



Ms. Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20006

RE: Proposed Rule; Request for Public Comment (February 17, 2012)
Defining Larger Participants in Certain Financial Products and Services Markets
Docket No. CFPB-2012-0005 / RIN 3170-AA00

April 17, 2012

I. INTRODUCTION

DBA International (“DBA”) is pleased to submit the following comment to the Consumer Financial Protection Bureau (“CFPB”) in response to the CFPB’s above referenced notice. DBA provides this comment to assist the CFPB to develop a strong supervision program to detect and assess risks to consumers. DBA recommends that the CFPB consider the following recommendations with regard to its proposed rule defining larger participants in certain consumer financial product and service markets (“CFPB Proposed Rule”).¹

- Include originating creditors in the consumer debt collection market.
- Clarify the definition of “annual receipts” with regard to debt buyers.
- Increase the threshold for the definition of a larger participant in the debt collection market to \$50 million in annual receipts.
- Provide guidance on CFPB examinations and risk assessments of those companies determined to be larger participants.

II. BACKGROUND

A. The CFPB Larger Participant Rulemaking

¹ CFPB Proposed Rule, 77 FR 9592 (available at: <http://www.gpo.gov/fdsys/pkg/FR-2012-02-17/pdf/2012-3775.pdf>).

On July 21, 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) was enacted into law.² Title X of the Dodd-Frank Act established the CFPB to, “regulate the offering and provision of consumer financial products or services under the Federal consumer financial laws.”³ Under the Dodd-Frank Act, the CFPB is required to implement a risk-based supervision program for certain non-depository “covered persons” that the CFPB defines by rule to be, “a larger participant of a market for other consumer financial products or services.”⁴ For those entities determined to be larger participants, the CFPB will exercise supervisory authority, which may include requiring reports and conducting examinations based on, “the risks posed to consumers in the relevant product markets and geographic markets.”⁵ The Dodd-Frank Act requires the CFPB to adopt a larger participant rule by July 21, 2012.

On February 17th, the CFPB issued a proposed rule and request for public comment on “Defining Larger Participants in Certain Consumer Financial Products and Services Markets.” DBA submits the following comment in response to the CFPB Proposed Rule.

B. DBA International

DBA was established in 1997 to serve as the trade association and voice for the debt buying industry. DBA represents experienced, knowledgeable and ethical debt buyers. DBA advocates on the membership’s behalf before federal and state legislatures and agencies. DBA has also acted in support of industry interests, where appropriate, in court cases of significance. DBA has adopted ethical and business conduct standards for the industry, including the publication of a “Statement of Principles and Guidelines for the Sale and Purchase of Consumer Debt” and a Code of Ethics that its members must comply with and that the DBA Ethics Committee is charged with enforcing.⁶

The debt buying industry provides a secondary market for charged-off receivables. By creating a secondary debt market, the debt buying industry benefits the economy by encouraging consumer lending; providing originating creditors with a return on what would otherwise be a lost asset; lowering the cost of credit for all consumer borrowers; and helping to make credit available for lower income consumers by providing liquidity back into the marketplace.

² Dodd-Frank Act, P.L. 111–203 (2010).

³ Dodd-Frank Act, § 1011(a). Among the enumerated consumer laws transferred to the CFPB’s jurisdiction is the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. §1692 et seq. Debt collection is subject to the FDCPA.

⁴ Dodd-Frank Act, § 1024(a)(1)(B). The CFPB non-depository supervision program is also authorized to reach, regardless of size, the following industries: (1) origination, brokerage, or servicing of loans secured by real estate for use by consumers primarily for personal, family, or household purposes, or loan modification or foreclosure relief services in connection with such loans; (2) private education loans; (3) payday loans; or (4) entities that the CFPB has reasonable cause to determine, by order, pose risks to consumers.

⁵ Dodd-Frank Act, § 1024(b)(2).

⁶ The DBA Statement of Principles and Guidelines for the Sale and Purchase of Consumer Debt is available at: <http://www.dbainternational.org/news/Statement%20of%20Principles%20and%20Guidelines.pdf>.

The DBA Ethics Rules and Ethical Considerations for DBA Members are available at: http://www.dbainternational.org/what_is_dba/code_of_ethics.asp.

It is the experience of DBA members that the vast majority of Americans pay their debts in a timely way. Only rarely do consumers take on a debt with the intent of not repaying the obligation. By helping the small percentage of consumers who have not paid their obligations, debt buyers assist in helping to reduce the cost of goods and services to the majority of consumers. Because debt buyers purchase accounts for less than the face value of the account, they are uniquely positioned to offer more attractive repayment options tailored to accommodate the consumer's specific situation. As the account owner, debt buyers have the flexibility to lower interest rates, reduce principal amounts, and establish monthly payment plans favorable to the consumer. Resolving a debt obligation also confers other benefits on the consumer, such as improving their credit history. In turn, this may increase the consumer's access to credit, and reduce the consumer's cost of credit.

III. ORIGINATING CREDITORS IN THE DEBT COLLECTION MARKET

DBA strongly urges the CFPB to reconsider the scope of the CFPB Proposed Rule in order for the CFPB to supervise originating creditors that engage in consumer debt collection activities. The CFPB Proposed Rule states that the definition of "consumer debt collection" is intended to "ensure that it captures a range of consumer debt collection activities." Yet the CFPB has defined the market in such a way that it excludes the collection activities of originating creditors, a large, and, indeed, dominant segment of the debt industry.

These three components of the debt industry (originating creditors, debt buyers, and debt collectors) are interrelated parts of the debt process. When originating creditors extend credit to a consumer, they, of course, expect that the consumer will repay the obligation according to the agreed on terms of credit. Many originating creditors directly collect on those consumer debts prior to contracting with a third-party debt collector or prior to selling the debt to a debt buyer. Based on an analysis of the consumer complaints submitted to the Federal Trade Commission (FTC) in 2010 and 2011, the companies identified with the largest number of complaints were originating creditors. The CFPB's own experiences with collection complaints, as described in the CFPB's Consumer Response Annual Report, further demonstrates that the collection activities of originating creditors can be a large source of consumer complaints.⁷ These collection activities by originating creditors are not discussed in the market overview accompanying the CFPB Proposed Rule.

The commentary accompanying the CFPB Proposed Rule recognizes that debt buyers who step into the shoes of the originating creditors may "undertake their own collection efforts."⁸ But the commentary fails to note that originating creditors may also undertake their own collection efforts; efforts which until now have been shielded from regulatory oversight. Originating creditors' collection activities are exempt under the Fair Debt Collection Practices

⁷ Consumer Response Annual Report, March 31, 2012 (available at: http://files.consumerfinance.gov/f/201204_cfpb_ConsumerResponseAnnualReport.pdf). The report details that 378 complaints (4.1% of total credit card complaints received) were about collection practices. The report also shows that at least some of the mortgage complaints received were about collection.

⁸ CFPB Proposed Rule, 77 FR at 9597.

Act (FDCPA), the primary statutory authority regulating abusive debt collection practices.⁹ Although the FDCPA was among the enumerated consumer laws transferred to the CFPB, the CFPB's supervision authority is not limited by, and should not be limited to, the scope of the FDCPA in determining larger participants in the debt collection market.

It has been suggested that originating creditors were not included in the CFPB Proposed Rule because these entities would be subject to CFPB supervision through other provisions of the Dodd-Frank Act. This, however, is not always the case. The Dodd-Frank Act expressly excludes those insured depository institutions and insured credit unions with total assets of less than ten billion dollars from the CFPB's supervisory authority.¹⁰ DBA recognizes that the CFPB Proposed Rule has been issued as part of the CFPB's supervisory authority over non-depository institutions. DBA, however, urges the CFPB to consider that these depository institutions' collection departments engage in debt collection activities that far exceed the \$10 million in annual receipts threshold proposed by the CFPB. The CFPB should consider extending its nonbank supervisory program to include departments within these depository institutions that act as collectors on consumer debts.

If the CFPB chooses not to include the collection departments of depository institutions, the CFPB should, at a minimum, consider including within its supervisory authority the debt collection activities of non-depository originating creditors. Non-depository institutions that act as originating creditors with respect to consumer debts that may be subject to internal debt collection activities include, but are not limited to, healthcare providers, financing companies, automobile lenders, utilities, telecommunications companies, and retailers.

The CFPB "views the increased detection and assessment of risks to consumers and to the consumer financial markets as a critical mission of the supervision program."¹¹ This mission would be furthered by the inclusion of originating creditors in the CFPB's definition of the consumer debt collection market.

IV. CLARIFYING THE DEFINITION OF "ANNUAL RECEIPTS" FOR DEBT BUYING COMPANIES

DBA recommends that the CFPB provide further clarification of the term "annual receipts."¹² The CFPB attempts to provide guidance about the definition of annual receipts by referring to the Internal Revenue Service (IRS) tax return forms. Different accounting methods with reference to those tax forms, however, could produce disparate results across the industry. DBA questions whether the CFPB intends to bind itself to IRS guidance and related case law interpreting how companies should complete their tax return forms.

⁹ FDCPA § 803(6).

¹⁰ Dodd-Frank Act § 1025(a).

¹¹ CFPB Proposed Rule, FN 71.

¹² CFPB Proposed Rule § 1090.101(c)(1).

DBA is also concerned about portions of the commentary to the CFPB Proposed Rule that would define “receipts” to exclude amounts collected for another except for fees earned in connection with such collections. This definition could well have an unfair and inappropriate impact on debt buying companies. For example, a debt collection company that obtains receipts amounting to \$10,000 from 10 consumers on behalf of an originating creditor will be considered under the CFPB Proposed Rule to have obtained, not \$10,000, but rather only the commission or fees earned from the \$10,000 in receipts. Under the same circumstances, a debt buying company that collects its own debts and obtains receipts amounting to \$10,000 from 10 consumers will be considered under the CFPB Proposed Rule to have obtained receipts equal to the entire amount obtained. However, both the debt collection company and the debt buying company have had the same number of consumer contacts and the same level of market participation.

DBA urges the CFPB to provide clarification on how “annual receipts” will be determined or reconsider the criteria by which the CFPB will decide whether a company is a larger participant in the consumer debt collection market so as not to inappropriately impact debt buying companies. At a minimum, DBA recommends that the CFPB provide examples of how the different industry participants (currently identified by the CFPB as third-party collectors, debt buyers collecting their own debts, and law firms / attorneys) should calculate annual receipts under the definition in the CFPB Proposed Rule.

V. INCREASING THE LARGER PARTICIPANT THRESHOLD

The CFPB Proposed Rule sets the threshold for a larger participant in the consumer debt collection market as any covered entity that has annual receipts of more than \$10 million from consumer debt collection activities.¹³ DBA recommends that the CFPB give consideration to increasing the threshold to \$50 million to provide regulatory relief to the many debt buying companies that are small businesses. The vast majority of DBA’s membership – in fact, 85 percent – consists of small businesses.

DBA recognizes that the CFPB seeks to extend its supervisory authority to the “larger,” not merely the “largest” participants in a market. DBA, however, urges the CFPB to weigh market coverage against the burden that would be placed on those small businesses that would be subject to supervision at the \$10 million threshold. Throughout the legislative history of the Dodd-Frank Act, President Obama and the Congress expressed an interest in reducing the CFPB’s supervisory burden on small banks. This principle should be applied to small, non-depository institutions as well.

VI. IMPACT OF SUPERVISION ON DEBT BUYING COMPANIES

The CFPB Proposed Rule indicates that the CFPB will decide to undertake supervisory action in connection with a determination that a company is a larger participant only after assessing applicable criteria set forth in the Dodd-Frank Act. Based on this assessment, the CFPB Proposed Rule states that the CFPB may choose not to undertake any supervisory activities at all, even if the entity is “eligible” for supervision. The decision will be based, in

¹³ CFPB Proposed Rule § 1090.102(a).

part, on the CFPB’s “limited resources to examine or otherwise exercise its supervisory authority over a larger participant based on criteria set by Congress, which focuses on risks to consumers.”¹⁴

Risk to consumers, however, will be the primary metric of the CFPB’s risk assessment.¹⁵ DBA understands that the CFPB will launch its consumer complaint system for non-depository institutions before the end of this year. DBA urges the CFPB to analyze complaints received about companies within the debt market as part of the CFPB’s risk assessment. Until the CFPB was created, the consumer complaint data available through the FTC’s Sentinel system was limited to reporting only the number of complaints without any further analysis. This raw data has not provided a clear picture of the nature of the industry or the legitimacy of the complaints lodged against industry participants. The CFPB has an opportunity to understand and gauge the actual risks to consumers posed by larger participants in the debt market if the CFPB develops a system that allows for in-depth analysis of consumer complaint data.

Although not required as part of the CFPB’s rulemaking obligations under § 1024 of the Dodd-Frank Act, DBA urges the CFPB to provide further details about how the CFPB will undertake its risk-based assessment of larger participants. Guidance on the level of supervision that larger participants may expect will provide greater certainty with regard to the CFPB’s non-depository supervision program.

VII. CONCLUSION

In summary, and as stated earlier, DBA recommends that the CFPB address the following concerns prior to finalizing how the CFPB will define larger participants in the consumer debt collection market:

- Include originating creditors in the consumer debt collection market.
- Clarify the definition of “annual receipts” with regard to debt buyers.
- Increase the threshold for the definition of a larger participant to \$50 million.
- Provide guidance on how the CFPB will perform risk assessments of those companies determined to be larger participants.

Respectfully Submitted,

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¹⁴ Dodd-Frank Act § 1024(b)(2). Other factors include asset size, volume of transactions, oversight by State authorities, and any other factors the CFPB determines to be relevant to the consumer debt collection market.

¹⁵ Dodd-Frank Act § 1024(b)(2).