



December 28, 2020

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Chief Counsel's Office
Attention: Comment Processing
Office of the Comptroller of the Currency
400 7th Street, SW.
Suite 3E-218
Washington, D.C. 20219

***Re: ACA International, the Association of Credit & Collection Professionals,
("ACA") Comment to Docket ID OCC-2020-0042, RIN 1557-AF05, Fair Access to
Financial Services***

Dear Comment Processing:

The Association of Credit and Collection Professionals ("ACA International" or "ACA") appreciates the opportunity to provide our comments in response to the Office of the Comptroller of the Currency's (OCC) proposed regulation to ensure that national banks and federal savings associations offer and provide fair access to financial services. ACA strongly supports the OCC's efforts to provide a regulation to clarify (1) the obligation of large banks to provide fair access to financial services, consistent with the Dodd-Frank Act's mandate and (2) the parameters of this requirement. We also strongly agree that this is pertinent because previous articulations of the fair access principle without the force and effect of law have been inadequate in deterring rogue examiners, as well as banks with political and agenda-driven ideologies. ACA members can attest to this fact as they continue to see unfair banking terminations arise across the country and impact their businesses.

I. ABOUT ACA INTERNATIONAL

ACA International is the leading trade association for credit and collection professionals. Founded in 1939, and with offices in Washington, D.C., and Minneapolis, Minnesota, ACA represents approximately 2,500 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.

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

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state. The majority of ACA member debt collection companies, however, are small businesses. According to a survey of the industry, approximately 44 percent of ACA member organizations have fewer than nine employees. Nearly 85 percent of members have 49 or fewer employees and 93 percent of members have 99 or fewer employees.

As part of the process of attempting to recover outstanding payments, ACA members are an extension of every community's businesses. ACA members work with these businesses, large and small, to obtain payment for the goods and services already received by consumers. In years past, the combined efforts of ACA members have resulted in the annual recovery of billions of dollars—dollars that are returned to and reinvested by businesses and dollars that would otherwise constitute losses on the financial statements of those businesses. Without an effective collection process, the economic viability of these 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 government budget shortfalls.

An academic study about the impact of debt collection confirms the basic economic reality that losses from uncollected debts are paid for by the consumers who meet their credit obligations:

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) influences 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.¹

In short, consumer harm can result in several ways when unpaid debt is not addressed. ACA members work to help consumers understand their financial situation and what can be done to address it and improve it. ACA members are committed to fair, reasonable, and respectful practices. As legitimate credit and collection professionals, ACA members play a key role in helping consumers fulfill their financial goals and responsibilities while facilitating broad access to the credit market.

II. SPECIFIC COMMENTS ON FAIR ACCESS TO FINANCIAL SERVICES

A. Background about Operation Choke Point and OCC Activity According to the Proposal

Consistent with the Dodd Frank Wall Street Reform and Consumer Protection Act's mandate of fair access to financial services and since at least 2014, the OCC has repeatedly stated that while banks are not obligated to offer any particular financial service to their customers, they must make the services they do offer available to all customers except to the extent that risk factors

¹ Todd J. Zywicki, The Law and Economics of Consumer Debt Collection and Its Regulation, MERCATUS WORKING PAPER, MERCATUS CTR AT GEORGE MASON UNIV., at 47 (Sep. 2015), available at <https://www.mercatus.org/system/files/Zywicki-Debt-Collection.pdf>.

particular to an individual customer dictate otherwise. The OCC notes that, “higher-risk categories of customers call for stronger risk management and controls, not a strategy of total avoidance. Obviously, if the risk posed by a business or an individual is too great to be managed successfully, then you have to turn that customer away. But you should only make those decisions after appropriate due diligence.” This principle of individual, rather than category-based, customer risk evaluation has been reinforced in numerous OCC reports, the testimony of OCC officials, and other agency releases. On at least two occasions, the OCC has issued guidance to address reports of banks refusing to provide financial services to entire industries engaged in lawful business activities without regard to the risk factors of the individual customers in these industries.

Despite the OCC’s statements and guidance over the years about the importance of assessing and managing risk on an individual customer basis, some banks continue to employ category-based risk evaluations to deny customers access to financial services. The OCC notes, this happens even when an individual customer would qualify for the financial service if evaluated under an objective, quantifiable risk-based analysis. The OCC further notes, these banks are often reacting to pressure from advocates across the political spectrum whose policy objectives are served when banks deny access to financial services to certain categories of customers.

The OCC adds it is their understanding that some banks have taken these actions based on criteria unrelated to safe and sound banking practices, including (1) personal beliefs and opinions on matters of substantive policy that are more appropriately the purview of state and federal legislatures; (2) assessments ungrounded in quantitative, risk-based analysis; and (3) assessments premised on assumptions about future legal or political changes. It observes in some cases, banks appear to have denied persons access to financial services without even attempting to price the financial services to reflect the perceived risk. Considering the now-discredited Operation Choke Point, in which certain government agencies (but not the OCC) were revealed to have pressured banks to cut off access to financial services to disfavored (but not unlawful) sectors of the economy, the OCC believes these criteria are not, and cannot serve as a legitimate basis for refusing to grant a person or entity access to financial services. Bank actions based on these criteria are inconsistent with a bank’s legal responsibility to provide fair access to financial services.

To address these concerns, the OCC is proposing a regulation to clarify (1) the obligation of large banks to provide fair access to financial services, consistent with the Dodd Frank Act’s mandate, and (2) the parameters of this requirement. Unlike previous articulations of the fair access principle discussed above, this OCC action would have the force and effect of law and enable the agency to take supervisory or enforcement action when appropriate.

B. ACA’s Comments

ACA members are committed to robust compliance with state and federal consumer protection laws including the Fair Debt Collections Practices Act and fair treatment of consumers. The debt collection industry is highly regulated at the state level and at the federal level by the Consumer Financial Protection Bureau, the Federal Trade Commission, and the Federal Communications Commission among other regulators, and the work of the industry has proven beneficial in ensuring consumers can continue to access credit and services in the future.

Despite the fact that they are highly regulated, and their work helps ensure a functioning economy; ACA members have been unfairly targeted by Operation Choke Point and other similar efforts for the past several years, which have led to banking relationship terminations. This activity occurred as recently as this month when an ACA member reported an unfair and unexplainable banking termination. One of the largest banks in the country stated to the ACA member, “We will not be able to open the savings account for XXXXXX because any debt collection activity or entity is considered high risk for our bank.” It further added, “Upon a second review, we maintain the same decision based on the industry type.”

On numerous other occasions since the inception of Operation Choke Point, credit and collection professionals have had their banking relationships abruptly terminated, which has in certain instances threatened the existence of their businesses and their employees’ jobs, since in certain states a license to operate is reliant on having a banking relationship. There is often little notice and no specific explanation for why the banking relationship was terminated. While the number of ACA members being impacted by Operation Choke Point and similar activity has declined, the highly questionable practices of Operation Choke Point continue. ACA members have worked with Congress to provide dozens of examples of redacted termination letters that appear to be based on broad discrimination of the industry. ACA would be happy to share these with the OCC as well.

In sum, ACA strongly supports the OCC’s efforts to issue a regulation to clarify (1) the obligation of large banks to provide fair access to financial services, consistent with the Dodd–Frank Act’s mandate and (2) the parameters of this requirement. We also strongly agree this is pertinent because previous articulations of the fair access principle without the force and effect of law have been inadequate in deterring rogue examiners as well as banks with political and agenda-driven ideologies. ACA members continue to report unfair banking terminations across the country. Allowing individuals to pick winners and losers in the financial services marketplace, based on individual unresearched ideologies, is a very dangerous slippery slope, not just for ACA members but for all Americans. Accordingly, ACA applauds the OCC for taking additional actions to address this very serious problem.

III. CONCLUSION

ACA appreciates the opportunity to provide comments. If you have any questions concerning our letter, please contact me using the information below.

Sincerely,



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