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FILED/ACCEPTED

SEP 29 2011

Federal Communications Commission
Office of the Secretary

September 28, 2011

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**VIA ELECTRONIC MAIL
AND STANDARD MAIL**

Karen Johnson, Esq.
Consumer & Governmental Affairs Bureau
Consumer Policy Division
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: ACA International

Dear Karen:

On behalf of ACA International (ACA), this letter is in further reference to ACA's May 21, 2010, comments filed with the Commission concerning the notice of proposed rulemaking to amend its regulations implementing the Telephone Consumer Protection Act (TCPA). Notice of Proposed Rulemaking, FCC 10-18, ¶ 16 (Jan. 22, 2010).

Enclosed please find selected pages from the President's Plan for Economic Growth and Deficit Reduction released on September 19, 2011. In particular, the White House proposes to:

amend the Communications Act of 1934 to facilitate collection of debts owed to or guaranteed by the Federal Government, by facilitating contact of delinquent debtors who are most readily reached on their cell phones. This provision is expected to provide substantial increases in collections, particularly as an increasing share of households no longer have landlines and rely instead on cell phones.

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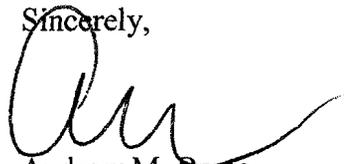
Karen Johnson, Esq.
September 28, 2011
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As you know, the Federal Government primarily hires private collection agencies to contact delinquent debtors to effectuate the recovery of debts owed to the United States. Many of these private collection agencies are members of ACA.

ACA's comments in the above-referenced rulemaking offer a way to achieve the stated goal of the White House without the complexity of opening the TCPA for legislative amendments. The Commission should use its interpretative authority to harmonize the TCPA regulations with telemarketing regulations promulgated by the Federal Trade Commission in 2008 amending the Telemarketing Sales Rule ("TSR"). With specific regard to debt collection calls, the FTC has concluded that the TSR exempts all calls to consumers to communicate information about debts because such calls are not "telemarketing" and do not induce the purchase of a good or service. Harmonization of the TCPA to the FTC's regulation requires that the TCPA be construed as not applying to debt collection calls. This result is consistent with the Do-Not-Call Implementation Act, the Commission's historic interpretation of the TCPA, and the plain language of the TCPA.

We welcome an opportunity to brief you on the importance of clarifying this issue so that meaningful recovery of these payment obligations is not jeopardized.

Sincerely,



Andrew M. Beato
Federal Regulatory Counsel
ACA International

Enclosure

cc: Adam Peterman (via electronic mail w/ enclosure)



Living Within Our Means and Investing in the Future

**The President's Plan for Economic
Growth and Deficit Reduction**

September 2011

OFFICE OF MANAGEMENT AND BUDGET

BUDGET.GOV

give States more flexibility to use Federal UI funds to get Americans who have lost their jobs back to work. The President's plan is targeted to address unemployment in an aggressive, multi-pronged way, drawing from ideas about what is working from around the country and from both parties. As we make UI more flexible and responsive to the needs of the unemployed and the Nation, we cannot tolerate waste in the program. However, UI is run as a Federal-State partnership; the error rates vary widely by State; and the high error rates in some States lead the UI program to have one of the highest improper payment rates of any Federal program. Reemployment and Eligibility Assessments (REAs)—in-person interviews with UI claimants to determine continued eligibility for benefits and whether additional reemployment assistance is needed—are an important part of the Administration's strong improper payments reduction strategy. The Administration proposes a multi-year discretionary allocation adjustment starting with \$10 million in 2012 along with \$60 million in base funding to allow States to conduct REAs. These assessments will strengthen UI program integrity by identifying ineligible claimants and reducing improper payments. They will also help reduce UI benefit costs by helping unemployed individuals return to work more quickly than they would were this targeted assistance not provided. This policy would reduce the deficit by \$256 million over 10 years.

Improve Collection of Pension Information from States and Localities. The Social Security Windfall Elimination Provision (WEP) and Government Pension Offset (GPO) provisions are adjustments to the Social Security formula which ensure that non-covered workers do not receive a higher proportional benefit than workers with similar earnings who worked their entire careers in covered employment. Currently, WEP and GPO adjustments are only applied when an individual worker attests that he or she has a pension in non-covered employment or the Social Security Administration (SSA) discovers that an individual is receiving a non-covered pension. While SSA is able to conduct data match-

es with the Office of Personnel Management to identify Federal workers who have been employed in non-covered employment, there is currently no similar data system to obtain information on State or local pensioners. This proposal provides up to \$50 million to State and local governments to develop such a system for more timely and accurate data collection and direct pension information reporting to SSA. This proposal would improve enforcement of the current law WEP and GPO provisions, resulting in improved payment accuracy for the Old-Age and Survivor, and Disability Insurance Programs, and is projected to save approximately \$3.1 billion over 10 years by preventing overpayments.

Step up collection of debts owed to the Federal Government. The Department of the Treasury manages the collection of delinquent tax and non-tax debt owed to various State and Federal agencies through the Treasury Offset Program (TOP), which collects delinquent non-tax debts (including child support) by offsetting outgoing Federal payments, and the Federal Payment Levy Program, which employs a continuous levy (deduction) on Federal payments to collect delinquent taxes from individual taxpayers. As of June 30, 2011, the Treasury's debtor database included approximately \$437 billion in delinquent debts, including \$308 billion in Federal debts (of which \$200 billion is tax debt), and \$129 billion in State debts (including \$111 billion in child support). In 2007, GAO estimated that approximately 60,000 Federal contractors were delinquent on over \$7 billion in Federal taxes, and in 2008, it found that over 27,000 Medicare providers owed more than \$2 billion in tax debt. This is money owed the Federal Government, and allowing those who cheat the system is unfair to us all. That is why the Administration is proposing the following reforms that will generate \$911 million in savings over 10 years:

- **Increase IRS levy authority to 100 percent for Federal contractor payments.** The tax code was amended by the American Jobs Creation Act of 2004, which sought to authorize a 100 per-

cent levy of Federal vendor payments. However, a technical error had the unintended effect of limiting the levy to 15 percent. This proposal, which was also included in the 2012 Budget, would correct the error and allow the Treasury to collect some of the sizable delinquent tax debt owed by Federal contractors. This will yield \$141 million over 10 years.

- **Increase IRS levy authority to 100 percent for Medicare payments.** The Congress recently authorized the levy (tax) and offset (non-tax) of Medicare payments to collect delinquent tax and non-tax debts through the Federal Payment Levy Program (FPLP); however, the Treasury currently levies only up to 15 percent of a payment to Medicare providers with delinquent tax debt. This reform would increase the levy to 100 percent when collecting tax debts, which would bring it in line with the 100 percent payment offset (through TOP) applied to non-tax debt collection. This will generate \$770 million in savings over 10 years.
- **Offset Federal tax refunds to collect State income taxes from debtors who currently reside in other States.** Under current law, Federal tax refunds may be offset to collect delinquent State income taxes only if the delinquent taxpayer resides in the State collecting the tax. This proposal would allow Treasury to offset tax refunds to collect delinquent State tax obligations regardless of where the debtor resides; however, collections are returned to States and do not score as Federal savings.
- **Allow agencies to contact delinquent debtors via their cellular phones.** The Administration also proposes to amend the Communications Act of 1934 to facilitate collection of debts owed to or guaranteed by the Federal Government, by facilitating contact of delinquent debtors who are most readily reached on their cell phones. This provision is expected to provide substantial increases in collec-

tions, particularly as an increasing share of households no longer have landlines and rely instead on cell phones.

OTHER REFORMS AND SAVINGS

Reform Abandoned Mine Lands (AML) payments. The coal industry as a whole is currently held responsible for cleaning up abandoned coal mines by paying a fee that finances grants to States and Tribes for reclamation. This linkage was lost, however, when the Congress in 2006 authorized additional unrestricted payments to certain States and Tribes that had already completed their coal mine reclamation work. In addition, regular reclamation funds are not well targeted at the highest priority abandoned mine lands, because amounts are distributed by a production-based formula so that funding goes to the States with the most coal production, not the greatest reclamation needs. States can use their funding for a variety of purposes, including the reclamation of abandoned hardrock mines, for which there is no other source of Federal funding.

The Administration proposes to reform the coal AML program to reduce unnecessary spending and ensure that the Nation's highest priority sites are reclaimed. First, the Administration proposes to terminate unrestricted payments to the States and Tribes that have been certified for completing their coal reclamation work, since these payments do not contribute to reclaiming abandoned coal mines. Second, the Administration proposes to reform the distribution process for the remaining funds to allocate available resources competitively to the highest priority coal AML sites. Through a competitive grant program, a new AML Advisory Council will review and rank the abandoned mine lands sites, so that the Department of the Interior, in coordination with States and Tribes, can distribute grants to reclaim the highest priority coal sites each year.

Mining for hardrock minerals (e.g., silver and gold) has also left a legacy of abandoned mines across the United States. The Administration