

CFPB's Latest Rules Impacting Healthcare and Other Receivables Markets

The Consumer Financial Protection Bureau (CFPB) opened its doors on July 21, 2011 and has steadily increased its rulemaking activity ever since. This article, written in conjunction with financial services compliance expert, Rozanne Andersen, summarizes the agency's rulemaking process, those impacted, and some of the noteworthy CFPB bulletins of 2013 for non-bank entities in the financial services market, including collection agencies, debt buyers, creditors, collection law firms and healthcare providers.

The CFPB's Reach in the Healthcare Market: Many people aren't aware that entities servicing healthcare receivables may have to answer to the CFPB. Though not directly supervised by the CFPB, healthcare providers that 1) report patient debt to credit reporting agencies, 2) partner with first and third party collection agencies, or 3) collect on patient accounts can be indirectly impacted. For example, patients may log complaints with the CFPB that pertain to the collection practices of the provider as well as the collection practices of any Extended Business Office (EBO) or third party working on behalf of such provider. In such cases, the party against which the consumer complained must provide a satisfactory response to the CFPB.

Rulemaking Process: The collection industry has been largely insulated from federal agency rulemaking for years. As a result, many members of the Accounts Receivable Management (ARM) and Revenue Cycle Management (RCM) industries are unclear about the CFPB's rulemaking process and do not understand how or when they need to adjust their collection practices to be in full compliance. Below, we explain how the CFPB creates rules and we also highlight some of its recent rules.

There are two methods by which a Federal governmental body may create rules.

1. **Formal Rulemaking** – This is accomplished through notice and comment. The agency publishes the proposed regulation, a/k/a rules, in the Federal Register and provides all stake holders, consumers and businesses with a period of time within which they may comment on the efficacy, reasonableness, cost and adoptability of the proposed rules. Formal rules are considered to be preferable because they are fully vetted and do not surprise consumers or the marketplace.
2. **Informal Rulemaking** – This method does *not* provide a notice and comment component. Examples include advisory documents, memoranda, bulletins, press releases, guidance documents, reports, letters, and in the world of CFPB oversight, the publication of compliance requirements based on the results of on-site examinations. Informal rulemaking can wreak havoc on an industry, as these rules can be viewed as uninformed and surprising.

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Selected Informal rules in 2013 impacting the collection of consumer debt

- **Responsible Business Conduct – Self-Policing, Self-Reporting, Remediation, and Cooperation** (Issued June 25, 2013): This bulletin advises organizations subject to the CFPB’s enforcement authority to self-report violations and potential violations. If a party meaningfully engages in these activities, referred to as “responsible conduct,” it may favorably affect the resolution of a CFPB enforcement investigation.
- **Representations Regarding Effect of Debt Payments on Credit Reports and Scores** (Issued July 10, 2013): This bulletin provides guidance to creditors, debt buyers, and third-party collectors about compliance with the FDCPA and sections 1031 and 1036 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) when making representations about the impact that payments on debts in collection may have on credit reports and credit scores.
- **Prohibition of Unfair, Deceptive, or Abusive Acts or Practices in the Collection of Consumer Debts** (Issued July 10, 2013): This bulletin explains that all covered persons or service providers are legally required to refrain from committing unfair, deceptive, or abusive acts or practices (collectively, UDAAPs) in violation of the Dodd-Frank Act, and must adopt system-wide UDAAP policies and practices.
- **CFPB Consumer Complaint Portal and Consumer Action Letters** (Via press release on July 10, 2013): The CFPB announced the launch of its consumer complaint portal for debt collection matters and its publication of five action letters consumers can use when corresponding with debt collectors. These letters impose new requirements on collectors, creditors and healthcare providers when responding to consumer complaints. All covered entities should register their organization with the CFPB and identify their person responsible for handling complaints. Remember, covered entities have only 15 days to provide a satisfactory response to the consumer’s complaint and to initiate a remedial action program.
- **The FCRA’s requirement to investigate disputes and review “all relevant” information provided by consumer reporting agencies (CRAs) about the dispute** (Issued on September 4, 2013): This bulletin clarifies the responsibilities of data furnishers under the FCRA, and addresses furnishers’ obligations to “review all relevant information” they receive in connection with disputes forwarded by CRAs. The CFPB expects furnishers to have reasonable systems and technology in place to process notices of disputes and information regarding disputes, including relevant documentation, forwarded to them by CRAs.

Best Practices Advice: All who engage in the collection of consumer debt should stay abreast of the CFPB’s requirements by reading the CFPB’s website at least weekly. The CFPB intends to begin a formal rulemaking process this fall with regard to the Fair Debt Collection Practices Act. In the meantime, pay close attention to all bulletins and press releases issued by the CFPB so that your organization remains compliant. For additional details about the CFPB and its initiatives, visit www.cfpb.gov.

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