

CFPB Strikes a Blow Against Unfair, Deceptive Collection Efforts

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As 2015 came to a close, the Consumer Financial Protection Bureau issued a press release announcing a consent order with a now-exited player in the small dollar lending space over alleged illegal debt collection practices. The press release, consent order, and simultaneously issued bulletin offering guidance on in-person debt collection practices are must-reads for every finance company, but here's a quick summary.

The Bureau claimed that EZCORP, Inc., engaged in unfair, deceptive, and abusive acts in its collection efforts. Specifically, the Bureau claimed that EZCORP visited consumers' homes and places of employment, sometimes on multiple occasions, to collect or attempt to collect debts from consumers. The Bureau also claimed that EZCORP's employees discussed the debt with, and took payments from, consumers at their homes and places of employment. While doing so, EZCORP's employees allegedly stated the name of EZCORP, wore name tags, handed their business cards to third parties, and left their business cards on consumers' doors where third parties could find them.

Prior to the visits, EZCORP's employees also allegedly threatened consumers with in-person collection visits, telling them that if they did not return a phone call or make a payment, EZCORP would conduct an in-person visit. The Bureau alleged that EZCORP's employees visited consumers' homes or places of employment even when they were able to contact the consumers through other means and, at times, visited consumers' homes or places of employment even when an EZCORP employee had recently spoken with the consumers by phone. If a consumer was not present or not available to speak during an in-person collection visit, employees would allegedly attempt to leave a letter for the consumer with a third party, such as the consumer's supervisor, co-worker, parent, child, or roommate. Third parties at consumers' workplaces at times refused to accept these letters because the consumers could not engage in personal business matters at work.

According to the Bureau, EZCORP's policies provided that employees should avoid disclosing the existence of the debt to third parties during in-person collection visits, but EZCORP's employees disclosed or engaged in conduct that risked the disclosure of the existence of consumers' debts to third parties, such as the consumers' supervisors, co-workers, neighbors, roommates, or family members. The Bureau asserted that these visits constituted unfair collection practices in violation of federal law.

Additionally, the Bureau alleged that, as part of its loan application process, EZCORP required consumers to list addresses and phone numbers for references, supervisors, and, in many instances, landlords. EZCORP allegedly did not disclose to consumers that these third parties would later be contacted by EZCORP's employees as part of debt collection efforts for purposes other than to acquire location information for the consumers. According to the Bureau, EZCORP's policies stated that

employees should contact third parties for "location purposes only," but, at times, EZCORP did not limit debt collection calls to references, supervisors, and landlords to circumstances in which it lacked adequate contact information for the consumer. EZCORP allegedly called these third parties repeatedly and, at times, disclosed or risked disclosing the existence of the consumer's debt. The Bureau asserted that these calls constituted unfair collection practices in violation of federal law.

The Bureau also asserted that EZCORP collected loan payments from consumers by electronic fund transfers through the Automated Clearing House, an electronic network used to obtain and transmit payments and deposits, in an unfair manner. According to the consent order, if consumers did not have sufficient funds in their accounts when EZCORP attempted an electronic fund transfer, consumers' banks often assessed nonsufficient funds fees or overdraft fees against the consumers. The Bureau alleged that if an initial electronic fund transfer from a consumer's bank account failed due to insufficient funds, EZCORP would, up until early 2013, initiate an "ACH split" on the consumer's next payday. An "ACH split" was three simultaneous attempts to withdraw money electronically from a consumer's bank account: one for 50% of the total amount due, one for 30% of the total amount due, and one for 20% of the total amount due. According to the Bureau, EZCORP did not adequately disclose to consumers that it would initiate an ACH split if an initial electronic fund transfer failed. The Bureau claimed that, since 2011, tens of thousands of consumers have likely incurred bank fees if they did not have sufficient funds in their accounts when the ACH splits were presented to the consumers' banks.

The Bureau also claimed that EZCORP engaged in deceptive collection practices such as false threats of litigation if consumers did not pay a past due amount and misrepresentations about consumers' ability to stop electronic fund transfers or the timing of such transfers. According to the Bureau, EZCORP policy permitted consumers to revoke their authorization for EZCORP to initiate electronic fund transfers from the consumers' bank accounts by notifying EZCORP or the consumers' bank either in writing or orally, depending on the type of loan. In numerous instances, in connection with collecting or attempting to collect debt, the Bureau alleged that EZCORP represented to consumers, directly or indirectly, expressly or by implication, that the only way for consumers to stop EZCORP from initiating electronic fund transfers against the consumers' accounts was for the consumers to make a payment or set up a payment arrangement. EZCORP also allegedly engaged in the deceptive practices of misrepresenting the consumers' ability to prepay the loans without penalty and EZCORP's policy on pulling credit reports.

The consent order also included an allegation that EZCORP required many consumers who obtained installment loans to sign loan notes that required them to authorize EZCORP to initiate multiple electronic fund transfers from the consumers' bank accounts. The authorizations allowed EZCORP to withdraw funds from the consumers' bank accounts at substantially regular intervals, such as biweekly or monthly, for repayment of the loans. In numerous instances, EZCORP allegedly conditioned the extension of credit to consumers on consumers agreeing to repay their loans by preauthorized electronic fund transfers, in violation of the Electronic Fund Transfer Act.

While announcing the consent order, in which EZCORP agreed to refund \$7.5 million to 93,000 consumers, pay \$3 million in penalties, and stop collection of remaining payday and installment loan debts owed by roughly 130,000 consumers, the Bureau also issued a "warning" bulletin about potentially unlawful conduct during in-person collections. The bulletin highlights that in-person collection visits may constitute harassment and may result in third parties, such as consumers' co-workers, supervisors, roommates, landlords, or neighbors, learning that the consumers have debts in collection.

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