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August 1, 2011

via HAND DELIVERY

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Washington, D.C. 20503

***Re: Comments of ACA International, Consumer Protection Bureau
Consumer Response Intake Fields***

Dear Mr. Dahl and Ms. Ahmed:

ACA International ("ACA") files this comment in response to the Consumer Financial Protection Bureau's ("CFPB") request for comments regarding its development of online and paper intake methods for consumers to submit questions, complaints, and other information about consumer financial products and services. As set forth below, ACA is concerned that any forms, whether online or in paper format, clearly distinguish and define a "complaint" from a mere "inquiry." Moreover, ACA respectfully requests that the CFPB incorporate policies and procedures to make sure that any complaints and inquiries are identified and

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assessed in a manner that is consistent with the requirements of the Fair Debt Collection Practices 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 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 operate within a limited geographic range of a single town, city or state, and the

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).

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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.

All ACA members must abide by ACA's Code of Ethics and Code of Operations, which are based on five core values: Respect, Leadership, Service, Innovation, and Fiscal Responsibility. In addition, ACA members must comply with all Federal and state laws and regulations governing the credit and collection industry. In fact, ACA's commitment to compliance is reflected in the fact that consumers are encouraged to file complaints with ACA. If a complaint is filed regarding an ACA member, ACA investigates the complaint and, if it finds that 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>.

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member company has violated the Association's standards and ethics guidelines, it will impose sanctions ranging from a private letter of admonition to suspension to expulsion.

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 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 \$40 billion in 2007 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. 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 PricewaterhouseCoopers, *Value Of Third-Party Debt Collection To The U.S. Economy in 2007: Survey and Analysis*, available at <http://www.acainternational.org/files.aspx?p=/images/12546/pwc2007-final.pdf>.

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2. Comments on the Proposed Consumer Intake Fields.

ACA has two main concerns with respect to the development of online and paper intake methods for consumers to submit questions, complaints, and other information about consumer financial products and services.

First, ACA respectfully requests that the collection and reporting of consumer data to the CFPB and other government agencies be part of a continuing discussion concerning the improvements to the enforcement scheme under the various Federal consumer protection laws. Indeed, ACA has long advocated that a system of collecting inquiries and complaints from consumers about the debt collection industry is not a proper, reasonable or accurate reflection of the industry's level of compliance with consumer protection laws, such as the FDCPA.

The Federal Trade Commission (FTC), the agency charged under the FDCPA with oversight of the debt collection industry, submits to Congress an annual report summarizing the administrative and enforcement actions it has taken under the FDCPA during the preceding year. In 2010, the FTC recognized that "third-party collectors contact millions of consumers each year" and "[t]he number of consumer complaints the FTC receives about these collectors is therefore only a small percentage of the overall number of consumers contacted."⁵ In fact, ACA member companies alone report billions of contacts (written and oral) annually. When aggregated with creditor-initiated communications, it is evident that the number of complaints reported, some of which do not involve violations of law in the first place,⁶ represent a small, fractional percentage of overall communications that do not result in complaints.

⁵ *Federal Trade Commission Annual Report 2010: Fair Debt Collection Practices Act*, at 4, available at <http://www.ftc.gov/os/2010/04/P104802fdcpa2010annrpt.pdf>.

⁶ *Id.* at 2 ("Even if accurately described, some conduct about which consumers complain does not violate the FDCPA.")

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The FTC's clarification also is consistent with other sources that rank consumer complaints against debt collectors much lower than other industries. According to the Better Business Bureau ("BBB"), 14,322 complaints concerning collection agencies were received in 2006. The resolution for the 14,322 complaints was 85%. This is notably higher than the average BBB resolution rate of 72.5% (across all industries). In 2006, the BBB received 280,503 inquiries about collection agencies, which ranked the industry 32 out of the 3,600 industries that received inquiries.

Consistent with these findings, ACA strongly encourages the CFPB to make sure that the any intake forms, whether online or in paper format, provide a field that clearly distinguishes and defines a "complaint" from a mere "inquiry." Moreover, it is important that the CFPB provide adequate procedural and training measures to ensure that any data gathered from such forms and reported to government agencies and the public (a) clearly distinguish 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; and (b) clarify that the number of consumer complaints against debt collectors is but a small percentage of the total number of annual consumer contacts by collectors each year.

Second, it is unclear as to how the CFPB is seeking to resolve consumer complaints, *e.g.*, as an intermediary between the consumer and collector, or whether the consumer and collector are expected to resolve the complaint between themselves. As such, ACA is concerned that any intake forms, whether online or in paper format, do not conflict of the FDCPA prohibition against disclosing the existence of a debt to third parties.⁷ In 1977, Congress passed the FDCPA, which established specific standards of conduct for the debt collection industry. One of the most important sections of the FDCPA is the prohibition of disclosing a consumer's debt to a third party.⁸

⁷ 15 U.S.C. § 1692 *et seq.*

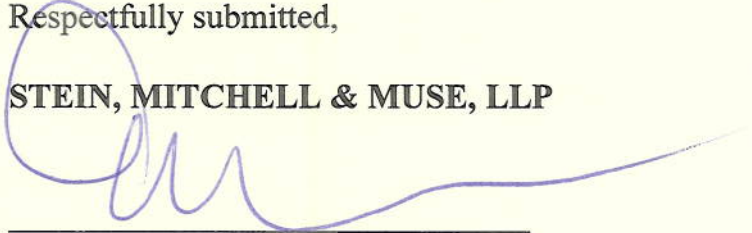
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Therefore, any intake forms, whether online or in paper format, should make clear that (a) the consumer consents to the debt collector communicating with the CFPB to resolve any such complaint and that (b) the consumer waives any previous cease communication request so that the debt collector is not in violation of the FDCPA when attempting to resolve the complaint. Moreover, if a healthcare debt is involved, any intake form should make clear that the consumer authorizes the debt collector to release information to the CFPB regarding the debt to comply with the Health Insurance Portability and Accountability Act of 1996.

ACA appreciates the opportunity to comment on the CFPB's proposed Consumer Response Intake Fields. If you have any questions, please contact Andrew M. Beato at (202) 737-7777.

Respectfully submitted,

STEIN, MITCHELL & MUSE, LLP

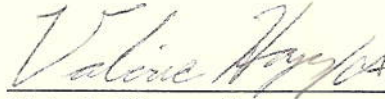


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⁸ 15 U.S.C. § 1692c(b).

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A handwritten signature in cursive script, appearing to read "Valerie Hayes", is written over a horizontal line.

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Dated: August 1, 2011