



Ms. Monica Jackson
Office of the Executive Secretary
Bureau of Consumer Financial Protection
1700 G Street NW
Washington, DC 20522

February 28, 2014

Re: Request for Comment on Advance Notice of Proposed Rulemaking for Debt Collection, Regulation F (12 CFR Part 1006).

Dear Ms. Jackson:

The American Legal and Financial Network (ALFN)¹ appreciates the opportunity to submit comments to the Consumer Financial Protection Bureau (Bureau) in response to the Advanced Notice of Proposed Rule Making on Regulation F.

Failing to Adhere to Authority as Granted by the Federal Debt Collection Practices Act and the Wall Street Reform and Consumer Protection Act

As proposed, Regulation F does more than “regulate the offering and provision of consumer financial products or services under the Federal consumer financial laws.”² The proposed regulation is an unconstitutional overreach. While stating its basis for regulating authority, Regulation F reads, “In 2010, the Dodd-Frank Act (the Act) authorized the Bureau to ‘**prescribe rules with respect to the collection of debts by debt collectors as defined in [the FDCPA].**’³ The Act provides the Bureau regulatory authority to “[implement] the Federal consumer financial laws through rules, orders, guidance, interpretations, statements of policy, examinations, and enforcement actions.”⁴

While the Act makes an express and clear grant of rule-making authority to the Bureau, it does so with the caveat that its authority is “subject to...provisions of law.”⁵ The Act does not change well established statutorily defined terms, nor does the Act as at any point authorize the Bureau to alter the definitions as prescribed by statute. At the present time, both debt and debt collectors are defined under the FDCPA and the Act. The Notice of Proposed Rule Making asks for input on “how proposed rules should define relevant and useful terms” which are already defined. Any attempt to alter or change constitutional enacted statutory terms is a unconstitutional overreach outside the scope of

¹ The ALFN (<http://www.alfn.org>) is a not-for-profit national trade association representing the interests of independent law firms and trustee companies that provide legal services to the mortgage banking industry. In addition, the organization provides industry education, information resources and publications, which serve to educate and inform industry professionals on federal, state and local industry matters.

² Dodd-Frank Wall Street Reform and Consumer Protection Act, Title X Sec. 1011 Establishment of the Bureau of Consumer Financial Protection (2010).

³ Debt Collection (Regulation F) 12 CFR Part 1006.

⁴ Dodd-Frank Wall Street Reform and Consumer Protection Act, Title X Sec. 1012 Executive and Administrative Power

⁵ Dodd-Frank Wall Street Reform and Consumer Protection Act, Title X Sec. 1022 Rulemaking Authority



the Bureau's power.⁶ No agency, not even one as powerful as the Bureau, can take action that is beyond the scope of the enacting legislation. In this instance the legislation was clear, that the regulations proscribed should follow the directive of the existing legislation, and the statutorily defined terms and activities.

Further, the Bureau has sought input on whether "it should generally seek to harmonize any rules it develops for third-party collectors and first-party collectors except to the extent that the law, facts, or policy considerations warrant different treatment."⁷ To the extent such "harmoni(zation)" would require a change in definition of legislatively defined terms, the harmonization is forbidden under existing law as agencies do not have the power to re-write statutes.

Creating Liability for Privacy Concerns Raised by the Suggestion of a Centralized Database of Consumer Information

Cause for concern is the following statement as outlined in Regulation F, "(t)he Bureau is considering using its rulemaking authority to develop requirements related to the transfer of specified information or documents as part of the sale of debt or placement of a debt with a third-party collector."⁸ The basis of such concern on the part of the industry is the exercise of such authority was expressly prohibited in the Act:

*"The Bureau may not use its authorities under this paragraph to obtain records from covered persons and service providers participating in consumer financial services markets for purposes of gathering or analyzing the personally identifiable financial information of consumers."*⁹

*"In General- The Bureau may not obtain from a covered person or service provider any personally identifiable financial information about a consumer from the financial records of the covered person or service provider."*¹⁰

When the Bureau does seek to gather information from service providers, "reasonable assurances of confidentiality" must be made under the Act.¹¹ Regulation F as it stands has not provided any such assurances as to how information contained in the proposed "repository" would remain confidential, and, accordingly is cause for concern among consumers and service providers alike. The recent scandals involving the inability of the Obamacare Administrator to keep any of the information in its central data repository is a shining example of the lack of the current administration's, or any agency within the administration, to be able to keep the no-public private financial information private.

⁶ Debt Collection (Regulation F) 12 CFR Part 1006

⁷ Debt Collection (Regulation F) 12 CFR Part 1006

⁸ Debt Collection (Regulation F) 12 CFR Part 1006

⁹ Dodd-Frank Wall Street Consumer Protection Act Title X Sec. 1022 Rulemaking Authority

¹⁰ Dodd-Frank Wall Street Consumer Protection Act Title X Sec. 1022 Rulemaking Authority

¹¹ Dodd-Frank Wall Street Consumer Protection Act Title X Sec. 1022 Rulemaking Authority



Entering Sphere of State Governance: Regulation of the Practice of Law and Judicial Procedure

Cited as a basis for concern, and thereby potential reason for action on the part of the Bureau, are the following: potential geographic burdens on the consumer debtor by appearing in court, a great number of default judgments, and potential abuse of choice of venue by creditor counsel.¹² While the Bureau is correct in that the FDCPA has been applied by State courts on specific subjects, this does not mean the Bureau has been expressly granted the authority to govern either the regulation of the practice of law in each of the States, or the rules of civil or judicial procedure in those states.

Indeed, “(t)he use of debt collection litigation to recover on debts has grown to become a critical part of the debt collection industry, with collection law firms having estimated 2.4 billion in revenues in 2011.”¹³ However, the growth of this industry does not necessitate an opportunity for further Federal regulation on the part of the Bureau unless “deceptive, unfair, or abusive” practices are being utilized on the part of debt-collectors. While the Bureau cites to differences in judicial procedure and evidentiary standard between state and local jurisdictions as a “source of collections industry fragmentation,” in truth, this province has been expressly exempt from any Federal regulation in our nation’s history.

Propounding Adverse Impact on Non-English Speaking Communities of Overly Burdensome Regulations Concerning Proposed Language Regulations

“The Bureau shall seek to implement and where applicable, enforce Federal consumer financial law consistently for the purpose of ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive.” Title X Sec. 1021(a) Purpose, Objectives and Functions. One way to ensure that consumers have access to markets is to end the over-regulation of the entities that offer the financial products and to cease unwarranted attacks on the financial industry. The increased regulation and attacks through civil monetary penalties results in the cost of those financial products to increase across the board to all consumers, to the point where the underserved consumers that need that access the most, will not be able to afford the services or products offered.

Conclusion

The collection of consumer debts “indirectly support(s) responsible borrowing by underscoring the obligation of consumers to repay their debts and [providing incentive for] consumers” to do so.¹⁴ Regulation F as proposed is an unconstitutional overreach. If made into a final rule, the rule will specifically harm consumers and providers alike by: 1) permitting the Bureau to exceed the scope of its authority under current statute; 2) putting consumer privacy rights at risk; 3) exposing the provider to liability for violating

¹² Debt Collection (Regulation F) 12 CFR Part 1006.

¹³ Debt Collection (Regulation F) 12 CFR Part 1006.

¹⁴ Debt Collection (Regulation F) 12 CFR Part 1006.



those rights; 4) infringing on the rights of States to regulate the practice of law; and 5) jeopardizing potential extension of credit to non-English speaking persons.

We appreciate your consideration of these comments. If we can provide any further information or clarify the views expressed herein, please do not hesitate to contact the undersigned.

Sincerely,

A handwritten signature in black ink that reads "Wesley T. Kozeny". The signature is written in a cursive style and is enclosed within a simple, hand-drawn rectangular box.

Wesley T. Kozeny, President & CEO
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