



CFPB Will Apply FDCPA Rules to Businesses That Collect Their Own Debts

Congress enacted the Fair Debt Collection Practices Act (FDCPA) in 1977 to protect consumers from unfair debt collection practices by third parties that were hired to collect debts on behalf of others. Debt collectors were prohibited from engaging in practices designed to harass debtors, including calling debtors at all hours of the day or night or embarrassing debtors by disclosing private information to the debtors' families, friends, employers, or co-workers, as well as to deceive debtors, such as concealing the collector's identity or purpose in calling, or misrepresenting the nature of the debt and the steps that can be taken legally to collect it. The FDCPA expressly does not apply to first parties that attempt to collect their own debts, such as banks and other financial institutions.

The Consumer Financial Protection Bureau recently issued a guidance [bulletin](#), "Prohibition of Unfair, Deceptive, or Abusive Acts or Practices in the Collection of Consumer Debts," announcing that it will apply many of the FDCPA provisions to companies that fall within its jurisdiction and collect their own debts. Although these first-party debt collectors otherwise would not be subject to the FDCPA's prohibitions, the CFPB has determined that many of the prohibited acts and practices under the FDCPA also constitute unfair, deceptive, and abusive acts or practices (UDAAPs).

The July 10, 2013, bulletin warns that "covered persons" that are within the CFPB's jurisdiction and collect their own debts will be subject to enforcement by the CFPB for UDAAP violations if they engage in any of the following "non-exclusive" list of FDCPA-prohibited acts:

- Collecting or assessing a debt and/or any additional amounts in connection with a debt (including interest, fees, and charges) that has not been expressly authorized by the agreement creating the debt or permitted by law;
- Failing to post payments timely or properly or to credit a consumer's account with payments that the consumer submitted on time, and then charging late fees to that consumer;
- Taking possession of property without the legal right to do so;
- Revealing the consumer's debt, without the consumer's consent, to the consumer's employer and/or co-workers;
- Falsely representing the character, amount, or legal status of the debt;
- Misrepresenting that a debt collection communication is from an attorney;
- Misrepresenting that a communication is from a government source or that the source of the communication is affiliated with the government;
- Misrepresenting whether information about a payment or nonpayment would be furnished to a credit reporting agency;
- Misrepresenting to consumers that their debts would be waived or forgiven if they accepted a settlement offer,

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when the company does not, in fact, forgive or waive the debt; and

- Threatening any action that is not intended or that the covered person or service provider does not have the authorization to pursue, including false threats of lawsuits, arrest, prosecution, or imprisonment for nonpayment of a debt.

Although the FDCPA already prohibits third-party debt collectors from engaging in any of the above actions, the CFPB announcement indicates that it will use its UDAAP authority to apply FDCPA rules to first-party debt collectors that are within its jurisdiction. Companies that offer or provide consumer financial products and/or services and collect their own debts (as well as their service providers) should immediately prepare and implement policies, procedures, and systems to prevent and detect such acts in the course of their debt collection activities.

For more information about the content of this alert, please contact [Michael Mallow](#) or [Michael Thurman](#).

Loeb & Loeb LLP's Consumer Financial Protection Bureau Task Force

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