ACA®
INTERNATIONAL
The Association of Credit and Collection Professionals

May 6, 2021

VIA ELECTRONIC DELIVERY TO REGULATIONS.GOV
Comment Intake
Bureau of Consumer Financial Protection
1700 G Street NW
Washington, D.C. 20552

Re: ACA International, the Association of Credit & Collection Professionals, ("ACA") Comment to Docket No. CFPB-2021-0007, Debt Collection Practices (Regulation F); Delay of Effective Date

Dear CFPB Staff:

The Association of Credit and Collection Professionals ("ACA International" or "ACA") appreciates the opportunity to provide our comments in response to the Consumer Financial Protection Bureau's ("CFPB" or "Bureau") proposal to extend the effective date of its October and December 2020 final rules on Regulation F (12 C.F.R. part 1006) by 60 days, to Jan. 29, 2022 ("Debt Collection Final Rules"). 86 Fed. Reg. 20,334 (Apr. 19, 2021).

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, ACA represents 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 are small businesses. Women make up nearly 70 percent of the total debt collection workforce and it is ethnically diverse. The accounts receivable management (ARM) industry is proud of its diversity. Overall, racial and ethnic minorities make up around 42 percent of ARM industry employees.[1]

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. 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

[1] Kaulkin Ginsberg, Diversity in the Collections Industry, available at https://www.acainternational.org/assets/survey-aca-international-kaulkin-ginsberg-shows-growing-diversity-accounts-receivable-management-industry/diversity-in-the-collections-industry-report-updated.pdf.

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

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, 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 both the supply and the demand of consumer credit. Although lax collection efforts will increase the demand for credit by consumers, the resulting 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.

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. 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.[2]

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.

II. Specific Comments on the Proposed Delay

In its proposal the CFPB states that, "In light of the ongoing societal disruption caused by the global COVID-19 pandemic, the Bureau is proposing to extend that effective date. To afford stakeholders additional time to review and, if applicable, to implement the Debt Collection Final Rules, the Bureau is proposing to extend the effective date by 60 days, to January 29, 2022."

ACA offers the following comments in response:

A. ACA appreciates that the CFPB understands that the rule imposes significant compliance burdens for the ARM industry, however, we do not think 60 days will make a material difference in alleviating those burdens. Instead, a phased implementation and enforcement discretion would be more reasonable and appropriate way to address these concerns.

[2] SBA Office of Advocacy Letter to CFPB, *available* at https://advocacy.sba.gov/2019/09/19/advocacy-submits-comments-on-the-bureau-of-consumer-financial-protections-proposed-rulemaking-on-debt-collection/. (Sep. 19, 2019).

As noted, many ACA members are small businesses. Navigating the complexities of complying with the Debt Collection Final Rules undoubtedly presents some serious regulatory burdens and resource constraints for both small and large businesses in the ARM industry. However, the CFPB has not stated that the 60-day extension of the effective date will be dedicated to addressing the compliance complexities that ACA members identified in comments on the proposed rule.[3] Thus, it is unlikely this brief extension will have a meaningful impact on allowing companies to understand and implement the Debt Collection Final Rules. To address implementation concerns due to time and resource constraints, we urge the CFPB to commit to not engage in enforcement activity in relation to the rule for an additional six months to a year after the implementation date.

At the same time, we take note of the CFPB's request for comment on the "costs and benefits of permitting debt collectors to obtain a safe harbor for using the Bureau's model validation notice as of November 30, 2021, even if the Debt Collection Final Rules do not otherwise take effect until January 29, 2022." 86 Fed. Reg. at 20,335. The Bureau's analysis of the costs and benefits of the 60-day extension concludes that costs of the delay to covered persons would not increase, since they "retain the option of complying with the rules before the effective date." *Id*. However, the Bureau fails to consider the lost benefit to covered persons from delaying the ability of debt collectors to obtain a safe harbor provided by the final rule, since optional use of a model validation notice or other safe harbor provisions would not convey the force and protection of a fully operational final rule. While this delay might not impose additional costs to covered persons, it takes away the substantial benefits to covered persons from avoidance of litigation—which is, after all, the point of providing safe harbors—even though the Bureau concluded that the short length of the implementation delay means that "any overall reduction of benefits" to consumers "should be small." *Id*. This asymmetry of costs and benefits requires that the Bureau retain the Nov. 30, 2021 effective date for the final rules' safe harbor provisions, even if other provisions are covered by a 60-day delay.

B. The CFPB has made conflicting statements about the justification for the delay in effective date.

The stated purpose of extending the compliance deadline for the Debt Collection Final Rules is in response to "societal disruption caused by the global COVID-19 pandemic." *Id*. at 20,334. However, in rescinding a policy statement regarding the Fair Credit Reporting Act that directly impacts the ARM industry by providing flexibility related to COVID-19, the Bureau seems to take a differing view, stating:

> "The Bureau has concluded that since release of this statement such circumstances have changed. Since March 2020 and over the course of the COVID-19 pandemic, consumer reporting agencies and furnishers have adjusted operations by, for example, shifting to a remote mode of operation. As States and other jurisdictions have rescinded and modified

[3] Comments of ACA International on CFPB Debt Collection Rule, *available* at https://www.acainternational.org/assets/advocacy-resources/aca-comment-cfpb-reg-f-9.17.19.pdf (Sep. 17, 2019).

> stay-at-home orders over the course of the pandemic, the Bureau has learned that many entities have resumed some level of in-person operations and, in many instances combined with more robust remote capabilities, have demonstrated improved business continuity."[4]

Absent an additional explanation from the CFPB about why the pandemic should result in flexibility in some regards, but not in other instances, ACA questions whether there are other motivations in changing the compliance deadline. Particularly in light of a February 2021 blog post by Acting Director David Uejio that stated that he was going to "[e]xplore options for preserving the status quo with respect to QM and debt collection rules."[5] ACA has concerns about whether this delay is a first, disguised step in an attempt to circumvent the Administrative Procedure Act's ("APA") protections for rules that have been finalized and published in the *Federal Register*. Many industry participants welcome additional time for implementing the rule. We agree the Bureau should provide additional clarity in some form for compliance with certain parts of the rule, but question whether that is the motivation for the delay, particularly since no industry participants formally asked for additional time for compliance.

C. The Administrative Record is Complete for the Debt Collection Final Rules.

The CFPB has been working on the Debt Collection Final Rules for nearly a decade. In 2013, the CFPB completed an Advanced Notice of Proposed Rulemaking. In 2016, it conducted the Small Business Regulatory Enforcement Fairness Act (SBREFA) panel with small entity representatives (SERs). It has also been conducting ongoing research on the debt collection market for nearly a decade. In May 2019, it issued a Notice of Proposed Rulemaking to extend the comment period for nearly four months and received more than 14,000 comments. Before and during this timeframe, the Bureau also held various roundtable meetings to solicit input from all stakeholders.

This is not to say that the Debt Collection Final Rules are by any stretch of the imagination perfect. In fact, there are many parts of the Debt Collection Final Rules that the ARM industry think missed the mark and will add uncertainty and compliance complexities. Nevertheless, the purpose of the rulemaking process is to provide clear final rules of the road for both consumers and the ARM industry. To that end, it is important for the CFPB to adhere to APA requirements when issuing and implementing final rules. This is critical for clarity and certainty in the financial services marketplace. ACA members are currently investing significant resources into implementing the Debt Collection Final Rules, as published in the *Federal Register*. Consumers benefit when the ARM industry has clear rules of the road they can implement without excessive burden and regulatory uncertainty, which could lead to a higher cost of credit and other passed

---

[4] CFPB Rescinds Series of Policy Statements, *available* at https://www.consumerfinance.gov/about-us/newsroom/cfpb-rescinds-series-of-policy-statements-to-ensure-industry-complies-with-consumer-protection-laws/.

[5] CFPB Blog post from Acting Director David Ueijo, available at https://www.consumerfinance.gov/about-us/blog/the-bureau-is-working-hard-to-address-housing-insecurity-promote-racial-equity-and-protect-small-businesses-access-to-credit/ (Feb. 4, 2021).

on costs for consumers. The Debt Collection Final Rules are supported by a substantial administrative record and must be implemented in a manner consistent with the APA.

Respectfully submitted,

Leah Dempsey
Vice President and Senior Counsel, Federal Advocacy
Phone: 410-627-3899
Dempsey@acainternational.org