

# Third-Party Service Provider (Collection Agency) Management

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Southwest Lending  
& Collections Conference

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**NEU**  
ANALYTICS

# Legal Disclaimer

The information provided here should not be construed as legal or compliance advice and all parties should seek their own professional counsel before taking any actions.

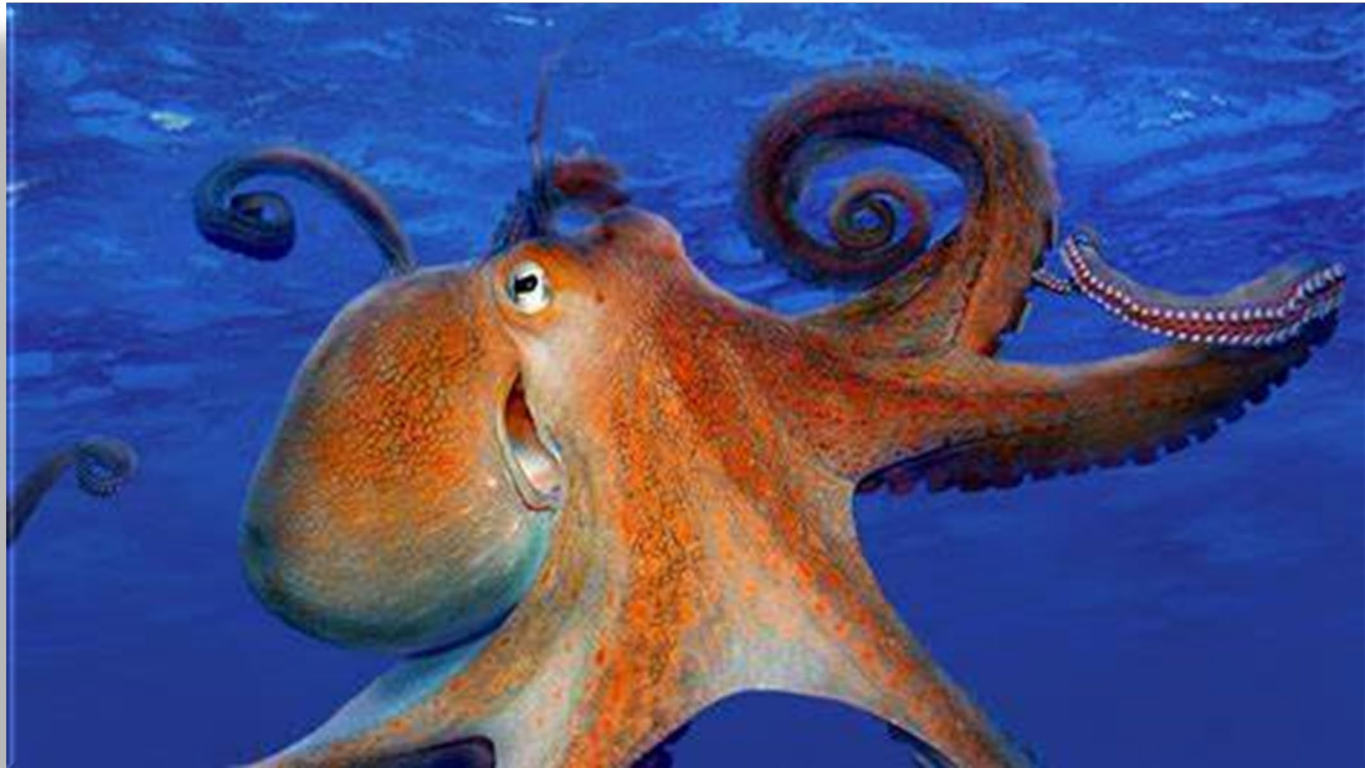


# Agenda

- NCUA / Third-Party Management
- CFPB / Third-Party Management
- Lawsuits
- Policies & Procedures
- Vendor Management Best Practices
- Vendor Service Provider Audits



# Planning Guru

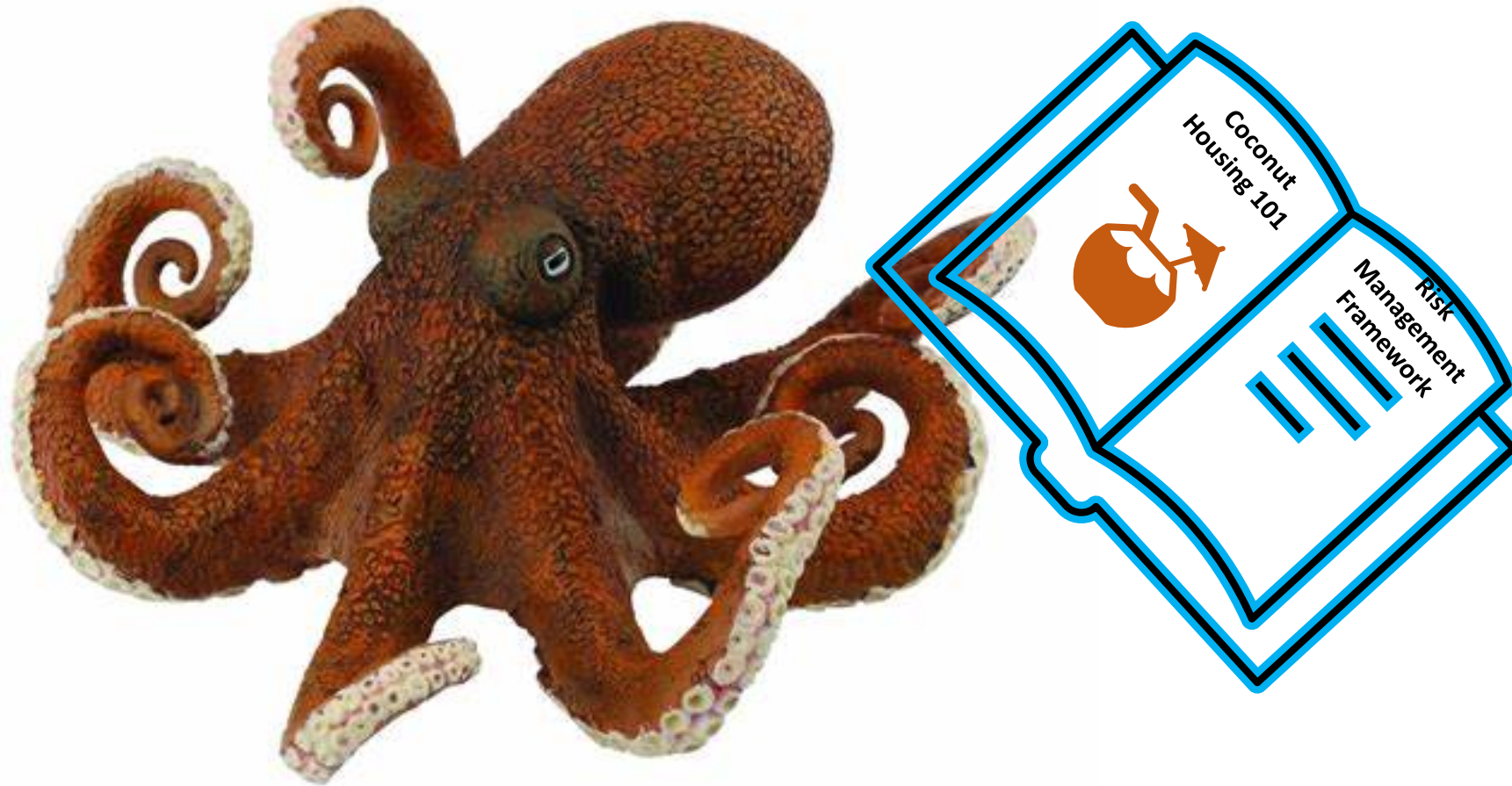




# Planning is Everything!



# Embrace Your Inner Octopus



# POLL



# NCUA (National Credit Union Association)

- ▶ Supervisory Letter 07-01 (October 2007)
  - ▶ Third Party Relationship Checklist
  - ▶ Due Diligence Over Third Party Service Providers: 01-CU-20/November 2001
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- <https://www.ncua.gov/regulation-supervision/letters-credit-unions-other-guidance/evaluating-third-party-relationships-0>
  - <https://www.ncua.gov/files/letters-credit-unions/LCU2008-09ENC.pdf>
  - <https://www.ncua.gov/regulation-supervision/letters-credit-unions-other-guidance/due-diligence-over-third-party-service-providers>



# NCUA Guidance – Initial Risk Review

- ▶ Expectations for Outsourced Functions
- ▶ Staff Expertise
- ▶ Criticality
- ▶ Risk, Reward or Cost-Benefit of the Relationship
- ▶ Insurance
- ▶ Effects on Membership
- ▶ Exit Strategy

# NCUA Checklist

	A	B	D
3	<b>Third Party Relationships</b>		
4	<b>INTRODUCTION AND PURPOSE</b>		
5	<b>Background</b>	<b>Yes/No</b>	<b>Comments</b>
6	1. Does the credit union maintain a list of the third party company(ies) or firm(s) which they use for outsourced services?		
7	2. Does the credit union maintain a description of the services provided by the third party company(ies) or firm(s)?		
8	3. Did the credit union consider more than one third party before entering into a relationship?		
9	4. Does the third party relationship(s) compliment the credit union's overall mission and philosophy?		
10	5. Has the credit union completed an appropriate risk assessment to determine the exposure related to each third party relationship?		
11	<b>Planning/Risk Assessment</b>	<b>Yes/No</b>	<b>Comments</b>
12	1. Does the credit union's planning and risk assessment address the following areas which it should based on the type and critical nature of the relationship(s):		
13	(a) Risk areas which could be affected by the third party arrangement (credit, interest rate, liquidity, transaction, compliance, strategic, and reputation );		
14	(b) Expectations of third party relationship;		
15	(c) Staff expertise;		
16	(d) Criticality of the activity to be outsourced;		
17	(e) Cost/Benefit analysis;		
18	(f) Impact on membership; and		
19	(g) Exit strategy.		
20	2. Has the credit union evaluated the costs of monitoring and providing support to the third party program (i.e., staffing, capital expenditures, communications, and technological investment)?		
	3. Does the credit union's strategic business plan include measurable and achievable		

# NCUA Guidance - Checklist

## ▶ Planning/Risk Assessment

- Costs
- Goals
- Strategy

## ▶ Due Diligence

- Background Check
- Business Model
- Cash Flows
- Financial & Operation Control Review
- Contract Issues & Legal review
- Accounting considerations

## ▶ Risk Measurement, Monitoring & Control

- Monthly monitoring/reporting
  - Performance
  - Compliance

## ▶ Controls over member data

- Protection of PII
- Data Breach Protection/Security

# Service Provider – CFPB Definition

- ▶ Provides a material service (collections)
- ▶ To a financial institution (credit union)
- ▶ In connection with the financial institution's product (credit card, loan, etc. )
- ▶ That was offered to a consumer

# CFPB – Service Provider Audits (from Bulletin 2012-03)

- ▶ Conduct thorough due diligence to verify that the service provider **understands** and is **capable of complying** with Federal consumer financial law.
- ▶ Request and review the service provider's **policies, procedures, internal controls and training materials** to ensure that the service provider conducts appropriate training and oversight of employees or agents that have consumer contact or compliance responsibilities.
- ▶ Include in the **contract** with the service provider clear expectations about compliance, laws well as appropriate and enforceable consequences for violating any compliance-related responsibilities, including engaging in unfair, deceptive, or abusive acts or practices.
- ▶ Establish **internal controls and ongoing monitoring** to determine whether the service provider is complying with Federal consumer financial laws.
- ▶ Take **prompt action** to address fully any problems identified through the monitoring process, including terminating the relationship where appropriate.

*Service Provider Bulletin: 2012-03: [https://files.consumerfinance.gov/f/20120212\\_cfpb\\_ServiceProvidersBulletin.pdf](https://files.consumerfinance.gov/f/20120212_cfpb_ServiceProvidersBulletin.pdf)*

*Updated Bulletin: 2016-02: [https://files.consumerfinance.gov/f/documents/102016\\_cfpb\\_OfficialGuidanceServiceProviderBulletin.pdf](https://files.consumerfinance.gov/f/documents/102016_cfpb_OfficialGuidanceServiceProviderBulletin.pdf)*



# Service Providers

- [Collection Agencies](#)
- [Collection Law Firms](#)
- Other Law Firms/Legal Firms
- Letter/Statement Vendors
- Repossession/Resale Company
- Telephone Company/Equipment & Service
- Computer Hardware/Software
- Security Personnel
- Payment Processing Vendors
- Cleaning Staff
- Data/Scrub Vendors
- Credit Bureau
- Call Monitoring Software
- Catering/Food Service
- Office Equipment, Desks, Chairs, Etc.
- Accountants
- Auditors
- Document Storage/Shredding
- Payroll Processing
- Dialer Hardware/Software
- Insurance Company
- License/Bond Company
- Consulting
- Auditors
- Learning/Training
- Direct Drop Voice Mail
- Office Supplies
- Utilities
- Internet Provider

# REGULATION F

## Audience Participation

# Regulation F – For Agencies

- ▶ 7/7/7 Rule
- ▶ Emailing
- ▶ Texting
- ▶ Initial Letter: Balance Itemization, Tear-Off
- ▶ Opt-Out per Contact Method
- ▶ Inconvenient Times
- ▶ Credit Reporting/Disputed Debts



November 30  
2021!

# Reg F for Creditors

- ▶ Email Forwarding – 35-day Letter
- ▶ Detailed Information for the Model Validation Letter
- ▶ Update Policies/Procedures
- ▶ Update Contracts w/ Reg F Language
- ▶ Request Updated Policies & Procedures from Agencies
- ▶ Request Updated Training Materials from Agencies

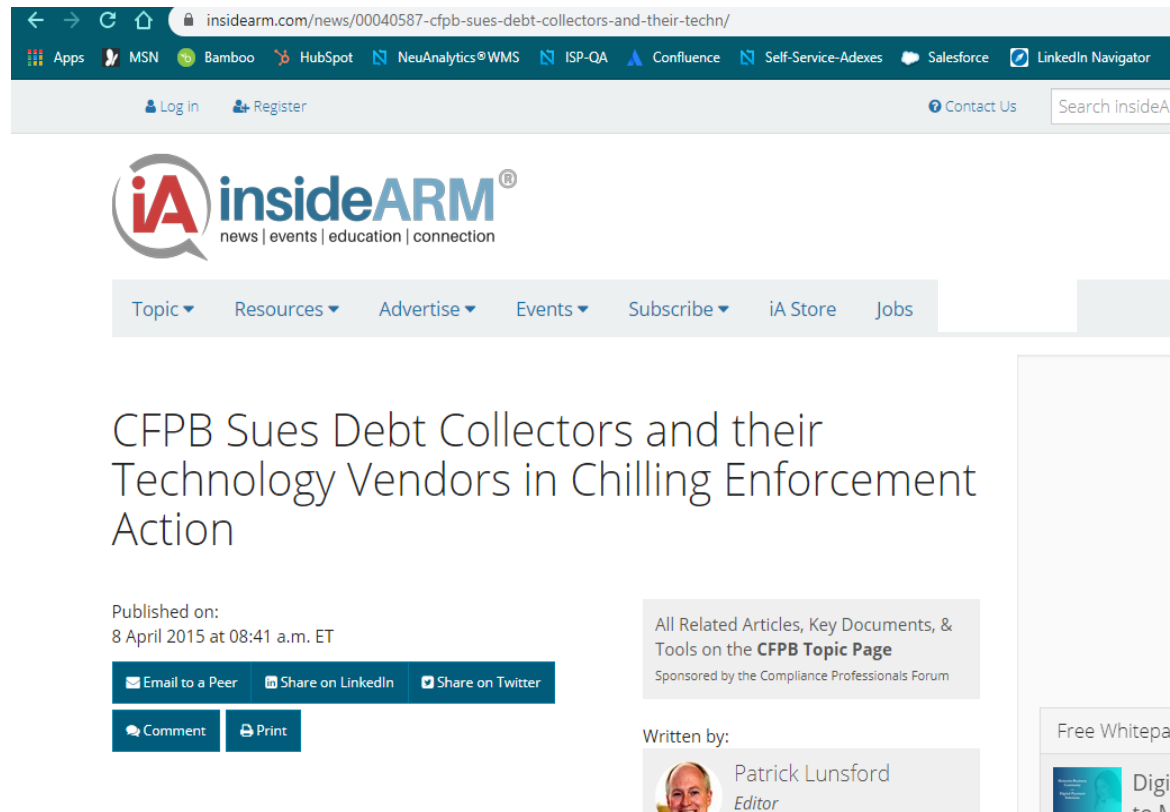
# Additional Regulations

## Audience Participation



# Lawsuits Involving Third-Parties

## CFPB Sues Debt Collectors and Their Vendors



The screenshot shows a web browser displaying an article on the insideARM.com website. The browser's address bar shows the URL: [insidearm.com/news/00040587-cfpb-sues-debt-collectors-and-their-tech/](https://www.insidearm.com/news/00040587-cfpb-sues-debt-collectors-and-their-tech/). The browser's toolbar includes various application icons like MSN, Bamboo, HubSpot, NeuAnalytics, ISP-QA, Confluence, Self-Service-Adexes, Salesforce, and LinkedIn Navigator. Below the browser, the insideARM logo is visible, with the tagline "news | events | education | connection". A navigation menu includes "Topic", "Resources", "Advertise", "Events", "Subscribe", "iA Store", and "Jobs". The article title is "CFPB Sues Debt Collectors and their Technology Vendors in Chilling Enforcement Action". The publication date is "8 April 2015 at 08:41 a.m. ET". Social sharing options include "Email to a Peer", "Share on LinkedIn", "Share on Twitter", "Comment", and "Print". A sidebar on the right contains a "Free Whitepa" section with a "Digi" link. A "CFPB Topic Page" link is also present, sponsored by the Compliance Professionals Forum. The author is identified as Patrick Lunsford, Editor.

<https://www.insidearm.com/news/00040587-cfpb-sues-debt-collectors-and-their-tech/>

# \$210 Million Settlement

- DOJ suit
- TCPA and Telemarketing Sales Rule
- 66 Million Phone Calls
- Dish was held responsible for the calls made by their third-party vendors
- Additionally agree to:
  - Prepare a telemarketing plan
  - Submit compliance materials to the DOJ and FTC annually until 2027
  - Provide compliance reports upon request by the agencies

[https://www.consumerfinancemonitor.com/2020/12/10/dish-network-agrees-to-pay-210-million-for-vendors-violations-in-historic-department-of-justice-telemarketing-enforcement-action/?utm\\_source=Ballard+Spahr+LLP+-+Consumer+Finance+Monitor&utm\\_campaign=24dffad22c-RSS\\_EMAIL\\_CAMPAIGN&utm\\_medium=email&utm\\_term=0\\_6dc018fe4c-24dffad22c-78749609](https://www.consumerfinancemonitor.com/2020/12/10/dish-network-agrees-to-pay-210-million-for-vendors-violations-in-historic-department-of-justice-telemarketing-enforcement-action/?utm_source=Ballard+Spahr+LLP+-+Consumer+Finance+Monitor&utm_campaign=24dffad22c-RSS_EMAIL_CAMPAIGN&utm_medium=email&utm_term=0_6dc018fe4c-24dffad22c-78749609)

# Lawsuit Involving Creditor and Agency

- ▶ Oregon McAdory v. M.N.S. & Associates and DNF Associates
- ▶ Vicarious Liability
- ▶ Audit Controls
- ▶ Audit Follow-Up

# Vicarious Liability

You are responsible for managing your agencies.

- Regular Auditing
- Call Monitoring
- Letter Review
- Complaint Handling
- Dispute Handling
- Compliance with the TCPA, SCRA, FDCPA, Regulation F, FCRA, etc.
- Compliance Scrubs for Bankruptcy, Deceased, SCRA, etc.
- Reconciliation of Balance

<http://messengerstrickler.com/blog/what-is-the-creditor-liability-under-the-fdcpa>

# Don't Forget the State Laws

- ▶ Iowa – debt collector may communicate the fact of the debt **not more than once** in any three-month period, with the parents of a minor debtor, or with any trustee of any property of the debtor, conservator of the debtor or the debtor's property, or guardian of the debtor. Iowa Code Ann. Sec. 537.7103(3)(a)(7).
- ▶ New York City: Limits debt collection calls to **two** per a seven-day period. New York City, N.Y. Rules, title 6, Section 5-77(b)(1)(iv).
- ▶ West Virginia: Limits debt collection calls to **thirty times** per week or ten telephone conversations per week. W. Va. Code Ann. Section 46A-2-125.
- ▶ Washington DC – Limits debt collection calls to **three** per a seven-day period. (Temporary provision due to COVID – Effective 6/24/21 through 2/4/22)



# Policies/Procedures/Work Instructions

- ▶ **Policies:** Guideline or statement of position with respect to a given topic. Gives the big picture. Written by presidents, owners and top managers in a company. They outline **what** the rules, roles & responsibilities are.
- ▶ **Procedures:** Often represent the responsibilities of managers and supervisors. Procedures ensure standardization and consistency across the organization as well as show someone **how** business is run.
- ▶ **Work Instructions:** Explains the step-by-step **instructions and details** on how to do a specific task. Work instructions are used when a process needs to be done a specific way. These should be written by the person who does the job on a daily basis. Do not use an individual's name for the instruction, but rather use their title to describe who should do the steps. (For example, do not write "Next, Sally opens the account program and ..... Instead write "Next, the account clerk opens the accounting program and....")

# Policy/Procedure/Work Instruction-Example

## Policy

**Bankruptcy Scrub Policy**  
To maintain compliance with the Bankruptcy Act, our company policy is to scrub all existing accounts for bankruptcy and monitor existing bankruptcies for change of status.

## Procedure

### Bankruptcy Scrub Policy Procedure:

A bankruptcy scrub will be performed with XXX Vendor within the first 30 days of a new account being opened, and continuous monitoring of all open accounts will be performed on a daily basis. All existing bankrupt accounts will be monitored for a change in the bankruptcy status.

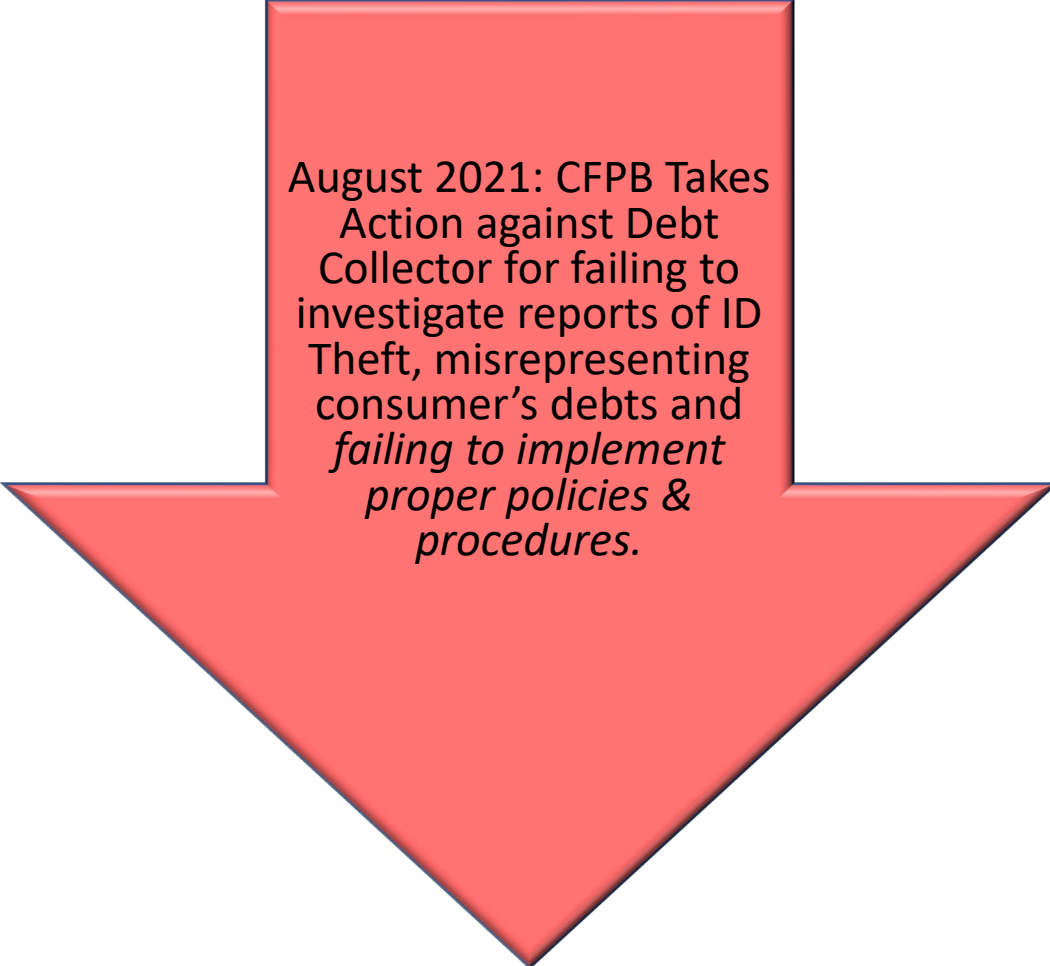
## Work Instruction

### Bankruptcy Scrub Work Instruction:

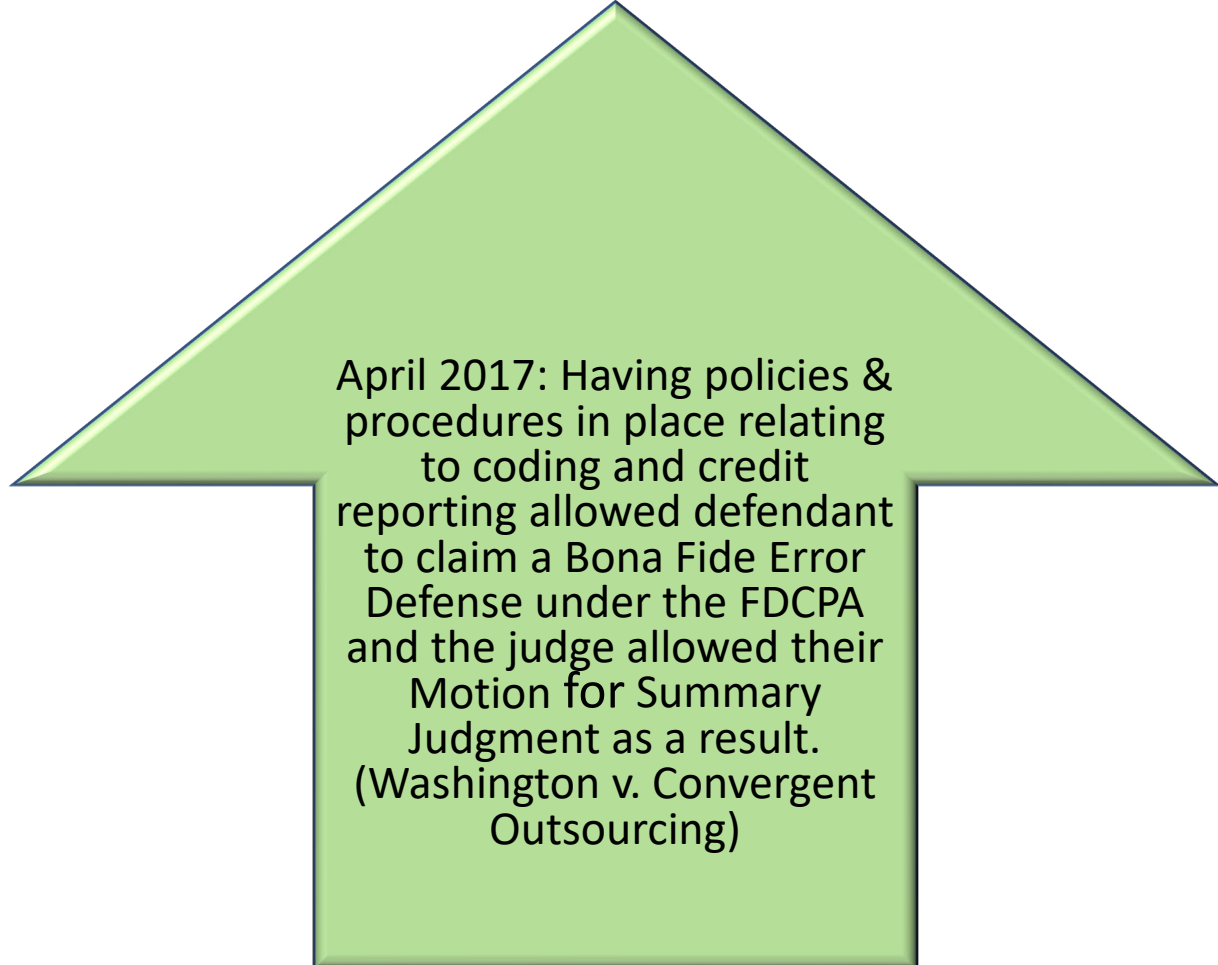
On the first business day of each month, the data center manager will pull a list of all new accounts opened the previous month and send that list to XXX Vendor via SFTP site (insert instructions here).

Data center manager will check the SFTP site daily for the existence of a bankruptcy file from XXX vendor and will upload that file by (insert instruction here)

# Lawsuits Mentioning Policies & Procedures



August 2021: CFPB Takes Action against Debt Collector for failing to investigate reports of ID Theft, misrepresenting consumer's debts and *failing to implement proper policies & procedures.*



April 2017: Having policies & procedures in place relating to coding and credit reporting allowed defendant to claim a Bona Fide Error Defense under the FDCPA and the judge allowed their Motion for Summary Judgment as a result. (Washington v. Convergent Outsourcing)

# Audience Participation

What are some policies and procedures you should be requesting from third party collection vendors?



# Policy Suggestions

- ▶ Cell phone
- ▶ Clean desk
- ▶ Internet usage
- ▶ Email communication
- ▶ Call monitoring
- ▶ Record retention
- ▶ Vendor Auditing
- ▶ Dispute Handling
- ▶ Complaint Handling
- ▶ TCPA
- ▶ Training
- ▶ Voice mail messages
- ▶ ACH
- ▶ Bankruptcy processing
- ▶ Deceased processing
- ▶ Call Monitoring
- ▶ Text Communication
- ▶ 7/7/7 Rule
- ▶ Online Chat
- ▶ Lettering
- ▶ FDCPA-Reg F Related
- ▶ Payment Processing
- ▶ Access (Physical and Software by Role)
- ▶ 4<sup>th</sup> Party Vendor Management
- ▶ Opt-in/Opt-Out
- ▶ Privacy/Security

# CFPB Third-Party Guidelines re: Policies & Procedures

- ▶ Policies to address the accuracy of transferred accounts in a manner that prevents re-aging of accounts;
- ▶ Policies addressing the adequate maintenance of records in order to substantiate decisions related to direct and indirect disputes;
- ▶ Policies and procedures designed to promote reasonable investigation of disputes;
- ▶ Policies to ensure adequate oversight of service providers;
- ▶ Policies related to the adequate training of staff; and
- ▶ Policies requiring the periodic review and updating of current furnishing policies and procedures.

# Vendor/Service Provider Audits

- ▶ Start with NCUA Checklist
- ▶ Review CFPB's requirements to ensure you are hitting their requirements
- ▶ Write policies & procedures about your audits, who will be performing them, how often, what are the questions that will be asked and what are the accepted responses
- ▶ Remember your remediation if you find something wrong
- ▶ Procure vendor management software, or in the alternative, create a SharePoint or other shared space to keep track of the vendors, the audits, the results, etc.
- ▶ Document, document, document – everything surrounding your audits, responses, action items, etc.

# Vendor Management Best Practices

- ▶ Determine your strategy, determine where this agency fits into the strategy (Early Out, Primary, Secondary, Tertiary, Quad)
- ▶ Do up-front due diligence
- ▶ Set up regular checkpoints/meetings
- ▶ Be very clear in your expectations up front and in your contract
- ▶ Ask for proof – don't take their word for performance
- ▶ Be data-driven in your approach to managing your vendors
- ▶ Conduct regular audits
- ▶ Take action on issues, don't wait
- ▶ Remember, your *reputation* is tied to the vendor



# Why Third-Party Agencies?

- ▶ Specialization of Collection Practices
  - Operational efficiency at contacting consumers
  - Highly trained in consumer protection compliance
  - Investment in specialized technology
    - Sophisticated telephone dialer technology
    - Template letter generation and mailing
    - Call Recording/Monitoring Software
    - Interactive Omni-Channel Communications
  
- ▶ Strong Financial Incentive to Recovery Debt
- ▶ Specialty Vendors (Bankruptcy, Deceased)
- ▶ Knowledge of the Regulations
- ▶ Free Up Internal Employees for More Productive Tasks

# Questions/Contact

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