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To the Point!

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OCC Issues Statement on Oversight of Debt Collection and Debt Sales

The OCC recently issued a statement titled "*Shining a Light on the Consumer Debt Industry*" (the "Statement") before the Senate Subcommittee on Financial Institutions and Consumer Protection regarding its supervision of debt collection and debt sales practices of national banks and federal savings associations (collectively "large banks"). The OCC noted that the Statement stems in part from problems the OCC and others have identified in mortgage loan servicing and foreclosure practices. It identifies best practices for policies and procedures for debt sales practices that the OCC expects for large banks.

Debt sales practices policies and procedures should:

- Require financial analysis of why selling the debt is better than collecting internally;
- Identify types of accounts that should not be sold and specify quality standards for debt that is sold;
- Ensure that purchase and sale agreements delineate roles and responsibilities for all parties;
- Require detailed documentation to ensure accurate and reliable information is provided to debt buyer;
- Specify internal bank documentation retention practices; and
- Address due diligence requirements of third parties to ensure compliance with the bank's own policies and procedures.

The OCC also noted the following specific debt sales best practices:

- Establishing an oversight committee for the bank's debt sales activities;
- Using a debt buyer scorecard to assess the legal and reputational risk of the debt buyer;
- Confirming the accuracy and completeness of account information;
- Using clear and consistent terminology in contracts;
- Providing sufficient documentation for proper collection of debts;
- Limiting the resale of debt contractually to prevent legal validity and ownership issues;
- Limiting the litigation strategy used by debt buyers;
- Maintaining quality management information systems for tracking and reporting; and
- Conducting periodic reviews.

The OCC has rising expectations related to debt sales practices that are consistent with the best practices noted in the Statement, with an emphasis on quality control processes and strong audit programs. The OCC will review this area during planned supervisory activities with large banks and will also collaborate with the CFPB, referring issues as necessary. The OCC indicated that it is in the process of developing supervisory guidance on sales of charged-off debt. Until such detailed guidance is officially issued by the OCC, the best practices and principles contained in the Statement should guide banks on their debt sales activity.

Banking Regulators Encourage Financial Institutions to Work with Troubled Student Loan Borrowers

The FDIC, the OCC and the Federal Reserve Board (collectively, the "federal banking regulators") recently issued a statement encouraging financial institutions to consider economically feasible and appropriate workout arrangements for student loan borrowers experiencing financial difficulties. The statement is consistent with the numerous initiatives launched by the CFPB to provide assistance to borrowers with student loans. The federal banking regulators will not criticize financial institutions for engaging in prudent workout arrangements even if such workouts result in adverse credit classifications or troubled debt restructuring under generally accepted accounting principles. The federal banking regulators encourage financial institutions with student loan modification programs or similar repayment programs to provide borrowers with practical information that clearly explains the general eligibility criteria and the process for requesting such programs.

Accordingly, student loan lenders should develop and adopt their own standards for workouts and modifications with policies and procedures in place to monitor the effectiveness of such standards. The position of the federal banking regulators provides needed flexibility for financial institutions that are student loan lenders in addressing repayment issues. The position also indicates that the student loans sector and its issues remain under the watchful eye of the federal banking regulators.

Actions on Internet Lending

Actions by state officials asserting jurisdiction over nonbank Internet lenders highlight the complex compliance issues that apply to these lenders. The California Corporations Commissioner has issued desist and refrain orders in 2013 against various Internet lenders offering payday loans to consumers for failure to be licensed under the California Finance Lenders Law and charging rates and fees in excess of rate caps. The New York Department of Financial Services and the Pennsylvania Department of Banking and Securities have each issued interpretive letters stating that Internet lenders without a location in their state that make loans to state residents are required to comply with their licensing and lending laws. As previously reported in *To the Point!*, regulators in New York and Massachusetts recently cautioned debt collectors that they are prohibited from collecting loans that violate state law, including debts originated by unlicensed Internet lenders. Finally, in May, the State of Minnesota obtained a judgment of $7 million plus court costs and attorneys' fees against an Internet lender for making 1,250 payday loans to Minnesota residents that did not comply with Minnesota law. Neither the lender's choice of law provision in its contract with borrowers or the fact that the lender did not have a location in Minnesota avoided the application of Minnesota law to the lender's activities. In determining damages, the Minnesota court further stated that damages could have been as high as $40 million if fully assessed against the lender.

Based on these recent regulatory and court actions in various states, a lender with a national program without the ability to exercise federal preemption must confirm that it has obtained required licenses and that its program terms comply with applicable state usury and lending law.

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To the Point! is a summary of items of interest and current issues for financial institutions with primary focus on regulatory, consumer, and corporate issues. Chapman and Cutler LLP maintains a dedicated practice group with expertise to counsel on these issues and other enterprise risk management matters facing financial institutions. If you would like to discuss any of the items contained in these briefings or other legal, regulatory, or compliance issues facing your institution, please contact one of the partners in our Bank Regulatory Group:

Marc Franson • 312.845.2988
Scott Fryzel • 312.845.3784
Heather Hansche • 312.845.3714
Doug Hoffman • 312.845.3794
John Martin • 312.845.3474
David Worsley • 312.845.3896
Dianne Rist • 312.845.3404

Chapman and Cutler LLP | 312.845.3000 | 111 West Monroe Street | Chicago | IL | 60603