ACA®
INTERNATIONAL
The Association of Credit
and Collection Professionals

March 10, 2021

Chairman Ed Perlmutter
House Financial Services Committee
Subcommittee on Consumer Protection and
Financial Institutions
Washington, D.C. 20510

Ranking Member Blaine Luetkemeyer
House Financial Services Committee
Subcommittee on Consumer Protection and
Financial Institutions
Washington, D.C. 20510

Dear Chairman Perlmutter and Ranking Member Luetkemeyer,

On behalf of ACA International (ACA), the Association of Credit and Collection Professionals, I am writing regarding the hearing titled, "Slipping Through the Cracks: Policy Options to Help America's Consumer During the Pandemic."

ACA International is the leading trade association for credit and collection professionals representing approximately 2,500 members, including credit grantors, third-party collection agencies, asset buyers, attorneys and vendor affiliates in an industry that employs nearly 125,000 employees worldwide. Most ACA member debt collection companies, however, are small businesses. Women make up nearly 70 percent of the total debt collection workforce and it is ethnically diverse. Additionally, the debt collection industry is diverse in terms of racial demographics as well. Overall, racial and ethnic minorities make up around 42 percent of debt collection employees. During this challenging time for the country, many ACA members—particularly our smallest member companies—are facing financial and operational challenges like those of other businesses throughout the country. This has, at times, made it more difficult to continue to offer employment opportunities in our heavily-regulated and compliance-focused industry, which for many Americans is an important stepping stone to a career in the financial services industry.

As businesses, community lenders, hospitals, and other providers throughout the country continue to face unprecedented challenges as a result of COVID-19, the work of ACA's members is more important than ever. 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 small, to obtain payment for the goods and services already received by consumers.

Significant research has confirmed the basic economic reality that losses from uncollected debts result in higher prices and restricted access to credit. The collections process plays a critical role in a healthy credit ecosystem. Lenders rely on the ability to collect to be able to lend to consumers of all means with diverse financial backgrounds. In a world without a collections process, consumers' ability to obtain credit cards or other unsecured credit would be greatly limited and, in many instances, consumers would only have the option to pay cash. This would be a disadvantage to many consumers, particularly to those who are low-

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

ACA@ACAINTERNATIONAL.ORG WWW.ACAINTERNATIONAL.ORG

income, and significantly limit options for credit and services. The work of ACA members allows lenders to continue to lend while keeping the cost of credit down, particularly for the riskiest borrowers.

ACA members continue to play an important role in the economy during the COVID-19 crisis by working to help consumers understand their options for resolving legally owed debt. When there is an open dialogue, ACA members can help consumers understand how they may qualify for options like financial assistance or options they may have through their own insurance. Learning about options, which can also include the ability to enter longer payment plans or take advantage of forbearance opportunities, helps consumers preserve their ability to access credit and services in the future. Ignoring outstanding obligations or remaining in the dark about payment options can lead to the worst outcome for consumers. This is in part why ACA members have seen a record number of inbound calls at times over the past year. As lenders and creditors continue to work to meet the credit needs of all consumers, particularly during this challenging time, the requirement for financial institutions to maintain safety and soundness is an important component of maintaining their ability to continue to lend and therefore a critical factor in this discussion.

Research shows that a system with reasonable debt collection regulations combined with an efficient debt collection industry can contribute to an expanded supply of consumer credit and generally lower interest rates.[1] This dynamic is essential for high-risk borrowers who are more likely to be able to access affordable credit in an environment where lenders can mitigate losses through post-default collection.[2] High-risk borrowers will, in many instances, either not qualify for credit or find credit to be prohibitively expensive, particularly if the lender cannot be satisfied that the loan will be repaid.[3] Simply, if creditors cannot collect, they will be forced to not to lend and consumers who legislation on this hearing agenda aims to protect will end up being harmed most.

Alternatively, with an effective debt collection industry in place, lenders can extend credit to borrowers of all means when expected recoveries after default compensate for the higher probability of default. Those same high-risk borrowers might also benefit the most if the increase in post default recoveries leads to a reduction in interest rates and expansion of supply to riskier borrowers. The debt collection industry provides a degree of security for lenders and a mechanism for them to mitigate losses. The work of the industry facilitates a marketplace where credit is more available to a broader range of consumers across a variety of income categories and credit histories.

Accordingly, ACA offers the following comments on legislation at issue in this hearing.

The Relief for Consumers During COVID-19 Act

This legislation, which halts almost all collection activities, would be devastating to the economy, medical providers and small businesses during a time when they are already suffering. Consumer welfare also depends on open communication, and it is important to engage in policymaking during this critical time for the country that provides consumers with more options to access credit and services, not fewer. Stopping the operations of the credit and collection system for the part of the economy that is still

[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.
[2] *Id.*
[3] *Id.*

functioning causes difficulties for hospitals, utility providers, governments and many businesses trying to survive and serve the whole community. For example, many protections are already in place for consumers who are no longer employed.

However, nearly 94 percent of the country is still fully employed, and more people are going back to work every day. Impeding the ability to collect past-due payments through legal recourse from consumers who are still fully employed and able to fulfill legal obligations, does not protect those most harmed by the pandemic. The businesses that are owed these payments are also directly impacted by COVID-19 closures. ACA members have worked with health care providers and consumer groups to develop best practices that address legal collections in medical debt during COVID-19.[4] These well-researched policies and best practices that reflect the input of various stakeholders are important during this challenging time for the country. Broad sweeping policies that threaten businesses and the economy, such as this legislation, are not an effective solution for anyone.

The Relief for Small Businesses and Nonprofits Act

This legislation impedes the operations of small businesses and creates complex and rigid guidelines that could interfere with hardship programs and other efforts to create flexibility in providing solutions for a consumer's unique financial situation. It is not clear that any research or data provides evidence that the time frames or dollar amounts outlined in the defined payment schedule result in any consumer benefit. Specifically, it provides details concerning dollar amounts owed: $2,000 or less, 12 months to repay; balances between $2,001 and $5,000, 24 months to repay; greater than $5,000, 36 months to repay. This legislation also requires an automatic grant of forbearance for consumers after the request and attestation of financial hardship, directly or indirectly related to COVID-19, until the end of the covered periods. No documentation proving the hardship is required. This legislation is not appropriately targeted to those directly impacted by COVID-19, and instead asks small businesses to carry the burden of these challenging times alone.

The Disaster Protection for Workers' Credit Act

This legislation would create uncertainty around a consumer's credit score and create the possibility of further putting them in financial turmoil by allowing an individual to borrow when they cannot afford to repay. After exhausting other options, credit reporting can be the best way to alert consumers of their outstanding debts. If this legislation becomes law, credit providers will not understand a consumer's financial situation if they have an inaccurate credit report and consumers could take on new obligations that will lead to problems down the road. We saw this happen in the past mortgage crisis when consumers purchased homes in droves that they could not actually afford. Inflating credit scores in a way that does not accurately portray a consumer's ability to repay does not benefit them.

The Emergency Relief for Student Borrowers Act

Not all student loan borrowers were impacted by COVID-19, and impeding communication with them may hinder their ability to consolidate loans in the future. Colleges, debt collection agencies and ultimately taxpayers will be harmed if student loan relief is not appropriately targeted. ACA members are committed to working with borrowers to help them understand their options.

[4] Best Practices For Resolution of Medical Accounts, available at https://www.acainternational.org/news/aca-international-and-hfma-release-new-best-practices-for-resolution-of-medical (September 2020).

The Stop Debt Collection Abuse Act

The stated purpose of this bill is to extend the Fair Debt Collections Practices Act to collectors of debt owed to a federal agency and limit any interest, fee, charge, or expense incidental to the principal obligation. The bill also mandates that debt buyers are subject to FDCPA, and it requires a GAO study on the use of debt collectors by local state and federal agencies. ACA is particularly concerned that definitions in the legislation for "debt" and "debt collector" conflict with definitions the Consumer Financial Protection Bureau recently finalized for those terms in its final rule for Regulation F. The rule is the result of the Dodd-Frank Wall Street and Consumer Protection Act, which provides the bureau with rulemaking authority for the debt collection industry.

Communicating about debt owed to the government is unique. For example, providing information about outstanding student loans may help borrowers avoid penalties or other negative consequences, such as the inability to obtain a federal government job. Congress previously has correctly recognized the unique distinctions for government owed debt. This distinction for debt owed at the state and local level is also particularly acute considering budget shortfalls as a result of COVID-19, which will be exacerbated by adding new requirements to collection efforts that will require additional time and resources to implement. This legislation also conflicts with the Debt Collection Improvement Act of 1996, the Fixing America's Surface Transportation Act, and Section 484A(b)(1) of the Higher Education Act that empowers the Department of Education to set the appropriate collection cost amount/percentage.

The FDCPA also already requires that fees and interest can only be charged if expressly authorized by the agreement creating the debt or permitted by law. There are also situations where state law allows collectors to add fees, but only if the contract creating the debt is silent on the issue. In these types of situations, the Federal Trade Commission has stated it is permissible to add collection fees to the debt. The legislation requires that the Comptroller General of the U.S. shall commence a study on the use of debt collectors by state and local government agencies. We applaud and support this aspect of the bill and are confident that this study will be in line with other research in this area, which shows both consumer and economic benefits from debt collection efforts for the government.

The Debt Collection Practices Harmonization Act

The stated purpose of this bill is to extend the FDCPA to cover debt owed to a state or local government and adds specific requirements for national disasters. As noted above, ACA does not support extending the FDCPA to debts owed to the federal government, and it also does not support extending it to local governments. Collecting government owed debt is an important part of a functioning economy and there may be a unique need for consumers to be able to efficiently resolve debts owed to a local government, for example maintaining a valid driver's license. Allowing professionals in the accounts receivable management industry to aid local and federal government in collection efforts benefits both consumers and the economy.

This bill also allows the damages amounts under the FDCPA to be tied to inflation. The vast majority of FDCPA litigation is for hyper-technical violations, where there was arguably not actual harm to a consumer. Most notably, given the mechanical language and requirements under the FDCPA, self-described "consumer protection" attorneys have generated unnecessary litigation based on technical, inconsequential, non-abusive violations. Many consumer attorneys throughout the country coordinate with their clients to call collectors with the intent of eliciting a response that will form the basis of an

FDCPA suit. These bait calls or trap calls are no different than acts of entrapment that plague well-intended collectors.

These attorneys burden collection agencies (which as noted above are often small businesses) with demands for tens of thousands of dollars to resolve claims arising from hyper-technical violations of the law. Moreover, they and their clients openly invoke the FDCPA as a pretext for avoiding the repayment of lawful debt. Some attorneys even use the FDCPA to drive their bankruptcy law practices. Many go so far as to search public court databases for newly filed collection actions to recruit new clients. Most importantly, these attorneys thrive on the mere threat of litigation, knowing that most agencies will pay $5,000 to settle a frivolous case instead of spending $50,000 to successfully defend one. In short there is already abusive litigation in this area that rewards the trial bar more than actual consumers. Tying this type of litigation to inflation will only further reward lawyers, while associated costs continue to be passed on to consumers.

Non-Judicial Foreclosure Debt Collection Clarification Act

The stated purpose of this bill is to amend the FDCPA to clarify that entities in non-judicial foreclosure proceedings are covered by the law. However, the broad language of "enforcement of security interest" may be interpreted to encompass creditors collecting secured debt. This arguably could sweep a large swath of products from creditors under the FDCPA including mortgage loans, auto loans, pawn loans, etc.

Ending Debt Collection Harassment Act of 2021

The stated purpose of this bill is to amend the Consumer Financial Protection Act of 2010 to require the director of the CFPB to issue a quarterly report on debt collection complaints and enforcement actions and prohibit the director of the CFPB from issuing rules that would allow a debt collector to send unlimited email and text messages to a consumer. ACA would be interested in additional reporting on the complaint database if it more accurately portrayed what the raw complaint data means for the accounts receivable management industry. The most troubling aspects of the complaint database are: (1) the bureau's broad definition of a complaint, (2) the bureau's failure to verify the accuracy of the complaints it receives, and 3) not contextualizing the number of complaints versus the number of contacts that are made. Notably, debt collection complaints account for only 0.005% of all consumer contacts made in a given year by the accounts receivable management industry. It also important to acknowledge that the CFPB already regularly issues reports that include information about the complaint database.

Regarding the provision that would prohibit, "allowing a debt collector to send unlimited email and text messages to a consumer," in the CFPB debt collection rule, we disagree with this interpretation of the final rule and believe this legislation is misguided. Alternatively, the CFPB's final rule instead addresses modern forms of communication and gives unprecedented power to consumers to control those modes of communication. Most notably, consumers have the ability to opt out of receiving messages and also control the contact information that they provide to creditors as an opt-in. In addition to this, there are many compliance hurdles that must be met for the accounts receivable management industry to be able to send emails and text messages in the first place, which require extensive training and compliance with the FDCPA and other consumer financial protection laws. The debt collection industry is not motivated to send unlimited communications causing consumers to opt-out after working hard to come into compliance with CFPB rules.

Lastly, it is also important to recognize that the FDCPA already imposes several requirements on the accounts receivable management industry, for example, the prohibition of engaging in any conduct that is harassing, oppressive, or abusive in connection with the collection of a debt. This legislation is redundant of that established law and instead seeks to further muddy the waters for already overly complex requirements for using consumers' preferred methods of communication. The CFPB's final rule was a small step forward in putting consumers in the collections process on a level playing field with others in the financial services marketplace by recognizing their preference to use email and text messaging over other outdated methods of communication recognized in the FDCPA, such as faxes. Treating consumers in the collections process differently than those who are bank customers, or other financial services customers, and limiting their ability to communicate makes unfair assumptions about their preferences.

Consumer Protection for Medical Debt Collections Act

ACA has several concerns about this bill, particularly regarding the year-long delay in reporting medical debt and the lack of clarity surrounding what is a "medically necessary procedure." Many consumers are unaware of the options they may have to handle their debt obligations and deadlines they face for insurance corrections and charity care options. After exhausting other options, credit reporting can be the best way to alert consumers of their outstanding debts. Moreover, consumers could be at risk if they are obtaining unaffordable credit and services during the lengthy time frame credit reporting would be delayed if this legislation were to become law. Providers will not understand a consumer's financial situation if they have an inaccurate credit report.

Thank you for your attention to these important matters. We look forward to continuing our engagement with Congress.

Sincerely,

Mark Neeb

Chief Executive Officer
ACA International