ACA INTERNATIONAL
The Association of Credit and Collection Professionals

March 2, 2021

Chairman Sherrod C. Brown
U.S. Senate Committee on Banking Housing and Urban Affairs
534 Dirksen Senate Office Building
Washington, D.C. 20515

Ranking Member Patrick Toomey
U.S. Senate Committee on Banking Housing and Urban Affairs
534 Dirksen House Office Building
Washington, D.C. 20515

Dear Chairman Brown and Ranking Member Toomey,

On behalf of ACA International (ACA), the Association of Credit and Collection Professionals, I am writing regarding the nomination of Rohit Chopra for the Consumer Financial Protection Bureau (CFPB or Bureau) Director. 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 70 percent of the total debt collection workforce and it is ethnically diverse. Additionally, 32 percent of businesses are women-owned.

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-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.

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ACA members have played an important role 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. 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 in recent months. 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 factor in this discussion because it is an important component of maintaining their ability to continue to lend.

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]

Yet, with an effective debt collection industry in place, lenders will extend credit to riskier borrowers 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. In sum, 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.

As Congress considers the nomination of Mr. Chopra, we ask that it keep in mind the important role the debt collection industry plays in ensuring a functioning economy and consumer access to credit. Operating under outdated laws and regulations that have not kept up with new technologies and consumer preferences does not benefit consumers. Going forward, we look forward to continuing to work with the Bureau in pursuit of clarity surrounding outdated laws for our industry, most pertinently the Fair Debt Collection Practices Act (FDCPA).

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[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.*

## I. ACA Urges the Bureau to Continue to Engage with all Stakeholders.

ACA has been appreciative of open dialogue with the CFPB since its inception, and we would urge the Bureau to continue to hold industry and consumer group discussions to facilitate transparent dialogue with all stakeholders. In general, we support the concept of the CFPB's advisory councils because we believe it is beneficial for Bureau staff to have more information about the impact of its work, particularly if they do not have any specific industry experience. However, ACA also recommends that the Bureau consider having a nonbank advisory board since the debt collection industry frequently has no representation on the Consumer Advisory Board (CAB). Meanwhile, other industries and stakeholders have significant representation on councils and on the CAB, even when the FDCPA rulemaking impacting the debt collection industry was one of the main agenda items for the Bureau. Nonbank participants in the financial services industry should not be overlooked in their ability to provide important feedback and should be given equal opportunity to participate.

## II. The CFPB Debt Collection Rule is an Important Step Toward Putting Consumers on a Level Playing Field.

The CFPB's recent actions regarding Regulation F, 12 CFR part 1006, which implements the FDCPA finally recognizes that consumers prefer modern communication methods. This is an important 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.

We applaud the Bureau's recognition that consumers in the collections process also deserve options including the ability to communicate in modern ways. We look forward to working to further improve this process. Consumers and the industry need clear rules of the road when using commonly used technologies, and consumers in all parts of the credit ecosystem must be treated equally.

## III. The CFPB's Complaint Database Paints an Inaccurate Portrait of the Debt Collection Industry

The Bureau has on numerous occasions reported on the number of debt collection industry complaints. However, the Bureau fails to contextualize the number of complaints in comparison to the number of contacts the debt collection industry has with consumers each year, which the Philadelphia Federal Reserve estimates to be well over one billion. Providing a better understanding of, and perspective on the debt collection marketplace would better serve the Bureau – and consumers – in the Bureau's analysis of the debt collection industry. The Bureau should focus its efforts on actual consumer harm, not mere inquiries lodged through the database.

### IV. Transparency and Due Process Should be Included in the Enforcement Process

To fulfill its statutory mission and obligations properly, the Bureau must strictly adhere to fair, clear, and transparent enforcement processes and practices. The Bureau's past actions have fallen short of these standards. Many companies that have been the subject of enforcement actions view the experience as a one-sided imposition of the Bureau's interpretation of the law. They report companies lack effective recourse to put forward a contrary view and, that they are often pressured into a settlement agreement to avoid the high cost of contesting the allegations. This sense of pressure is particularly strong for small businesses that lack the resources for dealing with an opaque, protracted and unresponsive process. This regulation through enforcement approach prevents businesses from knowing what is expected and required of them and wastes resources that could otherwise be put toward improving consumer outcomes.

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

Sincerely,

Mark Neeb

Chief Executive Officer
ACA International