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June 19, 2012

via Electronic Filing

Consumer Financial Protection Bureau
Attention: PRA Office
1700 G Street, N.W.
Washington, D.C. 20552

Shagufta Ahmed
Office of Management and Budget
New Executive Office Building, Room 10235
Washington, D.C. 20503

***Re: Comments of ACA International:
Generic Clearance for Collection of Information on Compliance
Costs and Other Effects of Regulations, OMB Number 3170-XXXX***

Dear Ms. Ahmed:

ACA International ("ACA") files this comment in response to the Consumer Financial Protection Bureau's ("CFPB") request for comments regarding the information collection requirements relating to the Generic Clearance for Collection of Information on Compliance Costs and Other Effects of Regulations that has been submitted to the Office of Management and Budget for review and approval. 77 Fed. Reg. 28571 (May 15, 2012) [hereinafter "Request for Comment"]. ACA urges CFPB to consider the substantial cost of compliance with the myriad of existing rules and regulations that govern the debt collection industry, as well as the disproportionate impact that compliance costs will have on debt collection companies considered by the Small Business Administration to be small business

ACA International Comments
OMB Number 3170-XXXX
June 19, 2012
Page 2

concerns.

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 FTC under the Federal Trade Commission Act, 15 U.S.C. § 45 *et seq.*, the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692 *et seq.*; the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.* (as amended by the Fair and Accurate Credit Transactions Act); the Gramm-Leach-Bliley Act, 15 U.S.C. § 6801 *et seq.*; 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.¹ In so doing, Congress committed the primary regulation of the recovery of debts to the jurisdiction of the Federal Trade Commission. 15 U.S.C. § 1692i.

ACA members range in size from small businesses with a few employees to large, publicly held corporations. Together, ACA members employ in excess of 150,000 workers. These members include the very smallest of businesses that

¹ The FDCPA defines “communications” subject to statute broadly to include “the conveying of information regarding a debt directly or indirectly to any person through any medium.” 15 U.S.C. § 1692a(2).

ACA International Comments.
OMB Number 3170-XXXX
June 19, 2012
Page 3

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.

ACA serves members and represents the industry by developing timely information based on sound research and disseminating it through innovative education, training, and communications. The Association also promotes professional and ethical conduct in the global marketplace; acts as the members' voice in critical business, legislative, legal, regulatory and public arenas; and provides quality products and services to its members.

To help members stay current on regulatory and business developments, as well as industry practices, ACA provides more than 130 educational and training workshops to its members each year, with nearly 1,000 industry professionals completing ACA's collector credentialing program annually. As discussed in detail herein, ACA is the industry leader in providing compliance information and education to its members,² and education to consumers to encourage financial literacy. ACA provides consumers with valuable information about their rights under the FDCPA and the Fair Credit Reporting Act.

ACA members are a crucial component in safeguarding the health of the economy. Uncollected consumer debt threatens America's economy. According to the Federal Reserve Board and United States Census Bureau, total consumer bad debt costs every adult in the United States \$683 every year. This translates into a

² Through ACA's Campus ACA™, the Association provides a wide variety of training and educational opportunities such as professional development courses, certification opportunities under ACA's proprietary certification program entitled Professional Practices Management System™ (PPMS), local and in-house seminars, online seminars, teleseminars and Webcourses, as well as regularly scheduled conferences. See <http://www.acainternational.org/?cid=321>.

ACA International Comments
OMB Number 3170-XXXX
June 19, 2012
Page 4

cost for the average non-supervisory worker of nearly 54 hours (before taxes) in annual salary that pays for the bad debt of other consumers. By itself, outstanding credit card debt has doubled in the past decade and now approaches three quarters of one trillion dollars. Total consumer debt, including home mortgages, exceeds \$9 trillion.³ Moreover, the greatest increases in consumer debt are traced to consumers with the least amount of disposable income to repay their obligations.

As part of the process of attempting to recover outstanding payments, ACA members are an extension of every community's businesses. They represent the local family doctor, hospital, or nursing home. 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 have resulted in the recovery of billions of dollars annually that are returned to business 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.⁴ 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.⁵ At the very least, Americans are forced to pay higher prices to compensate for uncollected debt.

³ William Branigan, *U.S. Consumer Debt Grows at an Alarming Rate*, Wash. Post, Jan. 12, 2004.

⁴ 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>.

⁵ *Id.*

ACA International Comments
OMB Number 3170-XXXX
June 19, 2012
Page 5

In 2011, Ernst & Young conducted a study⁶ 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 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. Significantly, third-party debt collectors contributed \$85.2 million and 652,300 employee volunteer hours to charitable organizations.

2. Comments of ACA International.

Section 1022(b)(2)(A) of the Dodd-Frank Act requires the CFPB to consider the potential costs of compliance to covered persons, including debt collection companies. As part of its analysis, the CFPB will consider, among other things, the potential ongoing costs for covered persons, along with implementation costs that may be incurred to comply with regulations. Request for Comment at 28571.

ACA is concerned with the financial costs of compliance with CFPB rules and regulations governing the debt collection industry. First, in addition to complying with CFPB rules and regulations, debt collection companies are strictly regulated by a myriad of existing and overlapping federal legislation, much of which has been adopted or amended in the past several years. Few industries have as many laws requiring interpretation and legal guidance. Depending on the type of accounts subject to collection, debt collectors and/or the credit grantors also may have compliance obligations under the following illustrative list of Federal laws in addition to the FDCPA:

- The Higher Education Act of 1971, Pub. L. No. 89-329;

⁶

Id.

ACA International Comments
OMB Number 3170-XXXX
June 19, 2012
Page 6

- The Bank Holding Company Act, 12 U.S.C. §§ 1841 *et seq.*;
- The Consumer Leasing Act, 15 U.S.C. §§ 1667 *et seq.*;
- The Electronic Fund Transfer Act, 12 U.S.C. §§ 222 *et seq.*;
- The Equal Credit Opportunity Act, 15 U.S.C. §§ 1691 *et seq.*;
- The Fair Credit Billing Act, 15 U.S.C. §§ 1666 *et seq.*;
- The Fair Credit and Charge Card Disclosure Act, 15 U.S.C. §§ 1601 *et seq.*;
- The Fair Credit Reporting Act, 15 U.S.C. §§ 1681 *et seq.*;
- The Federal Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.*;
- The Graham-Leach-Bliley Act, 15 U.S.C. § 6801 *et seq.*;
- The Health Insurance Portability and Accountability Act, 42 U.S.C. § 1320d-2 *et seq.*, including the Security Rule, Privacy Rule, and Transaction and Code Set Standards promulgated by the Department of Health and Human Services;
- The Home Equity Loan Consumer Protection Act, 15 U.S.C. §§ 1637 *et seq.*;

ACA International Comments
OMB Number 3170-XXXX
June 19, 2012
Page 7

- The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act, P.L. 107-56, 115 Stat. 272;
- The Right to Financial Privacy Act, 12 U.S.C. §§ 3401 *et seq.*;
- Telemarketing Sales Rule, 16 C.F.R. §§ 310.1 *et seq.*;
- Truth in Lending Act, 15 U.S.C. §§ 1601 *et seq.*;
- Regulation E, 12 C.F.R. § 205.1 *et seq.*;
- Regulation J, 12 C.F.R. § 210.1 *et seq.*;
- Regulation M, 12 C.F.R. §§ 213 *et seq.*; and
- Regulation Z, 12 C.F.R. § 226 *et seq.*

Moreover, each state has enacted laws and regulations supplementing the FDCPA, including licensing and registration requirements.⁷ There is little uniformity in these laws. Indeed, ACA publishes a 1,000 page survey of state law requirements entitled *Guide to State Collection Laws & Practices* covering different topics for each state (state consumer collection requirements, garnishment exemptions, FDCPA compliance, licensing fees, statutes of limitation, “Mini-Miranda” and validation notice information, bond requirements, trust accounts, resident office requirements, exemptions for out-of-state entities, and penalties for

⁷ The FDCPA pre-empts state laws to the extent that those laws are inconsistent with any Federal provision, and then only to the extent of the inconsistency. A state law is not inconsistent if it gives consumers greater protection than the FDCPA.

ACA International Comments
OMB Number 3170-XXXX
June 19, 2012
Page 8

collecting without a license, among other topics).⁸

ACA strongly urges the CFPB to guard against creating massive compliance costs on debt collection companies by considering existing compliance costs for debt collection companies and the effect that implementing additional rules and regulations will have on their compliance with existing regulations.

Second, ACA also is concerned about the impact that compliance costs will have on small businesses in the debt collection industry. The current proposed rule for identifying larger participants in the debt collection industry calls for regulation of companies with over \$10 million in annual receipts. *See* 77 Fed. Reg. 9592 (Feb. 17, 2012). Companies deemed to be larger participants are subject to the full scope of the CFPB's supervisory authority. The proposal, if finalized, will create a regulatory scheme in which debt collection companies with \$10 million in annual receipts will be small business concerns under the Small Business Administration's (SBA) rules, while being subject to the CFPB's costly supervisory authority as larger participants. In recognition that current data may call for an increase in size standards for the debt collection industry, the SBA has issued a proposed rule that seeks to increase the small business size standards for the debt collection industry to \$14 million in annual receipts. *See* Small Business Size Standards: Administrative and Support, Waste Management and Remediation Services, 76 Fed. Reg. 63510 (Oct. 12, 2011).

Approximately 2,000 of the businesses that are ACA members maintain fewer than 10 employees; and more than 2,500 of the members employ fewer than 20 persons. The proposed formula could potentially bring these businesses under the CFPB's supervisory authority by conflating gross collections brought in by

⁸ ACA International, *Guide to State Collection Laws & Practices*, available at http://www.acainternational.org/default.aspx?cid=866&ref=http://products.acainternational.org/eSeries2005/source/Orders/index.cfm^task=3*category=COMPLIANCE*product_type=sales*sku=21170*findspec=Compliance*continue=1*search_type=find.


ACA International Comments
OMB Number 3170-XXXX
June 19, 2012
Page 9

these businesses and designating an arbitrary threshold of \$10 million meant to bring in a disproportionate number of debt collectors under its burdensome supervisory authority.

Although it is difficult to quantify precise total costs of compliance with the CFPB's evolving rules and regulations, ACA is concerned that the overregulation of the debt collection industry will create massive compliance costs, particularly for entities considered by the SBA to be small business concerns. ACA strongly urges the CFPB to take into consideration the burdens and costs of complying with existing regulations, as well as the impact that new regulations will likely have on small business concerns.

ACA appreciates the opportunity to comment on these highly sensitive and 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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