

OPINIONS

Diekmann: Get Ready To Meet Your New Regulator - Yes, You

BY FRANK J. DIEKMANN
JAN 24, 2014



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Sitting there happy that you dodged a bunch of bullets because you are under \$10 billion in assets and don't have to comply with the mountain range of rules being created by the CFPB? Prepare to be shot. Repeatedly.

That's because the Consumer Financial Protection Bureau (and a bureaucracy that has ramped up in record time) has

found a way to "regulate" credit unions by coming in through the back door — and all the windows and drains — and it's going to be bringing NCUA and state regulators with it, according to two attorneys who have extensive experience in dealing with the CFPB.

The CFPB will be looking behind a lot of curtains at credit unions, according to John Culhane, Jr. and Chris Willis of the Atlanta-based firm Ballard Spahr, who are predicting even bigger compliance issues ahead for CUs — I hear your collective groans — beginning with members behind on loan payments.

"It's not just the CFPB," said Willis. "The FTC, state legislatures, state regulatory agencies are all getting very active in debt collection issues. The regulators have decided collectively this is a big area where there is a consumer protection problem. I think we're about to see some big changes."

The Other Olympiad

Ballard Spahr, which works with numerous credit unions, has already seen the CFPB run banks through exams that have focused solely on collections or the sale of debt to debt buyers.

"Why is this important to credit unions, if by and large CFPB is going to leave credit unions alone?" asked Culhane. "We've used the term 'Regulatory Olympics,' where the federal regulatory agencies seem to be setting the bar higher and higher for the institutions each regulates. There is this giant ramping up all across the regulatory spectrum." But what about that carve-out exempting CUs below \$10 billion in assets? Prepare to be carved up. "Although it's not as well known, the CFPB has the authority to participate in examinations of smaller credit unions," said Willis in remarks offered during



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a meeting in Orlando organized by the CUSO CU Revest. "The CFPB's enforcement jurisdiction is not dependent on credit union size or 'larger participant' status and extends to all entities, regardless of size. It doesn't have to worry about limitations on its exam authority — it uses Civil Investigative Demands as quasi-exams."

And if you're thinking you outsource debt collection, you're about to take another bullet. "When you use a collection provider and they have the CFPB in their offices, it's very natural for a collection provider to say

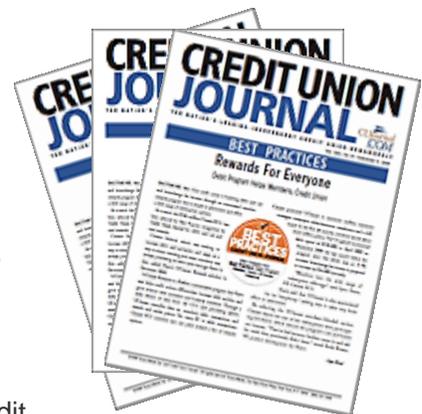
'We did this because our client asked us to.' They will totally throw you under the bus."

Culhane predicted that in the interest of taking the "temperature of the industry," he is "absolutely convinced" CFPB examiners will be tagging along with their NCUA counterparts.

Critics of the CFPB, and they are legion, have frequently pointed out that the agency is often at odds with itself, and that perhaps the acronym really stands for Contradictory Financial Positions by the Boatload. For instance, Culhane pointed out that the CFPB has really been "encouraging more mainstream institutions to embrace the role of credit unions, to be more consumer-centered." And yet its thousands of pages of new rules' and reach into every area of consumer finance has meant credit unions are suffocating under greater costs to hire more and more compliance officers — putting even more pressure on margins and creating less return for owners of the co-op. That's right, it tells banks to be more CU-like, even as it forces CUs to act more bank-like.

Some of the problems for CUs are self-inflicted, according to Willis and Culhane.

"Smaller banks and non-banks do not do a very good job of setting up robust compliance management systems. This is what they have said, and we know that is going to be a goal of theirs," said Culhane, who expects NCUA will follow suit and push for CUs to show auditing functions to be independent of the compliance program or business function. "You can have the best practices in the world, but if you haven't documented those practices, the CFPB is going to have an issue." Or, as Willis summed up, "If it's not documented, it doesn't exist."



Another CU vulnerability: accurate reporting to credit bureaus. "Credit unions have not always used best practices here," said Willis.



The Pendulum is the Pits

The two attorneys offered other suggestions related to debt collection and credit reporting, along with documentation, the handling of disputes, skip tracing and more, which I'll cover in a future column.

"Historically what we have seen in regulation in consumer credit, you have cycles and restrictions in credit. Politicians see those regulations restricting the economy, so they relax regulations, then there is some abuse or perceived abuse, and then we're right back into regulation again. But the pendulum never swings equally in both directions; it always swings more in the direction of regulation."

And remember what Edgar Allan Poe had to say about pendulums.

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Over the course of the next several years (a decade perhaps, if they somewhat slow on the uptake), the CFPB is going to look under ever rock across the entire financial landscape, finally raise their heads, look government in the eye, and say: "Why have you shirked your Constitutional duties to properly educate the public on matters of personal finance?"

And the shocked and weary financial professionals still standing in the ruins of this myopic pogrom will look about at one another and ask: "Why didn't we think to ask that?"

Posted by mdillon | Monday, January 27 2014 at 11:39AM ET

The informative comments from attorneys John Culhane and Chris Willis of the prestigious law firm Ballard Spahr were made during their presentation at an Executive Briefing hosted by CU Revest at the Waldorf Astoria, Orlando. CU Revest will continue our series of free Executive Briefings at various locations throughout the US in 2014, bringing current, pertinent and informative information such as these CFPB compliance issues to credit union executives. If you would like to attend one of these free sessions, please contact Mike Hales (mhales@curevest.com).

Posted by Mike H | Wednesday, January 29 2014 at 10:07PM ET

