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By Electronic Submission

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

Re: Request for Information Regarding Bureau Civil Investigative Demands and Associated Processes (Docket No. CFPB-2018-0001)

Dear Ms. Jackson:

This letter is submitted on behalf of the Receivables Management Association International (“RMA”) in response to the referenced Request for Information Regarding Bureau Civil Investigative Demands and Associated Processes (the “CID Process”).

We appreciate the opportunity to provide comments and information on the CID Process to the Consumer Financial Protection Bureau (the “Bureau”). RMA membership is composed of originating creditors, purchasers of defaulted and performing loans, and businesses and professionals that provide services to these entities. Each of these classes of members has participated in the CID process. Our comments and information are therefore reflective of this range of entities.

I. INTRODUCTION

RMA is the nonprofit trade association that represents more than 500 companies that purchase or support the purchase of performing and non-performing receivables on the secondary market. Members of RMA include passive and active debt buying companies, third party collection agencies, collection law firms, and financial institutions.

RMA is a national leader in promoting strong and ethical business practices within the receivables management industry. RMA requires all member companies who are purchasing receivables on the secondary market to be certified through RMA’s Receivables Management Certification Program (“RMCP”) as a requisite for membership (publicly available at <https://rmassociation.org/certification/>).

The RMCP is a comprehensive and uniform source of industry standards that have been recognized by the collection industry's federal regulator, the Consumer Financial Protection Bureau, as "best practices."¹ In addition to requiring that certified companies comply with local, state, and federal laws and regulations concerning collection activity, the RMCP goes above and beyond the requirements of local, state, and federal laws and regulations by requiring its member companies to comply with additional requirements not addressed by existing laws and regulations. The debt buying companies certified by the Program hold approximately 80 percent of all purchased receivables in the country, by RMA's estimates.

RMCP-certified companies are subject to vigorous and recurring independent, third-party audits to demonstrate to RMA their compliance with the RMCP. This audit includes an onsite inspection of the certified companies to validate full integration of RMCP standards into the company's operations. Following a company's initial certification, review audits continue to be conducted every three years.

Program certification also requires RMA member companies to engage, at the minimum, a chief compliance officer, with a direct or indirect reporting line to the president, chief executive officer, board of directors, or general counsel of the company. The chief compliance officer must maintain individual certification through the Program by completing 24 credit hours of continuing education every two years.

Our comments and information reflect the experiences of large, publicly-traded companies as well as small businesses who have engaged in the CID Process with the Bureau over the past several years. These experiences indicate that changes in the Bureau's CID Process are sorely needed because the Bureau's CID process has caused significant disruption to RMA members and the consumers they serve.

Our comments are summarized as follows:

- The Bureau lacks transparency in its process for initiating investigations. This lack of transparency results in the issuance of CIDs that are frustratingly vague and overreaching, especially when compared to CIDs made by other federal and state authorities.
- Because Bureau CIDs do not adequately describe the alleged unlawful conduct, responding to CIDs imposes an extraordinary burden on respondents both in terms of disruption of their business operations and the hard costs they incur to retain third parties to assist in their response.
- The Bureau's lack of transparency creates the appearance of abuse in the CID process.
- The time limits imposed by the Bureau's CIDs are unreasonable, compounding business disruptions and costs.
- Small business entities are materially adversely impacted by the CID process and should not be subjected to the same response requirements as larger entities.

¹ Consumer Financial Protection Bureau, Small Business Review Panel for Debt Collector and Debt Buyer Rulemaking, Outline of Proposals Under Consideration, July 28, 2016, p. 38 (publicly available at http://files.consumerfinance.gov/f/documents/20160727_cfpb_Outline_of_proposals.pdf).

II. RESPONSES TO PARTICULAR QUESTIONS

- A. The Bureau's processes for initiating investigations, including 12 CFR 1080.4's delegation of authority to initiate investigations to the Assistant Director of the Office of Enforcement and the Deputy Assistant Directors of the Office of Enforcement; and, the Bureau's processes for the issuance of CIDs, including the non-delegable authority of the Director, Assistant Director of the Office of Enforcement, and the Deputy Assistant Directors of the Office of Enforcement to issue CIDs

The Bureau's process for issuance of CIDs lacks necessary oversight because it permits the issue of CIDs without approval from the Bureau's Director. We understand that the Bureau permits Deputy Assistant Directors ("DAD") to authorize the issuance of CIDs and the decision to do so is not reviewed by an Assistant Director or the Director prior to issuance.

It appears that the DADs who are authorizing CIDs are also involved in the investigations that are the subject of the CID, even to the extent of personally overseeing the investigation. A DAD may lack objectivity to consider properly the cost and burden placed upon the CID recipient as opposed to the potential benefit to the Bureau. This is because the DAD has a personal stake in the outcome of the investigation and when an investigation has not revealed a potential unlawful conduct, may (for these personal reasons) authorize the issue of a broadly scoped CID in the hope of uncovering such conduct. Such a CID may identify the unlawful activity as "unfair, deceptive or abusive act or practice," or simply "debt collection" or the "filing of collection lawsuits," without providing notice of any particular conduct.

- B. The nature and scope of requests included in Bureau CIDs, including whether topics, questions, or requests for written reports effectively achieve the Bureau's statutory and regulatory objectives, while minimizing burdens, consistent with applicable law, and the extent to which the meet and confer process helps achieve these objectives

The Bureau is required to notify CID recipients of "the *nature of the conduct* constituting the alleged violation that is under investigation and the provisions of law applicable to such violation."²

1. The Bureau's notification of purpose does not identify conduct alleged to be unlawful

Our members' experience is that CIDs do not specify the nature of the conduct which is the basis for an alleged violation, but instead reference amorphous, generalized conduct which itself is not in violation of law. For example, in one case the CID stated that its purpose is to "determine whether debt collectors, furnishers, or other persons in connection with collection of debt and furnishing of information have engaged or are engaging in unfair, deceptive, or abusive acts or

² 12 CFR 1080.5 (emphasis added) *see also* 12 U.S.C. § 5562(c)(2) (permitting the Bureau to issue a civil investigative demand for information and documents "relevant to a violation").

practices” In this instance, it would appear that the Bureau does not believe an alleged unlawful practice exists, but only to “determine whether . . . [a company has] engaged or [is] engaging” in an unlawful practice.” Another CID described the nature of the conduct under investigation as “unlawful acts relating to debt collection through court proceedings” In other words, the nature of the conduct of an entity engaged in collecting debt, was *collecting debt*. Since collecting debt is itself not an unlawful activity, the CIDs we reviewed fail to specify, as section 1080.5 requires, “the nature of the conduct” which is alleged to be unlawful.

Omitting the “nature of the conduct” as anything other than debt collection fails to provide our members with the knowledge necessary to provide a timely response correlated to the conduct alleged to be unlawful. It also suggests to our members that they have not engaged in any alleged unlawful conduct, but that the CID is made to uncover a violation. Worse, it suggests the CID process for issuance of a CID lacks transparency, supervision and is subject to abuse.

Most disconcerting is that the Bureau’s failure to specify the “nature of the conduct” also prevents the CID recipient from taking corrective action. One recipient of such a CID in the summer of 2016 has still not learned the specific conduct that prompted the CID issue in the first place and has been unable to take corrective action to cease the supposed unlawful practice. Processes that should allow CID recipients to learn the nature of the conduct that is the basis of the alleged violation, such as the “meet and confer,” have not been fruitful.

2. The Bureau’s failure to provide the nature of the allegedly unlawful conduct makes responding to its CIDs burdensome, lengthy, disruptive and disproportionately costly when compared to other federal and state regulator

We have observed that CIDs that do not clearly articulate the purpose of the investigation and the conduct that is alleged to be unlawful typically make overly broad requests for documents and information. We have also observed that completing responses to the Bureau’s CIDs require nearly a year and in some instances several years. Responses to CIDs issued by other regulators can take as little as a month. The reason for the disparity in response time is simple: our members possess robust compliance management systems that allow them to identify instances when particular conduct occurred and provide data and information relative to the conduct. These systems enable efficient and effective responses to specific requests. CIDs issued by the Bureau that identify the nature of the conduct as “debt collection” or “unfair, deceptive or abusive acts or practices” are nonspecific and *per se* unreasonable. Because of this broad (and impermissible) scope, we have observed repeatedly that it is the Bureau’s practice to seek all documents and information concerning debt collection activity, rather than target its CID to particular conduct. An example is where the CID requests each version of all “templates, models, or form Documents or letters that the Company has used in Debt Collection.” Our members observed that CIDs issued by the Federal Trade Commission and state regulators typically identify particular conduct alleged to be unlawful, which allows faster responses targeted to the specific conduct at issue.

Furthermore, the response costs can be onerous for both small businesses and large companies. One business reported that its cost to engage counsel and outside information technology (IT)

consultants consumed more than its entire annual net income, even before considering the lost time from its own employees. In this instance, the sole shareholder of this minority-owned small business reported having suffered severe anxiety and physical ailments caused solely by the costs incurred in responding to onerous, overly broad demands. The small business owner reported that, to this day, the Bureau has not identified the specific conduct alleged to be unlawful other than “debt collection,” despite repeated demands.

- C. The timeframes associated with each step of the Bureau’s CID process, including return dates, and the specific timeframes for meeting and conferring, and petitioning to modify or set aside a CID

The Bureau should extend the timeframes for both meet and confer and CID responses. The Bureau requires the meet and confer meeting to occur within 10 days of receipt of a CID. Our review indicates that the Bureau’s shorter time impairs their ability to properly assess the information and documents sought under the CID reducing the likelihood that the meet and confer can meaningfully resolve production, privilege and other concerns.

The FTC’s Bureau of Consumer Protection (“BCP”) requires respondents to meet and confer within 14 days after receipt of their CID. We believe the additional four days enhances the prospect for more productive meet and confers. RMA believes that the meet and confer period for small business should be increased to 28 days. The existing 10-day requirement imposes greater difficulties upon small businesses who, in the days following receipt of a CID, are engaging counsel for the first time. In addition, some very small businesses that have received CIDs do not possess in-house information technology (IT) employees and must rely on outside vendors whose schedules do not align with the 10-day period. In some cases, businesses are so small that they have been required to devote nearly all their resources to secure counsel and IT assistance.

With respect to responses to documents and information, we believe the Bureau should require responses within 30 days of the respondent’s receipt of the CID. This period comports with the response time for federal subpoenas under Fed. R. Civ. P. 34(b)(2) as well as the response time provided by the FTC’s BCP and many state rules of civil procedure and requirements imposed in responding to CIDs issued by state regulatory authorities.

However, in the case of small businesses, the Bureau should allow a 60-day period for production of CID responses. Small businesses report to us that they have been compelled to produce documents and information in less than 30 days from their receipt of the Bureau’s CID and have devoted nearly all their company’s resources to comply. In one case, the recipient of the CID was composed of one shareholder and approximately 30 employees. While the Bureau has extended the response time in several cases, it has not been accommodating in all cases.

D. The Bureau's requirements for responding to CIDs, including certification requirements, and the Bureau's CID document submission standards

Our review discloses several instances where the Bureau's requirements for delivery of electronically stored information were excessive and not reflective of current standards for production of electronically stored information.

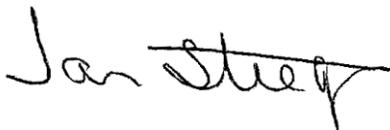
We note that the BCP accepts "standard Concordance or Relativity load files that can be created out of almost any eDiscovery application" from respondents to its CIDs.³ We urge the Bureau to adopt similar standards.

In the case of small businesses whose document production may be limited to only hundreds of files, we question the efficacy of requiring small businesses to bear the cost associated with engaging outside IT consultants to assemble and provide documents under arcane requirements such as specifying numerous fields for specialized electronic discovery tools. In more than one instance, the costs incurred by small businesses to satisfy such requirements amounted to tens of thousands of dollars. The cost is not surprising as a CID issued to a small, single-shareholder, minority-owned business employing approximately 30 people contained the same data requirements as a CID issued to a large, publicly-traded, multi-national company.

III. CONCLUSION

RMA appreciates the opportunity to comment on the RFI that is part of the Bureau's continuing efforts to ensure strong consumer protections in an environment conducive to the lawful collection of consumer debt. Please do not hesitate to contact me if RMA can provide further assistance. We look forward to working together to create a consumer credit market with fair and transparent collection practices.

Sincerely,



Jan Stieger,
Executive Director

³ See Comments of the Staff of the Federal Trade Commission's Bureau of Consumer Protection, March 26, 2018 publicly available at https://www.ftc.gov/system/files/documents/advocacy_documents/comments-ftc-bureau-consumer-protection-filed-bureau-consumer-financial-protection-regarding-cfpb/p124806_ftc_bcp_comment_to_cfpb_re_civil_investigative_demands.pdf