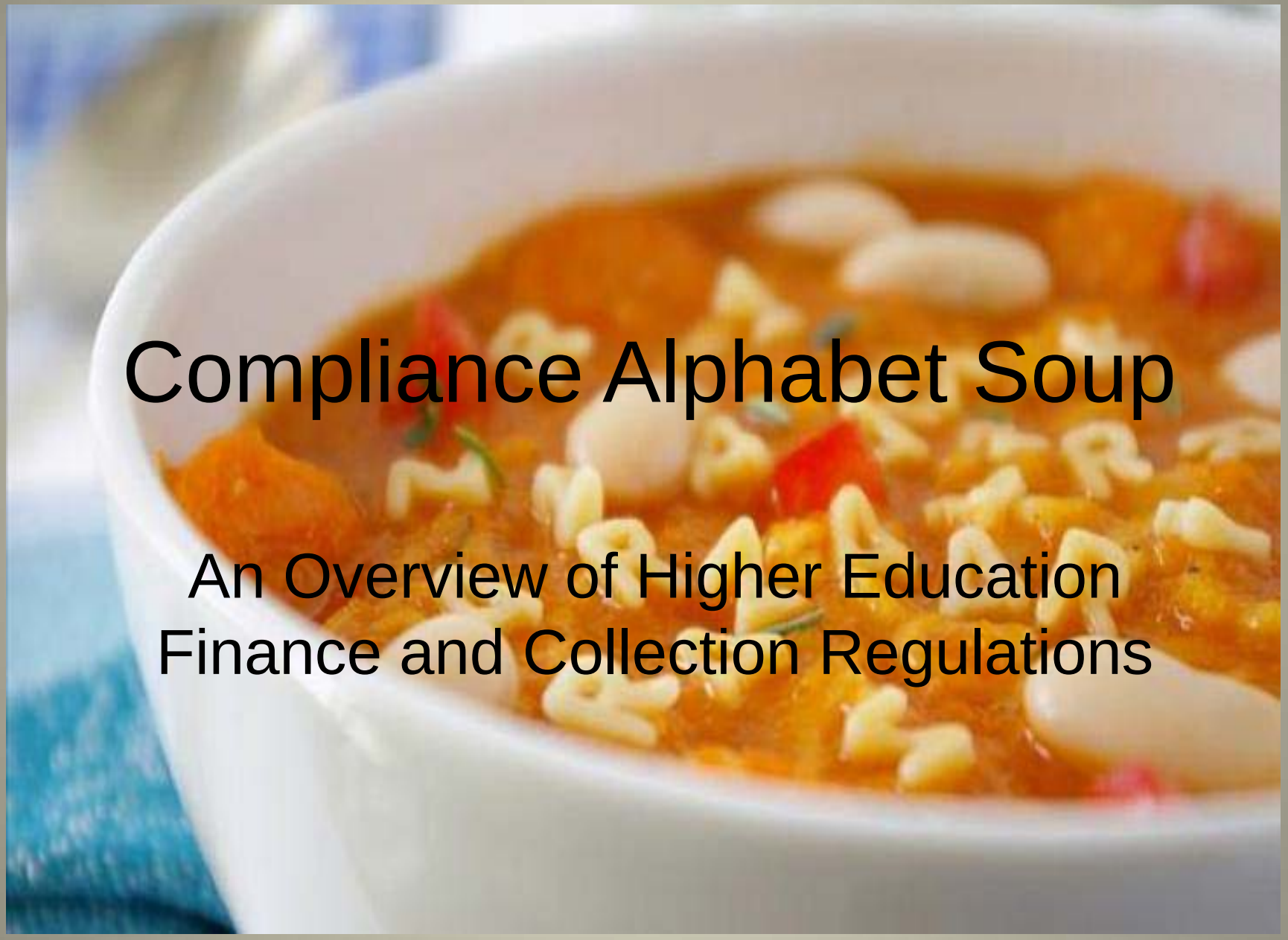

Compliance Alphabet Soup

An Overview of Higher Education Finance and Collection Regulations

Disclaimer

- This presentation is not legal advice and should not be relied upon as such.
- Information included represents the views and perspectives of the presenters and not their employers or any other entity.
- Information is believed to be accurate as of the date of this presentation.

Disclaimer

- This is an overview of the common regulatory requirements, institutions and third-party servicers may be subject to additional regulations not addressed in this presentation.

Compliance Alphabet Soup

- HEA
- FERPA
- GLBA
- HIPAA
- FCRA
- Red Flag Rules
- PCI DSS
- SCRA
- IRS
- ECOA – Reg. B
- TILA - Reg. Z
- EFTA – Reg. E
- U.S. Bankruptcy Code 11
- UDAAP
- FDCPA
- SOL
- Collection Cost
- TCPA
- Audits

Presentation Goals

- Identify common regulatory requirements
- Define those regulations
- Identify who is responsible or affected by the requirement
- Provide reference for more detailed research

HEA

- Higher Education Opportunity Act
  - HEA 2008 Reauthorization
  - 20 U.S.C. 1071 et.seq., Pub. L. 110-315

- The law was intended “to strengthen the educational resources of our colleges and universities and to provide financial assistance for students in postsecondary and higher education”. It increased federal money given to universities, created scholarships, gave low-interest loans for students, and established a National Teachers Corps. The "financial assistance for students" is covered in Title IV of the HEA.

HEA Continued…

- Perkins Loan Institutions and Third-party Servicers, must abide by the regulations
- focus on the following sections:
  - 34 CFR Section 668 General Provisions
    - http://www.ecfr.gov/cgi-bin/text-idx?SID=956065df2d76099b36874c6b97876599&node=pt34.3.668&rgn=div5
  - 34 CFR Section 674 Federal Perkins Loans
    - http://www.ecfr.gov/cgi-bin/text-idx?SID=956065df2d76099b36874c6b97876599&node=pt34.3.674&rgn=div5

FERPA

- Federal Family Educational Rights and Privacy Act of 1974
  - 20 U.S.C. §1232g et. seq.
- FERPA gives parents access to their child's education records, an opportunity to seek to have the records amended, and some control over the disclosure of information from the records. With several exceptions, schools must have a student's consent prior to the disclosure of education records *after that student is 18 years old*.

FERPA Continued…

- The law applies only to educational agencies and institutions (and their Third-Party Servicers) that receive funding under a program administered by the U.S. Department of Education

- http://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html

FERPA Continued…

- Generally, schools must have written permission from the parent or eligible student in order to release any information from a student's education record.

FERPA Continued…

- However, FERPA allows schools to disclose those records, without consent, to the following parties or under the following conditions (34 CFR § 99.31):
  - School officials with legitimate educational interest;
  - Other schools to which a student is transferring;
  - Specified officials for audit or evaluation purposes;
  - Appropriate parties in connection with financial aid to a student;
  - Organizations conducting certain studies for or on behalf of the school;
  - Accrediting organizations;
  - To comply with a judicial order or lawfully issued subpoena;
  - Appropriate officials in cases of health and safety emergencies; and
  - State and local authorities, within a juvenile justice system, pursuant to specific State law.
  - *Parents of dependent Students-Tax Docs need to proof dependency*

FERPA Continued…

- Schools may disclose, without consent, "directory" information such as;
  - a student's name, address, telephone number, date and place of birth, honors and awards, and dates of attendance.
  - However, schools must tell eligible students about directory information and allow parents and eligible students a reasonable amount of time to request that the school not disclose directory information about them.
  - Schools must notify eligible students annually of their rights under FERPA. The actual means of notification is left to the discretion of each school.

GLBA

- Gramm-Leach-Bliley Act
  - 15 U.S.C. §§ 6801-6809 and 16 C.F.R. § 314
  - requires financial institutions (companies that offer consumers financial products or services like loans, financial or investment advice, or insurance), to explain their information-sharing practices to their customers and to safeguard sensitive data.

GLBA Continued…

- Who must comply?
  - The definition of “financial institution” includes many businesses that may not normally describe themselves that way. In fact, the Rule applies to all businesses, regardless of size, that are “significantly engaged” in providing financial products or services.
  - All Institutions and third-party servicers must comply with GLBA

GLBA Continued…

- How to comply?
  - The Safeguards Rule requires companies to develop a written information security plan that describes their program to protect customer information.
    - designate one or more employees to coordinate its information security program;
    - identify and assess the risks to customer information in each relevant area of the company's operation, and evaluate the effectiveness of the current safeguards for controlling these risks;

GLBA Continued…

- design and implement a safeguards program, and regularly monitor and test it;
- select service providers that can maintain appropriate safeguards, make sure your contract requires them to maintain safeguards, and oversee their handling of customer information; and
- evaluate and adjust the program in light of relevant circumstances, including changes in the firm’s business or operations, or the results of security testing and monitoring.

GLBA Continued…

- www.ftc.gov/privacy/glbact.

- https://www.ftc.gov/tips-advice/business-center/guidance/financial-institutions-customer-information-complying#who

HIPAA

- Health Insurance Portability and Accountability Act of 1996
  - 45 C.F.R. Parts 160 and 164
  - Title II of HIPAA, known as the Administrative Simplification (AS) provisions, requires the establishment of national standards for electronic health care transactions
    - The HIPAA Privacy Rule regulates the use and disclosure of Protected Health Information (PHI) held by "covered entities"

HIPAA Continued…

- The Security Rule complements the Privacy Rule. While the Privacy Rule pertains to all Protected Health Information (PHI) including paper and electronic, the Security Rule deals specifically with Electronic Protected Health Information (EPHI).
  - It lays out three types of security safeguards required for compliance: administrative, physical, and technical.

HIPAA Continued…

- This requirement applies to entities that have access to identifiable health information.
  - Institutions and/or third-party servicers must comply

- www.hhs.gov

FCRA

- Fair Credit Reporting Act of 1971
  - 15 U.S.C. 1681 et. Seq., Pub. L. 91-508
  - that regulates the collection, dissemination, and use of consumer information, including consumer credit information.
  - Along with the FDCPA, it forms the base of consumer credit rights in the United States.

FCRA Continued…

- Consumer Reporting Agencies (CRAs) are entities that collect and disseminate information about consumers to be used for credit evaluation and certain other purposes, including employment.

FCRA Continued…

- CRA Responsibilities.
  - Provide a consumer with information about him or her in the agency's files and to take steps to verify the accuracy of information disputed by a consumer.
  - If negative information is removed as a result of a consumer's dispute, it may not be reinserted without notifying the consumer within five days, in writing.
  - CRAs may not retain negative information for an excessive period.
    - The FCRA describes how long negative information, such as late payments, bankruptcies, tax liens or judgments may stay on a consumer's credit report—typically seven years from the date of the delinquency. The exceptions: bankruptcies (10 years) and tax liens(seven years from the time they are paid).

FCRA Continued…

- The CRA must comply (either/or Institution or third-party servicer) depending who is reporting.

- http://www.consumer.ftc.gov/sites/default/files/articles/pdf/pdf-0111-fair-credit-reporting-act.pdf

FCRA Continued…

- The **FACT Act Furnisher Rules** were passed in 2010 by the federal banking agencies and the FTC and consist of:
  - **Accuracy and Integrity Rule** requires companies that provide information to credit bureaus to establish written policies regarding the "accuracy and integrity" of information furnished to the credit bureaus.
  - **Direct Dispute Rule** allows consumers to take their disputes directly to the furnishers of credit report information rather than acting solely through a credit bureau.
- These latest rules impose major new duties for lenders, servicers, collectors and other financial institutions that report, or "furnish," information to credit bureaus.

Red Flag Rules

- New Red Flag Requirements For Financial Institutions
  - Require financial institutions to develop and implement written identity theft prevention programs as part of the Fair and Accurate Credit Transactions Act of 2003

- Under the Rule, each institution must develop and implement a written Identity Theft Prevention Program designed to detect, prevent, and mitigate identity theft in connection with new or existing accounts

- Effective date is January 1, 2008

- Mandatory compliance date is June 1, 2010

Red Flag Rules

- Under the rule, creditors that hold covered accounts must develop an identity theft prevention program that includes reasonable policies and procedures to detect or mitigate identity theft and enable a creditor to:
  - identify relevant "red flags" (patterns, practices, and specific activities that signal possible identity theft) and incorporate them into the program
  - detect the red flags that the program incorporates
  - respond appropriately to detected red flags to prevent and mitigate identity theft
  - ensure that the Program is updated periodically to reflect changes in risks.

PCI DSS

- Payment Card Industry Security Standards Council
  - The PCI Data Security Standard specifies 12 requirements for compliance, organized into six logically related groups called "control objectives". Each version of PCI DSS has divided these 12 requirements into a number of sub-requirements differently, but the 12 high level requirements have not changed since the inception of the standard.

PCI DSS Continued…

1. Maintain a firewall
2. Do not use vendor defaults for passwords and other security parameters
3. Protect stored cardholder data
4. Encrypt transmission of cardholder data across open, public networks.
5. Use and regularly update antivirus software
6. Develop and maintain secure systems and applications

PCI DSS Continued…

7. Restrict access to cardholder data by business need-to-know
8. Assign a unique ID to each person with computer access
9. Restrict physical access to cardholder data
10. Track and monitor all access to network resources and cardholder data
11. Regularly test security systems and processes
12. Maintain a policy that addresses information security

PCI DSS Continued…

- https://www.pcisecuritystandards.org/
- http://www.pcicomplianceguide.org/

- Anyone who accepts and takes credit card payments, Institutions and/or third-party servicers must comply.

SCRA

- Service Member Civil Relief Act
  - 50 U.S.C. App. §§ 501—597b

- It is intended to postpone or suspend certain civil obligations to enable service members to devote full attention to duty and relieve stress on the family members of those deployed service members

SCRA Continued…

- examples of such obligations SCRA may protected against:
  - Outstanding credit card debt
  - Mortgage payments
  - Pending trials
  - Taxes
  - Terminations of lease.

SCRA Continued…

- SCRA does not excuse the member from any legal obligation, it simply delays it
- The protection is not automatic, member must apply for it
- Protection will only apply if the obligation was entered into prior to active duty

SCRA Continued…

- Protection extends from first day of active duty through 30-90 days after discharge
- Interest rate may be reduced to flat rate of 6%
- The burden is on creditor to seek relief by proving service member is not materially affected by service

SCRA Continued…

- Both Institutions and third-party servicers must comply

- http://www.military.com/benefits/military-legal-matters/scra/servicemembers-civil-relief-act-overview.html

IRS 1098T

- IRS 1098T
  - American Opportunity Tax Credit
    - detailed in Section 1004 of the American Recovery and Reinvestment Act of 2009.
  - Eligible educational institutions file this tax form for each student they enroll and for whom a reportable transaction is made.

IRS 1098T Continued…

- Institutions are responsible for complying although they may outsource.

- http://www.irs.gov/instructions/i1098et/ar02.html

ECOA

- Equal Credit Opportunity Act - Regulation B
  - 15 U.S.C. §1691 et seq.
- makes it unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction, on the basis of race, color, religion, national origin, sex, marital status, or age (provided the applicant has the capacity to contract); to the fact that all or part of the applicant's income derives from a public assistance program; or to the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act

ECOA Continued…

- The law applies to any person who, in the ordinary course of business, regularly participates in a credit decision, including banks, retailers, bankcard companies, finance companies, and credit unions.
  - Institutions must comply with this requirement

- http://files.consumerfinance.gov/f/201306_cfpb_laws-and-regulations_ecoa-combined-june-2013.pdf

TILA

- Truth in Lending Act - Regulation Z
  - 15 U.S.C. ch 41 § 1601
  - Law designed to promote the informed use of consumer credit, by requiring disclosures about its terms and cost to standardize the manner in which costs associated with borrowing are calculated and disclosed.

TILA Continued…

- Consists of three disclosures provided to the borrowers of private education loans at specific intervals of the loan application and approval process.
  - These disclosures are required for every private education loan a school or lender provides, and must contain special HEOA requirements and content.

TILA Continued…

- Three disclosures
  - Disclosure 1 is the Loan Application and Solicitation Disclosure
  - Disclosure 2 is the Loan Approval Disclosure
  - Disclosure 3 is the Loan Consummation Disclosure

TILA Continued…

- Exemptions to the disclosure requirement
  - Extensions of credit that are extended to students for expenses incurred after graduation from law, medical, dental, veterinary or other graduate school and related to relocation, study for a bar or other examination, participating in an internship or residency program, or similar purpose,

TILA Continued

- Extensions of credit with a term of 90 days or less.

- Tuition billing plans where an interest rate will not be applied to a balance and the term of the transaction is not greater than one year, even if the credit is payable in more than four installments.

EFTA

- Electronic Funds Transfer Act - Reg E
  - sections amended 12 U.S.C. ch. 3 § 226 et seq. and, 15 U.S.C. ch. 41 § 1601 et seq. and, 15 U.S.C. ch. 41 § 1693 et seq.
  - establish the rights and liabilities of consumers as well as the responsibilities of all participants in electronic funds transfer activities.

EFTA Continued…

- Guidelines for reoccurring electronic funds transfer payments.
- Anyone accepting EFT must comply, both Institutions and Third-party Servicers.
- http://www.federalreserve.gov/boarddocs/supmanual/cch/efta.pdf

U.S. Bankruptcy Code

- U.S. Bankruptcy Code
  - Title 11 of the United States Code
  - Chapter 7 (liquidation), and
  - Chapter 13 (reorganization)

- Both Institutions and third-party servicers must comply.

Bankruptcy Continued…

- Bankruptcy Code § 362 imposes the automatic stay at the moment a bankruptcy petition is filed
  - The automatic stay generally prohibits the commencement, enforcement or appeal of actions and judgments, judicial or administrative, against a debtor for the collection of a claim that arose prior to the filing of the bankruptcy petition.
  - The automatic stay also prohibits collection actions and proceedings directed toward property of the bankruptcy estate itself.

Bankruptcy Continued…

- Exemptions to discharge
  - Certain taxes owed to local, state or federal government
  - Student loans
  - Child support
- Unless filed for and granted “undue hardship” discharge

- http://www.uscourts.gov/FederalCourts/Bankruptcy.aspx

Bankruptcy-Current Law

- Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCA)
  - Expanded definition of student loans for purposes of section 523(a)(8) exception to discharge. Adds qualified educational loans as defined under section 221 of the Internal Revenue Code to those educational loans currently considered to be non-dischargeable.

Bankruptcy – Tuition Receivable

- Tuition Receivable
  - Presumed non-dischargeable?
  - Presumed non-discharge ability depends on certain factors
  - Bankruptcy court will need to recognize the obligation as a loan
    - Is there a written agreement?
    - Is credit extended?
  - Make the decision easier for a court

Bankruptcy – Transcript and Registration

- Withholding Transcripts
  - Likely viewed as violation of automatic stay provision
  - Serves no purpose other than to compel repayment
  - Ok to withhold after bankruptcy, as long as not discharged
- Registration
  - Refusal to allow registration likely viewed as violation of automatic stay
  - If bankruptcy is pending, cannot force student to pay past-due debt before allowing them to register
  - However, can make student pay in full for the semester he/she is registering

UDAAP

- Unfair Deceptive Abusive Acts or Practices
  - Pub.L. 111–203, H.R. 4173;
  - FTC enforced as UDAP since 1938, Dodd-Frank added “A” for Abusive.
  - Oversight by the CFPB.
- It is unlawful to engage in any Unfair, Deceptive, or Abusive Act or Practices
- No formal definition for “abusive” in the regulation.

UDAAP Continued…

- Examples of UDAAP violations:
  - Falsely representing character, amount or legal status of debt
  - Threatening any action that is not intended or no authority to pursue
  - Collecting or assessing a debt or additional amounts (including fees) not expressly authorized by the agreement or permitted by law
  - Failing to post payments timely or properly or to credit the account
  - Disclosing consumer's debt, without consent, to third parties, employer or co-workers

UDAAP Continued…

- Both Institutions and third-party servicers are required to follow UDAAP.

- http://www.consumerfinance.gov/guidance/supervision/manual/

FDCPA

- Fair Debt Collection Practices Act of 1978
  - 15 U.S.C. 1692 et. Seq., Pub. L. 95-109
  - a consumer protection amendment, to the Consumer Credit Protection Act which establishing legal protection from abusive debt collection practices.
  - Stated purposes are:
    - to eliminate abusive practices in the collection of consumer debts,
    - to promote fair debt collection,
    - and to provide consumers with an avenue for disputing and obtaining validation of debt information in order to ensure the information's accuracy.

FDCPA Continued…

- Prohibited conduct
  - Hours of contact (8am to 9pm local time)
  - Failure to cease communication upon request
  - Misrepresentation or deceit
  - Causing a telephone to ring or engaging in telephone conversation repeatedly or continuously
  - Communication with third parties
  - Threatening arrest or legal action
  - Abusive or profane language
  - Contact by embarrassing media
  - Seeking unjustified amounts

FDCPA Continued…

- Required conduct:
  - Identify themselves and notify the consumer,
  - Give the name and address of the original creditor
  - Notify the consumer of their right to dispute the debt
  - Provide verification of the debt
  - File lawsuit in proper venue (where debtor lives or where debtor signed contract)

FDCPA Continued…

- The law only applies to third-party collection firms, not to first party entities (institutions).

- https://www.ftc.gov/enforcement/rules/rulemaking-regulatory-reform-proceedings/fair-debt-collection-practices-act-text

SOL

- Statute of Limitations
  - the legally prescribed time limit in which a lawsuit must be filed. **
    - ** Exceptions:
      - State of Wisconsin
      - State Schools in Texas
  - These statutes vary from state to state,
  - and different obligations may fall under different time frames depending on whether the debt is based on an oral or written agreement,
  - or whether the debt has been reduced to a judgment

SOL Continued…

- Time frames vary from state to state
  - Generally between 3 to 10 years.
- Everyone is required to follow, both Institutions and third party servicers

SOL Continued…

- http://www.acainternational.org//files.aspx?p=/images/33194/1122statutesoflimitations.pdf

Collection Costs

- The FDCPA prohibits the addition of any interest, services fees, collection costs or other expenses incidental to the original debt unless it is expressly authorized by the agreement creating the debt.

- Some states have laws that regulate how much a collector can add in fees and interest, if anything at all.

Collection Costs-Recent Case Law

- Bradley v Franklin Collection Service, Inc. (2014)
  - Eleventh Circuit ruling
  - Medical debt where 30% collection cost/fee was added
  - Agreement said “I agree to pay ***all costs of collection*** . . . and reasonable collection agency fees”
  - Kojetin v CU Recovery, Inc. (2000) – Eighth Circuit ruling
    - Violation of FDCPA to add collection cost/fee based on percentage of the principal balance
    - Only entitled to actual cost of collection
  - Seeger v AFNI, Inc. (2008) – Seventh Circuit ruling
    - Percentage based fee can be appropriate if the parties agree to it in the contract

Collection Costs/Fees – Recent Case law

- Seeger continued
  - Contractual language stated the following
    - "You agree to reimburse us the fees of any collection agency, which may be based on a percentage at a maximum of 33% of the debt, and all costs and expenses, including reasonable attorneys' fees, we incur in such collection efforts."
- Bradley's contract did not specify the collection agency fee to be charged
  - FDCPA violated when added 30% fee

- Future?

Collection Costs Continued…

- Both Institutions and third-party servicers need to comply.

- http://www.acainternational.org/files.aspx?p=/images/33235/8000addingfees.pdf

TCPA

- Telephone Communication Protection Act of 1991
  - 47 U.S.C. 227, Pub. L. 112-238
  - Primary law governing the conduct of telephone solicitations.

- The law applies to both Institutions and Third-Party Servicers. No one is exempt.

TCPA Continued…

- TCPA establishes the following:
  - Do Not Call Registry
  - **Limit on Automated Dialer use**
  - Limit # of abandoned calls by telemarketer
  - Clearly identify electronic prerecorded messages
  - Modified the unsolicited facsimile advertising requirements

TCPA Continued…

- Limit on auto dialer use:
  - It is a TCPA violation to use an automated dialer (or prerecorded or artificial voice) to place calls to mobile phones, without the prior express consent of the consumer to do so.

- Expressed Consent:
  - Consumer provides expressed consent to be called on a wireless number via auto-dialer or prerecorded message if she knowingly releases the wireless number to the calling entity.
  - Also clarifies that a consumer who gives prior consent to the creditor also give prior consent to the third-party servicer.

TCPA Continued…

- Sample Language:
  - I authorize the school, *[Insert Institution name here*], and their respective agents and contractors to contact me regarding my loan request and or my loans(s), including payment of my loans(s), at the current or any future number that I provide for my cellular phone or other wireless device using automated telephone dialing equipment or artificial or prerecorded voice or text messages.

TCPA Continued…

- http://www.fcc.gov/document/telephone-consumer-protection-act-1991

- http://transition.fcc.gov/cgb/policy/TCPA-Rules.pdf

Audits

- Audits
  - 34 C.F.R. 668.23 Compliance Audits & Audited Financial Statements

- Both Institutions and Third-party Servicers must comply

Audits Continued…

- (2) *Institutions.* An institution that participates in any title IV, HEA program must at least annually have an independent auditor conduct a compliance audit of its administration of that program and an audit of the institution's general purpose financial statements.

- (b) *Compliance audits for institutions.* (1) An institution's compliance audit must cover, on a fiscal year basis, all title IV, HEA program transactions, and must cover all of those transactions that have occurred since the period covered by the institution's last compliance audit.

Audits Continued…

- (3) *Third-party servicers.* Except as provided under this part or 34 CFR part 682, with regard to complying with the provisions under this section a third-party servicer must follow the procedures contained in the audit guides developed by and available from the Department of Education's Office of Inspector General. A third-party servicer is defined under §668.2 and 34 CFR 682.200.

Audits Continued…

- (2) A third-party servicer that contracts with more than one participating institution may submit a compliance audit report that covers the servicer's administration of the title IV, HEA programs for all institutions with which the servicer contracts.

- (3) A third-party servicer must submit annually to the Secretary its compliance audit no later than six months after the last day of the servicer's fiscal year.

Audits Continued…

- Both Institutions and Third-party Servicers must submit annually an audited financial statement

- This financial statement must be prepared on an accrual basis in accordance with generally accepted accounting principles, and audited by an independent auditor in accordance with generally accepted government auditing standards and other guidance contained in audit guides issued by the Department of Education's Office of Inspector General.

Audits Continued…

- http://www.ecfr.gov/cgi-bin/text-idx?SID=fbe6a15fe26f2792f37a8b3d07c7aaa0&node=se34.3.668_123&rgn=div8

- http://www.ifap.ed.gov/ifap/byYear.jsp?type=aguides

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