The Consumer Finance Podcast – Year in Review and Look Ahead: Servicing and Collections in Flux – How States, Reg F, and Coerced Debt Laws Are Rewriting the Playbook
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Guests: Stefanie Jackman, Nicholas O'Conner
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Chris Willis (00:05):

Welcome to *The Consumer Finance Podcast*. I'm Chris Willis, the co-leader of Troutman Pepper Locke's Consumer Financial Services Regulatory Practice. And today's episode is another in our continuing Year in Review and Look Ahead series where we're going to be talking about servicing and collections, an issue that's important to almost everyone in the industry. But before I jump into that topic, let me remind you to visit and subscribe to our blogs, TroutmanFinancialServices.com and ConsumerFinancialServicesLawMonitor.com. And don't forget about all of our other great podcasts, the *FCRA Focus*, *Payments Pros*, *Moving the Metal*, and *The Crypto Exchange*. All of those are available on all popular podcast platforms. And speaking of those platforms, if you like this podcast, let us know. Leave us a review on your platform of choice and let us know how we're doing. Now, as I said, today we're doing another Year in Review and Look Ahead series based on our very popular publication of the same name. And today we're going to be talking about and opening in detail the chapter on servicing and collections. And joining me to talk about that are two of the most qualified people in the firm, maybe even in the world, to talk about this, and that is my colleagues, Stefanie Jackman and Nick O'Conner. Stefanie, Nick, thanks for being on the podcast today.

Stefanie Jackman (01:17):

Thanks for having us, Chris. Excited to be here.

Nick O'Conner (01:19):

Thanks, Chris. Appreciate the invitation and we look forward to chatting with you today.

Chris Willis (01:23):

Well, let's just jump right into it. It really was no secret to anybody over the past years that the CFPB had been intensely interested in debt collection and was therefore a major force in shaping regulatory expectations with respect to debt collection. The CFPB isn't active in the same way that it used to be, obviously. And so, Stefanie, I wanted to just ask you first, what has been the impact of the change in the CFPB's operations on the servicing and collections industry, if any?

Stefanie Jackman (01:55):

Yeah, there has been a lot of change at the federal level. And where I've really seen that most immediately in the realm of servicing and collections is the reduction of any kind of immediate threats at the federal level. Of course, the FTC remains also empowered to enforce in this area, but they've really been in their traditional lane under all of the past administrations of really just looking for truly bad actors under black letter, plain language interpretations of the collection laws. So, they haven't changed. But the CFPB hasn't been engaging in any examinations, hasn't been engaging in any investigations. Now we're starting to hear bits and pieces about whether that may be picking up, but it's certainly at a very different level of both frequency and intensity than when it was under the last administration. So, that's one immediate impact. Nobody's getting examined or supervised. Another thing we've seen is at least talk from the CFPB about contemplating whether to change the threshold for who is considered a larger participant as a debt collector and therefore subject to CFPB supervision. Everybody is subject to the enforcement authority of the CFPB under Dodd-Frank, but for supervision, you have to be a larger participant.

Stefanie Jackman (03:16):

And the CFPB has at least floated and put on some of its potential rulemaking agendas for the future the idea of whether they should increase the revenue threshold for determining who qualifies as a larger participant. We'll see if that happens. I'm not aware of it moving forward since it was first floated last year, but that remains a potential impact. But on the other side, an impact has been, we already had seen states beginning to legislate and regulate in this area more aggressively, I would say, over the last two presidential administrations, from Trump 1 through Biden. And there's no reason for that to stop now, and it's not stopping. It is continuing. States are stepping in to enforce and legislate and take other action that's within their authority in areas where they perceive the CFPB to have stepped back. And that's a place, collections in particular, where we could see more attention and in fact have, although to date that attention has largely come through not AGs, but state collection licensing authorities in the scope of examining people who hold collection licenses or the types of interpretations we see on who may need to hold a collections or servicing license in that state, depending on the type of consumer account that's involved.

Stefanie Jackman (04:37):

And another thing, and I know that Nick's going to talk about this in more detail, but Reg F, right? How much is Reg F going to be adhered to, supported by the CFPB? We have Loper Bright, which again, Nick will get into, but the idea there that courts don't always have to defer the way that they used to to regulatory interpretations. Nothing's perfect, Chris, but Reg F, I think by and large, is viewed as more good than bad by members of the collection and receivables management industries because it sets some rules of the road in some areas, like making clear you could use electronic communications to collect accounts. The FDCPA was enacted in 1977, and it didn't speak to that because those technologies didn't exist. So, there could be ambiguity on whether it was permitted and how. So that's one great example. Trying to clarify ways that you can leave a message without risking an unauthorized debt disclosure, which had some tension in the case law and other areas. Will the CFPB stand by that? Will it

not? Will courts honor it? That's a to be seen. But how much staying power will Reg F have is something I'm thinking about for the next few years.

Chris Willis (05:51):

Okay. And I'm going to ask Nick about that in one second. But I first want to underline one of the things you said, Stefanie, which is when you think about state regulatory activity, I've always felt that collection-related matters, both by debt collectors and by creditors collecting their own accounts, is really one of the primary areas where we see state enforcement because A, those cases tend to be very visible to state regulators through consumer complaints and B, they don't tend to be that complicated. You're either saying something you shouldn't or calling excessively or whatever. And it's sort of obvious to everybody and there's no difficult legal issue or anything like that that the state regulator has to get around to bring those cases. And so, it stands in my mind as one of the primary areas where states could really make their presence known from an enforcement standpoint.

Stefanie Jackman (06:42):

I completely agree, and for all the reasons you said. It's also an area to try to exert pressure up the chain through taking certain positions on fees and whether they're recoverable, for instance, which we know fees transcend the collection space and various consumer credit products. How consumers are accommodated when they have challenges in repaying their accounts. These are all areas that are not clear in the black letter law in all instances on how to navigate it, but certainly give room through UDAP or other broader prohibitions under state law for states to push priorities or agendas or positions they want that they may think the CFPB is no longer supportive of. Of course, that could be limited to only their state boundaries. But if they're a large state, and we're seeing this happen, if they're a large state from a consumer population perspective, think about Florida, Illinois, California, New York, Massachusetts, and others. Those types of actions there can have ripple effects more broadly into other states just because it's a matter of managing risk internally and what's most efficient.

Chris Willis (07:57):

All right, Nick, Stefanie has promised our listeners that you are going to give us a great discussion of Loper Bright and Reg F. And so Reg F came out in, what was it, 2021, I think, and has been the official interpretation of the FDCPA since then. But Loper Bright comes along and says, well, federal courts, you don't have to give any deference to an agency's interpretation of a statute. You can make that determination on your own. So, how do you think the Loper Bright decision will impact the ability of FDCPA debt collectors to rely on Reg F as being sort of the Bible that they live by in their operations?

Nick O'Conner (08:37):

Loper Bright was a landmark decision. It's going to change the way that we look at anything that involves a federal agency like the CFPB. So, what does that mean? I don't think that collectors and debt collection agencies should stop thinking about Reg F. I think it's still very important. It's still going to be guidance, but we're going to change the way that we're thinking about it. In the past, when you had an ambiguous statute and you were trying to interpret it, it had a lot of

power. What did Reg F say? That was going to be used in making that determination a lot more strongly than it is now. Now it's just simply persuasive authority. It's something that will be used amongst other things for the court to make that decision. The court needs to use its independent judgment in deciding what a certain statute means or what the certain provision of the FDCPA means. So, we're going to have courts all over the country not relying on that as heavily and now looking independently at the FDCPA to decide if this ambiguity is going to fall in favor of the reading of Reg F or the independent statute reading.

Nick O'Conner (09:41):

So, it really depends on how courts treat it. I think that we've seen courts exercising a lot more independence when it comes to interpreting these ambiguous clauses, making a decision on what they think the language of the FDCPA means as opposed to what Reg F would prescribe under the old regime. One thing to make clear is that Reg F wasn't vacated. It's still on the books. It's still something that's going to be important. So, it should still be used as a guideline, especially in the compliance context. I think you have two different ways you want to look at it. In the compliance context, I think it's still probably the closest thing that we have to a rule of the road, as you suggested. And so, it's something that we want to use in that context. In the litigation context, it's going to be a little bit different. We're not just going to be using it as the standard, but in litigation, we're really going to be looking at whether this is something that in the court's independent judgment, it also feels, is going to go our way. So, we really want to take a different tack in litigation and look closer at the statute, the language of the statute, other courts' interpretations, as opposed to just relying on Reg F.

Nick O'Conner (10:43):

So, the question then becomes, when is the court going to look more at Reg F and when is the court going to look more at the plain language of the statute in practice? And so I think what we've seen is when the statutory language in question, the interpretation of Reg X looks to do something that is innovative or it really tries to expand what the statutory language is, courts are a little bit more hesitant to follow it. When the Reg F is close to the statutory language, it can be used to interpret it in a better way. So, I think it depends on the situation. But when you have something where Reg F seems to really be expanding the FDCPA, you can see a bit more hesitation from courts to go with those decisions.

Chris Willis (11:24):

Okay, thanks very much for that. Now, Stefanie, you and I talked about state regulatory presence in the area of servicing and collections. But there's another area of state activity I also want to talk to you about, and that's legislation. We've seen a whole lot of state debt collection related legislation over the past five or so years, but particularly in 2025, dealing with things like medical debt furnishing and medical collections. Where do you think we're going to go with this in 2026?

Stefanie Jackman (11:53):

Well, first, I think we may see more legislation proposed and enacted. One of the things we've seen, I don't have an exact count, Chris, but we're up to at least, I'm confident it's at least 25, I

think it's actually closer to 30 states that have said something on furnishing medical debt or otherwise imposing related limits on how it can be collected. We've seen states say, in addition to not being allowed to report, you can't foreclose a lien on a patient's primary residence to pay for medical debt, limitations on garnishment relating to recovery on medical debt. I have every reason to think that's going to continue to be a hot topic for states. We're seeing states also look to each other for examples of legislation. So early on, the legislation that was proposed and enacted was a little bit more disparate in its approach than we've seen more recently. Some almost are identical in some ways in the phrasing they're using. So, against that background, we're also starting to see challenges. Challenges based on the argument that at least as to the credit reporting restrictions, which generally mean a total ban, particularly since the CFPB withdrew its rulemaking to do that last year after the new administration took over, the litigation is claiming that these laws are preempted by the FCRA.

Stefanie Jackman (13:18):

And one of the things I think that has emboldened, I think it was inevitable, Chris, that we were going to have to see these challenges in states. But I think one of the things that further emboldened taking this step was in the challenge to the CFPB's proposed rule that would have banned any medical debt related credit reporting. The judge in the Northern District of Texas, in issuing the opinion siding with the challengers to the rule and finding it to be preempted and outside the scope of the CFPB's authority to promulgate, the judge also made a comment that I think state laws would be similarly preempted, but that wasn't in the scope of the case. But that right there is at least some persuasive authority that I would expect we will see be shown and featured more in these litigations. The litigations that are pending are right now in three different places. These are not all the states that have these laws, but I think to challenge in every single state is, there's reasons that that could be detrimental. Right? We'd like to get maybe a few wins under our belt on the preemption issue or see how courts are ultimately reconciling it.

Stefanie Jackman (14:23):

Do they align with what we saw in the CFPB's proposed rulemaking out of the Northern District of Texas before launching more broadly? But we've got a continuation of the Frey, F-R-E-Y, litigation. This is in the First Circuit Court of Appeals. It's now back, I believe, to the Maine District Court. This I thought was dead and gone. We had the First Circuit, I think in 2022, uphold restrictions on medical debt that were saying you had to wait a certain period of time before you could report it. But then in, I believe it was 2023, Maine was one of the states that decided to update its law to completely ban the furnishing of it, which reinvigorated that case. So, that's what's going on there. We have the litigation filed by ACA in Colorado. I believe that was October, November of last year. And then about two weeks ago, give or take, CDIA actually filed another lawsuit in Minnesota raising similar challenges to Minnesota's medical debt furnishing ban. On the other hand, nothing's been filed in New York yet, but I have heard at least anecdotally about the New York regulators taking a very, very expansive view of what some of the laws that were enacted late last year, including a ban on medical debt related furnishing, to apply not just to healthcare providers and those acting on their behalf, but more broadly.

Stefanie Jackman (15:50):

And it's not clear. You could read it either way if you read the statute. That's often the case with some of these state laws. But to read it very broadly to say it's any type of medical debt, even if owed to a third-party financing company and never owed directly to a hospital. So, there's a lot of unknowns. I am hopeful that the litigation that is pending will enter into briefing in the near future that will resolve some of these issues and we'll get a read on where courts are. We're still probably looking at at least a year, and there'll certainly, I would imagine, be appeals by either side. But until then, I've had clients asking, "What do I do in these other states?" It's a tricky question. We don't know where the case law is going to go. We don't know how the courts are going to come down. I don't yet perceive that states are pushing here outside of maybe New York, but I think that could be a driver. If we see states beginning to try to enforce these statutes, that could be a driver of additional litigation. It could be a driver of a request for preliminary injunctions in the jurisdictions where we have pending litigation.

Stefanie Jackman (16:58):

So, there's a lot of this story to be written, Chris, and sitting here right now, we have to be, I think, at least mindful of these laws. And another thing that people need to be mindful of is you may sit here thinking, "Oh, well, I don't collect on behalf of a healthcare provider," or, "I am not myself a healthcare provider." And don't all of these exempt credit cards? Well, most of them exempt general-purpose credit cards, not all, but you can argue it should be exempt. And I think that many of the states will be open to that. But many of them do not exempt installment loans, and some don't exempt open-end credit, like credit cards, that are marketed specifically for the payment of healthcare expenses. Now, I don't know what that means. It doesn't tell me in these statutes. Does that mean exclusively for the payment of medical products? Does it mean 90% of the time? What does it mean? And we could see some states taking different positions on that as well.

Chris Willis (17:55):

Thanks for that, Stefanie. But I do have to register one bit of disagreement with you, because I don't think you can or should read the New York law either way on the issue you mentioned. I think it clearly only prohibits furnishing by medical providers and debt collection agencies they hire. That's what I think the law says, and I think that's the clear interpretation.

Stefanie Jackman (18:15):

I agree that's a clear interpretation, and you and I have had some back-and-forth and know exactly why somebody else does not.

Chris Willis (18:21):

Yeah. So, Nick, let me turn to you about another form of state legislation that we've seen particularly recently in 2025, and that is coerced debt laws. We've got seven states having enacted them by the end of 2025. Do you think that's going to continue? And whether it does or doesn't, how should our listeners react to those state coerced debt laws?

Nick O'Conner (18:44):

Chris, coerced debt has really become a pretty big issue over the last years and into 2025. As you said, we've got seven states that have some sort of coerced debt statute: California, Texas, Maine, Minnesota, Connecticut, Illinois, and New York among them. So just to back up, coerced debt is usually debt that is opened in somebody's name without their meaningful consent. A lot of times this happens when you're dealing with an intimate partner, boyfriend, girlfriend, things like that. Threats, intimidation, fraud are used to coerce the person into taking the debt. And then you imagine a scenario where this happens, the relationship ends, and now the partner who is essentially the victim is faced with all sorts of economic challenges. They may have credit problems. They go to get an apartment, they can't do it. Go to get a car, they can't do it. They have a bunch of debt. So it's something that has gotten the attention of the legislature. It's a fairly bipartisan issue. You can see when California and Texas are doing the same thing, that should give you a little bit of indicator as to how broad of an appeal it has.

Nick O'Conner (19:45):

So, I think it is something that we're going to continue to see into more and more states. The National Consumer Law Center has a model coerced debt statute, so it just sort of makes it cut and paste for other states to – legislatures should – just take this, adopt it, and say, "We want to have this too." This is something that's not sort of an ad hoc thing or a fad. I think this is something that we're going to see moving across the country. And it's something that if you're in that industry, you need to be prepared for this and have a plan. So, what should you do? I think you want to, if people are familiar with the SCRA investigations process, things like that, that's kind of what you want to have in place here. You want to have a process for economic abuse, coerced debt, a specific procedure that you come up with that's going to address these things. That's going to go a long way in keeping yourself compliant. Just having a policy, build that investigative process, know what you're looking for, know the different factors, understand the statute in the state that you're dealing with, and the best way for you to make sure that you're crossing all your T's and dotting all your I's when you're doing an investigation on coerced debt.

Nick O'Conner (20:46):

And when you're making a national policy, you want to look at, as these statutes continue to come out and evolve, what's the most restrictive statute and start building that high-water mark for a national organization where you take the most restrictive statute and aim your policy to that. So, it's something that you need to be aware of. If you don't know what it is, you need to figure it out and understand it. And it's important to have a policy because I do think we're going to see this more and more in the future.

Chris Willis (21:12):

Yeah, I think you're right. The last topic that I want to cover with the two of you is one that I feel like we cannot leave out of any discussion about servicing and collections, and that's debt settlement companies. So, I'm going to give you both the chance to weigh in on this. They're such a major force in the operational reality that the industry faces. What trends did you observe with regard to debt settlement companies in 2025, and are you thinking that there'll be any shifts in that moving forward? Nick, why don't you start?

Nick O'Conner (21:39):

Debt settlement companies are still very active. We're operating in a new regime where the CFPB is not giving as much oversight as it once did, but on the ground, the economy is still in a place where non-prime consumers are struggling. Affordability is an issue. People are racking up a lot of debt these days. And so, whereas some of your prime consumers have a few more options, for your non-prime consumers, debt settlement companies are still very active in bringing in new clients and finding ways to try and find settlements and other relief. I think that we're going to see it. Debt settlement companies won't go away, but I think they're going to become more targeted to this band of consumers that doesn't have a whole lot of other options. They're really struggling, and the plaintiffs' bar is going to take notice of that. And they're going to be looking at different ways that they can go after these companies, looking at class actions, they're going to be looking at fees, telemarketing practices, the disclosures you're giving, arbitration clauses, things like that. They're really going to be scrutinizing that to try and find issues with these debt settlement companies that they can litigate. So, growing demand, the regulatory shift where the CFPB isn't giving it quite as much oversight is going to change the landscape, certainly.

Chris Willis (22:52):

Stefanie, I enjoy giving you the last word on our podcast, and I'm going to do it again now. What would you like to tell the audience about what you see in your crystal ball with respect to DSCs?

Stefanie Jackman (23:01):

I think they're going to continue to make use of AI and continue to increase the amount of demands and other communications that are received both by members of the industry, credit bureaus, just like we've seen in the past. So, that's going to be a challenge. And I note that we've had at least one state, I believe it was Washington, pass legislation a couple of years ago that said while you are obligated to talk to these companies, they can't keep doing that to you over and over again. It could be helpful to have other states put some similar guardrails in to make sure that legitimate debt settlement companies that are really acting on behalf of their clients are heard and that bad actors that may have a different purpose are not causing adverse impacts to consumers who really need the help.

Chris Willis (23:49):

I'm so glad you mentioned that because I totally agree with you, and I think you're 100% correct about it. And I would just make the additional observation that in addition to wishing for more state legislation, which we shall all do collectively, the use of AI by debt settlement companies as a method to sort of flood the industry with communications seems to me to be an invitation for an arms race with the servicing and collection industry to have to use AI to counter it, because I don't know any other way you'd deal with that kind of volume of communications in a cost-effective way. But we'll see what the industry chooses to do in that regard. So, Stefanie, thanks for being on the podcast. Nick, you too. It was great to have you on. And thanks, of course, to our audience for listening today as well. Don't forget to visit and subscribe to our blogs, TroutmanFinancialServices.com and ConsumerFinancialServicesLawMonitor.com. And while you're at it, why not visit us on the web at Troutman.com and add yourself to our

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