



October 24, 2012

Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552
strategyplancomments@cfpb.gov

Re: CFPB Draft Strategic Plan 2013-2018

Consumer Financial Protection Bureau:

The National Association of Retail Collection Attorneys ("NARCA") appreciates this opportunity to submit the following comments in response to the Consumer Financial Protection Bureau's ("Bureau's") Draft Strategic Plan 2013-2018.

NARCA is a nationwide trade association of over 700 skilled debt collection law firms and in-house counsel of creditors. NARCA's mission is to preserve and enhance the integrity and viability of legal collections, and members are required to adhere to NARCA's Code of Professional Conduct and Ethics. Attorneys employed by NARCA member law firms are committed to the fair and ethical treatment of all participants in the debt collection process. They are required to practice law in a manner consistent with their responsibilities as officers of the court and must adhere to applicable state and federal laws, rules of civil procedure, state bar association licensing and certification requirements and their respective rules of professional conduct.

NARCA looks forward to collaborating with the Bureau to ensure the Bureau will, through its Strategic Plan, reasonably protect consumers without unduly burdening legitimate legal debt collection. To that end, NARCA respectfully submits the following comments in response to the CFPB's Draft Strategic Plan 2013-2018.

I. CFPB GOAL 1

- A. **CFPB OUTCOME 1.1:** *Create, adopt, and administer regulations in order to promote a consumer financial marketplace in which: (A) consumers can understand the costs, benefits, and risks associated with consumer financial products and services initially and over the term of the product or service, and (B) consumers are not subject to deceptive, unfair, abusive, or discriminatory practices.*

NARCA COMMENT: NARCA supports the outcomes sought by the Bureau, but has issue with the use of the word "abusive" inasmuch as the term is as of yet undefined and provides no guidance to consumers, industry or the CFPB. NARCA respectfully suggests

that guidance, perhaps in the form of a policy statement, would prevent disparate interpretations of the term. This is particularly important with the likelihood of enforcement by state regulators and Attorneys General. Businesses and law firms need a clear road map to design and implement effective compliance processes and procedures, and doing so based upon guesswork and speculation can result in costly and unnecessary consequences.

1. **CFPB STRATEGY:** *Work with consumers and industry stakeholders on developing regulations to implement existing federal consumer financial laws effectively.*

NARCA COMMENT: As the only trade association entirely dedicated to attorneys practicing in the area of creditors' rights, NARCA applauds the CFPB for its intent to work with industry stakeholders on developing regulation. NARCA recommends greater transparency with regard to which industry stakeholders the Bureau is consulting with and relying upon for industry data and a description of the criteria utilized by the Bureau for determining its outreach targets.

- a. **CFPB PERFORMANCE MEASURES - % OF REGULATORY TARGETS MET:** *The percentage of targets met for consumer protection regulations set forth in our annual regulatory calendar.*

NARCA COMMENT: Using the percentage of targets met for regulations as a performance measure can provide a disincentive to delay finalization of proposed rules that warrant additional consideration and redrafting.

- i. **CFPB PERFORMANCE INDICATORS – INFORMED RULEMAKING:** *The percentage of rulemakings informed by public outreach processes, such as SBREFA (Small Business Regulatory Enforcement Fairness Act) panels and/or e-rulemaking.*

NARCA COMMENT: It would be expected that 100% of the Bureau's rulemaking is informed by public outreach processes. NARCA notes that "Informed," however, is not the equivalent of "influenced," the latter reflecting the Bureau was not only informed, but took action on the information. Further, this Performance Indicator is purely quantitative and NARCA respectfully suggests that post-implementation qualitative analysis should be performed to assess both positive and negative consequences to consumers and financial services providers.

B. CFPB OUTCOME 1.2 & 1.3

1. **CFPB STRATEGIES:** *Acquire and analyze qualitative and quantitative information and data pertaining to consumer financial product and service markets and companies. Focus resources on institutions and their product lines that, based on their size, nature of the product, and field and market intelligence, pose the greatest risk to consumers.*

NARCA COMMENT: The accuracy and thoroughness of the qualitative and quantitative information, data and market intelligence upon which the Bureau will rely are the determining factors as to whether the Outcomes succeed. The sources of information relied upon, as well as the information itself, should be thoroughly disclosed to interested stakeholders to ensure that misinformation is not considered and that no important information is omitted.

- a. **CFPB PERFORMANCE MEASURES - TIMING OF ENFORCEMENT ACTIONS:** *In matters where the Bureau determines enforcement action is warranted, the percentage of those matters where an action is filed or settled within two years of the opening of the enforcement investigation.*

NARCA COMMENT: Using a purely quantitative measure tends toward quota fulfillment regardless of whether the filing or settlement of an action within a prescribed timeframe is warranted. NARCA respectfully suggests this performance measure may drive premature action by the Bureau.

- b. **CFPB PERFORMANCE MEASURES - SUCCESSFUL RESOLUTION OF CASES:** *The percentage of all cases filed by the CFPB that were successfully resolved through litigation, a settlement, or issuance of a default judgment.*

NARCA COMMENT: It is unclear what is meant by "successfully resolved." Does this simply mean brought to conclusion, regardless of outcome, or resolved in favor of the Bureau? NARCA respectfully suggests that this performance measure should have greater definition.

- i. **CFPB PERFORMANCE INDICATORS - SUPERVISION ACTIVITIES OPENED:** *Supervision activities (examinations, target reviews, or horizontal reviews) opened during the fiscal year.*

NARCA COMMENT: This is a purely quantitative measure that lends itself to quota fulfillment. NARCA respectfully suggests that this performance indicator may drive the potential opening of unwarranted supervision activities.

II. CFPB GOAL 2

A. CFPB OUTCOME 2.1

1. CFPB STRATEGIES

- a. **CFPB PERFORMANCE MEASURES - COMPLAINT VOLUME:** *Number of consumer complaints handled.*

NARCA COMMENT: It is unclear what is meant by "handled." Does this mean something more than simply the number of consumer complaints received? How will the Bureau develop a baseline against which to measure its progress? NARCA respectfully suggests that this Performance Measure should have greater definition.

- b. **CFPB PERFORMANCE MEASURES - COMPLAINT CYCLE TIME -** *Investigations cycle time (from investigations queue to closure).*

NARCA COMMENT: This purely quantitative measure can lead to quota fulfillment by pushing investigations to closure when additional information may be warranted. The bureau does not identify the baseline cycle time against which it will measure its performance.

B. OUTCOME 2.2

1. **STRATEGIES –** *Collaborate with third parties to encourage the development of effective financial skills and habits.*

NARCA COMMENT: NARCA supports the Bureau's outreach to businesses and associations that possess unique knowledge of personal finance. Through collaboration with the private sector, financial literacy programs can be enhanced with different yet complimentary approaches. NARCA looks forward to collaboration with the CFPB in this area. NARCA has presented its own financial literacy program, *Avoiding the Debt Trap*, to students across the United States and is aware that other not-for-profit organizations offer similar programs. NARCA's program is offered for free and is presented by NARCA members who, as attorneys practicing debt collection law, observe daily the financial difficulties faced by consumers. NARCA's members perform this service out of a sense of civic responsibility, and many other businesses and associations possess similar financial knowledge that can be translated into meaningful educational programs.

III. CFPB GOAL 3

- A. **OUTCOME 3.1 –** *Monitor markets and conduct research to surface financial trends and emergent risks relevant to consumers.*

NARCA COMMENT: NARCA encourages the bureau not to adopt a “one size fits all” approach with regard to markets, particularly with regard to the unique role of attorneys in the larger field of debt collection.

B. OUTCOME 3.2 – *Support efforts to reduce outdated, unnecessary, or unduly burdensome regulations.*

NARCA COMMENT: NARCA supports this desired Outcome and respectfully suggests that priority consideration be given to regulations that have created the greatest uncertainty among stakeholders and those that result in significant costs to providers of financial services yet yield little or no benefit to consumers.

1. STRATEGIES

- a. **CFPB PERFORMANCE MEASURES - CONSUMER REPORTS PRODUCED:**
Reports produced about specific consumer financial products, markets, or regulations.

NARCA COMMENT: Unilateral analysis of data by the Bureau has the potential, or even the likelihood, to result in inaccurate or incomplete reports. Whether Internal reports for educating Bureau employees or external reports for educating the public, if inaccurate or incomplete they will perpetuate half-truths or complete falsities. Internal and external reports should be posted by the Bureau prior to final draft for input from stakeholders.

IV. CFPB GOAL 4

1. CFPB OUTCOME 4.4

2. CFPB STRATEGIES

- a. **CFPB PERFORMANCE MEASURES – PUBLIC ENGAGEMENT:** *Number of public field hearings, town hall meetings, Congressional testimonies, open press events, and meetings with stakeholders.*

NARCA COMMENT: NARCA commends the Bureau for its outreach and public engagement, including its meetings with stakeholders. NARCA notes, however, that the Bureau’s approach to disseminating information appears fragmented. For example, notices of field hearings appear on the Bureau’s blog, but do not immediately appear on the front page of the Bureau’s website and are not sent via e-mail to those who have signed-up for e-mail notifications. NARCA recommends that the information disseminated through one source should be disseminated through all sources. NARCA also recommends that there be more than two weeks’ notice for field hearings

and that a program of anticipated events be published six months in advance.

NARCA thanks the Bureau for its consideration of these comments and appreciates its ongoing, collaborative relationship with the Bureau.

Respectfully Submitted,

Louis S. Freedman, President