

**IN THE UNITED STATES DISTRICT
COURT FOR THE SOUTHERN DISTRICT
OF TEXAS, HOUSTON DIVISION**

ACA INTERNATIONAL

and

SPECIALIZED COLLECTION
SYSTEMS, INC.

Plaintiffs,

v.

CONSUMER FINANCIAL PROTECTION
BUREAU; and ROHIT CHOPRA, in his
official capacity as Director of the Consumer
Financial Protection Bureau,

Defendants.

Case No. 4:25-cv-00094

**PLAINTIFFS' ACA INTERNATIONAL AND SPECIALIZED
COLLECTION SYSTEMS, INC.'S MOTION OPPOSING DELAY IN
PROCEEDINGS**

Plaintiffs ACA International (“ACA”) and Specialized Collection Systems, Inc. (“SCS”) (collectively, “Plaintiffs”) respectfully request this Court grant the Consumer Financial Protection Bureau’s (“CFPB”) request for a 90-day stay of the action (Dkt. No. 24) but also stay the Final Rule’s¹ effective date until August 15, 2025. The instant opposition is filed two days before

¹ CFPB, Prohibition on Creditors and Consumer Reporting Agencies Concerning Medical Information (Regulation V) 90 Fed. Reg. 3276-3374 (Jan. 14, 2025). To be codified as 12 C.F.R. §§ 1022.3(j); 1022.30; 1022.38.

Defendants' Response to our Preliminary Injunction Motion is due. In support Plaintiffs state as follows:

Plaintiffs do not oppose a 90-day stay of the instant matter, but oppose a mere 90-day stay of the Rule (90 Fed. Reg. 3276) because a 90-day stay of the Rule's effective date until June 15, 2025 is insufficient to alleviate the irreparable harm from this Rule and will increase prejudice to Plaintiffs by delaying a decision on Plaintiffs' request for a preliminary injunction. See Pls. Mot. on App. for Prelim. Inj., Case No. 4:25-cv-00094, Dkt. No. 14 (filed Jan. 24, 2025). Rather, to prevent harm and prejudice from a litigation delay, Plaintiffs require a delay in the Rule effective date until at least August 15, 2025.

The CFPB's situation is unusual, and we have not identified on-point mandatory case authority that directs the result for either party's request. Therefore, we look to factors considered when deciding whether to stay a preliminary injunction pending appeal. Courts consider four factors:

(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies. *Barber v. Bryant*, 833 F.3d 510, 511 (5th Cir. 2016) citing *Nken v. Holder*, 556 U.S. 418, 427, 129 S.Ct. 1749, 173 L.Ed.2d 550 (2009) (quotation marks and citation omitted).

"The first two factors of the traditional standard are the most critical." *Nken v. Holder* at 434, 129 S.Ct. 1749. Also, "the maintenance of the *status quo* is an important consideration in granting a stay." *Dayton Board of Education v. Brinkman*, 439 U.S. 1358, 1359, 99 S.Ct. 28, 58 L.Ed.2d 67 (1978).

(1) Likelihood of Success

Plaintiffs have briefed their reasons for requesting an extended stay of the Rule in its Motion on Application for Preliminary Injunction. *See* Dkt. No. 14. The Motion provides three

separate bases under the Administrative Procedure Act and First Amendment for vacating the Rule. *Dkt. No. 14* at 10-11. In addition, the Final Rule clearly violates the Major Questions Doctrine because healthcare payment responsibility and billing practices are a matter of great political significance. The Final Rule regulates a significant portion of the American economy and causes billions of dollars in losses by the healthcare industry: it impacts approximately 15 million private agreements (*Dkt. No. 14* at 4) and will cost healthcare providers over \$970 billion in ten years. *Id.* Recent cases applying the doctrine based on economic significance have similarly involved hundreds of billions of dollars of impact. *See e.g., Biden v. Nebraska*, 600 U.S. —, 143 S. Ct. 2355, 2362 (2023) (\$430 billion); *West Virginia v. EPA*, 597 U.S. 697, 715 (2022) (\$1 trillion by 2040).

(2) Irreparable Injury

As explained in the Motion, SCS and ACA members are currently struggling to adapt systems and processes to accommodate the Rule. *Id.* at 6. ACA creditor members will soon be deprived of about 57% of credit reporting data available about delinquent accounts. They are working now to change underwriting models, pricing, and risk tolerances to adapt to the lack of transparency about medical debt obligations. *Id.* A preliminary injunction in this matter sooner—rather than later—would allow creditors to stop these efforts entirely based on the Court's assessment under the preliminary injunction standard. A mere three-month delay, however, does not relieve ACA members of the need to prepare for the information loss because if Plaintiffs are not successful on their injunction motion, creditors must be prepared to quickly comply with the Rule by June 15, 2025.

Likewise, ACA's members who collect medical debt are preparing new disclosures, working with healthcare provider clients to adapt agreements, or adjusting systems to increase

litigation and outbound communications. *Id.* While a preliminary injunction would allow them to cease these efforts, a 90-day delay just mires them in uncertainty for longer.

An effective date delay to August 15, 2025, however, allows ACA members to fully pause their preparations for the Rule until such time as (a) this litigation resumes and the Court can rule on the fully-briefed motions, or (b) the new CFPB leadership can consider the issues and publish a Rule retraction in the federal register.

(3) Injury to the Other Parties

According to a lawsuit filed by the CFPB’s union, the CFPB has a new acting director who directed the CFPB workforce “to ‘cease all supervision and examination activity,’ ‘cease all stakeholder engagement,’ pause all pending investigations, not issue any public communications and pause ‘enforcement actions.’” *National Treasury Employees Union v. Russell Vought*, Case No. 1:25-cv-00381, Dkt. No. 1 at 5 (D. D.C. filed Feb. 9, 2025). In addition, in a post on X on February 8, 2025, Defendant Vought “said he had notified the Federal Reserve that the CFPB . . . will not take ‘its next draw of unappropriated funding,’ saying the funding ‘is not “reasonably necessary” to carry out its duties.’” *Id.* at 4 citing Sarah Fortinsky, “Vought Seeks to Halt Action at CFPB,” The Hill.com, <https://thehill.com/homenews/administration/5134732-cfpb-budget-russiavought/>.

Defendant CFPB, therefore, would likely benefit from a longer stay, which enables new leadership to understand and implement its positions in this matter—as demonstrated by its current request for a 90-day stay. Defendant Chopra is no longer CFPB Director, therefore has no remaining interest in this matter. Accordingly, a stay of the Final Rule until August 15, 2025 will not injure the government parties.

(4) Where the public interest lies

As noted in section (1) above, the Final Rule will cost healthcare providers over \$970 billion in ten years and affect the First Amendment rights of all creditors throughout the United States; therefore, serious consideration of the issues briefed is warranted. A certain delay of the Final Rule until August 15, 2025 will provide predictability to the millions of businesses and providers affected by the rule. The current voluntary delays by CFPB due to the changing administration does not provide the certainty and clarity of a court-ordered delay. Therefore, a slightly-extended implementation delay of 150 days is reasonable, mitigates significant harm, and is in the public interest.

Accordingly, Plaintiffs respectfully request that if this Court rules to stay the litigation for 90-days; it finds that to maintain the pre-rulemaking *status quo* and prevent prejudice to ACA members, it also stays the Rule's effective date 150 days until August 15, 2025.

Dated: February 12, 2025

Respectfully submitted,

ACA INTERNATIONAL and SPECIALIZED
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By its attorneys,

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Certificate of Service

I certify that on February 12, 2025 I electronically filed the foregoing document(s) using the CM/ECF system and they are available for viewing and downloading from the Court's CM/ECF system, and that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system where appropriate.

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