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Governmental Investigations Involving the Debt Collection Industry: *Ignorance is Not Bliss*

September 7, 2016

ACA INTERNATIONAL
The Association of Credit and Collection Professionals

Contents

Agenda

- **8:30 - 9:00 am** | Registration and Breakfast
- **9:00 – 9:10 am** | Welcoming Remarks by Anthony DiResta, Partner, Holland & Knight
- **9:10 - 10:00 am** | Anthony Alexis, Assistant Director for Enforcement, Consumer Financial Protection Bureau
- **10:00 - 10:50 am** | Greg Nodler, Senior Counsel for Enforcement Policy and Strategy, Consumer Financial Protection Bureau
- ***10:50 - 11:00 am*** | *Break*
- **11:00 am – 12:15 pm** | Panel Discussion
  - Heather Allen, Attorney, Federal Trade Commission
  - Daniel Dwyer, Attorney, Division of Financial Practices, Federal Trade Commission
- **12:15 – 1:15 pm** | Lunch and Presentation, "Hot Topics Concerning TCPA Litigation"
  - Cory Eichhorn, Partner, Holland & Knight
  - Phil Rothschild, Senior Counsel, Holland & Knight

ACA INTERNATIONAL
The Association of Credit and Collection Professionals

Welcome to…

Governmental Investigations Involving the Debt Collection Industry: *Ignorance is Not Bliss*

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Governmental Investigations Involving the Debt Collection Industry: *Ignorance is Not Bliss*

Hosted by:

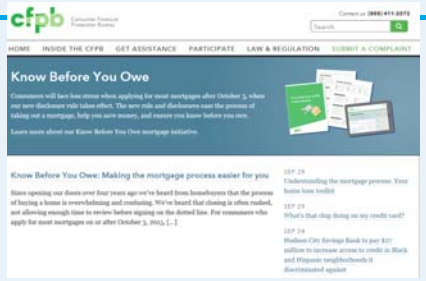
ACA International
The Association of Credit and Collection Professionals

September 7, 2016
9:00 am – 1:00 pm

Consumer Financial Protection Bureau

Core function:

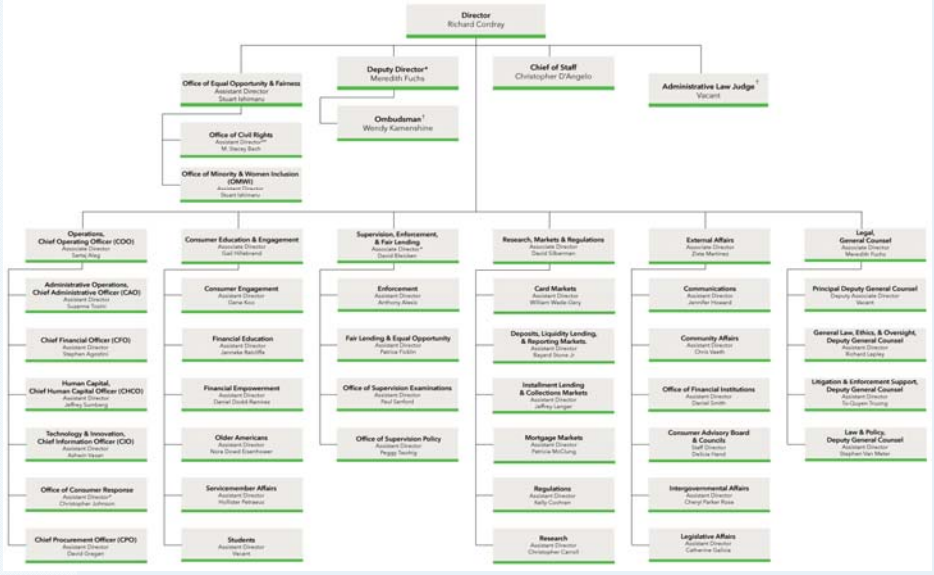
- To give consumers the information they need to understand the terms of their agreements with financial companies.



Among other things, the CFPB:

- Writes rules, supervise companies, and enforce federal consumer financial protection laws;
- Restricts unfair, deceptive, or abusive acts or practices;
- Receives consumer complaints;
- Promotes financial education;
- Researches consumer behavior;
- Monitors financial markets for new risks to consumers;
- Enforces laws that outlaw discrimination and other unfair treatment in consumer finance

Consumer Financial Protection Bureau



Office of Enforcement
Consumer Financial Protection Bureau

Mission:

- To ensure that consumer finance markets work efficiently, by consistently and fairly enforcing federal consumer financial laws, empowering consumers to take more control over their economic lives and protecting honest businesses

Function:

- Investigate potential violations of federal financial consumer laws;
- Obtain relief for consumers through civil and administrative actions for remedies that include cease-and-desist-orders, equitable relief, rescission and reformation of contracts, monetary relief, and civil penalties; and
- Support the CFPB's supervisory function by providing legal analysis and assistance on all examinations of bank and nonbank entities to ensure compliance with the law.

Anthony Alexis
Director, Office of Enforcement

- ***Background***:
  - Mr. Alexis received his B.A. at George Washington University and earned his J.D. from Howard University.
  - Mr. Alexis clerked on the U.S. Court of Appeals for the Eighth Circuit and the U.S. District Court for the Eastern District of Missouri in St. Louis. Trial attorney in the Department of Justice's Commercial Litigation Branch.
  - Complex litigation and white collar partner at Mayer Brown LLP in its Washington, D.C. office.
  - Assistant United States Attorney in the District of Columbia for 13 years where he worked in the civil and criminal divisions.
- Prior to serving as Director of the CFPB Office of Enforcement, Mr. Alexis previously served as Acting Assistant Director, Principal Deputy, and Deputy Assistant Director for Field Litigation for the CFPB's Office of Enforcement.

Federal Trade Commission

Mission:

- To prevent business practices that are *anticompetitive* or *deceptive* or *unfair to consumers*;
- To enhance informed consumer choice and *public understanding* of the competitive process; and
- To accomplish this without *unduly burdening* legitimate business activity.

Federal Trade Commission

Strategic Goals:

- *Protect Consumers*: Prevent fraud, deception, and unfair business practices in the marketplace.
- *Maintain Competition*: Prevent anticompetitive mergers and other anticompetitive business practices in the marketplace.
- *Advance Performance*: Advance the FTC's performance through organizational, individual, and management excellence.

Division of Financial Practices Federal Trade Commission

Financial services play an important role in the daily lives of virtually all Americans. Financial Practices promotes truthfulness and fairness in the provision of these services by entities within the FTC's jurisdiction, so that consumers can make better-informed decisions.

- **Debt Collection:** The Fair Debt Collection Practices Act prohibits deceptive, unfair, and abusive debt collection practices that can harm consumers who are unable to pay their debts due to job loss or other financial problems. Financial Practices uses enforcement and education to protect consumers from such harmful practices. It also conducts public workshops and makes policy recommendations on developments in the debt collection marketplace.

Division of Financial Practices
Federal Trade Commission

- **Mortgage, Credit Card, and Other Debt Relief Services:** Financial Practices targets firms that make deceptive offers to assist consumers in reducing or renegotiating secured debt, such as a mortgage or car loan, and unsecured debt, such as credit card bills. These claims mislead consumers already in financial distress as to who is providing these services, what services they will provide, and how much they charge for them. The scams vary, and include offers to provide mortgage loan modification, foreclosure relief, short sales, mortgage refinancing, debt settlement, debt negotiation, and credit counseling. Victims often find themselves in even more dire financial straits than before.

Division of Financial Practices
Federal Trade Commission

- **Pay Day Lending:** Many consumers who need cash quickly turn to payday loans – short-term loans with very high interest rates (i.e., 400% of more) that are generally due on the consumer's next payday after the loan is taken out. In recent years, the availability of payday loans via the Internet has markedly increased. Unfortunately, some payday lending operations have employed deception and other illegal conduct to take advantage of financially distressed consumers seeking these loans.

Division of Financial Practices
Federal Trade Commission

- **Motor Vehicle Sales, Financing, and Leasing:** For most consumers, the purchase of a car or truck is their most expensive financial transaction, other than the cost of housing. Financial Practices leads the FTC's regulatory and law enforcement efforts with respect to the practices of motor vehicle dealers, most of which were exempted from the authority of the Consumer Financial Protection Bureau by the Dodd-Frank Act.

Division of Financial Practices
Federal Trade Commission

- **Deception Relating to Other Financial Services:** Financial Practices broadly targets deception and unfairness in the marketing and provision of a diverse array of other financial products and services, such as credit repair and mortgage lending and servicing.

Division of Financial Practices
Federal Trade Commission

- **Mobile Technologies:** Financial Practices is home to the Bureau of Consumer Protection's Mobile Technology Unit, which leads the Bureau's efforts to promote better consumer protections in the mobile environment. Among other things, the Unit identifies potential targets for enforcement; coordinates and provides guidance on the Bureau's mobile enforcement and policy work; holds public workshops on emerging issues; and develops surveys, reports, and educational materials to highlight mobile practices of concern. As new mobile financial products emerge, Financial Practices examines them and targets unfair and deceptive practices in the mobile payments and m-commerce ecosystems..

Operation Collection Protection
Federal Trade Commission

- *In 2015, the FTC and other law enforcement authorities around the country announced the first coordinated federal-state enforcement initiative targeting deceptive and abusive debt collection practices.*
- This nationwide crackdown encompasses 30 new law enforcement actions by federal, state, and local law enforcement authorities against:
  - collectors who use illegal tactics such as harassing phone calls and false threats of litigation, arrest, and wage garnishment;
  - collectors knowingly attempted to collect so-called phantom debts – phony debts that consumers do not actually owe.
  - collectors that failed to give consumers legally required disclosures and notices, or to follow state and local licensing requirements.

Thank you and please feel free to contact me with any questions.

Anthony DiResta

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Presentation by **Anthony Alexis**
Assistant Director for Enforcement, Consumer Financial Protection Bureau

Holland & Knight

Presentation by **Greg Nodler, Senior Counsel for Enforcement Policy and Strategy, Consumer Financial Protection Bureau**

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Panel Discussion with **Heather Allen, Attorney, Federal Trade Commission** and **Daniel Dwyer, Attorney, Division of Financial Practices, Federal Trade Commission**

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The Federal Trade Commission's Debt Collection Program

Recent Initiatives and Priorities

Holland & Knight | ACA International
Governmental Investigations Seminar
September 7, 2016

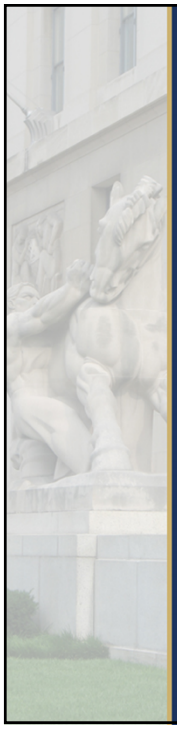
Heather Allen
Dan Dwyer
Division of Financial Practices
Federal Trade Commission

Disclaimer

These are our personal views and do not necessarily reflect the views of the Federal Trade Commission or any individual Commissioner.

Presentation Overview

1. FTC's strategic priorities and recent cases in debt collection
2. Law enforcement investigations and coordination with CFPB
3. FTC business education and outreach initiatives
4. How can the FTC and the debt collection industry work together?
5. Q&A

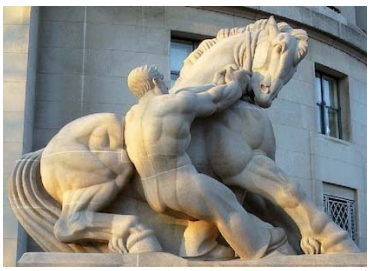


1 Strategic Priorities and Recent Enforcement Actions

Debt and Debt Collection: Consumer Protection Challenges

- ~35% of U.S. residents with credit files have a debt in collections
  - Average debt ~$5,100
  - Total consumer debt: $2.5 trillion
- FTC received more than 890,000 complaints about debt collection in 2015
  - Top complaint category (29% of total complaints)
- Key issue: debts sold and resold, often with data integrity problems

FTC Debt Collection Program



- Law enforcement
  - Fair Debt Collection Practices Act (FDCPA)
  - Fair Credit Reporting Act (FCRA)
  - Section 5 of the FTC Act (unfair/deceptive practices)
- Other activities
  - Education and public outreach
  - Research and policy initiatives

Debt Collection Enforcement Program

In 2015:

- Filed 12 new cases against 52 different defendants
- Obtained nearly $94 million in judgments
- Banned 30 companies and individuals from the debt collection industry
- coordinated the first federal-state-local enforcement initiative targeting deceptive and abusive debt collection practices

Strategic Priorities

- Data integrity and security
  - Collection claims without substantiation
  - Upstream practices: sale of bad debt portfolios
- Deterrence of egregious collection practices
  - Coordinated law enforcement actions
  - Criminal referrals
- Credit reporting practices

FTC Approach in Litigation

- Federal court actions, often seeking relief on an *ex parte* basis
  - Receivership over corporate entities
  - Freeze defendants' assets
  - Immediate access to defendants' business premises
- Civil penalty actions, referred to DOJ for filing
  - Generally reach out to company pre-filing
  - Often file complaint & settlement at same time

Key Recent Enforcement Actions

- **Data integrity**
  - *FTC & New York v. Delaware Solutions*
  - *FTC & Illinois v. Stark Law*
- **Substantiation**
- **Credit Reporting Practices**
  - *USA v. Credit Protection Association*
- **Egregious practices**
  - *FTC & Illinois v. K.I.P.*
  - *FTC v. BAM Financial*

Data Integrity

FTC & New York v. Delaware Solutions

Data Integrity

FTC and Illinois v. Stark Law, LLC

Substantiation

- Claims without a reasonable basis:
  - That consumers owe debts in part or in whole
    - Initial claim of indebtedness
      - Wrong consumer
      - Wrong amount (including assessed interest)
      - No authority to collect
      - Other portfolio-level issues
    - Continued claim of indebtedness on portfolio after portfolio-level warning signs appear, without appropriate investigation
    - Continued claim of indebtedness on individual accounts despite consumer dispute not appropriately addressed
  - That collector will take a certain action
    - Legal action—lawsuit or arrest
    - Other actions (*e.g.*, have driver's license suspended)

Recent Substantiation Cases

- *FTC v. Stark Law* (payday)
  - Initial claim of indebtedness: portfolio-level issues
  - During collection: claim that will sue consumer w/o actual intention to sue (FDCPA § 807(5)/15 U.S.C. § 1692e(5))
- *FTC v. Delaware Solutions* (payday)
  - Initial claim of indebtedness: portfolio-level issues
- *FTC v. BAM Financial* (credit cards)
  - Continued claim of indebtedness after unaddressed disputes
- *FTC v. Municipal Recovery Servs.* (municipal debt)
  - During collection: claims that consumers will be arrested, have driver's license suspended, car impounded

Recent Substantiation Cases

- *FTC v. National Payment Processing LLC* (payday)
  - Continued claim of indebtedness after unaddressed disputes
- *FTC & CFPB v. Green Tree Servicing LLC* (mortgages)
  - Initial claim of indebtedness: portfolio-level issues
  - Continued claim of indebtedness after unaddressed disputes
- *FTC v. Premier Debt Acquisitions* (credit card)
  - Continued claim of indebtedness after unaddressed disputes
- *FTC v. Credit Smart, LLC* (bank account-related)
  - Initial claim of indebtedness: portfolio-level issues
  - Continued claim of indebtedness after unaddressed dispute
  - Collecting interest w/o reasonable basis

Credit Reporting

USA v. Credit Protection Association

CONSUMER REPORTS:

WHAT INFORMATION FURNISHERS NEED TO KNOW

FEDERAL TRADE COMMISSION | BUSINESS.FTC.GOV

Egregious Practices

FTC & State of Illinois v. K.I.P., LLC

FEDERAL TRADE COMMISSION
PROTECTING AMERICA'S CONSUMERS

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News & Events » Press Releases » FTC, Illinois Attorney General Halt Chicago Area Operation Charged With Illegally Pressuring Consumers to Pay 'Phantom' Debts

FTC, Illinois Attorney General Halt Chicago Area Operation Charged With Illegally Pressuring Consumers to Pay 'Phantom' Debts

FOR RELEASE

April 10, 2015

TAGS: Bureau of Consumer Protection | Midwest Region | Consumer Protection | Debt Collection

The Federal Trade Commission and the Illinois Attorney General's Office have obtained a court order temporarily halting a fake debt collection scam located in Aurora, Illinois, a western suburb of Chicago. The defendants are charged with illegally using threats and intimidation tactics to coerce consumers to pay payday loan debts they either did not owe, or did not owe to the defendants.

The FTC's case against K.I.P., LLC, Charles Dickey, and Chantelle Dickey is the agency's seventh 'phantom' debt collector matter.

"This company scared and tricked people into paying debts they didn't owe," said Jessica Rich, Director of the FTC's Bureau of Consumer Protection. "Working with terrific partners like the Illinois Attorney General, we will keep going after phantom debt scams like this one and shutting them down."

"The defendants have threatened and intimidated their way into stealing hundreds of thousands of dollars from unsuspecting people all across the country," Illinois Attorney General Lisa Madigan said. "Between our two offices, we have hundreds of complaints. It is clear they must be stopped."

EVENTS CALENDAR

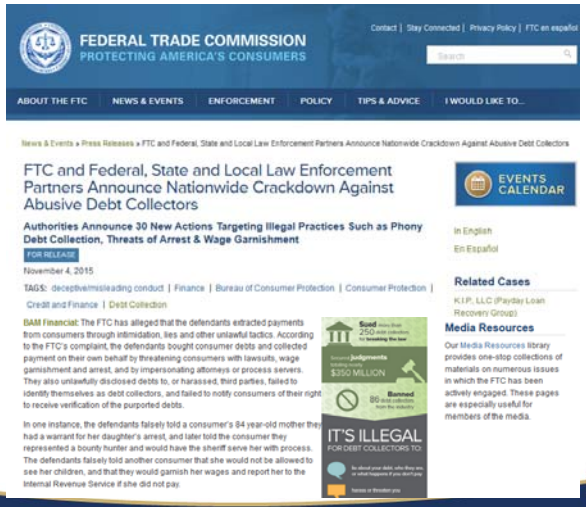
Related Cases
K.I.P., LLC (Payday Loan Recovery Group)

For Consumers
Blog: Stand up to fake debt collectors
Payday Loans
Fake Debt Collectors
Debt Collection

For Businesses
Debt Collection

Egregious Practices

FTC v. BAM Financial, LLC



2 | Law Enforcement Investigations & Coordination w/ CFPB

FTC Investigations

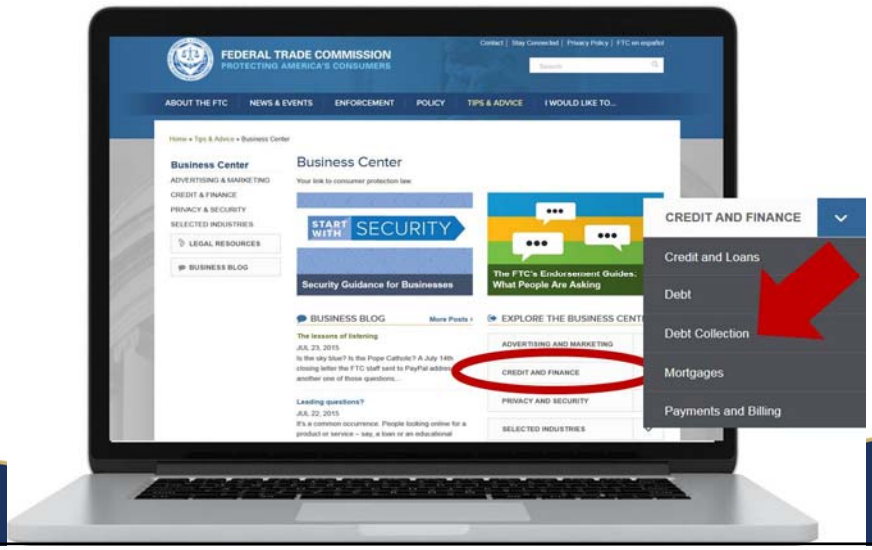
FTC-CFPB Coordination

cfpb
Consumer Financial Protection Bureau

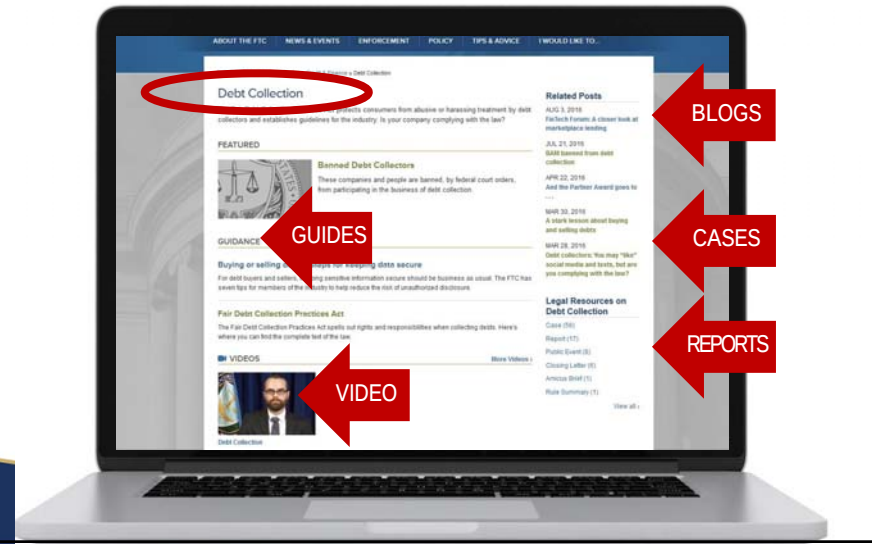
Federal-State-Local Coordination

3 FTC's Debt Collection Business Education and Outreach Initiatives

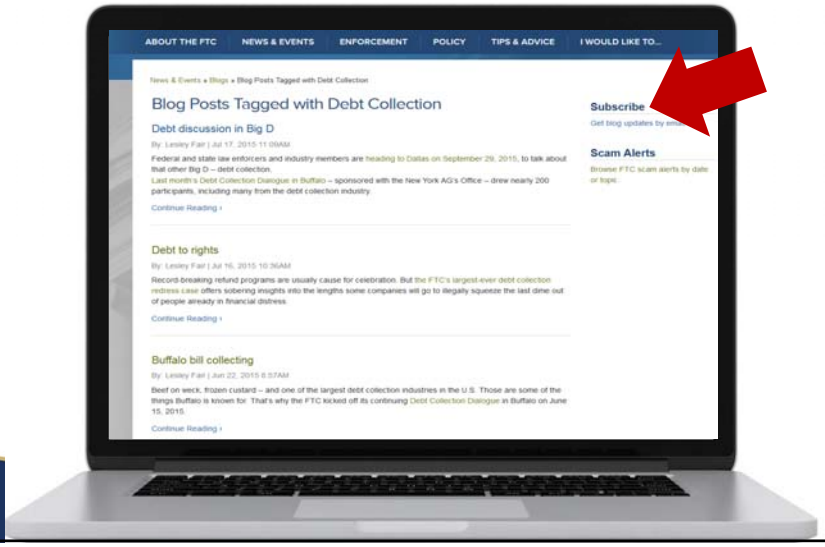
FTC's Business Center: business.ftc.gov



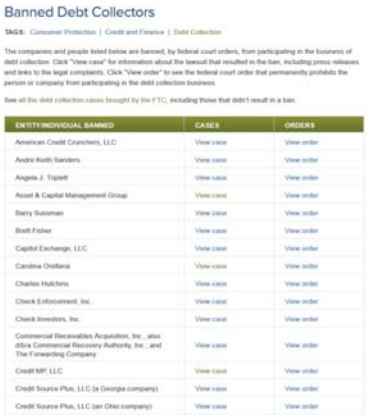
FTC's Business Center: business.ftc.gov



FTC's Business Blog: 55 Debt Collection Posts to Date



The Debt Collection Hall of Shame



To date: 116 banned companies/individuals

4 How Can We Work Together?

FTC's Debt Collection Dialogue Events

Debt Collection Dialogue

A conversation between government and business

Data Security Guidance

Call Out Bad Actors

See something.
Say something.

Help Us Collect Clicks

At business.ftc.gov or consumer.ftc.gov

5 | Question and Answer

Questions?

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HOT TOPICS IN TELEPHONE CONSUMER PROTECTION ACT LITIGATION

CORY W. EICHHORN
PHIL ROTHSCHILD
HOLLAND & KNIGHT LLP

Holland & Knight

WHY WAS THE TCPA ENACTED?

- Legislative history indicates Congress enacted the TCPA to protect privacy interests of telephone subscribers by putting in place restrictions on certain unsolicited, automated telephone calls
- In general, the TCPA was passed to "protect individual consumers from receiving intrusive and unwanted calls"
  - *Gager v. Dell Fin. Servs., LLC*, 727 F.3d 265, 268 (3d Cir. 2013)

WHAT CONDUCT DOES THE TCPA PROHIBIT?

- The TCPA sets out four areas of prohibited conduct.
  - *See* 47 U.S.C. § 227(b)(1)(A)-(D)
- It prohibits initiating a phone call to any residential phone line "using an artificial or pre-recorded voice to deliver a message without the prior express consent of the called party."
  - 47 U.S.C. § 227(b)(1)(B)
- No violation, however, where such calls are "exempted by rule or order by the [Federal Communications] Commission . . ." *Id.*

EXEMPTIONS

- Calls made for "commercial purposes" that do not "include or introduce an advertisement or constitute telemarketing."
  - 47 C.F.R. § 64.1200(a)(3)
- FCC has stated that "prerecorded debt collection calls are exempt" from this section of the TCPA.
  - See In re Rules & Regs. Implementing the TCPA of 1991, 23 FCC Rcd. 559, 561 § 5 (Jan. 2008)
- Accordingly, calls made to a residential telephone line seeking to collect a debt are exempt from the TCPA

WHAT ABOUT CALLS MADE TO NON-DEBTORS?

- FCC hasn't specifically addressed this issue
- At least one court has held that calls made to non-debtors do not fall within the exemption.
  - See *Watson v. NCO Group, Inc*., 462 F. Supp. 2d 641 (E.D. Pa. 2006)
- A number of other courts have come to an opposite conclusion and held that the exemption does apply to calls made to non-debtors.
  - *See, e.g., Franasiak v. Palisades Collection, LLC*, 822 F.Supp.2d 320 (W.D.N.Y. 2011) (finding that debt collection calls are exempt under FCC's regulations regardless of whether or not the intended recipient was in fact the debtor); *Herrera v. AllianceOne Receivable Management, Inc*., 2016 WL 1077110 (S.D. Cal. March 17, 2016) (finding exemption applied where calls were made for a commercial purpose and did not transmit an unsolicited advertisement)

ADDITIONAL PROHIBITIONS

- TCPA also precludes any person from making "any call (other than a call made . . . with prior express consent of the called party) using any automatic telephone dialing system ["ATDS"] or any artificial or prerecorded voice . . . to any telephone number assigned to a . . . cellular service . . .or any service for which the called party is charged for the call."
  - 47 U.S.C. § 227(b)(1)(A)(iii).
- Elements for this type of claim are:
  1. Defendant called a cellular telephone service or a service for which the called party is charged on a per call basis;
  2. Using an ATDS; and
  3. Without the recipient's prior consent

POTENTIAL DEFENSE STRATEGIES

» *Establish that calls were not made to a cell phone or to a service where the party is charged per call.*

- Courts have found a VOIP home telephone line assigned through a cable provider is not a cell phone.
  - *See Herrera v. AllianceOne Receivable Management, Inc*., 2016 WL 107710
- Bundled packages or flat fees do not qualify for a call to a service where each party is charged per call

POTENTIAL DEFENSE STRATEGIES (continued)

» *Demonstrate that an ATDS was not used*

- The TCPA defines ATDS as equipment that has the capacity "to store or produce telephone numbers to be called, using a random or sequential number generator" and ability to "dial such numbers." FCC has also stated ATDS is equipment with the capacity to dial numbers without human intervention.
  - See 47 U.S.C. § 227(a)(1)
- High burden; commentators have suggested any phone that's not a rotary phone will qualify as an ATDS and that in the real world many kinds of legitimate calls will be swept within the TCPA
- Many financial services companies are evaluating the use of equipment that incorporate, among other things, the use of manual dialers to avoid TCPA liability.

POTENTIAL DEFENSE STRATEGIES (continued)

» *Demonstrate that an ATDS was not used (continued)*

- Where evidence shows calls have been made manually, summary judgment is appropriate in favor of a defendant.
  - *See Carlisle v. Green Tree Servicing, LLC*, 2016 WL 4011238 (N.D. Ga. July 27, 2016) (finding that "the fact that a company possesses or uses an ATDS is not sufficient to show that the company used the ATDS to call that particular person")

POTENTIAL DEFENSE STRATEGIES (continued)

» *Show Prior Express Consent Was Provided*

- 2008 FCC Ruling determined that "provision of a cell phone number to a creditor, e.g., as part of a credit application, reasonably evidences prior express consent by the cell phone subscriber" and "persons who knowingly release their phone numbers have in effect given their invitation or permission to be called"
- Example of credit application is illustrative, other courts have found that a debtor provides prior express consent when he provides his cell phone number in communications made to a defendant after the initial signing of loan.
  - *See, e.g., Hill v. Homeward residential,. Inc.,* 799 F.3d 544, 522 (6th Cir. 2015); *see also Lawrence v. Bayview Loan Servicing, LLC*, 152 F Supp.3d 1376 (S.D. Fla. Jan. 20, 2016)
- FCC, however, has stated that a "called party may revoke consent at any time and through any reasonable means"

POTENTIAL DEFENSE STRATEGIES (continued)

» *Good Faith Defense*

- In *Danehy v. Time Warner Cable Enterprises*, 2015 WL 5534094 (E.D.N.C. Aug. 6, 2015), a federal district court recognized a good faith defense and granted summary judgment in favor of a defendant holding that the defendant had a good faith belief that it had consent to call a particular number based on the fact it was previously provided that number by a customer. The number in questions, however, had been reassigned to another individual.
- A majority of courts have not followed *Danehy*. *See, e.g., Lee v. Loandepot.com, LLC*, 2016 WL 4382786 (D. Kansas August 17, 2016) (declining to apply a good faith defense based on FCC's determination that a caller must have the consent of the subscriber or non-subscriber customary user of the phone to be found not liable)
- Unclear whether, and to what extent, courts would accept a good faith defense but it is unlikely in light of recent FCC pronouncements.

POTENTIAL DEFENSE STRATEGIES (continued)

» *Standing*

- Defendants have recently cited to Supreme Court's recent decision in *Spoeko, Inc v. Robins*, 136 S. Ct. 1540 (2016) in an effort to argue that plaintiffs in TCPA cases lack standing. In *Spokeo*, the Supreme Court held that in order "[t]o establish injury in fact, a plaintiff must show that he or she suffered an invasion of a legally protected interest that is concrete and particularized and actual or imminent, not conjectural or hypothetical" and "for an injury to be particularized, it must affect a plaintiff in a personal and individual way." *Id*. at 1547-8.
- A majority of courts have rejected a *Spokeo* type argument in TCPA cases. *See, e.g., Hewlett v. Consolidated World Travel, Inc*., 2016 WL 44466536 (E.D. Cal. August 23, 2016) (finding that allegations of nuisance and invasion of privacy in TCPA actions are sufficient to state a concrete injury and pointing to purpose and history of TCPA)

POTENTIAL DEFENSE STRATEGIES (continued)

- *Standing (continued)*
  - At least one court has found a plaintiff lack standing to bring a TCPA claim where she filed TCPA cases as "business" finding that the plaintiff's privacy interest were not violated and her actions did not serve the purpose of the statute.
    - *See Stoops v. Wells Fargo Bank, N.A.*, 2016 WL 3566266 (W.D. Penn. June 24, 2016)

DAMAGES UNDER THE TCPA

- TCPA permits a plaintiff to recover $500 in damages per phone call and allows a court to increase that amount to $1500 per call if it finds "that the defendants willfully or knowingly violated" the TCPA.
- Accordingly, damages can be extremely high in these matters, particularly in class action cases.

OFFERS OF JUDGMENT

- In *Campbell-Ewald Co. v. Gomez*, 136 S.Ct. 663 (2016), the Supreme Court held that an unaccepted offer of judgment to the named plaintiff in a TCPA class action pursuant to Rule 68 did not moot a plaintiff's claim. The Court held that pursuant to the terms of the Rule itself the only sanction is that "if the [ultimate] judgment . . . is not more favorable than the unaccepted offer, the offeree must pay the costs incurred after the offer was made." Rule 68(d)
- While *Campbell Ewald* did not decide "if the result would be different if a defendant deposits the full amount of the plaintiff's individual claim in an account payable to the plaintiff, and the court then enters judgment for the plaintiff in that amount." *Id*. at 672

- Recently the Sixth Circuit Court of Appeals in *Mey v. North American Bancard, LLC*, 2016 WL 3613395 (6th Cir. June 6, 2016), addressed the issue the Supreme Court refused to address in a case where a defendant tendered $4,500 check to plaintiff in an effort to moot claims under the TCPA. In *Mey*, the Court held that "[e]ven if we assume that an unaccepted cashier's check could moot a claim, NAB has not shown that its tender satisfies Mey's demand for relief, which the tender must do it is to moot Mey's individual claims." Id. at *3.
- To that end, the court found the district court did not make a finding as to the number of calls and that there could potentially be additional calls plaintiff and defendant are not aware of. Accordingly, "the upshot is that at this point, whether $4,500 provides Mey with all the relief she is entitled to remains unclear." *Id*.

WAIT AND SEE

- 2015 FCC Order addressed over 21 separate requests for clarification or other actions regarding TCPA, including whether the meaning of the term "called party" refers to the intended recipient of the call or the current subscriber. The FCC Order found that the term referred to the subscriber (the consumer assigned to the telephone number or a non-subscriber that customarily uses the phone). Accordingly, under the FCC Order, a defendant must have the consent of the subscriber or non-subscriber customary user of the phone. As noted above, this creates potential liability where numbers have been re-assigned.
- Over 10 petitions were filed in several appellate courts challenging the 2015 FCC Order. Those petitions have been consolidated before the District of Columbia Circuit Court of Appeals, but no decision has been issued to date.
  - *See ACA Int'l v. F.C.C., No. 15-1211 (D.C. Cir.)*

Questions?

Thank you!

Holland & Knight

Additional Materials

Consumer Financial Protection Bureau

Speech

Prepared Remarks of CFPB Deputy Director Steven Antonakes at The Exchequer Club

By Steve Antonakes – FEB 18, 2015

Good afternoon. It's a pleasure to be here with all of you. I believe that we share common goals: a strong and vibrant consumer financial services market, as well as a highly competitive, sustainable economy that works for the benefit of consumers and business alike. Today, I will seek to provide you with a better understanding as to how the Bureau utilizes a risk-focused supervision program in furtherance of those goals.

By way of background, I am a career financial services regulator. I cut my teeth during the end of the S&L; Crisis as an entry-level bank examiner nearly 25 years ago. In the lead up to the mortgage crisis, I witnessed the alarming proliferation of high-risk products and deteriorating underwriting practices which ultimately led to one of the worst economic periods since the Great Depression.

In the wake of the devastation, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act which created the Consumer Financial Protection Bureau. Previously, authority for administering and enforcing the various federal consumer financial laws was strewn across seven federal agencies. For each of those seven agencies, consumer protection was only one of its many responsibilities. As a result, no single agency was primarily focused on protecting the everyday users of financial products and services.

The Bureau does not have a safety and soundness mandate. Nevertheless, we very much care about the financial health of banks and nonbanks. As a veteran of two banking crises, I can tell you unequivocally that, in my view, consumer protection is not in conflict with safety and soundness. Consumers benefit from a healthy,

competitive, and diversified financial services system through greater access to credit and competitive pricing.

Ultimately, both financial and consumer compliance performance are dependent on strong management. Seldom do institutions excel in one and not the other. No business built on deceiving its customer base will be sustainable. Moreover, when businesses underinvest in compliance management systems it can pose significant reputational and financial risks.

Our mission is to protect consumers by promoting a consumer financial services marketplace where consumers can understand the costs, benefits, and risks of the financial decisions that they make. Consumers should be able to make these decisions in a marketplace free from unfair, deceptive, or abusive acts or practices – whether they are applying for a mortgage, choosing a credit card, repaying a student loan, cashing a paycheck, or sending money to family members overseas.

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In addition to serving as the Bureau's Deputy Director, I lead the Division of Supervision, Enforcement, and Fair Lending. It is the largest of the Bureau's six divisions, with examiners and enforcement attorneys stationed across the country. It is our responsibility to oversee all banks and nonbanks under the Bureau's jurisdiction and enforce federal consumer protection and fair lending laws. To best achieve our objectives, we actively encourage our staff to demonstrate the following attributes: humility, fairness, and consistency.

We strive to bring an emphasis on humility to all of our work. We understand the enormity of our mission and our responsibility to treat businesses reasonably with an understanding of the burdens associated with regulatory compliance. We know we do not operate in a vacuum, and so our charge to protect consumers requires us to adapt to new economic pressures, products, market participants, and delivery systems.

We aspire to supervise and enforce federal consumer protection laws fairly in a way that protects law-abiding businesses from unfair competition by those companies that seek advantage by breaking the law.

We endeavor to be consistent in the enforcement of the laws within our jurisdiction, across product markets, charter types, and institution sizes. This benefits the entire economy by making consumer financial markets work.

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The Bureau's jurisdiction is unlike any traditional bank regulatory agency. We have supervisory authority over banks, thrifts, and credit unions with assets over $10 billion, as well as their affiliates. These institutions total fewer than 150 but on a combined basis account for $12.5 trillion in assets or nearly 80 percent of the nation's banking market.

In addition, the Bureau has supervisory authority over nonbank mortgage originators and servicers, payday lenders, and private student lenders of all sizes. We also supervise the larger participants of other markets as the Bureau defines by rule. To date this includes debt collectors, consumer reporting agencies, student loan servicers, and foreign money transmitters. We also recently published a proposed rule to include nonbank auto lenders as well. All told, these nonbank markets add well over 15,000 unique institutions to our already significant portfolio of large depository institutions.

It was clear to us from the outset that the traditional approach to supervision wouldn't work at the Bureau. Visiting all of the banks and nonbanks under our jurisdiction on a set, regular schedule, as other federal agencies have in the past, would be impractical given their number, size, and complexity as well as the relatively small size of our examination force. More importantly, adopting a fixed-schedule approach would fail consumers by focusing precious resources on potentially less severe problems, when larger, more pressing consumer protection issues awaited their turn.

There are two key distinctions to how we approach our work. First, given our consumer-protection mandate, we focus on risks to consumers rather than risks to institutions. This drives our strong focus on consumer compliance management systems to ensure that regulated institutions adapt their controls to their business strategies and operational complexity. Second, we conduct our examinations by product line rather than an institution-centric approach. Accordingly, we assess the likely risk to consumers in all product lines, at all stages of a product's life cycle, and across wide swathes of the entire consumer financial marketplace. Our sole focus on consumer financial protection, along with our footprint in both the bank and nonbank space, makes the Bureau unique among federal regulators.

We begin to prioritize our supervisory responsibilities by taking institutions and breaking them down into their distinct product lines that are offered to consumers. For example, a large bank might have several product lines – auto lending, credit cards, deposit accounts, international money transfers, mortgage origination, and mortgage servicing – while a nonbank mortgage company might have just two – mortgage origination and servicing. We refer to each distinct product line at an

institution as an "institutional product line". These are the basic units of our prioritization approach.

Once broken down into institutional product line, we can now compare them across institutions, charters, or licenses. This is vital given our jurisdiction over both banks and non-banks, allowing us to evaluate each institutional product line by their activity, rather than the provider's form of organization.

We evaluate each product line based on potential for consumer harm related to a particular market; the size of the product market; the supervised entity's market share; and risks inherent to the supervised entity's operations and offering of financial consumer products within that market.

Accordingly, our prioritization approach assesses risks to the consumer at two levels: the market level and then the institution level. At the market-wide level, we assess the risk to the consumer from the products and practices being followed in a particular market. Some markets have stronger incentives to serve consumers than others. We find that generally when consumers cannot choose their provider of financial products or services their clout is limited and they lose their most important voice, the ability to "vote with their feet." Moreover, when a market's central focus reflects a financial relationship between two businesses, consumers can become collateral damage to the economics that drive such markets.

Take, for example, the market for mortgage servicing where the principal business relationship is between two companies. This can and often has led to a suboptimal customer service experience. Surprises, runarounds, and mistreatment are the byproducts of a lack of investment in customer service that has plagued loan servicing markets for nearly a decade.

Similarly, in the debt collection market, consumers do not choose their collector. They are in an inherently vulnerable position once their account has been referred to collection. This dynamic can also lead to troubling practices resulting in significant consumer harm. Debt collection is the single largest category of complaints received by the Bureau's Consumer Response Office. These complaints and our supervisory and enforcement work show that consumers often face excessive and abusive calls, false threats of legal action, and inaccurate data furnishing to the credit reporting agencies when dealing with debt collectors.

As with debt collectors, consumers do not chose the credit reporting agencies that have information about them and sell it to others. Prospective creditors, for example, pay credit reporting agencies for credit reports and credit scores to assist them in evaluating the risks of offering credit to consumers. Of course, the users of the data want the data upon which they rely to be accurate but they also want it to

be cheap. Credit reporting agencies may attempt to balance these competing interests of their customers. But they have no financial incentive to factor in the interests of the consumer who may suffer severe and long lasting harm from one inaccurate report.

Thus, while we there are potential risks to consumers in numerous financial markets, we view some markets, like the ones I just described, as higher risk. In addition to the risks posed to the consumer from the products and practices in the marketplace, we also consider the relative product market size in the overall consumer finance marketplace.

The other part of our prioritization framework focuses on the institution. It recognizes that some institutions' business models within a market are more harmful to consumers than others.

Accordingly, our prioritization efforts assess the relative risks to the consumer from each institution's activity within any given market. This process accounts for a broad range of factors that predict the likelihood of specific consumer harm. We start with institution's market share within an individual product line, which corresponds to the number of consumers affected. We prioritize relatively larger players with a more dominant presence given their ability to impact more consumers than relatively small players.

However, our prioritization approach augments this size consideration significantly with what we call field and market intelligence. Field and market intelligence includes both qualitative and quantitative factors for each institutional product line , such as the strength of compliance management systems, the existence of other regulatory actions, findings from our prior exams, metrics gathered from public reports, and the number and severity of consumer complaints we receive. In addition, given the Bureau's mandate to ensure fair, equitable, and nondiscriminatory access to credit for all consumers, we supplement general field and market intelligence with fair-lending-focused information to ensure that we are appropriately identifying and prioritizing fair lending risks as well.

Taken together, the information that we gather about each institutional product line at the market-level and at the institutional-level allows us to focus our resources where consumers have the greatest potential to be harmed. Relatively higher risk institutional product lines within relatively higher risk markets are our highest priority.

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After we break an institution down by its product lines, we eventually have to put it back together again. For many large and complex institutions, our prioritization efforts will result in several examinations over a period of time. For these institutions, each examination has a distinct start and end date and culminates with issuance of a supervisory letter which summarizes the examination activity, identifies any violations of law, and may include corrective action that the management and board must take to effectuate compliance.

Upon the conclusion of the review period, an institution will receive what we refer to as a roll-up examination report. This is the work product that will summarize the findings from all of the prioritization-driven targeted examinations conducted during the review period. The roll-up examination report will include the overall Federal Financial Institutions Examination Council compliance rating based upon the results of the product line-specific examinations conducted included during the review period.

For less complex or smaller entities, a supervisory plan will include an appropriately scoped single point-in-time examination that will result in a single examination report and assigned compliance rating.

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If we are risk prioritizing our exams correctly, including examining a number of non-banks that have not previously been subject to federal supervision, it is likely that a number of our examinations will yield findings that warrant some form of corrective action.

In certain instances, where there are more significant violations, we refer matters to our action review committee. Our action review committee determines through a deliberative and rigorous process whether matters that originate from our examinations will be resolved through confidential supervisory action, such as a board resolution or memorandum of understanding, or through a public enforcement action. Based upon the severity of examination findings, our field team will make a recommendation to the senior leaders within the Division of Supervision, Enforcement, and Fair Lending whether supervisory or enforcement action is appropriate.

A common set of factors is utilized to ensure determinations are made in a consistent fashion. In general, these factors fall into one of three buckets: violation-focused factors; institution-focused factors; and policy-focused factors.

Let me explain each of these in turn. When we think about the violations themselves, we think about severity in terms of the number of consumers affected,

the magnitude of the harm, and the nature of the violation. For example, we are more likely to pursue public enforcement if we identify improper foreclosures than slightly miscalculated APRs. We consider whether the violation has ceased or is ongoing. We also consider the importance of deterrence. If we suspect a troubling practice is widespread, we may want to put the entire industry on notice through public enforcement actions.

We also consider the institution's behavior after the violation occurred. In particular, we consider whether the regulated entity has cooperated with the Bureau and how willing and able it is to comply on a going forward basis. If an institution self-identified or self-corrected the violation, this may tilt the balance in favor of using the supervisory tool, since we can have greater confidence that the informal action will still be carried out. On the other hand, if an institution has been unwilling to take corrective action, or if they have repeatedly been cited by the Bureau or another regulator for similar conduct, public enforcement action may be more appropriate.

Finally, we consider policy-focused factors. These may include how we have treated similar violations in the past, other Bureau activity related to the problematic conduct and how our action fits into the Bureau's broader priorities and goals.

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Our process is continually evolving. By looking back at the growing body of results from our examinations, we will be better informed about various institutions and incorporate that information back into our risk assessment for subsequent years. We are hopeful that our new approach will solidify an incentive system that rewards strong compliance and appropriately identifies those who violate the law, regardless of size, charter type, or industry. We believe that our risk-based and institutional product line-oriented approach to supervision represents a significant step forward for consumer protection regulation. We think our careful and reasoned approach to taking corrective action will result in consistency for industry and fairness for consumers. And, we are hopeful that all of this will reshape markets in consumers' and businesses' interests in the years to come. Thank you.

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The Consumer Financial Protection Bureau is a 21st century agency that helps consumer finance markets work by making rules more effective, by consistently and fairly enforcing those rules, and by empowering consumers to take more control over their economic lives. For more information, visit consumerfinance.gov.

Topics: • FAIR LENDING • DEBT COLLECTION • MORTGAGES

Consumer Financial Protection Bureau
1700 G Street NW, Washington, DC 20552

CFPB Bulletin 2013-06

Date: June 25, 2013

Subject: Responsible Business Conduct: Self-Policing, Self-Reporting, Remediation, and Cooperation

The Bureau considers many factors in the exercise of its enforcement discretion. These include, for example: (1) the nature, extent, and severity of the violations identified; (2) the actual or potential harm from those violations; (3) whether there is a history of past violations; and (4) a party's effectiveness in addressing violations. This guidance is being provided to inform those subject to the Bureau's enforcement authority that in addition to these and other factors, there are activities they can engage in both before and after the conduct in question has occurred that the Bureau may favorably consider in exercising its enforcement discretion. Specifically, a party may proactively self-police for potential violations, promptly self-report to the Bureau when it identifies potential violations, quickly and completely remediate the harm resulting from violations, and affirmatively cooperate with any Bureau investigation above and beyond what is required. If a party meaningfully engages in these activities, which this bulletin refers to collectively as "responsible conduct," it may favorably affect the ultimate resolution of a Bureau enforcement investigation.

The purpose of this guidance is to encourage activity that has concrete and substantial benefits for consumers and contributes significantly to the success of the Bureau's mission. Depending on its form and substance, responsible conduct can improve the Bureau's ability to promptly detect violations of the federal consumer protection laws, increase the effectiveness and efficiency of enforcement investigations, enable the Bureau to pursue a larger number of worthy investigations with its finite resources, provide important evidence in enforcement investigations and cases, and help more consumers in more matters promptly receive financial redress and additional meaningful remedies for any harm they experienced.

Depending on the nature and extent of a party's actions, the Bureau has a wide range of options available to properly account for responsible conduct in enforcement investigations. For example, the Bureau could resolve an investigation with no public enforcement action, treat the conduct as a less severe type of violation, reduce the number of violations pursued, or reduce the sanctions or penalties sought by the Bureau in an enforcement action. It must be emphasized, however, that in order for the Bureau to consider awarding affirmative credit in the context of an enforcement investigation, a party's conduct must substantially exceed the standard of what is required by law in its interactions with the Bureau.

In the Bureau's consideration of a party's conduct in these areas it must be stressed that what best protects consumers is ultimately central to the Bureau's exercise of its enforcement discretion. Self-policing, self-reporting, remediation, and cooperation with the Bureau's investigation are unquestionably important in promoting the best interests of consumers, but so

too are vigorous, consistent enforcement of the law and the imposition of appropriate sanctions where the law has been violated.

In addition, this guidance, and its description of activities that may warrant favorable consideration, is not adopting any rule or formula, or making a promise to any person about any specific case. The Bureau is not in any way limiting its discretion and responsibility to evaluate each case individually on its own facts and circumstances. There is no consistent formula that can be applied to all enforcement actions to accomplish the goal of protecting consumers. Similarly, there is no formula that can be applied to account for cooperation based on a party's actions related to the activities set forth above. Indeed, there may be circumstances where the misconduct is so egregious, or the harm inflicted so great, that no amount of cooperation or other mitigating conduct could justify a decision not to bring an enforcement action, or even to forgo seeking the imposition of a civil money penalty. In short, the fact that a party may argue it has satisfied some or even all of the elements set forth in this guidance will not foreclose the Bureau from bringing any enforcement action or seeking any remedy if it believes such a course is necessary and appropriate.

Factors Used to Evaluate and Acknowledge Responsible Conduct

As noted previously, the Bureau principally considers four categories of conduct when evaluating whether some form of credit is warranted in an enforcement investigation: self-policing, self-reporting, remediation, and cooperation during the Bureau's enforcement investigation. However, if a party engages in another type of activity particular to its situation that is both substantial and meaningful, the Bureau may take that activity into consideration.

Listed below are some of the factors the Bureau will consider in determining whether and how much to take into account self-policing, self-reporting, remediation, and cooperation. This list is not exhaustive, and some of the factors identified may relate to more than one category of responsible conduct. Finally, the importance of each factor in a given case, and the way in which the Bureau evaluates each factor, will depend on the circumstances.

Self-policing:

This concept, which can also be described as self-monitoring or self-auditing, reflects a proactive commitment by a party to use resources for the prevention and early detection of potential violations of consumer financial laws. The Bureau recognizes that a robust compliance management system appropriate for the size and complexity of a party's business will not always prevent violations, but it will often facilitate early detection of potential violations, which can limit the size and scope of consumer harm. Questions the Bureau will consider in determining whether to provide favorable consideration for self-policing activity that detects violations or potential violations of federal consumer financial laws include:

1. What is the nature of the violation or potential violation and how did it arise? Was the conduct pervasive or an isolated act? How long did it last? Was the conduct significant to the party's profitability or business model?

2. How was the violation or potential violation detected and who uncovered it? What compliance procedures or self-policing mechanisms were in place to prevent, identify, or limit the conduct that occurred and to preserve relevant information? In what ways, if any, were the party's self-policing mechanisms particularly noteworthy and effective?

3. If the party's self-policing functions have previously been the subject of supervisory examination by the Bureau or other regulators, what have been the results of such examination? How, if at all, has the party changed its self-policing following such examination? If the party's self-policing functions have not previously been the subject of supervisory examination, how do those functions measure up to customary supervisory expectations?

4. If the party is a business entity, what was the "tone at the top" of the business about compliance? Was there a culture of compliance? How high up in the chain of command did people know of or participate in the conduct at issue? Did senior personnel participate in, or turn a blind eye toward, obvious indicia of misconduct or deficiencies in compliance procedures?

Self-reporting:

Each category of responsible conduct is important to the Bureau and can significantly affect the Bureau's decision about whether a party should receive favorable consideration. Of the four categories, however, prompt and complete self-reporting to the Bureau of significant violations and potential violations is worth special mention. While no substitute for effective self-policing, self-reporting substantially advances the Bureau's protection of consumers and enhances its enforcement mission by reducing the resources it must expend to identify potential or actual violations that are significant enough to warrant an enforcement investigation and making those resources available for other significant matters. Prompt self-reporting of serious violations also represents concrete evidence of a party's commitment to responsibly address the conduct at issue. For these reasons, the Bureau puts special emphasis on this category in its evaluation of a party's overall conduct. Questions the Bureau will examine in determining whether to provide favorable consideration for self-reporting of violations or potential violations of federal consumer financial laws include:

1. Did the party completely and effectively disclose the existence of the conduct to the Bureau, to other regulators, and, if applicable, to self-regulators? Did affected consumers receive appropriate information related to the violations or potential violations within a reasonable period of time?

2. Did the party report the conduct promptly to the Bureau? If it delayed, what justification, if any, existed for the delay? How did the delay affect the preservation of relevant information, the ability of the Bureau to conduct its investigation, or the interests of affected consumers?

3. Did the party proactively self-report, or wait until discovery or disclosure was likely to happen anyway, for example due to impending supervisory activity, public company reporting requirements, the emergence of a whistleblower, consumer complaints or actions, or the conduct of a Bureau investigation?

Remediation:

When violations of federal consumer financial laws have occurred, the Bureau's remedial priorities include obtaining full redress for those injured by the violations, ensuring that the party who violated the law implements measures designed to prevent the violations from recurring, and, when appropriate, effectuating changes in the party's future conduct for the protection and/or benefit of consumers. Remediation may be viewed positively even when the party believes that it may have identified a potential rather than an actual violation. Questions the Bureau will examine in determining whether to provide favorable consideration for remediation activity regarding violations of federal consumer financial laws include:

1. What steps did the party take upon learning of the misconduct? Did it immediately stop the misconduct? How long after the misconduct was uncovered did it take to implement an effective response?

2. If the party is a business, were there any consequences imposed on the individuals responsible for the misconduct?

3. Did the party take prompt and effective steps to preserve information, identify the extent of the harm to consumers, and appropriately recompense those adversely affected? In situations where the harm caused by the violation goes beyond the amounts the victims may have paid to the party, did the party identify and implement additional ways to completely redress the harm?

4. What assurances are there that the misconduct is unlikely to recur? By the time of the resolution of the Bureau matter, did the party improve internal controls and procedures designed to prevent and detect a recurrence of such violations? Similarly, have the party's business practices, policies and procedures changed to remove harmful incentives and encourage proper compliance?

Cooperation:

Unlike self-policing and remediation, which may occur with or without Bureau involvement, cooperation relates to the quality of a party's interactions with the Bureau after the Bureau becomes aware of a potential violation of federal consumer financial laws, either through a party's self-reporting or the Bureau's own discovery efforts. In order to receive credit for cooperation in this context, a party must take substantial and material steps above and beyond what the law requires in its interactions with the Bureau. Simply meeting those obligations will not be rewarded by any special consideration. Questions the Bureau will examine in determining whether to provide favorable consideration for cooperation in a Bureau investigation include:

1. Did the party cooperate promptly and completely with the Bureau and other appropriate regulatory and law enforcement bodies? Was that cooperation present throughout the course of the investigation? Did the actor identify any additional related misconduct likely to have occurred?

2. Did the party take proper steps to develop the truth quickly and completely and to fully share its findings with the Bureau? Did it undertake a thorough review of the nature, extent, origins, and consequences of the misconduct and related behavior? Who conducted the review and did they have a vested interest or bias in the outcome? Were scope limitations placed on the review? If so, why and what were they?

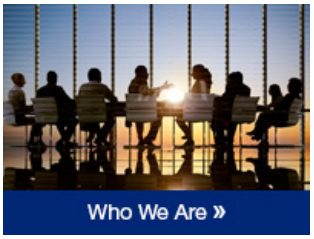
3. Did the party promptly make available to the Bureau the results of its review and provide sufficient documentation reflecting its response to the situation? Did it provide evidence with sufficient precision and completeness to facilitate, among other things, enforcement actions against others who violated the law? Did the party produce a complete and thorough written report detailing the findings of its review? Did it voluntarily disclose material information not directly requested by the Bureau or that otherwise might not have been uncovered? If the party is a business, did it direct its employees to cooperate with the Bureau and make reasonable efforts to secure such cooperation?

The Bureau intends and expects that this guidance will encourage parties subject to the Bureau's enforcement authority to engage in more self-policing. When potential violations of the consumer financial laws arise, the Bureau intends and expects that parties will engage in more self-reporting to the Bureau, more prompt and complete remediation of harm to victimized consumers, and more cooperation with the Bureau in its enforcement investigations. Such an outcome, the Bureau believes, would benefit both consumers and providers of consumer financial products and services.

Institute for Consumer Protection Defense and Compliance

Holland & Knight

The Institute is maintained and updated regularly by Holland & Knight attorneys. It serves as a resource for clients as well as a platform to shape the public discourse in the field. Visit us at: www.hklaw.com/Consumer-Protection-Defense-Compliance-Institute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Anthony E. DiResta is a partner in Holland & Knight's Washington, D.C., office and a member of the firm's Litigation and Dispute Resolution Practice. Mr. DiResta focuses his practice on governmental consumer protection investigations involving allegations of deceptive, unfair or abusive business practices; charges of false advertising; and privacy and data security matters. He is also engaged in complex commercial litigation at the trial and appellate levels. Mr. DiResta is the co-chair of the firm's Consumer Protection Defense and Compliance Team.

In June of 2015, Mr. DiResta was honored as one of the nation's top "Regulatory Trailblazers & Pioneers" by *The National Law Journal.* It is an exclusive award that honors a select and prominent group of lawyers in the country who are leaders in successfully navigating the ever-changing fields of regulatory and compliance law.

Mr. DiResta is a former director of the Federal Trade Commission's (FTC) Southeast Regional office, where he supervised many of the enforcement, investigative, litigation and outreach activities of the Competition and Consumer Protection Bureaus of the agency in Georgia, Florida, North Carolina, South Carolina, Tennessee, Mississippi and Alabama. Among his accomplishments is his initiation and coordination of a consumer protection law enforcement sweep – including the Department of Justice (DOJ), the Securities and Exchange Commission, 15 attorneys general and the FTC – that resulted in more than 25 lawsuits and proceedings throughout the country. Under his leadership, the Southeast Regional office received the John Marshall Award from the U.S. Attorney General for its enforcement achievements. Mr. DiResta also served as a former Assistant U.S. Attorney for the Northern District of Georgia, Atlanta Division.

A seasoned advocate, Mr. DiResta has assisted clients in bet-the-company governmental investigations and litigation pursued by federal agencies such as the FTC, the Consumer Financial Protection Bureau (CFPB) and the DOJ, as well as in state enforcement proceedings involving state attorneys general. Specifically, Mr. DiResta has successfully defended companies and individuals in over 50 governmental investigations – with many of those investigations being closed. His experience includes trials and appearances before many federal and state courts, class actions, multidistrict litigation – and many of his accomplishments are highlighted in reported decisions with cutting-edge precedents. In addition, Mr. DiResta serves as general counsel to the Word of

Mouth Marketing Association (WOMMA), the advertising trade association that focuses on social media marketing.

Mr. DiResta is widely published in the areas of commercial litigation, FTC and CFPB matters, governmental investigations, consumer protection and antitrust law, with many articles cited by the courts and law review publications. In fact, one of his articles – "Software Support and Hardware Maintenance Practices: Tying Considerations," *Computer Lawyer*, 1991 – was cited with approval by the U.S. Supreme Court in *Eastman Kodak Co. v. Image Technical Services, Inc.*, a leading antitrust decision.

Honors & Awards

» Regulatory & Compliance Trailblazer, *The National Law Journal*, June 2015
» Sunshine Award, Society of Professional Journalists, 1993
» Martindale-Hubbell AV Preeminent Peer Review Rated

Memberships

» American Law Institute, Elected Member, 1993 - present

- *Restatement of Torts*, Advisor
- Restatements of Privacy, Governmental Ethics, and Employment Law, Consultative Group Member

» Association of Credit and Collection Professionals, Regulatory Committee, 2010-2015
» American Bar Association, Litigation Section, Member, 1984-2011
» American Bar Association

- Pro Bono and Public Interest Committee, Co-Chair, 2008-2009
- Antitrust Litigation Committee, Co-Chair, 2000-2003
- Host Committee Member, ABA Annual Meeting, 2002
- Government Litigation Counsel Committee, Co-Chair, 1997-1999

» *Litigation News*, Associate Editor, 1992-1994

Education

» Florida State University College of Law, J.D.
» Harvard University, Ed.M.
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Bar Admissions

» District of Columbia
» Georgia
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ANTHONY ALEXIS

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Consumer Financial Protection Bureau

Tony Alexis is the Assistant Director for Enforcement at Consumer Financial Protection Bureau. In that capacity, Mr. Alexis is responsible for investigations and litigation conducted by the CFPB's 130-person enforcement division.

Mr. Alexis has also served as Acting Assistant Director, Principal Deputy, and Deputy Assistant Director for Field Litigation for the CFPB's Office of Enforcement. Prior to joining the CFPB, Mr. Alexis was a partner at Mayer Brown LLP in its Washington, D.C. office where he practiced in the Government Investigations and complex litigation areas. Prior to joining Mayer Brown, Mr. Alexis had been an Assistant United States Attorney in the District of Columbia for 13 years. During that time, he served as the senior attorney in the Civil Division, the Fraud & Public Corruption Section and as the Deputy Chief of the Federal Major Crimes Section, where he was responsible for supervising and conducting the investigation and prosecution of federal criminal offenses, including economic crimes fraud, extra-territorial crimes, money laundering, immigration fraud and environmental crimes. He also investigated and prosecuted a number of high-profile complex white-collar crimes, including bribery, public corruption, embezzlement, Foreign Corrupt Practices Act violations and health care fraud. Mr. Alexis conducted dozens of civil and criminal jury trials in both Federal and the DC Superior Court and argued before the US Court of Appeals for the District of Columbia Circuit. Before joining the US Attorney's office, Mr. Alexis spent four years as trial attorney for the Civil Fraud Section of the Commercial Litigation Branch of the US Department of Justice. There he worked on dozens of investigations related to the False Claims Act and fraud matters ranging from procurement and healthcare fraud to kickbacks, bribes and conflicts of interest. In addition to awards and commendations from the various federal agencies, Mr. Alexis received several Department of Justice awards including the United States Department of Justice Director's Award for Superior Performance as an Assistant US Attorney.

He received a JD from Howard University School of Law and BA from George Washington University. After graduation from law school, Mr. Alexis served as a Judicial Law Clerk on the US Court of Appeals for the Eighth Circuit and the US District Court for the Eastern District of Missouri in St. Louis.

GREG NODLER

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Consumer Financial Protection Bureau

Mr. Nodler is Senior Counsel for Enforcement Policy and Strategy at the CFPB. He **e**nforces consumer financial protection laws including the Consumer Financial Protection Act, Fair Debt Collection Practices Act, Truth in Lending Act, Fair Credit Reporting Act, and Equal Credit Opportunity Act.

Experience

- Senior Counsel for Enforcement Policy and Strategy, Consumer Financial Protection Bureau
  October 2014 – Present, Washington D.C.

- Enforcement Attorney, Consumer Financial Protection Bureau
  July 2011 – October 2014 , Washington D.C.

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Ms. Allen is an attorney in the FTC's Division of Financial Practices. She works on a variety of consumer credit and financial services issues, including debt buying, mobile cramming, mortgage servicing, and automobile sales and financing. She is a graduate of the University of Maryland and Stanford Law School.

DANIEL DWYER

Attorney, Division of Financial Practices

Federal Trade Commission

Mr. Dwyer is an attorney in the Division of Financial Practices at the Federal Trade Commission. He works on a variety of consumer credit and financial services issues, including debt collection, mortgage advertising, and automobile sales and financing. Mr. Dwyer was a contributor to the FTC's report entitled The Structure and Practices of the Debt Buying Industry (2013), and he co-organized a 2013 roundtable event titled Life of a Debt: Data Integrity in Debt Collection, which was presented by the FTC and the CFPB. Mr. Dwyer is a graduate of Duke University and the University of California, Berkeley, School of Law.

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Practices: Litigation and Dispute Resolution | Consumer Protection Defense and Compliance

Cory W. Eichhorn is a partner in Holland & Knight's Miami office where he is a member of the Litigation and Dispute Resolution Practice. Mr. Eichhorn has extensive litigation experience, particularly in a wide range of commercial litigation matters. He regularly represents clients in the financial services industry, including national banks, mortgage bankers, loan servicers, debt collectors and consumer finance companies.

Mr. Eichhorn focuses his practice on class actions and individual matters involving various federal and state regulations, including the Fair Debt Collection Practices Act, the Fair Credit Reporting Act, the Truth in Lending Act, the Real Estate Settlement Procedures Act and a variety of state laws governing the financial services industry. Mr. Eichhorn represents these clients on a national level and manages litigation throughout the country.

In addition, Mr. Eichhorn represents a number of clients in the structured settlement industry, including purchasers of structured settlements. In that capacity, Mr. Eichhorn has represented clients in class actions and individual matters in a wide array of state and federal courts throughout the country. He also counsels clients on compliance issues related to the structured settlement industry.

Mr. Eichhorn is also devoted to the community. He currently sits on the Resource Development Committee of the Special Olympics of Miami-Dade County and on the board of directors of the Hearing and Speech Center of Florida.

Honors & Awards

- Florida *Super Lawyers* magazine, Rising Star, 2010-2016
- Martindale-Hubbell AV Preeminent Peer Review Rated

Memberships

- The Florida Bar, Appellate Practice Section
- Dade County Bar Association
- Special Olympics Miami-Dade County, Resource Development Committee
- Hearing and Speech Center of Florida, Board of Directors

Education

- University of Miami School of Law, J.D., cum laude
- University of Florida, B.A.

Bar Admissions

- Florida

Court Admissions

- U.S. Court of Appeals for the Eleventh Circuit
- U.S. District Court for the Middle District of Florida
- U.S. District Court for the Northern District of Florida
- U.S. District Court for the Southern District of Florida

PHILIP E. “PHIL” ROTHSCHILD

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Practices: Litigation and Dispute Resolution | Consumer Protection Defense and Compliance

Philip E. Rothschild is a litigation attorney in Holland & Knight’s Fort Lauderdale office. He practices in the area of complex commercial litigation, with an emphasis on federal court issues. Prior to joining the firm, Mr. Rothschild served as a chambers law clerk for more than a decade in the offices of three active U.S. District Court judges in the U.S. District Court for the Southern District of Florida, including James I. Cohn (2004-2012), Kenneth A. Marra (2002-2004) and William P. Dimitrouleas (1998-2002). During this time, he accumulated a wealth of experience and understanding in numerous areas of civil practice and substantive law, including business torts, contract disputes and employment law, among others. With 14 years of experience assisting federal trial court judges with an assortment of motions in civil cases, Mr. Rothschild knows the importance of top-quality written and verbal advocacy. He applies this experience to provide effective representation in all litigation matters in state and federal court.

Mr. Rothschild also has experience as a civil enforcement attorney for the Federal Trade Commission’s (FTC) Consumer Protection Bureau in Washington, D.C. During his time at the FTC, he investigated violations of federal credit laws and brought enforcement actions in both federal court and administrative proceedings. At Holland & Knight, Mr. Rothschild has applied this knowledge in several matters, including successfully defending a Truth in Lending Act (TILA)/Real Estate Settlement Procedures Act (RESPA)/Fair Debt Collection Practices Act (FDCPA) action by a represented mortgagor, with most claims dismissed at the pleading stage and the remaining claim subject to summary judgment; successfully defending a class action under the Florida Consumer Collection Practices Act that resulted in denial of class certification; and defending a state attorney general investigation of a client’s environmental claims under the FTC’s Green Guides that resulted in the client being permitted to continue sales with no changes to its existing product and an agreement reached on future product sales.

In the community, Mr. Rothschild coached youth soccer for six seasons and has been a division representative for eight seasons with the Soccer Association of Boca Raton. In addition, he is a member of the University of Pennsylvania Alumni Interview Program.

Honors & Awards

» Judge Jose A. Gonzalez Jr. 2014 Unsung Hero Award, U.S. District Court for the Southern District of Florida

Memberships

- Federal Bar Association
- Federal Bar Association Broward County Chapter, Judicial Liaison Officer
- Broward County Bar Association
- Florida Bar Federal Court Practice Committee
- 2017 Southern District of Florida Bench & Bar Conference Planning Committee

Education

- UCLA School of Law, J.D.
- University of Pennsylvania, B.A., cum laude

Bar Admissions

- Florida

Court Admissions

- U.S. District Court for the Southern District of Florida
- U.S. District Court for the Middle District of Florida
- U.S. Court of Appeals for the Eleventh Circuit