

2018 TCFA Annual Convention

Legal Update

Carl R. Galant
McGinnis Lochridge
(512) 495-6083
cgalant@mcginnislaw.com

Today's Topics

- OCC—Sunset Review
- Arbitration Rule is Dead
- Payday/Small Dollar Lending Rule is Still Alive
- Debt Collection Rule and Enforcement
- Texas Anti-Surcharge Law

OCCC—Sunset Review

- Where we are in the process
 - OCCC Self-Evaluation Report (identified market gap - credit desert)
 - Stakeholder comments and meetings
 - Sunset Staff Report
 - Public comments and hearings
 - OCCC responded to Sunset recommendations
 - Waiting for Sunset Bill
- Topics of interest to TCFA members
 - No major changes for OCCC
 - Did not address the credit desert
 - Administrative enforcement changes (OCCC agreed with these)

Arbitration Rule is Dead

- Rule originally published July 19, 2017
- Applied to TCFA members, prohibited class-action waivers, and required disclosure that consumer can join a class action
- Congress disapproved rule under the CRA on Oct. 24, 2017
- Trump signed joint resolution into law on Nov. 1, 2017
- CFPB published notice that rule “has no force or effect” on website
- CFPB officially published notice removing rule from CFR

Payday Rule Lives

- Legislative attempts to derail rule failed
- CFPB proposed to reopen rulemaking in Feb. 2019
- Texas lawsuit filed by two trade groups on April 2018
 - Stay lawsuit and compliance date (Aug. 19, 2019) until new rulemaking completed
 - Consumer groups have sought to intervene and oppose
- In separate suits (DC and NY), constitutionality of CFPB structure challenged (conflicting decisions)

Debt Collection Rule

- Notice of rulemaking published in November 2013
 - CFPB announced it would rewrite for market-wide coverage (i.e., to first- and third-party debt collectors)
 - Sat idle for several years
- Still no action, but rule is on Spring 2018 rulemaking agenda
 - Notice of rulemaking expected March 2019
 - CFPB says it will focus on FDCPA collectors (i.e., third-party collectors)

Debt Collection Enforcement

- Despite new leadership, CFPB still enforcing debt collection violations
- Examples of UDAAPs that have been cited
 - Field visits
 - Collection calls to work
 - Calls to third parties
 - Disclosure of debt or delinquency to third parties
 - Credit reporting violations
 - Need written policies and procedures for: response to customer disputes; standard data reporting formats; record retention; internal controls; promptly deleting, updating, or correcting information in records; coordination between Metro 2 Guide and e-Oscar

Texas Anti-Surcharge Law

- Lenders cannot charge convenience fee for debit card transactions
 - Texas Anti-Surcharge Law (now under Atty General enforcement)
 - Chapter 342, Tex. Fin. Code, does not authorize such a charge
- *Roswell v. Pettijohn*
 - Challenged constitutionality of Texas law
 - Fifth Circuit found it constitutional
 - After USSC stated NY law could be unconstitutional, Texas lawsuit was remanded back to trial court
 - Hearing on motion for summary judgment in March 2018
 - No decision as of end June 2018