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FDCPA: Compliance Risks and Opportunities in Collections Litigation

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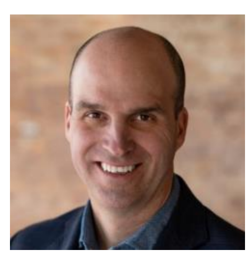

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Executive Summary

The Consumer Financial Protection Bureau's (CFPB) Final Rule for Debt Collection was released on Oct 30, 2020, and it provides a framework for industry to interpret the Fair Debt Collection Practices Act (FDCPA) and also provides consumers with control over the manner and method of communications about their debt. Diana Banks, Vice President with American Bankers Association, addressed three key areas of the Final Rule in our webinar FDCPA Update: New Risks and Opportunities in collections litigation and this paper summarizes those insights:

- The shift from traditional to digital contact strategies
- The need for creditors to increase the oversight of their debt collection partners
- The impact of FDCPA on Creditors

How to Bake Compliance into Collections Litigation

Keeping up with federal, state, local and, venue-specific laws, rules, and procedures is a huge cost to manage and risk to collection. Efficiently maintaining rigorous compliance will be even more complicated with the Final Rule, but the opportunity of an automated collections litigation platform with built-in compliance not only exists today but helps prepare debt collectors for the future. Walker White, Chief Executive Officer of Oliver, offers his perspective on how creditors can avoid compliance risk and capitalize on these new opportunities:

- **Codify Compliance:** think TurboTax™
- **Simplify Audit:** Pairing codified compliance with a collections litigation platform to provide comprehensive audit capabilities
- **Customization:** Compliance is a framework with many paths to maintaining it; law firms must be able to practice the "art of litigation" while staying inside the boundaries of the framework

The industry is ripe for change. Consumers are demanding a different way to interact with companies. Regulators are demanding transparency and strict adherence to laws, rules, and regulations. And technology has evolved to meet those demands in the current litigation processes. Most collections litigation strategies lack the built-in agility needed to manage the changing dynamics of the market, bringing to light clear failure points in the process. Each time creditors hit a failure point, they leak value out of their strategy, directly impacting their bottom line. The insights in this paper focus on a revolutionary approach to address the compliance failure point in collections litigation.

The New FDCPA Rule Implication for Creditors

Insights from the Final Rule and Diana Banks, Vice President, American Bankers Association

The release of the FDCPA promises to bring substantial changes to consumer debt collection practices. The industry has a year to implement these rules, so it's critical to start retooling the collections litigation strategy now to ensure rigorous compliance. This paper begins by looking at three key components of the Final Rule that are written for third parties but also have implications for creditors.

The FDCPA rule will bring a shift from traditional to digital contact strategies

While digital communication (e.g. email and text) has been available for a long time, many debt collectors have hesitated to use these digital communications channels until there was a sturdier legal framework in place. This was to the detriment of the overall market because there are many indications that consumers prefer these channels for contact. The Final Rule outlines the explicit methods debt collectors can use to communicate with consumers through email, text, and possibly other social media platforms.

The Final Rule provides a series of controls and safeguards to allow consumers to initiate their preferred methods of communication (traditional or digital) or to opt-in or out of a series of choices knowing they can always make changes later.

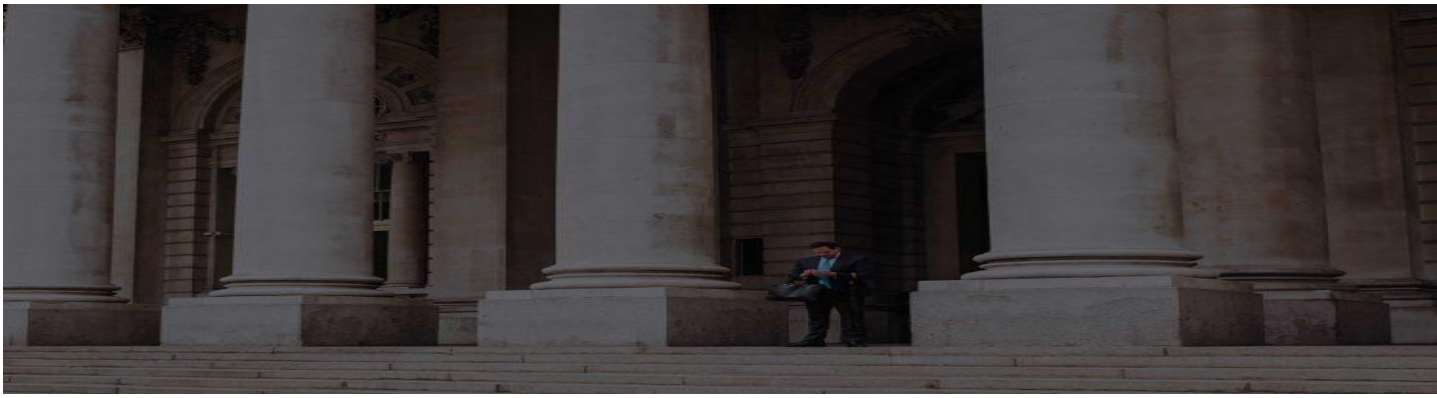
Once the consumer identifies their preference, a debt collector must use that method of communication to provide actual notice. It's also important to make sure that the traditional debt collection framework remains in place. Specifically, it still prohibits third party disclosures, limits communications so that they are not delivered at either inconvenient times or in an inconvenient manner, allows consumers to express a preference about whether or not to be communicated with at a place of employment, and assures that any electronic communications can be obtained by a consumer and retained by a consumer in their preferred manner.

Today, many debt collectors comb through account histories to ensure that specific consumer outreach, whether outbound or inbound, is compliant. Technology such as Artificial intelligence (AI) and machine learning are more effective in helping debt collectors access accurate information quickly and ensure that they remain aligned with consumer expectations. Additionally, it is essential to use enhanced platforms that enable employees to capture and, in real-time, update consumers' consents, opt-ins, and opt-outs to assure they can pivot to keep up with consumers' preferences.

For more information, read Technology: The Key to Consumer Digital Engagement Under the Final Debt Collection Rule by Leslie Bender, Ann Lemmo, and Joann Needleman with Clark Hill PLC

Creditors need to be mindful of the oversight requirements for the collection agency partners

While the FDCPA is a third-party rule, creditors and first-party servicers need to prepare for shifts in how third parties



operate. Debt collectors are going to be seeking more information that will help them comply with the rule and they'll be coming back to their creditor partners to get information like good and bad phone numbers, email addresses, information that's needed for validation, notices, etc. That's a shift in what we've seen previously, and creditors need to be preparing for that shift now.

Also, creditors need stronger visibility into when and how third parties are meeting these new compliance regulations.

Creditors' feared that the rule would be applied to them through the Bureau's UDAAP authority.

While the CFPB has done a couple of things to reassure creditors, the CFPB did not promise that it would never apply any aspect of the Final Rule to creditors. In addition, the CFPB did not comment on State Attorney General enforcement and applicability to creditors.

Regardless, creditors will need to incorporate the elements of the Final Rule into their oversight of debt collectors, including ensuring that digital communications are sent only at convenient times, monitoring to see if mini-Miranda warnings are given in every language in which a debt collection communication occurs, monitoring call frequency under the presumptive limits in the final rule, and monitoring for the potential for harassment from aggregated contact attempts across all communication channels.

As a result, the one-year compliance timeframe should be a period of intense effort by creditors to become prepared to handle the impact of the Final Rule.

For more information, read The CFPB's final debt collection rule: impacts on creditors by Stefanie Jackman and Christopher J Willis with Ballard Spahr, LLP

How to Bake Compliance into Collections Litigation

The new rulings from CFPB will curtail some of the most widely used—and often abused—practices in collections. While litigation comes with its challenges, specifically around compliance, it provides some very real benefits to the consumer:

- It introduces a dis-interested third party into the situation—the judge and the law
- It institutionalizes collections so that both the creditor and consumer know what to expect
- It reduces variability which is much better for creditors because it allows them to control the compliance and reputational risks of recovering debt from their consumers

Now that the CFPB has identified ***what*** needs to change, this paper will identify ***how to*** cost-effectively incorporate those changes into the collections litigation strategy.

The Risk: Efficiently Maintaining Rigorous Compliance.

Keeping up with federal, state, local and, venue-specific laws, rules, and procedures is a huge cost to manage and risk to collection and implementing the Final Rule will be no different. Creditors and law firms need full-time staff to monitor the laws, rules, and procedures across the nation. Since the formation of the CFPB, the amount of quality control checks and audit requirements has grown exponentially. In the past, there were only two solutions; hire more people or lower your volume. In the face of the expected growth of debt over the next few years, neither course of action is ideal.

The Opportunity: Automation with Built-in Compliance

The technology exists today to automate much of the compliance process to ensure adherence across the collections litigation channel. Here are three key categories of automation that allow creditors to maintain rigorous compliance.

1. Codify Compliance

   Think of how TurboTax™ transformed the way the average person does their taxes and remain compliant with the IRS; that's codifying. The first step is to codify all the federal, state, local, and venue specific laws and regulations. Next, place this code onto a platform that is used by all parties across the collections litigation channel to ensure that everyone is maintaining compliance throughout the process.

   Creditors and law firms have extensible procedures and business rules that need to be incorporated into the platform. These are specific procedures that help those companies meet reputational goals or internal controls.

   A key value in codifying compliance is providing granular visibility and agility. When an account cannot automatically flow through the process, then they need to be escalated and handled on an exception basis. Now 90% of inventory can be automated and only 10% need exception-based management.

2. Simplify Audit

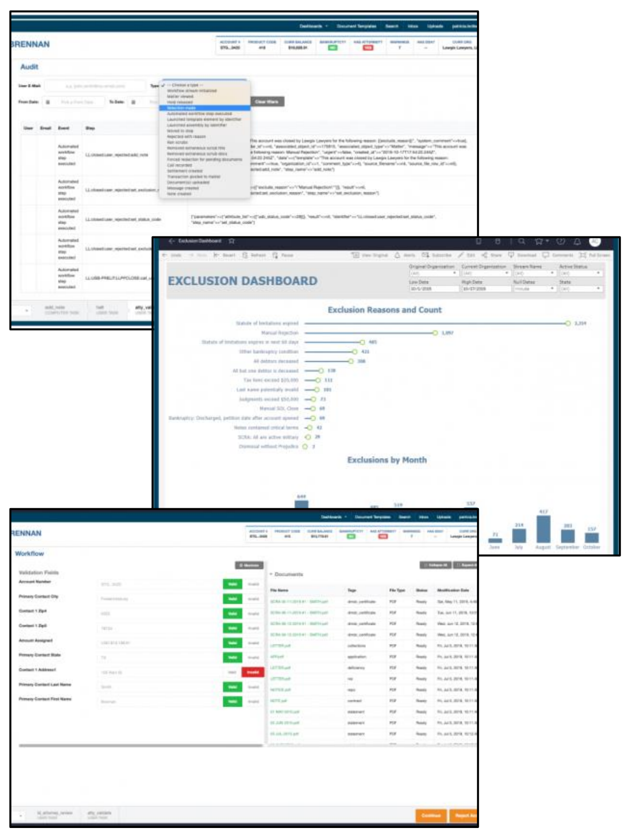
   The CFPB measures compliance through audits, yet this can be a very manual, time-consuming, and subjective process. Additionally, many creditors have strict internal controls that need to be managed and measured. By building compliance into the collections litigation platform, debt collectors can automatically capture audit data. The platform documents every step of the process including measuring meaningful attorney involvement.

Clear reporting of handoffs, reviews, approvals, and SLAs are critical to the accuracy of the audit. Finally, giving creditors end-to-end visibility and control over the process is critical to ensure that all the compliance and internal controls are met.

3. Customization

Litigation is a combination of science and art, meaning that there can be multiple ways to manage an account and remain compliant. Many debt collectors have developed unique standard operating procedures (SOPs) that need to be incorporated into the compliance framework. Creditors have multiple law firms in each state where they litigate and each of their firms can navigate the compliance framework with their unique SOP. By integrating these SOPs into the platform, all the parties can continue to process inventory according to their SOP and still maintain the overall consistency of approach that creditors and regulators require.

Finally, technology today enables us to quickly adapt much to changing market and regulatory conditions. The COVID-19 pandemic is a perfect example. From a legal and reputational perspective, creditors needed to suddenly stop the litigation process and reassess the level of the hardship of their accounts, modify their process of collection with courtesy communication or forbearance offerings, and then quickly restart the process when the courts reopened. If they had a collections litigation platform in place with built-in compliance, SLAs, and SOPs, they would have been able to automatically send courtesy communication and continue to work on accounts and place them in processing queues. Upon reprioritization based on their ability to pay and preparing them for litigation, accounts would be ready to be put into the system as soon as the courts reopened.



Agility for Today and Tomorrow

Conclusion

Think about it. With your business under the microscope of regulators, most creditors are forced to manage their business with caution.

While the debt is mounting, the pressure is building. At some point, the storm is going to pass, and the economy will expand.

Now is the time to re-tool your collection litigation process into an agile system so you can cost-effectively scale your operation to capture more revenue in a shorter timeframe when the opportunity arises.

This paper gave you numerous capabilities that you can implement today and experience immediate cost savings; as well as the capabilities you need to scale your operation to increase revenue, accelerate the litigation process and maintain rigorous compliance.

To learn more on how to re-tool your collections litigation strategy to meet current and future compliance rules, contact Oliver at info@olivertechnology.com.

olivertechnology.com

Increased Revenue

Increase revenue by efficiently scaling legal filings through orchestration of expensive, repetitive manual tasks.

- Increases efficiency of pre- and post-placement employees by 4-5 times.
- Reduces cycle time between parties by 80%.
- Eliminates 95% of errors and re-work caused by manual processes

Rigorous Compliance

Automate compliance by codifying federal, state, local, venue and customer-specific laws, rules and procedures.

- Automatically incorporates current compliance laws and regulations into workflows and documentation.
- Configures to your Standard Operating Procedures.
- Audits every action by every party.

Simplified Litigation

Drive collaboration, communication and oversight by securely consolidating the litigation process for all parties.

- Accelerates strategy based on current visibility of the entire litigation process across all parties.
- Automates the assembly and redaction of required documentation.
- Drives efficiency by identifying choke points, increasing accountability and monitoring effectiveness.