



June 8, 2023

Chairman John Hickenlooper  
Senate Commerce Subcommittee on  
Consumer Protection, Product Safety and Data  
Security  
Russell Senate Office Building 254  
Washington, D.C., 20510

Ranking Member Marsha Blackburn  
Senate Commerce Subcommittee on  
Consumer Protection, Product Safety and Data  
Security  
Russell Senate Office Building 254  
Washington, D.C., 20510

Dear Chairman Hickenlooper and Ranking Member Blackburn:

On behalf of the Association of Credit and Collection Professionals (“ACA International” or “Association”), I am writing regarding the Subcommittee on Consumer Protection, Product Safety and Data Security hearing titled “Protecting Consumers from Junk Fees.”

ACA International represents approximately 1,700 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 International 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 International members play a critical role in protecting consumers and providing liquidity to lenders. ACA International 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.

ACA International members also follow comprehensive compliance policies, are diligent about employing strong compliance management systems, and have high ethical standards to ensure consumers are treated fairly and the wide range of federal and state laws that govern collections are followed. The Association contributes to this end goal by providing timely industry-sponsored education as well as compliance certifications. In short, ACA International members are committed

to assisting consumers as they work together to resolve their financial obligations, all in accordance with the Collector’s Pledge that all consumers are treated with dignity and respect.

## II. Convenience Fees

In June 2022, the Consumer Financial Protection Bureau (“CFPB” or “Bureau”) issued an Advisory Opinion on Debt Collectors’ Collection of Pay-to-Pay Fees (the “Convenience Fee Rule”), which interprets language in the Fair Debt Collection Practices Act to only allow debt collectors to charge credit card convenience fees in those situations when state law explicitly authorizes the collection of such fees. CFPB Compliance Bulletin 2017-01, 82 FR 35936, 35936 (Aug. 2, 2017).<sup>1</sup> By promulgating the Convenience Fee Rule, the CFPB is attempting to subvert the nationwide debate over the FDCPA’s text in favor of its preferred policy. Even more troubling, it is demanding this change in law with a mere “interpretive rule,” which did not include a notice and comment process required in the Administrative Procedure Act. Section 808(1) of the FDCPA prohibits debt collectors from collecting “any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.” 15 U.S.C. § 1692f (2022). Multiple courts have grappled with whether a credit card convenience fee elected by the borrower to cover the debt collector’s credit card merchant interchange fees (which are set by a Federal Reserve regulation) is permissible under this FDCPA provision.

The CFPB’s reading since 2017 has vacillated. In a 2017 Compliance Bulletin, the Bureau said that a fee was only “permitted by law” if it was expressly *authorized* by state law—the fact that a fee is not *prohibited* is not enough to save it from Section 808(1) or Regulation F. Conversely, when it promulgated Regulation F, it “generally mirror[ed] the statute” on the topic of charges permitted by law. 85 FR 76734, 76833 (2022). As relevant here, Regulation F provides that “[a] debt collector must not collect any amount unless such amount is expressly authorized by the agreement creating the debt or permitted by law.” 12 CFR § 1006.22(b) (2022). Notably, the Bureau’s 2022 “Advisory Opinion” reverted to its 2017 position and the 2022 Advisory Opinion in effect rewrote the Regulation F provision to swap “permitted by law” with “expressly authorized by law.”

Under the CFPB’s 2017 guidance, consumers were permitted to pay a convenience fee as long as a free payment choice was provided to them, and that it was explicitly stated. Yet, now the CFPB is making arbitrary decisions about which fees are “junk” and which are not based on ideological views, rather than precedent and explicit statutory text.

The federal government has no place to make determinations for consumers about what fees are worth paying, and which are not because they do not know each individual’s circumstance. For example, people use ride-sharing services even though they are typically a more expensive option compared to public transportation. Should the government take away the ability to make that choice because one is more expensive than the other—without a notice and comment rulemaking process, or without a determination by Congress? This is the type of discussion that should be had in the public domain and the CFPB should be following the Administrative Procedure Act.

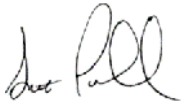
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<sup>1</sup> *Debt Collection Practices (Regulation F); Pay-to-Pay Fees*, CFPB, [https://files.consumerfinance.gov/f/documents/cfpb\\_convenience-fees\\_advisory-opinion\\_2022-06.pdf](https://files.consumerfinance.gov/f/documents/cfpb_convenience-fees_advisory-opinion_2022-06.pdf)

The release of the 2022 Advisory Opinion draws continued concerns from ACA International on the CFPB's regulatory processes and lack of stakeholder involvement in those processes. When the CFPB moves the goal post on the industry without following the notice and comment process in the APA, there will be unintended consequences. For example, some consumers for a variety of reasons choose to pay their bills with a credit card even though a fee is associated with those payments. However, those payment methods can save consumers time and potentially other costs (such as ordering new checks).

The federal government should not eliminate consumers' choices without the material data and information to make those decisions. It should also not be making arbitrary decisions to classify certain financial services fees as "junk" based on ideological views.

Thank you for holding the hearing and for your consideration. Please let me know if you have any questions.

A handwritten signature in black ink, appearing to read "Scott Purcell". The signature is fluid and cursive, with the first name "Scott" written in a smaller, more compact script than the last name "Purcell", which is more expansive and stylized.

Scott Purcell  
Chief Executive Officer  
On behalf of ACA International