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Submitted electronically

February 28, 2014

Ms. Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Re: Advance Notice of Proposed Rulemaking Regarding Debt Collection
Practices [Docket No. CFPB-2013-0033 RIN 3170-AA41]

Dear Ms. Jackson:

The Independent Community Bankers of America (ICBA)¹ appreciates the opportunity to provide comments and information regarding the Advance Notice of Proposed Rulemaking (ANPR) published by the Consumer Financial Protection Bureau (CFPB) on debt collection practices. As with all areas of banking, community banks conduct business with their customers in a fair, considerate, and responsible manner. Because community bankers understand

¹ The Independent Community Bankers of America® (ICBA), the nation's voice for nearly 7,000 community banks of all sizes and charter types, is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education, and high-quality products and services.

ICBA members operate approximately 23,600 locations nationwide, employ almost 300,000 Americans, and hold more than \$1.2 trillion in assets, \$1 trillion in deposits, and \$750 billion in loans to consumers, small businesses, and the agricultural community. For more information, visit www.icba.org.

debt collection can be sensitive for their customers who may have difficulty making timely payments, collection practices are conducted with the goal of helping customers to the best of the bank's ability. The irresponsible and aggressive practices mentioned in the CFPB's ANPR are not the reality in the community banking world. ICBA urges the CFPB to remain cognizant of this fact as it moves forward with any new regulatory requirements on debt collection, and to not impose unnecessary or superfluous requirements on community banks.

Background

The CFPB is seeking comment, data, and information from the public about debt collection practices. The Fair Debt Collection Practices Act (FDCPA) was passed in 1977 to protect consumers from harmful debt collection practices of collectors. The CFPB is the first federal agency to possess the authority to issue substantive rules for debt collection under this statute. The CFPB may also address concerns related to debt collection using its authority under the Dodd-Frank Wall Street Reform and Consumer Protection Act to issue regulations concerning unfair, deceptive, and abusive acts or practices and to establish disclosures to assist consumers in understanding any costs, benefits, and risks associated with consumer financial products and services.

Among other things, the FDCPA was enacted to eliminate abusive debt collection practices by debt collectors and insure debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged. To achieve these purposes, among other things, the FDCPA: (1) prohibits debt collectors from engaging in abusive, deceptive, or unfair practices; (2) imposes restrictions on debt collectors' communications with consumers and on their communications with others; and (3) mandates a debt dispute process that includes certain protections for consumers and obligations for collectors.

The FDCPA, however, does not apply to all collectors of debts. The statute generally covers the collection activities of third-party collectors for debts in default at the time they are obtained. In addition, a creditor can be treated as a debt collector under the FDCPA with respect to debts that were in default when it obtained them, or when a creditor collects under names other than its own.

Despite the enactment and enforcement of the FDCPA, the CFPB states there have been significant consumer protection problems related to debt collection and the agency is receiving many consumer complaints about debt collection practices. The CFPB states that common complaints from consumers are that collectors harass them, demand amounts consumers do not owe, threaten dire consequences for non-payment, or fail to send required notices. The CFPB also states in addition to consumer complaints being filed with the government, consumers file thousands of private actions each year against debt collectors

that allegedly have violated the FDCPA.

The CFPB indicates it is issuing this ANPR to request information on a wide range of debt collection practices and issues, and to explore potential debt collection rulemaking proceedings and other actions it could take to improve the systematic performance of the debt collection market. The CFPB also states it is important to examine whether rules covering the conduct of creditors collecting in their own names on their own debts that arise out of consumer credit transactions are warranted. The CFPB reports that experience since passage of the FDCPA suggests that first-party collections could be a concern in their own right.

ICBA Position

Community banks have not participated in the aggressive and harmful debt collection practices that have motivated this ANPR. If community banks did engage in such practices, they would not be profitable since the community bank business model is dependent on sensitive and responsible customer service. ICBA is therefore opposed to any rulemaking that places restrictions or requirements on community banks that collect their own debt or sell debts to third-party debt collectors.

ICBA also urges the CFPB not to require creditors to satisfy the same requirements as third-party debt collectors. If the CFPB moves forward with regulatory requirements regarding debt collection, it should not focus requirements on first-party debt collectors or there should be a threshold established that excludes community banks as has been provided in the ability-to-repay/qualified mortgage rulemaking and mortgage servicing rulemaking.

As the CFPB notes in its ANPR, in 2011, a national trade association of collectors reported that the most frequent required debts on which collectors seek to recover from others are medical and other health-related debts (36 percent), credit card debts (20 percent), telecom debts (13 percent), and student loan debts (12 percent).² With the exception of credit card debt, most of these types of debt are not products or services provided by community banks. Furthermore, complaints received from the Federal Trade Commission (FTC) about first-party collectors represented only 4.3 percent of all complaints received in 2012, whereas complaints about third-party debt collectors represented 19.8% of all FTC complaints received.³ It is worth noting that complaints for both first-party debt collectors and third-party debt collectors were less in 2012 than in 2011, decreasing in absolute terms by 13.6 percent and as a percentage of all

² ACA International, *2011 Top Collection Markets Survey: For Period: Jan. 1, 2010-Dec. 31, 2010* at 9 (2011).

³ U.S. Bureau of Consumer Fin. Prot., *Fair Debt Collection Practices Act: CFPB Annual Report 2013* at 15 (2013), available at http://files.consumerfinance.gov/f/201313_cfpb_March_FDCPA_Report1.pdf.

complaints that consumers filed directly with the FTC.⁴ This indicates that agency attention to debt collection practices is helping and any new regulatory requirements may not be necessary. The CFPB should use this ANPR to carefully examine whether regulations are even needed regarding debt collection practices.

If the CFPB decides to proceed with writing regulations on debt collection practices, we urge the agency to carefully analyze these practices and observe which parties are actually responsible for the issues raised in this ANPR. Community banks are already facing an ever increasing list of regulatory requirements and burden as well as difficulty complying with new requirements, such as the lengthy list of new mortgage regulations, for practices they did not conduct.

Summary of ICBA Comments

ICBA's key comments expressed in this letter can be summarized as follows:

- The CFPB should consider the different business model of community banks before pursuing “one-size-fits-all” regulatory requirements that are unnecessary or superfluous.
- ICBA encourages the CFPB to conduct outreach to community banks to better understand their operations and technical issues before imposing any new regulatory requirements.
- The CFPB should concentrate its efforts and resources on the greater enforcement of irresponsible actors instead of writing more rules that will provide additional regulatory burden to financial institutions already following proper procedures and protocols.
- The CFPB should use its Office of Financial Literacy to educate consumers about debt management and their rights and responsibilities instead of imposing more disclosure requirements on creditors.
- ICBA opposes regulatory provisions for community banks that will require them to monitor third-party behavior after a debt is sold to a third-party.
- Community banks should not be subjected to additional notification requirements regarding the collection of debts. If the CFPB pursues additional notification requirements, ICBA supports an exemption from such requirements for community banks.
- ICBA does not support requirements to share documentation and

⁴ *Id.*

information about debts through a centralized repository.

- ICBA does not support requirements for first-party debt collectors to provide validation notices to consumers.
- ICBA believes mortgage loans should be exempt from any debt collection regulatory requirements, because the debt validation procedure is already required under the new mortgage servicing regulations.
- ICBA strongly encourages the CFPB to conduct extensive consumer testing on validation disclosures and whether lengthier disclosures are needed.
- ICBA does not support the inclusion of information, such as a social security number, on validation notices.
- The CFPB should allow flexibility in how validation notices are formatted and delivered to consumers.
- The CFPB should not impose requirements on how community banks manage customer disputes regarding debt collection.
- The CFPB should allow flexibility and not regulate community bank communications with their customers regarding debt collection.
- ICBA does not support rules that would impose prohibitions on the debt collection practices of first-party debt collectors.
- ICBA does not support additional disclosure requirements regarding time-barred debt.
- ICBA does not support additional recordkeeping or monitoring requirements for community banks.

The Community Bank Business Model

ICBA urges the CFPB to consider the business model of community banks before implementing any additional regulatory requirements on debt collection practices. Community banks play an important role in our nation's economy. Because most community banks are locally owned and operated, they have strong ties to their local communities. Community bankers also have a close relationship with their customers and, consequently, are very familiar with their customers' financial condition, history, ability to pay their debts and any unforeseen or extenuating circumstances. The unique community bank business

model affords bankers the flexibility to tailor debt collection practices depending on the borrower's circumstances and cooperation.

The community bank business model is different than that of the larger national financial institutions, in that a community bank's success is dependent on the financial success of their communities and customers. Community banks create symbiotic relationships with the communities they serve and adhere to the highest business practices and ethical standards because this is the nature of their business. Because community banks have a vested interest in the economic well-being of their customers and communities, they do not engage in abusive lending or intimidating debt collection practices. Community banks cannot afford to tarnish their reputation in the communities they serve by engaging in such business practices. Their business depends on knowing their customer base well and understanding how to best manage relationships with them.

ICBA understands the intent of the CFPB is to further control debt collection practices to prevent abuses from occurring in the future. Nevertheless, increasing regulatory requirements for community banks that do not engage in these practices is not the answer. When considering further action after this ANPR and the CFPB's collection of data and information, ICBA urges the CFPB to remember that community banks engage in responsible banking, lending and collection practices due to their vested interest in their communities and the consumers they serve. In addition, community banks take great time to educate and inform their customers about the consequences of their borrowing decisions.

The differences between the banking practices of community banks and the larger national financial institutions as well as third-party debt collectors should be considered in any CFPB rulemaking on debt collection, and there should not be a "one-size-fits-all" approach to any future agency rulemakings.

The CFPB Should Actively Engage Community Banks

ICBA encourages the CFPB to seek input about operational and other technical issues from community banks before taking any additional steps to create new policies or regulatory requirements on debt collection. Additional feedback can be sought through industry outreach meetings with community bankers throughout the country.

While ICBA acknowledges the guidance and input that can be obtained through the public comment and Small Business Regulatory Enforcement Fairness Act (SBREFA) process, we are concerned there is often not enough industry outreach conducted to community banks in the developmental rulemaking stage, when proposed regulations are being considered but have not been drafted.

This fact is significant because the CFPB only examines and receives consumer complaints about financial institutions with more than \$10 billion in assets. CFPB officials therefore do not have the opportunity to observe the day-to-day operations of community banks or assess any complaints about them despite the fact the agency writes rules for all financial institutions.

Information obtained through industry outreach meetings would be useful in understanding the impact any proposed rules will have on community banks throughout the country. ICBA would welcome the opportunity to organize a meeting in Washington with community bankers and CFPB staff, so that bankers can share their specific experiences with debt collection practices and their positive interactions with consumers in their communities, and educate staff on the potential operational and compliance costs any proposed regulatory changes could have on their banks.

The CFPB Should Focus on Enforcement

The CFPB has asked for comment on whether rulemaking would be an effective way to address and control any problems with debt collection practices. While rulemaking is often an effective means of insuring consistent and responsible practices are taking place, ICBA believes that with regard to debt collection practices, the CFPB should concentrate its efforts and resources on greater enforcement against irresponsible actors instead of writing more rules that will impose additional regulatory burden on financial institutions that are already following proper procedures and protocols.

The CFPB has acknowledged in this ANPR that “there are avenues other than rulemaking through which to change or clarify the standards applicable to the collections process.” The statutory standards governing how collectors must act in seeking to recover on debts have remained largely unchanged since the FDCPA was enacted in 1977. Examples of improper debt collection practices are mentioned in this ANPR, and these practices are already in violation of the FDCPA. The CFPB should channel its resources toward enforcement of the existing requirements.

While ICBA supports enforcement actions to address the problems with debt collection practices over blanket regulation, we also support such enforcement over the publication of agency “guidance” or “best practices,” because guidance and best practices are often interpreted by bank examiners as requirements during the examination process. Thus, we do not believe that agency guidance or best practices would necessarily be a better approach over enforcement.

Furthermore, the CFPB has already taken action to address problems with debt collection, and should examine the results of their prior actions before imposing

regulatory requirements. For example, as mentioned in this ANPR, the CFPB has become the first federal agency to routinely supervise debt collectors. In addition to its supervisory activities involving certain creditors collecting on their own debts, in October 2012, the CFPB issued its Larger Participant Rule, establishing supervisory authority over approximately 175 debt collectors accounting for over 60 percent of the industry's annual receipts. In addition, on July 10, 2013, the CFPB held a field hearing in Portland, Maine, during which it announced guidance in the form of two supervisory bulletins, one that addresses unfair, deceptive, and abusive acts and practices in debt collection activities generally and one that addresses representations regarding credit reports and credit scores during the debt collection process.² The CFPB should not take any regulatory action regarding debt collection practices until the effects of this additional supervisory authority and guidance requirements can be measured.

The CFPB Should Focus on Consumer Education

The CFPB is a unique agency in that it is required by statute to have an Office of Financial Literacy that develops and implements strategies to improve the financial literacy of consumers and provide opportunities to access financial counseling and resources. Because of the CFPB's strong consumer education role, ICBA believes an ideal way to address the management of consumer debt and educate consumers about their rights and responsibilities would be through education campaigns and CFPB interactive internet resources. These methods of education and communication would be more effective than requiring creditors to provide more disclosures that are difficult to absorb and understand given the amount of credit disclosures consumers are already receiving.

Information Transferred Between Debt Owners and Debt Buyers or Third-Party Collectors (Questions 1-12)

The CFPB is seeking to learn more about transfers of information related to debts when debts are sold or placed for collection with third parties. In particular, the CFPB seeks information to assist in the development of proposed rules for creditors, debt buyers, and third-party collectors to create a comprehensive debt information system.

ICBA Comments:

Community banks are commonly first-party debt collectors that use their own staff to recover on defaulted debt in their own names, and have their own policies and procedures for recovering on defaulted debt. Many community banks do not sell their debt or place debt with a third-party for collection. Some community banks will use well known local law firms and third parties to supplement their debt collection efforts, but collection practices are handled responsibly and

consistent with how all community bank business is conducted.

ICBA is opposed to any regulatory requirements that will force community banks to monitor third-party behavior after a debt is sold to a third-party. Such requirements will be overly burdensome, expensive, and unnecessary for community banks and will make their operating procedures more expensive, which could trickle down as a cost to their customers.

Information Provided to Consumers Upon Sale or Placement of Debt (Questions 13–15)

The FDCPA does not currently require any notification to consumers at the time their debt is sold or placed with a third-party for collection. The CFPB raises the issue that one way to mitigate any confusion a consumer may have regarding where their debt originated would be to require notification to the consumer when a debt is sold or placed for collection.

ICBA Comments:

Many community banks do not sell their debt, but collect debt from consumers internally. Nevertheless, community banks, unlike larger national financial institutions, have a vested interest in the customers in their communities and have a customer service-driven business model where communication is a top priority. Because of the already active communication that community bankers have with their customers, we would not support additional notification requirements that could be burdensome and costly, yet superfluous and unnecessary, for community banks. If the CFPB pursues additional notification requirements, we support an exemption from such requirements for smaller entities such as community banks.

Furthermore, ICBA does not support any requirements to share documentation and information about debts through a centralized repository, which could also be costly and burdensome for community banks and provide little, if any, benefit to consumers or community banks given their active communications already. ICBA urges the CFPB to conduct consumer testing and carefully analyze whether the need exists for such notification and information requirements.

Validation Notices, Disputes, and Verifications (Questions 15-53)

The CFPB seeks information related to the validation notices provided to consumers and the obligations of debt collectors with respect to consumer disputes. In regard to validation notices, the FDCPA section 809(a) requires a debt collector, within five days of the first communication with a consumer in connection with the collection of any debt, to provide certain information in writing

to the consumer. As the CFPB acknowledges, these notices provide basic information about the alleged debt and the consumer's right to dispute it.

The CFPB states concerns have been raised by the FTC and consumer groups that information on validation notices is not sufficient to allow a consumer to recognize whether the debt being collected is their own, because the consumer may not recognize the name of the debt buyer or the amount of the debt owed may be different from the amount disclosed on the last periodic statement sent by the original creditor.

ICBA Comments:

ICBA does not believe these notices should be required for first-party debt collectors, as this is unnecessary if the original creditor is contacting the consumer. Community banks communicate frequently with their customers who are already aware of their debts and required payments.

In particular, ICBA believes that mortgage loans should be exempt from any debt collection regulatory requirements, because the debt validation procedure is already required under the new servicing regulations. The Truth in Lending Act (TILA) requires notices when ownership changes and the Real Estate Settlement Procedures Act requires notices when servicing has transferred. Thus, consumers are already provided with information about new parties holding and managing their debt. Financial institutions should not be faced with duplicative regulatory requirements.

In addition, ICBA strongly encourages the CFPB to conduct extensive consumer testing on these disclosures and whether lengthier disclosures are needed or would be useful to consumers before moving forward with any regulatory requirements. Consumer testing conducted across the country, both in large metropolitan areas and smaller towns, could provide data to indicate the usefulness of additional disclosures. Consumers are already inundated with lengthy disclosures that often go unread. ICBA does not support additional disclosures requirements that will not be useful for the consumer but will cause regulatory burden for community banks.

With regard to additional information being included in the validation notices, such as the consumer's social security number, ICBA does not believe that any portion of a social security number should be included on these notices as this could increase the risk of identity theft. Given today's data security concerns, the CFPB should not require any disclosures that would include sensitive consumer information in notices delivered in the mail or electronically.

The CFPB also asks about disclosing consumer rights provided in the FDCPA on

the validation notices. If such disclosure is required, it should be required on the notice and not in a separate document that the consumer will have to read. Again, the CFPB should pay special attention to avoiding information overload for consumers, which is becoming a problem given the myriad of new mortgage and credit card disclosure requirements over the last couple of years.

With regard to the format and delivery of validation notices, we believe the CFPB should allow flexibility in how these notices are formatted and delivered to consumers.

The CFPB also asks about consumer disputes, such as disputes regarding whether the consumer is the debtor or the amount of the debt. Again, community banks rarely have consumer disputes because the lines of communication are more open between the banks and their customers. If there is a dispute, community bankers resolve it with their customers internally. Many community bankers have commented to ICBA that debt disputes do not occur, aside from the rare occurrence when a consumer had to file bankruptcy. Such disputes are not typical in community bank customer relations.

Debt Collection Communications (Questions 54-91)

Many provisions of the FDCPA address debt collectors' communications with consumers and third parties. The CFPB seeks comment on how rulemaking with respect to communications in debt collections could help both consumers and the industry.

ICBA Comments:

In general, ICBA supports allowing flexibility in the communications regarding debt collection, instead of additional regulatory requirements. If any regulatory requirements or disclosures are imposed, we urge the CFPB to exempt community banks so they may continue to provide good customer service and not be stifled with additional requirements and regulatory burden. Customer communication is a key aspect of community bank operations and is not in need of additional oversight.

Unfair, Deceptive, and Abusive Acts and Practices (Questions 92-131)

As the CFPB notes, Congress enacted the FDCPA in response to the "abundant evidence of the use of abusive, deceptive, and unfair practices by many debt collectors."⁵ A primary purpose of the FDCPA's provisions is to prohibit the use of such practices. The CFPB is examining whether additional requirements should be imposed to address any current abusive, deceptive, or unfair debt collection practices.

⁵ 15 U.S.C. 1692(a).

ICBA Comments:

ICBA does not support rules that would provide restrictions on first-party debt collectors or prohibitions on debt collection practices of first-party debt collectors. Customer service is the key component of a community bank's business model, and therefore rules and requirements about unfair or abusive debt collection practices are not necessary. A community bank could not survive in today's market if it engaged in the abusive conduct referenced in this ANPR. Any additional regulatory requirements will only create more regulatory burden, more policies and procedures, and more paper for community banks. If prohibitions are imposed, they should not apply to community banks.

Furthermore, the CFPB should clarify that any additional requirements do not apply to communications by mortgage servicers already required by applicable law, such as telephone contact requirements and required delinquent notice disclosures that a consumer might find harassing.

Time-Barred Debts (Questions 132-142)

Time-barred debts are debts that are older than the applicable statute of limitations. There are no requirements set forth in the FDCPA regarding time-barred debts. The CFPB is interested in comments about the need for and the costs and benefits of proposed provisions concerning the collection of time-barred debt.

ICBA Comments:

ICBA does not support additional disclosure requirements regarding time-barred debt, because such requirements would be costly and burdensome for community banks and not provide a benefit to consumers who are already overwhelmed with disclosures. If the CFPB engages in consumer testing and other research regarding disclosures relating to time-barred debts, ICBA urges it to also evaluate whether the consumer would read and understand such a disclosure. Consumer testing on format and content do not measure the actual usefulness of the disclosure and its significance compared to the other credit and financial disclosures that consumers now receive and must absorb. The CFPB should test for usefulness of any considered disclosures and gauge whether a consumer would actually stop, read, and understand the disclosure when they receive it.

Recordkeeping, Monitoring, and Compliance Requirements (Questions 159-162)

The FDCPA does not currently contain specific record retention requirements,

though debt owners who also function as creditors or mortgage originators may be subject to record retention requirements under other statutes and regulations, such as TILA or the Equal Credit Opportunity Act (ECOA). The CFPB is interested in receiving information about the usefulness of record retention requirements regarding debt collection.

ICBA Comments:

ICBA does not support additional recordkeeping or monitoring requirements for community banks that are already faced with many regulatory requirements about recordkeeping under such regulations as Regulation Z (TILA) and Regulation B (ECOA). Any new policies should be consistent with the usual retention policies required for community banks under current regulations.

ICBA thanks you for the opportunity to comment on this ANPR. As you are aware, community banks are common-sense lenders that offer products and services on fair terms as a means of effectively serving their customers. In considering any proposed regulations, please keep in mind that community banks care about customer service above anything else, and have not engaged in the misleading practices referenced in this ANPR.

If you have questions or need additional information, please contact me at (202) 821-4469 or Elizabeth.Eurgubian@icba.org. ICBA would be happy to meet with CFPB staff to discuss these comments in further detail and provide additional insight from the community banker perspective.

Sincerely,

/s/

Elizabeth A. Eurgubian
Vice President & Regulatory Counsel