BEFORE THE FEDERAL TRADE COMMISSION
WASHINGTON, D.C.

RE: REQUEST FOR COMMENTS ON TELEMARKETING SALES RULE UNDER THE TELEMARKETING CONSUMER FRAUD AND ABUSE PREVENTION ACT

FTC NOTICE: TELEMARKETING RULEMAKING COMMENT:
FTC File No. R411001 16 CFR Part 310

COMMENTS OF THE DEBT BUYERS ASSOCIATION

Submitted By:

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I. A description of the Debt Buyers Association (DBA).

The DBA is a non-profit corporation comprised of a network of industry professionals dedicated to building a reliable and credible market for delinquent receivables. The Association was founded in March of 1997 and incorporated as a California non-profit corporation in March of 1999. The DBA has a membership of nearly 300 companies. These members include collection agencies, collection attorneys and investors, all of whom apply standard collection techniques in an effort to collect the purchased debt. These efforts are no different than those that are applied by contingency fee collection professionals.

Debt buyers may also resell all or portions of delinquent receivables portfolios to other debt buyers. The practices and characteristics of the resale market do not materially differ from the market for debt sold by the original creditor. The sellers of delinquent debt include American Express, Bank of America, Chase Manhattan Bank, First USA, Fleet Bank, GE Capital, First Select and many other major credit grantors. The delinquent debt buying marketplace has increasingly been recognized by credit grantors as a valuable resource that permits them to realize a return on what would otherwise be non-performing assets and as a result, the delinquent debt buying marketplace has enjoyed remarkable growth in recent

years.

It is estimated that there were five sellers of delinquent debt in 1992. By 1998, that number had grown to 225, and it is projected that there will be 300 major sellers of delinquent debt by 2005. The face value of all such debt sold in 1993 was $1.3 billion. By 1997, that number had grown to $15 billion and sales reached approximately $25 billion in 2000. The Debt Buyers Association estimates that the amount of debt to be sold by the original creditors in 2002 will exceed $60 Billion.

The stability of this market is important both to the major credit grantors who have been provided with an alternative to traditional collection methods and to those who buy delinquent receivables. Additionally, Wall Street has recognized the viability of this market by creating additional sources of capital through securities offerings. All of this activity indicates the vital and vibrant role played by the purchase and sale of delinquent debt portfolios in the consumer credit marketplace.

II. Comments on the Proposal Regulatory Changes to 15 U.S.C. 6101-6108 (Telemarketing Sales Rule – TSR).

A. We applaud the Commission's efforts in this area.

The DBA applauds the Commission's desire to further regulate telemarketing activity in order to further curtail abusive and deceptive practices.

B. §310.4(a)(3) should not be applicable to delinquent debt collection entities or purchasers of delinquent debt.

§310.4(a)(3) prohibits a telemarketer from requesting from an individual the payment of any fee or consideration in exchange for "repairing" a consumers credit score or report until such actual change in the report is consummated. The DBA does not believe that its members are sellers or telemarketers as defined under the TSR. However, to clear up any

ambiguity if any, we suggest that this section specifically exclude delinquent debt collection activities from the application of the law and regulation subsection.

This section of the law and regulation subsection is specifically aimed at the practice of telephone solicitation by credit repair organizations and mirrors sections of the Credit Repair Organizations Act (15 U.S.C. 1679) (CROA). No ambiguity should exist that would affect legitimate delinquent debt collection activities. In the course of normal business practices, a delinquent debt collector will offer to report to a credit reporting bureau that a delinquent debt has been paid or resolved if the individual pays the agreed upon amount of the delinquent debt first (assuming the delinquency was even reported to the credit reporting bureau). Certainly, the benefit to the consumer is obvious if his or her credit score is improved and the benefit to the creditor is also obvious, as a legitimate debt has been paid or otherwise resolved. However, if a delinquent debt collector actually needs to repair the credit report of the individual prior to accepting payment, all leverage in favor of the creditor evaporates, thereby foregoing the delinquent debt collector from ever informing the individual of the benefit of improving his or her credit report by paying his or her delinquent debt. Ironically, if a delinquent debt collector was required to report to a credit reporting bureau that an account was paid when in fact it was not, then such an action could be construed as a violation of the Fair Credit Reporting Act!

In the federal district court case ,*White v. Financial Credit Corp.* 2001 U.S. Lexis 21486, (2001, N.D. Ill East Div.), the Court held delinquent debt collection entities such as Financial Credit Corp. are not subject to the Credit Repair Organizations Act, 15 U.S.C. 16796. Accordingly, Section 310.4(a)(3) which mirrors similar prohibitions by credit repair entities but of course focuses on the telephone as the tool of choice to commit deceptive act should otherwise not apply to debt collection entities. To clear up any ambiguity in the law,

and to have the regulation comply with judicial interpretation of the CROA, the DBA suggests that the regulation specifically state that Section 310.4(a)(3) does not apply to delinquent debt collection activities.

C. Section 310.4(b)(1)(iii)(B) of the proposed regulations should specifically exclude delinquent debt collection telephone calls from the Prohibited Activities list.

This proposed section prohibits telephone calls to an individual who has placed his or her name on a "DO NOT CALL" registry maintained by the Commission. The DBA believes that delinquent debt collectors are not sellers or telemarketers as defined under the Act but nevertheless requests that the Commission resolve ambiguity, if any, and for other legitimate reasons which follows, by exempting delinquent debt telephone collection activity from the application of the aforesaid regulation subsection.

Laws already exist that protect an individual from harassing or abusive delinquent debt collection activity such as the Fair Debt Collection Practices Act (16 U.S.C. 1692 et. Seg.) and various State laws that regulate this area. These laws provide the mechanism for an individual to prevent contact by telephone or by written communication by a delinquent debt collector. However, allowing an individual to prevent such telephone calls from the initial point of delinquency can be detrimental to the individual and the creditor as well. Despite the obvious adversarial nature of the telephone call, many times a simple verbal reminder to pay is all that is necessary to resolve a delinquency. Sometimes a debtor may have forgotten to make a payment due to vacation, family emergency, etc. Forbidding such calls could result in a delay in informing the individual of a delinquency thereby resulting in damage to an individual's credit report.

The harm to a creditor is obvious as well as it immediately precludes the parties from communicating verbally in order to quickly resolve the situation amicably. The creditor

would be left with reporting the delinquency to the credit reporting bureau and/or filing a legal action since written communications in resolving such situations can be cumbersome and timely. Obviously, if the individual wishes to preclude further contact, the FDCPA and state laws require the delinquent debt collector to cease and desist from any further contact. In essence, the application of this regulation to delinquent debt collection will hinder the easy and timely resolution of legitimate financial matters between the creditor and debtor.

Finally, a number of states such as California already have created a similar DO NOT CALL list. Interestingly, the California statute and regulation specifically exclude delinquent debt collection telephone calls from the type of calls prohibited by placing one's name on the DO NOT CALL list (see 17592 (e)(2)). The Commission should also adopt California's position as well and resolve any ambiguity as to whether or not the subsection applies to delinquent debt collection entities.

Respectfully Submitted,

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