



National Association
of Federal Credit Unions
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NAFCU | Your Direct Connection to Advocacy, Education & Compliance

September 23, 2016

The Honorable Richard Cordray
Director
Consumer Financial Protection Bureau
1700 G Street NW
Washington, D.C. 20552

RE: Third-Party Debt Collection Outline of Proposals Under Consideration

Dear Director Cordray:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only national trade association focusing exclusively on federal issues affecting the nation's federally-insured credit unions, I am writing in regard to the Consumer Financial Protection Bureau's (CFPB) Outline of Proposals Under Consideration and Alternatives Considered (Outline) for third-party debt collection practices. Credit unions are not debt collectors under the *Fair Debt Collection Practices Act* (FDCPA) and should be excluded from any debt collection rulemaking. To the extent that the CFPB has decided to continue with first-party debt collection rulemaking, NAFCU would like to thank the Bureau for recognizing that credit unions collecting on their own behalf should be addressed separately.

Nonetheless, the Bureau's Outline has sparked concern among NAFCU's members because such proposals would likely have an indirect effect on credit unions and raise operational and administrative costs. As member-owned, not-for-profit cooperatives, credit unions serve a different purpose in the financial industry and should consequently receive different treatment from regulatory agencies like the CFPB. NAFCU would greatly appreciate the opportunity to discuss in further detail the needs and interests of credit unions as well as potential proposals under consideration for a rule regarding first-party debt collectors at an in-person meeting with the CFPB.

General Comments

This Outline represents the first attempt at an overhaul of the debt collection industry in over four decades. In 1977, Congress passed the *Fair Debt Collection Practices Act*, which established various disclosure requirements and restrictions on the conduct of debt collectors. The FDCPA, however, generally only covers those collecting on behalf of another party (i.e. the creditor) and debt buyers. The *Dodd-Frank Wall Street Reform and Consumer Protection Act*

(Dodd-Frank Act) named the CFPB as the primary agency for issuing comprehensive regulation to implement the FDCPA and clarify the extent of its proscriptions.

Under its unfair, deceptive, and abusive acts and practices (UDAAP) authority, the Bureau may issue regulations affecting “covered persons.” The Dodd-Frank Act’s definition of covered persons includes those debt collectors encompassed under the FDCPA and creditors who are collecting on debts that relate to a consumer financial product or service.

In November 2013, as a response to countless complaints and lawsuits about debt collection practices, the Bureau issued an Advanced Notice of Proposed Rulemaking (ANPR). Following the ANPR, the Bureau conducted a Survey of Consumer Views on Debt, consumer testing of model validation notices and other disclosures, as well as industry surveys regarding collector practices and procedures. This Outline followed to prepare the first of two Small Business Regulatory Enforcement Fairness Act (SBREFA) Panels discussing debt collection. The first SBREFA Panel has already been convened and the CFPB plans to convene a second this fall to address first-party debt collection practices.

NAFCU is grateful that the CFPB decided to divide the SBREFA process into two Panels to distinguish between first- and third-party debt collectors, and urges the CFPB to continue with separate rulemaking. NAFCU also asks the CFPB study the indirect effect that future rulemaking for third-party debt collectors may have on credit unions’ bottom line and, with that in mind, consider first-party debt collector proposals that recognize the one-of-a-kind structure and goals of credit unions.

Separate Rulemaking for First-Party Debt Collectors

As a logical continuation of the separate SBREFA Panel hearings, NAFCU recommends that the CFPB maintain a separate rulemaking process for third- and first-party debt collectors. Congress initially passed the FDCPA because of concerns about the predatory, profit-driven, and ruthless actions of third-party debt collectors. Credit unions, however, are not-for-profit, member-owned institutions that work for their members, and not against them. Credit unions prioritize guiding delinquent borrowers through the process to bring their loan payments current and establishing a lasting, mutually beneficial relationship. Therefore, the relationship between credit unions and their members is markedly different from that of a debtor and a third-party debt collector.

Considering that only third-party debt collectors are covered under the FDCPA and, barring an act of Congress, such coverage cannot be expanded, the CFPB should first issue a proposed rule that applies to only third-party debt collectors. Next, under its UDAAP authority, the CFPB may issue a proposed rule to address first-party debt collection practices. A separate proposal for first-party debt collectors would better ensure the Bureau does not conflate two distinct statutory

authorities and issues a rule that caters to the unique relationship credit unions have with their members. Separate rulemaking would also allow the Bureau to provide greater clarity on the areas it finds most troubling and the specific initiatives it plans to pursue to resolve these problems.

Indirect Effect on Credit Unions

The Bureau's proposal that collectors "substantiate" their claims would inevitably generate heightened requirements for credit unions that call upon debt collectors to collect their debts. Credit unions will have to devote time and resources to assisting third-party debt collectors in the verification and confirmation of information regarding the debt. NAFCU and its members support increased transparency and enhanced consumer understanding in the debt collection process, but simultaneously urge the CFPB to conduct actual studies about the debt collection industry and the type of policies and procedures utilized by credit unions.

Credit unions exist for the primary purpose of serving their members. Accordingly, credit unions work closely with their members during the life of their loan, whether it is figuring out a payment plan that best suits their financial situation or discussing loss mitigation options to protect the member's home and family. In fact, recent data collected by NAFCU's June 2016 Economic & CU Monitor indicate that roughly 80 percent of credit unions have waived late fees, interest, or fines for their members and another 33 percent have forgiven debts to one or more members. These are hardly the type of harassing debt collection practices that the CFPB seeks to curb.

In light of recent financial pressures forcing credit unions to merge or liquidate, the CFPB must be very careful in proposing and implementing rules regarding debt collection so as not to add to the financial difficulties many credit unions already face. Complicated and extensive regulatory requirements to change debt collection policies and procedures may force smaller credit unions to merge or even close up shop because they cannot afford to pay knowledgeable compliance officers to navigate the regulations. Stringent requirements to scrub a member's loan file for "fundamental information" to share with third-party debt collectors also adds a layer of complexity and expenses for credit unions that already have and are following sound information-sharing procedures. NAFCU believes that a thorough study of the credit union sector of the industry would reveal as much and that the CFBP should engage in such a review before proposing any debt collection rule that would affect credit unions.

Potential Proposals for First-Party Debt Collectors

NAFCU strongly suggests that the CFPB not rely solely on consumer complaints in constructing proposals because such proposals end up being blanket solutions instead of individualized, focused strategies to address the biggest problem areas. NAFCU recommends the CFPB spend

more time studying the industry, specifically credit unions, before determining their proposals for first-party debt collectors and in reevaluating the third-party debt collection proposals. As is, if the Outline's proposals were extended to credit unions, they would impose a high burden and potentially make the collection of smaller debts more difficult, or even infeasible.

Credit unions are not the industry players ignoring the rules of the game. Credit unions already abide by policies and procedures that ensure their members are not subject to abusive debt collection practices. While considering proposals for first-party debt collectors, the CFPB should acknowledge, as it has done in the past, that credit unions are not the bad actors. The CFPB should also strive to cultivate proposals that are workable and do not impose significant costs on credit unions.

Again, NAFCU would very much like to meet with the CFPB to discuss the credit union perspective, the Bureau's debt collection data-gathering methodology, and potential ideas for the first-party debt collection outline and eventual proposed rule. NAFCU believes that collaboration on this front could lead to a rule that protects consumers from harassment and abusive practices in the debt collection process, while also protecting credit unions from unnecessarily burdensome regulation.

Conclusion

NAFCU appreciates the opportunity to provide our comments on the Outline pertaining to third-party debt collection practices. If you have any questions or concerns, please do not hesitate to contact me at akossachev@nafcu.org or (703) 842-2212.

Sincerely,

A handwritten signature in black ink, appearing to read "Ann Kossachev". The signature is fluid and cursive, with the first name "Ann" and last name "Kossachev" clearly distinguishable.

Ann Kossachev
Regulatory Affairs Counsel