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

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

August 12, 2024

Dear Director Chopra,

The Iowa Credit Union League (ICUL) is pleased to present this comment letter to the Consumer Financial Protection Bureau. ICUL is a not-for-profit trade association that represents the interest of 68 credit unions within the state and their 1.6 million member-owners. Iowa credit unions are small compared with national banks and other financial institutions. Of the 71 credit unions in Iowa, 63 have less than \$750 million in assets and only one has more than \$10 billion. ICUL appreciates the opportunity to provide comments on the Consumer Financial Protection Bureau's (CFPB or the Bureau) proposed rule on the Prohibition on Creditors and Consumer Reporting Agencies Concerning Medical Debt.

ICUL respectfully urges the Bureau to recognize the difference between credit unions and larger financial institutions. Credit unions are specifically structured to support their members and local communities. They do not operate on assessing high fees, nor have the volume or add-on products to absorb increasing operational costs. The lower fees and lessened ability to absorb operational costs means that credit unions are less likely to be able to mitigate unforeseen risk, as the proposed rule may unintentionally create.

As mission-based organizations that provide minimal to low fees, competitive products, and accessible financial services, Iowa credit unions prioritize supporting and building relationships within their local communities. While we support the Bureau's intent to protect consumers and Iowa credit union members, we strongly encourage the CFPB to reconsider its proposal. Specifically, we find the changes in this rule to present financial detriments to Iowa credit unions, particularly as they do not have the same access to resources to mitigate risk that larger financial institutions may have.

While Iowa credit unions understand the intention of the proposed rule, the impact on credit unions would be tremendous. If the items contained in the proposed rule were to be finalized without any changes, credit unions and the members they serve could suffer severe financial impact. The ability to accurately analyze risk associated with an Iowa credit union's capacity to lend to its members is integral to Iowa credit union operations. While most Iowa credit unions have ceased using medical debt in credit determinations, creating a prohibition that prevents the Iowa credit unions who need access to this type of information is detrimental to credit union operations. We understand that the rule is intended to pass along a financial benefit to consumers, but this rule does not effectuate the intended result. Instead, this proposed rule will result in confusion among consumers and financial institutions as well as financial harm to Iowa credit unions and their members. By removing the ability of credit unions to have accurate

information as to a members repayment behavior, the CFPB is inadvertently creating scenarios by which a member may overextend their financial obligation.

Request for Comment by CFPB

The Bureau is seeking comment on various items including a myriad of regulatory considerations for the proposed amendments seeking to: (1) remove the financial information exception and (2) limit the circumstances under which consumer reporting agencies are permitted to furnish medical debt information to creditors in connection with credit eligibility determinations. Accordingly, ICUL, on behalf of Iowa credit unions, is submitting this letter with our comments on these items.

Removal of the Financial Information Exception

According to the proposed rule, The Fair Credit Reporting Act (FCRA) was designed to accomplish three things: (1) prevent the misuse of sensitive consumer information by limiting recipients to those who have a legitimate need for it; (2) improve the accuracy and integrity of consumer reports; and (3) promote the efficiency of the nation's banking and consumer credit systems.¹ Additionally, the FCRA was also supposed to “enable creditors to make appropriate credit decisions based on accurate consumer reporting information that truly reflects whether a consumer will repay a loan, while simultaneously protecting the privacy of consumer data”.²

Further, in order to protect consumer privacy, the FCRA contains a restriction which disallows creditors from obtaining or using medical information pertaining to a consumer in connection with any determination of the consumer's eligibility or continued eligibility, for credit. However, the FCRA contained an exception which allowed a creditor to consider medical information in connection with a determination of eligibility for credit so long as it met the requirements of the three-part test³. In providing this exception, the FCRA struck a balance between the use of medical information for credit determinations and the privacy considerations of consumers.⁴

In the currently proposed rule, it is this balance that the CFPB is seeking to upset. By eliminating this exception, the CFPB is expecting financial institutions, and in particular, credit unions, to make credit eligibility determinations without having access to all of the factors that are used in making those decisions. We understand that the CFPB has a vested interest in protecting the privacy of consumers through its rulemaking authority. However, disrupting a balance that was intentionally implemented to alleviate the tension between the needs of creditors and the protections of consumers undermines the purpose of the FCRA itself.

Furthermore, credit unions are smaller financial institutions with traditionally less mitigation resources. The ability to accurately determine risk, particularly in lending decisions, is important to their existence. The proposed rule eliminates an exception which many credit unions rely on to make important credit decisions based on the consumer's ability to repay and their historical payment behavior. While we recognize and understand the CFPB's assertion that many medical expenses are unexpected and as such are not accurate determinations of a consumer's ability to repay, completely prohibiting the use of that information situates credit unions in a precarious position.

¹ *Prohibition on Creditors and Consumer Reporting Agencies Concerning Medical Information (Regulation V)*, Consumer Financial Protection Bureau, No. CFPB-20204-0023, pg. 19 (pub. Jun. 11, 2024); *see also*, *Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47, 52 (2007); 15 U.S.C. § 1681(a)(4).

² *Id.* at 19; *see also*, S. Rep. No. 91-517, at 1 (1969); *Trans Union Corp. v. FTC*, 81 F.3d 228, 234 (D.C. Cir. 1996).

³ *Id.* at 29; *See also*, 12 CFR 1022.30(d)(1).

⁴ Fair Credit Reporting Medical Information Regulations (2004 NPRM), 69 FR 23380 (Apr. 28, 2004).

Finally, credit unions are largely nonprofit financial institutions with a dedication to member-focused services. This includes having lower overall fees, beneficial overdraft services, financial counseling services, and financial educational programs. Credit unions also handle sensitive financial information, including medical information needed to make credit eligibility decisions, with the utmost care and security. When a member of a credit union experiences financial hardships, the credit union works with that member to ensure a satisfying resolution for the member and for itself. Eliminating an exception because of the actions of more predatory creditors which will adversely affect credit unions and by extension, their members, is patently unfair.

We ask the Bureau to consider the member-focused actions of credit unions and allow the financial information exception to continue.

Limiting the Circumstances for Furnishing Medical Debt Information

As it stands, the FCRA has an exclusive list of permissible purposes for which consumer reporting agencies may provide consumer reports.⁵ In particular, the FCRA allows a consumer reporting agency to produce a consumer report to a “person which it has reason to believe ‘intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer’”.⁶

In the currently proposed rule, a consumer reporting agency could “include medical debt information in a consumer report furnished to a creditor for credit eligibility purposes only if the following criteria are met: (1) the consumer reporting agency has reason to believe the creditor is not prohibited from obtaining or using the medical debt information...and (2) the consumer reporting agency is not otherwise prohibited from furnishing to the creditor a consumer report containing the medical debt information, including by a State law that prohibits furnishing to the creditor a consumer report containing medical debt information”.⁷ The Bureau is proposing this criteria to provide regulatory coherence with the proposed elimination of the financial information exception and to facilitate compliance among consumer report furnishing agencies.⁸ In the Bureau’s own words, “these limitations on consumer reporting agencies would markedly facilitate compliance”.⁹

However, the CFPB is strictly relying on consumer reporting agencies to be able to effectively comply with this criteria. The CFPB is assuming that consumer reporting agencies could “more easily implement automatic processes that remove medical debt information provided by medical information furnishers from those reports that are requested for credit eligibility determinations...”¹⁰ There has been no evidence provided by the CFPB to support this.

Consequently, if the proposed rule was finalized, credit unions would be put in the position of over-reliance on consumer reporting agencies by assuming that they are furnishing compliant information. Were this rule to be finalized, if a consumer reporting agency is not in compliance with the criteria and furnished medical debt information, whether intentionally or unintentionally, the credit union would be unintentionally in possession of information it was no longer legally allowed to have. This poses a significant security and operational risk to the credit union. While we understand that the CFPB needs to enact additional criteria to ensure consumer reporting agency compliance and to promote regulatory

⁵ *Id.* at 47-48.

⁶ *Id.* at 47-48; *see also*, 15 U.S.C. 1681(a)(3)(A).

⁷ *Id.* at 47.

⁸ *Id.* at 49.

⁹ *Id.* at 49.

¹⁰ *Id.* at 49.

consistency, the speculation of increased compliance by consumer reporting agencies may create significant harm to credit unions.

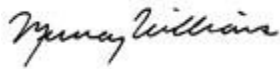
Accordingly, we ask the CFPB to consider not amending the FCRA to include the above-listed criteria or creating a “safe harbor” provision for credit unions that are unintentionally in possession of medical debt information.

Conclusion

We appreciate the Bureau extending the opportunity to comment and provide feedback on this proposed rule. We have endeavored to provide helpful insights into the issues this rule presents to Iowa credit unions. We strongly urge and are hopeful that the CFPB will not finalize this proposed rule in its current form.

Thank you for the opportunity to comment on this proposed rule and for your consideration of these items.

Sincerely,



Murray Williams
CEO/President
Iowa Credit Union League

