



**Testimony of Joann Needleman  
President of the National Association of Retail Collection Attorneys  
Before the United States House Committee on Financial Services**

**Who's In Your Wallet:  
Examining How Washington Red Tape Impairs Economic Freedom  
April 8, 2014**

**Introduction**

Chairman Hensarling, Ranking Member Waters, and Members of the Committee, thank you for the opportunity to offer testimony regarding the economic consequences of recent rulemaking and supervisory and enforcement actions. It is my privilege to serve as President of the National Association of Retail Collection Attorneys (“NARCA”).

NARCA is a not-for-profit trade association comprised of over 700 law firms engaged in the practice of consumer debt collection law. Attorneys employed by NARCA member law firms are committed to the fair and ethical treatment of all participants in the debt collection process. As officers of the court, they must adhere to applicable state and federal laws, rules of civil procedure, state bar association licensing and education requirements and the rules of professional conduct.

NARCA has a significant interest in ensuring that Consumer Financial Protection Bureau (“CFPB”) rulemaking is consistent with NARCA members’ professional responsibilities to their clients, the courts, consumers and the general public. NARCA does support reasonable rulemaking that ensures consumers are adequately protected, provided such measures do not unduly burden legitimate debt collection.

As a preliminary matter, the CFPB asserts that its authority to regulate the practice of law by collection attorneys derives from the Dodd-Frank Act. NARCA does not concede this point and has submitted comments on this issue in response to CFPB rulemaking. While these arguments are outside the scope of this hearing, I think it is important for the Committee to understand that the premise of CFPB regulation of attorney conduct is not without controversy.

## **Effect of Regulation on Law Firms**

NARCA's membership is largely comprised of law firms which, in terms of size, would be considered small businesses. Over 63% of NARCA members have twenty-five employees or less. President Obama stated in 2010 that small businesses (which presumably include small law firms) are "the backbone of our economy and the cornerstones of our communities." And yet, when I look at the effect of CFPB regulation, I know first-hand that these smaller law firms are bearing the brunt of the burden.

As President of NARCA I am told with increasing frequency about smaller law firms that are "folding" or changing practice areas because of the compliance costs associated with new regulations. These firms employ hard-working men and women who are not only lawyers, but also individuals in IT, bookkeeping, human resources and compliance. Many of these firms have been in existence for over 20 years. They have always been compliant with state and federal laws and have never had any action brought against them under the Fair Debt Collections Practices Act or other consumer protection laws. Nevertheless, in the past year a number of these law firms have received letters from significant clients telling them in so many words "thanks, but no thanks." While the work of these firms was exemplary in every respect, the cost of compliance was just too expensive and the risks too great. Larger participants, seeing declining revenues due to compliance requirements and needing to reduce their audit costs, would rather work with five large partners than ten smaller ones. It's the classic story of the little guy (or girl) who just can't compete and is now left out of the game.

At a CFPB Field Hearing last July, Director Cordray stated that "there is no reason why debt collectors cannot treat consumers with dignity and respect, even as businesses are able fairly to collect the money that is actually due to them." While I agree wholeheartedly with Director Cordray's remarks, the current regulatory scheme cannot achieve the unachievable. What the CFPB wants is better customer service from the debt collection industry; a Main Street perspective. But how can you achieve that personal level of service when the only way to succeed is to use the Wall Street Model and employ hundreds, if not thousands of people who will never talk to the same consumer twice? It's like comparing a "big box" retailer to a local proprietor: Sure, the "big box" is cheaper, but you know the corner store will do a better job of dealing with a problem.

Dodd-Frank was enacted to prevent "too big to fail." Small businesses and law firms in the debt collection industry are losing their ground in this current regulatory environment because, sadly, they are simply "too small to succeed."

NARCA agrees with the U.S. Chamber of Commerce that it is of the utmost importance that “the CFPB approaches rulemakings with the highest sensitivity towards the Bureau’s impact on small businesses.” Further, it should be mandatory that the CFPB solicit public feedback on the consequences, intended and unintended, on small businesses at a fixed point in time following implementation of a final rule. This requirement should be in conjunction with a post-implementation review by a Small Business Advocacy Review Panel.

How much has the cost of compliance increased for collection law firms? NARCA asked that question of its members in preparation of its response to the CFPB’s recent Advance Notice of Proposed Rulemaking (“ANPR”). NARCA members report that over the past three years the cost of compliance has increased 327.1%

### **Effect of Regulation on Consumers**

Every collection attorney will tell you that communication is the key for consumers to resolve their debts. Whether the debt is admittedly owed or is in question, resolution is achieved through interaction between the consumer and the collector. The CFPB should be more proactive in encouraging this communication. Instead, the tone and spin of the CFPB’s press releases, bulletins and testimony is far more likely to strike fear into the hearts of consumers and discourage these conversations. In fact, the CFPB has published template letters that consumers may use to communicate with debt collectors. These letters, drafted without any industry input, are designed to halt communication between consumers and debt collectors.

Participants at both the FTC-CFPB Roundtable and NARCA’s Legal Symposium on Consumer Debt Collection explained that debt collectors have three avenues to collect debt: 1) communicate with the consumer by mail; 2) communicate with the consumer by telephone; and 3) file a lawsuit against the consumer if the consumer refuses to communicate. The lawsuit avenue is seldom a preferred choice for consumers, creditors or collection attorneys. Any opportunity to achieve resolution prior to suit generally inures to the benefit of all in terms of cost, convenience and outcome. Thus, it is not surprising that NARCA members reported in response to the ANPR that it is over 80% more likely a collection lawsuit will be filed if a consumer refuses to communicate. Further, the ANPR responses show that settlement terms are significantly more favorable to consumers if negotiated prior to the filing of a lawsuit than after.

The NARCA Legal Symposium on Consumer Debt Collection, held in October 2013 at The George Washington University, included a panel entitled “Legal Collections: The Essential Link to a Successful Credit-Based Economy.” Panelists included Dr. William

Dunkelberg (Professor of Economics, Temple University), Troy Paredes (former Commissioner, SEC), Alfred Pollard (General Counsel, FHFA) and Todd Zywicki (Professor, George Mason University School of Law). In summary, the panelists explained that the availability of credit improves consumers' overall quality of life and allows businesses to operate more efficiently. However, as regulatory requirements begin to mount, those who were intended to benefit from the regulation begin to bear some of the burden. Debt collection regulations raise the cost, legal and otherwise, of providing credit and reduce the recovery of debt per dollar of effort expended. The end result is a decrease in the availability of credit to consumers.

The conclusions of the panelists are supported by a Working Paper (No. 13-38) published by the Federal Reserve Bank of Philadelphia in May 2013. The author stated:

The effect of debt collection restrictions on the number of revolving lines of credit is negative, statistically strong, and economically significant. . . Robust contract enforcement can help explain the existence of large and active retail credit markets and contribute to our understanding of how these markets function. In terms of policy implications, my results indicate that financial regulation that institutes strong consumer protection must be balanced with creditor rights in order for the latter to extend consumer credit in the first place.

### **Conclusion**

Thank you for the opportunity to offer this testimony. NARCA is committed to working with the CFPB to ensure rulemaking strikes the proper balance between consumer protection and preservation of creditors' rights and the availability of affordable consumer credit. Small businesses and law firms should not fail simply because they are "too small to succeed."