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INTERNATIONAL

April 25, 2022

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

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

Dear Chairwoman Waters and Ranking Member McHenry:

On behalf of ACA International, the Association of Credit and Collection Professionals (ACA), I am writing regarding your hearing titled, "Consumers First: Semiannual Report of the Consumer Financial Protection Bureau (CFPB)." 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. The debt collection workforce is ethnically diverse and 70% of employees are women.

ACA members' compliant work helps consumers by saving American households an average of more than $700 in savings per year. 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 work toward numerous compliance and ethical standards through industry-sponsored education and certifications. In short, ACA members are committed to helping consumers resolve their legally owed debts in a responsible manner, which helps create a sustainable marketplace. This is consistent with the Collector's Pledge that states all consumers are to be treated with dignity and respect.

Following are some concerns about the CFPB's actions in the last several months, and their impact on businesses and consumers.

I. The CFPB's Harmful Rhetoric about the ARM Industry Hurts Consumers and the Economy

Despite the clear economic benefits of the ARM industry, and ACA members' strong commitment to compliance, the rhetoric from CFPB's leadership in recent weeks insinuates the industry is made up entirely of bad actors seeking to harm consumers. This could not be further from the truth and is offensive to the thousands of employees in the country who engage in collections work. In fact, over the past year and a half, these individuals have dedicated thousands of their hours, dollars, and other resources into having robust compliance programs to meet the requirements in the CFPB's Regulation F. Notably, this is only one of dozens of state and federal laws and regulations ACA members work to comply with. Yet, the CFPB provides no acknowledgement of the work of the industry, or even of the bureau itself including its creation of various compliance tools, that has led to a more regulated environment. This is after nearly a decade of collaboration with ACA and the CFPB.

Instead, the new leadership at the CFPB and the Biden administration pretend that the debt collection industry is unregulated and running amuck. This was made apparent in a video from this month, when Vice President Kamala Harris referenced several concerns about practices that are already illegal under the Fair Debt Collection Practices Act and other compliance issues that are part of Regulation F. Additionally, we are extremely disappointed with the CFPB Director's use of pejorative terms when describing not only the debt collection industry, but most participants in the entire 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"—hinting their activity is akin to a criminal enterprise. These misleading attacks on financial services providers do not help consumers; instead they cause consumers to avoid participating in the regulated financial services marketplace and push towards other less regulated alternatives.

Regulation through press releases, to try to force unresearched agendas in the financial services marketplace is an extremely dangerous way to regulate major sectors of the economy relied on by consumers. Under the Dodd-Frank Reform and Consumer Protection Act (Dodd-Frank Act), Congress contemplated several checks and balances on this system of creating policy, including the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) process to protect small businesses from overly burdensome rules that do not properly consider their size and structure. The creation of new policies outside of this process disregard the Dodd-Frank Act and the original purpose of the CFPB.

In reality, ACA members receive thousands of testimonials from consumers about how they have

helped consumers get back on their feet, provided excellent customer service, and changed their entire lives for the better (as you can see in a video from a consumer here). ARM professionals serve as a guide to help consumers understand various options for resolving their debt and practices to avoid it in the future. Arbitrarily limiting their work and allowing Director Chopra, who has yet to meet with anyone from the industry, to drive a false narrative about these hardworking people is not fair, and very detrimental to the credit ecosystem.

ACA encourages Congress to ensure the CFPB operates as intended to create a fair, transparent, and competitive marketplace. Congress should also work to ensure the CFPB focuses on ways to provide material benefits to consumers, such as an increased focus on education and financial literacy efforts to help consumers better understand early steps they can take to avoid breaching contractual financial obligations. Through the Financial Literacy Committee, ACA created the Know My Debt website to deliver clearly worded expectations to help consumers improve their financial literacy and resolve their debts. ACA applauds the CFPB's tools outlined in its recent FDCPA report to Congress that focus on helping consumers understand debt collection processes and avoid scams. This is work that actually will benefit consumers and keep them out of financial distress.

II. Urging Consumers Not to Pay Legally Owed Debt and Abolishing the Credit Reporting System will Have Immense Economic Consequences

The CFPB in recent weeks has identified medical and student loan debt, as areas where consumer contracts that were originally agreed to, do not need to be honored. It is extremely problematic that the CFPB, through the lens of a single, unelected official, is making nationwide decisions, changing the precedent for contracts laws, and arguably favoring various sectors of the economy. Taking away credit reporting as a tool in the collections process, which notably is the last option used when it comes to medical debt and most other types of debt, will without question force certain health care providers and creditors to turn to litigation sooner and more often to recover payment for services already provided. It will also lead to increased costs and less access to credit and services for consumers. The blanket policies Director Chopra is working to implement are not tailored only to those in need; they include well-off Americans who can afford their low-dollar medical bills under $500 and their education tuition or loans, which have provided them advantages over others in the workforce. The blind belief that the health care community and education community can absorb financial shocks of that nature is misguided and could lead to disastrous outcomes for consumers.

III. The CFPB Rhetoric is Signaling Red Flags for the Economy

Credit reports that do not account for financial obligations, such as past-due medical bills and student loans, increase the chance of future credit grantors extending credit that a consumer cannot afford.

That process could lead to increases in bankruptcies, stress and harm through additional costs for consumers, and inappropriate losses to credit grantors—ultimately causing a negative impact for all credit users. It is also unclear how some of the changes being pushed by the CFPB will impact the bankruptcy process, a move that could make filing more difficult for consumers. The CFPB is watering down the accuracy and validity of credit reports and putting lenders in a position where they are likely to offer credit to those who cannot afford it.

It is ironic that the CFPB was created in response to the 2008 financial crisis, yet now seems to be at the tip of the spear of creating another economy where banks underwrite loans without an accurate picture of the consumer's ability to repay. We have seen how this played out before when "creative math" and blind spots in credit portfolios led to crippling foreclosures for consumers throughout the country. The CFPB seems to be all but urging consumers not to pay their debt. This will not lead to a healthy and functioning economy.

IV. Supported CFPB Actions Taken Related to Medical Debt by the Credit Bureaus Will Harm Health Care Providers and Consumers

A. Changing the Time Period for Reporting from Six Months to One Year will Cause Consumers to Miss Insurance Deadlines.

At the urging of the CFPB, credit reporting agencies (CRAs) recently increased the minimum timeframe to credit report medical debt from six months to one year from the date of delinquency. This change is for the stated purpose of offering consumers more time to address their debt with insurance companies (Payors) and medical providers (Providers) before it is reported. The six-month rule already harms consumers. These actions blatantly disregard the significant harm that will come to the portion of the population who does not respond to regular collection attempts, such as calls and letters, and who find out about their medical debt from seeing it on their credit report. Society has done an excellent job of promoting the need for consumers to read their credit report regularly and free of charge. Learning about a financial obligation on their credit report may be the first time it registers for a consumer that they really need to address the issue with their insurance company and act to avoid future litigation.

Many physician practices' specify in managed care contracts that if a bill is not submitted to the insurance company within six months from the date of service, the insurance company does not have to pay that bill. That is why in 2020 a group of stakeholders, including the Healthcare Financial Management Association (HFMA) and ACA, jointly published the second edition of Best Practices for Resolution of Medical Accounts with input from consumer groups and providers.[1] These best

[1] Best Practices For Resolution of Medical Accounts, available at https://www.acainternational.org/news/aca-

practices further enhanced controls over credit reporting, and purposefully arrived at 120 days from the date of first discharge billing as an appropriate time for credit reporting to ensure accuracy in the final adjusted amounts as well as for the consumer to file a claim with the Payor if needed. The 180-day wait time was already a problem. Changing the goal post to 365 days will remove the option for claiming insurance coverage for an even greater number of consumers, as most all other health care contracts have a provision that a timely-filed insurance claim is 365 days from the date of service. Beyond that, there is no legal obligation to pay the claim.

Then what happens? These actions will put the full onus on consumers to pay the bill in full when the Payor will not. If the consumer cannot pay, and the insurance company will not pay, then the Provider will need to pass that cost on to everyone else. It may also lead to more Providers requiring consumers to pay cash up front. Alternatively, Providers may move to groups that have a different economic model for more robustly passing those costs on to others. In either scenario, access to care is reduced or eliminated—even for people with good insurance. As an additional side effect, Providers might initiate a greater number of lawsuits as the only option to ensure consumers pay for the services they received. This is a more expensive and time-consuming process than credit reporting that is played out in the public domain. While larger Providers may not need to resort to litigation, smaller Providers may be forced to do so to keep their doors open and continue to provide services.

B. Setting an Arbitrary Threshold for Debt will Harm the Smallest Medical Providers and Limit Access to Care, Especially in Rural and Underserved Areas.

The decision to no longer include past due medical legal obligations of under at least $500 starting in the first half of 2023 is a significant detriment to Providers. The biggest unintended consequence of not allowing medical debt under $500 to be credit reported will be the reduction in services from small Providers to low-income and middle-class Americans. Government regulators, particularly those involved in this discussion that do not have a background or expertise in health care issues, and consumer groups, have a false impression of the real-world impact of this change. While less than $500 may seem like "small change" to large, publicly traded companies like the CRAs, bills of this amount can be a significant portion of a small or medium-size Provider's livelihood. This is particularly true for mental health providers, serving rural and underserved areas through telehealth, and other physicians providing critically important services at lower costs. While the typical ophthalmologist bill is less than that of a major hospital, it does not mean that the ability to provide eyecare services should be taken for granted. Solo practitioners, including dentists, pediatricians, and other Providers, typically have bill balances below the $500 range.

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international-and-hfma-release-new-best-practices-for-resolution-of-medical (September 2020).

It is worth noting that these are the doctors who most rely on third-party debt collectors to recover the rightfully owed money for services they provided. Small providers, such as Clair Family Dentistry, who shared their story in a video here, do not have the infrastructure for in-house collections. The amounts they collect often represent whether the doctor makes a profit or incurs a loss in running his or her business, including employment costs. It might be possible for one bill for less than $500 to be written off by a small Provider, but dozens of bills for this amount could take away from significant operational costs. Most Providers are not sophisticated financial institutions like banks. If they cannot collect on their accounts and therefore incur ongoing losses that take away from running their business, they will not be able to provide these important services to our communities.

As noted above, it is a common mischaracterization of the health care industry and their business offices to think the largest hospitals speak for all Providers. For the small and medium-sized Providers, their economic model depends on the co-pay or deductible actually being paid. What choices do they have with the impact of the CRAs' change prompted by the CFPB? Again, they will be forced to stop providing services to people who cannot pay cash up front, even when the consumer has insurance.

Notably, the Emergency Medical Treatment and Labor Act only covers emergency care; Providers are free to choose payment policies that work for their business when it does not involve emergency treatment, including refusing to provide care. Another likely outcome is that Providers will join larger organizations that can afford to work with the changed economic model, perhaps abandoning rural and underserved areas as a result. Allowing only large balance medical debts on credit reports, collections will be reserved for the Providers that provide high-dollar services.

Basic economic principles make clear that low-income Americans will be harmed most when Providers constrict services, leading to higher costs and less access to medical care for all consumers. Taking the credit reporting tool away and disproportionately impacting smaller Providers, without first researching the long-term impacts and without having all stakeholders at the table, is bad policymaking. We saw this demonstrated at the CFPB's recent virtual panel on medical debt in Georgia, which did not include representatives of small or medium-sized Providers, Payors, collection agencies, or other government agencies charged with the responsibility of activities related to medical debt. Medical debt is a complex subject that many stakeholders in the financial services industry do not fully understand or have expertise in, and all relevant stakeholders must be involved in crafting solutions.

C. There are a Variety of Agencies, Laws, and Regulations Impacting Medical Issues, Not Being Considered.

As noted above, industry stakeholders have already developed best practices for credit reporting.[2] Additionally, the U.S. Department of the Treasury (Treasury) and the Internal Revenue Service published 501(r), which addresses medical debt and credit reporting. The U.S. Department of Health and Human Services (HHS) oversees the Center for Medicare and Medicaid Services, which already provides input on debt collection practices. HHS also oversees the Center for Consumer Information and Insurance Oversight (CCIIO), which has responsibility for ensuring the Patient Protection and Affordable Care Act (PPACA) best serves the American people. HHS is the federal agency with oversight responsibility of health insurance companies. HHS, the Treasury, and the Department of Labor oversee the Consolidated Appropriations Act, which includes the No Surprises Act—aiming to protect consumers from surprise billing concerns related to insurance issues.

Furthermore, the Department of Veterans Affairs also put into place procedures to wait to use credit reporting until other account resolution options are used, such as what is outlined in the ACA and HFMA best practices, but in no way limits timeframes or amounts. The PPACA also provides for free or reduced-cost medical care for low-income and middle-class Americans when obtaining services from nonprofit Providers. This is either mandated by state law or determined by each Provider in their charity care policy. Moreover, consumers with incomes below 400% of the Federal Poverty Level, which is about $111,000 per year for a family of four in 2022, typically have coverage and options for free or reduced-cost medical care as a result of the PPACA. This is just a small picture of the laws and regulations managing health care administration. If Americans are unaware of their benefits under the PPACA, that is a vastly different problem to solve and changing the credit reporting model is not the solution—at least not without extensive research.

We have not seen credible analytical research that articulates how, or if, these arbitrary actions add to the existing body of policies in a way that would improve consumer outcomes for those seeking medical care. Conversely, it is clear that a simple economic analysis would prove that disrupting the credit cycle and making broad assumptions that Providers, especially small and medium-size organizations, can absorb costs will lead to significant harm for low-income consumers. The CFPB's recent report, "Medical Debt Burden in the United States," unfortunately fueled false narratives by making significant assumptions based on flawed anecdotal information.

Due to the major changes in the marketplace after the implementation of 501(r), as well as the National Consumer Assistance Plan, pre-2017 data does not tell the real story of how consumers and Providers make decisions today. The COVID-19 pandemic has further changed consumers' and

[2] *Id.*

Providers' behavior. Other laws attempting to change the existing landscape for medical care, specifically the No Surprises Act, which is included within the Consolidated Appropriations Act of 2021, are complex. Measuring the impact of these changes is critical before guessing or making political capitulations without accurate data or research.

It is also worth noting that ACA has previously urged the CFPB to consider issues related to insurance payment problems during the Regulation F rulemaking process. The CFPB refused to adopt the industry's suggestion to include communication about available charity care programs under the safe-harbor protections of Regulation F. Rather than addressing those problems, the CFPB is now attempting to place the burden on Providers and the third-party agencies helping them.

V. Research and Analytical Data is Needed Before Making Sweeping Changes

Due to the complexity of these issues, the right course of action is to convene all stakeholders before moving forward with major policy shifts, unlike a recent CFPB panel on medical debt that had no representation from the medical or debt collection industry. It is also critical to put out new policies for public comment in line with the Administrative Procedures Act, to allow for a fair and transparent process. Furthermore, it is extremely critical to study these issues and consider scientifically rigorous data before making sweeping major decisions. The CFPB took more than seven years to promulgate Regulation F and still was not able to get it completely right. The overall medical debt and health care delivery system is infinitely more complex and needs the appropriate attention from those who are educated and experienced in these issues.

Thank you for your attention to the concerns of the ARM industry.

Sincerely,

Scott Purcell
Chief Executive Officer