

CFPB Update – April 2016

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Presentation Overview

- CFPB Update: April 2016
 - **Oral Argument:**
 - *PHH Corporation, et al. v. CFPB*
 - **Decision:**
 - *CFPB v. ACICS*
 - **Enforcement Action:**
 - *CFPB v. Pressler & Pressler, LLP, et al.*
 - **Reports:**
 - CFPB Monthly Complaint Snapshot
 - FDCPA: CFPB Annual Report 2016

- This month's focus:
 - Compliant communications and practices when using social media.

Oral Argument: *PHH Corporation, et al. v. CFPB*

- Vigorous oral argument held in the U.S. Court of Appeals for the D.C. Circuit.
- Challenges made to:
 - CFPB’s constitutionality; and
 - Director Cordray’s decision to interpret the Real Estate Settlement Procedures Act, thereby resulting in an increased penalty on PHH Corporation, et al., from approx. **\$6 million** to **\$109 million**.

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Decision: *CFPB v. ACICS*

- Issue:
 - Defendant ACICS challenged the CFPB’s authority to issue it a Civil Investigative Demand (CID) because ACICS argued that it does not offer a “consumer financial product or service.”
 - ACICS is a private company that provides accreditation services to for-profit colleges
- Result:
 - *Judge Leon of the U.S. District Court for the District of Columbia ruled that the CFPB did **NOT** have authority to issue the CID.*

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CFPB Consent Order: *Pressler & Pressler, LLP, et al.*

- Enforcement action taken against debt collection law firm, the firm's two principal partners, and a debt buying company.
- The consent orders bar the companies and individuals from continuing to engage in deceptive practices, primarily:
 - Failing to verify debts purchased; and
 - Harassing consumers with unsubstantiated and false lawsuits and court filings.
- The orders also require the firm and the named partners to pay \$1 million, and New Century to pay \$1.5 million, to the CFPB.

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CFPB Monthly Snapshot

- Focus of March 2016 Monthly Complaint Snapshot: Debt Collection
- Practices cited as basis for complaints:
 - Collection on debt not owed;
 - Debt collectors repeatedly calling consumers; and
 - Consumers unable to verify debts owed.

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FDCPA: CFPB Annual Report 2016

- Violations uncovered in 2015 through supervisory efforts:
 - Failure to state that a call is from a debt collector;
 - Failure to implement consumer requests regarding communications; and
 - False, deceptive or misleading representations regarding credit reporting.
- Enforcement in 2015:
 - Resulted in \$360 million returned to consumers and \$79 million in fines.
- In 2015, the Bureau handled over 85,200 debt collection complaints, making debt collection the largest source of consumer complaints.

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April 2016 Focus: Compliant Communications

- Last month the FTC issued a blog post aimed at debt collectors that use social media and text messages during collection.
- The FTC warned that:
 - ***A debt collector may not disclose the existence of a debt to a third party on social media.*** Beware of posting on online platforms, as well as contacting a borrower's "friends" or "connections" on social media during skip-tracing efforts.
 - ***A debt collector may not make false statements or use false pretenses on social media.*** The FTC warned collectors not to use text messages designed to look like fraud alerts.
 - ***A debt collector must disclose, in all communications, that they are a debt collector trying to collect on a debt.***
 - ***Don't use social media to impose fees that are not authorized by the FDCPA.***

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April 2016 Focus: Compliant Communications

- **CFPB Compliance Risk Management Expectations for Social Media:**

- A financial institution should have a risk management program that allows it to identify, measure, monitor, and control the risks related to social media.
- The risk management program should be designed with participation from specialists in compliance, technology, information security, legal, human resources, and marketing.
- Financial institutions should also provide guidance and training for employees' official use of social media.
- Financial institutions should ensure that information it communicates on social media sites is accurate, consistent with other information delivered through electronic media, and not misleading.

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Questions?

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