Utah Bankers Association
Compliance Conference

FDCPA Compliance:
Let’s Be Fair About This

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Agenda

• Background
• Coverage
• Debt Collector Definition
• Communication
  – Third-Parties
• Abuse/Harassment/Unfair Practices
• Current Regulatory Environment
• Questions and Answers
Background

• Enacted in 1977
  – Designed to eliminate abusive, deceptive and unfair practices in debt collection
  – FTC had authority over the Act until it was transferred to the CFPB in 2011
  – CFPB shares enforcement authority with the FTC and other federal banking agencies
  – Currently there are no regulations that implement the law for insured financial institutions
Coverage

• Applies only to collection of obligations incurred by consumers for personal, family, or household purposes
Debt Collector

• Defined as any person who regularly collects, or attempts to collect, consumer debts for another person or institution or uses some name other than its own when collecting its own consumer debts.
  – Would include an institution that regularly collects debts for an unrelated institution
Debt Collectors That Are Not Covered

An institution is not a debt collector under the FDCPA when it collects:

• Another’s debts in isolated instances
• Its own debts under its own name
• Debts it originated and then sold, but continues to service
• Debts that were not in default when they were obtained
• Debts that were obtained as security for a commercial credit transaction
• Debts incidental to a bona fide fiduciary relationship or escrow arrangement (for example, a debt held in the institution’s trust department or mortgage loan escrow for taxes and insurance).
• Debts regularly for other institutions to which it is related by common ownership or corporate control.
Communication

Unless the debt collector has permission from the consumer or from a court, the law prohibits communication:

• At an unusual time or place
• Before 8:00 am
• After 9:00 pm
• When the consumer is represented by an attorney
Prohibited Communication

• At the consumer’s place of employment
  – If it is known that the employer forbids such communication

• Using post cards is prohibited

• Envelopes must not suggest the letter is from a debt collector

• Communicate information to others which would disgrace the debtor including through publicizing a debtor list or advertising the debt for sale
Third Parties

There are limits regarding a collector’s ability to talk to third parties

- Generally, agents can talk only to the debtor, their attorney and their spouse (if debtor is a minor, then also their parent or guardian). If talking to someone other than the debtor:
  - Debt collector must identify themselves
    - Identify their employer if asked
  - Must state the call is to confirm or correct location information
    - Only discuss debtor’s location
  - Not state that the consumer owes a debt
  - Once location information is received
    - Not communicate more than once
Location Information from a 3rd Party

• May not communicate by postcard
• May not communicate with 3rd party if debt collection knows the debtor is represented by an attorney
Abuse/Harassment

Collectors and Agents cannot:

• Threaten physical force or violence
• Let the telephone ring in such a manner so as to annoy the debtor
• Use obscene or profane language
• Contact the debtor at their job if there is reason to know such communications are prohibited
• Cause the debtor expense for long distance calls, telegram fees, etc.
Unfair or Unconscionable Practices

• Must fairly represent the status, amount and character of the debt
• May not:
  – Falsely imply that communication is from an attorney
  – Threaten to take any action when the collector does not intend to take such action
  – Imply that the consumer committed a crime
  – Use any false representation to collect or obtain information
  – Communicate or threaten to communicate credit false credit information
Unfair or Unconscionable Practices - Continued

• Must disclose in first communication (verbal or written) that they are trying to collect a debt and any information will be used for the purpose
Unfair Practices

• Collect only amount legally owed

• Postdated checks
  – May not deposit before date on check
  – If postdated more than 5 days
    • Notify the customer at least 3 days but no more than 10 days before depositing the check

• Threaten to take action if there is no right to do so
Validation of Debt

• Validation sent to consumer within 5 calendar days
  – Unless information is contained in initial communication
  – Notice must contain
    • Amount of debt
    • Name of Creditor
    • Statement that debt will be assumed valid unless disputed
    • Statement that the creditor will provide the name and address of the original creditor (if different)
    • Statement that if the debt is disputed that the collector will provide verification of the debt by mail
Validation of Debt

• If the debt is disputed within 30 days, all collection activity must stop until the debt is verified

• If consumer owes multiple debts, any payment must be applied to the debts in accordance with the consumer’s direction
• **UDAAP**

  - Collections is an emerging area of risk
  - Prohibits debt collectors from engaging in unfair or deceptive acts or practices
  - Applies to the collection of consumer debts by third parties
  - State laws are similar and impact first parties. This is the gold standard
  - CFPB memo and case law extends application to all banks
Recent CFPB Guidance

• Don’t make false promises to entice settlement
• Only take possession of property when there is a legal right to it
• No inaccurate claims regarding credit reports, credit scores and creditworthiness
CFPB ANPR

• 1/14/2014
  – CFPB-2013-0033
  – General premise is to apply third-party debt collection requirements upon first-party debt collectors
  – ABA Comment Letter
    • 2/28/14
Recent Action

• 9/30/2015

• CFPB ordered an indirect auto lending company and its auto lending subsidiary to pay $48.3 million in fines for alleged FDCPA, TILA, and UDAAP violations.

• The CFPB alleges
  – The companies manipulated borrowers by using phony caller ID information and lying about imminent repossession or criminal charges in order to induce loan payments
  – The companies also contacted third parties of the borrowers and made similar misrepresentations about the borrower’s account
Questions??