



May 7, 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-2021-0008, Debt Collection Practices in Connection with the Global COVID-19 Pandemic (Regulation F).

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”) interim final rule associated with an eviction moratorium issued by the Centers for Disease Control and Prevention (CDC) in response to the global COVID-19 pandemic. The interim final rule requires that debt collectors provide written notice to certain consumers of their protections under the CDC eviction moratorium and prohibit misrepresentations about consumers’ ineligibility for protection under the moratorium. (12 CFR Part 1006) 86 Fed. Reg. 21163 (April 22, 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

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>.

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.

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. 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 INTERIM FINAL RULE

In its proposal, the CFPB states that the interim final rule requires that debt collectors provide written notice to certain consumers of their protections under the CDC eviction moratorium and prohibits misrepresentations about consumers’ ineligibility for protection under the moratorium.

A. The Interim Final Rule Provides No Data or even Anecdotal Evidence that the Debt Collection Industry is Causing Consumer Harm in this Area.

In its outreach to membership, ACA only heard from one member, out of 2,100, who is connected to this type of debt collection. However, we can assume there are likely a limited number of other members throughout the country that are connected to the landlord-tenant relationship by providing debt collection services for unpaid legal obligations.

The ACA member who said they do work in this space stated that their agency does not engage in eviction proceedings, but they do help landlord clients by using an attorney to obtain money judgments after their eviction attorney has obtained a judgment for possession and the tenant has moved out. The final money judgment is then assigned to the agency for collection.

The CFPB states in its interim final rule that,

“Consumer advocacy groups, legal aid organizations, housing organizations, faith groups, and other stakeholders have expressed concerns to the Bureau that debt collectors under the FDCPA are not abiding by the CDC Order. This feedback includes, among other things, allegations that debt collectors have engaged in eviction-related conduct that in their view violates the FDCPA.”

This is the only evidence the CFPB points to that noncompliance with the CDC Order is a widespread and abused practice in the debt collection market. ACA questions the validity of this hearsay, absent additional data, or information about a specific problem, especially since it does not appear to be an area that many debt collectors work in. In the past, similar concerns were raised by these advocacy groups about the ARM industry seeking to garnish stimulus checks through bank levies, which never materialized. ACA is not aware of any data or research showing that garnishment of stimulus checks from the debt collection industry happened on a widespread basis. In fact, we are unaware of any examples of the debt collection industry targeting and garnishing stimulus checks through a bank levy when the most recent checks hit banks accounts.

The interim final rule states that it will prohibit debt collectors from filing an eviction action against a consumer to whom the CDC Order reasonably might apply without disclosing that the consumer may be eligible for temporary protection from eviction under the CDC Order and prohibits debt collectors from falsely representing or implying to a consumer that they are not eligible for temporary protection from eviction under the CDC Order. Again, ACA is not aware that the ARM industry is in any way not working with consumers in the eviction process. However, we do think it would be beneficial for the CFPB to clarify what happens after the moratorium period and if the tenants had moved voluntarily prior to any eviction action. Specifically, who is responsible for providing a consumer their notice required under the CDC? Do they still have the right to apply for those funds if they are not a current tenant? Can a third-party agency apply on behalf of landlord clients? These would be helpful and practical questions to have answers to.

B. In Light of a Federal Court Striking Down CDC Orders, More Clarity is Needed.

On May 5, 2021, in the case *Alabama Association of Realtors, et al. v. U.S. Department of Health and Human Services, et al.*, Case No. 1:20-cv-03377, the U.S. District Court for the District of Columbia struck down the CDC’s eviction moratorium. The question before the court was, does the Public Health Service Act grant the CDC the legal authority to impose a nationwide eviction moratorium? The D.C. Circuit found that it does not. Specifically, the court found that the plain language of the Public Health Service Act, 42 U.S.C. Section 264(a), unambiguously forecloses the nationwide eviction moratorium, and as a result it must set aside the CDC Order, consistent with the Administrative Procedure Act.

Since a federal court struck the CDC Order down, it is not entirely clear how the ARM industry can and should comply with the CFPB interim rule. As such, that must be addressed before the CFPB moves forward with its interim final rule.

III. Conclusion

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. That includes many medical providers on the front lines. ACA is unaware of any trends of abusive behavior by debt collectors toward those impacted by COVID-19. Alternatively, ACA members have reported that they are working with consumers to provide flexibility in the form of hardship programs and other opportunities for longer term solutions that work for an individual consumer.

ACA appreciates the opportunity to provide comments. If you have any questions concerning our letter, please feel free to contact me.

Respectfully submitted,

A handwritten signature in cursive script that reads "Leah Dempsey".

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