



1700 G Street, N.W., Washington, DC 20552

CFPB Compliance Bulletin 2015-07

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Subject: In-Person Collection of Consumer Debt

In response to recent practices observed during supervisory examinations and enforcement investigations, the Consumer Financial Protection Bureau (CFPB or Bureau) issues this compliance bulletin to provide guidance to creditors, debt buyers, and third-party collectors about compliance with sections 1031 and 1036 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) and the Fair Debt Collection Practices Act (FDCPA) when collecting debt from consumers.

As discussed in more detail in CFPB Bulletin 2013-07,¹ the Dodd-Frank Act prohibits covered persons or service providers, including first-party and third-party debt collectors, from committing or engaging in unfair, deceptive, or abusive acts or practices (collectively, UDAAPs) while collecting or attempting to collect consumer debts. In addition, the FDCPA prohibits third-party debt collectors and others subject to that Act from, among other practices, communicating with a consumer at any time or place that is known or which should be known to be inconvenient to the consumer, or at the consumer's place of employment if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication, from communicating with any person other than the consumer (and other specified parties, except in certain circumstances) in connection with the collection of any debt other than to acquire location information in accordance with the FDCPA, from "us[ing] unfair or unconscionable means to collect or attempt to collect any debt," and from "engag[ing] in any conduct the natural consequences of which is to harass, oppress, or abuse any person in connection with the collection of a debt."²

Dodd-Frank Act

First-party and third-party debt collectors may run a heightened risk of committing unfair acts or practices in violation of the Dodd-Frank Act when they conduct in-person debt collection visits, including to a consumer's workplace or home. An act or practice is unfair under the Dodd-Frank Act when it causes or is likely to cause

¹ See CFPB Bulletin 2013-07, Prohibition of Unfair, Deceptive, or Abusive Acts or Practices in the Collection of Consumer Debts (July 10, 2013), available at http://files.consumerfinance.gov/f/201307_cfpb_bulletin_unfair-deceptive-abusive-practices.pdf.

² 15 U.S.C. §§ 1692b, 1692c, 1692d, and 1692f.

substantial injury to consumers which is not reasonably avoidable by consumers and is not outweighed by countervailing benefits to consumers or competition.

Depending on the facts and circumstances, in-person collections may cause or may be likely to cause substantial injury to consumers. For example, in-person collection visits may result in third parties, such as consumers' co-workers, supervisors, customers, roommates, landlords, or neighbors learning that the consumers have debts in collection. When such information is revealed to such third parties, it could harm the consumer's reputation and, with respect to in-person collection at a consumer's workplace, result in negative employment consequences. In addition, depending on the facts and circumstances, in-person collection visits may result in substantial injury to consumers even when there is no risk that the existence of the debt in collections will be disclosed to third parties. Such injury may result when, for example, a collector goes to a consumer's place of employment when the consumer's employer prohibits the consumer from having personal visitors there, which could also result in negative employment consequences. As with other types of collection, in-person visits may also be likely to cause substantial injury to a consumer if, based on the facts and circumstances, a likely or actual consequence of the visits is to harass the consumer.

In a recent public enforcement action, based on the facts and circumstances in that matter, the Bureau alleged that the disclosure or risk of disclosure of debts to third parties during in-person collection visits, as well as going to a consumer's place of employment when the creditor knew or should have known that personal visitors were not permitted or that going to the consumer's place of employment was inconvenient to the consumer, was unfair in violation of the Dodd-Frank Act.³ The Bureau's examiners have also found in one or more examinations unfair acts or practices with respect to in-person collection workplace visits.⁴

Fair Debt Collection Practices Act

In addition, third-party debt collectors and others subject to the FDCPA who engage in in-person collection visits may violate a variety of FDCPA provisions.

First, section 805(a)(1) and (3) of the FDCPA makes it illegal for third-party debt collectors and others subject to that Act to communicate with a consumer in connection with the collection of any debt "at any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer" or "at the consumer's place of employment if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication." Consumers may find in-person collection visits to be inconvenient and collectors may know or should know of this inconvenience; similarly, collectors

³ See *In re EZCORP, Inc., et al.*, File No. 2015-CFPB-0031 (the Bureau ordered the company to pay redress and a penalty and prohibited the company from conducting future in-person collection visits to consumers' homes and workplaces).

⁴ See, e.g., Supervisory Highlights, Spring 2014 edition at p. 18.

may know or have reason to know that a consumer's employer prohibits the consumer from receiving such communication at the workplace. For example, a consumer may indicate that an in-person collection visit to a consumer's workplace would be likely to disrupt the consumer's workplace, interfere with the consumer's ability to do his or her job, or is prohibited by the consumer's employer. In-person collection visits therefore may pose a heightened risk of collectors violating section 805(a)(1) and (3) of the FDCPA.

Second, subject to certain exceptions, section 805(b) of the FDCPA prohibits third-party debt collectors and others subject to that Act from communicating with any person other than the consumer in connection with the collection of any debt. Depending on the facts and circumstances, in-person collection visits may result in collectors communicating with others about the debt in violation of section 805(b).⁵

Finally, sections 806 and 808 of the FDCPA prohibit, respectively, a debt collector from engaging in any conduct the natural consequence of which is to harass, oppress, or abuse any person, and from using unfair or unconscionable means to collect or attempt to collect any debt. In-person collection visits may pose a heightened risk that collectors will violate these provisions.

If the CFPB determines that a company has engaged in acts or practices that violate the Dodd-Frank Act, the FDCPA, or other Federal consumer financial law, it will take appropriate supervisory or enforcement actions to address the violations and seek all appropriate corrective measures, including remediation of harm to consumers and assessment of civil money penalties.

This compliance bulletin summarizes existing requirements under the law and findings the Bureau has made in the course of exercise of its supervisory and enforcement authority and is a non-binding general statement of policy articulating considerations relevant to the Bureau's exercise of its supervisory and enforcement authority. It is therefore exempt from notice and comment rulemaking requirements under the Administrative Procedure Act pursuant to 5 U.S.C. 553(b). Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.⁶ The Bureau has determined that this compliance bulletin does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring Office of Management and Budget (OMB) approval under the Paperwork Reduction Act, 44 U.S.C. 3501, et seq.

⁵ The FDCPA permits debt collectors to communicate in a manner that would otherwise violate Sections 805(a)(1) and (a)(3), as well as Section 805(b), if they obtain the "prior consent of the consumer given directly to the debt collector."

⁶ See 5 U.S.C. § 603(a), 604(a).