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Legal Help for People in Debt

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October 27, 2023

The Honorable Rohit Chopra
Director, Consumer Financial Protection Bureau
1700 G Street, NW
Washington, D.C. 20552

RE: Small Business Advisory Review Panel for Consumer Reporting Rulemaking, Medical Debt Collection Information

Via CFPB_consumerreporting_rulemaking@cfpb.gov

Dear Director Chopra,

Tzedek DC is an independent public interest center headquartered at the UDC David A. Clarke School of Law in Washington, DC. Inspired by the ancient Hebrew teaching "Tzedek tzedek, tzedek tirdof," or "Justice, justice, you shall pursue," Tzedek DC's mission is to safeguard the legal rights and financial health of DC residents with low incomes dealing with the often-devastating consequences of abusive debt collection practices and other consumer related issues. Tzedek DC offers direct legal services at no cost to DC residents with low- to moderate- income struggling with debt and other consumer-related legal issues. We support the CFPB's proposal to remove medical bills from credit reports and offer the following comments.

Consumer reporting agencies collect and assemble or evaluate information about, among other things, the credit, criminal, employment, and rental histories of hundreds of millions of Americans. They package this information into consumer reports, which are restricted for use typically to creditors, insurers, landlords, employers, and others making eligibility and other decisions about consumers. This collection, assembly, evaluation, dissemination, and use of vast quantities of often highly sensitive personal and financial data about consumers poses significant risks to consumer privacy.

In the FCRA, Congress restricted creditors' ability to obtain or use medical debts in credit decisions, but it granted the federal banking agencies and the National Credit Union Administration authority to create regulatory exemptions to that restriction. Those agencies promulgated exemptions, including one for medical debt financial information, which is primarily used by creditors to consider medical debts in underwriting decisions. When the CFPB was created, Congress transferred this authority to the CFPB. In 2011, the CFPB republished, in general with only technical and conforming changes, the consumer financial protection regulations it inherited from other agencies under the Dodd-Frank Act, including Regulation V for consumer reporting. As part of that process, the CFPB republished without substantive change the medical debt financial information exemption in [Regulation V § 1022.30\(d\)](#).

The CFPB is considering proposals to:



- (1) Revise Regulation V § 1022.30(d), to modify the exemption such that creditors are prohibited from obtaining or using medical debt collection information to make determinations about consumers' credit eligibility (or continued credit eligibility), and
- (2) Prohibit consumer reporting agencies from including medical debt collection tradelines on consumer reports furnished to creditors for purposes of making credit eligibility determinations.

CFPB Questions on Proposals and Alternatives Under Consideration

Q1. How, if at all, will the proposal under consideration require your firm to change its operations, products, or services?

We are a small public interest law firm focused on providing services to District of Columbia residents earning up to 400% of the Federal Poverty Level, some of whom have outstanding medical debt and/or medical debt on their credit reports impacting their credit score. This proposal to end reporting of medical debt to the Credit Reporting Agencies (CRAs) and prohibiting creditors from using medical debt information to determine credit eligibility would be a positive step for many of our clients, as medical debt-related information would not necessarily prevent them from renting an apartment or raise negative flags on a background check for employment. We have a medical debt-focused project, but even this proposed change would not eliminate necessary advocacy in the reduction/elimination of the negative consequences of medical debt. We also provide financial counseling services, and if medical debt were eliminated from reporting to CRAs, that work would be able to focus on other issues potentially impacting a resident's credit report/score, issues that may be more representative of credit responsibility and worthiness than debts accrued due to a medical need or emergency.

Q2. What do you anticipate will be the initial and ongoing costs to your firm, if any, of complying with the proposal under consideration? If applicable, how do those costs compare to your firm's current costs to comply with the provision(s) of the FCRA or Regulation V related to the proposal under consideration? Please quantify all such costs by type and amount to the extent possible.

We would welcome medical debt not being reported on credit reports and impacting scores, and would further welcome being able to focus our financial counseling and credit-focused work on non-medical financial decisions.

Q3. What aspect or aspects of complying with the proposal under consideration would be the most challenging?

Public education. If not reported on and actively impacting their credit, clients may be less inclined to pursue remedies to pay off that debt, which could result in being sued/garnished in the future.

Q4. What alternative approaches, if any, should the CFPB consider in lieu of the proposal under consideration?

We fully support the CFPB prohibiting the reporting of medical debt to the CRAs and medical debt factoring into other credit decisions.

Q5. Other than compliance costs, what costs, burdens, or unintended consequences should the CFPB consider with respect to the proposal under consideration? Please quantify if possible. What alternatives, if any, would mitigate such costs, burdens, or unintended consequences?

It is possible with without the "stick" of reporting medical debt to CRAs and having the debt appear on credit reports, residents with medical debt may be less incentivized to pay down that debt, resulting in unrecouped costs for medical providers that may result in negative impacts to their businesses and/or increases in pricing to account for uncollected debts. However, having had medical debt on credit reports and impacting scores to date has not necessarily been successful in compelling payment, either due to inability to pay or other factors. There could be increased costs in personal civil suits by medical providers to sue patients for debts if they cannot rely on reporting to the CRAs to incentivize payment.

Q7. What factors disproportionately affecting small entities should the CFPB be aware of when evaluating the proposal under consideration? Would the proposal under consideration provide unique benefits to small entities?

We encourage the CFPB to review data, smaller medical providers may have more difficulty recouping debts owed without the ability to report those debts to the CRAs. We have seen evidence of several *large* health systems, often non-profit health systems, who sue patients for debts owed; potentially smaller providers may choose to become more litigious if CRA reporting and credit impacting of medical debt is no longer allowed.

CFPB Questions on Medical Debt Collection Information

Q35. Under the proposals under consideration, would you anticipate that medical debt collectors would stop furnishing medical debt collection information to consumer reporting agencies and use alternative debt collection methods? If so, which ones?

Perhaps debt collectors would seek to directly sue patients with medical debt.

Q36. To what extent do creditors currently use medical debt collection information when making credit eligibility determinations, including to comply with other laws or requirements? Do creditors use medical debt collection information for other purposes in connection with a credit transaction?

As we understand it, creditors may use any information on a credit report, which could include medical debt valued at over \$500 after the voluntary changes implemented by the CRAs, in making their credit worthiness/eligibility determinations. As the proposal document notes, Regulation V § 1022.30(d) has existing exemptions that allows a creditor to view both medical debt and non-medical debt to make credit decisions; however, we argue, as have others, that medical debt is not a good predictor in determining someone's credit worthiness, particularly since medical debt may arise due to accident or illness for which one was unprepared. Being unable to pay a several thousand dollar, unexpected hospital bill is dissimilar to agreeing to make monthly payments on a rental unit or a car based on your expected income.

Q37. From what sources do creditors obtain consumers' medical debt collection information, other than consumer reports?

Contingency collection agencies and debt buyers.

Q38. What are the pros and cons of an alternative approach of mandating a delay in the furnishing and reporting of medical debt for a particular period of time, and not reporting or furnishing medical debt below a particular dollar amount?

Pros for delayed reporting:

- Gives patients time to address the medical debt prior to any reporting to a CRA and resulting/ancillary impacts
- Increased chance that other credit decisions will not include medical debt

Cons for delayed reporting:

- Medical debt is *still* reported to the CRAs, even if "delayed"; amount of "delay" may be insufficient for the patient to be able to pay the bill
- Credit decisions could still be made with medical debt in mind/as part of calculation

Pros for not reporting under amount certain:

- A significant amount of US medical debt is only several hundred dollars; limiting the reportable amount would eliminate reporting much of the existing levels of medical debt
- Small medical debts would be unlikely to cause additional financial complications, such as impacting employment or housing



Cons for not reporting under amount certain:

- Doesn't eliminate *all* the reporting, and some medical debt amounts are in the five-and-six figures (and is very debilitating)

Q39. What are the pros and cons of an alternative approach of requiring consumer reporting agencies and 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?

Pros:

- Secondary verification of the alleged debt to ensure that the debt is:
 - owed and at that amount,
 - by the alleged debtor,
 - who is verified to be the correct person

Cons:

- Additional time, energy, money, expended to verify existing debts all held by the alleged debtor prior to collection
- After investigation, may determine debt is *not* owed and nothing to collect, and/or that the alleged debtor is not the correct person to collect from, and/or that the amount of the alleged debt is wrong and there is less (or more!) to collect

Tzedek DC appreciates the opportunity to provide comments and inform the CFPB's consideration of prohibiting reporting of medical bills and medical debt on credit reports.

Sincerely,

Tzedek DC