



April 19, 2021

Chairwoman Maxine Waters  
House Financial Services Committee  
Washington, D.C. 20510

Ranking Member Patrick McHenry  
House Financial Services Committee  
Washington, D.C. 20510

Dear Chairwoman Waters and Ranking Member McHenry:

On behalf of ACA International, the Association of Credit and Collection Professionals (ACA), I am writing regarding H.R. 2547, the Comprehensive Debt Collection Improvement Act, which has many flawed and unresearched policy proposals that would harm the economy, creditors, and the ability for consumers to access credit and services in the future.

ACA International is the leading trade association for credit and collection professionals representing approximately 2,100 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 accounts receivable management 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 many other businesses throughout the country. This has, at times, made it more difficult for companies 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 financial services.

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

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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.

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 financial assistance or payment options they may have through their own insurance. Learning about these options, which can also include extended payment plans or forbearance, 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 accounts receivable management industry can contribute to an expanded supply of consumer credit and generally lower interest rates.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> Simply stated, if creditors cannot collect, they will be forced not to lend and consumers who much of the legislation slated for this hearing aims to protect will end up being harmed most. Alternatively, with an effective accounts receivable management 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 accounts receivable management 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 this legislation.

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<sup>1</sup> 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>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

## • **Consumer Protection for Medical Debt Collections Act**

ACA has several concerns about this bill, including delaying collection of medical debt for a two-year period beginning on the date that the first payment with respect to such medical debt is due; the year-long delay in reporting medical debt; and the lack of clarity surrounding the definition of a “medically necessary procedure.” Delaying the ability to collect medical debt for two years will crush medical providers throughout the country, many of whom have been on the front lines of the pandemic for the past year. This nonsensical legislation harms consumers by delaying, but not stopping, the need to pay legally owed debt in a way that will push off obligations and potentially cause consumers to take on credit they cannot afford. Moreover, delaying the need to pay a certain type of debt for two years could have a serious impact on certain parts of the economy and could harm the ability to provide medical care in the U.S. during a time when it is critical in the country.

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. Additionally, 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.

## • **Ending Debt Collection Harassment Act**

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 by the accounts receivable management industry in a given year. 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. The CFPB’s final rule instead addresses modern forms of communication and gives unprecedented power to consumers to control those forms of communication. Most notably, consumers can opt-out of receiving messages and control the contact information that they provide to creditors as an opt-in. In addition, there are many compliance requirements for the accounts receivable management

industry to be able to send emails and text messages. The CFPB requires extensive training and compliance with the Fair Debt Collection Practices Act and other consumer financial protection laws. The accounts receivable management 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 includes several requirements for the accounts receivable management industry such as 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 the FDCPA and instead seeks to further muddy the waters of 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.

#### • **The Stop Debt Collection Abuse Act**

The stated purpose of this bill is to extend the FDCPA 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 the FDCPA, and it requires a Government Accountability Office 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 CFPB 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 accounts receivable management 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 debt owed to the government. This distinction for debt owed at the state and local level is also particularly acute considering budget shortfalls as a result of COVID-19 that will be exacerbated by adding new requirements to collection efforts and 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 situations, the Federal Trade Commission has stated it is permissible to add collection fees to the debt. The legislation requires the Comptroller General of the U.S. to 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 that 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 it add 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 debt owed to the government is an important part of a functioning economy and there may be a unique need for consumers to be able to efficiently resolve these debts owed to a local government, such as 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. 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 lawsuit. These bait 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.<sup>4</sup>

#### • **Non-Judicial Foreclosure Debt Collection Clarification Act**

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<sup>4</sup> *Id.*

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 into the FDCPA including mortgage loans, auto loans and pawn loans.

ACA supports the intent of the Fair Debt Collection for Servicemembers Act and Senior Investor Pandemic and Fraud Protection Act.

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

Sincerely,

Mark Need

A handwritten signature in black ink, appearing to read 'Mark Need', with a stylized flourish at the end.

Chief Executive Officer  
ACA International