

# The Navy Federal CFPB Consent Order What Credit Unions Need to Know

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# Overview of CFPB Consent Order

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**On October 11, 2016, the Consumer Financial Protection Bureau (CFPB) announced a consent order against Navy Federal Credit Union (Navy Federal), including fines and redress totaling \$28.5 million. The allegations included Navy Federal making false threats against members and unfairly restricting account access.**

**Because of its asset size, Navy Federal is directly under the supervision of the CFPB. However, there is some value in looking at the consent order and having credit unions look at their own practices to determine any risk the institution may have regarding debt collection and account restrictions.**

[The CFPB announced significant findings](#) and penalties against Navy Federal:

*“Navy Federal Credit Union misled its members about its debt collection practices and froze consumers out from their own accounts,” said CFPB Director Richard Cordray. “Financial institutions have a right to collect money that is due to them, but they must comply with federal laws as they do so.”*

The consent order contained two primary findings: deceptive debt collection practices, and unfair restriction of consumers’ electronic account access. The CFPB claimed “hundreds of thousands of consumers were affected by these practices” and that the practices violated the Dodd-Frank Wall Street Reform and Consumer Protection Act. The time period was between January 2013 and July 2015.

Whether or not the penalty is appropriate for Navy Federal’s actions is not part of this analysis. In addition, we can only look at what was alleged in the consent order. Our assumption will be that the allegations in the consent order are true, but we understand that they may not be. However, by reviewing the regulations surrounding the consent order, we can provide some insight as to what credit unions should look for with respect to their own debt collection and account restriction practices.

**CU\*Answers does not provide legal advice to clients and cannot provide an opinion as to whether the risk identified here applies to your institution in the jurisdiction(s) where your credit union does business. If you have concerns whether you are at risk of regulatory action or lawsuit, CU\*Answers recommends you provide your own legal counsel with information regarding your current debt collection practices.**

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# Debt Collection Practices

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The CFPB made several serious allegations against Navy Federal, including that Navy Federal made deceptive representations to hundreds of thousands of consumers in the course of attempting to collect on consumer debts.

In its collection letters, Navy Federal was accused of threatening legal action by stating legal action had “been recommended” or there was “no alternative but to recommend for legal action.” However, the threat of legal action did not result 97% of the time, even among consumers who did not make a payment.

Navy Federal also sent letters threatening to contact Servicemembers’ Commanding Officers including language:

*“Your continued failure to forward the requested funds will leave us no alternative but to forward the Certificate of Compliance covering your loan to your commanding officer to request assistance in communicating with you.”*

There was no evidence of any efforts to contact commanding officers in any of these cases. Navy Federal *did* have authorization to contact the commanding officers, but the CFPB stated that this language was “buried in fine print, non-negotiable, and not bargained for by consumers.”

Navy Federal also threatened the ability of members to obtain additional credit:

*“You will find it difficult, if not impossible, to obtain additional credit because of your present unsatisfactory credit rating with [us].”*

In addition, the CFPB also cited that Navy Federal’s statement about repairing credit by calling the credit union. CFPB stated that this statement constituted a false offer of “credit repair services.”

## CFPB Consent Order

### Letters Threatening Legal Action

26. As described in Paragraphs 14 through 18, in connection with its debt collection activities, [Navy Federal] has represented in collection letters, expressly or impliedly, that it intended to take legal action against consumers.

27. In fact, in most cases, at the time [Navy Federal] made the representations, the threatened legal action was not intended.

### Letters Threatening to Contact Servicemembers’ Commanding Officers

36. As described in Paragraphs 29 through 31, in connection with its debt collection activities, [Navy Federal] has represented in collection letters, expressly or impliedly, that it was authorized and intended to contact consumers’ commanding officers about the debts [Navy Federal] was attempting to collect.

37. In fact, at the time [Navy Federal] made the representations, [Navy Federal] was not authorized and did not intend to contact the consumers’ military chains of command about the debts [Navy Federal] was intending to collect.

### Letters Containing Misrepresentations about Credit Ratings

48. As described in Paragraphs 39 through 42 ... [Navy Federal] has represented, expressly or impliedly, that [Navy Federal] offered credit repair services; that [Navy Federal] issued a credit rating; that a consumer’s decision to settle or repay a debt would result in repairing or improving the consumer’s credit history; and that a consumer’s delinquency or default on a Navy Federal Credit Union debt would make it difficult or impossible for the consumer to obtain additional credit.

49. In fact, at the time [Navy Federal] made the representations, [Navy Federal] did not issue credit ratings; and [Navy Federal] had no basis to assert that a particular consumer’s decision to settle or repay a debt would result in repairing or improving the consumer’s credit history or that a consumer’s delinquency or default on a Navy Federal Credit Union debt would make it difficult or impossible for the consumer to obtain additional credit from other creditors.

Finally, the CFPB alleged Navy Federal engaged in deceptive telephone debt collection. Some of the allegations repeated the collection letters, such as Navy Federal threatening legal action or wage garnishment it did not intend to take, threatened to contact commanding officers. In addition, the training manuals instructed collections personnel to obtain borrower's commanding officer's contact information. There were no records that any employees were disciplined for these telephone actions.

#### **Findings and Conclusions as to Deceptive Debt Collection Communications over the Telephone**

*59. As described in Paragraphs 51 through 53, in connection with its debt collection activities, [Navy Federal] has represented, expressly, or impliedly, that it intended to file suit, garnish wages, or contact consumers' military employers about the debt.*

*60. In fact, at the time of the representations, the threatened actions were not intended or were actions [Navy Federal] was not authorized to pursue.*

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# Account Restriction Practices

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In addition, the CFPB also challenged Navy Federal on account freezing practices.

*The credit union froze electronic account access and disabled electronic services for about 700,000 accounts after consumers became delinquent on a Navy Federal Credit Union credit product. This meant delinquency on a loan could shut down a consumer's debit card, ATM, and online access to the consumer's checking account. The only account actions consumers could take online would be to make payments on delinquent or overdrawn accounts.*

These actions were, according to the CFPB, provided without adequate notice, and no exception was made for accounts containing protected federal benefits.

## CFPB Consent Order

### Unfair Electronic Account Access Restrictions

*74. As described in Paragraphs 62 through 71, from at least January 1, 2013 until it ended the practice mid-2015, [Navy Federal] unfairly restricted consumers' electronic account access and electronic account services, on all of the consumers' accounts, when the consumers were delinquent on a Navy Federal Credit Union credit account.*

*75. [Navy Federal's] acts and practices caused or were likely to cause substantial injuries to consumers.*

*76. The injuries to consumers included, but were not limited to:*

- a. Interfering with consumers' ability to make purchases or withdrawals using their debit or ATM cards;*
- b. Interfering with consumers' ability to make deposits through ATMs;*
- c. Preventing consumers from managing their accounts online or through ATMs; and*
- d. Preventing consumers from initiating electronic transfers or payments from or between their Navy Federal Credit Union accounts.*

*77. The injuries to consumers were not reasonably avoidable because [Navy Federal's] policies and practices regarding electronic access and service restrictions were not adequately disclosed to consumers when they opened their deposit accounts, when they opened their credit accounts or before they became delinquent on a credit account.*

*78. The injuries to consumers were not outweighed by any countervailing benefits to consumers or competition.*

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# Collection Issues and Mitigation Steps

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## Fair Debt Collection Practices Act

A credit union that uses false threats, such as threatening litigation that is not intended to be filed, claiming that fees will be added when they will not be, or stating that delinquent debt will be reported to the credit reporting agencies when they will not be, are considered violations of the Fair Debt Collection Practices Act (FDCPA). For its part, the CFPB considers violations of the FDCPA to be Unfair and Deceptive Practices.

## Mitigation Considerations

A credit union concerned about its delinquency practices should:

1. Have legal counsel review all notices for compliance with FDCPA.
2. Ensure that there are no misrepresentations, especially with respect to threats of action that the credit union does not intend to take.
3. Disclosures about contracting third parties need to be clear, and not buried in fine print, if allowed at all.
4. There cannot be false claims of “credit repair” or the inability of the member to obtain additional credit elsewhere.
5. Contact procedures need to be documented, including contact by telephone. There needs to be audit of violations of procedures and appropriate discipline.

## FDCPA Key Concepts

*Violations of the FDCPA can include any false, deceptive or misleading representations in connection with the collection of any debt by the debt collector.*

*Examples of these misrepresentation can include:*

- *Misrepresenting the character, amount, or legal status of the debt;*
- *Falsely representing or implying that nonpayment will result in the arrest of any person or the seizure, garnishment, attachment or sale of any person’s property or wages, unless such action is lawful and the debt collector intends to take such action;*
- *Threatening to take any action that cannot legally be taken or that is not intended to be taken, such as threatening to make third-party disclosures about the existence of a debt, or threatening to furnish information to a consumer reporting agency that the debt collector does not actually intend to furnish;*
- *Using any other false representation or deceptive means to collect or attempt to collect any debt or obtain information concerning a consumer.*

*There are many other potential violations of the FDCPA.*

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# Account Restrictions and Mitigation Steps

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## Account Freeze

Federally chartered credit unions have the ability under their bylaws to freeze accounts:

*A member who is disruptive to credit union operations may be subject to limitations on services and access to credit union facilities.*

The NCUA has issued Opinion Letters stating that this language allows for account freezing, provided, there is some “logical relationship between the objectionable conduct and the services to be suspended” and that members receive notice of the policy. State chartered credit unions may also have authority to freeze accounts based on state law.

However, the credit union authority to freeze accounts is limited in several respects. First, there has to be adequate notice to the member that account restrictions are a possibility for failure to pay. Unless the member has granted a security interest to the credit union, Regulation Z prohibits the use of offsets to satisfy a cardholder’s indebtedness. In addition, Regulation B would prohibit any freeze that had a disparate impact on minority borrowers.

## Mitigation Considerations

A credit union concerned about its account freeze practices should:

1. Have counsel review all agreements that allow for the credit union to freeze accounts to ensure disclosures are proper.
2. Ensure the practices of freezing accounts do not violate Reg Z or Reg B.
3. Ensure that account freezing will not impact protected funds.
4. Consider adding language to the automated delinquency notice that generates prior to the freeze occurring. This can be found on the MNCNFF menu option number 3.
5. Review your automated freeze configurations also found on MNCNFF option number 4. Most credit unions have set this flag to freeze all accounts other than share draft. In doing so you are not limiting electronic access to the member’s transactional account which would include transfers and debit card access.

