Heartland
Credit Union Association

September 16, 2019

Office of Regulations
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Re: Debt Collection Practices (Regulation F);
Docket No. CFPB-2019-0022; RIN 3170-AA41.

On behalf of the 2.2 million credit union members we represent, the Heartland Credit Union Association (HCUA) appreciates the opportunity to comment on the Consumer Financial Protection Bureau's (CFPB) proposal to amend Regulation F, which implements the Fair Debt Collection Practices Act (FDCPA).

Lenders collecting their own debts should be treated differently than third-party debt collectors that exist solely to collect payment from debtors and maintain no ongoing relationship after the collections process has been resolved. The distinction between first-party and third-party carries added importance for credit unions because of their not-for-profit, cooperative ownership structure. In contrast to a bank or other for-profit lender, whose shareholders have the ultimate interest in the repayment of debts, at a credit union, the other members are the key stakeholders and have a strong interest in ensuring the credit union can take appropriate steps to collect debts owed by their fellow members. After all, the credit union's members will ultimately end up paying the cost of uncollected debts in the way of higher interest rates on loans and lower rates on savings.

The collection of debt payments from borrowers is critical to the safety and soundness of any lending institution. Credit unions, as financial cooperatives, collect debts from their member-owners and, in certain circumstances, retain third-party collectors. Therefore, our interest in this rulemaking is two-fold: (1) the Bureau should not promulgate a rule that could result in FDCPA requirements intended for third-party collectors to be applied to first-party collectors; and (2) in promulgating its first substantive rulemaking under the 42-year old FDCPA, the Bureau should carefully consider the broad impact its proposal will have on consumers and the operations of third-party collectors.

Therefore, HCUA strongly opposes the promulgation of a debt collection rulemaking that would directly or indirectly impose the FDCPA's requirements on credit unions and other first-party debt collectors seeking to collect payments on loans they originate or service.

Under prior CFPB leadership, the practice of "regulation through enforcement" created substantial uncertainty in the financial services market. The CFPB has undergone extensive efforts recently in ending that practice and establishing clear "rules of the road" for financial institutions to follow. The proposed debt collection rulemaking and its implication that an open question exists as to whether the activities prohibited under the FDCPA proposed rule could also be prohibited under the Bureau's unfair, deceptive, or abusive acts or practices (UDAAP) authority raises concern. HCUA would strongly oppose the extension of the FDCPA's statutory or regulatory requirements to credit unions engaged in first-party collection activities. We urge the CFPB to re-evaluate its proposed rulemaking to ensure no question exists on this issue and its authority is firmly placed exclusively in the FDCPA. Credit unions are concerned the Bureau's direct reference to its UDAAP authority in this FDCPA-grounded rulemaking could open the door down the road for portions of this rule to be applied to first-party debt collectors. The era of "regulation through enforcement" created substantial uncertainty in the consumer financial services space. The current proposal, as drafted, could potentially undermine the CFPB's admirable goal of ending that controversial practice.

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Credit unions support the CFPB in their desire to minimize snail mail and telephone communications in favor of email and text message. However, this paradigm shift should be established through clear, streamlined requirements instead of a complex system of obtaining consumer consent that ultimately adds costs on the affected entities. The creation of a mechanism for debt collectors to provide electronic disclosures is a welcome change to the outdated FDCPA regulation. Credit unions support the CFPB permitting greater use of email in debt collection communications, as email has proven to be an effective, efficient, and often preferred means of commutating between parties. However, the proposed E-SIGN and "alternative" consent requirements are overly complex and could ultimately inhibit debt collectors from communicating with debtors through these preferred technologies. In addition, the "alternative" consent option for third-party debt collectors, which essentially "transfers" E-SIGN consent obtained by a creditor or prior debt collector to the third-party collector, would place increased expectations on creditors that assign out debt. These increased expectations would likely result in creditors experiencing increased costs, record retention issues, and require creditors to develop and maintain new information systems.

The proposed rule would limit the number of telephone calls a debt collector may place to a consumer about a particular debt within a seven-day periods. In many cases, communications during the debt collection process are intended to provide the debtor with critical information such as available options for repayment plans or debt restructuring. It is possible that establishing a needlessly low restriction on the number of permissible telephone communications under a bright-line limit could lead to consumers having less information available to them about their debts. The CFPB should thoroughly and properly study the permissible number of call attempts to ensure effective communication is not needlessly hindered.

The proposal would establish and provide sample language for an authorized "Limited-Content Message" that would allow a debt collector to leave a message requesting a call back from the debtor and avoid violating the FDCPA's restrictions. The "Limited-Content Message" itself would not be considered a "communication" under the FDCPA and, if heard or observed by a third-party, it would not constitute a prohibited third-party disclosure.

In addition to providing a safe harbor, the proposed rule would outline the content permitted in a "Limited-Content Message." This would include the debtor's name, a request for the debtor to reply to the message, the name of the natural person or persons the consumer can contact to reply, and a telephone number the debtor can call. The proposed content creates several potential limitations that undermine the usefulness of leaving limited-content messages. Under the proposal, the debt collector would not be allowed to provide their company name in the message. The requirement to state only a natural person could lead to confusion and be unworkable at entities with larger debt collection staffs.
In addition, the Bureau should clarify that providing information on how debtors can request non-English disclosures does not obligate the debt collector to provide future communications in that language.

As always, we appreciate the opportunity to review this issue. We will be happy to respond to any questions regarding these comments.

Sincerely,

Brad Douglas
President/CEO