



Legislative Reform for the Consumer Financial Protection Bureau: An Overview of the Impacts of CFPB Actions on the Accounts Receivable Management Industry

ACA International is the leading trade association for accounts receivable management (ARM) professionals, representing over 1,800 credit grantors, third-party collection agencies, asset buyers, attorneys, and vendor affiliates across an industry employing approximately 125,000 people—with women representing over 70% of the debt collection workforce and racial and ethnic minorities comprising a significant 42% of employees.

- In recent months, the Consumer Financial Protection 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.
- Of note for this Congress, the U.S. Supreme Court recently granted certiorari to consider the questions stemming from the *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 5th 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.
- Research has shown that reasonable debt collection regulations combined with an efficient debt collection industry can contribute to an expanded supply of consumer credit and lower interest rates.¹ This is essential for higher-risk borrowers who would not otherwise qualify for credit or for whom credit would be prohibitively expensive. It gives borrowers access to affordable credit when lenders can mitigate losses through post-default collection. In the absence of the debt collection industry, consumers would be unable to obtain credit cards and other unsecured credit would be extremely limited, causing disadvantages for consumers without cash on hand.

¹ Julia Fonseca, Katherine Strair and Basit Zafar, *Access to Credit and Financial Health: Evaluating the Impact of Debt Collection*, Federal Reserve Bank of New York Staff Report, No. 814, May 2017, https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr814.pdf?la=en.%2525205

Taking Account of Bureaucrats Spending (TABS) Act

The TABS Act changes the source of funding for the CFPB from the Federal Reserve System to annual appropriations, allowing for greater oversight. ACA fully supports this bill 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, issues that have been highlighted by courts. The appropriations process also allows consumers through their elected officials to have a voice in the direction of the bureau. Additionally, this bill would bring the CFPB out from under the Federal Reserve and make it into an independent agency named the Consumer Financial Empowerment Agency.

Consumer Protection for Medical Debt Collections Act

H.R. 1773 was introduced in March 2023 and mirrors a similar bill included in the Comprehensive Debt Collection Improvement Act, which did not advance past the U.S. House of Representatives in the 116th or 117th Congress. This bill would amend the Fair Debt Collection Practices Act to provide a timeline for medical debt collections and prohibit credit reporting agencies from reporting medical debts. As a result, it could impact health care providers' medical billing and consumers' knowledge of unpaid bills. ACA disagrees with this proposal and believes this legislation is misguided and would be confusing to consumers.

The CFPB Dual Mandate and Economic Analysis Act

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.

The CFPB-IG Reform Act

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.

The Transparency in CFPB Cost-Benefit Analysis Act

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.

The enormous resource costs associated with this regulation (with limited benefit for consumers) has consumed countless hours of time and resources. This 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.

CFPB Whistleblower Incentives and Protection Act

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, particularly since there is a single director of the bureau with unfettered authority.

Consumer Financial Protection Commission Act

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.

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.

Making the CFPB Accountable to Small Businesses Act

This legislation would require the CFPB to expect that size and sophistication-based review of regulations is needed in reviews by the Small Business Regulatory Enforcement Act (SBREFA) panel. If such reviews are not complete, they must release a justification that the relative size and resources of small entities should have no bearing on the regulation, supported by factual policy and legal reasons.

Congress has continually urged the CFPB to narrowly form its rules to specific consumer harms. When the SBREFA became law in 1996, Congress set out to grow federal agencies' abilities to know how their regulations impact small firms and use that information to remove unnecessary regulatory burdens on those firms.

Therefore, this legislation seeks to require a description of the steps the CFPB or other agency has taken to minimize any additional cost of credit for small entities and again, where no significant alternatives for small entities were adopted, provide a detailed justification of the covered agency's determination that the relative size and resources of small entities should have no bearing on the regulation supported by factual, policy and legal reasons.

ACA strongly supports this legislation to protect small businesses.

Fair Access to Banking Act

This bill would amend the Federal Reserve Act to prohibit certain financial service providers who deny fair access to financial services from using taxpayer-funded discount window lending programs, and for other programs. Banks should be required to make decisions about banking relationships based on individualized risk-based analysis using empirical data evaluated under quantifiable standards, rather than on categorical decisions discriminating against entire industries. ACA supports this legislation to preserve banking relationships for its members.

Financial Compensation for CFPB Whistleblowers Act

This Senate bill would authorize the CFPB to award financial compensation to whistleblowers who report wrongdoing to the consumer bureau.