

CONSUMER FINANCIAL SERVICES: DEBT COLLECTION AND DEBT SALES

The debt collection and debt buying industries present an ever-changing matrix of legal and compliance challenges. We help clients—including creditors, debt collection firms, and debt buyers—navigate this complex regulatory and litigation landscape and chart a course for achieving their business goals.

Our clients include banks and non-bank lenders, debt buyers, debt collection agencies and law firms, health care systems, and others who collect and service debt, as well as technology providers who provide communications platforms and data analytics services used in debt collection. We provide a “soup-to-nuts” range of advice on debt collection issues: from assessing and designing debt collection-related compliance programs to evaluating third-party debt collectors and oversight programs to monitor them, to defending regulatory claims that arise in both examinations and enforcement investigations. We also assist clients in individual and class action litigation arising from debt collection operations. Specifically, we serve as national and regional counsel for a number of clients with regard to their FDCPA, FCRA, and TCPA-related servicing and collection litigation. Relatedly, we represent clients in connection with state law collection actions, such as those brought under California’s Rosenthal Act.

With regulatory scrutiny increasingly focused on the collection of consumer debts, we believe that much of the risk can be mitigated and controlled through effective risk assessments, monitoring and controls. We help clients identify risk factors, develop a plan to avoid problems and, if necessary, defend against claims by government agencies and private plaintiffs. Drawing on our frequent and direct experience with the full range of federal and state regulators—as well as our broad knowledge of federal and state collection laws and Unfair, Deceptive or Abusive Acts and Practices (UDAAP) issues—we navigate the complex maze of state and federal collection laws, as well as regulatory expectations, to help clients create workable, cost-effective collections strategies that minimize risk.

Our attorneys regularly assist clients in overhauling their collections operations and outsourcing various portions of their collections processes. Our team includes regulatory lawyers with deep knowledge of the Consumer Financial Protection Bureau (CFPB), the Federal Trade Commission (FTC), the federal and state banking agencies, and state attorneys general. It also includes litigators who defend a wide variety of industry players. We represent clients in litigation and regulatory investigations involving the Fair Debt Collection Practices Act (FDCPA) and state debt collection laws, Telephone Consumer Protection Act (TCPA), Fair Credit Reporting Act (FCRA), Servicemembers Civil Relief Act (SCRA), Electronic Funds Transfer Act (EFTA), and statutes prohibiting Unfair, Deceptive, and Abusive Acts or Practices (UDAAP).

The leaders of our collections practice are among the best in the field. *ChambersUSA: America’s Leading Lawyers for Business* consistently recognizes John Culhane, Jr. as a leader in the consumer financial services industry. John Socknat is recognized as a leading voice on collections licensing issues and served as a Nationwide Multistate Licensing Systems (NMLS) board member. Both attorneys are regular speakers at prominent collection industry conferences.

Our experience includes:

- Conducting dozens of first- and third-party collections assessments across the consumer financial services industry
 - As part of these assessments, we advise on issues arising under federal and state collection laws, UDAAP, payments issues, state licensing requirements, vendor oversight, and regulatory compliance management expectations
 - In June 2017 alone, our team conducted six collection agency assessments to assist a client in outsourcing its entire delinquent debt collection and credit reporting operations. These assessments included leading onsite compliance interviews; assessing compliance with all state and federal collection laws; reviewing all policies, procedures, and consumer-facing communications; and assessing the agencies' collection licenses.
- Providing nationwide representation to clients in collections-related litigation involving the FDCPA, TCPA, FCRA, and related state statutes.
- Representing several collection agencies, a debt buyer, and several debt collection law firms in CFPB enforcement investigations
- Assisting several large banks and non-banks, as well as debt buyers, in collection-focused CFPB examinations, including responding to Potential Action and Request for a Response letters relating to collections issues
- Assisting a large student lender in overhauling its entire third-party collections process and its controls and monitoring with respect to third-party collections
- Assisting a large debt buyer in designing third-party collection agency auditing procedures and training the client's auditors to conduct audits of third-party debt collection firms
- Providing ongoing collection-related advice to several large credit card issuers
- Assisting debt collection clients in revising their policies and procedures and counseling debt sellers in establishing criteria for conducting due diligence of potential debt buyers
- Drafting compliance checklists for collection agencies. These checklists include an analysis of potential risks and the controls that these agencies should have in place to mitigate the identified risks
- Advising clients on how to structure policies and train employees to avoid collections issues, including those relating to documentation, debt collection litigation, and incentive compensation
- Conducting mock CFPB examinations to help clients detect and mitigate potential problem areas within their collection operations
- Developing 50-state resources for first- and third-party collection clients to use in connection with collection letters, texts, emails, voice messages, and scripts
- Developing affidavit policies, procedures, and samples for use in all 50 states in connection with debt collection litigation
- Conducting regular diligence related to acquisitions of collections operations and portfolios in the credit card, installment lending, and health care industries
- Assisting two major industry associations—one composed of banks, the other of large collection agencies—in providing comments related to the CFPB's debt collection rulemaking

We also have a wealth of experience in the areas of law that go hand-in-hand with debt collection and servicing.

MOBILE COMMERCE AND EMERGING PAYMENTS

We advise on the marketing and development of new products and services, including online banking and mobile platforms. We are experienced in electronic signatures and contracting, emerging payments (including virtual currencies), behavioral marketing, mobile payments, and TCPA compliance issues involving the design of mobile text and call campaigns.

CREDIT REPORTING

Our attorneys have deep experience with all aspects of the FCRA and its state analogs. We advise financial institutions, credit bureaus (traditional and specialty), credit resellers, data brokers, lending platforms, and lenders on issues involving the Fair Credit Reporting Act. We also prepare credit reporting compliance systems that ensure data accuracy and integrity, assist clients in establishing systems to resolve consumer disputes, and help clients respond to regulatory supervision and investigations involving credit reporting.

TCPA

We help clients design mobile text message and prerecorded and autodialed call campaigns. We also defend financial services companies against TCPA claims brought by individuals, as well as in high-stakes, complex actions, going head-to-head with the leading class action plaintiffs' counsel in jurisdictions across the country. Our successful defense of these cases has resulted in dismissals and highly favorable settlements.

PRIVACY AND DATA SECURITY

We advise on compliance, Big Data analytics, online marketing, e-commerce, and mobile privacy and help clients avoid and respond to cyber incidents. We represent clients in cyber-related internal and government investigations, federal and state enforcement matters, crisis management, and litigation.

AWARDS AND ACCOLADES

- We are consistently ranked by *Chambers USA: America's Leading Lawyers for Business* and other publications as a top-tier consumer finance firm. In 2021, *Chambers USA* ranked our Group as [one of only three firms in its highest national tier](#) for Financial Services Regulation: Consumer Finance (Compliance & Litigation). Our Group also earned a Band 1 ranking in Financial Services Regulation: Consumer Finance (Enforcement & Investigations).
- Ballard Spahr received multiple [2020 Readers' Choice Awards from JD Supra](#), including the "Top Firm Award" in Finance & Banking. In addition, four members of our Group earned "Top Author" honors in the Finance & Banking category.
- We monitor the latest developments affecting the consumer financial services industry and keep clients informed through timely legal alerts, a [podcast](#), and our award-winning blog, [Consumer Finance Monitor](#), which focuses on important CFPB actions, and developments from relevant state and federal agencies.

CONTACT

JOHN L. CULHANE, JR.

Team Leader

culhane@ballardspahr.com

215.864.8535