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CFPB DEBT COLLECTION (REGULATION F) RULEMAKING FAQs

On November 12, 2013, the Consumer Financial Protection Bureau (“CFPB” or the “Bureau”) issued an [Advance Notice of Proposed Rulemaking](#) (“ANPR”) seeking comment, data, and information from the public about debt collection practices, and in January 2014, the CFPB extended the comment period to February 28, 2014. The CFPB has indicated that it will move to the next stage in rulemaking in December 2014. While the ANPR is far from a final rule, the ANPR included a number of policy statements and questions that provide insight into the direction the CFPB may be headed when it releases a proposed rule.

Why is the CFPB engaged in a rulemaking?

For the last several years, the Federal Trade Commission (“FTC”) and now the CFPB have reportedly received more consumer complaints about debt collectors than about any other single industry.

What Federal rules presently apply to debt collection?

The Fair Debt Collection Practices Act (“FDCPA”) prohibits debt collectors from engaging in unfair, deceptive, abusive, and other unlawful collection practices, but no federal agency was vested with authority to issue general implementing regulations prior to the creation of the CFPB. In addition, generally consumer financial services providers are subject to restrictions on unfair, deceptive, or abusive acts and practices (“UDAAPs”) under the Consumer Financial Protection Act (“CFPA”), and, for the most part, restrictions on unfair and deceptive trade practices under the Federal Trade Commission Act.

From 1977 to 2010, the primary enforcement authority on the federal level for the FDCPA was the FTC. Under the Dodd-Frank Act, the CFPB has primary government responsibility for administering the FDCPA. The Bureau has the authority to prescribe rules with respect to debt collection; issue guidance concerning compliance with the law; collect complaint data; educate consumers and collectors; and undertake research and policy initiatives related to consumer debt collection. The Bureau now shares federal enforcement responsibility for the FDCPA with the FTC and other federal agencies. In January 2012, the CFPB and the FTC entered into a [Memorandum of Understanding](#) (“MOU”) to coordinate efforts to protect consumers and avoid duplication of federal law enforcement and regulatory efforts. The MOU allows the FTC and CFPB to share enforcement information and coordinate activities.

What are the highlights of the rulemaking?

The CFPB is considering whether rules governing the collection of debts are warranted under the FDCPA or other CFPB authorities, including the CFPA, and, if so, what types of rules would be appropriate. Among the highlights:

- **Scope of Rulemaking** - Significantly, the CFPB indicated that future rules could encompass parties that collect their own debts—entities that are, under most circumstances, not subject to the FDCPA. The FDCPA generally applies to third-party debt collectors, such as collection agencies, debt purchasers, and attorneys who are regularly engaged in debt collection.

In addition, in [Bulletin 2013-07 \(July 10, 2013\)](#) the CFPB stated that by its authority under Dodd-Frank, all “covered persons,” including originating creditors, must refrain from committing UDAAPs when engaging in debt collection. The Bulletin offered examples of conduct that could constitute UDAAPs, including various acts or practices specifically identified in the FDCPA as prohibited, as well as various acts or practices that would likely be covered by the general FDCPA prohibitions on harassment or abuse, false or misleading representations, and unfair practices.

Also, the CFPB notes in the ANPR that some debt collection that is subject to the FDCPA may not be subject to the CFPA’s restriction on UDAAPs, and hence, it sought information about different types of debts in collection to help it determine which debts involve a consumer financial product or service.

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- **Disclosures** - The CFPB indicated that the rulemaking might include disclosures or address acts or practices in connection with debt collection activities. Of note, the CFPB expressed concerns about time-barred debt and the risk it poses to consumers who may not understand their legal rights and obligations. However, at the time of the ANPR there was a circuit split on whether settlement letters in which debt collectors made no affirmative disclosure about the time-barred nature of the debt violated the FDCPA.
- **Litigation Practices** - The CFPB indicated that there is a state role in debt collection litigation. However, based on the questions asked it appears that the CFPB may seek to influence state court procedures through imposing requirements on collectors by creating higher burdens of substantiation using UDAAP concepts.

What areas of the collections process is the CFPB considering for a rule?

The ANPR requested responses to 450 questions and sub questions. Among the topics the ANPR addressed were: Scope; Information Accuracy; Validation Notices, Disputes, and Verifications; Debt Collection Communications; Unfair, Deceptive, and Abusive Acts and Practices; Collection of Timed-Barred Debts; Debt Collection Litigation Practices; State and Local Debt Collection Systems; Recordkeeping Monitoring; and Compliance Requirements.

What questions did the CFPB ask about information accuracy?

The CFPB has stated several times that it is concerned about the transfer of information from an original creditor to third-party debt collection firms and debt buyers, and from those parties to other debt collectors and credit bureaus. The CFPB asked how documents and records are currently transferred and how to improve the accuracy of that information. The Bureau asked questions about how to ensure that debt collectors identify the correct person, claim the correct amount, and have adequate paperwork or data to support their claims about the amount owed.

What questions did the CFPB ask about information provided to the consumer?

Among the questions the ANPR raised is whether federal rules can better ensure that consumers receive clear information about debts and adequate information about legal rights. The CFPB is presently testing disclosures for debt collection.

What questions did the CFPB ask about communication tactics used by collectors?

Among the questions the ANPR raised is how federal rules can regulate contact frequency, contact methods, and contact claims.

Have the FTC and the CFPB previously taken steps to study the debt collection market?

The FTC and CFPB have undertaken several studies of the debt collection industry.

- **Collecting Consumer Debts: The Challenges of Change** (2009) – This FTC report recognized that the modernization of the FDCPA was needed in order to address new technologies, and noted inconsistencies in the implementation and interpretation of the law.
- **Repairing a Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration** (2010) – This FTC report made recommendations for enhanced state court and arbitration rules.
- **The Structure and Practices of the Debt Buying Industry**(2013) – This FTC report took an extensive look at the debt buying industry, focusing primarily on the manner and flow of information from creditors and other owners of debts to debt buyers. Of note, the FTC acknowledged in the report that its study did not permit any conclusions as to the prevalence of errors or inaccuracies in the information about the debts transferred.
- **Life of A Debt: Date Integrity in Debt Collection**(2013) – The FTC and CFPB held a joint roundtable that focused on four key areas: (1) information available to debt collectors at the time of assignment or sale, (2) verifying disputed debts both from the perspective of the FDCPA and FCRA, (3) debt collection litigation, and (4) time-barred debt.

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For more information, please contact Jonathan L. Pompan at 202.344.4383 or .

Jonathan L. Pompan, a partner in the Washington, DC office of Venable LLP, co-chairs the firm's Consumer Financial Protection Bureau ("CFPB") Task Force. His practice focuses on providing comprehensive legal advice and regulatory advocacy to a broad spectrum of clients, such as nonbank financial products and services providers, including debt buyers and collectors, advertisers and marketers, and trade and professional associations, before the CFPB, the Federal Trade Commission,

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For more information about this and related industry topics, see www.venable.com/cfpb/publications.

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