Top 5 Takeaways From the Arbitration SBREFA Panel for the Debt Collection Industry

ARM-U Webinars Proudly Sponsored by:

Legal Disclaimer

This information is not intended to be legal advice and may not be used as legal advice. Legal advice must be tailored to the specific circumstances of each case. Every effort has been made to assure this information is up-to-date. It is not intended to be a full and exhaustive explanation of the law in any area, however, nor should it be used to replace the advice of your own legal counsel.

Rulemaking Timeframe

SBREFA PANEL CONVENED

- SERs Notified
- SER Meeting with SBREFA Panel
- SER Written Material Submission
- Panel Report

Publish Proposed Rule

- Proposed Rule Published
- SBREFA Panel Report made public
- Notice and Comment Period
- CFPB Receives and Reviews Public Comment

FINAL RULE

- FINAL RULE ISSUED
- Effective Date
- Must Comply with Rule (180 days passes from effective date)

Timing & Information CFPB Provides to SERs

- SERS are selected and receive initial e-mail communications regarding the SBREFA process received
- Documents Released Publicly and to SERS
  - Outline of proposals
  - Potential prepared remarks/hearing
  - Fact sheets
  - Any studies conducted (like the arbitration study)
  - List of discussion questions
- Introductory Phone Call with SERs
- Materials Discussion Phone Call with SERs
- SER Meeting with Panel to Answer Discussion Questions
- SER Written Materials Due

Why Is This Important?

- Initial opportunity to shape the rulemaking process and propose alternatives
- SERs play an important role in recalibrating regulators' proposed rules
- A non-related entity, the Small Buisness Administration, can help advance the SERS comments and alternatives on the SER's behalf
- The proposed rules and discussion points released in advance of the SBREFA panel are good benchmarks for the entire industry and should be thoroughly reviewed
- SERs need data and information from other industry members
- SERs can attach letters, data, reports, etc. from other industry members to any written submission
- Written submission is part of the public record
- Only the information in the public record can be used to challenge a final rule

CFPB Debt Collection Rulemaking Predictions

- Documentation requirements
  - Similar to CA's Debt Buyer requirements & potential ban on debt resale
- Validation requirements
  - Similar to NY's substantiation requirements
- Sample initial validation notice
- Call frequency rules
  - similar to NYC, WV, MA or state-based call restrictions
- References to emerging technology
- Out of statute debt
  - Disclosures, additional restrictions and possible ban
- First party rules that may be issued after the third party regulations

5 Takeaways from Debt Collector SERS for Future SBREFA Panelists

1. Consistent Messaging
2. Challenge Underlying Assumptions
3. Propose Realistic Alternatives
4. Importance of Clear and Convincing Data
5. Unintended Consequences for Consumers and Potential Negative Impact on Access to Credit

1. Consistent Messaging Sets Foundation for Strong SBA Report

- ACA, DBA, NARCA AND bankers, auto-lenders, payday lenders
- Identify SERs
- Each SER should discuss buisness-specific data that furthers an over-arching and consistent narrative regarding:
  - Impact on Small Businesses
    - Cost of credit
    - Non-monetary implications (employee time, counsel time, etc.)
    - Reduction in workforce in response to higher operating costs
    - Inability to operate at a profit
  - Impact on Consumers
    - Reduced access to credit
    - Reduced financial products and services
  - Alternative Proposals

2. Challenge Underlying Assumptions

- Identify Assumptions
  - What data does the CFPB utilize as the basis for the proposed rules?
  - Confounding Variables
  - Is the data sufficiently limited in scope and accurately applied?
    - For example, is data regarding debt purchase used to substantiate the need for rules for that impact non-purchasing agencies?
- Compare these assumptions with your company's data and industry-wide information
- Support with evidence (data and anecdotal)

3. Propose Beneficial Alternatives

- Establish that regulation is possible without severe impact on small business & consumer access to credit
- Proposed alternative should explain why the alternative is:
  - Better for Business
    - Less impact on operating costs, cost of credit, etc.
    - Reduced risk of job loss or workforce reduction
    - Less impact on all businesses in credit cycle
  - Better for consumers
    - Access to credit
    - Access to financial products and services
- Consistent across different entities (collectors, creditors, debt buyers, collection lawyers, issuers, etc.)

4. Provide Data, Data, and More Data

Best way to show the economic impact of the proposed regulation is through concrete empirical evidence.

- Answer questions posed by organizations during the SBREFA Process with company and industry-specific data
  - Must be able to explain relevance in meaningful way
- Explain how similar regulations have had negative impact on businesses and consumers over time
- Point to academic and research studies with similar findings
- Provide as much data as possible
  - SERS can submit confidentially in written response
- Consider written response to attach to SERs written submission (for the record)

5. Impact on Consumers

- C is for Consumer
- Regulation is onerous on small businesses <u>and</u> presents unintentional harm to consumers
  - Risk/benefit analysis
- Concrete evidence the proposed rules:
  - Will reduce availability of credit
  - Will result in reduction of financial products and services
- Role in the Credit Economy
  - Debt collection is part of the credit cycle and does not operate autonomously

This webinar was co-produced by

COMPLIANCE
PROFESSIONALS FORUM

generously supported by TransUnion

compliancepf.com

This webinar was co-produced by the Compliance Professionals Forum, an educational membership organization created by insideARM.

Members receive:

- clearly explained, up-to-the-minute compliance insight
- how-to guidance and tools
- help from a network of peers who can walk you through compliance challenges

ARM-U Webinars Proudly Sponsored by:

LexisNexis RISK SOLUTIONS TransUnion neustar Cornerstone Support, Inc.