

# Client Alert

August 2014

## OCC Issues Bulletin on Consumer Debt Sales to Third-Party Debt Buyers

On August 4, 2014, the Office of the Comptroller of the Currency (the “OCC”) of the US Department of the Treasury issued new guidance outlining sound banking practices related to consumer debt sales to third-party debt buyers.<sup>1</sup> The bulletin sets forth the OCC’s expectations for banks that engage in debt-sale arrangements and applies to all OCC-supervised banks. Supervised banks are expected to do the following:

- Ensure appropriate internal policies and procedures are developed and implemented to govern debt-sale arrangements consistently across the bank;
- Perform appropriate due diligence when selecting a debt buyer;
- Ensure debt-sale arrangements with debt buyers cover all important considerations;
- Provide accurate and comprehensive information regarding each debt sold, at the time of sale;
- Refrain from selling certain types of debt;
- Comply with applicable laws and regulations; and
- Implement oversight of the debt-sale arrangement.

Banks should pay particular attention to two types of debt the OCC identifies as inappropriate for sale: “[d]ebt of borrowers that have sought or are seeking bankruptcy protection” and “[d]ebt of account holders currently in litigation with the institution.”<sup>2</sup> According to the OCC, such debts are not appropriate for sale because they likely fail “to meet the basic requirements to be an ongoing legal debt.”<sup>3</sup> However, the OCC has left unanswered how broadly this guidance should be interpreted.

For example, as to debt associated with borrowers in bankruptcy, the OCC’s guidance seems to contradict the language of Fed. R. Bankr. P. 3001(e), which governs transferred claims and specifically contemplates the sale and assignment of claims in bankruptcy, both before and after a bankruptcy filing, without distinguishing between charged off and non-charged off debt.<sup>4</sup> The OCC’s guidance is not expressly limited to the sale of debt discharged in bankruptcy and therefore seemingly prohibits a broad range of potential consumer bankruptcy claims trading. If the OCC’s guidance is intended to be read broadly, it could have significant implications on the claims trading industry.

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<sup>1</sup> OCC Bulletin 2014-37.

<sup>2</sup> See *id.* at 4.

<sup>3</sup> See *id.*

<sup>4</sup> See Fed. R. Bankr. P. 3001(e) (addressing the transfer of claims before and after the filing of a proof of claim).

Additionally, with respect to the debt of account holders currently in litigation with the institution, the language “currently in litigation” can be read quite broadly. On its face, this language suggests that the “litigation” could be related to any matter involving the account holder, even those unrelated to the account itself. Such an interpretation could also have very significant implications.

Notably, the OCC guidance states that as the OCC becomes aware of concerns with non-bank debt buyers, it will refer those issues to the Consumer Financial Protection Bureau (“CFPB”).<sup>5</sup> Therefore, OCC-supervised banks and debt buyers alike should carefully consider their debt-sale compliance procedures in the context of this new guidance.

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<sup>5</sup> Bulletin 2014-37 at p. 5.