American Bankers Association®

Hallee Morgan
VP & Sr. Counsel
Regulatory Compliance & Policy
hmorgan@aba.com

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

Via Electronic Submission

RE: Proposed Rule re Prohibition on Creditors and Consumer Reporting Agencies Concerning Medical Information (Regulation V); Docket No. CFPB-2024-0023

Dear Director Chopra:

ABA appreciates the opportunity to comment on the Consumer Financial Protection Bureau's Notice of Proposed Rulemaking (NPRM) concerning the use and reporting of medical debt under the Fair Credit Reporting Act (FCRA).[1] The proposed rule would amend Regulation V to prohibit creditors from obtaining or using medical financial information, including medical debt information, in connection with credit decisions. It would also prohibit credit reporting agencies from reporting medical debt information on consumer reports to creditors in connection with credit decisions. The proposal would reverse regulatory provisions that have allowed lenders to consider information about medical debt in credit origination for nearly two decades.

I. Summary of Comment

The proposed rule appropriately excludes credit issued by a third-party lender from the term "medical information," and ABA strongly agrees with this decision. This is both the most reasonable interpretation of the statute and the only interpretation that is operationally feasible to implement. Banks that offer unsecured consumer credit – including credit card issuers – do not receive transaction-level data that would allow them to distinguish medical expenses from other expenses. As a result, it would not be possible to implement a definition of medical information that includes third-party credit the consumer uses to pay for medical products and services.

However, ABA has significant concerns with the remainder of the proposed rule.

The proposal to remove information about approximately $49 billion in medical collections from the credit reporting system will increase credit risk and reduce credit availability. Fundamentally, the less information creditors have regarding a consumer's existing debt obligations and repayment history, the less they can account for credit risk and the consumer's ability to repay. The CFPB's claims to the contrary are not reasonable or adequately supported by evidence. The Administrative Procedure Act (APA) does not permit agency actions that are

[1] The American Bankers Association is the voice of the nation's $24 trillion banking industry, which is composed of small, regional and large banks that together employ approximately 2.1 million people, safeguard $19 trillion in deposits and extend $12.4 trillion in loans.

"arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" or "in excess of statutory jurisdiction, authority, or limitations." A rule is arbitrary and capricious under the APA "if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." Judged by this standard, the proposed rule is arbitrary and capricious and should not be finalized as proposed.

The FCRA prohibits creditors from obtaining or using medical information in connection with a determination about a consumer's eligibility for credit, except in specific circumstances. The purpose set forth in the statute was to "restrict the use of medical information for inappropriate purposes."[2] However, Congress also recognized that creditors may have "legitimate operational, transactional, risk, consumer, and other needs"[3] to consider certain medical information and gave the banking agencies authority to issue rules to protect these needs, consistent with the intent of the FCRA to restrict the use of medical information for inappropriate purposes.

The CFPB proposes to suppress medical debt information based on claims that it is not sufficiently predictive of credit risk, not to prevent inappropriate use of medical information. However, nothing in the FCRA permits the CFPB to suppress information based on its predictiveness, rendering the proposed rule inconsistent with the reasoned decisionmaking required by the APA, and the CFPB relies on factors Congress did not intend for it to consider. Moreover, the proposal appears motivated by a desire to influence healthcare policy, which the CFPB may not do through the FCRA.

The proposed rule is not supported by evidence and, contrary to the APA's requirement to examine the relevant data and articulate a satisfactory explanation for its action. The proposed rule relies heavily on an outdated 2014 study, which does not support the proposal to suppress medical debt because it found only that certain types of medical debt were less predictive of risk, *not* that they were non-predictive. Moreover, both the data in the 2014 study and the new data the CFPB cites predate important developments regarding medical debt, including changes by the credit bureaus that significantly limited what medical debts are reported, changes in credit scoring models, and legal and regulatory changes to improve the accuracy of medical billing. The CFPB relies exclusively on data reflecting consumer experiences before and during the COVID 19 pandemic, which are not reflective of the current consumer credit market. Also, the CFPB's statutorily required cost-benefit and economic impact analysis are wholly inadequate. The CFPB fails to consider the full costs of the proposed rule – and often doesn't even attempt to do so.

The CFPB does not adequately consider how the proposed rule will directly and materially harm banks and consumers, rendering the proposal arbitrary and capricious because it fails to consider important – and presumably unintended – consequences of the proposal. These include the impact of increased credit risk on consumer access to credit and on bank safety and soundness, the conflict with the ability to repay requirements of the Truth in Lending Act (TILA) and Regulation Z, and the impact on cashflow underwriting.

[2] Fair Credit Reporting Act (FCRA) § 604, 15 USC § 1681b(g)(5)(A) (emphasis added).
[3] FCRA § 604, 15 USC § 1681b(g)(5)(A).

Banks do not want to issue loans consumers cannot repay – it is bad for the consumer and bad for the bank. To ensure their loans will be repaid and are priced according to risk, banks must have complete information about an applicant's assets and liabilities. This includes repayment obligations arising from medical debt. The evidence shows that medical debt has predictive value. But to the extent information about certain types of medical debt may be less predictive than nonmedical debt, market participants, including credit scoring companies, have already adjusted how they consider medical debt.

If lenders are not able to consider medical debts in credit underwriting, consumer delinquencies and defaults will increase, impacting banks' safety and soundness and consumers' credit access. If lenders know that credit scores have increased, but believe that risk has not decreased, they will simply offset the increase by further tightening their lending standards.

Absent regulatory clarity, the proposed rule also could create potential conflicts with the ability to repay requirements of TILA and Regulation Z. To resolve that potential conflict, the CFPB must clarify that creditors will be permitted to request and use reliable third-party records other than the credit report to verify information about medical debt and disability income. This, in turn, would protect consumers by ensuring TILA continues to provide robust consumer protections.

Finally, prohibiting the use of medical information could impede creditors' ability to use cashflow information to underwrite consumer credit. Cashflow underwriting is a promising tool to responsibly expand access to credit for underserved consumers, and the CFPB should make it clear that the rule will not prevent the use of this avenue to expand financial inclusion.

II. ABA Supports the CFPB's Determination That the Prohibition on Considering Medical Information Does Not Apply to Third-Party Credit.

ABA strongly agrees with the CFPB's interpretation that the term "medical information" in the FCRA relates only to a debt the consumer owes directly to a health care provider and does not apply to third-party credit the consumer uses to pay for medical products and services.

The proposed rule would prohibit creditors from obtaining or using medical financial information – including medical debt information – in connection with a credit decision. The FCRA defines medical information as:

> information or data . . . created by or derived from a health care provider or the consumer, that relates to— (A) the past, present, or future physical, mental, or behavioral health or condition of an individual; (B) the provision of health care to an individual; or (C) the payment for the provision of health care to an individual.[4]

The proposed rule correctly interprets this to mean a debt is "medical information" only if it arises from the consumer's payment obligation owed *directly* to the medical provider for the healthcare service or product provided.[5] This is both the most reasonable interpretation of the statute and the only interpretation it is operationally feasible to implement.

[4] FCRA § 602, 15 U.S.C. § 1681a(i).
[5] CFPB, Notice of Proposed Rulemaking (NPRM), re Prohibition on Creditors and Consumer Reporting Agencies Concerning Medical Information (Regulation V), Docket No. CFPB-2024-0023 at 31-32.

Banks that offer unsecured consumer credit generally do not know how a customer spends the loan proceeds.[6] While credit card issuers can identify the merchant with whom the consumer shopped, many retailers sell a mix of medical and non-medical products, and issuers do not receive transaction-level data that would allow them to distinguish medical expenses from other expenses. Moreover, this issue is not unique to general-purpose credit cards; health and wellness credit cards are accepted by a wide range of wellness-related businesses, including major pharmacy chains that sell nonmedical merchandise. Because they do not receive transaction-level information, issuers of these cards do not know whether a purchase at a retail pharmacy is for medication or shampoo.

Even if it were operationally possible for a lender to isolate a consumer's medical expenditures, treating them as medical debt would significantly reduce consumers' access to credit and, in turn, to healthcare. If credit extended by third-party lenders could be considered medical debt it would likely cause lenders to tighten their underwriting standards or increase their pricing to offset the increased repayment risk.[7]

For these reasons the proposed rule appropriately excludes information about debts incurred to pay for medical bills using credit issued by a third-party lender from the term "medical information," and ABA strongly agrees with this decision.

III. The Remainder of the Proposed Rule Is Arbitrary and Capricious, Inconsistent with the FCRA's Statutory Directives, and Exceeds the CFPB's Authorities.

While the proposed rule correctly interprets the statute as it relates to third-party credit, the remainder of the proposed rule does not reasonably interpret or adhere to the statute.

The APA does not permit agency actions that are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" or "in excess of statutory jurisdiction, authority, or limitations."[8] A rule is arbitrary and capricious under the Administrative Procedure Act "if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise."[9] Judged by this standard, the proposed rule is arbitrary and capricious and should not be finalized as proposed.

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[6] Moreover, because money is fungible, it is not clear how a bank could determine whether and what portion of an unrestricted installment loan (such as a typical personal loan) was used to pay for healthcare products or services.
[7] It could even cause some lenders who currently offer general-use credit products to begin applying healthcare-specific usage restrictions to avoid holding "medical debt."
[8] Administrative Procedure Act (APA) § 706(2), 5 U.S.C. § 706(2).
[9] *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29, 43, 103 S. Ct. 2856, 2867, 77 L. Ed. 2d 443 (1983)

1. The Proposed Rule Exceeds the CFPB's Rulemaking Authority and Disregards the Purpose of The Legislative Provision It Purports to Implement.

When Congress amended the FCRA in 2003 it added Section 604(g)(2), which prohibits creditors from "obtain[ing] or us[ing]" medical information in connection with a determination about a consumer's eligibility for credit, except in specific circumstances.[10] Congress tempered the prohibition by giving the prudential banking agencies (before the Dodd-Frank Act transferred authority over the FCRA to the CFPB) flexibility to issue regulations that would permit creditors to use medical information that is necessary and appropriate to protect "legitimate operational, transactional, risk, consumer, and other needs."[11] Congress' recognition of creditors' legitimate needs for certain medical information was affirmed by the prudential banking agencies. They amended Regulation V to permit lenders to use "medical financial information," provided it is the type of information routinely used in making credit eligibility determinations, the lender uses it no less favorably than similar information that is nonmedical, and the creditor does not consider the consumer's health condition or history in the credit determination.[12]

The CFPB's proposal, however, would strike the "medical financial information" section of Regulation V and prohibit creditors from considering information about consumers' medical payments and medical debts.

In Section 604(g)(2) of the FCRA, Congress clearly and unequivocally expressed its intent to safeguard consumer's privacy and to prevent lenders from using medical information inappropriately:

> Regulations required – The Bureau may, after notice and opportunity for comment, prescribe regulations that permit transactions under paragraph (2) that are determined to be necessary and appropriate to protect legitimate operational, transactional, risk, consumer, and other needs (and which shall include permitting actions necessary for administrative verification purposes), *consistent with the intent of paragraph (2) to restrict the use of medical information for inappropriate purposes*.[13]

In other words, this grant of rulemaking authority instructs the agency not only to protect legitimate risk and other needs, but also to restrict inappropriate uses of private medical information. Yet, the proposed rule does not meaningfully consider consumer privacy. Instead, it focuses on the predictiveness of medical debt,[14] and it proposes regulatory amendments that cannot reasonably be characterized as related to privacy issues.[15] Nor does the CFPB provide

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[10] It is unclear that this prohibition is as broad as the CFPB claims. Arguably, it only prohibits creditors from using unredacted medical information. Section 604(g)(2) states that, in connection with a credit decision, creditors "shall not obtain or use medical information (other than medical information treated in the manner required under section 1681c(a)(6) of this title)." 1681c(a)(6) sets out the specific types of information that CRAs must restrict from credit reports to de-identify the medical provider and the services provided.
[11] FCRA § 604, 15 USC § 1681b(g)(5)(A)
[12] Regulation V, 12 CFR § 1022.30(d)(1)
[13] FCRA § 604, 1681b(g)(5)(A) (emphasis added)
[14] *See e.g.* NPRM at 4, 5, 16 17, 37-41, 63, 89-99, 130-177.
[15] For example, the CFPB defines "medical information" to include "medical information in the form of a civil judgment." NPRM at 32. Yet, it is difficult to see the privacy interest in prohibiting lenders from considering information about a civil judgment relating to medical debt, when court orders are generally a matter of public

evidence of inappropriate practices by lenders under the current rule that warrant the change in policy. In fact, the current rule appropriately safeguards privacy by permitting creditors to consider only medical financial information and expressly prohibiting consideration of information related to the consumer's underlying health conditions.

The CFPB attempts to justify its proposed rule by alleging that the financial information exception in Regulation V is no longer necessary and appropriate for credit underwriting because, the CFPB alleges, it is not predictive of repayment risk. However, the words "necessary and appropriate" do not grant the CFPB unconstrained discretion. Indeed, if they did, they would violate the Constitutional doctrine that Congress must provide an "intelligible principle" to guide agency action when delegating legislative authority. [16] Rather, the regulation must be within the grant of rulemaking authority, as understood by reference to the legislative text and context.[17] Not only does the proposed rule disregard the purpose of the FCRA's restrictions on the use of medical information, it also fails to reasonably consider or protect legitimate operational, transactional, risk, or consumer needs. In fact, it would have the opposite effect, as will be discussed in section IV. The words "necessary and appropriate" cannot overcome these deficiencies or justify the CFPB's proposal.

As noted above, the APA demands that an agency act within the express statutory grant of authority and provide a reasoned and well-supported explanation for its action, particularly when it proposes a change to a long-standing rule in which regulated entities have a serious reliance interest.[18] The CFPB has failed on both counts.

2. *The Proposed Rule Is Not Otherwise Authorized by the FCRA And Exceeds the CFPB's Authorities and Jurisdiction.*

The FCRA does not empower the CFPB to suppress entire categories of information (including medical debt) from credit reports based solely on claims about their predictiveness. Instead, Congress left it to lenders to determine how to issue credit consistent with the bank's risk appetite and prudential regulation and consistent with required consumer protections.

Although the proposed rule cites concerns about the accuracy of medical information as a basis for questioning its predictiveness, the FCRA also does not authorize the wholesale suppression of an entire category of information based on concerns about accuracy. Instead, Congress chose to promote the accuracy of information on credit reports by expressly requiring furnishers to have reasonable procedures to ensure they provide complete and accurate information, and by enabling consumers to dispute the accuracy of specific items on their

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record. Nor would a plain-language reading of information "created by or derived from a health care provider or the consumer" include the opinion or order of a court.

[16] *See e.g. Gundy v. United States,* 588 U.S. 128, 139 S. Ct. 2116, 204 L. Ed. 2d 522 (2019).

[17] *Cf. Gundy* at140–41.

[18] *See F.C.C. v. Fox Television Stations, Inc.,* 556 U.S. 502, 515, 129 S. Ct. 1800, 1811, 173 L. Ed. 2d 738 (2009) (citing *Smiley v. Citibank (South Dakota), N. A.,* 517 U.S. 735, 742, 116 S.Ct. 1730, 135 L.Ed.2d 25 (1996)).

consumer reports.[19] This is consistent with the FCRA's purpose, which is to require reasonable *procedures* to ensure consumer protections within the consumer reporting system.[20]

The proposed rule appears to be driven, in part, by concerns about the healthcare system and medical billing practices. However, problems in the healthcare system can only be solved through healthcare policy, not through the consumer reporting system. The concerns the CFPB raises regarding medical billing practices, the complexities of insurance coverage, and delays in insurance reimbursement, etc. merit attention.[21] But, the CFPB does not have authority to make or influence healthcare policy via credit reporting regulations.

Perhaps most concerningly, the proposal sets a precedent for suppressing credit reporting on politically sensitive categories of debt. This concern is heightened by the appearance that the CFPB developed the proposal to achieve political objectives. The White House announced the proposed rule in a statement that touted the Administration's work on medical debt and criticized Republicans in Congress.[22] Two weeks before that, Vice President Harris' speech at a campaign event hailed the Administration's planned removal of medical debt from credit reports.[23]

The proposed rule exceeds the CFPB's statutory authorities and its jurisdiction, in contravention of the FCRA and the APA. Moreover, the rule appears to be based on considerations other than the reasoned decisionmaking required by the APA.

IV. The Evidence Does Not Support the Proposed Rule.

The proposal to remove information about approximately $49 billion in medical collections from the credit reporting system will increase credit risk and reduce credit availability. Fundamentally, the less information creditors have regarding a consumer's existing debt obligations and repayment history, the less they can account for credit risk. The CFPB's claims to the contrary are not reasonable or adequately supported by evidence.

An agency must provide a reasoned analysis for rulemaking that changes course from a prior position, and "must examine the relevant data and articulate a satisfactory explanation for its action" based on its consideration of the relevant factors.[24] The CFPB has failed to do so here. Instead, its data is skewed and outdated, its findings are unreliable, and its analysis disregards relevant and material factors.

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[19] *See* FCRA, 15 U.S.C. §§ 1681e, 1681b, 1681i, 1681s-2.

[20] Note that the FCRA's express statutory purpose is "to require that consumer reporting agencies adopt reasonable *procedures*" to meet commercial needs in a way that is fair to the consumer." 15 U.S.C. § 1681(b).

[21] *See e.g.* NPRM at 4, 10, 31, 38, 59.

[22] White House, *Vice President Harris Announces Proposal to Prohibit Medical Bills from Being Included on Credit Reports and Calls on States and Localities to Take Further Actions to Reduce Medical Debt* (Jun. 11, 2024), https://www.whitehouse.gov/briefing-room/statements-releases/2024/06/11/fact-sheet-vice-president-harris-announces-proposal-to-prohibit-medical-bills-from-being-included-on-credit-reports-and-calls-on-states-and-localities-to-take-further-actions-to-reduce-medical-debt/.

[23] White House, *Remarks by President Biden and Vice President Harris at a Campaign Event, Philadelphia, PA* (May 29, 2024), https://www.whitehouse.gov/briefing-room/speeches-remarks/2024/05/29/remarks-by-president-biden-and-vice-president-harris-at-a-campaign-event-philadelphia-pa/.

[24] *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29, 30–31, 103 S. Ct. 2856, 2860–61, 77 L. Ed. 2d 443 (1983).

1. The 2014 Data Point Study is Flawed and Outdated.

The proposed rule relies heavily on an outdated 2014 study, which would not support the proposed rule even if its conclusions were reliable. The CFPB's 2014 "Data Point" concluded that certain credit report information about medical debt in collections is less predictive of credit risk than information about non-medical debt in collections.[25]

However, importantly, the 2014 study did *not* conclude that medical debt collections are not predictive of credit risk. It initially concluded that loans to consumers with medical debt collections performed better than loans to consumers with similar credit scores but with other types of collections, suggesting that 2014 credit scoring models were less predictive for consumers with medical debt collections than other types of collections.[26] It then further examined the data and determined that this was only the case for consumers with more paid than unpaid medical debt on their credit reports. Loans to consumers with more unpaid than paid medical debt performed the same or worse than loans to other consumers with the same credit scores.[27] This narrow conclusion does not support a blanket claim that medical debt is not predictive of credit risk, and it does not support a prohibition on using and reporting information about medical debt in credit decisions.

Additionally, the study is not an appropriate source for the proposed rule to rely on. Its scope was limited, and as it prominently caveats: "it is possible that other measures of performance could yield different results . . . [and] that medical collections will be more or less informative for specific types of credit (e.g., credit cards, auto loans) or in custom models constructed for individual lenders."[28] It did not assess charge-off rates or other metrics of performance or risk. It also only considered credit scores and did not assess how lenders use medical debt information on credit reports to understand a consumer's overall financial picture.

In addition, the 2014 Data Point is materially out of date. As the study itself cautions, "[c]redit conditions can and do change over time . . . [so] analyses for other time periods could produce different estimates."[29] Indeed, the study's data – collected from October 2011 through September 2013 – is now over a decade old. The study was designed to evaluate how well credit scores predicted delinquency for consumers with medical debt, but, since 2014, credit bureaus and credit scoring companies have made significant changes regarding medical collections, as discussed below. The largest credit scoring companies have also adjusted how they assess and weigh medical debt in their models since 2014. And origination practices have not been static since 2013 – indeed, the ATR/QM rule governing general mortgage underwriting criteria took effect in 2014.[30]

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[25] Data Point: Data point: Medical debt and credit scores (May 2104), https://files.consumerfinance.gov/f/201405_cfpb_report_data-point_medical-debt-credit-scores.pdf.
[26] 2014 Data Point at 5, 16.
[27] 2014 Data Point at 6, 19.
[28] 2014 Data Point at 12.
[29] 2014 Data Point at 12.
[30] CFPB ATR/QM Rule, 78 FR 6408 (2013). Note that mortgages comprise over 70% of total consumer credit in the U.S. *See e.g.* https://www.newyorkfed.org/microeconomics/hhdc.html .

In short, not only do the study's findings fall far short of justifying a total ban on using medical debt information for credit decisions, the study itself is materially outdated. The CFPB cannot reasonably claim the 2014 study supports the 2024 proposed rule.

2. *The New Data and Analysis in the Proposed Rule Are Deeply Flawed.*

The proposed rule relies on data that predate significant relevant regulatory and industry changes and was likely skewed by consumer experiences and economic conditions during the COVID 19 pandemic. It analyzes data from March 2018 through July 2023 to assess medical debt's predictive value, and the data it uses to evaluate loan performance is limited to tradelines opened before January 2022. Yet, the CFPB's analysis does not account for the significant changes during that time to the economy, credit markets, credit reporting, credit scoring, and medical billing.

The pandemic had significant effects on the economy, credit markets, and consumer behavior that make the CFPB's data unrepresentative. Yet, its analysis did not consider whether the pandemic skewed the data from this period. For example, at least 7.8 million homeowners enrolled in mortgage forbearance between March 2020 and March 2023,[31] suggesting that the data about delinquency rates during this period are unlikely to be representative of current loan performance.

Further, because it only considered loans originated before January 2022, the performance data does not reflect significant recent market and regulatory changes. The three largest credit bureaus made significant changes since 2022, specifically: in July 2022 they stopped reporting medical collections that had been paid in full, which would address the sole finding of the 2014 Data Point study, i.e. that credit scores at that time were less predictive of delinquency only for consumers with more unpaid than paid credit reports; they also stopped reporting those medical debts that had been unpaid for less than a year, to give consumers time to resolve any errors and address their medical debts; and in April 2023 they removed medical collections under $500.[32] These changes removed nearly 70% of medical collections tradelines from consumer reports. In January 2022, the No Surprises Act took effect, with reforms designed to improve the accuracy of medical billing, including by prohibiting surprise medical bills.[33] Even if the CFPB had adequate support for its claims regarding the predictiveness of medical debt, these changes substantially address the specific issues the CFPB points to as the basis for its allegation that medical debt is not sufficiently predictive.

The CFPB's data and analysis do not reflect these developments, and it relies on non-representative data. Yet the proposed rule does not provide a reasonable explanation for failing to account for these relevant factors, and does not pass muster under the APA.

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[31] Bankrate, *Pandemic mortgage forbearance draws to a close, but new relief options emerge* (Mar. 21, 20204), https://www.bankrate.com/mortgages/pandemic-mortgage-relief-ending/#forbearance;

[32] *See* Experian, Press Release: Equifax, Experian and TransUnion Remove Medical Collections Debt Under $500 From U.S. Credit Reports (Apr. 11, 2023) https://www.experianplc.com/newsroom/press-releases/2023/equifax-experian-and-transunion-remove-medical-collections-debt-under-500-from-us-credit-reports.

[33] No Surprises Act, Pub. L. No. 116-260, 134 Stat. 1182, Division BB, § 109 (2021).

3. *The Proposal Does Not Consider the Private Sector's Market-Driven Risk Adjustments.*

Even if the CFPB were authorized under the law to prohibit the use and reporting of medical debt information, there is no reason to believe that such a drastic step is warranted, much less wise. In fact, it will only cause market participants to lose trust in the credit reporting and credit scoring system.

The fact that the market has already adjusted its uses of medical debt information shows that the proposed rule is unnecessary. Lenders and credit score providers have strong market incentives to maximize the predictiveness of their models, and so they are continuously evaluating how to use the information in the credit reporting system to do so. Credit score providers recently made significant changes affecting how medical debt is used in their models.

Market participants generally continue to regard medical debt as predictive of credit risk to a meaningful degree. If the CFPB suppresses medical information or requires lenders to give medical debt less weight than they consider appropriate, it will only undermine confidence in the credit reporting and credit scoring systems. This in turn will drive market adjustments, which will ultimately harm consumers by restricting credit availability or increasing credit pricing.

The fact that the credit bureaus continue to report information about certain medical collections indicates that they, and the markets they serve, have found these debts to be predictive. Credit scoring companies have adjusted their use of medical debt information to varying degrees, too – nevertheless, as FICO stated when it adjusted its model to reduce the weight of medical debt:

> [I]gnoring ALL medical collections, regardless of whether those accounts have been paid, can have an adverse impact on score predictiveness. . . . Intuitively this makes sense given the prevalence of medical collections – over half of all consumer collection accounts are medical collections, and the vast majority (~90%) of those accounts are unpaid. Our research has consistently found that individuals with unpaid collections are more risky (i.e., less likely to repay loans) than those who do not have unpaid accounts. Therefore, it is not surprising that disregarding this information could harm the FICO® Score's predictive power."[34]

As this makes clear, banks and others continue to consider it important to have access to information about medical debt to help evaluate ability to repay and credit risk.

Moreover, many banks are already beginning to adjust their practices for using this information as they consider appropriate to its predictiveness. Some banks have adjusted their uses for medical debt information, some have adjusted the weight they give to medical debt, and some no longer consider medical debt. This demonstrates that banks adapt dynamically and in accordance with their risk appetites and evaluations of the value of information for predicting likelihood of repayment. The CFPB should not dictate whether and how banks consider medical

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[34] FICO, *The Impact of Medical Debt Collections on FICO® Scores* (Jul. 13, 2015), https://www.fico.com/blogs/impact-medical-debt-collections-ficor-scores.

debt, which will only cause them to lose trust in the credit reporting and scoring system and tighten their lending accordingly.

The proposed rule disregards important aspects of the problem by failing to meaningfully consider: recent changes to the use and reporting of medical debt; market participants' use of sophisticated risk modelling and ability to make their own determinations about medical debt; and the effects of suppressing medical debt information many market participants still consider predictive of risk.

4. The Cost-Benefit Analysis Does Not Evaluate the Full Costs of the Proposal.

The proposed rule's cost-benefit and economic impact analysis are severely deficient. The CFPB fails to consider the full costs of the proposed rule – and often doesn't even attempt to do so.

Section 1022(b) of the Dodd-Frank Act requires the CFPB to consider "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 the impact of the rule on regulated financial institutions.[35] Additionally, the Regulatory Flexibility Act requires agencies to evaluate the economic impact their proposed rules will have on small entities (including increases to the cost of credit), and consider alternatives to minimize the impact.[36]

As discussed above, the CFPB's analysis of the proposed rule's impact on lenders' ability to accurately assess credit risk is flawed, incomplete, and does not support its conclusions. And as discussed in section IV, the proposed rule fails to adequately consider the harms of suppressing medical debt information. It does not account for the cost that will arise from the introduction of additional risk into the financial system, the tightening of credit standards and credit availability, and other consequences of the proposed rule. In many instances, the CFPB simply states that it lacks data needed to assess the impacts, without a reasonable explanation of why it did not gather or attempt to gather that data before commencing the rulemaking.[37]

Moreover, as the Small Business Administrations' Office of Advocacy noted in its comment, the CFPB does not provide sufficient information about the costs to small entities, and "without "sufficient information about the potential economic impact on small entities . . . the public cannot provide meaningful feedback on the agency's assumptions . . . and the CFPB cannot consider, meaningful alternatives."[38] Moreover, the CFPB underestimates the number of small

[35] Dodd-Frank Act § 1022(b), 12 USC § 5512(b).
[36] Regulatory Flexibility Act, 5 USC § 603.
[37] *See e.g.* NPRM at 68, 69, 72, 76, 79, 81, 83, 84.
[38] Small Business Administration Office of Advocacy, *Comment Re: Prohibition on Creditors and Consumer Reporting Agencies Concerning Medical Information (Regulation V) Docket No. CFPB–2024–0023, RIN 3170–AA54* at 5 (August 5, 2024).

depository financial institutions that would be affected by approximately 6,000 – omitting nearly 80% of all small depositories.[39]

The proposed rule fails to consider the full costs to consumers, banks, medical providers, small entities, and the U.S. economy. Because of this, the CFPB has not satisfied its statutory obligations to conduct meaningful cost-benefit and economic impact analyses.

V. The Proposed Rule Does Not Adequately Consider the Impact of Suppressing Information About Borrowers' Medical Obligations

Congress authorized rulemaking to protect legitimate operational, transactional, risk, or consumer needs, but the proposed rule would have the opposite effect. As noted in section II, the words "necessary and appropriate" do not grant the CFPB unconstrained discretion in its rulemaking: the agency must still engage in reasoned decisionmaking and the rule must be consider all important aspects of the problem. The CFPB, by contrast, does not adequately consider how the proposed rule will directly and materially harm consumers and banks.

Banks do not want to issue loans consumers cannot repay – it is bad for the consumer and bad for the bank. To ensure their loans are likely to be repaid and are priced according to risk, banks must have the information to account for risk as fully as possible. This includes repayment risk arising from medical debt. As discussed in Section III, the evidence shows that medical debt still has predictive value, and to the extent information about certain types of medical debt may be less predictive than nonmedical debt, market participants including credit scoring companies have already adjusted how they consider medical debt.

If lenders are not able to adequately estimate the risk arising from medical debts, it is likely to increase consumer delinquencies and defaults. This not only harms affected consumers but also impacts institutional safety and soundness. If banks cannot accurately price the risk of loss into the cost of the loan, it affects whether their portfolios are aligned with their institutional risk appetite and the effectiveness of their risk management strategies. If enough risk accrues in institutions or in secondary markets, it could turn into systemic risk.

1. The Proposed Rule Will Harm Banks

Even if the rule is finalized, consumers with medical debt will still be legally responsible for repayment. Creditors can still take action to recover unpaid medical debt, up to and including suing the consumer and garnishing their wages or bank accounts. But, regardless of how creditors pursue recovery, consumers will still be liable for payment of their medical debt, and it will still affect the riskiness of issuing them a new loan.

To assess credit risk, lenders must know when a credit applicant has medical debts that could affect their ability to repay the new loan. The CFPB posits that medical debt is not a good indicator of repayment risk because in many cases it is unavoidable or the result of an

[39] Small Business Administration Office of Advocacy, Comment at 4.

emergency, but while this may be relevant to willingness to repay it does not alter a consumer's *ability* to repay.

It is particularly important for lenders to have complete information about an applicant's financial obligations, including medial debts, before issuing a loan. If the consumer is already unable to pay a large debt burden, they are less likely to be able repay an additional loan and may even be at greater risk of declaring bankruptcy before the new loan is repaid. Indeed, the CFPB has repeatedly acknowledged that medical debt contributes to bankruptcy and declared in 2022 report on medical debt that "[m]edical debt can increase the likelihood that an individual will file for bankruptcy, especially for individuals who incur very large medical debts."[40]

Community banks would be particularly affected by the increased risk of suppressing medical debt information. As a result, they would have to adjust their lending the most, generating significant operational and compliance costs as well as competitive losses from having to reduce their lending more in proportion to larger competitors.

2. The Proposed Rule Will Harm Consumers

If the CFPB finalizes the rule as proposed, in order to offset the hidden risk our members report they would tighten credit standards, decrease the amount they lend, and/or increase loan pricing. Banks are already tightening their consumer lending standards and reducing their consumer lending, and this could compound the effect.[41] This, in turn, would reduce consumer access to credit – contrary to the CFPB's claim that the proposed rule would make more people eligible for credit.

While the proposed rule asserts that removing medical debt from credit reports would benefit consumers with medical debt by increasing their credit scores, this is unlikely to generate net consumer benefit. The CFPB's expectation that consumer credit scores will increase by 20 points is speculative in the absence of access to credit scorers' proprietary information about their respective models. Regardless, any increase in credit scores that is based on reducing the availability of information simply makes scores less accurate and lenders less confident in them.

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[40] CFPB, *Medical Debt Burden in the United States* at 29-30 (Feb. 2022), https://files.consumerfinance.gov/f/documents/cfpb_medical-debt-burden-in-the-united-states_report_2022-03.pdf. In addition, Director Chopra made this point when speaking about medical debt last year, citing to the 2022 report, although his remarks did not address the connection between medical debt and bankruptcy as it affects default risk. CFPB, *Prepared Remarks of Director Rohit Chopra at the American Association of Healthcare Administration Management* (May 4, 2023), https://www.consumerfinance.gov/about-us/newsroom/prepared-remarks-director-rohit-chopra-american-association-healthcare-administration-management/#2.

[41] *See* Federal Reserve Board of Governors, *April 2024 Senior Loan Officer Opinion Survey on Bank Lending Practices,* https://www.federalreserve.gov/data/sloos/sloos-202404.htm ("Over the first quarter [of 2024], banks reported tightening lending standards and most terms, on net, for all consumer loan categories. . . . A significant net share of banks reported increasing minimum credit score requirements for credit card loans, while moderate net shares of banks reported doing so for auto loans and other consumer loans"); FDIC, *2024 Risk Review* at 35-40 (May 22, 2024), https://www.fdic.gov/analysis/risk-review/2024-risk-review/2024-risk-review-full.pdf ("Consumer loan growth at banks slowed in 2023 as banks tightened lending standards and households reduced their demand for loans. Consumer loan performance for the industry weakened in 2023.")

If lenders know that credit scores have increased, but believe that risk has not decreased, they will simply offset the increase by further tightening their lending standards. The CFPB concedes that lenders "may change their underwriting processes in response to the proposed rule," and the "allocation of credit may change across consumers with and without medical debt relative to the current baseline allocation if creditors change their underwriting practices." But it does not address the consequences of the fact that many consumers may be less likely to be approved for credit, or on less favorable terms, due to the tightening of credit.[42]

Recent research also calls into question the CFPB's claims that removing medical debt from credit reports will improve consumers' financial outlooks. Economists from Harvard, Stanford, UCLA, and LMU partnered with an organization that paid off individuals' medical debt to study the effects of the program. Their study, published by the National Bureau of Economic Research, found "no impact of debt relief on credit access, utilization, and financial distress on average" from directly eliminating consumers' medical debts.[43] Although it noted that "removal of medical debt from credit reports has historically been cited as a primary benefit of debt relief," the study could "detect no effects on measures of borrowing or financial distress."[44]

Further harm to consumers is likely if they are more likely to be sued to recover delinquent debt. As noted, if the rule eliminates an incentive to pay, such as a potential reduction to a credit score, creditors will be more likely to have to take these other actions to enforce the debt, including garnishing their wages or bank accounts. Medical providers and purchasers of medical debt are likely to sue consumers more frequently if consumers' incentives to repay are changed when medical collections no longer affect their credit reports. Also, consumers sometimes identify overdue medical bills for the first time when applying for a loan, allowing them to either pay the debt or dispute the information and have the item removed from their credit report.[45] Because the proposal would also hide information from consumers, some consumers may not have the chance to address the issue in time to avoid litigation.

It would be irresponsible to remove medical debt information from credit reports and prohibit lenders from considering it. The proposed rule is inconsistent with the rulemaking authority the FCRA provides and the Administrative Procedure Act. It arbitrarily and capriciously disregards or dismisses the harmful effects this would have, including bringing undisclosed risk into banks and credit markets, reducing banks' ability to assess a consumer's ability to repay and default risk, making litigation a more common means of recovery, decreasing lenders' confidence in

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[42] It did consider that consumers might be more likely to apply for credit for other reasons, and it conceded: "If consumer demand for credit is affected by the proposed rule, the credit applications that creditors receive may have different underlying delinquency risk." NPRM at 98.
[43] Kluender et al., *The Effects Of Medical Debt Relief: Evidence From Two Randomized Experiments*, NBER Working Paper 32315 (Apr. 2024), https://www.nber.org/system/files/working_papers/w32315/w32315.pdf, abstract.
[44] *Id.* at 5-6.
[45] As noted previously, the major credit bureaus no longer report medical debt that has been paid in full. *See* Experian, Press Release: Equifax, Experian and TransUnion Remove Medical Collections Debt Under $500 From U.S. Credit Reports (Apr. 11, 2023) https://www.experianplc.com/newsroom/press-releases/2023/equifax-experian-and-transunion-remove-medical-collections-debt-under-500-from-us-credit-reports.

available risk analysis triggering tighter credit standards, higher prices, and reduced lending, and ultimately reducing access to consumer credit.

VI. The Proposed Rule Would Conflict with the Truth in Lending Act and Regulation Z

The proposed rule also may be incompatible with a creditor's legal obligations under TILA's Ability to Repay (ATR) requirements for residential mortgage transactions.[46] In the aftermath of the mortgage crisis, the Dodd-Frank Act[47] required lenders to make a reasonable and good faith determination that the consumer has the ability to repay a residential mortgage loan according to its terms.[48] The Bureau recognized these Congressional objectives and implemented rules requiring lenders to make reasonable and good faith determinations that the consumer has a reasonable ability to repay, based on verified and documented information, before issuing a residential mortgage loan.[49]

In implementing TILA's ATR requirements, the CFPB explained that the goal of the statute was to prevent a reprise of the deterioration of lending standards that preceded and contributed to the 2008 financial crisis.[50] The Bureau noted that the ATR requirement was intended to prevent consumers from obtaining mortgages they could not afford.[51] As a result, Regulation Z requires mortgage lenders to consider "the consumer's monthly payments on the loan, loan-related obligations, and any simultaneous loans of which the creditor was aware, as well as any recurring, material living expenses of which the creditor was aware."[52] Additionally, Regulation Z requires mortgage lenders to verify the information they rely on to determine ATR using reasonably reliable third-party records, which the official commentary to Regulation Z expressly states includes credit reports.[53]

TILA imposes significant liability for violating ATR requirements.[54] A lender who is found not to have complied with the ATR requirement is subject to general TILA damages and is also liable for special ATR statutory damages that may be up to the sum of all finance charges and fees paid by the consumer, which borrowers may recover through a private right of action. Potential civil money penalties can reach $4,000 per day for individual actions, and $1 million for class actions. When a lender or an assignee initiates a foreclosure action, a consumer may

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[46] TILA § 129C(a)–(b) (codified as amended at 15 U.S.C. § 1639c(a)–(b)).
[47] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 929-Z, 124 Stat. 1376, 1871 (2010) (codified at 15 U.S.C. § 78o).
[48] *See* TILA §129B(a)(2), 15 U.S.C. § 1639b(a)(2).
[49] 12 C.F.R. § 1026.43(c)(2)–(4).
[50] *See* 78 Fed. Reg. 6408, 6570 (Jan. 30, 2013)("A primary goal of the statute was to prevent a repeat of the deterioration of lending standards that contributed to the financial crisis, which harmed consumers in various ways and significantly curtailed their access to credit.").
[51] "The statutory ability-to-repay standards reflect Congress's belief that certain lending practices (such as low- or no- documentation loans or underwriting loans without regard to principal repayment) led to consumers having mortgages they could not afford, resulting in high default and foreclosure rates." *Id*. at 6415.
[52] 78 Fed. Reg. at 6409.
[53] 12 CFR § 1026.43(c)(3)' 12 C.F.R. 1026.43(c)(3)-3 (Official Commentary).
[54] *See* Section 1416 of the Dodd-Frank Act amending TILA section 130(a). For a thorough discussion of the liabilities under the Dodd-Frank Act, see preamble to the final rule at 78 Fed. Reg. 6408, at 6416.

assert an ATR violation as a basis for recoupment or setoff. The ATR provisions of Regulation Z can also become the basis for repurchase or indemnity requests, particularly given the existence of assignee liability. Banks would face significant potential uncertainty about compliance and liability if the any final rule is unclear on how to comply with the ATR law.

In light of the mortgage-related ability-to-repay requirements, the Bureau must provide additional assurances regarding the inclusion or exclusion of medical debt information from mortgage-related calculations.

1. *The Proposal Would Reduce Lenders' Ability to Identify Medical Debts When Assessing Borrowers' Ability To Repay*

Banks comply with TILA by identifying and verifying all debts that can affect a consumer's ability to afford a loan. They review the consumers' credit reports and self-reported information on the application, and typically verify self-reported information using reliable third-party records such as two to three months of bank statements and develop a more complete understanding of the consumer's financial picture.

However, if lenders cannot use credit reports to identify delinquent unpaid medical debts, and the consumer has not been making payments in the last two to three months (or whatever time period is reflected in the requested bank statements), the bank may have difficulty independently learning of those debts. As a result, prohibiting the use of credit reports to verify medical debts could incentivize some consumers to omit medical debts from their mortgage applications in an effort to conceal their existence. This obviously would weaken the consumer protections provided by the ATR provisions to the detriment of consumers and mortgage lenders.

Similarly, while credit card issuers are subject to different ATR requirements under Regulation Z, they are required to consider the consumer's ability to make minimum payments. In particular, they must consider the consumer's debt-to-income ratio, debt-to-assets ratio, or the income the consumer will have after paying their debt obligations.[55] Unlike mortgage lenders, credit card issuers do not typically require applicants to submit bank statements, so the proposed rule would even more significantly impair their ability to independently identify consumers' medical debts. If the CFPB suppresses medical debt information it may prevent credit card issuers from accurately understanding repayment risk and impede issuers' ability to accurately understand consumers' total debt. This also would weaken the consumer protections provided by the credit card ATR provisions.

2. *The Proposed Rule Raises Questions About Conflicts with TILA and Regulation Z's Requirement to Verify Information Used to Assess Ability to Repay Mortgages*

The proposed rule also could create a risk that when applicants self-report medical debt on their mortgage application, banks will be unable to fulfil their legal obligation to verify applicants' debt. While the CFPB attempts to reconcile its proposal with Regulation Z, the proposed rule is not sufficiently clear whether, when a mortgage lender receives unsolicited

[55] *See* 12 CFR § 1026.51(a)(1)

information about medical debts, it may verify the medical information using sources other than credit reports.

The proposed rule states that creditors may continue to use medical information (including medical debt information) that they receive without specifically requesting it, such as when consumers self-report medical debts in response to a general question on the credit application about their current debts or obligations.[56] However, the proposed rule prohibits the use of credit reports to verify medical information, and suggests that creditors do not need to obtain medical debt information from a credit report to comply with their ATR requirements (even when relying on the exception otherwise applicable for compliance with federal law).[57] As a result, the proposed rule could be read to require the creditor to rely on the consumer's stated information in the application form related to his current debt obligations, without further verification.

Absent appropriate clarity, the proposal could undermine banks' ability to assess credit risk and potentially create conflict with Regulation Z. The CFPB must clarify that creditors will be permitted to request and use reliable third-party records other than the credit report to verify information about medical debt and disability income.[58]

Critically, to the extent the CFPB proposes to change lenders' obligations under Regulation Z, it must make that clear by amending Regulation Z itself. In order to ensure needed regulatory clarity, the CFPB must not attempt to change Regulation Z solely through a rulemaking to amend Regulation V.

Clarifying the proposed rule as discussed above would confirm mortgage lenders' ability to verify in advance that a consumer can afford a loan subject to TILA's ATR requirements. This, in turn, would protect consumers by ensuring TILA continues to provide robust consumer protections.

3. *The Proposed Rule Must Clarify and Harmonize Its Application to HELO*CS

The proposed rule adds a new example to better define the exemption from the general prohibition on obtaining or using medical information for compliance with federal law.[59] In the new example, the proposed rule recognizes that creditors are required by Regulation Z to reasonably and in good faith determine a consumer's ability to repay a covered home loan before making the loan to a consumer.[60] For purposes of this requirement, home loans secured by open end lines of credit are excluded:

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[56] NPRM at 54.
[57] NPRM at 54-56.
[58] This is particularly needed in light of the CFPB's commentary on Regulation Z, which indicates that creditors need not "obtain additional records to verify the existence or amount of obligations shown on a consumer's credit report or listed on the consumer's application," unless they have reason to know the information may be suspect, inaccurate or subject to dispute. 12 C.F.R. 1026.43(c)(3)-3 (Official Commentary).
[59] 12 C.F.R. 1026.43(e)(1)(ii). ("To comply with applicable requires of . . . Federal laws.").

[60] 12 C.F.R 1026.43(c)(1).

> This section applies to any consumer credit transaction that is secured by a dwelling, as defined in § 1026.2(a)(19), including any real property attached to a dwelling, *other than: (1) A home equity line of credit* subject to § 1026.40.[61]

Notwithstanding the fact that HELOCs are excluded from the scope of the ATR provision, many banks underwrite HELOCs consistent with closed-end standards, applying the ability to repay standards equally for open- and closed-end home loan transactions.[62]

To make sure that all HELOC underwriting can be assessed similarly, any final rule should provide that high cost HELOCs enjoy the same treatment as closed end loans in proposed Section 1022.30(e)(6), which reads: "A consumer applies for a mortgage loan subject to §§ 1026.43(c) *or 1026.34(a)(4)* of this chapter."[63] The cross reference to Section 1026.34(a)(4)[64] refers to the ability to repay requirements that apply for those HELOCs that constitute high cost loans. The proposed rule should therefore provide that: "A consumer applies for a mortgage loan subject to §§ 1026.43(c) *or 1026.40,* of this chapter."

The CFPB must provide regulatory clarity to ensure that banks can safely underwrite mortgages, credit cards, and HELOCS, and can continue to serve consumers without fear of violating contradictory requirements across multiple federal laws including TILA.

VII. The Proposed Rule Could Reduce Lenders' Ability to Use Cashflow Underwriting of Consumer Credit

Cashflow underwriting is a promising tool to responsibly expand access to credit for underserved consumers. Cashflow underwriting evaluates credit risk by analyzing the flow of recurring deposits and payments through a consumer's account. This can allow lenders to accurately assess the creditworthiness of "credit invisible" and "thin file" consumers, making

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[61] 12 C.F.R. 1026.43(a)(1) (emphasis added).

[62] Our banks believe this is not only a prudent approach, but also an approach that is required by safety and soundness regulators. For example, OCC direction to its regulated institutions to originate prudently underwritten loans states that—"All relevant risk factors should be considered when establishing product offerings and underwriting guidelines. Generally, these factors should include a borrower's income and debt levels, credit score (if obtained), and credit history, as well as the loan size, collateral value (including valuation methodology), lien position, and property type and location. … Consistent with the agencies' regulations on real estate lending standards, prudently underwritten home equity loans should include an evaluation of a borrower's capacity to adequately service the debt. … Given the home equity products' long-term nature and the large credit amount typically extended to a consumer, an evaluation of repayment capacity should consider a borrower's income and debt levels and not just a credit score." https://www.occ.gov/news-issuances/bulletins/2005/bulletin-2005-22a.pdf

[63] NPRM at179 (emphasis added).

[64] "In connection with an open-end, high-cost mortgage, a creditor shall not open a plan for a consumer where credit is or will be extended without regard to the consumer's repayment ability as of account opening, including the consumer's current and reasonably expected income, employment, assets other than the collateral, and current obligations including any mortgage-related obligations that are required by another credit obligation undertaken prior to or at account opening, and are secured by the same dwelling that secures the high-cost mortgage transaction."

them eligible to access credit. The CFPB has alluded to these potentials of cashflow underwriting, including in its recent Section 1033 rulemaking proposal and on its blog.[65]

Eliminating Regulation V's financial information exception could impede creditors' ability to use cashflow information to underwrite consumer credit. Under the proposed rule, creditors could not obtain or use information about medical debt. If this requires lenders to identify and exclude any medical payments in the consumer's account, it would hinder the use of cashflow underwriting. Moreover, it may not even be possible based on the available information about a payee. Smaller banks, in particular, lack the resources to do this kind of intensive analysis or to build the technical tools to reliably screen out medical debt information from accounts.

The CFPB should clearly provide that creditors may obtain and use medical payment information for cashflow underwriting purposes. Otherwise, the proposed rule will likely interfere with the development of this promising avenue to increase financial inclusion.

VIII. Conclusion

The proposed rule exceeds the authority set forth in the FCRA, does not adhere to Congress' express intent, is not supported by reasoned analysis, has numerous evidentiary and methodological deficiencies, and conflicts with other statutory and regulatory schemes.

Congress did not authorize the CFPB to suppress information from the credit system because the CFPB considers it insufficiently predictive. Prohibiting consideration of medical debt in credit underwriting would reduce lenders' ability to understand consumers' credit risk and ability to repay. As a result, it is likely to cause significant adverse consequences to banks and consumers, including causing the tightening credit standards. And, it risks creating conflicts with TILA and Regulation Z, as well as making it more difficult to use cashflow underwriting to increase financial inclusion. CFPB's arguments to the contrary are not based on adequate evidence or analysis, and disregard important aspects of the issue.

For these reasons, ABA urges the CFPB to withdraw its proposed rule.

ABA appreciates the opportunity to comment on the proposed rulemaking. If you have any questions or want to discuss any of these topics, please contact Hallee Morgan at hmorgan@aba.com or 202-663-7605.

Sincerely,

Hallee Morgan
VP & Senior Counsel, Regulatory Compliance and Policy
American Bankers Association

[65] *See* CFPB, *Notice of Proposed Rulemaking: Required Rulemaking on Personal Financial Data Rights,* Docket No. CFPB-2023-0052 https://files.consumerfinance.gov/f/documents/cfpb-1033-nprm-fr-notice_2023-10.pdf; CFPB, *Blog: Looking at credit scores only tells part of the story – cashflow data may tell another part (*Jul. 26, 2023), https://www.consumerfinance.gov/about-us/blog/credit-scores-only-tells-part-of-the-story-cashflow-data/.