

CFPB Gives Preview of Changes Coming to the Collection Industry

Consumer Financial Services Alert

Hinshaw Alert | 3 min read

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On July 28, 2016, the Consumer Financial Protection Bureau (CFPB) issued a detailed [outline](#) of proposals that address some of the hot topic issues in the collection industry. Before they become rules, these proposals will first be sent to the Small Business Review Panel for feedback, and the public will also have the opportunity to comment. The proposals generally focus on broad topic areas, but also briefly outline a number of key issues addressing consumer complaints, as outlined below.

Collector Contacts with Consumers

In response to complaints of high volume of calls and letters, the CFPB is proposing limits on contact with consumers. The CFPB proposes that collectors should be limited to six attempts before they have reached the consumer and additional restrictions once contact has been confirmed. Also proposed is a new set of locations where a collector may not contact a consumer, plus a requirement of a 30-day waiting period before a collector may contact any survivor after the death of a consumer. Additionally, any consent given to a creditor to contact a consumer outside of the FDCPA's restrictions may not be relied on by a creditor or collector down the line.

Validation of Information

According to the CFPB, one third of consumers contacted regarding a debt have reported that the attempt to collect was for the wrong amount. The new rules propose that collectors must scrub their files and substantiate the debt before contacting consumers and must ensure they have accurate information such as the full name, last known address and telephone number, account number of the consumer, the date of default and the amount owed, and the date and amount of any payments after default.

Restrictions Following a Dispute

Under the proposed rules, collectors must stop collection and review documentation once a dispute has been made; and if there is insufficient evidence, the collector may not proceed. Importantly, the CFPB is considering

allowing a verbal questioning of the debt by the consumer to be done at any time which would prompt the requirement for the collector to check its documentation. Any warning signs that information is inaccurate or incomplete require a halt in the collection process until the issue is solved. A few common warning signs cited are a portfolio with high rates of disputes and the inability to obtain underlying documents to respond to a specific dispute. Lastly, before filing any collection lawsuit, collectors must again check their information.

Litigation Disclosure

In the initial collection notice, the collector must include information concerning the consumer's federal rights, and whether the debt is time barred for purposes of a collection lawsuit. This "litigation disclosure" includes information on how a collector intends to sue and provision of contact information for legal service programs. Lastly, the initial notice contains a tear-off portion that consumers can easily send back to either pay the debt or dispute it.

The proposed rules require that if a dispute is made within 30 days, the collector must provide the consumer with a debt report containing written information that substantiates the debt and cannot proceed until it is sent. The proposed rules attempt to prevent the "burying" of debt by transferring it when a consumer disputes the debt, and requires that upon a transfer, the collector must send information regarding the debt so consumers do not have to dispute a second time.

Incidental Fees

One important issue facing many collectors are "convenience fee" lawsuits in which a consumer sues because of a small dollar amount that a collector charged for paying the debt on a website. The CFPB is proposing that these fees may be collected permissibly if: a) state law expressly permits them, or b) the consumer has expressly agreed to them in the contract that created the underlying debt and state law does not either expressly permit or prohibit such fees.

Key Take Away

While the CFPB's proposed rules are now only a set of proposals, collectors must be aware of the proposals that may soon become law. Please continue to rely on Hinshaw to closely monitor the status of the rulemaking process, and contact Brandon S. Stein or your regular [Hinshaw attorney](#) regarding any questions.

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