NATIONAL ASSOCIATION OF CONSUMER ADVOCATES

April 17, 2012

VIA EMAIL

Ms. Monica Jackson
Office of the Executive Secretary
Bureau of Consumer Financial Protection
1700 G Street NW
Washington DC 20006

Re: Docket No. CFPB-2012-0005

Dear Ms. Jackson,

The National Association of Consumer Advocates (NACA), a national non-profit organization of consumer protection attorneys and other consumer advocates committed to promoting justice to consumers, respectfully submits the following comments on the Consumer Financial Protection Bureau’s (CFPB) proposed rule defining the “larger” debt collectors and consumer reporting agencies (CRAs) subject to supervision by the CFPB. These comments focus solely on the sections of the proposed rule referring to the debt collectors as larger participants in the market place.

NACA is encouraged to see that the federal government through the CFPB will finally have the necessary tools and resources to effectively oversee the debt collection and debt buying industry. The debt collection sector has a long history of unfair and abusive behavior against consumers and has been largely unregulated at the federal level. According to a Federal Trade Commission (FTC) 2011 report, the debt collection industry generates more consumer complaints than any other business. Even though the FTC has filed several lawsuits targeting very egregious debt collection actions, the FTC has lacked the necessary oversight authority and manpower to enact robust rulemaking.

Currently the CFPB has the authority to write new rules under the federal Fair Debt Collection Practices Act (FDCPA) and enforce the law to rein in the worst abuses of the debt
collection and debt buying industries. But effective compliance not only requires enforcement and regulation but also supervision of “larger” debt collectors. The flexibility of supervisory and examination authority enables the CFPB to obtain the information it needs about operational issues and emerging threats to write well-informed, effective, and timely rules and meaningful enforcement actions over debt collectors, as well as other providers of the consumer products and services it regulates.

As the CFPB defines the entities that will be subject to examination in this and future rulemakings, it should:

- **Define “larger” broadly** so that the CFPB has the flexibility to examine a range of entities that may pose different risks for consumers. The CFPB needs to examine not only the “largest” entities but also those that have a disproportionate impact in particular niche markets or on particular population (such as minority groups, military, students or seniors). Different entities may have different business models and pose different risks. The CFPB is not obligated to actually examine every “larger” participant and can tailor its resources to an evolving understanding of where risks emerge.

- **Prevent evasions** by including counting the revenues of affiliated companies and also firms that act as agents or are under contract to another firm. The CFPB should also enact an anti-evasion rule.

- **Examine all of an entity’s consumer financial products and services** even if it is a larger participant in just one market. Many products and services are interrelated, and the CFPB must get a clear picture of a firm’s entire operations in order to understand the risks to consumers. Firms that offer more than one product or service may pose different risks to consumers than mono-line firms.

**Debt Collectors as “Larger” Participants**

There are approximately 4,500 debt collection agencies in the United States. The CFPB’s proposed rule will define as larger to be the 175 debt collection firms whose current annual revenue from collecting debts related to consumer financial debts exceeds $10 million, totaling 4% of the nation’s debt collectors. The rule leaves over 4,300 firms out of the oversight of the CFPB even though some of the worst abuses may occur at firms that do not have high annual receipts or lack proper compliance systems. Based on the experience of NACA attorneys enforcing private rights of action against debt collectors using harassing and illegal practices, we recommend that the CFPB have the ability to audit and supervise a broad range of debt collection firms. This includes expanding both the criteria for defining larger participants in the market place and the threshold.

The criteria for defining larger participants and the threshold should be expanded by:
1. **Expanding the criteria for defining larger participants in the market for debt collection; make “aggregation of receipts” a separate criterion for determining who is a larger participant.** The Bureau proposes in § 1090.102(a) to use annual receipts as the criterion for defining larger participants in the market for consumer debt collection. In so doing, the Bureau also adapts the SBA’s definition of “annual receipts” in defining this criterion which also implements the aggregation requirement in section 1024(a)(3)(B) of the Act by providing that the annual receipts of a person shall be added to the annual receipts of each of its affiliated companies. NACA would like to emphasize that it considers this aggregation requirement very important and encourages the CFPB to make aggregation of receipts a separate, additional criterion for determining who is a larger participant. Aggregation of receipts is equally a meaningful measure of the level of participation of an entity in a market and the entity's impact on consumers. For example, if an entity uses an unaffiliated third-party debt collector, since this collector acts as a fiduciary for these funds, these funds should count towards determining who is a larger participant. If only annual receipts are used, the income of some third-party debt collectors, debt buyers and collection law firms, who act as an agent for or do business on behalf of a larger debt collection entity, will not count towards the annual receipts of a company even though they all earn income from recovering delinquent consumer debt. The primary distinction here is affiliation. Under the proposed rule, only the companies - affiliated with potential larger participants - receipts will be subject to the aggregation requirement but companies who use third-party, but unaffiliated collectors, to collect revenue on their behalf will not have to count this revenue towards the annual receipts for the purpose of being considered a larger participant. NACA encourages the CFPB to then include aggregate receipts as an additional criterion in order to level the playing feel between unaffiliated companies that contribute significantly to the income of debt collection companies.

2. Including any firm that has annual revenue from any source of $7 million or more as long as at least $3.5 million are related to the collection of debts related to consumer financial product or service.

3. Counting the receipts of, and potentially examining, not just affiliated companies but also companies that are under contract to a central firm. For example, a debt buyer should not escape examination by employing a series of third party collectors to act on their behalf, each of which is below the threshold.

4. Proposing a subsequent rulemaking, soliciting small business input, to consider a lower threshold that permits the CFPB to spot check smaller firms.
**Conclusion**

Thank you for considering these comments. If you have any questions regarding these comments, please contact Ellen Taverna at (202) 452-1989 ext 109 or at ellen@naca.net.

Sincerely,

Ellen Taverna  
NACA Legislative Associate

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