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The Fair Debt Collection Practices Act (FDCPA) and You

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Do you collect your own debt? Or do you hire a third party to collect debt on your behalf? If so, take note: the Consumer Finance Protection Bureau ("CFPB") has issued new guidance in CFPB Compliance Bulletin 2015-07 regarding in-person collection of consumer debt.

The Fair Debt Collection Practices Act ("FDCPA") prohibits third-party debt collectors 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 they 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."

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

In-person collection visits may pose a heightened risk of collectors violating any of the above provisions of the FDCPA.

However, there is not similar clear guidance with respect to actions of first-party debt collectors. CPFB Bulletin 2015-07 states that it is intended to provide guidance to creditors, debt buyers and third-party debt collectors about compliance with sections 1031 and 1036 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act") and the FDCPA when collecting debt from consumers in person.

The Dodd-Frank Act covers both first-party and third-party debt collection. Such collectors may commit an "unfair act or practice" 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 substantial injury to consumers which is not reasonably avoidable by consumers and is not outweighed by countervailing benefits to consumers or competition.

Examples that the CFPB lists as in-person collections causing or likely to cause substantial injury to consumers under the Dodd-Frank Act include:

- In-person collection visits, which may result in third parties, such as a consumer's co-workers, supervisors, customers, roommates, landlords or neighbors leaning that the consumer has 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-person collection visits even when there is no risk that the existence of the debt in collections will be disclosed to third parties, such as when 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.
- In-person collection visits if a likely or actual consequence of the visit is to harass the consumer.

The CFPB Bulletin sets forth a recent public enforcement action in which the CFPB 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. *See In re EZCORP, Inc. et al,* File No. 2015-CFPB-0031 (the CFPB ordered the creditor to pay redress and a penalty and prohibited the creditor from conducting future in-person collection visits to consumers' homes and workplaces).

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 monetary penalties.

The CFPB Bulletin a helpful reminder to all creditors that use of in-person collection visits (whether by the creditor itself or a third party) carries a great risk of running afoul of the Dodd-Frank Act and the FDCPA. With this Bulletin, the CFPB has made clear that a creditor can be held liable for violations relating to in-person collection activities, even though the FDCPA does not extend to first-party debt collectors. If you have doubts about whether your collection actions comply, contact your attorney for further guidance.

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