

**Dealers and Debt Collection Practices**  
**Subject to UDAAP Compliance**  
**By ADR Staff**

The Consumer Financial Protection Bureau (CFPB) issued notice on July 10, 2013, that creditors engaging in unfair, deceptive, or abusive acts or practices (UDAAP) in the course of debt collection may be subject to supervisory, enforcement, or other actions under the authority outlined in the Dodd-Frank Act. The notice extends to original creditors, including BHPH dealers, and is unrelated to the Fair Debt Collection Practices Act (FDCPA), which applies primarily to third-party debt collectors.

With respect to UDAAP standards in general, the Bureau provides the following summary.

- **Unfair Acts or Practices.** An act or practice is unfair when:
  1. It causes or is likely to cause substantial injury to consumers;
  2. The injury is not reasonably avoidable by consumers; and
  3. The injury is not outweighed by countervailing benefits to consumers or to competition.
- **Deceptive Acts or Practices. An act or practice is deceptive when:**
  1. The act or practice misleads or is likely to mislead the consumer;
  2. The consumer's interpretation is reasonable under the circumstances; and
  3. The misleading act or practice is material.
- **Abusive Acts or Practices.** In contrast to the Federal Trade Commission Act which prohibits unfair and deceptive acts or practices, the Dodd-Frank Act also prohibits "abusive" acts or practices. The CFPB considers an act or practice abusive when it:
  1. Materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service;
  2. Takes unreasonable advantage of
    - a. A consumer's lack of understanding of the material risks, costs, or conditions of the product or service;
    - b. A consumer's inability to protect his or her interests in selecting or using a consumer financial product or service;
    - c. A consumer's reasonable reliance on a covered person to act in his or her interests.

With respect to debt collection practices in particular, the Bureau provides the following examples of unfair, deceptive, and/or abusive acts or practices. They note that the list is non-exhaustive and that the Bureau will be watching these practices closely.

- Collecting or assessing a debt and/or any additional amounts in connection with a debt (including interest, fees, and charges) not expressly authorized by the agreement creating the debt or permitted by law.
- Failing to post payments timely or properly or to credit a consumer's account with payments that the consumer submitted on time and then charging late fees to that consumer.
- Taking possession of property without the legal right to do so.
- Revealing the consumer's debt, without the consumer's consent, to the consumer's employer and/or co-workers.

- Falsely representing the character, amount, or legal status of the debt.
- Misrepresenting that a debt collection communication is from an attorney.
- Misrepresenting that a communication is from a government source or that the source of the communication is affiliated with the government.
- Misrepresenting whether information about a payment or non-payment would be furnished to a credit reporting agency.
- Misrepresenting to consumers that their debts would be waived or forgiven if they accepted a settlement offer, when the company does not, in fact, forgive or waive the debt.
- Threatening any action that is not intended or the covered person or service provider does not have the authorization to pursue, including false threats of lawsuits, arrest, prosecution, or imprisonment for non-payment of a debt.
- Misrepresenting that paying debts in collection would improve a consumer credit report, credit score, or credit worthiness.
- Misrepresenting that paying debts in collection would increase the likelihood of a consumer receiving credit or more favorable credit terms from a lender.

The Bureau includes this final cautionary note:

“Again, the obligation to avoid UDAAPs under the Dodd-Frank Act is in addition to any obligations that may arise under the FDCPA [Fair Debt Collection Practices Act]. **Original creditors and other covered persons and service providers involved in collecting debt related to any consumer financial product or service are subject to the prohibition against UDAAPs in the Dodd-Frank Act.** The CFPB will continue to review closely the practices of those engaged in the collection of consumer debts for potential UDAAPs, including the practices described above. The Bureau will use all appropriate tools to assess whether supervisory, enforcement, or other actions may be necessary.”

It is worth remembering that the Bureau encourages consumers to file complaints associated with financial products. The Bureau maintains an active presence on online social media websites, such as Facebook, and communication venues, such as Twitter, promoting their consumer protection authority to the general public. **These consumer complaints serve as a trigger for CFPB investigation of financial institutions and creditors, including BHPH dealers. Complaints against non-BHPH dealers are forwarded to the FTC for review.** In all phases of a transaction – from the initial consumer contact to debt collection - diligently refrain from engaging in acts or practices that could be interpreted as unfair, deceptive, or abusive and could be used as the foundation of a formal consumer UDAAP/UDAP complaint to the CFPB.