



Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

RE: Proposed Rule & Request for Public Comment
Procedural Rules to Establish Supervisory Authority Over Certain Nonbank Covered
Persons Based on Risk Determination
Docket No. CFPB-2012-0021

July 24, 2012

I. INTRODUCTION

DBA International (“DBA”) is pleased to submit the following comments to the Consumer Financial Protection Bureau (“CFPB”) in response to the CFPB’s above referenced notice. DBA is the trade association and voice for the debt buying industry.

DBA supports the CFPB’s exercise of supervisory authority over participants in the debt buying industry that the CFPB has reasonable cause to determine have engaged in, or are engaging in, conduct that poses risks to consumers. DBA members are the core of the debt buying industry that adheres to applicable laws and regulations as well as working directly with consumers for the mutual benefit of debt buyers and consumers. DBA believes that the identification and supervision of the few bad actors that pose a risk to consumers would benefit the debt buying industry. Some of these bad actors may fall below the larger participant threshold, and therefore, DBA urges the CFPB to seek out and exercise supervisory authority over these companies.

DBA also supports the CFPB’s proposed process to make such determinations. Companies should have notice of the CFPB’s determination and a reasonable opportunity to respond. DBA, however, offers the following recommendations to further improve the process:

- When making a risk determination, the CFPB should evaluate complaint data to take into account the size of the company, the number of consumer accounts, and the nature of the complaints rather than simply the total number of complaints.
- Clarify what other sources of information will be the basis for a risk determination.
- Lengthen the period of time permitted for a company to respond to the CFPB.
- Provide companies with more discretion about how they may present a supplemental oral response.

DBA looks forward to working with the CFPB during this ongoing process and will continue to provide comments and information to the CFPB, including input from the DBA membership, to improve the quality of information available to the CFPB about the debt buying industry.

II. BACKGROUND

A. 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.

In February 2012, the DBA Board of Directors approved the development of a certification program for the debt buying industry that will (1) serve as a comprehensive resource for debt buying entities to ensure adequate training and continuing education on the DBA Code of Conduct, best industry practices, and applicable federal and state laws and regulations; (2) provide assurances to originating creditors that certified debt buying entities subscribe to core standards; and (3) demonstrate to legislators and regulators that a self-regulatory program can effectively promote consumer protection and reduce consumer complaints involving the debt buying industry. A recent DBA press release stated that, "DBA International, as a leader within the industry, has ensured, and will always ensure, that our membership is receiving the most comprehensive resources to be compliant with government standards and responsive to consumer and industry needs. We believe the creation of a Debt Buyer Certification Program is simply the next logical step by offering our members a uniform industry standard by which they should abide."

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

It is the experience of DBA members that the vast majority of Americans pay their debts in a timely manner. 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 benefits on the consumer, whose credit history may improve. In turn, this may increase the consumer's access to credit and reduce the consumer's cost of credit.

B. CFPB Supervisory Authority Over Certain Nonbank Covered Persons Based on Risk Determination

Under Section 1024 of the Dodd-Frank Act, the CFPB may supervise those nondepository covered persons that the CFPB, “has reasonable cause to determine, by order, after notice to the covered person and a reasonable opportunity for such covered person to respond, based on complaints . . . or information from other sources, 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.”¹

On May 25, 2012, the CFPB issued a proposed rule and request for public comment to establish procedural rules to implement the CFPB's risk-based supervision.² Under the Proposed Rule, the CFPB will provide a company with a notice describing the basis for the CFPB's assertion of supervisory authority based on a risk determination. The company would have two opportunities to respond to the notice by: (1) a written response; and (2) a supplemental oral response. If, following the company's response, the CFPB makes a final determination that the company poses a risk to consumers, the company would have an opportunity to petition for termination of the CFPB's supervisory authority after two years by informing the CFPB of actions taken and progress made to reduce risks to consumers.

III. DBA RECOMMENDATIONS

As stated, DBA supports many aspects of the Proposed Rule, such as the CFPB's decision to consider as confidential all materials submitted by a company to the CFPB as part of the risk determination process. However, being declared by the CFPB to be a risk to consumers will have a stigmatizing effect on a company, and could potentially equate to a death sentence for the company. Such a determination by the CFPB could also spawn private lawsuits against a company. Due to the serious repercussions that could result from the CFPB's risk determination, DBA offers the following recommendations to further improve the procedures set forth in the Proposed Rule.

A. CFPB Basis for Risk Determination

The Proposed Rule states that the CFPB's determination that the CFPB has reasonable cause to believe a company poses a risk to consumers will be based on complaints collected by the CFPB and “information collected from other sources.”³

¹ Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) § 1024.

² 77 FR 31226 (“Proposed Rule”).

³ Proposed Rule § 1091.102(b).

i. Complaints

DBA urges the CFPB to consider more than the total number of complaints submitted against a company when making its determination. For example, one hundred complaints lodged against a small company can have much more significance than the same number of complaints for a large company, depending on each company's account inventory. DBA recommends that the CFPB, at a minimum, view the number of complaints as a percentage of the total number of consumer contacts made by a company. The nature of the complaints submitted against a company is also important. For example, one hundred complaints about lawfully permissible debt collection activity should be distinguished from one hundred complaints of actual wrongdoing by the company. DBA urges the CFPB to evaluate complaint data to take into account the size of the company and the nature of the complaints rather than simply the total number of complaints.

ii. Other Sources of Information

DBA also urges the CFPB to provide the industry with some clarity on what "other sources" may be used by the CFPB to make its risk determination. If the CFPB's goal in issuing the Proposed Rule is to "provide transparency" on the CFPB's procedures,⁴ then the CFPB should provide information about the other sources that will impact the CFPB's determination, including any sources specific to the debt buying industry.

B. Company Response Time

The Proposed Rule provides that any response by a company must be filed within 20 days of service of the CFPB's notice, and any failure by a company to file a timely response will result in a waiver of the company's right to respond.⁵ DBA recommends that the CFPB extend the company's response time, because the proposed 20 days does not give companies a reasonable opportunity to prepare a response.

The company's response must include "all records, documents, or other items" that the company will rely on to counter the CFPB's risk determination.⁶ Under the Proposed Rule, the failure to submit any such documents will be considered a waiver of the company's right to submit such materials at any future stage of the CFPB proceedings or during any judicial review.⁷ Because any failure by the company to gather the necessary support to dispute the CFPB's notice will have significant negative impact on the entire risk determination process, companies should be given longer than 20 days to respond.

⁴ Proposed Rule, Explanatory Materials at Section VI, p. 31232.

⁵ Proposed Rule § 1091.105(a); § 1091.105(c) ("Failure of a respondent to file a response within the time period set forth in paragraph (a) of this section shall constitute a waiver of the respondent's right to respond.").

⁶ Proposed Rule § 1091.105(b)(2).

⁷ Proposed Rule § 1091.105(d) (The respondent waives the right at any future stage to "rely on any argument, record, document, or other information that the respondent does not raise or include in its response.").

DBA recommends that the CFPB provide the company with at least the same amount of time to prepare the materials contained in the response as the CFPB will have to review those materials. The CFPB Assistant Director may take up to 45 days to make a recommended determination based on the company's response or up to 90 days if the company presents a supplemental oral response.⁸ The CFPB Director has an additional 45 days to make a final determination.⁹ DBA urges the CFPB to extend the 20 day response time to match the 45 days that the CFPB provides for the CFPB to reach its final determination.

C. Supplemental Oral Response

DBA supports the CFPB's decision to establish more robust procedures than required in the Dodd-Frank Act by allowing companies to request a supplemental oral response in addition to the written response. DBA, however, offers the following recommendations that would make the supplemental oral response process fairer for the requesting companies.

i. Manner of Conducting a Supplemental Oral Response

The Proposed Rule states that supplemental oral responses will "be conducted by telephone unless the Assistant Director directs that it be conducted in some other manner."¹⁰ The CFPB's view is that conducting such supplemental oral responses by telephone is, "less burdensome than conducting an in person response."¹¹ Companies, however, should have the discretion to take on any "burden" associated with making an in person response. DBA urges the CFPB to provide companies with the right to request an oral, in-person "hearing" due to the serious repercussions that could result from the CFPB's risk determination.

ii. Date and Time of a Supplemental Oral Response

The Proposed Rule states that the Assistant Director will provide the company with a notice setting forth the date, time and general information relating to the conduct of a supplemental oral response.¹² DBA urges the CFPB to direct the Assistant Director to schedule the supplemental oral response in consultation with the company rather than at the Assistant Director's sole discretion.

iii. Limitations on the Conduct of a Supplemental Oral Response

The Proposed Rule would give the Assistant Director the authority to "impose limitations on the conduct of a supplemental oral response," also without consulting the company.¹³ If the Proposed Rule is intended to "establish a consistent procedure applicable to all affected entities,"

⁸ Proposed Rule § 1091.108.

⁹ Proposed Rule § 1091.109.

¹⁰ Proposed Rule § 1091.106(b)(1).

¹¹ Proposed Rule, Explanatory Materials at Section IV, p. 31230.

¹² Proposed Rule § 1091.106(d).

¹³ Proposed Rule § 1091.106(b)(2).

DBA believes that the authority of the Assistant Director to establish limits on a company's response on a case-by-case basis runs counter to the CFPB's stated purpose for the Proposed Rule.¹⁴ If the CFPB believes that such authority is necessary so that the Assistant Director can focus the supplemental oral response on arguments supporting the company's "respective legal and factual assertions," then this is a standard that can be uniformly established for all respondents in the Proposed Rule.¹⁵ The CFPB has dictated the required elements of a company's written response in the Proposed Rule, and so DBA recommends that the CFPB similarly restrict the content of the supplemental oral response by rule rather than by the discretionary authority of the Assistant Director. If the CFPB retains the Assistant Director's authority to impose limitations on a company's supplemental oral response on a case-by-case basis, DBA recommends that any limitations on the supplemental oral response be developed by the Assistant Director in consultation with the company.

iv. Discovery and Witnesses During a Supplemental Oral Response

The CFPB asserts that the Proposed Rule establishes procedures of an "informal nature" for a company to provide the CFPB with a supplemental oral response.¹⁶ Thus, the CFPB will not permit discovery or the calling of witnesses.¹⁷ The CFPB, however, will allow companies to be represented by an attorney.¹⁸ This provision demonstrates that the CFPB recognizes that a risk determination could have a serious impact on small companies that may be unjustly found to be a risk to consumers. DBA recommends that the CFPB reconsider allowing companies to conduct discovery or call appropriate witnesses to appear at a supplemental oral response.

IV. CONCLUSION

DBA appreciates the opportunity to comment on the procedural rules that the CFPB proposes to use when establishing supervisory authority over nonbank covered persons based on a risk determination. Thank you for your consideration of our recommendations.

Respectfully Submitted,

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¹⁴ Proposed Rule, Explanatory Materials at Section VI, p. 31232.

¹⁵ Proposed Rule, Explanatory Materials at Section IV, p. 31230.

¹⁶ *Id.*

¹⁷ Proposed Rule § 1091.106(b)(3).

¹⁸ Proposed Rule § 1091.106(b)(4)(ii).