

CFPB Continues to Focus on Reforming Consumer Collection Practices

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The CFPB has authority to enforce violations of the Consumer Financial Protection Act's prohibition on unfair, deceptive, and/or abusive practices (UDAAP). UDAAP violations have figured prominently in multiple enforcement orders covering what the CFPB deems "deceptive" debt collection practices. The magnitude of the penalties imposed demonstrates that the CFPB is using UDAAP enforcement actions to try to reform industry practices. Thus, businesses engaged in collection of consumer debt face mounting regulatory scrutiny in addition to existing civil litigation challenges under the Fair Debt Collection Practices Act (FDCPA).

In a recent enforcement action, the CFPB ordered the United States' two largest debt buyers to overhaul their "deceptive debt collection practices" and, collectively, pay \$61 million in refunds, stop collecting \$128 million, and pay \$11 million in civil penalties. Among other things, the CFPB found that the debt buyers had knowingly purchased "approximate" debt from creditors where the current balances had not been confirmed, and then misrepresented their intention to prove the debts, by suing with "robo-signed" lawsuits that did not provide proof of the amounts owed. **In some instances, the debt buyers advised borrowers that they had to prove that the debt was not owed or that an attorney had reviewed the debt and a suit was imminent.** The Bureau found each of these practices deceptive. Other practices that have been deemed deceptive by the CFPB in recent orders include phone calls with a fake name on caller ID, false threats to immediately repossess collateral, and misleading customers into consenting to auto-dialer technology by making false misrepresentations that consenting to the auto-dialer is the only way to prevent early morning cell phone calls.

The definition "debt collector" under the Fair Debt Collection Practices Act (FDCPA) was recently refined by the Eleventh Circuit in *Davidson v. Capital One* to make it clear that it includes any person who regularly collects or attempts to collect debts owed or due to another and could not apply to a bank that collected debts bought from another, but owned by the bank. Even if the debt buyers sanctioned by the CFPB had collected only their own, owned-debts, and thus were able to limit their FDCPA civil liability, such a distinction did not protect the debt buyers from CFPB's UDAAP enforcement capabilities. Thus, businesses that collect debts – whether owned by themselves or by another – should carefully consider the CFPB's reach and the guidance provided regarding what the CFPB considers deceptive practices.