



Credit Union National Association

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February 27, 2014

Ms. Monica Jackson  
Office of the Executive Secretary  
Consumer Financial Protection Bureau  
1700 G Street NW  
Washington, DC 20552

Re: Comments on the CFPB's Advanced Notice of Proposed Rulemaking on Debt Collection (Regulation F); Docket No: CFPB-2013-0033

Dear Ms. Jackson:

The Credit Union National Association (CUNA) appreciates the opportunity to submit comments regarding the Consumer Financial Protection Bureau's (CFPB) advance notice of proposed rulemaking (ANPR) on debt collection practices. In addition to providing input on some of the questions in the ANPR, our comment letter urges the CFPB to exclude from any regulation of debt collection credit unions that collect debts concerning loans they originate or service for their members, also referred to as first-party debt collectors. By way of background, CUNA is the country's largest credit union trade organization, representing our nation's state and federal credit unions, which serve nearly 99 million members.

**CFPB Should take a Targeted Approach in Addressing Issues with Specific Third-Party Debt Collectors**

As part of its review of current debt collection practices, the CFPB has requested input on a variety of issues, including whether the scope of any rulemaking that would apply to third-party debt collectors should also apply to first-party collectors.

CUNA has and continues to oppose unscrupulous business practices, including those related to debt collections. However, we strongly oppose an approach that would attempt to impose new rules on credit unions and other first-party debt collectors seeking to collect payments on loans they originate or service.

We believe consumers and creditors would best be served by an approach from the CFPB that focuses on bad actors. In that connection, in its review of debt collection practices, we urge the agency to concentrate on problem cases rather than on the creation of broad new rules that affect good and bad actors similarly.



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Credit unions that are collecting their own debts should be treated differently than third-parties that are in the business of debt collections. As member-owned, not-for-profit financial cooperatives, credit unions are distinct from most other types of financial service providers. Repeatedly, CFPB Director Cordray has commended credit unions for their practices and urged them to “keep doing what you are doing.” We urge the agency to reflect that view in all rulemakings, including any new rules that are developed regarding debt collection practices.

Credit unions operate to promote thrift and to provide credit and savings vehicles to their members at reasonable rates. Unlike other types of financial service providers, the member-borrowers of a credit union have a strong interest in ensuring the credit union is able to take appropriate steps to collect debts owed by their fellow members. In addition, it is the credit union’s members who will ultimately end up paying the cost of uncollected debts in the way of higher interest rates on loans and lower rates on savings.

As part of the CFPB’s explanation of why regulation in the area of debt collection might be appropriate for first-party debt collectors, the CFPB stated that, “Typically, competition in markets will incentivize firms to provide products and services on terms that consumers favor, but this competition may not be effective with regard to collections practices. Once a debt has gone into collection, consumers cannot choose their collector; the relevant choice for the consumer came when deciding from which firm to purchase or borrow.” 78 Fed. Reg. 67853.

While we agree with this as a rationale for regulating third-party debt collectors, we strongly disagree with its applicability to credit unions and other entities pursuing collection of their own debts. In instances where the creditor is the debt collector, the consumer has chosen the creditor and may choose to obtain future financial services elsewhere.

### **Responses to Specific Question in the ANPR**

To assist the CFPB in its data collection efforts regarding debt collection practices, we have provided answers to certain questions included in the ANPR.

#### **Transfer and Accessibility of Information Upon Sale and Placement of Debts**

Question 1: What data is available regarding the information that is transferred during the sale of debt or the placement of debt with a third-party collector and does the information transferred vary by type of debt (e.g., credit card, mortgage, and student loan)? What data is available regarding the information that third-party debt collectors acquire during their collection activities and provide to debt owners?

A: From a consumer protection perspective, we believe it is important that the creditor share enough information with the third-party collector so that upon request by the borrower the third-party can assist the borrower in identifying the loan at issue.

It is our understanding that entities using third parties typically transfer basic account information to such a collection agency, including name, address, and contact information, often transferring such information through a secure connection directly to the third-party's computer system. The information provided to the third-party agency may differ depending on the type of account at issue; for example, more information may be provided for a car loan than for a credit card. Information available from the collector may include access to the third-party's notes on the account, which allows the creditor to see when the third-party contacts the borrower, the content of the communication, and whether any new information was obtained.

While it is our understanding that most creditors share the information described above with their third-party debt collector, there will of course be exceptions. Rather than impose new requirements on all creditors, the CFPB should focus on issues relating to the creditors failure to provide sufficient information to the third-party collector.

Question 5: To what extent do debt owners transfer or make available to debt buyers or third-party collectors information relating to: Disputes (e.g., that a debt had been disputed, the nature of the dispute, whether the debt had or had not been verified, the manner in which it was verified, and any information or documentation provided by the consumer with the dispute); unusual or inconvenient places or times for communications with the consumer (e.g., at the consumer's place of employment); cease communications requests; or attorney representation? What would be the benefits and costs of debt buyers and third-party collectors obtaining or obtaining access to this information upon sale or placement of the debt? To what extent do third-party debt collectors provide this information to debt owners?

A: When placing a debt in collections with a third-party, it is our understanding that a creditor typically informs the third-party of the status of the account, including whether there is a disputed account. In addition, a creditor will provide the third-party with its answer to the dispute along with supporting documentation. Most reputable third-party collection agencies should notify the creditor immediately if there is a dispute regarding one of its accounts.

Question 8: Please describe debt collectors' access rights to documentation such as account statements, terms and conditions, account applications, payment history documents, etc. What restrictions are most commonly placed on these

access rights? Do these restrictions prevent or hinder debt collectors from accessing documentation?

A: Some creditors provide such information only in instances where the borrower disputes the debt with the third-party. Whereas others provide this information automatically.

Question 12: Would sharing documentation and information about debts through a centralized repository be useful and cost effective for industry participants? If repositories are used, what would be the costs and benefits of allowing consumers access to the documentation and information about their debts in the repository and of creating unique identifiers for each debt to assist in the process of tracking information related to a debt? What privacy and data security concerns would be raised by the use of data repositories and by permitting consumer and debt collector access? Would such concerns be mitigated by requiring that repositories meet certain privacy and security standards or register with the CFPB?

A: We have major concerns with such a centralized repository and question its usefulness and cost effectiveness. Most of the same information is currently available through credit files. Such a repository would be quite costly to develop and maintain; such costs would assumedly be borne by those using the repository. In addition, we are concerned with the security of such a repository, particularly since data breaches are far too common.

#### Validation Notices, Disputes, and Verifications

Question 16: Where the current owner of the debt is not the original creditor, should additional information about the current owner, such as the current owner's address or other contact information, be disclosed in the validation notice or upon request? Would this information be helpful to consumers so that they may contact the current owner directly about the debt, or about the conduct of its third-party collector?

A: There may be some benefits in disclosing this information, as long as regulatory burdens on creditors are minimized. Such disclosure could be helpful to both the consumer and the entity attempting to collect the debt; and would facilitate better communication for all parties involved.

Question 35: Should consumers be required to provide particular information or documentation as part of their disputes to debt collectors to trigger an investigation requirement under the Fair Debt Collection Practices Act (FDCPA)?

A: We believe consumers should be required to provide in writing information regarding the nature of their dispute within a reasonable amount of time following receipt of notice or statement.

### Debt Collection Communications

Question 54: The CFPB seeks comment on how rulemaking with respect to communications in debt collections could help both consumers and the industry.

A: In our view, there are a number of provisions under the FDCPA that if properly enforced, help ensure communications with consumers are appropriate. For example, third-party debt collectors are already prohibited from harassing consumers, using unfair practices to collect a debt, conceal their identity, or disregard a written request from the consumer to end further contact, among other provisions. They are also restricted in their use of postcards or including language on an envelope that indicates a debt collection. We think consumer education regarding these prohibitions as well as proper enforcement of statutory provisions as they apply to third-party collectors would go a long way toward protecting consumers without additional broad based rulemaking.

### Recordkeeping, Monitoring, and Compliance Requirements

Question 160: The Nationwide Mortgage Licensing System and Registry (NMLSR), which was originally used by state regulators for the registry of mortgage loan originators, is increasingly being used as a broader licensing platform, including for the registration of debt collectors. Would it be desirable for NMLSR to expand or for some other existing platform to be used to create a nationwide system for registering debt collectors rather than having the CFPB create such a system? What could the CFPB do to facilitate the sharing of information among regulators who are part of the NMLSR or other nationwide system to safeguard confidentiality and protect privileged information?

A: There could be a potential benefit in using the NMLSR to register third-party debt collectors and their firms but additional comments on this issue should be sought before developing a proposal. However, the policies and procedures that the NMLSR uses to safeguard confidentiality and protect privileged information should also be considered by the CFPB. In addition, we would be opposed to any requirement to establish a registry for first-party collectors or credit unions.

### Conclusion

For the reasons discussed above, CUNA strongly opposes any regulation of the debt collection efforts of credit unions and other first-party debt collectors.

CUNA agrees that unscrupulous business practices, including those performed by certain third-party debt collection agencies, should not be tolerated. However, to address those issues, we urge the CFPB to utilize a targeted approach that focuses on third-party debt collectors that engage in abusive and/or illegal collection efforts. Further, we urge the agency to consider how increased consumer education and enforcement of existing requirements on third parties that violate legal requirements could protect consumers.

In any event, we encourage the agency to avoid unnecessary regulations and unintended consequences for credit unions and other responsible creditors and first-party debt collectors.

Thank you for the opportunity to express our views on the CFPB's ANPR on debt collection practices. If you have any questions about our comments, please do not hesitate to contact CUNA Deputy General Counsel Mary Dunn or me at (202) 508-6743.

Sincerely,

A handwritten signature in cursive script that reads "Luke Martone". The signature is written in black ink and is positioned above the printed name and title.

Luke Martone  
Senior Assistant General Counsel