

**UNITED STATES COURT OF APPEALS
For the First Circuit**

No. 24-1151

CONSUMER DATA INDUSTRY ASSOCIATION,

Plaintiff - Appellant

v.

AARON M. FREY, in his capacity as ATTORNEY GENERAL OF THE STATE OF MAINE; LINDA J. CONTI in her capacity as SUPERINTENDENT OF THE MAINE BUREAU OF CONSUMER CREDIT PROTECTION,

Defendants - Appellees

**APPELLANT’S SECOND CONSENTED-TO
MOTION TO ENLARGE BRIEFING SCHEDULE**

Plaintiff-Appellant, Consumer Data Industry Association (“CDIA”), by and through its undersigned counsel, hereby moves this Court to extend the parties’ briefing schedule to a date following issuance by the Consumer Financial Protection Bureau (“CFPB”) of a Notice of Proposed Rulemaking regarding the Fair Credit Reporting Act (“NPR”). As grounds for the within Motion, Appellant states as follows:

This appeal involves the question of whether and the extent to which the Fair Credit Reporting Act, 15 U.S.C. §1681 et seq. (“FCRA”), preempts two Maine laws that attempt to prohibit the reporting of medical collection account information and account information stemming from economic abuse in consumer

reports by consumer reporting agencies. CDIA appealed an order of the District Court finding the FCRA partially preempts both laws.¹

The CFPB, which is a federal regulator that has certain regulatory and enforcement authority under the FCRA, is currently engaged in a process to adopt a formal rule interpreting certain provisions of the FCRA and topics related to credit reporting—one of which is medical debt. The CFPB first disclosed a potential FCRA rulemaking in its regulatory Agenda released in the fall of 2022, although it only obliquely referred to it as under “[consideration] whether to amend Regulation V.”² Nothing more occurred with the potential rulemaking for a year, when the CFPB engaged in the feedback process required by the Small Business Regulatory Enforcement Fairness Act (“SBREFA”), in which the CFPB sought input from small business participants on issues under consideration within the potential rule, including the regulation of medical debt.³ With respect to medical debt, the SBREFA documents suggest various approaches are under consideration by the CFPB from delaying the reporting of medical debt by furnishers to

¹ *Consumer Data Indus. Ass’n v. Frey*, --- F.Supp.3d ---, 2024 WL 98437 (D. Me. 2024).

² Fair Credit Reporting Act Rulemaking, CFPB Agency Rule List - Fall 2022 found at: <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202210&RIN=3170-AA54> (last visited 5/14/2024).

³ See *Small Business Review Panel for Consumer Reporting Rulemaking* found at <https://www.consumerfinance.gov/rules-policy/small-business-review-panels/small-business-review-panel-for-consumer-reporting-rulemaking/> (last visited 5/14/2024).

consumer reporting agencies, to a ban on the use of medical debt by creditors in credit underwriting decisions, to the adoption of specific dispute handling rules related to consumer medical data, among others.⁴ The CFPB has published no definitive timeframe for the rulemaking, and has not provided a draft rule to the public or to industry. Thus, while industry has known that the rulemaking is underway, and that medical debt will likely be included in the proposed rule, the details and timing of the proposal have been unknown.

However, on May 6, 2024, Vice President Harris referenced the impending rule in a way that suggests it may be issued shortly, and further, that the proposed rule will likely regulate the reporting of medical debt by consumer reporting agencies. She stated “[w]e are also implementing a rule—and this is critically important—we are also implementing a rule that medical debt cannot be used in calculating your credit score...which means medical debt cannot be the reason someone is denied a car loan, a home loan, or a small-business loan.”⁵ Further, staff from the CFPB confirmed last week (at CDIA’s industry conference) that the CFPB continues to plan on regulating medical debt in two ways - by regulating its

⁴ *Small Business Advisory Review Panel For Consumer Reporting Rulemaking Outline of Proposals and Alternatives Under Consideration*, pp. 17-18, https://files.consumerfinance.gov/f/documents/cfpb_consumer-reporting-rule-sbrefa_outline-of-proposals.pdf (last visited 5/14/2024).

⁵ <https://www.whitehouse.gov/briefing-room/speeches-remarks/2024/05/06/remarks-by-vice-president-harris-during-the-nationwide-economic-opportunity-tour/> (last visited 5/13/2024).

use by lenders in credit decisioning, and by limiting its inclusion in consumer reports by consumer reporting agencies. Some industry experts suggested the rule could be issued in the next 1-2 months, although the CFPB declined to pinpoint a timeline, stating only that the rule is a top priority for the CFPB and that work remained ongoing.

At this time, the extent to which the proposed FCRA rule will impact the issue in this case is unknown.⁶ Given that the time horizon for the issuance of the NPR, while still unknown, appears more imminent, CDIA suggests that the parties be allowed time to review the proposed rule and evaluate its impact on the case before this Court on appeal and consider how each should proceed. Respectfully, neither the parties, nor this Court, benefit from a full appellate briefing on issues that may be materially affected by the rule, and about which further briefing might later be required.

Counsel for Appellant has consulted with Appellee's counsel, Chief Deputy Attorney General Christopher C. Taub, who does not oppose this motion. CDIA's brief is currently due May 20, 2024, and Appellees' brief is currently due June 19,

⁶ To be clear, by filing this Motion, CDIA does not concede that the proposed rule would have any binding effect on this Court or the case, or that any party waives any argument regarding the applicability of the rule or the authority of the CFPB to act by agreeing to the extension of briefing deadlines contemplated herein. Both parties reserve the right to argue the extent to which, if any, the issues on appeal are impacted by the proposed rule, including any argument regarding the authority of the CFPB to act.

2024. Attorney Taub does not object to a briefing schedule that would be triggered by the issuance of the NPR, as follows:

- Appellant’s Brief to be filed thirty (30) days after the issuance of the Notice of Proposed Rulemaking by the CFPB;
- Appellee’s Brief to be filed thirty (30) days after the Appellant’s Brief is to be filed; and
- Appellant may file any reply brief within 21 days after the Appellee’s Brief is served.

WHEREFORE, Appellant CDIA requests that the deadline for filing the Appellant’s Brief be extended to thirty days following the issuance of the Notice of Proposed Rulemaking by the CFPB, the date for filing Appellees’ Brief to thirty (30) days thereafter, and the Appellant’s Reply 21 days after the filing of the Appellees’ brief, and for other such relief as justice may require.

Dated at Augusta, Maine, this 16th day of May, 2024.

Respectfully submitted,

PLAINTIFF-APPELLANT,
Consumer Data Industry Association

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CERTIFICATE OF SERVICE

I hereby certify that on May 16, 2024, I electronically filed the foregoing document with the United States Court of Appeals for the First Circuit by using the CM/ECF system. I certify that the following parties or their counsel of record are registered as ECF Filers and that they will be served by the CM/ECF system:

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/s/ Ryan P. Dumais

Ryan P. Dumais, Esq.