



February 4, 2021

VIA ELECTRONIC DELIVERY TO REGULATIONS.GOV

Comment Intake
Bureau of Consumer Financial Protection
1700 G Street NW
Washington, DC 20552

***Re: ACA International, the Association of Credit & Collection Professionals,
("ACA") Comment to Docket No. CFPB-2020-0034, Consumer Access to Financial
Records***

Dear CFPB Staff:

The Association of Credit and Collection Professionals ("ACA International" or "ACA") appreciates the opportunity to provide our comments in response to Consumer Financial Protection Bureau's ("CFPB" or "Bureau") Advanced Notice of Proposed Rulemaking (ANPR) regarding Section 1033 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), which provides that a consumer financial services provider must make available to a consumer information in the control or possession of the provider concerning the consumer financial product or service that the consumer obtained from the provider.

I. ABOUT ACA INTERNATIONAL

ACA International is the leading trade association for credit and collection professionals. Founded in 1939, and with offices in Washington, D.C. and Minneapolis, Minnesota, ACA represents approximately 2,500 members, including credit grantors, third-party collection agencies, asset buyers, attorneys, and vendor affiliates in an industry that employs more than 230,000 employees worldwide.

ACA members include the smallest of businesses that operate within a limited geographic range of a single state, and the largest of publicly held, multinational corporations that operate in every state. The majority of ACA member debt collection companies, however, are small businesses. According to a survey of the industry, approximately 44 percent of ACA member organizations have fewer than nine employees. Nearly 85 percent of members have 49 or fewer employees and 93 percent of members have 99 or fewer employees.

As part of the process of attempting to recover outstanding payments, ACA members are an extension of every community's businesses. ACA members work with these businesses, large and

ASSOCIATION HEADQUARTERS
4040 WEST 70TH STREET 55435
P.O. BOX 390106, MINNEAPOLIS, MN 55439-0106
TEL (952) 926-6547 FAX (952) 926-1624

FEDERAL GOVERNMENT AFFAIRS OFFICE
509 2ND STREET NE, WASHINGTON, D.C. 20002
TEL (202) 547-2670
FAX (202) 547-2671

small, to obtain payment for the goods and services already received by consumers. In years past, the combined efforts of ACA members have resulted in the annual recovery of billions of dollars – dollars that are returned to and reinvested by businesses and dollars that would otherwise constitute losses on the financial statements of those businesses. Without an effective collection process, the economic viability of these businesses and, by extension, the American economy in general, is threatened. Recovering rightfully owed consumer debt enables organizations to survive, helps prevent job losses, keeps credit, goods, and services available, and reduces the need for tax increases to cover government budget shortfalls.

An academic study about the impact of debt collection confirms the basic economic reality that losses from uncollected debts are paid for by the consumers who meet their credit obligations:

In a competitive market, losses from uncollected debts are passed on to other consumers in the form of higher prices and restricted access to credit; thus, excessive forbearance from collecting debts is economically inefficient. Again, as noted, collection activity influences on both the supply and the demand of consumer credit. Although lax collection efforts will increase the demand for credit by consumers, the higher losses associated with lax collection efforts will increase the costs of lending and thus raise the price and reduce the supply of lending to all consumers, especially higher-risk borrowers.¹

In short, consumer harm can result in several ways when unpaid debt is not addressed, and ACA members work to help consumers understand their financial situation and what can be done to address it and improve it.

The debt collection market is extremely varied in the types of debt being collected and the nature and size of the accounts receivable management (ARM) industry encompasses a broad scope. The client base serviced by industry members is highly diverse. From large corporations to local Main Street service providers — all of whom have a vested interest in customer retention, particularly in the case of small business creditors. From medical debt to student loan debt, mortgage debt to credit card debt, unpaid check to unpaid government fees, or a single bill from a local business, the differences incident to each type of debt require a thoughtful and nuanced regulatory approach.

As noted, ACA’s membership is made up primarily of small businesses. The Small Business Administration Office of Advocacy has on several occasions outlined concerns with compliance burdens for the ARM industry that should be considered before promulgating new requirements. ACA members are committed to fair, reasonable, and respectful practices and take their obligations in collecting debt very seriously. As legitimate credit and collection professionals, ACA members play a key role in helping consumers fulfill their financial goals and responsibilities while facilitating broad access to the credit market.

¹ Todd J. Zywicki, The Law and Economics of Consumer Debt Collection and Its Regulation, MERCATUS WORKING PAPER, MERCATUS CTR AT GEORGE MASON UNIV., at 47 (Sep. 2015), available at <https://www.mercatus.org/system/files/Zywicki-Debt-Collection.pdf>.

II. SPECIFIC COMMENTS ON CONSUMER ACCESS TO DATA

In the ANPR, the Bureau states that is interested in feedback on issues of potential regulatory uncertainty with respect to section 1033 and its interaction with other statutes. The ANPR mentions several consumer protection statutes, however, it does not directly discuss the Fair Debt Collection Practices Act (FDCPA). The CFPB recently issued final rules amending Regulation F, 12 CFR Part 1006, implementing the FDCPA. Several sections of these final rules, and the FDCPA, have specific requirements for how the debt collection industry can interact with consumers, including information that can be provided to them. As such, ACA urges the CFPB to conform any requirements for providing consumer access to data with Regulation F and its implementing rules.

Additionally, any actions taken by the Bureau should take into account data security and privacy requirements that are already in place for the ARM industry. ACA members obtain consumer information for legitimate business reasons to facilitate monetary recovery for their clients across industries. Consequently, ACA members are subject to myriad of federal and state consumer protection laws and regulations. Depending on the type of accounts subject to collection, these laws and regulations in addition to the FDCPA, include the Gramm-Leach Bliley Act, the Fair Credit Reporting Act, the Health Insurance Portability and Accountability Act of 1996, among others. Accordingly, as the Bureau determines consumer rights in accessing data, it should also ensure that there is no overlap or conflict with current requirements or practices in this area for the ARM industry.

Consumers have expressed preference for using new technology and ACA supports the Bureau's recognition that there must be innovation responding to consumer demands. Recent CFPB actions that recognize consumer preference for using email and text messaging to communicate are a step forward. We are eager to continue to work with the Bureau to help them understand consumer preferences when working with the debt collection industry.

III. CONCLUSION

ACA appreciates the opportunity to provide comments. If you have any questions concerning our letter, please contact me at the contact information below.

Sincerely,



Leah Dempsey
Vice President and Senior Counsel, Federal Advocacy
Phone: 202-810-8901
Dempsey@acainternational.org