August 12, 2024

Via electronic submission
The Honorable Rohit Chopra
Director
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Re: Prohibition on Creditors and Consumer Reporting Agencies Concerning Medical Information (Docket No. CFPB–2024– 0023 or RIN 3170–AA54)

Dear Director Chopra:

The Bank Policy Institute[1] and the Consumer Bankers Association[2] are providing these comments in response to the Consumer Financial Protection Bureau's proposed amendments to Regulation V, the implementing regulation for the Fair Credit Reporting Act (FCRA). The CFPB proposes to substantially limit the financial information exception, which broadly permits creditors to obtain and use medical financial information (including information about medical debt) in connection with credit eligibility determinations. This important exception was established by the prudential banking agencies and the National Credit Union Administration in 2005 and adopted by the CFPB pursuant to the Dodd-Frank Act's transfer of authorities to the CFPB. The CFPB proposes to retain only certain elements of the exception related to income, benefits, and loan purpose. The Proposal also would limit the circumstances under which consumer reporting agencies (CRAs) are permitted to furnish medical debt information to creditors in connection with credit eligibility determinations.

<u>Overview</u>

We support and share the CFPB's mission to protect consumers in the markets for financial products and services. While the Proposal raises several fundamental concerns, as described further herein, should the CFPB proceed with the rulemaking, we strongly support the CFPB's exclusion of debt owed to a third-party lender, including a credit card issuer, as proposed. However, the CFPB should not attempt to eliminate any other categories of debt from credit reports. In addition, lenders will require further

[1] The Bank Policy Institute is a nonpartisan public policy, research and advocacy group, representing the nation's leading banks and their customers. Our members include universal banks, regional banks and the major foreign banks doing business in the United States. Collectively, they employ almost 2 million Americans, make nearly half of the nation's bank-originated small business loans, and are an engine for financial innovation and economic growth.

[2] The Consumer Bankers Association (CBA) is the only national trade association focused exclusively on retail banking. Established in 1919, the association is a leading voice in the banking industry and Washington, representing members who employ nearly two million Americans, extend roughly $3 trillion in consumer loans, and provide $270 billion in small business loans.

guidance from the CFPB regarding how to comply with existing ability-to-repay requirements in light of the proposed removal of medical debt from such reports.

The Proposal suffers from several problems. The CFPB does not have the authority to prohibit credit reporting agencies from providing medical debt information in consumer reports. Moreover, the Proposal would ultimately harm consumers, particularly low-and-moderate income and underserved consumers, financial institutions, medical providers, and the market for consumer financing more generally. By significantly limiting creditors' visibility into and consideration of a consumer's medical debts and expenses in underwriting decisions, consumers may be extended more credit than they can afford, which could lead to default. This would, in turn, ultimately increase the cost and decrease the availability of credit, harming all consumers. Furthermore, because the Proposal would increase the likelihood that creditors may extend credit on which borrowers are more likely to default, lenders' safety and soundness controls could be affected, which would be detrimental to the overall health of the financial system.

Ultimately, the Proposal is a misguided attempt to address the CFPB's fundamental concerns about the high cost of medical care, inaccurate or inflated medical bills, and unlawful medical industry debt collection and reporting.[3] While these may be valid policy concerns, these issues cannot be addressed by restricting the ability of creditors to consider medical debts in making underwriting decisions; rather, the concerns that underlie this Proposal can only be changed by those entities themselves or by legislators or other policymakers with authority over those entities. Indeed, the CFPB has relevant authority under the FCRA and the Fair Debt Collections Practices Act (FDCPA), for example, to directly address practices that are illegal, such as misrepresentations by debt collectors about whether and how much a consumer owes. Addressing such practices head-on would be more effective than the indirect approach the CFPB has proposed, which would not only be ineffective, but also would have negative collateral consequences for consumers and creditors. However, the CFPB has failed to explain why alternative options would not achieve the CFPB's goals. For these reasons, we urge the CFPB to withdraw the Proposal.

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[3] Indeed, CFPB officials and prior CFPB regulatory actions have made the CFPB's concerns about these issues clear, and the CFPB has undertaken these efforts in connection with a broader effort by the Administration to "Lessen the Burden of Medical Debt and Increase Consumer Protection." White House Fact Sheet: "The Biden Administration Announces New Actions to Lessen the Burden of Medical Debt and Increase Consumer Protection" (April 11, 2022), FACT SHEET: The Biden Administration Announces New Actions to Lessen the Burden of Medical Debt and Increase Consumer Protection | The White House. For example, the CFPB's General Counsel has previously stated that "federal law and the law of many states require non-profit hospitals to have financial assistance programs for people who cannot afford to pay, and require hospitals to let people know about these programs," but has criticized the administration by hospitals of charity and reduced-cost care benefits and suggests that consumers are being harmed by the ways in which hospitals communicate with consumers about those benefits, which may result in consumers having medical bills or debt that they do not actually owe or for which they could receive assistance. The CFPB articulated similar concerns in its RFI on medical payment products. Request for Information Regarding Medical Payment Products, 88 Fed. Reg., 44,281 (July 12, 2023).

I. **Should the CFPB proceed with this rulemaking, the CFPB should exclude medical debt owed to third-party lenders, not attempt to prohibit any additional debt information from inclusion in credit reports, and provide further guidance regarding ability-to-repay requirements.**

Should the CFPB proceed with this rulemaking, we strongly support the Bureau's definition of "medical debt information" that excludes "debt owed to a third-party lender (including a medical credit card issuer whose products are offered specifically for the payment of medical services or general purpose credit card issuer) from whom a consumer took out a loan to pay medical expenses or bills from the definition of medical debt information." The proposed definition of "medical debt information" is consistent with the statutory definition of medical information. In pertinent part, the FCRA defines medical information as "information or data, whether recorded or oral, in any form or medium, created by or derived from a health care provider or the consumer, that relates to . . . the payment for the provision of health care to an individual."[4] The medical information, and by extension, the medical debt information must be "created by or derived from a health care provider."[5] Any expansion of the current definition would result in debts that are not connected to the provision of health care being removed from credit reports, which would exacerbate the negative effects of the removal of medical debt from credit reports, including by limiting lenders' ability to accurately assess a consumer's ability to repay an extension of credit.

Expansion of the proposed definition of "medical debt information" to include debt owed to a third-party lender, including a credit card issuer, would create further furnishing challenges. Furnishing only the non-medical debt portion of a consumer's credit card balance owed would create significant operational challenges for credit card issuers and increased confusion for consumers. As a threshold matter, it would require that furnishers be able to identify "medical debt" charges and then recalculate multiple essential fields (such as current balance, credit limit, amount past due and actual payment amount) to remove the "medical debt" charges. Card issuers do not have this much insight into a consumer's purchases. For example, a purchase at a drugstore could be related to medical debt information (e.g., a prescription), but could also include non-medical debt information (e.g., food or beverage). Assuming furnishers could reasonably identify those charges from merchant category codes or other indicia, then they would also be effectively required to maintain two sets of records – one that reflects all data elements and another that removes any "medical debt" charges. We do not believe it is currently feasible to bifurcate this information. Accordingly, this could result in operational risk for furnishers and consumer confusion, as information that appears on their consumer report would differ from the balance listed on monthly statements or online transaction histories. The CFPB has rightly excluded medical debt owed to a third-party lender, such as a credit card issuer, from the definition of "medical debt information." The CFPB should maintain this exclusion and affirmatively state that debt owed to a third-party lender, including a credit card issuer, is not in scope. Furthermore, the CFPB should not seek to expand the proposed elimination of medical debt from credit reports to any other types of debt.

In addition, the negative effects of the Proposal, as described further herein, would be amplified substantially should the CFPB attempt to remove other types of debt from consumer reports. Removal of additional debt information would further degrade the ability of creditors to make risk-based

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[4] 15 U.S.C. 1681a(*i*)(1).

[5] *Id*.

underwriting decisions and could result in consumers taking on more debt than they are able to manage, which would ultimately harm their financial wellbeing.

Finally, compliance with the Proposal may make it more challenging to conduct the ability-to-repay analysis required by multiple other laws and regulations administered by the CFPB. Therefore, the CFPB should provide further guidance for lenders who must comply with ability-to-repay requirements. For example, the ability-to-repay rules provide that creditors must consider debt they are aware of, even if the debt is not reflected on the consumer's credit report. The Proposal provides, however, that a creditor or card issuer is not permitted to obtain or use any medical information from a consumer reporting agency to comply with the ability-to-repay rule for closed-end mortgages,[6] the repayment ability rule for open-end, high-cost mortgages,[7] or the ability-to-pay rule for open-end (not home-secured) credit card accounts.[8] The Proposal further states that a creditor would not violate the prohibition on obtaining medical information if the creditor receives medical information pertaining to a consumer in connection with the creditor's determination of the consumer's eligibility for credit without specifically requesting such information.

The Proposal also provides that creditors would not be required to independently verify the existence and amount of medical debt provided in a consumer's application, even if that debt is not shown in the consumer report. However, the Proposal should confirm that creditors are ***permitted*** to verify unsolicited medical debt information using reliable third-party records that are not the credit report. Moreover, the Proposal should clarify that a creditor is permitted to consider debts listed on a consumer report that are not obviously medical debts. In this regard, the CFPB should amend Example 6 to provide that a creditor or card issuer is not required to independently verify that a debt listed on a consumer report is for purposes other than medical debt.

There are other foreseeable circumstances in which medical debt information may be provided by potential borrowers, such as in the 1003 Uniform Application Form, which most creditors use when originating closed-end loans. This form requires consumers to disclose their debts and any income they want examined for purposes of obtaining the loan. One section of the 1003 form prompts consumers to list income from other sources including "disability income," and misrepresentation of debts and income on the 1003 form by the consumer is a federal crime.[9] The CFPB should amend the example in Section

[6] 1026.43(c). (1) *General requirement*. A creditor shall not make a loan that is a covered transaction unless the creditor makes a reasonable and good faith determination at or before consummation that the consumer will have a reasonable ability to repay the loan according to its terms.

[7] 1026.34(a)(4). (1) *General requirement.* A creditor shall not make a loan that is a covered transaction unless the creditor makes a reasonable and good faith determination at or before consummation that the consumer will have a reasonable ability to repay the loan according to its terms.

[8] 1026.51(a)(i) Consideration of ability to pay. A card issuer must not open a credit card account for a consumer under an open-end (not home-secured) consumer credit plan, or increase any credit limit applicable to such account, unless the card issuer considers the consumer's ability to make the required minimum periodic payments under the terms of the account based on the consumer's income or assets and the consumer's current obligations.

[9] Any intentional or negligent misrepresentation of information may result in the imposition of: (a) civil liability on me, including monetary damages, if a person suffers any loss because the person relied on any misrepresentation that I have made on this application, and/or (b) criminal penalties on me including, but not limited to, fine or imprisonment or both under the provisions of Federal law (18 U.S.C. §§ 1001 et seq.).

1022.30(c) to encompass a broader set of circumstances in which a creditor may consider information about medical debt provided by the consumer. Specifically, section 1022.30(c) should provide that:

A creditor does not obtain medical information in violation of the prohibition if, for example:

> (i) In response to a general question regarding a consumer's debts or expenses, the creditor receives information that the consumer owes a debt to a hospital.
> (ii) In a conversation with the creditor's loan officer, the consumer informs the creditor that the consumer has a particular medical condition.
> ***(iii) In response to a question regarding the consumer's income or income source, the creditor receives information that the income or the income source relates to "disability."***
> ***(iv) The information is provided by the consumer on an application for real-estate secured credit using a form providing that misrepresentation of information on the application subjects the consumer to civil liability or criminal penalties.***

II. <u>The Proposal would harm consumers, financial institutions, and the consumer finance market more broadly</u>.

The proposed amendments to Regulation V would harm consumers, banks, and the consumer finance market more broadly. While the CFPB notes that credit scores would increase as a result of the Proposal, those scores would be artificially inflated: they would only rise because certain relevant data would be suppressed. Thus, credit scores would be less reliable, which would compromise lenders' ability to engage in risk-based underwriting, and credit markets would become less efficient as a result.[10]

By limiting the ability of lenders to consider medical debt, creditors' ability to evaluate a consumer's ability to repay a mortgage or credit card loan, for example, would be compromised. In some cases, this would result in consumers taking on debt they cannot afford. Consumers would thus have a greater risk of defaulting, which would have significant negative consequences for the consumer, such as negatively affecting their credit scores or ability to qualify for future loans. In addition, limiting credit reporting would undermine consumers' ability to demonstrate improved creditworthiness.[11]

Moreover, because the Proposal would undermine creditors' ability to engage in risk-based underwriting, lenders may have to increase the cost of, or reduce the availability of, credit, which would make it more difficult for low-and-moderate income consumers to access credit.

Yet the CFPB fails to acknowledge these fundamental problems with the Proposal.

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[10] "Credit scores and reports aim to categorize consumers based on their risk levels. Both low-risk and high-risk borrowers can access financial markets but receive different financing terms, such as varying credit limits and interest rates. While there is always some uncertainty—low-risk borrowers may default, and high-risk borrowers may repay—detailed information allows for more nuanced and customized financial products." Andrew Rodrigo Nigrinis, Ph.D., "Economic Analysis of the Consumer Financial Protection Bureau's Prohibition on Creditors and Consumer Reporting Agencies Concerning Medical Information (Regulation V)" at 11, (July 8, 2024), AndrewNigrinisEconomicAnalysis-CFPB-FCRA-NPRM-July2024.pdf (acainternational.org).

[11] Nigrinis at 17-19

The Proposal also could result in more consumers not paying their medical bills if the negative consequences are removed, which could result in increases in the cost of medical care, directly contrary to the CFPB's goals. Indeed, one relevant study predicts that as a result of the Proposal, medical providers "would suffer a loss of income from non-payment of services" estimated in the first year to be $24 billion and the "estimated range for the losses over time ranges from $82 billion to $655 billion."[12] One medical practice asserted in response to the Proposal that they use credit reporting "only sparingly" and that it is "primarily employed to address cases where individuals are capable but unwilling to settle their medical dues."[13] Nevertheless, the medical practice noted that credit reporting "provides one of the few guardrails in our economy that ensure fair and equitable compensation to professionals as they conduct their business" and that removing that tool "could lead to significant financial challenges for" medical practitioners "with ripple effects on the quality of care," as reduced revenue would hamper the ability to attract top medical talent.[14] In addition, physicians and providers may increasingly require upfront payments for care to ensure they receive payment. Indeed, this trend has already been increasing.[15] Patients unable to pay in cash upfront may be denied care. Ultimately, the patients who will bear the brunt of these negative effects would be lower-income consumers.

The CFPB has not sufficiently weighed the supposed benefits of the Proposal against the substantial harm that the Proposal could cause to consumers, as we describe throughout this letter, as it is required to do under section 1022(b)(2)(A) of the Consumer Financial Protection Act.[16]

Finally, by removing certain credit attributes such as medical debt from the credit reporting system because the CFPB deems them "less predictive," the Proposal creates a risk that banks' safety and soundness controls could be affected. For example, in the Comptroller's Manual on Safety and Soundness regarding Credit Card Lending, the OCC requires banks to "consider a consumer's ability to make the required minimum periodic payments under the terms of an account [citing to 12 C.F.R. section 1026.51, the ability-to-pay requirement for cards]. Specifically, issuers must determine an applicant's ability to pay based on an assessment of the applicant's current or reasonably expected income or assets and his or her current debt obligations."[17] The Comptroller's Handbook on Safety and Soundness regarding Residential Real Estate similarly provides that underwriters " must also take into account the need to comply with Regulation Z's requirement that the creditor make a reasonable and good faith determination at or before consummation that the consumer will have a reasonable ability to repay the

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[12] Nigrinis at 3.

[13] Emergency Medicine Associates, Vancouver, Washington, letter to the CFPB re: CFPB-2024-0023-0001 (July 6, 2024).

[14] *Id*.

[15] Melanie Evans, (2024) "Hospitals Are Refusing to Do Surgeries Unless You Pay in Full First", The Wall Street Journal, May 9th.

[16] Section 1022(b)(2)(A) of the CFPA requires the CFPB to consider: (i) The potential benefits and costs to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services resulting from such rule; and (ii) the impact of proposed rules on covered persons, as described in section 5516 of this title, and the impact on consumers in rural areas. 12 U.S.C. § 5512(b)(2)(A).

[17] Comptroller's Manual on Safety and Soundness, Credit Card Lending, Version 2.0 at 31 (April 2021), .

loan according to its terms for most closed-end consumer mortgages.[18] The qualified mortgage/ability-to-repay rule, mandated by Congress in the Dodd-Frank Act, reflects Congress' belief that ability-to-repay evaluations are essential in underwriting decisions. The Proposal appears to conflict with these rules in Regulation Z promulgated by the CFPB.

The prudential banking regulators rely on the existing requirements regarding ability-to-repay and emphasize the importance of considering a borrower's "current debt obligations" in assessing whether banks are appropriately accounting for default risk in their underwriting procedures. However, the CFPB's Proposal would alter existing data available for the ability-to-repay calculus, as medical debt would no longer be consistently considered. The Proposal would amend a rule that the prudential agencies themselves enacted in 2005, at which time, at least, they clearly determined that considering medical debt was important as part of an institution's assessment of a borrower's credit risk. Furthermore, the CFPB is required to consult with the banking agencies, but has not provided any details about these consultations.[19]

III. The CFPB lacks authority to restrict CRAs from including medical debt in consumer reports.

The CFPB lacks legal authority under the FCRA to limit the ability of CRAs to include medical debt in consumer reports.[20] Congress clearly articulated in the FCRA information that may not be included in a consumer report. FCRA Section 605(a) specifically identifies eight types of records that may not be included on a consumer report (unless an exception applies), including, medical debt pertaining to veterans.[21] Had Congress intended to impose a broad prohibition on the inclusion of medical debt in consumer reports, it would have done so in the statute. There is no indication that Congress intended for the Bureau to supplement the list by regulation; when Congress gives the Bureau authority to supplement a list included in a statute, it does so directly.[22] Furthermore, the FCRA specifically permits a CRA to provide medical information related to "transactions, accounts or balances relating to debts arising from the receipt of medical services, products, or devices" so long as certain conditions are

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[18] The Handbook also provides that "Common underwriter review procedures include: evaluation of the borrower's repayment capacity by looking at income information, employment status and consistency of employment, ***current debt obligations***, alimony, and child support; credit score; credit history using a conventional credit bureau report or other alternative credit documentation; and financial resources (deposit accounts and other liquid investments) consistent with the underwriting considerations and verification requirements of the ATR rule, as applicable" (emphasis added). Comptroller's Handbook on Safety and Soundness regarding Residential Real Estate, Version 1.0 (June 2015) at 19-20

[19] The CFPB states only that "Prior to issuing this proposed rule and in accordance with CFPA section 1022(b)(2)(B), the CFPB consulted with staff from various Federal agencies to discuss aspects of its Proposal. Specifically, the CFPB met with staff from the Board of Governors of the Federal Reserve System, the Office of Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration (NCUA), the Federal Trade Commission, the Department of Health and Human Services, Department of Housing and Urban Development, the FHFA, the Small Business Administration, the VA, and the Department of Agriculture." 89 Fed. Reg. at 51688.

[20] 15 U.S.C. § 1681c(a).

[21] 15 U.S.C. §1681c.

[22] *See*, *e.g.*, 12 U.S.C. § 5514 (authorizing the CFPB to identify non-depository institutions subject to CFPB supervision authority beyond those in three enumerated industries).

met.[23] Therefore, Congress established a statutory framework that clearly contemplates the inclusion of medical debt (other than certain types of veterans' medical debt, which it specifically prohibits from being included), so long as the relevant conditions are met.

IV. **The Proposal would not address the CFPB's fundamental concerns about medical industry debt collection or reporting, and its justifications for the Proposal are deficient and not well-grounded in fact**.

The Proposal does not address the CFPB's fundamental concerns about the cost of medical care or the actions of providers, insurance companies, or debt collectors in the healthcare ecosystem. As noted, the CFPB's Proposal is part of a broader effort of the Biden Administration and the CFPB to address concerns about the pricing of medical care, inaccurate or inflated medical bills, or unlawful medical industry debt collection or reporting practices. Indeed, CFPB officials and prior CFPB regulatory actions have made the CFPB's concerns about these issues clear.[24] Yet, the CFPB has not provided sufficient explanation or evidentiary support for how the Proposal would address the CFPB's concerns or why alternative approaches with fewer collateral consequences would be inadequate. The CFPB makes several assertions attempting to justify the Proposal, none of which support the CFPB's rationale.

As noted previously, the federal banking agencies established the financial information exception permitting entities to use medical debt information so long as certain requirements were met. As required by the statute, the agencies concluded that the exception was both "necessary and appropriate to protect legitimate operational, transactional, risk, consumer, and other needs (including administrative verification purposes)" and consistent with Congressional intent "to restrict the use of medical information for inappropriate purposes."[25] Moreover, the agencies found that the financial information exception struck "a balance between permitting creditors to obtain and use certain medical information about consumers when necessary and appropriate to satisfy prudent underwriting criteria and to ensure that credit is extended in a safe and sound manner."[26]

Pursuant to the Dodd-Frank Act, the authority to administer the FCRA was transferred to the CFPB, and the CFPB now asserts that the federal banking agencies, in adopting the regulatory exception summarized above, "did not cite evidence or provide analysis in support" of their conclusions regarding the necessity and appropriateness of the exception. The CFPB proposes to remove the financial information exception from Regulation V, while retaining certain elements of the exception relating to

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[23] 15 U.S.C. § 1681b(g)(1)(c).

[24] For example, the CFPB's General Counsel has previously noted that "federal law and the law of many states require non-profit hospitals to have financial assistance programs for people who cannot afford to pay, and require hospitals to let people know about these programs." https://www.consumerfinance.gov/data-research/research-reports/understanding-required-financial-assistance-in-medical-care/. The Bureau has criticized the administration by hospitals of charity and reduced-cost care benefits, and suggests that consumers are being harmed by the ways in which hospitals communicate with consumers about those benefits, which may result in consumers having medical bills or debt that they do not actually owe or for which they could receive assistance. The CFPB articulated similar concerns in its RFI on medical payment products, which we pointed out was similarly mis-directed at medical payment providers.

[25] 70 Fed. Reg. 70664 (Nov. 22, 2005).

[26] 69 FR 23380, 23384 (Apr. 28, 2004).

income, benefits, and the purpose of a loan. In addition, as discussed previously, the Proposal would prohibit CRAs from including medical debt in consumer reports.

In support of the Proposal, the CFPB cites to a "significant body of research," much of which it has conducted itself, as well as "marketplace changes" that the CFPB claims raise "questions about the necessity and appropriateness of creditors' use of medical debt information in credit underwriting." The conclusions the CFPB draws in reliance on such research in its attempt to justify the Proposal are overstated and not well grounded in fact, and thus, the CFPB fails to meet the high bar that it must meet to justify the CFPB's proposed changes to Regulation V.

First, the CFPB cites to research that suggests, unlike other types of debt, medical debt often results from circumstances over which "consumers have no control," such as accidents or sudden illnesses, preventing a consumer's ability to "shop around" for medical services. However, the Proposal is not limited to unexpected medical debt; it would cover debt associated with elective procedures as well. The CFPB supports its assertion about medical debt with a citation to the "results of national survey [that] show that 7 in 10 adults with health care debt say that the bills that led to their debt were for a one-time or short-term medical expense due to an unforeseen event such as an accident or sudden illness."[27] The CFPB overstates the extent to which medical debt results from circumstances over which consumers have no control. The study itself actually provides that 7 in 10 adults said that their medical debt was for "a one time or short-term medical expense, such as a single hospital stay or treatment for an accident."[28] While one-time or short-term medical expenses may be from a sudden illness or accident, many such expenses very well may not be, as it is common to have planned surgeries or other procedures that entail a single hospital visit or stay. Indeed, even if a sudden illness or accident does result in medical debt, that is not a factor that is relevant to whether the debt should be considered.

Moreover, the justification to exclude a debt from a credit report because the debt was unexpected and not the consumer's fault has no logical boundary and is not based on any specific grant of statutory authority. It is incontrovertible that incurring unexpected medical debt is an unfortunate situation, the fact remains that a creditor should know that a consumer cannot repay a bill regardless of what the underlying cause of the bill is, even if the debt was unexpected and not the consumer's fault. For example, credit card debt may be, and often is, incurred due to unexpected expenses; yet, that fact does not negate the relevance of that debt in lenders' underwriting decisions. Certainly, there may be inequities in that some do not have to incur debt to pay for unexpected expenses, medical or otherwise, but that is not something that can be addressed by suppressing indebtedness data from credit reports or limiting its consideration in underwriting decisions. Indeed, as described throughout this letter, suppression may in fact exacerbate those aspects of the healthcare system that the CFPB seeks to address, such as by further increasing the cost of care and reducing access to care, particularly for lower income and underserved consumers.

The CFPB also asserts, based primarily on its own research from a decade ago, that medical debt collections "are less predictive of future consumer credit performance than nonmedical collections." However, the CFPB study to which the Proposal cites does not say that medical debt lacks any merit as a

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[27] 89 Fed. Reg. at 51684, *citing* Lunna Lopes et al., Kaiser Fam. Found., Health Care Debt in the U.S.: The Broad Consequences of Medical and Dental Bills (June 16, 2022), Health Care Debt In The U.S.: The Broad Consequences Of Medical And Dental Bills - Main Findings - 9957 | KFF (reporting survey results that 7 in 10 adults with health care debt say the debt arose from bills for a one-time or short term medical expense).

[28] *Id*.

predictor of future repayment behavior. The study in fact finds that medical debt information included in consumer scoring is predictive of delinquency, although not as predictive as other consumer collection accounts over the studied period.

The CFPB next claims that the "inconsistent nature of medical collection furnishing and medical debt collection practices likely limits the value of such information for credit underwriting. However, this reasoning is not sufficient justification for why medical debt information should not be included in consumer reports or considered in underwriting. Suppressing the inclusion of medical debt in credit reports would not fix the problem of inconsistent reporting, nor does the fact of inconsistent reporting negate the utility of medical debt as a data point that creditors may wish to consider in making underwriting decisions.

The CFPB then cites to the fact that "many industry participants have reduced or stopped their reliance on information about medical debt, casting doubt on its value." However, the fact that certain industry participants have reduced or stopped their reliance on medical debt information is not necessarily reflective of its lack of value in underwriting. None of the industry's voluntary initiatives appear to have been driven by a concern over the predictiveness of the information, however. The three major CRAs eliminated paid medical debt and medical debt under $500 from credit reports and increased the waiting period for unpaid medical debt collections to appear on credit reports from six months to one year to account for a greater share of insurance payment delays. The relevant press releases announcing these changes did not mention the predictive value of medical debt in underwriting.[29]

The final rationale that the CFPB articulates for the Proposal is that "several States have prohibited, or are considering prohibiting, the inclusion of consumer medical debt on consumer reports" and "the CFPB is not aware of evidence that such actions have affected creditors' underwriting standards or that creditors have materially curtailed access to credit or tightened credit terms in those States." Stating that the CFPB is "not aware" of any such effect, is not tantamount to there actually *being* no such effect. The CFPB also states that some "Federal government agencies have also been reviewing and modifying their underwriting practices to reduce or eliminate medical debt collections from consideration when evaluating whether a consumer will repay a loan," which, in conjunction with the changes made by certain states, "indicate a growing awareness that medical debt information may have limited value for credit underwriting purposes." This assertion is pure conjecture on the part of the CFPB. None of the CFPB's citations to information about the states that have prohibited or are considering prohibiting the inclusion of consumer medical debt contain any conclusion or even reference to the lack of value of medical debt in credit underwriting. Furthermore, the citation to the "federal government actions" in this regard is somewhat circular, in that it is to the White House's press release about, among other things, the CFPB's ongoing campaign to "prevent unlawful medical debt collection and credit reporting."

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[29] The joint press release by the CRAs announcing the removal of paid medical debt from consumer reports and the increase in the time period before unpaid medical collection debt would appear on a consumer's report from 6 months to one year stated that the action would give "consumers more time to work with insurance and/or healthcare providers to address their debt before it is reported on their credit file," Equifax, Experian, and TransUnion Support U.S. Consumers With Changes to Medical Collection Debt Reporting. The joint press release announcing the elimination of medical debt under $500 from credit reports stated that "We believe that the removal of medical collection debt with an initial reported balance of under $500 from U.S. consumer credit reports will have a positive impact on people's personal and financial well-being," Equifax, Experian and TransUnion Remove Medical Collections Debt Under $500 From U.S. Credit Reports | Business Wire.

The CFPB also has failed to sufficiently explain why it has not sought to address its concerns regarding medical debt through alternative, more direct solutions with fewer collateral consequences. For example, the FCRA, which the CFPB administers, requires CRAs to "follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates."[30] In addition, the FCRA provides that furnishers have a duty to provide accurate information to CRAs.[31] The CFPB could address its concerns about the accuracy of medical debt more directly through its authority under those sections of the FCRA. In addition, pursuant to the FDCPA, which the CFPB also administers, a debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt."[32] Similarly, the CFPB has not explained why it has not taken action pursuant to that statute to address its concerns regarding debt collectors. The CFPB simply notes in the Proposal that the "CFPB also considered requiring consumer reporting agencies and medical information furnishers, upon receiving a dispute, to conduct an independent investigation to certify that a disputed medical debt is accurate and not subject to pending insurance disputes. However, consumer reporting agencies are already subject to accuracy and dispute resolution requirements. Therefore, the CFPB has preliminarily determined that its rulemaking goals are best achieved through the proposed approach."[33] This description does not provide a meaningful explanation for why the CFPB has not pursued these alternative, direct, less harmful approaches. Using those tools would be a more direct and appropriate avenue to address the concerns it cites as motivating the issuance of the Proposal, particularly as this direct approach may have fewer negative consequences for consumers, financial institutions, and the market for consumer credit more broadly. Rather than significantly limiting the ability of creditors to consider medical debt information in making underwriting decisions, the Bureau should consider and exhaust the above discussed authorities first.

Thus, the CFPB has failed to provide a meaningful explanation or robust evidentiary support justifying the proposed changes to Regulation V. The Proposal is therefore deficient and not well-grounded in fact.

V. <u>Conclusion</u>

As discussed throughout this letter, the Proposal suffers from several problems, including that the CFPB does not have the authority to prohibit credit reporting agencies from providing medical debt information in consumer reports. Moreover, by significantly limiting creditors' visibility into and consideration of a consumer's medical debts and expenses in underwriting decisions, consumers may be extended more credit than they can afford, which could lead to default. This would, in turn, ultimately increase the cost and decrease the availability of credit, harming all consumers. Furthermore, by increasing instances of default, the Proposal could have implications for banks' safety and soundness obligations and the related expectations of the prudential banking agencies.

Should the CFPB proceed with this rulemaking, however, we strongly support the CFPB's exclusion of debt owed to a third-party lender, including a credit card issuer, as proposed. However, the CFPB should

[30] 15 U.S.C. § 1681e(b).

[31] 15 U.S. Code § 1681s–2.

[32] 15 USC 1692e.

[33] 89 Fed. Reg. at 51696.

not attempt to prohibit the inclusion of any other categories of debt from credit reports. In addition, lenders will require further guidance from the CFPB regarding how to comply with existing ability-to-repay requirements in light of the proposed removal of medical debt from such reports.

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Thank you for your consideration of this request. Please contact Paige Paridon at paige.paridon@bpi.com or (703) 887-5229 or Rachel Ross at rross@ConsumerBankers.com or 202-552-6366 if you have questions or to discuss our response further.

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