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July 24, 2012

***via* Electronic Submission**

Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street, N.W.
Washington, D.C. 20552

Re: Comments of ACA International: Procedural Rules to Establish Supervisory Authority over Certain Nonbank Covered Persons Based on Risk Determination, Docket No. CFPB-2012-0021, RIN 3170-AA24

Dear Ms. Jackson:

ACA International ("ACA") files this comment in response to the Consumer Financial Protection Bureau's ("CFPB") proposed rule regarding procedural rules to establish supervisory authority over certain nonbank covered persons based on risk determination. 77 Fed. Reg. 31226 (May 25, 2012) [hereinafter, "Proposed Rule"]. ACA appreciates the Bureau's attempt to provide guidance about its planned procedures to establish supervisory authority over nonbanks as set out in the Proposed Rule. However, as discussed below, this Proposed Rule fails to adequately define what conduct is prohibited by this rule and the basis on which the CFPB will make that determination. Moreover, it fails to provide a reasonable opportunity for entities that are not larger market participants to respond to allegations before being subject to the full scope of the CFPB's supervisory authority. Indeed, it requires significant revision to comply with its statutory mandate under Title X of the Dodd-Frank Wall Street Reform and Consumer

Protection Act of 2010, 12 U.S.C. § 5301 *et seq.* ("Dodd-Frank Act").

1. Background on ACA International.

ACA International is an international trade association originally formed in 1939 and composed of credit and collection companies that provide a wide variety of accounts receivable management services. Headquartered in Minneapolis, Minnesota, ACA represents approximately 5,500 company members, including credit grantors, collection agencies, attorneys, asset buyers, and vendor affiliates.

The company-members of ACA comply with applicable federal and state laws and regulations regarding debt collection, as well as ethical standards and guidelines established by ACA. Specifically, the collection activities of ACA members are regulated primarily by the Federal Trade Commission ("FTC") under the Federal Trade Commission Act,[1] the Fair Debt Collection Practices Act ("FDCPA"),[2] the Fair Credit Reporting Act (as amended by the Fair and Accurate Credit Transactions Act),[3] and the Gramm-Leach-Bliley Act,[4] in addition to numerous other federal and state laws. Indeed, the accounts receivable management industry is unique if only because it is one of the few industries in which Congress enacted a specific statute governing all manner of communications with consumers when recovering debts, including those created in the context of healthcare operations.

ACA members range in size from small businesses with a few employees to large, publicly held corporations. Together, ACA members employ in excess of

1 15 U.S.C. § 45 *et seq.*

2 15 U.S.C. § 1692 *et seq.*

3 15 U.S.C. § 1681 *et seq.*

4 15 U.S.C. § 6801 *et seq.*

150,000 workers. These members include the very smallest of businesses that operate within a limited geographic range of a single town, city, or state, and the very largest of national corporations doing business in every state. The majority of ACA members, however, are small businesses. Approximately 2,000 of the company-members maintain fewer than ten employees, and more than 2,500 of the members employ fewer than twenty persons.

As part of the process of attempting to recover outstanding payments, ACA members are an extension of every community's businesses. ACA members work with these businesses, large and small, to obtain payment for the goods and services received by consumers. In years past, the combined effort of ACA members has resulted in the recovery of billions of dollars annually that are returned to businesses and reinvested. For example, ACA members recovered and returned over $44.6 billion in 2011 alone, a massive infusion of money into the national economy.[5] Without an effective collection process, the economic viability of these businesses, and, by extension, the American economy in general, is threatened. Recovering consumer debt enables organizations to survive; helps prevent layoffs; keeps credit, goods, and services available; and reduces the need for tax increases to cover governmental budget shortfalls.[6] At the very least, Americans are forced to pay higher prices to compensate for uncollected debt.

In 2011, Ernst & Young conducted a study[7] to measure the various impacts of third-party debt collection on the national and state economies. In addition to recovering and returning $44.6 billion in 2011, the study found that third-party debt collectors directly provided 148,272 jobs and $5 billion in payroll. When factoring

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5 Ernst & Young, *The Impact of Third-Party Debt Collection on the National and State Economies*, February, 2012, *available at* http://www.acainternational.org/files.aspx?p=/images/21594/2011acaeconomicimpactreport.pdf.

6 *Id.*

7 *Id.*

in jobs created indirectly, those numbers doubled to 302,000 jobs and $10 billion in payroll. The study also concluded that third-party debt collectors paid $509 million in state and local taxes and $495 million in federal taxes. The total state and local tax impact of third-party debt collectors was $1 billion, and the total federal impact was $970 million.

2. Comments on the CFPB's Proposed Rule.

The Proposed Rule seeks to regulate nonbank covered persons when the CFPB has "reasonable cause" to determine that such covered person "is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services." Proposed Rule at 3122. In effect, the Proposed Rule inadequately defines the type of conduct prohibited by this rule and does not provide a reasonable opportunity for companies to understand and respond to allegations made by the CFPB. This Proposed Rule requires significant revision to afford entities with a reasonable opportunity to respond to the allegations against them in order to comply with the authority delegated to the CFPB under the Dodd-Frank Act.

First, the Proposed Rule fails to adequately define the type of "conduct . . . [that] poses risks to consumers." ACA strongly urges the CFPB to clarify that prohibited "risk" includes only inappropriate or undisclosed financial risk to the consumer. Otherwise, entities could be brought under the scope of the CFPB's supervisory authority based on disclosed risks to consumers and without having violated any law or regulation. Absent a clear understanding of what conduct is prohibited under this rule, it is difficult to understand what conduct would subject debt collectors to regulation.

Second, the Proposed Rule fails to adequately define the basis for the CFPB's determination of "reasonable cause." The only guidance provided in the Proposed Rule is that "reasonable cause" will be based on "complaints collected by the Bureau . . . or on information collected from other sources." Proposed Rule at

31227. Since the CFPB was established by the Dodd-Frank Act, ACA has filed a number of comments setting forth its concerns regarding the Bureau's collection and interpretation of consumer complaint information to third parties.[8] As illuminated in previous comments filed by ACA, reviewing consumer inquiries and complaints about the debt collection industry is not a proper, reasonable, or accurate gauge of the industry's level of compliance with consumer protection laws, such as the FDCPA. This Proposed Rule, again, underscores the importance of implementing adequate procedural and training measures to ensure that any data gathered at the outset clearly distinguishes between complaints of FDCPA violations and complaints that do not assert law violations or simply inquire into the rights and responsibilities of collectors and consumers during the collection process. ACA strongly urges the CFPB to clarify how consumer complaints will be used in determining "reasonable cause" under this rule.

Third, the Proposed Rule seeks to adopt an "informal" procedure for determining whether an entity that is not a larger participant should be subject to the burdensome supervisory authority of the CFPB. This procedure includes a Notice containing the underlying allegations based on consumer complaints and other sources. There are no rights of discovery and no witnesses may be called before the CFPB decides to subject the entity to the full scope of its supervisory authority. Under the Dodd-Frank Act, entities are entitled to a "reasonable opportunity . . . to respond" to the charges against them under this rule. 12 U.S.C. § 5514(a)(1)(C). It is impossible for an entity to assess the merits of a Notice without production of the complaints or other information that form the basis of the notice. Before deciding to subject entities that are not larger participants to the full scope of the CFPB's supervisory authority, a "reasonable opportunity . . . to respond" to the allegations

[8] *See, e.g.*, ACA's Comments on the CFPB's Notice of Proposed Privacy Act System of Records, Treasury/DO.315-CFPB (Filed Feb. 9, 2011); ACA's Comments on the CFPB's Consumer Response Intake Fields (Filed Aug. 1, 2011); ACA's Comments on the CFPB's Disclosure of Records and Information, Docket No. CFPB-2011-0003 (Filed Sept. 26, 2011); ACA's Comments on the CFPB's Disclosure of Consumer Complaint Data, Docket No. CFPB-2012-0023 (Filed July 19, 2012).

must include some rights of discovery, including, but not limited to, the complaints and information upon which the Notice is based, the source of such information, and the identity of witnesses.

ACA appreciates the opportunity to comment on these significant issues. If you have any questions, please contact Andrew M. Beato or Jed Wulfekotte at (202) 737-7777.

Respectfully submitted,

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