REPORT

Telephone Communication Compliance: The CFPB's Consent Orders

COMPLIANCE PROFESSIONALS FORUM

insideARM

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6110 Executive Blvd, Suite 1040, Rockville, Maryland, 20850
editor@insideARM.com | 240.499.3834 | www.insideARM.com

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Introduction

Since its inception, the Consumer Financial Protection Bureau (CFPB) has penalized a wide variety of companies and people for violating federal consumer financial protection laws. The CFPB most often issues penalties through the use of consent orders settled in federal court. The penalized parties agree to the consent orders through a "stipulation" that allows them to resolve the dispute and agree to the penalty without admitting guilt.

The CFPB intends for its consent orders to set industry-wide precedents. In March 2016, CFPB Director Richard Cordray referred to consent orders as a guide "to all participants in the marketplace to avoid similar violations and make an immediate effort to correct any such improper practices," telling the Consumer Bankers Association that any company not following the precedents set by the CFPB's consent orders is committing "compliance malpractice."

The Bureau has the authority to issue penalties for violations of a range of laws, but they focus most often on violations of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. In relation to this, the main thing Account Receivables Management (ARM) companies are penalized for are so-called "unfair, deceptive, or abusive acts and practices" (UDAAPs), which are prohibited by Sections 1031 and 1036 of Dodd-Frank.

What is a UDAAP? Detailed definitions can be found in this CFPB bulletin published on July 10, 2013:

- An act or practice is considered **unfair** if it causes or is likely to cause substantial injury to consumers, the injury is not reasonably avoidable by consumers, and the injury is not outweighed by countervailing benefits to consumers or competition.
- An act or practice is considered **deceptive** if it is material, if it is likely to mislead a consumer, and if the consumer's interpretation is reasonable under the circumstances.
- An act or practice is considered **abusive** if it materially interferes with a consumer's understanding of or ability to understand a product/service; or takes unreasonable advantage of a consumer.

When the CFPB penalizes a company or individual, the Bureau's order stipulates that the penalized party act differently in some way. Additionally, most consent orders involve a financial penalty. The CFPB issues two main types of fines when announcing their enforcement actions – redress and civil penalties. The largest fines assessed by the CFPB are usually redress penalties. Redress penalties are typically distributed by the penalized party directly to consumers, and civil penalties are put into the federal Civil Penalty Fund established by the Dodd-Frank Act. The total amount of fines and penalties can vary widely.

The CFPB says they will be "closely" monitoring the following specific unfair, deceptive, or abusive acts and practices in the collection of consumer debts:

- Collecting or assessing a debt and/or any additional amounts in connection with a debt not 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 non-payment 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, when the company does not, in fact, forgive or waive the debt.
- Threatening any action that is not intended or the covered person or service provider does not have the authorization to pursue, including false threats of lawsuits, arrest, prosecution, or imprisonment for non-payment of a debt.

This paper specifically looks at consent orders that address telephone communications violations. As of May 2016, the Bureau has yet to specifically cite the TCPA explicitly in a consent order against a company or individual. But telephone communication issues show up in each of the eight consent orders listed below.

This paper has been excerpted from insideARM's larger **The CFPB's Consent Orders Regulating the ARM Industry** report, available for sale now.