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## Risk Alert – Navy FCU Consent Order

### Re: CFPB Consent Order for Collection Practices and Account Restrictions

On October 11, 2016, the Consumer Financial Protection Bureau (CFPB) entered into a consent order with Navy Federal Credit Union (Navy FCU). The consent order included a mandate to provide \$23 million to impacted consumers and pay a \$5.5 million civil money penalty.

The CFPB's enforcement action focused on Navy FCU's debt collection practices – including representations made in debt collection letters and account and service restrictions for delinquent borrowers. The CFPB indicated Navy FCU's debt collection practices were unfair or deceptive. In light of the consent order, all credit unions should review their practices to examine whether they are currently engaging in similar practices and determine appropriate actions to reduce risks.

#### Effective Date

There is not a specific effective date related to the CFPB's enforcement action. Rather, the enforcement order demonstrates the CFPB's continued emphasis on preventing unfair, deceptive or abusive acts or practices (UDAAP).

#### Scope

The Consumer Financial Protection Bureau entered into the consent order with Navy FCU pursuant to its powers under the Dodd-Frank Act. While Navy FCU is subject to direct supervision by the CFPB, the consent order is informative for credit unions that may be regulated by other federal or state regulators.

#### Agency

The Consumer Financial Protection Bureau entered into the consent order and enforcement action with Navy FCU pursuant to its examination authority. The CFPB did not adopt new regulations or guidance related to UDAAP practices. However, the consent order does outline areas where the CFPB identified unfair or deceptive acts or practices – which should prompt other credit unions to review their own practices and procedures.

## **Executive Summary**

The CFPB's enforcement action against Navy FCU is further evidence of the CFPB's commitment to "supervision by enforcement" rather than via regulatory rulemaking. All credit unions should review the enforcement action and determine whether they should adjust their practices, procedures and disclosures in order to reduce UDAAP risks. Rather than focus on the actions or inactions of Navy FCU, this Risk Alert will address areas where the enforcement action has increased risks for all other credit unions.

The two largest areas of concern following the CFPB consent order are: (1) debt collection letters; and (2) actions taken to restrict accounts and services due to delinquency or negative account balances. Regarding debt collection letters, the CFPB made its opinion clear that language used in debt collection letters cannot be misleading or deceptive and, importantly, should reflect the borrower's actual situation and the institution's intended actions. And, while credit unions have traditionally taken appropriate actions to restrict accounts and services to delinquent borrowers, the CFPB's enforcement action serves as a reminder to review how and when borrowers are informed of those potential restrictions.

Ultimately, the CFPB's enforcement action increased risk for all credit unions. This is true regardless of the credit union's primary regulator, asset size or charter type. As often happens, other regulators, examiners and auditors monitor the CFPB's actions closely and deficiencies identified by the CFPB quickly spread to future non-CFPB examinations and audits.

## **Impacted Areas**

The CFPB's enforcement action impacts multiple areas throughout the credit union. The collection, operations and asset protection departments are impacted as well as compliance, audit and risk management. Ultimately, each department should review and analyze its practices and procedures given the CFPB's position in the Navy FCU enforcement action.

## **Action Items**

Credit unions should review their practices, procedures and disclosures in the following areas in order to properly analyze and manage their UDAAP risks.

### Review Debt Collection Letters

The consent order took a strong stance against representations made in debt collection letters. To reduce risks, credit unions should analyze their debt collection and charge-off letters to ensure they reflect the institution's practices and do not threaten action that will not be taken and do not misrepresent the credit union's ability to take specific actions.

### Analyze Current Process for Recommending Legal Action

The CFPB criticized template letters that it alleged were likely to mislead reasonable consumers. Many letters indicated that legal action had “been recommended” or that the CU had “no alternative but to recommend [the account] for legal action.” The CFPB’s investigation found that only 5,000 of the 193,000 consumers that received those letters were actually sued and, thus, it concluded that there was not a sufficient process to determine when to send letters to consumers threatening legal action.

Credit unions should review their current process for determining when letters threatening legal action are sent and whether the message sent in those letters matches the credit union’s actual collection practices.

### Review References to Credit Scores or Credit Reports

The CFPB’s consent order also criticized references to the consequences of failing to pay a loan or negative account balance. Specifically, the CFPB analyzed references to the possible inability to obtain future loans due to the impact on a consumer’s credit score as well as mentions of improving the consumer’s credit score or rating by working with the credit union.

Given the broad criticisms from the CFPB, credit unions should review their letters to ensure they do not make misleading or inaccurate claims about the possible impact on a member’s credit. Even accurate representations face increased risk following the consent order.

### Review Account and Service Restrictions

Despite long-standing opinion letters and policy positions by the National Credit Union Administration regarding denying and suspending services to delinquent borrowers, the CFPB criticized the practice – especially regarding freezing electronic access to a member’s accounts. Navy FCU had practices to restrict debit/ATM cards, online and mobile banking, and other electronic services and those restrictions were not lifted until after a member made arrangements to repay or settle their debt.

The CFPB indicated these practices were unfair because members could not reasonably avoid the restrictions due to the lack of disclosure. Following this consent order, credit unions should review their account and service restriction practices and analyze when and how members are informed of the possible restrictions.

### Analyze Current Denial/Suspension of Services Policy

Many credit unions maintain a Denial of Services Policy, Suspension of Service Policy, Good Standing Policy, or other similar policy that outlines when a member is ineligible for certain accounts and services.

Credit unions should review any existing policies and determine if they need to be updated or revised based on the credit union's current practices as well as the CFPB's consent order. Additionally, credit unions should analyze when and how members are informed of any policies.

#### Review Disclosures, Agreement and Notices

In addition to having a policy outlining when a member's accounts and services may be restricted or denied, credit unions will want to ensure that their disclosures and agreements outline their ability to take action as the credit union deems necessary. Additionally, credit unions should analyze whether the placement of any disclosures or notices are prominent or whether they are "buried in the fine print."

#### Review Pre-Restriction Warnings or Notices

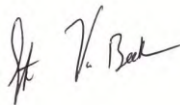
A key criticism of the account and services restriction was that members were not informed of the possible restrictions prior to Navy FCU taking the action. Credit unions can reduce this risk by ensuring their policies are disclosed and available to member. Further, credit unions should analyze whether it is appropriate to place more specific mentions of possible restrictions in communications sent to delinquent borrowers or members with negative account balances. This pre-restriction notice will help demonstrate the credit union took proactive steps to notify members in advance.

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Howard & Howard has experience assisting credit unions ensure their practices are compliant with regulations and upfront, clear, and transparent to members. Whether your credit union needs a complete review of your policies, procedures and practices or analysis of a specific issue, we look forward to the opportunity to serve.

If you have any questions or need more information – please feel free to contact me.

Very truly yours,



Steve Van Beek

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#### Additional Resources

[CFPB Press Release on Enforcement Action](#)

Administrative Proceeding File No. 2016-CFPB-0024: [Navy FCU Consent Order](#)

Page 4 of 4

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