



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

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

April 25, 2023

Dear Chairman McHenry and Ranking Member Waters:

On behalf of ACA International, the Association of Credit and Collection Professionals (“ACA”), I am writing in regard to the markup of the Consumer Financial Protection Bureau reform legislation. 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.

ACA members play a critical role in protecting consumers while 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.

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 that are included within The CFPB Transparency and Accountability Reform Act.

H.R. 2489, 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. 1382, 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. 6038, 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. 1313, 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. 2490, 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. 1410, 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.

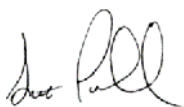
H.R. ____, the "Encouraging Innovation and Protecting Consumers Act"

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. 1749, 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.

Thank you for your leadership.



Scott Purcell
Chief Executive Officer