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National Association of Federally-Insured Credit Unions

September 17, 2019

Comment Intake
Bureau of Consumer Financial Protection
1700 G Street NW
Washington, DC 20552

RE: Debt Collection Practices (Regulation F) (RIN 3170-AA41)

Dear Sir or Madam:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing in response to the Bureau of Consumer Financial Protection's (Bureau or CFPB) notice of proposed rulemaking regarding debt collection practices. NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 117 million consumers with personal and small business financial service products. Credit unions are not debt collectors as defined in the *Fair Debt Collection Practices Act* (FDCPA), nor do not participate in abusive and harassing debt collection practices. Credit unions are not the type of institution the FDCPA sought to curtail. Due to credit unions' not-for-profit, member-owned structure, they operate to empower their members to get on track with outstanding debts. NAFCU supports the Bureau's efforts to modernize outdated provisions of the FDCPA to enhance communication efforts between debt collectors and consumers. Although credit unions are not debt collectors as defined in the FDCPA, they will face indirect effects as creditors resulting from this proposed rule.

Summary of Regulatory Improvements

NAFCU maintains a number of concerns regarding the proposed rule and its effects on credit unions, and recommends the Bureau review the following issues:

- *Scope of Authority:* The Bureau should limit the scope of authority for this rulemaking to its authority under the FDCPA, and remove those provisions created under the Bureau's unfair, deceptive, or abusive acts or practices (UDAAP) authority to remove confusion and ambiguity for creditors.
- *Communication Cap and UDAAP Violations:* The Bureau should resolve ambiguities in calculating the communication cap in the context of multiple outstanding debts, and include an example. In addition, the Bureau should remove footnote 313, which references communication in excess of the limit constituting a UDAAP violation.
- *Validation Notice:* NAFCU is concerned about the indirect costs that debt collectors may pass on to creditors. The Bureau should address potential liability if an error occurs in the transfer of a previously provided opt-out notice by a creditor. In addition, the Bureau

should address whether the itemization date must be re-calibrated when a transfer of debt occurs.

- *Time-Barred Debt:* The Bureau should remove the standard "knew or should have known" from the provision as it creates more ambiguity.
- *Meaningful Attorney Involvement:* The Bureau should remove the provision for "meaningful attorney involvement" as the proposed rule interferes with the practice of law including attorney-client privilege and work product doctrines.
- *Telephone Consumer Protection Act (TCPA) Concerns:* The Bureau should work together with the Federal Communications Commission (FCC), as the proposed rule conflicts with provisions of the TCPA.

General Comments

Since enactment of the FDCPA over 40 years ago, communication technology has advanced, and it will continue to evolve. Consumers have replaced rotary telephones and pagers with mobile telephones, and telephone booths are noticeably absent from street corners. Considering these dramatic shifts, NAFCU appreciates the Bureau's efforts to modernize the FDCPA. As technology has advanced, there have been inconsistent court decisions regarding its application to debt collection practices. This legal uncertainty creates costs for the industry and risks for the consumer. It is important that consumers have the ability to communicate in an efficient manner and that they are protected from bad actors who seek to harass and threaten them to collect debts owed. As such, NAFCU appreciates the Bureau's commitment to a transparent rulemaking process that balances the interests of consumers and debt collectors, and attempts to provide clear rules.

Moreover, it is important to have a clear and fair rule in place for debt collection activities because as consumer debt rises, we see a correlation with increased debt collection practices. Consumer debt has risen by $124 billion to a total of $13.67 trillion as of the end of Q1 2019.[1] Increased consumer debt will lead to increased debt collection activities as some consumers experience financial hardships.

The proposed rule applies to "debt collectors" as defined by the FDCPA, or "any person who uses an instrumentality of interstate commerce or mail in any business the principle purpose of which is the collection of debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due, or asserted to be owed or due, to another." This definition excludes creditors collecting debts in their own name, and applies only to third-party debt collectors, or those collectors utilizing any name other than its own to collect debts owed. Credit unions do not act as third-party debt collectors, meaning they do not collect debts utilizing any name other than their own. Credit unions assist their members in becoming current with outstanding balances by offering payment plans and financial education assistance, and often times discharge outstanding debts. Despite the proposed rule applying only to third-party debt collectors, creditors are indirectly impacted by this proposed rule in many ways.

[1] *See* https://www.newyorkfed.org/microeconomics/hhdc.html.

The Bureau should limit its scope of authority to the FDCPA

In crafting this rule, the Bureau is utilizing its rulemaking authority under the FDCPA and the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Dodd-Frank), specifically its authority under section 1031. Section 1031 of Dodd-Frank allows the Bureau to "prescribe rules applicable to a covered person or service provider identifying as unlawful, unfair, deceptive, or abusive acts or practices in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service." Additionally, section 1031 allows the Bureau "prevention authority," meaning the Bureau may promulgate rules under section 1031 for preventing such acts or practices. By utilizing its UDAAP authority, the Bureau includes first-party debt collectors or creditors in a rulemaking that is tailored to address third-party debt collection practices. This creates confusion and ambiguity for credit unions regarding potential compliance with the proposed rule. Additional clarification from the Bureau on the proposed rule's application to first-party debt collectors and creditors is necessary. NAFCU recommends the Bureau keep first and third-party rulemakings separate instead of overlapping obligations utilizing UDAAP authority. Additionally, the Bureau has indicated the possibility of a future first-party rule. NAFCU reiterates its long-standing position that credit unions should be exempted from any first-party rulemaking. Credit unions are not the nefarious, bad actors that the Bureau intends to target with this rulemaking. NAFCU requests the Bureau utilize its exemption authority under section 1022 of Dodd-Frank to exempt credit unions from any first-party rulemaking due to their unique not-for-profit structure.

The Proposed Rule's Effects on Credit Unions as Creditors

Communication Cap and Potential UDAAP Violations

Credit unions are not the type of debt collector the FDCPA intended to limit or prohibit from making contact with consumers. Credit unions are not engaging in communication with their members with the intent to annoy, abuse, or harass. Effective and efficient communication with consumers regarding outstanding debts is in the best interest of all parties, and NAFCU agrees that this communication must occur in a mutually beneficial manner that in no way harasses or abuses consumers. However, the proposed rule creates ambiguity for credit unions who seek to contact their members. NAFCU requests that the Bureau modify this proposed rule to resolve such ambiguities.

Section 1006.14(b)(2)(i) of the proposal prohibits a third-party debt collector from placing a telephone call to a particular consumer in connection with collection of a debt more than seven times within a consecutive seven-day period. Further, section 1006.14(b)(2)(ii) prohibits third-party debt collectors from calling a consumer for a one-week period after an actual telephone conversation takes place. As proposed, there is a bright-line rule of how many attempts are allowable if attempting to collect on a single debt. However, the proposal creates ambiguity and difficulties in discerning the communication cap in the context of communications involving multiple debts. As the Bureau noted in the proposed rule, almost 75 percent of consumers that have at least one debt in collection have multiple debts in collection. It is reasonable that a consumer may wish to discuss other debts owed once a successful communication occurs between parties.

The official interpretation of section 1006.2(b) defines an attempt to communicate as “an act to initiate a communication or other contact with any person through any medium, including by soliciting a response from such person. An act to initiate a communication or other contact with a person is an attempt to communicate regardless of whether the attempt, if successful, would be a communication that conveys information regarding a debt directly or indirectly to any person.” When placing a call to a consumer with multiple debts pursuant to section 1006.14(b)(2), it is unclear whether an attempt to communicate is counted towards the outstanding debts that were not the subject of the call but may or may not have been discussed with the consumer.

Additionally, the examples provided in the commentary do not address how to calculate the communication cap when multiple debts exist. Proposed comment 14(b)(5) only offers examples that contemplate scenarios in which one particular debt is the subject. The first example illustrates that a debt collector attempting to collect two particular types of debt may place seven unanswered telephone calls to the consumer in connection with the first debt, and seven unanswered telephone calls to the consumer in connection with the second debt. The second example illustrates that if a debt collector is attempting to collect two types of debt, and a successful communication is made in regards to one particular type of debt, then the debt collector cannot communicate with the consumer again for another seven days.

The examples could be broadly interpreted to suggest that a debt collector must demonstrate that they did not discuss, and did not intend to discuss any other debts when the communication occurred for a particular debt in order to not have an attempted communication counted. These examples, coupled with the interpretation of an attempt to communicate create ambiguity. In addition, the examples and commentary do not address the situation where there are multiple outstanding debts, a successful communication is made pertaining to a particular debt, but the consumer inquires about the other outstanding debts. NAFCU requests that the Bureau resolve the ambiguities on calculating the communication cap when there are multiple outstanding debts. In addition, the Bureau should add an example in the commentary illustrating the aggregation of calls in the context of multiple debts.

Although the proposed communication cap is imposed upon third-party debt collectors, the Bureau notes in the proposal that excessive communication is per se harassment that could lead to a UDAAP violation. NAFCU disagrees with the proposition that a creditor typically stops communicating with a consumer once responsibility for an account has moved to a third-party debt collector. A majority of credits unions continue to communicate with their members after a transfer of debt to a third-party debt collector. This communication may include notifying members through email, telephone, or written correspondence that a third-party debt collector will contact them. Considering that credit unions continue to communicate with their members after transferring a debt, the proposed rule creates significant ambiguity.

This ambiguity is bolstered by footnote 313 of the proposal, which states that the "Bureau has not determined in connection with this proposal whether telephone calls in excess of the limit in proposed section 1006.14(b)(2)(i) by creditors and others generally not covered by the FDCPA would constitute an unfair act or practice under section 1031(c) of the Dodd-Frank Act if engaged in by those persons, rather than by an FDCPA-covered debt collector." Inclusion of this footnote is troubling for credit unions, as they may find themselves in violation of UDAAP for simply contacting their members. Credit unions contact their members regarding delinquency or default, and this communication is mutually beneficial for both the creditor and the member. Frequent and/or earlier communication can only benefit the member by providing more time to cure and allowing more options for assistance; such as becoming current, entering into a payment plan, discussing forgiveness options, or notifying a member of potential fraud that led to the outstanding debt. The inability to communicate with members diminishes member service.

NAFCU opposes the proposed communication cap given the potential for a UDAAP violation. Without clarification for first-party debt collectors and creditors, the litigation floodgates will open, leading to a myriad of court decisions determining what constitutes "excessive and abusive communication." In addition, this communication cap may have a chilling effect on creditors contacting their members to proactively mitigate the risk of a UDAAP violation. Credit unions may use the communication cap as a de facto "safe harbor" to avoid a UDAAP violation. The Bureau stressed the importance of having a "bright-line" rule for communication between third-party debt collectors and consumers, but the inclusion of the footnote and lack of clarity in the proposed rule creates uncertainty for credit unions and other creditors. Given that the "abusive" prong of UDAAP is still undefined creates even more uncertainty and potential risk of an enforcement action. NAFCU requests the CFPB remove footnote 313 to reduce confusion and continue to allow creditors to communicate meaningfully with their members.

Validation Notice

NAFCU underscores the importance of a validation notice, which allows consumers to clearly understand the debt owed and to whom. In addition, the validation notice mitigates potential litigation for all parties. The Bureau's 2019 Annual Report on the FDCPA reported that 40 percent of consumer complaints stemmed from an attempt to collect a debt not owed by the consumer. This percentage illustrates the importance of verifying an outstanding debt before collection practices begin. Credit unions who utilize third-party debt collectors have existing procedures in place to verify their members' debts.

According to NAFCU's June 2019 *Economic & CU Monitor Survey,* 36 percent of respondents use a third-party vendor for debt collection practices and have processes in place to verify the accuracy of delinquent account data before sending it to a third party debt collector. Those members who have processes in place validate a varying amount of information. Some credit unions validate the member's name, contact information (home phone number, work phone number, email address), and balance owed. Other members validate account number, employer, loan type, open date, charge-off amount, and social security number.

Section 1006.42 of the proposed rule allows third-party debt collectors to provide certain disclosures electronically. Delivery of the electronic disclosures must be made pursuant to the *Electronic Signatures in Global and National Commerce Act* (E-Sign Act), or the alternative channels laid out in the proposal. This alternative channel allows a third-party debt collector to utilize previously provided opt-out notices from creditors to the consumer. Thus, the proposal requires credit unions to maintain and transfer more information to third-party debt collectors than previously required. This provision requires more communication and coordination between credit unions and third-party debt collectors. As with any regulatory change, compliance costs will increase with necessary updates to internal systems to ensure the transfer of correct data and information. Although the third-party debt collector sends the validation notice, the creditor may incur the costs. The Bureau recognized the potential for increased indirect costs being passed from third-party debt collectors to creditors in the proposal. NAFCU's members remain very concerned that this proposal will increase costs for them as creditors.

In addition to increased costs, NAFCU members report varying degrees of potential compliance burdens in terms of updating policies and procedures, or building additional data fields into their systems. Some NAFCU members currently provide opt-out notices for their members who receive disclosures electronically, however, there are NAFCU members who do not currently provide disclosures electronically and thus are not collecting opt-out notices. The compliance burden on these creditors will be greater as they may update their internal policies and procedures to provide opt-out notices and begin returning certain records. Further, NAFCU remains concerned about the liability involved with creditors providing previously provided opt-out notices to a third-party debt collector. If a bona-fide error occurs where a creditor provides a previously provided opt-out notice to a debt collector who then provides a validation notice disclosure electronically to the consumer, based on an incorrect record of delivery, then the consumer may have a claim against the debt collector and the creditor. The Bureau should provide clarification for situations where an error occurs in the transferring of previously provided opt-out notices.

Lastly, section 1006.34 requires the validation notice to include certain information, including an itemization date. Section 1006.34(b)(3) defines itemization date as one of the four following options: (1) the last statement date; (2) the charge-off date; (3) the last payment date; or (4) the transaction date. It is common for a debt to transfer between numerous debt collectors throughout the collection life cycle. When a transfer occurs, the subsequent debt collector may require the creditor to provide an updated itemization date. From an operational perspective, providing an itemization date several times can be quite challenging if internal systems are not set up to re-calibrate the itemization date. Ideally, creditors would prefer to provide the last statement date, and if the amount is disputed, then the itemization date will be re-calibrated. The proposed rule does not address whether the itemization date must be re-calibrated when a transfer of debt occurs. NAFCU requests the Bureau provide guidance on this issue to provide clarity for creditors.

Time-Barred Debt

Credit unions do not seek to bring claims or threaten to bring claims against consumers in instances of a time-barred debt. However, when the circumstance arises that a creditor seeks to bring a valid claim against a consumer, it is imperative that a creditor's rights are not impeded. The proposed rule inhibits a creditor's right to bring suit by barring a case based on the statute of limitations. Further, the proposed rule creates a vague standard prohibiting a suit that creates greater uncertainty.

As the Bureau recognizes in the proposed rule, it is difficult in certain circumstances to determine the applicable statute of limitations, and the proposed rule creates greater uncertainty with a vague standard. Section 1006.26(a)(1) defines the statute of limitations to mean the period prescribed by applicable law for bringing a legal action against the consumer to collect a debt. State laws determine the applicable statute of limitations. As the Bureau recognized in the preamble, the applicable statute of limitations varies by State, County, and debt type. Generally, a defendant raises the statute of limitations as an affirmative defense to a suit; however, the proposal would altogether bar bringing a suit based on the statute of limitations, inhibiting a creditor's right to legal recourse.

Creditors do not typically file suit against a consumer to collect on a time-barred debt, but the proposal now makes a filing error based on a statute of limitations a violation of Federal law. Such an outcome is inappropriate because errors could stem from tolling and borrowing statutes, or choice of law issues. In a debt collection case, the statute of limitations may begin as of the date of the account's last activity, last payment, or default date. In addition, the statute of limitations may be reset with a partial payment or a written promise to repay the debt, depending on state law. Additionally, there are sometimes complicated choice of law issues involved where one court may opt to "borrow" the statute of limitations from another jurisdiction if it is shorter. In those situations, the court may choose a shorter statute of limitations than the plaintiff-creditor had anticipated would be applied to the matter at hand.

Additionally, section 1006.26(b) of the proposed rule prohibits a debt collector from bringing or threatening to bring a lawsuit on a time barred debt if they "knew or should have known" that the debt was time-barred. The preamble to the rule and staff comments acknowledge that the determination will involve analyzing which statute of limitations applies, when the statute of limitations began to run, and whether the statute of limitations has been tolled or reset, but that there may be situations where state law is unclear. The term "know or should have known" is vague and open to interpretation by state courts, which creates uncertainty and could lead to a patchwork of standards across the country. State courts have processes built in to handle situations where the court determines that the statute of limitations has expired in a particular case. For example, courts may dismiss the suit and award sanctions, where applicable. This rule is an area of law reserved for states to decide, and should be left to the states for the best course of action. The proposal's provisions regarding time-barred debts are outside the scope of the Bureau's statutory purview, and exceeds the confines of Dodd-Frank. Therefore, NAFCU recommends the Bureau remove the standard for "know or should have known" standard. Determining a standard for time-barred debt is a practice best left to the states.

Meaningful Attorney Involvement

Credit unions involved in debt collection litigation seek to comply with the letter of law in collecting on debts that are rightfully owed. Any debt collection rulemaking must balance consumer protections with creditor's rights. The Bureau states in the proposal that it is "particularly important for consumers, attorneys, and law firms engaged in such litigation to be protected by a clear articulation of what meaningful attorney involvement in debt collection litigation submissions means under FDCPA section 807, as would be implemented by proposed section 1006.18." However, the FDCPA does not explicitly authorize the Bureau promulgate a rulemaking for "meaningful attorney involvement," nor does section 1006.18 provide clarity for consumer and creditor rights attorneys. In addition, the proposed rule improperly interferes with the practice of law at the state level, including attorney-client privilege and work product doctrines.

The plain language of section 807 of the FDCPA does not create standards for "meaningful attorney involvement" But section 807(3) prohibits an individual from falsely representing or implying that the individual is an attorney, or that a communication is from an attorney. Thus, looking at the plain language of section 807(3), an attorney could not be found in violation of the provision because they would not be acting in any other capacity than as an attorney. Standards for "meaningful attorney involvement" have been determined by case law over the years. The Bureau lacks the authority under the FDCPA to require a framework for "meaningful attorney involvement."

Under the proposed rule, a creditor's rights attorney would be unable to demonstrate they met the proposed "safe harbor" for "meaningful attorney involvement" without revealing to their adversary and to the court all of the steps the attorney took on behalf of the client. This disclosure would include revealing all documents, legal authorities reviewed for the client, and the reasoning the attorney used to reach the conclusion that the client's claim was warranted in fact and law. In order to do this, the attorney must reveal client confidences and potentially waive attorney-client privilege, which infringes on the attorney's duties and ethical responsibilities to the client. By allowing consumers to challenge the process by which a creditor's rights attorney represents the creditor when preparing and filing debt collection litigation pleadings, the proposed rule improperly interferes with the practice of law.

The Bureau asserts that the proposed rule mirrors Rule 11 of the Federal Rules of Civil Procedure (Rule 11); however, the proposed rule is much more restrictive. To illustrate, Rule 11 allows an attorney to pursue a legal position for a client whenever there is a "non-frivolous argument for extending, modifying, or reversing existing law or for establishing new law."[2] By contrast, the proposed rule only provides a safe harbor to a creditor's rights attorney if the claims, defenses or other legal contentions made by the attorney are "warranted by existing law." Thus, there is no safe harbor from a FDCPA claim if the creditor's rights attorney was seeking, on behalf of his client, to extend, modify, or reverse existing law or establish new law. Instead, the proposed rule

[2] *See* Fed.R. Civ. Proc. 11(b)(2).

improperly penalizes attorneys who advocate on behalf of their clients for extensions, modifications, or changes in existing law.

In addition, Rule 11 allows factual contentions in pleadings if they "will likely have evidentiary support after a reasonable opportunity for further investigation or discovery."[3] The proposed rule only provides a safe harbor for creditor's rights attorneys if the factual contentions they made for their clients have evidentiary support. This language hinders creditor's rights attorneys' ability to advocate zealously on behalf of their clients. Attorneys are penalized for making factual assertions for the client based on what the attorney believes discovery or a further investigation will prove. The Bureau's proposed "safe harbor" does not mirror Rule 11. In conclusion, the proposed rule does not provide clarity for creditor's rights attorneys. NAFCU requests the Bureau remove the provisions for "meaningful attorney involvement" from the proposed rule.

TCPA Concerns

The proposed rule's provisions regarding communication with a consumer conflict with the TCPA, causing greater confusion for creditors attempting to contact their members. Credit unions make legitimate business calls to their members, and the proposed rule allows communication channels, which may be in violation of the TCPA. The TCPA was enacted to protect consumers from telemarketers who use automated telephone dialing systems ("autodialers"), artificial or pre-recorded voice messages. Specifically, section 227(b)(2)(A) of the TCPA prohibits the use of an autodialer to call any wireless telephone number absent an emergency purpose or prior express consent of the called party. The proposed rule expands the scope of communication to include text messages, limited content messages, email, and social media channels; therefore, the definition of an autodialer is particularly important as debt collectors may be in conflict with the TCPA when utilizing one of the allowable channels of communication under the proposal. Unfortunately, there is no bright-line definition of what constitutes an autodialer under the TCPA.

Following the March 2018 invalidation[4] of the FCC's approach to defining "autodialer" in its 2015 Omnibus Declaratory Ruling and Order (2015 Order), the courts have inconsistently ruled on the definition of an autodialer. To illustrate, in *Marks v. Crunch San Diego*[5], the United States Court of Appeals for the Ninth Circuit reinterpreted and revived the FCC's 2015 Order definition of an autodialer to cover all dialers that automatically call numbers stored on a list. The D.C. Circuit court previously invalidated this definition. Several lower courts have adopted the *Marks* holding as well, while some courts have cited *Marks* as being overbroad and have adopted a different interpretation. Other courts have determined that "human intervention" can be sufficient to negate an inference of autodialer usage. Given the lack of a uniform definition, creditors and debt collectors run the risk of TCPA violations depending on how they contact the consumer and whether express prior consent was provided.

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[3] *See* Fed.R. Civ. Proc. 11(b)(3).
[4] *ACA International v. FCC,* No. 15-1211 (D.C. Cir. Mar. 16, 2018).
[5] *Marks v. Crunch San Diego, LLC*, No. 14-56834 (9^{th} Cir. Sept. 20, 2018).

The definition of an autodialer is particularly important because it encroaches on creditors' and third-party debt collectors' ability to make legitimate telephone calls to consumers. If a debt collector or creditor contacts the consumer at their wireless telephone number regarding a particular debt using an autodialer without prior express consent, they may face TCPA liability. For instance, if limited content messages are pre-recorded voicemails or text messages, these would fall under the definition of an autodialer, potentially constituting a violation of the TCPA depending on how contact occurred and whether the consumer gave prior express consent. In addition, liability for TCPA violations can be imputed to creditors in certain circumstances for calls made by a third-party debt collector on their behalf. A United States District Court for the Western District of Wisconsin held that TCPA liability attaches to those who control making specific calls, and to those who knowingly allow an autodialer to make prohibited calls.[6] Not only do creditors and debt collectors have to be mindful of the definition of an autodialer when communicating with a consumer, but they must also be aware of the scope of a consumer's prior express consent.

In *Hudson v. Ralph Lauren*[7], the plaintiff provided consent to receive six text messages per month from the defendant and its marketing partners. However, the plaintiff received more than six text messages, and the United States District Court for the Northern District of Illinois held that the defendant exceeded the scope of the consent provided, violating the TCPA. Although this holding narrowly focuses on text messages, the Bureau's proposed rule provides that a debt collector may send an unlimited number of text messages without prior consent. Given the holding of *Hudson*, a third-party debt collector must rely on the scope of prior express consent given by a consumer to a creditor to receive text message communications, and not exceed that scope to comply with the TCPA. This is another example of the proposed rule in conflict with the TCPA.

More recently, the FCC issued a Declaratory Ruling[8] allowing telephone companies to block "robocalls" before the call gets to the consumer. Under the rules, consumers are permitted to opt-in to call blocking as the default and give to their voice service provider a curated "white list" of callers from which they wish to receive communications. Although these rules are helpful to consumers when illegitimate, fraudulent calls occur, they may block legitimate, informational and often times critical, calls (text messages are not included within the scope of this Declaratory Ruling) from creditors and third-party debt collectors. The FCC's rules may make communication between parties more difficult.

Given the illustrated inconsistencies between courts' interpretations of TCPA definitions coupled with the potential effect of the FCC's new rules on robocalls, NAFCU urges the Bureau to work with the FCC to ensure that the Bureau's proposed rule does not conflict with the TCPA. The crux of the proposal is to provide effective communication channels for both consumers and debt collectors; therefore, the TCPA plays a vital role in the efficacy of these communications. NAFCU

[6] *Cunningham v. Montes*, 378 F. Supp. 3d 741 (W.D. WI. 2019).
[7] *Hudson v. Ralph Lauren Corporation et al*, No. 18-C-4620 (N.D. Ill. May 1, 2019).
[8] *In the Matter of Advanced Methods to Target and Eliminate Unlawful Robocalls*, Declaratory Ruling and Third Further Notice of Proposed Rulemaking, FCC 19-51, CG Docket No. 17-59 (adopted June 6, 2019).

urges the Bureau to ensure that this proposed rule does not further complicate compliance with the TCPA.

Conclusion

NAFCU appreciates the opportunity to share its members' concerns about the proposed rule’s indirect effects on credit unions, specifically concerning communicating with members and coordinating and providing information to third-party debt collectors. The Bureau should limit the scope of authority for this rulemaking to its authority under the FDCPA, and remove those provisions created under the Bureau’s UDAAP authority to eliminate confusion and ambiguity for creditors. It is paramount that the Bureau keep rulemaking separate for first and third-party debt collectors to account for the unique relationships between consumers and debt collectors. In addition, the proposed rule’s provisions regarding communication conflict with the TCPA so the Bureau should work with the FCC to resolve this. Lastly, the Bureau should remove those provisions of the proposed rule that interfere with the practice of law. Should you have any questions or require additional information, please do not hesitate to contact me at (703) 842-2249 or kschafer@nafcu.org.

Sincerely,

Kaley Schafer
Regulatory Affairs Counsel