

The Compliance Challenges of Credit Union Collections

Presented by

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Collections and Compliance?

- Yes! It is about more than just collecting a debt
- Collectors must be aware of lending and collection rules, as well as many others
- The goal is to reduce delinquency while mitigating risks and protecting the credit union



FDCPA

- Enacted in 1978 & enforced by Federal Trade Commission (FTC)
- Applies to debt collectors collecting on behalf of the original creditor
- FDCPA prohibits harassment, making misleading/false statements, and also limits the times at which collection calls may be made



-Staff should be aware and follow in spirit



FDCPA: State Chartered CUs

Per U.S.C 1962 § 814 (Administrative Enforcement):

- The FTC has been granted enforcement authority over state-chartered credit unions
- State-chartered credit unions must follow the FDCPA debt collection UDAAP rules even when employees are collecting on the credit union's own debt



CFPB Supervisory Highlights Issue 17 Summer 2018

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CFPB Supervisory Highlights Issue 17

- Section 809(b) of the FDCPA requires a debt collector, upon receipt of a written debt validation request from a consumer, to cease collection of the debt until it obtains verification of the debt and mails it to the consumer. Seven examinations found that one or more debt collectors routinely failed to mail debt verifications before engaging in further collections activities.



https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/bcfp_supervisory-highlights_issue-17_2018-09.pdf



GLBA

- Signed into law November of 1999 and requires regulators such as NCUA to establish appropriate standards for the administrative, technical, and physical safeguards of member records and Non Public Personal Information
- GLBA part 503(b)(3) and 12 C.F.R part 716



GLBA

Requires credit unions to have policies and procedures to protect member information

-Even members that are delinquent are entitled to their privacy and appropriate safeguarding of their records



Regulation P

- Implements the GLBA
- Annual disclosure of privacy policy (unless exceptions met)
- Gives members the option to opt out of certain information sharing



TCPA

- 47 U.S.C. § 227 and C.F.R. § 64.1200
- Are you calling a cell phone to collect?
- Do you have the correct consent?
- Collection calls are informational calls for TCPA purposes



UDAAP

- Refrain from unfair, deceptive, abusive acts or practices during the collection process
- Periodically listen to recorded calls and review auto-generated notices
- Do you know it when you see it?



UDAAP

- Make sure your members are aware when payments are considered received
- Make sure members are aware of how partial payments are treated



Prompt Payment Crediting

- 12 CFR 1026.10
- Payments applied when received or backdated to avoid harm to the member
 - Except when delay does not result in finance or other charges



E-Sign Act

Electronic consent required

- Member must consent electronically
- Must reasonably demonstrate ability to access disclosures and documents
- Was consent for one transaction or disclosure or multiple?



TILA

- Authority transferred from Federal Reserve to CFPB (BCFP)
- 12 CFR Part 1026
- Doesn't apply to : business, commercial and/or loans made to non-natural persons



TILA: Loan Documents and Disclosures

- Are your documents and disclosures compliant?
- Different requirements dependent upon the type of loan
- Do you have the appropriate provisions and signatures needed to collect?



TILA

- Consensual security interest for credit card accounts:
 - Prohibits creditors from offsetting member funds to cover delinquent credit cards unless exception requirements met



RESPA and TILA

- Mortgage Servicing and Early intervention requirements
 - Live contact
 - HUD and SCRA information in written notice
 - Periodic statements to members in bankruptcy



Reg. X and Reg. Z: Mortgage Servicing Rules

- Foreclosure after 120 days
- Successor in interest provisions
- Small Servicer Exemptions
 - 5,000 or fewer mortgages
 - Not all portions are exempt



Regulation E

- Preauthorized transfers
- Change in terms notices
- Disputes
- Resolving errors



Reg. E: Overdrafts

- Proper opt in
- Disclosures at ATMs
- Assessing Fees: Available vs. actual balance
- Collection calls and notices



FACTA

- Credit Unions should have a red flag program (ID Theft)
- Your member has stated the loan you are collecting on is not theirs, now what?
- Collectors should be trained to identify Red Flags as well as possible credit reporting errors



FCRA

- Ensures accurate, fair consumer reporting
- Is the member delinquent due to a credit union error ? If so, has this error affected their credit rating?
- Credit disputes must be investigated and responded to within a specified time
- 15 U.S.C. § 1681



BSA/AML/OFAC

- Do you know your member?
- Collection staff should be trained to identify and report suspicious activity
- OFAC checks for repossession sales?



FCU Act : Making Loans and Taking Funds

- **Statutory Lien:** FCU Act verbiage in either account agreement or loan agreement (preferably both) that allows the CU to “impress” its statutory lien and apply shares to be applied to loans. (Can also be adopted in a by-law or policy)



Taking Funds

- **Pledge of Shares:** Account agreement verbiage :allows funds in shares to be applied to negative balances
- **Right of Setoff:** Common Law right-not typically used by credit unions. Setoff is canceling of mutual debt between creditor & debtor



Reg. B: Adverse Action Notice

- Closing open end products due to delinquency?
- Imposing restrictions due to delinquency?
 - Adverse action notice must be sent within 30 days of taking adverse action on existing accounts



Discrimination

- Collection activity and adverse actions should not vary dependent upon race, religion, sex, national origin or any other protected class!
 - All collection attempts should be consistent and based on policy/procedure



SCRA

- 50 U.S.C. §§ 3901-4043
- Protects active duty military members, reservists or members of the National Guard and, in limited situations, dependents of military members
- 6% rate cap for loans taken out **prior** to military service
- Cannot repossess collateral without a court order



MLA

- 10 U.S.C. § 987
- Provides protection for active duty military, spouses and dependents for **new** loans taken out
- MAPR of 36% for the extension of consumer credit to a covered borrower and his or her dependents
- No mandatory arbitration clause or cross collateral language



Bankruptcy

Credit Unions should have specific procedures to outline steps to take for bankruptcy including account maintenance to avoid potential violations of the automatic stay (credit reporting, automated letters, statements etc.)

- Collection attempts in progress must stop, no further collection activity



UCC: Course of Dealing

Sequence of conduct concerning previous transactions, between parties to a particular transaction, that is to be regarded as establishing a common basis of understanding...: UCC § 1-303(b)



UCC: Repossession

Certain notices required to be sent to borrowers for repossessed vehicles:

- **Notice of disposition of collateral** (U.C.C § 9-611 and state specific laws)
- **Notice of Sale and explanation of deficiency balance/surplus** (U.C.C § 9-616 and state specific laws)



GAAP

- Once a vehicle is repossessed it is no longer a loan it is now an asset
- Improperly reporting assets can cause material issues with financial statements
- TDRs
- Nonaccrual



State Laws

- Safe Deposit box rental collection
- Mechanic and Storage Liens
- Statute of Limitations for collection
- Breach of the Peace



IRS Reporting: 1099C

- Credit union cancels member debt
- Must be \$600 or more and due to an “identifiable event”
- Can no longer pursue the debt once 1099 C form sent



Record Retention

- Various different retention requirements for different records
- The credit union should have a record retention policy
 - Policy covers the retention and disposition of credit union's records



Vendor Management

- Due Diligence is required and should be conducted before referring accounts for collection
 - Periodic reviews are beneficial, how are they performing?
- You are still responsible for their compliance
 - Are you aware of their training and collection practices?



Consumer Complaints

- As member-owned financial cooperatives, credit unions should manage compliance and reputational risk
- A critical element of a strong compliance management system is establishing written policies and procedures to record, categorize, analyze, investigate, resolve, and respond to complaints.



■ LCU: 15-CU-04



Risk Factors

- **Compliance risk:** Failure to comply with legal and regulatory requirements, which can expose your credit union to litigation or administrative actions and enforcement.

-Can your credit union afford a fine/penalty?

PENALTY



Risk Factors

- **Reputation risk:** Risk to your credit union's reputation, arising from negative public opinion or perception of the credit union.

-How are your collectors treating your members?



Risk Factors

- **Credit risk:** Risk relating to any contract between a credit union and a person or entity, usually involving loans. Risk of your loans going bad

-Although the loans are already made adequate collections can help manage this risk



Risk Factors

- **Transaction risk:** Fraud committed in financial transactions – or in errors arising during such transactions. This is also known as operating risk or fraud risk.

-Is there potential for collection staff to commit fraud? Risk mitigation steps in place?



Last but not Least

The Credit Union must have written collection policies and procedures.

-You will be held accountable for not adhering to your own policies and procedures



Any Questions?

If you have any questions regarding these guidelines please contact Maria Peyton

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