June 12, 2023

Chairman Sherrod Brown
Senate Committee on Banking, Housing and Urban Affairs
Washington, D.C. 20510

Ranking Member Tim Scott
Senate Committee on Banking, Housing and Urban Affairs
Washington, D.C. 20510

Dear Chairman Brown and Ranking Member Scott:

On behalf of ACA International, the Association of Credit and Collection Professionals ("ACA" or "Association"), I am writing regarding your hearing concerning the Semiannual Report of the Consumer Financial Protection Bureau. ACA 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 member debt collection companies, however, are small businesses. The debt collection workforce is ethnically diverse and 70% of employees are women.

Background about ACA International

ACA members play a critical role in protecting consumers and 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.

ACA 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 members are committed to assisting consumers as they work together to resolve their financial obligations, all in accord with the Collector's Pledge that all consumers are treated with dignity and respect.

The Consumer Financial Protection Bureau ("CFPB" or "Bureau") continues to target the work of the ARM industry in several ways. One of the Bureau's apparent objectives is to completely remove any

reference to outstanding medical debts from all credit reports. This goal, if achieved, will result in negative consequences to consumers and harm medical providers throughout the country.

The CFPB recently announced that it is planning to engage in a rulemaking under the Fair Credit Reporting Act (FCRA) related to medical debt. The CFPB does not have jurisdictional authority over many issues related to medical debt and has limited authority under the FCRA to engage in rulemaking in this area. Yet, it appears adamant to get involved in medical debt issues, including an apparent objective to further the concept of universal health care through the back end of the medical system.

There are also serious concerns about the CFPB's interpretive rule issued last year as an advisory opinion on "junk fees" in the debt collection market. There is an existing judicial precedent that supports the use of these convenience fees, and they are very common in modern payment processing. Yet, the CFPB issued an advisory opinion without first engaging in a transparent and deliberative process with all stakeholders to understand the consumer choice associated with these fees. There was no effort to try to understand the benefits of why these fees are sometimes used in payment processing.

As the ARM industry grapples with this advisory opinion, it is disappointing that the Bureau did not provide a notice and comment period and opportunity for discussion before making these sweeping changes. As further outlined below, the CFPB is also engaging in serious overreach in proposals concerning nonbank registries. It has also deputized state attorneys general to go after financial service providers, often seeking to double team financial companies and exhaust resources through joint examination processes.

Accordingly, ACA urges Congress to consider the following concerns.

Areas of CFPB Overreach

I. CFPB Actions Surrounding Medical Debt

Director Chopra and other leaders in the CFPB have delivered public remarks that appear to encourage nationwide credit reporting agencies ("NCRAs") to not report unpaid medical debt. In March 2022, the three NCRAs announced significant changes to the medical debt credit reporting process. They announced that, effective July 1, 2022, paid medical debt will no longer be included on consumer credit reports. In addition, the time period before unpaid medical debt appears on a consumer's credit report will be increased from six months to one year. In the first half of 2023, Equifax, Experian, and TransUnion started to no longer include medical debt collections under at least $500 on credit reports. Compounding this explosive action, in August 2022, VantageScore announced that it will exclude all medical billing that is sent to collections from its credit scoring model, making no differentiation between medically necessary *and* voluntary medical debt.

In the wake of these actions, the CFPB has taken credit for the NCRAs' behavior in public forums such as previous congressional testimony. ACA members have already seen evidence of their clients in the medical space suffering because of the message behind the message telling consumers that they do not have to pay their medical debt and will face no consequences if they do not. Last month alone,

ACA members working for medical providers throughout the country reported plummeting numbers of consumers making payments, despite that many of them are insured and have the means to do so.

The CFPB also recently announced that it will begin the rulemaking process under the FCRA to issue rules related to medical debt. Please see the attached letter that explains why the CFPB does not have the legal authority to do this and other related concerns about the impact this will have on medical providers and the larger economy.[1]

II. The CFPB's Actions Surrounding Nonbank Registries Run Counter to the Law

ACA has outlined in detail to the CFPB concerns about why its actions to require certain nonbank covered person entities to have registries is constitutionally flawed. One is related to final public orders "repeat offenders." [2] The other registry impacts entities that use form contracts and arbitration agreements.[3] As outlined in ACA's letters included the in footnote, there are several legal and policy reasons why these registries should not be made final. Much of the CFPB's analysis in these proposals is frankly inaccurate and paints the picture of flawed ideological views that disfavor various industries, including the debt collection industry. Attempting to create new policies by relying on outdated, non-quantifiable, and in some cases just plain made-up information is harmful to consumers. Ignoring the will of Congress and its actions to strike down CFPB rules related to arbitration under the Congressional Review Act also raises separation of powers concerns. As a federal agency that is tasked with protecting consumers, the CFPB must do a better job to understand the laws and regulations in place for the debt collection industry and have a better understanding of its work for creditors throughout the country before making broad assumptions and accusations about the use of consumer contracts and "repeat offenders."

III. CFPB and White House Focus on Junk Fees is Flawed

In July 2022, the CFPB 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 ("FDCPA.") 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).[4] By promulgating the Convenience Fee Rule, the CFPB is attempting to subvert the nationwide debate over FDCPA text in favor of its preferred policy. Most troubling, it is demanding this change in law with a mere "interpretive rule," which did not include a notice and comment rulemaking.

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

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[1] Letter to CFPB in Response to NCLC petition https://policymakers.acainternational.org/wp-content/uploads/2022/11/aca-response-to-nclc-petition-cfpb-November2022-final.pdf and Amicus Brief in *CDIA v. Frey*, available at https://policymakers.acainternational.org/wp-content/uploads/2022/12/cdia-aca-amicus-brief.pdf.

[2] Comments of ACA International available at https://policymakers.acainternational.org/wp-content/uploads/2023/03/aca-comments-cfpb-nonbank-registry-march2023.pdf.

[3] Comments of ACA International available at https://policymakers.acainternational.org/wp-content/uploads/2023/03/aca-comments-cfpb-nonbank-contracts-march2023.pdf.

[4] Debt Collection Practices (Regulation F); Pay-to-Pay Fees, CFPB, https://files.consumerfinance.gov/f/documents/cfpb_convenience-fees_advisory-opinion_2022-06.pdf

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 Reg. F. CFPB, CFPB Compliance Bulletin 2017-01, 82 FR 35936, 35936 (Aug. 2, 2017). 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).

In contrast, the Bureau's 2022 "advisory opinion" reverted to its 2017 position. The 2022 advisory opinion in effect rewrote the Regulation F provision to swap "permitted by law" with "expressly authorized by law."

When the CFPB moves the goal post on industry without following the notice and comment process, 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 also should not be making arbitrary decisions to classify certain financial services fees as "junk" based on ideological views.

IV. Coordination with Attorneys General Should be Fair and Reasonable

Last year, the CFPB issued an interpretative rule "to provide further clarity regarding the scope of state enforcement." According to the interpretive rule, Section 1042 of the Consumer Financial Protection Act ("CFPA") allows the CFPB to authorize state attorneys general to independently enforce federal consumer financial laws, regulations, and Bureau consent orders. The message the CFPB has clearly been sending, and actions it has taken, have resulted in numerous instances of duplicative actions from the Bureau and state attorneys general. Members of Congress recently pointed out that, "It is clear that state attorneys general may enforce the CFPA in cases where the CFPB has not. But the statute does not allow for a state attorney general to become a party to an existing CFPB enforcement action. It is therefore inappropriate for the CFPB to recruit a state attorney general that is not otherwise investigating a company to pursue enforcement as a means of intimidation.

When bad actors are engaging in abusive behavior, ACA supports targeted efforts to eliminate illegal activity. However, seeking to intimidate or burden legitimate businesses by engaging in duplicative enforcement with the states is not a good use of anyone's resources, and the costs are ultimately passed on to consumers. When businesses are spending time dealing with duplicative supervision or enforcement actions, they are not innovating and focusing on solving consumers' problems. Congress created the CFPB to protect consumers, not to rally states to work in concert

with them to target certain disfavored industries or businesses.

Thank you for your attention to the concerns of the ARM industry. Please let me know if you have any questions.

Scott Purcell
Chief Executive Officer
ACA International