

Financial Services Update: Lenders Beware - UDAAP and Your Debt Collection Practices

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Many lenders haven't spent a lot of time worrying about their debt collection practices. They have rested comfortably knowing that they are exempt in many instances from the Fair Debt Collection Practices Act (FDCPA) when collecting debt owed to the bank. A recent consent order entered by the Consumer Financial Protection Bureau (CFPB) against Navy Federal Credit Union should cause lenders to re-evaluate those long held beliefs. Exercising its authority regarding unfair, deceptive and abusive acts and practices (UDAAP), the CFPB alleged that Navy Federal engaged in deceptive debt collection practices. Navy Federal ultimately settled the claims and agreed to pay \$28.5 million in fines and restitution.

The principal allegation of misrepresentation made by the CFPB was that Navy Federal threatened collection of delinquent members' accounts when, in fact, Navy Federal did not intend to pursue such collection. Navy Federal's primary methods of collection were telephone calls and letters to delinquent and overdrawn members. Like many lenders, Navy Federal utilized debt collection template letters to communicate with delinquent members. Several of these templates made representations that legal action "had been recommended" or that it would "have no alternative but to recommend [the account] for legal action." The CFPB determined that these letters created "the net impression that Navy Federal intended to sue its members if they failed to make the payment as instructed" in the letters.

During its investigation into Navy Federal's debt collection practices, the CFPB found that while Navy Federal had sent approximately 193,000 debt collection letters threatening litigation, it had filed fewer than 5,000 lawsuits to enforce those obligations. The CFPB further noted that Navy Federal rarely initiated the legal action it stated it had "recommended" - in a sample of 293 accounts that were sent letters but did not respond or make payments, litigation was actually commenced only eight times (3.3 percent).

The consent order also notes other debt collection practices that proved to be problematic for the CFPB. For example, Navy Federal suspended account access to delinquent members, represented that members would find it "difficult, if not impossible, to obtain additional credit because of ... present unsatisfactory credit rating," stated that delinquent members could "repair" their credit rating by making payments to Navy Federal, and also threatened to contact members' military chain of command. It is noteworthy that Navy Federal handled most of its own debt collection efforts using its own employees up to the point of litigation.



It is well established that the FDCPA prohibits a debt collector from using "any false, deceptive, or misleading representation or meaning in connection with the collection of any debt." 15 U.S.C. § 1692e. Among the types of misrepresentations prohibited by the FDCPA are "[threats] to take any action that cannot legally be taken or that *is not intended* to be taken." 15 U.S.C. § 1692e(5) (emphasis added). Although creditors seeking to collect on their own debt are generally exempt from coverage under the FDCPA, the CFPB's UDAAP authority is not limited to the constraints of the FDCPA. Given the CFPB's focus on pursuing alleged unfair or abusive acts and practices, however, we encourage you to revisit your debt collection practices - including template letters and telephone scripts - to help identify and manage potential risks:

1. Do your letters threaten to take action that you either: (1) are not legally able to take; (2) that you seldom take; or (3) do not intend to take?
2. Do your letters give a "net impression" (i.e., imply) that you intend to take legal action when you do not have a present intent to take such action?
3. Do your current policies and procedures provide for a blanket treatment of all delinquent accounts prior to sending debt collection letters, or are accounts reviewed on an independent basis?

At a minimum, it is advisable to have an understanding as to the number of lawsuits you have actually initiated versus the number of debt collection letters that are sent threatening legal action to determine whether now may be the time to consider revising your debt collection templates.

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