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VIA ELECTRONIC DELIVERY TO REGULATIONS.GOV

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

**Re: *Comments of ACA International on Request for Information Regarding
Bureau Data Collections
Docket Number CFPB-2018-0031***

Dear Sir/Madam:

ACA International (“ACA”), the Association of Credit and Collection Professionals, submits these comments in response to the Bureau of Consumer Financial Protection’s (“Bureau”) “Request for Information (“RFI”) Regarding Bureau Data Collections,” 83 Fed. Reg. 49,072 (September 28, 2018). ACA appreciates the opportunity to provide input in response to the Bureau’s RFI.

I. BACKGROUND ON ACA INTERNATIONAL

ACA International is the leading trade association for the accounts receivable management industry. Founded in 1939, and with offices in Washington, D.C. and Minneapolis, Minnesota, ACA represents approximately 3,000 members, including credit grantors, third-party collection agencies, asset buyers, attorneys, and vendor affiliates in an industry that employs more than 230,000 employees worldwide. Given its longstanding history and broad membership, ACA is uniquely positioned to assist the Bureau with information gathering related to debt collection, as well as to collaborate with the Bureau on how its proposed policies and regulations will impact the credit and collection industry.

ACA members include the smallest of businesses that operate within a limited geographic range of a single state, and the largest of publicly held, multinational corporations that operate in every state. The majority of ACA-member debt collection companies, however, are small businesses. According to a recent survey, 44 percent of ACA member organizations (831 companies) have fewer than nine employees. Additionally, 85 percent of members (1,624 companies) have 49 or fewer employees and 93 percent of members (1,784) have 99 or fewer employees.

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Without an effective collection process, the economic viability of businesses and, by extension, the American economy in general, is threatened. Recovering rightfully-owed consumer debt enables organizations to survive, helps prevent job losses, keeps credit, goods, and services available, and reduces the need for tax increases to cover governmental budget shortfalls. Furthermore, without the information that ACA members provide to consumers, they cannot make informed decisions that help preserve their ability to access credit, medical care, and a host of other goods and services. ACA members play a key role in helping consumers fulfill their financial goals and responsibilities, while facilitating broad access to the credit market.¹ The ability to collect on unpaid debt is an important part of maintaining the health of the American economy, and the work of the debt collection industry has proven to keep the price of credit more affordable for consumers.²

Importantly, ACA members are committed to fair, reasonable, and respectful practices and take their obligations in collecting debt very seriously. ACA members play a key role in helping consumers fulfill their financial goals and responsibilities while facilitating broad access to the credit market.

II. COMMENTS OF ACA INTERNATIONAL

In its RFI, the Bureau seeks feedback and input from interested parties to assist the Bureau in assessing the overall efficiency and effectiveness of its Data Governance Program and Data Collections in support of the Bureau's work.

A. Overarching Points

ACA recognizes and appreciates the Bureau's need for relevant and accurate data in order to further its statutory objectives. However, since the Bureau's inception, ACA has had continual concerns with the Bureau's data collection efforts. Despite statements that the Bureau strives for transparency, it has not adhered to that objective when data is requested through the Freedom of Information Act (FOIA) process. A lack of transparency is also evident when the Bureau re-uses and shares collected data from one division with another and in doing so may compromise limitations and privileges of that data. Finally, although the Bureau claims to promote collaboration among all stakeholders, it has failed to share its knowledge and information within its possession, thus impeding the collaborative process.

¹ In 2016, third-party collection agencies recovered approximately \$78.5 billion in total debt and returned \$67.6 billion to creditors. This return to creditors represents an average savings of \$579 per household, as businesses were not compelled to compensate for lost capital through increased prices.

² Zywicki, Todd, "The Law and Economics of Consumer Debt Collection and Its Regulation," available at <https://www.mercatus.org/system/files/Zywicki-Debt-Collection.pdf> (Sep. 2015). "In a competitive market, losses from uncollected debts are passed on to other consumers in the form of higher prices and restricted access to credit; thus, excessive forbearance from collecting debts is economically inefficient. Again, as noted, collection activity has an effect on both the supply and the demand of consumer credit. Although lax collection efforts will increase the demand for credit by consumers, the higher losses associated with lax collection efforts will increase the costs of lending and thus raise the price and reduce the supply of lending to all consumers, especially higher-risk borrowers."

a. Lack of Transparency

Since its inception, the Bureau has promoted itself as a 21st Century agency and stated that “transparency is the core of [its] agenda.”³ However, when it comes to data collection, the Bureau has not completely lived up to that mission. For example, on July 7, 2016, ACA requested information under FOIA for the data associated with the Bureau’s *Debt Collection Survey from the Consumer Credit Panel* (Debt Collection Survey). The Bureau denied ACA’s request, stating that the information would be withheld due to the deliberative process exemption and to protect privacy.⁴ ACA appealed the Bureau’s denial, which was granted in part based on the fact that “the record [did] not indicate whether the [Bureau’s] FOIA Office conducted an appropriate segregability analysis.” ACA’s request was remanded for a determination on “whether any reasonably segregable non-exempt records can be produced.” Thereafter, the Bureau produced some but not all of the Debt Collection Survey data, never providing promised information on more than 2,000 spreadsheet entries from which Personal Identifiable Information had been redacted. ACA has made repeated requests to the Bureau for the remaining data associated with the Debt Collection Survey, but to date the Bureau has neither appropriately addressed the matter nor produced the missing data. The Bureau’s lack of response has resulted in ACA filing another FOIA request. This pattern of recalcitrance on responding to FOIA requests is both needlessly burdensome to parties properly seeking information and completely at odds with the Bureau’s position on transparency.

b. Re-Use of Data

ACA has significant concerns regarding the re-use of data, especially information that is acquired during the supervisory and enforcement process. One such concern is the treatment of privileged information. Rules promulgated under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), in 12 C.F.R. Part 1070 Subpart D,⁵ provide for protective treatment of confidential and privileged information, namely that its production during supervisory examinations will not otherwise waive privilege. However, the Bureau continues to share this same privileged information with other agencies that are not covered by statutory privilege waiver protections established by 12 U.S.C. §§ 1828(x) and 1821(t). Moreover, confidential information subject to attorney-client privilege gleaned from supervisory examinations should not be shared with other Bureau divisions, especially those involved in rulemaking. In the debt collections industry, legal advice is a constant, since what constitutes “best practices” is determined by evolving case law and literally changes from day to day. Third party debt collectors often confer with their counsel to determine best practices, given the uncertainties in the law. The sharing of this information with agencies and divisions circumvents regular administrative process and could have a chilling effect.

c. Deficiencies in the Collaborative Process.

Industry has sought and the Bureau has encouraged a collaborative debt collection rulemaking process. However, the Bureau’s own Data Report shows that significant data has been collected

³ <https://www.consumerfinance.gov/open-government/our-open-government-activities/>.

⁴ See FOIA Exemptions 5 (Deliberative Process Privilege) and FOIA Exemption 6 (Unwarranted Invasion of Privacy).

⁵ *Confidential Treatment of Privileged Information*, CFPB-2012-0010, 77 FR 39617 (July 5, 2012).

to support and develop the Bureau’s proposals for debt collection rules, yet industry has not seen this data, nor were regulated parties even aware that such data was collected. The only data the Bureau has shared with industry are the partial results from the Debt Collection Survey. When it comes to data sharing, the Bureau has been one-sided, requesting data from industry while refusing to show its hand with the data it has already collected. The Bureau needs to do a better job in working with industry to find the correct results through data and collaboration, rather than lending credence to views that it develops to fit its pre-determined view of the debt collections market.

B. Specific Points on Which the Bureau Seeks Feedback

a. Aspects of the Bureau’s Data Governance Program, including: Best practices for data governance that the Bureau should consider adopting; and additional ways that the Bureau can improve its Data Governance Program, including improvements to its processes for collecting data, managing data, and releasing data.

Response: ACA has concerns regarding the release and re-use of data pursuant to the Bureau’s Data Governance Program. Appendix A: *Data governance policies and charters and data-sharing procedures* appended to this current RFI outlines the responsibilities and authorities of the Bureau’s Chief Information Officer (CIO) and the Bureau’s Chief Data Officer (CDO) in conjunction with the Data Governance Board when approving the disclosure of *discretionary* data to the public or other entities, as well as the release of data within the Bureau. (Emphasis added.) The Data Governance Program highlights various guiding principles including a “risk-benefit analysis” whereby the Bureau must weigh the benefits of disclosure against the risk to consumer or other entities. ACA questions whether this analysis is conducted when the Bureau releases any data, and in particular data from the consumer complaint database. ACA raised these concerns in its responses to prior RFI regarding the consumer complaint database this past summer.⁶ To the extent that there is information that is confidential or privileged, the outlined principles make no mention of how protection of that privilege will be maintained or whether the person who produced the data will be given notice pursuant to 12 C.F.R §1070.46(b). The Bureau should consider a better due process procedure (notice and opportunity to be heard) when confidential or privileged information is released or re-used.

b. Changes the Bureau should, or should not, make to the sources, uses, and scope of its Data Collections.

Response: The Bureau must be more transparent in its efforts to reveal the scope of the data it possesses and how it is being used. Further, ACA is confused by the scope of the term “Data Collections” as defined in this RFI. For example, under the section “**SUPPLEMENTAL INFORMATION,**” the Bureau notes, “[w]e use the phrase ‘Data Collections’ to refer to the Bureau data intakes outside of the Division of Supervision, Enforcement, and Fair Lending or the Office of Consumer Response.” However, in the **Request for Information Overview,** the Bureau “invite[s] comments on the Bureau’s re-use of data collected through consumer response

⁶ ACA International Comments on RFI Regarding the Bureau's Consumer Complaint and Consumer Inquiry Handling Processes (CFPB-2018-0014-0001); ACA International Comments on RFI Regarding Bureau Public Reporting Practices of Consumer Complaint Information (CFPB-2018-0006-0217).

and supervisory and enforcement activities.” This explanation lacks clarity. Although information gleaned from supervisory and enforcement activities may not fall under the category of “Data Collections,” it certainly is information that the Bureau relies heavily upon in order to develop policy and to assist in rulemaking. Under the circumstances, the Bureau must be more transparent when using and re-using data obtained through these activities, as this has a significant and direct impact upon covered entities without their knowledge.

- c. How and when data collected primarily for one Bureau function should, or should not be used for other Bureau functions consistent with applicable law.*

Topics may include: The use of confidential supervisory information or confidential investigation information to inform multiple functions of the Bureau; The use of data obtained for purposes of research, market monitoring, or for assessing the effectiveness of significant rules to inform other functions of the Bureau; Reduction of burden on potential furnishers of data by use of the same data by other Bureau functions; and Other issues that the Bureau should consider when using a Data Collection for a function other than the primary function for which it was collected.

Response: As noted above, ACA has concerns with the Bureau’s use and re-use of confidential supervisory information for other Bureau functions, including the sharing of information with other Bureau divisions. The context of the information gleaned from a supervisory examination is not representative of an industry and may be particular to the entity being examined. That entity may have constraints due to geography, market presence and product lines that may result in that data being unique. Sharing that data with another division like Research, Market and Regulations (RMR) may provide little utility since that review will be based on a broader market perspective. Additionally, anecdotal information from various groups meeting with the Bureau, shared in industry or advocate facing meetings, should be considered but also must undergo data driven analysis if used in rulemaking or other policymaking.

- d. Changes the Bureau could make to existing Data Collections, or potential new Data Collections the Bureau could collect, consistent with its statutory authority, to more effectively meet the statutory purposes and objectives as set forth in section 1021 of the Dodd-Frank Act:*

- 1. The statutory purposes set forth in section 1021(a) are: All consumers have access to markets for consumer financial products and services; and Markets for consumer financial products and services are fair, transparent, and competitive.*
- 2. The statutory objectives set forth in section 1021(b) are: Consumers are provided with timely and understandable information to make responsible decisions about financial transactions; Consumers are protected from unfair, deceptive, or abusive acts and practices and from discrimination; Outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens; Federal consumer financial law is enforced consistently, without regard to the status of a person as a depository*

institution, in order to promote fair competition; and Markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.

Response: ACA fully supports the Bureau's desire and intent to meet its statutory purpose when it pursues data collection. If the Bureau wants to ensure that markets, products and services operate transparently, then the Bureau should be as forthcoming as possible when requests for information under FOIA are made. The Bureau's current FOIA practices appear to operate in the opposite way, forcing those requesting information often to have to file appeals in order to obtain information that should be provided in the first place.

In order to achieve the statutory objectives set forth above, the Bureau's representations of a collaborative process must be real. ACA experiences reveal that the Bureau's efforts to be one-sided, requesting data from industry while refusing to show its hand with the data it has already collected. Many in the debt collections industry were not aware that the Bureau was in possession of data that related to call frequency until the release of this current RFI and associated appendices. While the Bureau is entitled to collect data in support of its proposals which will be tested when a proposed rule is issued, transparency would go further to achieve a well-defined and workable rules that benefit consumers and the industry alike. Going forward, the Bureau needs to do a better job in working with industry to find the correct results through data, rather than feeding concerns that it develops data to fit its pre-determined view of the debt collections market.

ACA appreciates the opportunity to provide comments to the Bureau in response to its RFI Regarding the Bureau's Regarding Bureau Data Collections Processes.

Respectfully submitted,



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