



September 30, 2021

Director Rohit Chopra
Consumer Financial Protection Bureau
1700 G Street NW
Washington, D.C. 20552

Dear Director Chopra:

On behalf of the Association of Credit and Collection Professionals (“ACA International” and “ACA”), congratulations on your confirmation as the Director of the Consumer Financial Protection Bureau (“CFPB” and “Bureau”).

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 more than 2,100 members, including credit grantors, third-party collection agencies, asset buyers, attorneys, and vendor affiliates in an industry that employs 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, which is also ethnically diverse. The accounts receivable management (ARM) industry is proud of its diversity. Overall, racial and ethnic minorities comprise around 42% 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 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. In short, all consumers and businesses are harmed when unpaid debt is not addressed.

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>.

ACA members work with consumers to help them deal with their unique financial situation to address it and improve it. As part of this work, ACA supports the mission of the CFPB to ensure that markets for consumer financial products and services work in a fair, transparent, and competitive manner. ACA members are eager to continue working closely with the Bureau to also ensure that consumers have access to a variety of options for resolving their outstanding debts, so that creditors can continue to lend and provide services as the result of the healthy credit-ecosystem ACA members help foster. We wish you much success in your new role.

As you begin your work leading the Bureau, ACA offers the following thoughts on policymaking impacting the ARM industry.

I. ACA Urges the Bureau to Continue to Seek Feedback from all Stakeholders

It is critical for the Bureau to have access to real-world examples from all stakeholders surrounding debt collection on how policymaking impacts them. Since the Bureau's inception, ACA has served as a resource to the CFPB and has enjoyed collaborating on financial literacy projects as well as other direct outreach initiatives to improve consumer outcomes. ACA is eager to regularly meet with you and your team to provide perspective, feedback, and data, all of which will benefit consumers, creditors, and the ARM industry. Unfortunately, when information about the debt collection industry relied upon during policymaking is one-sided, or embellished upon by certain groups, the resulting policies negatively impact the ARM industry as well as consumers and creditors. As such, it is critical that when issues surrounding the ARM industry arise all stakeholders have the opportunity to contribute to the discussion.

ACA offers the Bureau our full support whenever it has questions or concerns about an industry practice. If there are bad actors engaging in activities that do harm consumers, ACA is eager to support all efforts to weed out such bad actors. On many occasions ACA has applauded the CFPB when it has used its resources to eliminate criminal actors posing as participants in the debt collection industry. We will continue to do that. When the Bureau tailors its policymaking to eliminate those acting egregiously, and toward truly harmful practices, all stakeholders are better for it.

Additionally, ACA recommends that the Bureau consider adding a nonbank advisory board precisely because the debt collection industry oftentimes is not represented on the Consumer Advisory Board (CAB). At the same time, other industries are afforded a significant representation in various councils and on the CAB. For example, even now when Regulation F (the Debt Collection Final Rules) implementation is underway, debt collection industry input is missing from the CFPB's advisory committees. Since the Debt Collection Final Rules are primarily impacting those in the third-party collections industry, other first parties or advocacy groups do not, and cannot, provide the same perspective. We submit that it is important for the Bureau to consider nonbank participants' input when developing rules and policies and are disappointed that many well-qualified ARM industry participants continue to not be selected to provide their expertise on CFPB committees.

The unique perspective of the debt collection industry within the financial services industry and ability to provide important feedback should not be overlooked. ACA members are on the frontlines communicating with consumers. As part of this work, they see trends in the financial services marketplace firsthand. Their perspectives and understanding of what is needed in terms of policy changes for the benefit of consumers would serve the Bureau well.

II. Regulation F Final Rules

The CFPB worked on the Debt Collection Final Rules for nearly a decade. The Debt Collection Final Rules are set to go into effect on November 30 of this year. Earlier, 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.

Not unlike any new regulation, the Debt Collection Final Rules are not perfect and will need clarifications for compliance purposes. Many provisions in the Final Rules missed the mark and therefore will have the unintended effect of adding uncertainty and compliance complexities. ACA members are currently investing significant time and resources into implementing the Debt Collection Final Rules, as currently written and published in the *Federal Register*. As an industry comprised of mostly small business, this has been no small effort and has commanded thousands of hours of attention from compliance professionals as well as investments in new products, software programs, and training resources.

Looking forward, ACA plans to continue engagement with the CFPB to resolve unintended compliance complexities associated with the Debt Collection Final Rules. ACA understands that the CFPB must adhere to Administrative Procedure Act (“APA”) and the Small Business Regulatory Enforcement Fairness Act (“SBREFA”) requirements when issuing and implementing final rules. This is critical for clarity and certainty in the financial services marketplace.

III. The Complaint Database, as Designed, Paints an Inaccurate Portrait of the Debt Collection Industry

The Bureau has on several occasions remarked negatively about the number of debt collection industry “complaints.” However, the Bureau often fails to contextualize the number of complaints as compared to the significant number of contacts the debt collection industry makes with consumers, which the Philadelphia Federal Reserve estimates to be well over one billion per year.² Providing better understanding of, and perspective on, the debt collection marketplace

² Robert M. Hunt, PhD, Vice President and Director, Payment Cards Center Federal Reserve Bank of Philadelphia. Understanding the Model: The Life Cycle of a Debt. Presented at “Life of a Debt: Data Integrity in Debt Collection,” FTC-CFPB Roundtable (June 6, 2013)

would better serve the Bureau – and consumers – in the Bureau’s analysis of the debt collection industry. The Bureau should focus its resources on actual consumer harm rather than raw numbers of complaints provided without context. Additionally, complaints oftentimes are not focused on the actions of the collections professionals, yet the “complaint” is targeted at them. Against this backdrop, ACA asks that the complaint database and its utility be reevaluated going forward, and that the Bureau focus on ensuring that it is being used in way in which true concerns are collected and addressed, and not as a public relations tool to punish disfavored industries. The credit and collection industry supports efforts to identify true complaints and problem actors to eliminate bad practices. We remain eager to work with the Bureau to refine this database to ensure that it is focused on truly improper activity.

IV. Transparency and Due Process Are Tenants that Should Guide CFPB Activity When Creating Compliance Expectations

ACA members are committed to robust compliance with federal and state consumer protection laws. Unfortunately, the Bureau has at times conflated regulations and supervisory guidance, and the resulting legal requirements and parameters surrounding their use. While ACA supports the ability to provide compliance clarifications through supervisory guidance, it should not be used as a tool to create new requirements or create a path for rulemaking through enforcement actions. All rulemakings should be undertaken in compliance with APA and SBREFA requirements. This said, ACA does support the Bureau’s ability to provide compliance materials through various guidance mediums so that ACA members have access to such resources necessary to understand and implement procedures and protocols to ensure compliance with new regulations.

ACA strongly encourages the Bureau to issue frequent (possibly quarterly) FAQs to help explain regulatory expectations. Creating clear expectations for compliance ultimately benefits consumers, while also providing much-needed transparency about expectations within the industry. The CFPB has not yet provided FAQs for the Debt Collection Final Rules even though the implementation date is just weeks away. Providing these in a timely and understandable manner is critical, particularly for small businesses.

ACA also supports the use of formal advisory opinions in addition to FAQs, including the Advisory Opinion Program. Entities often seek an opinion from a regulatory agency because a critical issue arises that requires explanation. This may be within the course of litigation or pending litigation or necessary for ongoing compliance, and time is of the essence. Furthermore, courts often give deference to Agency-issued advisory opinions, which provides further support for their utility. Scenarios that arise for regulated entities are sometimes overlooked in the consideration of a rule. Industries change, and in the case of the debt collection market, new and existing technologies may provide enhancements to formerly standard procedures. Advisory opinions may assist in the development of best practices on an ongoing basis. These opinions should be used to address difficulties in understanding compliance expectations.

As a specific example, ACA encourages the CFPB to promptly address the very real compliance concerns resulting from a recent U.S. Court of Appeals opinion in the 11th Circuit, *Hunstein v. Preferred Collection and Management Services Inc.* The *Hunstein* opinion followed a collection

agency's use of a specialized entity to process and mail a statutorily required initial validation notice to the involved consumer, a common practice that even the CFPB acknowledges is common in its Commentary in the Debt Collection Final Rules. In an opinion deviating widely from a decades-old practice, the appellate court held that the mere transmission of information to a mail processing vendor to facilitate the automated processing and mailing of a letter to a consumer was a "communication" with the letter vendor under the FDCPA.

Curiously, the appellate court deemed this automated process to be a "communication" as that term is defined in the FDCPA, even though not a single person at the mail processing vendor ever saw the information that had been processed precisely because it was all automated. If the *Hunstein* opinion stands as is, it will undermine many long-existing and important compliance protections designed to protect consumer information when utilizing mail processing vendors to deliver consumer with notice of their rights under the FDCPA and also have an adverse impact that limits consumer options when dealing with their debts. (Please see ACA's amicus brief that fully outlines our concerns about this issue.³)

On another point, under Section 212 of the SBREFA, small entity compliance guides are required to be published under the Regulatory Flexibility Act. Entities should be able to rely on such guides, and such reliance should be deemed compliance with the law. These and other compliance guides should not include a disclaimer otherwise.

We submit that in fulfilling its statutory mission and obligations, the Bureau should engage in fair, clear, and transparent rulemaking activity. It should not engage in rulemaking by enforcement. ACA members are eager to continue working with the Bureau to showcase their commitment to compliance standards and welcome open dialogue with the Bureau on the best way to achieve these mutually-desired results.

In closing, and once again, we want to congratulate you on your selection as the Director of the CFPB. Thank you for your attention to these matters important to the ARM industry and we look forward to working with you toward a shared goal of a healthy and safe economy for consumers and creditors alike.

Sincerely,

Mark Neeb

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

Chief Executive Officer
ACA International

³Brief of Amicus Curiae ACA International, available at <https://www.acainternational.org/assets/member-alert-amicus-brief-filed-hunstein/aca-international-amicus-brief.pdf>.