



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Office of the Director  
Bureau of Consumer Protection

March 11, 2011

The Honorable Elizabeth Warren  
Special Assistant to the President and Special Advisor to the Secretary of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

Dear Professor Warren:

As you may be aware, the American Arbitration Association (“AAA”) recently released new standards for consumer debt collection arbitration.<sup>1</sup> The Federal Trade Commission’s Bureau of Consumer Protection has serious reservations as to whether these new standards will provide adequate protection for consumers. We would appreciate the Bureau of Consumer Financial Protection (“CFPB”) considering these reservations in connection with its study and report to Congress.<sup>2</sup>

The Federal Trade Commission (“FTC” or “Commission”) has closely evaluated the topic of debt collection arbitration, holding public roundtables and soliciting public comment. In July 2010, the Commission issued the enclosed report, *Repairing a Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration* (“Roundtables Report”) with findings,

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<sup>1</sup> During an industry self-imposed moratorium on debt collection arbitration, the AAA convened a task force to consider whether it should recommence offering such services, and, if so, how its current arbitration protocols should be changed. FTC staff participated informally in the AAA Task Force. On October 22, 2010, the task force released its Consumer Debt Collection Due Process Protocol Statement of Principles (“AAA Principles” or “Principles”), AMERICAN ARBITRATION ASSOCIATION, NATIONAL TASK FORCE ON THE ARBITRATION OF CONSUMER DEBT COLLECTION DISPUTES, CONSUMER DEBT COLLECTION DUE PROCESS PROTOCOL - STATEMENT OF PRINCIPLES (Oct. 2010), *available at* <http://www.adr.org/si.asp?id=6248>, which concluded that it would be feasible for AAA to recommence providing such arbitration.

<sup>2</sup> The Dodd-Frank Wall Street Reform and Consumer Protection Act instructs the CFPB to conduct a study and submit a report to Congress concerning mandatory, pre-dispute arbitration with respect to consumer financial products or services. Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 1028, 124 Stat. 1376, 2003-04 (2010).

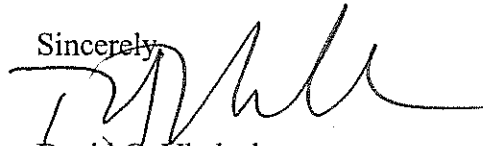
conclusions, and recommendations.<sup>3</sup> The Roundtables Report concluded that consumers must be given a meaningful choice whether to resolve debt collection disputes through arbitration and that such arbitration must meet fundamental standards of procedural fairness.

The AAA Principles fail to provide consumers meaningful choice about debt collection arbitration. Creditors who use AAA as an arbitration provider would not be required to include in their credit contracts any choices for consumers about whether or how to use arbitration, much less reasonable methods of exercising such choices.

With regard to fairness, the AAA Principles contain some positive ideas, such as using procedures and technologies that make it easier and less expensive for consumers to participate in the arbitration process and appointing arbitrators in a manner that enhances their actual and perceived neutrality. However, the AAA Principles fail to address four key recommendations the Commission made relating to fairness. First, the Principles do not require that senders of arbitration notices adopt measures to increase the likelihood that they have valid addresses for consumers, or that senders use envelopes that make it clear that the contents of these letters (i.e., the arbitration notices) are important. Second, the Principles do not limit arbitration costs to what consumers would have paid in a similar court proceeding and do not allow indigent consumers to request fee waivers early in the process. Third, the Principles do not mandate that arbitrators issue written, reasoned opinions. Finally, the Principles do not state that AAA will make decisions more accessible to the parties and the public.

We respectfully request that the CFPB consider the Roundtables Report recommendations and the application of these recommendations to creditors, debt collectors, and arbitration forums. We look forward to working with the CFPB to protect consumers in this area. Please contact me if you have any questions or need further information.

Sincerely,



David C. Vladeck

cc: American Arbitration Association  
American Bankers Association  
Financial Services Roundtable

Enclosure

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<sup>3</sup> FEDERAL TRADE COMMISSION, REPAIRING A BROKEN SYSTEM: PROTECTING CONSUMERS IN DEBT COLLECTION LITIGATION AND ARBITRATION (July 2010), *available at* <http://www.ftc.gov/os/2010/07/debtcollectionreport.pdf>.