CENTER FOR CAPITAL MARKETS
COMPETITIVENESS

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The Honorable Sherrod Brown
Chairman
Committee on Banking,
Housing and Urban Affairs
Washington, DC 20510

The Honorable Patrick Toomey
Ranking Member
Committee on Banking,
Housing and Urban Affairs
Washington, DC 20510

Dear Chairman Brown and Ranking Member Toomey:

The U.S. Chamber of Commerce opposes H.R. 2547, the "Comprehensive Debt Collection Improvement Act." This legislation would make sweeping and counterproductive changes to the already robust consumer protections that exist for debt collection. These changes would severely disrupt existing practices and increase the cost of financial services and medical care that are available to consumers.

Debt collection and credit reporting are critical elements of consumer financial services and all the opportunities those services provide for American families. Consumers are entitled to, and already receive, appropriate protections from errors or inappropriate conduct in debt collection. Robust protections likewise apply to the reporting of information to credit bureaus. Congress consequently should carefully weigh any changes that would stop debt collection and credit reporting from playing their critical roles in the financial system. Making it more difficult for creditors to collect on debt that they are contractually entitled will increase the cost of credit provided to other borrowers. Similarly, making it harder for creditors, and other companies, to rely on the information provided to credit bureaus will make it more challenging to assess a borrower's ability to repay a loan, leading to a higher cost of credit for consumers.

The Comprehensive Debt Collection Improvement Act would harm consumers by both reducing credit availability and making credit more expensive for consumers.

Title IV – Consumer Protection for Medical Debt Collections Act

Title IV – the Consumer Protection for Medical Debt Collections Act – would institute new restrictions that would make it extremely difficult to collect medical debt. This would raise costs for healthcare providers, leading to increased costs for consumers. These provisions overlook the important function of credit bureaus in our financial system, including expanding the availability of credit to consumers. The legislation also disregards the consumer protections that credit bureaus recently implemented regarding the reporting of medical debt. The Chamber agrees that medical care should be affordable but making it more difficult for providers to collect on legitimate bills to cover their expenses runs contrary to this objective.

Sec. 402 of the legislation would effectively prohibit healthcare providers from collecting on medical debt for two years. The legislation would amend Section 808 of the Fair Debt Collection Practices Act (FDCPA) to prevent, "engaging in activities to collect or attempting to collect a medical debt before the end of the 2-year period beginning on the date that the first payment with respect to such medical debt is due." Throughout history, data shows that the older the debt, the harder it is to collect. For example, consumers may not have a recollection the debt has been incurred and would likely wonder why collection has been delayed a full two years. This would impose an extreme financial strain on healthcare providers that would ultimately be passed down to consumers or lead them to reducing the availability of the critical medical services they provide today.

Sec. 403 of the legislation would institute unnecessary obstacles for the reporting of medical debt to credit bureaus. Specifically, Sec. 403 would amend Sec. 605(a) of the Fair Credit Reporting Act (FCRA) to ban the reporting of "Any information related to a debt arising from a medically necessary procedure." The Chamber strongly cautions against the banning of reporting any information related to medical debt (or otherwise) to credit bureaus. This information enables creditors, such as banks and credit unions, to understand a borrower's ability to repay a loan. Not only does this protect the safety and soundness of the financial institution, but it plays a critical consumer protection function since it helps institutions avoid extending credit to borrowers who are likely to default. And while the legislation limits the reporting ban to information relating to debt arising from "medically necessary procedure," that term is constructed so broadly that it would cause significant confusion and likely prevent reporting of any information about medical debt.

Sec. 403 would also bar reporting of any medical debt to a credit reporting agency for one year. Specifically, it would ban the reporting of "Any information related to a medical debt if the date on which such debt was placed for collection, charged to profit or loss, or subjected to any similar action antedates the report by less than 365 calendar days." This provision overlooks the policy of the nationwide credit bureaus that unpaid medical debt not be included on a credit report unless it is 180 days past due that was subject of a 2015 voluntary agreement by the nationwide credit bureaus with 31 state attorneys general and a separate agreement with the New York Attorney General.

Title V – Ending Debt Collection Harassment Act

Title V – the Ending Debt Collection Harassment Act – would create confusion around two new rules that were recently finalized by the Consumer Financial Protection Bureau (CFPB). On October 30, 2020, the CFPB issued a final rule under the FDCPA to prescribe Federal rules governing the activities of debt collectors,[1] and on December 10, 2020, issued another final rule under the FDCPA supplementing the former.[2] This legislation would effectively require changes

[1] https://www.consumerfinance.gov/rules-policy/final-rules/debt-collection-practices-regulation-f/

[2] https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-issues-final-rule-on-consumer-disclosures-related-to-debt-collection/

to these rules before they take effect, meaning that Congress would judge the rules before knowing how they work in practice.

When the CFPB requested comment on these rules, the Chamber noted, "Any debt collection policy thus must simultaneously accomplish two separate goals: allowing debt collectors to serve their important function in the credit system while ensuring that consumers are treated with dignity and respect."[3] We believe the CFPB's final rules meet this dual objective and are concerned that the Comprehensive Debt Collection Improvement Act (H.R.2547) would disrupt this balance.

The Bureau's final rules under the FDCPA do not apply directly to first-party debt collectors (e.g. originators of a loan); however, they have important consequences for their ability to serve consumers. First-party debt collectors oftentimes rely on third-party collectors once a debt is delinquent or in default. Additionally, some creditors, including financial institutions, voluntarily adhere to standards under the FDCPA as a best practice.

Sec. 502 is especially troublesome given that it would restrict electronic communication between a debt collector and a consumer. The legislation would require consumers to opt-in to the precise type and frequency of electronic communication, which would be extremely difficult to manage to companies adhering to the FDCPA. Capping the number of emails or texts that can be sent is problematic because the circumstances regarding a loan and repayment plan will differ for each consumer. New limitations for electronic communication may force debt collectors to contact consumers via mail or phone, which is oftentimes not the consumer's preference. The restrictions appear to disregard that the CFPB's existing rules that permit consumers to easily opt out of electronic communication, and the FDCPA permits consumers to request a cease in all communication. Inhibiting electronic communication will create challenges for both consumers and debt collectors.

Restrictions on electric communication run the risk of stopping creditors from creating payment plans to assist consumers. Such payments plans help consumers avoid the negative impacts of delinquency or default. Without such plans, consumers may instead be subject to late payment fees. Likewise, adverse information may be added to their credit file, making it harder and more expensive for them to secure a loan in the future. In this way, such restrictions not only do not have their intended effect, but are counterproductive, harming consumers.

Title VIII – Non-judicial Foreclosure Debt Collection Clarification Act

Title VIII – the Non-judicial Foreclosure Debt Collection Clarification Act – would reverse the decision of the Supreme Court of the United States from March 20, 2019 in *Obduskey v. McCarthy and Holthus LLP*. In this decision, the Supreme Court unanimously clarified that an entity engaged in non-judicial foreclosure proceedings does not qualify as a "debt collector" under the FDCPA.

Non-judicial foreclosure allows lenders to avoid litigation costs that inevitably result from judicial involvement in the foreclosure process. The legislation would discourage lenders

[3] http://www.centerforcapitalmarkets.com/wp-content/uploads/2019/09/9.18.19_DebtCollection_CFPB.pdf?#

from using such non-judicial processes, raising costs for creditors that, in turn, would hurt consumers by increasing the cost of credit when securing a mortgage. Pushing creditors away from non-judicial foreclosure would also increase uncertainty for lenders in the foreclosure process. This would increase risks to lenders that would be reflected in increased rates for consumers.

There are already fair and predictable regulations in place to protect consumers. Federal agencies, including the CFPB, enforce regulations regarding non-judicial foreclosure, and state foreclosure processes require that the borrower(s) be notified regarding the foreclosure proceedings. Overturning the Supreme Court's unanimous decision thus would cause unnecessary complications for lenders working to provide accessible access to credit.

Sincerely,

Tom Quaadman

cc: Members of the Senate Committee on Banking, Housing and Urban Affairs