

Brownstein Attorneys Advise on Updates to 40-Year-Old FDCPA
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Client Alert

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On Tuesday evening, Sept. 17, ACA International filed a 155-page comment to the Consumer Financial Protection Bureau's ("Bureau") proposed debt collection rule. The comment advocates for consumers, creditors and a stable U.S. credit economy—as well as its 2,500 members of the accounts receivables management industry. A copy of the full comment is available [here](#). Brownstein's consumer finance attorneys worked alongside ACA to craft the comment based on several months of research, conversations with consumers and industry, and legal analysis. The proposed "Regulation F" will implement and interpret the Fair Debt Collection Practices Act (FDCPA), which became law in 1977 and has not been modified since.

ACA International is the leading trade association for credit and collection professionals. Founded in 1939, and with offices in Washington, D.C., and Minneapolis, ACA represents approximately 2,500 members, including credit grantors, third-party collection agencies, asset buyers, attorneys and vendor affiliates in an industry that employs more than 230,000 employees worldwide. In many ways, the accounts receivables industry is critical to the U.S. economy and job growth. The majority of ACA-member debt collection companies are small businesses. According to a recent survey, 44% of ACA member organizations (831 companies) have fewer than nine employees. About 85% of members (1,624 companies) have 49 or fewer and 93% of members (1,784) have 99 or fewer.

ACA's Comment to the Bureau

ACA believes that the Bureau's efforts will resolve ambiguities in the FDCPA and help create uniform national standards. For the first time in 40 years, consumers across the U.S. will be able to receive consistent written notices, telephone voicemail messages, and—if the Bureau takes ACA's comments seriously—we hope to see standard disclaimers from the Bureau concerning statutes of limitations on accounts and the calculation of accrued interest. This will address both consumer and industry concerns by providing transparency to consumers seeking to understand their rights under the law and decrease litigation over benign technical errors.

The Bureau took a step forward to provide clarity to the practice of sending electronic communications. Its proposed rule recognizes consumer preference to communicate electronically, and also the accounts receivables industry's hesitancy to adopt the technology for fear of litigation or regulatory risk.

ACA took aim, however, at how the Bureau decided to micromanage emails. We disagreed with the Bureau's interpretation that the E-SIGN Act applied to written notices under the FDCPA—as the E-SIGN Act applies only to "transactions" among parties with a relationship. It's appropriate to apply the E-SIGN Act when consumers take out a mortgage loan and receive their loan estimates. It makes little sense to force agencies and consumers to jump through complex consent processes when a consumer has asked via email for copies of old account statements, and the agency's only task is to provide proof that an alleged debt is valid. ACA asked the Bureau to reconsider its views about the need for E-SIGN consent.

Significant Issues for Creditors and the Economy

Some Bureau proposals will cost an estimated \$9 billion to implement, with little evidence to support that changes are truly needed. Approximately three-quarters of the accounts receivable management industry will struggle to comply with a Regulation F requirement that written validation notices contain up to nine new pieces of itemized information (proposed §1006.34). The large swath of impacted businesses will struggle because they service non-finance debt.

Non-finance debts are accounts originated by businesses such as hospitals, doctors, dentists, health clubs, pest control, lawn maintenance services and telecommunications. Importantly, most of the debt collected in the U.S. is related to health care spending. Some non-financial creditors also include state governments, local governments and municipalities, utilities, and even the Internal Revenue Service. Many businesses have historically provided sufficient documentation and itemization to prove the existence of a debt in state courts. However, they often do not maintain account data in the fashion contemplated under proposed §1006.34. We estimate that the cost to change creditor systems to comply with §1006.34 will be over \$3 billion in the first year, and up to \$6 billion in later years. Creditors that don't wish to change systems will simply send the debt to law firms for collection in court. ACA thinks this is bad for consumers.

The U.S. economy depends on collected debt. Debt collection returned \$67.6 billion of funds in 2016 to U.S. businesses—that's an average savings of \$579 for every American household. ACA's comment expressed the concern that regulations should not incentivize consumers to shirk legal and valid debts at the expense of honest businesses and other consumers seeking affordable credit. Small- and medium-sized business owners and their employees will stop providing services in advance of payment if collections become less certain. Particularly for housing and utilities, restricted credit could cause significant harm to low-income consumers.

Most significantly, considering the impact that many of the CFPB's proposed rules will have on the economy, ACA expressed great concern over the lack of economic studies and data to support the Bureau's more aggressive requirements like call caps and itemization. Rules that could so severely impact the U.S. economy must be tested and substantiated with econometrics and cost-benefit analyses. The Bureau has not yet performed these studies.

The due date for all comments is today, Sept. 18, 2019. A hearing about the modernization of debt collection will be held in front of the House Financial Services Committee on Sept. 26, 2019, at 10:00 a.m. EST. Click [here](#) for updates.

This document is intended to provide you with general information regarding the ACA International's comment to the CFPB's proposed debt collection rule. The contents of this document are not intended to provide specific legal advice. If you have any questions about the contents of this document or if you need legal advice as to an issue, please contact the attorneys listed or your regular Brownstein Hyatt Farber Schreck, LLP attorney. This communication may be considered advertising in some jurisdictions.

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