

To the Point: The Chase Consent Order



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CHASE



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Introduction: How to Get From Then to Now

On September 18, 2013, JP Morgan Chase settled its ongoing legal battle with the Office of the Comptroller of the Currency. The [consent order](#), released September 19, 2013, stems from a March 2012 probe of the bank's credit card portfolio sales and other debt collection practices.

In 2012, the Office of the Comptroller of the Currency began investigating Chase after a whistleblower alleged that the bank had approximately 5,000 accounts with incorrect balances and 11,000 accounts with judgments the bank falsely claimed it had. Charges against Chase included failure to reconcile the inconsistent past-due balances generated by the bank's computer systems, the collection of delinquent debts in the absence of complete or accurate records, and robo-signing of affidavits that brings into question the legal integrity of Chase's claims against tens of thousands of consumers.

Chase issued a press release the same day the consent order was released, noting that the issues identified in the consent order "were discovered by Chase in internal reviews that began in 2010." The bank stated that it had stopped filing credit card collection litigation in 2011 and has not restarted the process. Chase claimed that less than one percent of its customers were impacted. The bank also claimed in the release that it had dismissed the impacted lawsuits.

"Any mistake is regrettable and does not reflect the high standards we set for ourselves and our commitment to providing all customers an outstanding experience. We are committed to fixing this and getting it right," Chase said in its release.

These investigations, and Chase's subsequent payout, are likely to change the practices at nearly all banks. Debt collection attorneys and debt buyers are going to feel the impact most directly. It's in the ARM industry's best interest to closely follow the cases as they develop.

The Charges

In the consent order, the OCC identified unsafe or unsound practices in connection with JP Morgan Chase's sworn document and collection litigation practices, as well as the bank's efforts to comply with the SCRA (Servicemembers Civil Relief Act). These unsafe practices were most noticeable in the bank's consumer and community banking businesses, including credit card services and student loans.

Specifically, the OCC accused Chase of:

- Causing affidavits to be filed in court where the affiant did not have personal knowledge of the assertions made or had reviewed the relevant books and records
- Permitting the filing of "inaccurate sworn documents" that resulted in judgments with financial errors in favor of the bank
- Failing to "sufficiently oversee outside counsel and other third-party providers" who handled its sworn documents and collections litigation

Corrective Action

1. **Create a compliance committee:** The committee has to consist of three directors, and at least two cannot be employees. They have to be responsible for monitoring and coordinating what is required to be carried out by the consent order. And it's requiring progress reports, and it specifies the timelines within which those progress reports have to be submitted to evidence compliance with the consent order.
2. **Comprehensive action plan:** Chase must identify the resources it has to develop and carry out the requirements of the consent order. The compliance committee will be responsible for carrying out this plan.
3. **Metrics to measure compliance:** Data counts! Experts speculate that OCC has mandated Chase set up these metrics because, like the Consumer Financial Protection Bureau, it's an increasingly data-driven organization.
4. **Governance and controls:** Chase must be able to show that it has carried through the required processes of the consent order.

Any plans made by Chase in response to the consent order must be submitted back to the deputy comptroller and the enforcement inspector in charge before they can move forward.

From the Webinar:

"There has been a lot of talk certainly in blogs and the press in the last week that there were no fines and penalties associated with this OCC consent order. I would tend to disagree. As you see, Chase is going to have to engage a lot of resources to develop its litigation plan and the SCRA plans...and audits. But also, they have to do a top-to-bottom review of all their collection accounts from January 1, 2009, to the present to see if they're eligible for remediation. And once those accounts...are identified, then there will be remediation. So, there are fines and penalties to some degree, maybe not specifically but to some degree, put into this consent order. And that is a process that needs to be done almost immediately."

*Joann Needleman
Vice President, Maurice & Needleman P.C.*

Plan for Litigation

Chase will be responsible for the oversight, monitoring and supervision of not only their internal data and information, but also information and data that goes outside of the bank; this includes data that goes to collection attorneys, to the extent collection attorneys do pleadings and affidavits. Chase is going to have to be responsible and ensure that all of that is compliant within the order and within the legal requirements.

1. **Bank Oversight:** Chase must develop written policies and procedures to monitor and make sure that sworn documents and litigation are appropriate. They must also put processes in place to make sure that factual assertions in verified pleadings are correct and review of bank records are correct. Finally, affidavits must obviously be done correctly.
2. **Bank-Attorney Collaboration:** These processes are meant to ensure that what attorneys are doing is accurate and appropriate. Interestingly, there's a requirement in the consent order that fees and expenses are consistent with credit agreement and legal requirements. This may address some of the findings of the OCC where they felt that fees were being paid not necessarily for success, but for the amount of work that was being done. There will need to be a whole engagement with Chase and their attorneys about how they're going to pay them.
3. **Attorney Oversight:** This is also a key component of bank-attorney collaboration.

Debt Sales

The consent order requires the bank to revise its policies concerning its sales of charged-off consumer debt. Essentially, the order tells Chase that even though it sells a debt, it can't just walk away. Chase will have to be actively engaged with their debt buyers on an ongoing basis even after the transaction is completed to ensure that the information that the debt buyer is receiving and potentially using in its efforts to enforce the debt are accurate.

Chase must develop policies that ensure:

- The accuracy and integrity of "all information" provided to the purchaser
- Information provided to debt buyers is sufficient and appropriate for compliant debt collection activities
- Debt buyers can receive additional information concerning purchased accounts when necessary
- The bank engages in initial and ongoing due diligence of the purchasers of the banks charged-off accounts, "including an evaluation of the debt buyers' past performance with respect to consumer protection and debt collection laws"
- The bank has a "thorough understanding" of the "scope of debt buyers anticipated debt collection activities"
- The bank implements a system that monitors complaints and "any allegations of adverse treatment" by debt buyers

Third-Party Management

Chase has to have procedures in place for outsourcing its collection litigation. It defines third parties as generally third-party providers, any agent, independent contractor, consulting firm, law firm or other material participant in the process.