

Three Take Aways From the Dallas Debt Collection Dialogue

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<http://www.insidearm.com/daily/debt-collection-news/accounts-receivables-management/three-take-aways-from-the-dallas-debt-collection-dialogue/>



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The Federal Trade Commission (FTC) held its second of three debt collection dialogues in Dallas, Texas yesterday, September 29, 2015 at the Dedman School of Law, Southern Methodist University (**the first** (<http://www.insidearm.com/daily/debt-collection-news/accounts-receivables-management/new-york-agc-office-compels-collectors-to-help-root-out-bad-players-in-the-industry/>) was held June 15, in Buffalo, NY). The dialogue entitled “A Conversation Between Government and Business” included **two panels** (<http://www.insidearm.com/daily/debt-collection-news/debt-collection/ftc-announces-more-balanced-panel-for-next-debt-collection-dialogue/>)

comprised of government regulators and industry representatives.

During both panels the regulators and industry members discussed their goals and challenges, and debated points of contention. Here are three important “take-aways” for your consideration:

1) Do not wait for the CFPB rule making.

Design your operations and compliance programs around best practices found in the Consent Orders. Whether or not the CFPB rulemaking team will codify the best practices found in Consent Orders into final rules, the FTC and CFPB enforcement panelists made clear that if you are engaging in the practices that are being punished in any of these actions, change your practices immediately—use the Orders to determine how you can comply going forward.

Further, don't just look at the recent Orders against Encore Capital or PRA. Christopher Koegel, FTC Assistant Director Division of Financial Practices, listed a number of the older Consent Orders (CPS, Allied Interstate, Asset Acceptance, Green Tree, Expert Global Solutions) that he said constituted the building blocks or “baby steps” in the formation of

best debt collection practices. Although Koegel is with the FTC, not the CFPB, he strongly suggested that the bad behavior addressed in all prior consent orders will be addressed in the CFPB's upcoming rulemaking.

Joann Needleman, NARCA President and Clark Hill attorney, pointed out two examples from the recent Encore/PRA Orders where industry members are seeking additional clarity: (1) whether debt collectors can still presume the debt to be valid after the 30 day validation period passes with no consumer dispute as outlined in FDCPA section 1692(g); and (2) what is the meaning of substantiation. When confronted with these industry concerns about a lack of clarity, Mr. Nodler, provided specific examples from the Encore/PRA Orders in an effort to illustrate their intent.

Patricia Baxter, President-Elect of DBA International discussed concerns about provisions in Consent Orders that chill legal conduct (like debt resale). When questioned further concerning how the industry can decipher the difference in these Consent Orders between best practices that should be implemented widely versus a punishment for the particular company subject to the Order based on its bad behavior, Mr. Nodler responded: "the rules are in flux."

2) There is still more research and work to be done in order to improve upon potential government regulations and initiatives designed to assist consumers in a balanced and fair debt collection process.

This became clear in the discussion of "hot topic" areas. There was agreement among the panel members about the benefits of the CFPB Consumer Complaint Portal. But as Michael Frost, Chief Legal Officer & General Counsel for CBE Companies and a member of the ACA Board of Directors, addressed there exists a need for continued reforms due to concerns with the accuracy and integrity of the complaint portal statistics and tracking. Baxter indicated that the DBA is working on solutions with the regulators through their Consumer Complaint task force.

All agreed that debt collection attorneys engaging in debt collection efforts prior to litigation are subject to the FDCPA and regulatory oversight, but there was debate about the right enforcement mechanism for these attorneys when litigation has commenced. Robert Foehl, ACA Vice President and General Counsel, stressed the historical significance rooted in the separation of powers doctrine placing supervision over attorneys within the judicial branch.

The general consensus was that more information is needed to measure both federal and state initiatives (like those in California and New York) to determine whether the reforms are having a positive effect. For example, Ms. Needleman commented that an informal survey

of NARCA members showed that the default judgment rates in Maryland have not increased following the 2013 court reforms. Needleman stressed that all parties desire greater consumer participation, so if these rules are not having the desired effect “we need to continue to work on it.” On the other hand, Jessica Lesser, from the Texas Attorney General’s Office, stated that, in Texas, she personally has seen a dramatic improvement in the court filings by creditors to the benefit of the consumer. Mr. Koegel made clear that it is too early to make any determination about the success of these initiatives and that as a group we must not rush to judgment and instead continue to study the statistics and evaluate different solutions together.

3) The ARM industry was well represented.

All ARM industry representatives shared thoughtful comments, drew attention to pressing concerns, and stood-up for the majority of law abiding debt collectors and buyers. It was made clear that the industry eagerly awaits clear regulations to end the uncertainty surrounding certain practices, such as voice mail messages, emails, and consumer notices.

Industry representatives in the dialogue demonstrated clear support for ridding the industry of those who fail to follow the rules. Ms. Baxter and Mr. Foehl, highlighted the industry’s cooperation with regulators.

Mr. Frost and Ms. Needleman spoke about the increasing cost of compliance and consolidation impacting the industry.

Finally, Baxter explained in detail the DBA International Certification Program as well as regulator input in the creation of the standards.

As a member of the industry, I appreciate that we’ve had the opportunity to engage on these issues that are critical to the way we will operate in the future. As we have repeatedly heard from regulators, “the rules are [still] in flux.” So as I think about the third and final scheduled FTC Debt Dialogue (to be held **November 18 in Atlanta** (<https://www.ftc.gov/news-events/events-calendar/2015/11/debt-collection-dialogue-conversation-between-government>)), my hope is that we will see continued cooperation and more progress.