April 1, 2022

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Comment Intake
Consumer Financial Protection Bureau
1700 G Street NW
Washington, D.C. 20552

Re: Comments of ACA International, Request for Information Regarding Fees Imposed by Providers of Consumer Financial Products or Services, Docket No. CFPB-2022-0003

Dear CFPB Staff:

I. Background

On behalf of ACA International, the Association of Credit and Collection Professionals (ACA), I am writing regarding your request for information concerning fees related to consumer financial products and services. ACA represents approximately 2,100 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 debt collection workforce and it is ethnically diverse.

ACA members' compliant work represents an average savings of more than $700 for every American household. The accounts receivable management (ARM) industry plays a critical role in keeping America's credit-based economy functioning with access to credit at the lowest possible cost. Data from 2018 shows that the total net debt returned to creditors through the ARM industry's work with consumers amounted to nearly $90.1 billion. This work benefits all American consumers and keeps the costs of goods and services down during a time when rising prices are harming Americans throughout the country. ACA members also have numerous compliance and ethical standards that they work toward through industry-sponsored education and certifications. ACA members are committed to helping consumers resolve their legally owed debts in a responsible way, consistent with the Collector's Pledge that all consumers are treated with dignity and respect.

II. Comments of ACA International

A. Use of Fees in the ARM Industry

In its request for information (RFI), the CFPB notes that in 2017, "after observing many abuses," the CFPB issued a Compliance Bulletin[1] on unfair, deceptive, and abusive acts or practices relating to fees for making payments over the telephone, and potential violations of the Fair Debt Collection Practices Act (FDCPA). The RFI states, "These kinds of convenience fees are still common." However, the CFPB does not provide any evidence or date of abuse by ARM Industry participants occurring in this area. ACA takes issue with including this vague and unsupported accusation in an RFI and is unaware of any pattern of abusive behavior in this area among our members.

Notably, the FDCPA prohibits the collection of any amount including any interest, fee, charge, or expense incidental to the principal obligation unless the amount is included in an agreement creating the debt or state law allows for it.[2] Some ACA members do, however, charge fees in a compliant way outside the scope of an original agreement. For example, one ACA vendor offers a global payment processing proposed fee program that does not violate the FDCPA because the fee does not directly benefit the debt collector and is instead collected by a third-party payment processor as a fee charged for the expedited pay-by-phone option with notice of free payment alternatives. As another example, some state laws may allow for the addition of fees by a debt collector or creditor, depending on the circumstance. ACA members that charge fees work to do so in a compliant way, despite some unclear precedent in this area created by case law.

B. Policy Discussion of Fees

Congress recently noted in a letter that, "the CFPB broadly groups all fees associated with consumer products and services as 'junk fees' and does not provide any legal definition of the term or any statutory authority to define such a term."[3] ACA strongly agrees with this concern. Moreover, we are disappointed that it has been a trend in recent months for the CFPB to use pejorative terms when describing not only the debt collection industry, but also most participants in the financial services industry. For example, in a recent enforcement action against an ACA member, that takes their compliance obligations seriously, the CFPB referred to their efforts in the industry as a "debt collection ring,"—therefore insinuating their activity is akin to a criminal enterprise. These misleading attacks on financial services providers do not help consumers. In fact, they stand to cause consumers to avoid participating in the regulated financial services marketplace and to turn to other less regulated alternatives.

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[1] Phone Pay Fee Compliance Bulletin 2017-01, available at https://www.consumerfinance.gov/compliance/supervisory-guidance/bulletin-phone-pay-fees/ (July 27, 2017).

[2] 15 U.S.C. § 1692f(1) (2018) [§808(1)]

[3] Consumer Financial Protection Bureau, *Taskforce on Federal Consumer Financial Law Report, Volume I*, available at https://files.consumerfinance.gov/f/documents/cfpb_taskforce-federal-consumer-financial-law_report-volume-1_2022-01_amended.pdf (January 2021).

Simple economic analysis would hold that some costs must be passed on to consumers for those working in the financial marketplace to be able to continue to operate and keep the economy churning, without an increased cost of credit. As noted in the Bureau's recent Taskforce on Federal Consumer Financial Law Report,[4] the costs associated with not making timely payments for consumers is also an important part of encouraging accountability in the marketplace. The report noted, "…timely payments provide evidence of the borrower's continued ability and willingness to repay. Late payments are an indicator that a problem may have arisen. Specific charges imposed for late payments are an attempt to discourage such behavior (and not only for the purposes of increasing revenue as sometimes believed, although late fees may help cover costs associated with late payments as well as discouraging them)."[5] We have seen regulatory interventions in the past, such as those outlined in the CFPB report[6] related to interchange fees, that ultimately led to a harmful outcome for consumers because of similar misguided assumptions that all costs for consumers are bad. Providing clear disclosures and being transparent is important. However, starting from the premise that any and all fees are "junk" is problematic.

ACA instead encourages the CFPB to focus on education and financial literacy efforts to help consumers better understand steps they can take to avoid those charges. The CFPB is unclear in its RFI about its intended actions in this space, beyond making broad and unsupported accusations against the debt collection industry and using combative words to describe the entire financial services marketplace. If there is substantive information that points to trends in this area in the future, we look forward to a more robust discussion.

Thank you for your attention to these concerns.

Sincerely,

Leah Dempsey
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[4] Letter from Congress, available at https://republicans-financialservices.house.gov/news/documentsingle.aspx?DocumentID=408300 (March 30, 2022).
[5] *Id.*
[6] *Id.*