



Chairman Andy Barr  
House Financial Services Subcommittee on  
Financial Institutions and Monetary Policy  
Washington, D.C., 20510

Ranking Member Bill Foster  
House Financial Services Subcommittee on  
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March 8, 2023

Dear Chairman Barr and Ranking Member Foster:

On behalf of ACA International, the Association of Credit and Collection Professionals (“ACA”), I am writing in regard to your hearing: **“Consumer Financial Protection Bureau: Ripe for Reform.”**

ACA represents approximately 1,800 members, including credit grantors, third-party collection agencies, asset buyers, attorneys, and vendor affiliates in an industry that employs more than 125,000 people worldwide. Most ACA member debt collection companies, however, are small businesses. Women make up 70% of the total diverse debt collection workforce.

### **I. Background on ACA International**

ACA members play a critical role in protecting consumers providing liquidity to lenders. ACA members work with consumers to resolve their debts, which in turn saves every American household, on average, more than \$700, year after year. The accounts receivable management (“ARM”) industry is instrumental in keeping America’s credit-based economy functioning with access to credit at the lowest possible cost. For example, in 2018 the ARM industry returned over \$90 billion to creditors for goods and services they had provided to their customers. And in turn, the ARM industry’s collections benefit all consumers by lowering the costs of goods and services—especially when rising prices are impacting consumers’ quality of life throughout the country.

### **II. Support for CFPB Reform Legislation**

In recent months, the Consumer Financial Protection Bureau (“CFPB” or “Bureau”) has undertaken a misguided, and frankly unlawful, campaign to target the ARM industry’s compliant collection activities. Unfortunately, CFPB leadership has chosen to forego meaningful conversations with stakeholders in the ARM industry and continues to overlook the economic benefits that are achieved through compliant collection activity. Recent litigation challenging the CFPB’s construct has complicated our efforts to work with the Bureau and understand the scope of its authority.

As Congress is aware, the U.S. Supreme Court recently granted certiorari to consider the questions stemming from *Community Financial Services Association of America Ltd. v. CFPB* case, which found the CFPB's independent funding mechanism is unconstitutional. The U.S. Court of Appeals for the Fifth Circuit held that the CFPB's "double-insulated" funding violates the U.S. Constitution's Appropriations Clause as well as the separation of powers principles on which it is based. As a result of this ambiguity surrounding the CFPB's rulemaking authority, it seems judicious for the CFPB not to engage in any additional rulemaking until critical questions about its structure are resolved.

Unfortunately, the CFPB remains undeterred in its continued efforts to regulate by enforcement actions and press releases, and, even when it does engage in actual rulemaking, it is through flawed and unlawful procedures.

These overbroad activities undertaken by the CFPB put significant judicial, consumer, and financial service market participant resources at risk, which benefits no one. Furthermore, the ongoing litigation, in conjunction with the CFPB's refusal to engage in a transparent process for policymaking that follows the Administrative Procedure Act, highlights why reforms are needed to the construct to the CFPB.

Thus, ACA supports each of the legislative reforms that are at issue in this hearing.

#### **H.R. \_\_\_\_, the "CFPB Dual Mandate and Economic Analysis Act" (Rep. Emmer)**

Under the CFPB Dual Mandate and Economic Analysis Act, when the Bureau seeks to implement and enforce federal consumer financial law, it must do so consistently for the purpose of strengthening private sector participation in markets, without government interference or subsidies, so as to increase competition and enhance consumer choice. ACA strongly agrees that this is appropriate.

Also, under this legislation, the CFPB director would be required to establish an Office of Economic Analysis that would be charged with reviewing and assessing proposed guidance, orders, rules, and regulations measuring existing rules, regulations, guidance, and orders. ACA also strongly agrees that this requirement is appropriate to the development of any new regulations.

#### **H.R. \_\_\_\_, the "Taking Account of Bureaucrats' Spending (TABS) Act" (Rep. Barr)**

The TABS Act changes the source of funding for the CFPB from the Federal Reserve System and transfers it to annual appropriations. This is appropriate precisely because it adds the necessary constitutional checks and balances to an agency with very little accountability as a result of its single director structure and funding mechanism. The appropriations process also allows consumers through their elected officials to have a voice in the direction of the Bureau. ACA fully supports adding transparency and accountability to CFPB actions that have been highlighted by courts.

#### **H.R. \_\_\_\_, the "CFPB-IG Reform Act" (Rep. Luetkemeyer)**

The CFPB-IG Reform Act, among other things, creates an Inspector General for the CFPB who then must appear before Congress. ACA supports this Act to provide more accountability to the CFPB.

#### **H.R. \_\_\_\_, the "Transparency in CFPB Cost-Benefit Analysis Act" (Rep. Mooney)**

Regulations issued by the CFPB fail to account for the costs impacting regulated entities such as staff training time, implementing new technologies, and creating new policies and procedures, for example, all of which create expensive and excessive burdens. These regulatory burdens are

eventually passed on to consumers, force consolidation of industries, and leave consumers and businesses with less choice.

Requiring the CFPB to conduct cost-benefit analysis will ensure that the agency weighs the burdens and negative consequences associated with implementation and compliance against the benefits of a regulation before rules can be finalized. ACA members recently invested significant time and resources to comply with the CFPB's Regulation F, an implementing regulation for the Fair Debt Collection Practices Act ("FDCPA"). The enormous resource costs associated with this regulation (with limited benefit for consumers) has consumed countless hours of time and resources.

Congressman Mooney's legislation's requirement that the CFPB must provide justification for new regulations, including a statement of need and an examination of why the Bureau must undertake the proposed regulation coupled with an analysis of why the private market, state, local, or tribal authorities cannot adequately address the problem, would be an important step forward to impose more accountability and workable requirements from the CFPB. ACA strongly supports this bill.

#### **H.R. \_\_\_\_, the "CFPB Whistleblower Incentives and Protection Act" (Rep. Emmer)**

This legislation amends the Consumer Financial Protection Act of 2010 to provide for whistleblower incentives and protection at the CFPB. ACA supports this legislation and agrees this is necessary to add more accountability and transparency to the Bureau.

#### **H.R. \_\_\_\_, the "Consumer Financial Protection Commission Act" (Rep. Luetkemeyer)**

This legislation is an appropriate and sensible remedy that would bring long term stability to the Bureau. In addition to safeguarding the CFPB from executive and political interference, a Senate-confirmed, bipartisan commission will provide a balanced and deliberative approach to supervision, regulation, and enforcement by encouraging input from all stakeholders. ACA strongly supports this legislation.

#### **H.R. \_\_\_\_, the "Encouraging Innovation and Protecting Consumers Act"**

This legislation restores functions to the Bureau's office of innovation. ACA supports this legislation as it would allow for critical innovation in the financial services marketplace.

#### **H.R. \_\_\_\_, the "Making the CFPB Accountable to Small Businesses Act" (Rep. Fitzgerald)**

This legislation includes detailed justification of the covered agency's determination that the relative size and resources of small entities should have no bearing on the rule, supported by factual policy, and legal reasons. It also includes a description of the steps the agency has taken to minimize any additional cost of credit for small entities and, where no significant alternatives for small entities was adopted, a detailed justification of the covered agency's determination that the relative size and resources of small entities should have no bearing on the rule, supported by factual, policy and legal reasons. ACA strongly supports this legislation that is necessary to protect small businesses.

### **III. CFPB Efforts Surrounding Medical Debt Are Misguided**

Advocacy groups in conjunction with the CFPB continue to push for changes to health care receivables. Most recently there has been a push in the Administration, the IRS, and the CFPB to

drastically alter the collection of unpaid medical debt including the medical debt credit reporting system.<sup>1</sup>

As ACA has set out in earlier letters to the CFPB and Congress,<sup>2</sup> it is deeply concerning that CFPB leadership repeatedly fails to address the myriad of unintended and negative consequences that result from making back-ended changes to the delivery of health care in America. Creditors enter into contracts/agreements to provide goods and services with the expectation they will get paid. Part of that expectation is that unpaid debts can be reported to the credit bureaus, as specifically allowed by the Fair Credit Reporting Act (“FCRA”).

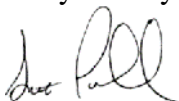
The CFPB’s efforts to rewrite the FCRA regarding the credit reporting of unpaid medical debts are unconstitutional. Moreover, the CFPB’s most recent actions directly threaten to re-write existing agreements to pay medical providers after debts were incurred. This is unfair to small businesses and medical providers throughout the country, all of whom rely on the ability to be compensated for services they deliver.

These changes are not only a financial matter, but more importantly cause the risk of changes in patients’ access to care. A broad ban on medical debt credit reporting could have unintended consequences, such as reducing care options and causing more medical providers to demand payment upfront, putting additional pressure on patients. The Fair Debt Collection Practices Act and the FCRA are silent as it relates to treating medical debt differently than other types of debt and therefore is beyond the authority of the CFPB.<sup>3</sup>

Creating a new health care system through the credit reporting process or by stymieing hospital collection efforts is not the answer. The CFPB provided no credible evidence to support its underlying assumptions that unpaid medical debt provides no predictive value for existing and future creditors to consider when making credit decisions. The [attached chart](#) highlights their flawed research in this area.

Simply put, the CFPB is willfully, and unconstitutionally, overlooking the harmful, negative, and unintended consequences that result when policymaking is undertaken without the required transparency. Reforms must be implemented to rectify these significant deficiencies regarding the CFPB in its current state.

Thank you for your leadership on this issue.



Scott Purcell  
Chief Executive Officer

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<sup>1</sup> <https://communitycatalyst.org/resource/end-medical-debt/>.

<sup>2</sup> See Letter from Scott Purcell, ACA International Chief Executive Officer, to the Hon. Rohit Chopra, Consumer Financial Protection Bureau Director (Sept. 30, 2022) <http://bit.ly/3NWF1Mf>; Letter from Scott Purcell, ACA International Chief Executive Officer, to Chuck Schumer, United States Senate Majority Leader, et al (Sept. 8, 2022) <http://bit.ly/3toNjDa>.

<sup>3</sup> See Response to Petition for Rulemaking - NCLC, et al. to “Ban Medical Debts from Credit Reports” (Document ID CFPB-2022-0067-0001) (Nov. 23, 2022) <http://bit.ly/3mDLi5E>

