



June 7, 2018

Jan Stieger, CMP, CAE
Executive Director
Receivables Management Association International
jstieger@rmassociation.org
1050 Fulton Avenue, Suite 120
T +1 916 482 2462
F +1 916 482 2760

By Electronic Submission

Comment Intake
Bureau of Consumer Financial Protection
1700 G Street NW
Washington, DC 20552
www.regulations.gov

Re: Request for Information Regarding Bureau Rulemaking Processes (Docket No. CFPB-2018-0009)

To Whom It May Concern:

This letter is submitted on behalf of the Receivables Management Association International (“RMA”) in response to the referenced Request for Information Regarding Bureau Rulemaking Processes (“Rulemaking Processes”).

We appreciate the opportunity to provide comments and information on Rulemaking Processes to the Bureau of Consumer Financial Protection (“Bureau”). RMA membership is composed of originating creditors, purchasers of defaulted and performing loans, and businesses and professionals that provide services to those entities. Each of these classes of members has participated in, and been impacted by, Rulemaking Processes and specifically the debt collection rulemaking. Our comments and information are therefore reflective of this range of entities.

I. INTRODUCTION

RMA is a nonprofit trade association representing more than 500 companies that purchase or support the purchase, sale, and collection of performing and non-performing receivables on the secondary market. Members of RMA include banks, debt buying companies, third-party collection agencies, collection law firms, and brokers.

RMA is a national leader in promoting strong and ethical business practices within the receivables management industry. RMA requires all its member companies who are purchasing receivables on the secondary market to become certified through RMA’s Receivables Management Certification Program (“RMCP”) as a requisite for membership (publicly available at <https://rmassociation.org/certification/>).

The RMCP is a comprehensive and uniform source of industry standards that has been recognized by the collection industry's federal regulator, the Consumer Financial Protection Bureau, as "best practices."¹

In addition to requiring that certified companies comply with local, state, and federal laws and regulations concerning collection activity, the RMCP goes above and beyond the requirements of local, state, and federal laws and regulations by requiring its member companies to comply with additional requirements not addressed by existing laws and regulations. The debt buying companies certified by the RMCP hold approximately 80 percent of all purchased receivables in the country, by RMA's estimates.

RMCP-certified companies are subject to vigorous and recurring independent, third-party audits to demonstrate to RMA their compliance with the Certification Program. This audit includes an onsite inspection of the certified companies to validate full integration of RMCP standards into the company's operations. Following a company's initial certification, review audits continue to be conducted every three years.

Program certification also requires RMA-certified companies to engage a chief compliance officer, with a direct or indirect reporting line to the president, chief executive officer, board of directors, or general counsel of the company. The chief compliance officer must maintain individual certification through the RMCP by completing 24 credit hours of continuing education every two years.

II. COMMENTS

Our comments and information reflect the experiences of large, publicly-traded companies as well as mid-sized and small businesses that have engaged in Rulemaking Processes with the Bureau over the past several years, through comments and meetings, either directly or through RMA and other industry associations. The Bureau's debt collection rulemaking, which received comments in response to the Bureau's Advance Notice of Proposed Rulemaking ("ANPR") in November 2013, has significantly impacted each of these businesses. The pending rulemaking has literally affected every aspect of our members' business, from the purchasing and sales environment for receivables, to operations and compliance with regard to phone, letter, and other communications with consumers, to the account documentation and data standards required for collections. Below is an outline of our key concerns and suggestions:

A. The Debt Collection Rulemaking Timeline Has Been Extremely Long, and This Prolonged Rulemaking Has Created Significant Uncertainty for the Industry and Our Consumers.

The Bureau issued the ANPR in November 2013 – nearly five years ago. As of now, we expect the Bureau to issue a Notice of Proposed Rulemaking ("NPRM") in March 2019, with final rules to be issued at least several months after that. To have a rulemaking go on for six or more years

¹ Consumer Financial Protection Bureau, Small Business Review Panel for Debt Collector and Debt Buyer Rulemaking, Outline of Proposals Under Consideration, July 28, 2016, p. 38 (publicly available at http://files.consumerfinance.gov/f/documents/20160727_cfpb_Outline_of_proposals.pdf).

is, to say the least, lengthy. This has created substantial uncertainty for our industry, the banks that sell to us, as well as our investors and consumers. Courts across the nation have issued a host of different and often conflicting decisions for virtually every aspect of collections in the absence of formal rules. The result is, simply put, a web of different standards and rules across states and sometimes across cities and counties. It is also worth noting that the Bureau's various Consent Orders have also added a layer of uncertainty to whether certain industry business practices, although not prohibited under the law, are permissible. We urge the Bureau to move forward with well-considered debt collection rules faster than has been the case to date, in order to provide a federal standard that creates certainty and clarity for the industry and the consumers we serve.

B. The SBREFA Outline Failed to Address the Effective Date of the Rules

The Small Business Review Panel for Debt Collector and Debt Buyer Rulemaking's Outline of Proposals Under Consideration ("SBREFA Outline") addressed a myriad of topics, including collector communication practices, information integrity and related concerns, and consumer disclosures. The SBREFA Outline was 117 pages long and was issued nearly three years after the ANPR was issued, reflecting the considerable time and consideration the Bureau has given to the debt collection rulemaking. However, one extremely important issue was noticeably *not* addressed in the otherwise comprehensive SBREFA Outline: the effective date of the rules, and whether they would apply retroactively to accounts charged off or defaulted prior to the effective date of the rules.

With the web of confusing and often inconsistent state and even city level requirements for data, documentation, disclosures, retention, and a variety of other topics, many debt buyers have historically purchased portfolios of debt with only federal and state requirements *in effect at the time of purchase* in mind. Indeed, without knowing what any rule will require, it is impossible for industry participants to purchase portfolios knowing exactly what types of data and documents they will be required to collect in the 12-24 months from now.

Given this concern, we urge the Bureau to apply its rulemaking to accounts that are charged-off or go into default after the effective date of the rules. This would ensure that, once the rulemaking takes effect, as original creditors send charged-off accounts to collectors or sell them, the necessary data and documents to comply with the new rules would be maintained. It is important to note that, in part because of the increasingly stringent regulatory environment on both the federal and state levels, the industry has been subject to unprecedented consolidation. Accounts are sold and transferred due to this consolidation, ensuring a prospective application of the rulemaking is essential to preserve the value of prior transactions that complied with the law at the time of the transaction. There is also a Constitutional takings concern with regard to creating new rules that impinge on the value of existing contracts. Given these concerns, it is critical that the Bureau address this important topic in the forthcoming NPRM.

C. In all Rulemakings, a Cost-Benefit Analysis Should Be Done to Weigh the Benefit to Consumers Versus the Harm to Financial Institutions

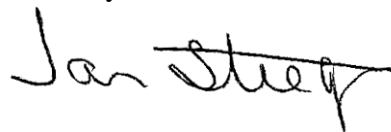
We applaud Acting Director Mulvaney's creation of an Office of Cost Benefit Analysis, and agree it is critical to assess carefully the benefits and costs of regulations under consideration for consumers and industry. To that end, we think the Bureau has done a generally good job collecting input from industry associations and consumer groups, although the Consumer Advisory Board has notably lacked, since its inception, any representative from the debt buying industry. We also applaud the Bureau's recognition of the RMCP, which establishes self-regulation for the industry through rigorous and uniform industry standards, as "best practices." We ask that, as the Bureau establishes rules for the industry, it looks to the industry best practices codified in RMA's Certification Program.

In its rulemakings, the Bureau should consider the practical implications of any new rules to businesses, consumers and the courts. In the debt collection rulemaking, there should also be a close look at the importance of promoting communication between collectors and consumers, including the potentially harmful impact of unduly restrictive contact caps and modern communication methods (*e.g.*, email, cell phone, text and voicemail messages) that are not reflected in the Fair Debt Collection Practices Act that was enacted over four decades ago.

III. CONCLUSION

RMA appreciates the opportunity to comment on this RFI as part of the Bureau's continuing efforts to ensure strong consumer protections in an environment conducive to the lawful collection of consumer debt. Please do not hesitate to contact me if RMA can provide further assistance. We look forward to the end of very long rulemaking processes that result in strong standards for the credit and collections industry and that promote fair and transparent collection practices.

Sincerely,

A handwritten signature in black ink, appearing to read "Jan Stieger", with a stylized flourish at the end.

Jan Stieger,
Executive Director