RECEIVABLES MANAGEMENT ASSOC.
SETTING THE GLOBAL STANDARD

June 25, 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 the Bureau's Inherited Regulations and Inherited Rulemaking Authorities (Docket No. CFPB-2018-0012)

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's Inherited Regulations and Inherited Rulemaking Authorities

We appreciate the opportunity to provide comments and information on the Inherited Regulations and Rulemaking Authorities to the Bureau of Consumer Financial Protection ("Bureau"). The Dodd-Frank Act states that the Bureau is authorized to exercise its authorities under Federal consumer financial law for, among other objectives, "ensuring that, with respect to consumer financial products and services . . . outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens." In this RFI, the Bureau has asked for specific suggestions regarding any potential updates or modifications to the Inherited Regulations, consistent with the laws providing the Bureau with rulemaking authority and the Bureau's regulatory and statutory purposes and objectives.

RMA membership is composed of originating creditors, purchasers of defaulted and performing loans, and businesses and professionals that provide services to these entities. Each of these classes of members is subject to Inherited Regulations consistent with the rulemaking authorities of the Bureau. Our comments and information are therefore reflective of this range of entities.

I. INTRODUCTION

RMA is the nonprofit trade association that represents more than 500 companies that purchase or support the purchase of performing and non-performing receivables on the secondary market.

Members of RMA include passive and active debt buying companies, third-party collection agencies, collection law firms, and financial institutions.

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 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 own 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 RMCP. 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 will be conducted every three years.

Program certification also requires RMA-certified companies to engage, at the minimum, 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

The receivables management industry in the United States suffers from antiquated, inherited laws and regulations that are subject to the rulemaking authorities of the Bureau – the primary example being the Fair Debt Collection Practices Act ("FDCPA"), adopted by Congress in 1977. When considering an industry that is dependent on communications as much as the receivables management industry is, without an update to address the tectonic shift in modern technology that has occurred over the same time period, the regulations are in desperate need of an update that incorporate new modern technologies.

To read the FDCPA, one would think the use of a telegram is a common practice in debt collection. In fact, the only modes of communication addressed in the FDCPA are by "mail"

---

[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).

(seven references), “telephone” (five references), and “telegraph” (three references). Absent are any references to cell phones, personal computers, e-mails, texting, smartphone apps, voicemail, and the Internet.

The lack of clarity as it relates to modern technology in the FDCPA has resulted in a complex patchwork of judicial decisions, many of which come to contradictory conclusions, stretching from coast to coast. All that this has accomplished is to create an environment where law-abiding businesses face lawsuit after lawsuit concerning whether their business practices conform to the requirements of the FDCPA. Industry members want to follow the law, but it is difficult, if not impossible, with conflicting court decisions and no clear guidelines or safe harbors. The evolution of the FDCPA is inconsistent with the law’s stated purpose – “to insure that those debt collectors who refrain from using abusive debt collection practices are *not competitively disadvantaged*, and to promote *consistent* State action to protect consumers against debt collection abuses.”[2]

Similar challenges exist with the Telephone Consumer Protection Act (“TCPA”) which was adopted in 1991. The TCPA contains only two references to cell phones and zero references to text messaging despite the fact that it is supposed to provide guidance on phone solicitations. However, given that only 3% of the U.S. population had cell phones in 1991 (compared to 81% today)[3] and the first text message was sent a year after the TCPA’s adoption, the lack of references should not be surprising. Similar to the FDCPA, without statutory amendments, the courts have been left to interpret the law’s applicability to modern communication technology, which has only created more uncertainty following conflicting judicial decisions.

We recommend that modernization of inherited regulations like the FDCPA and TCPA address the following issues, among others:

- **Use of e-mails:** Clarify that using e-mails does not violate the FDCPA, that e-mails are considered letters for the purpose of collection communication, and offer additional guidance (*e.g.*, regarding sending times). Evidence shows that e-mails reduce contact frequency and lead to better consumer protection compared to phone calls.
- **Use of text messages**: Clarify that using text messages does not violate the FDCPA and TCPA and allows for the inclusion of links in the body of the text. Evidence exists that text messages reduce contact frequency and drive consumer contacts.
- **Distilling contact frequency guidelines:** Clarify that engaging with technology (*e.g.*, clicking a link or replying to an e-mail) can be considered an exception to the proposed limits on contact frequency, since the consumer is engaged in live conversation. Evidence shows that contacting consumers in a timely manner, following their engagement, greatly improves response rates and will support reducing contact frequency.
- **Consumer consent:** Clarify that using e-mails and text messages does not require extra consent and that prior consent obtained by the debt originator can be transferred to debt buyers and collectors, if required and given.

[2] 15 USC 1692(e) (emphasis added).
[3] Percentages calculated from CTIA (the nonprofit trade association representing the wireless communications industry) statistics on wireless subscribers.

In the end, it is most important for consumers to be able to communicate with businesses in the modern modes that they have grown accustomed to using rather than creating artificial barriers to communication. It is noteworthy that, in many situations, the credit was established, utilized by the consumer, and payments made all through a variety of electronic technologies; yet, when it is time to collect on the obligation, we are required to communicate in a manner foreign to the consumer: US Mail, Faxes, and Telegrams.

With technology changing so fast, the solution in any new rulemaking needs to stress flexibility over rigidity. One only needs to point to the Centers for Disease Control and Prevention's 2016 National Health Interview Survey that indicated that 50.8% of homes *only* had cellphone service to demonstrate the scope of the problem with the aforementioned laws.

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 working together to create a consumer credit market with fair and transparent collection practices. RMA members embrace reasonable, fair, and balanced rules, as long as the requirements are technologically feasible, the data is available, and they are imposed in a prospective nature.

Sincerely,

Jan Stieger

Jan Stieger,
Executive Director