

The Consumer Financial Protection Bureau

Attention: Legal Division Docket Manager

Docket No. CFPB-2024-0023

July 29, 2024

JustLeadershipUSA (JLUSA and our national policy coalition, the JustUS Coordinating Council (JCC), support the Notice of Proposed Rulemaking for Regulation V of the Fair Credit Reporting Act (FCRA) entitled, "Prohibition on Creditors and Consumer Reporting Agencies Concerning Medical Information." This NPRM's modification to Regulation V and removal of an exception in the FCRA regarding medical debt on credit and consumer reporting will be a key contributor to enhanced economic mobility for millions of Americans - including members of our coalition and community impacted by the criminal legal system.

While we recognize and support the April 2023 efforts in reducing the prevalence of medical debt through ending the practice of reporting of amounts \$500 or less, the prevalence of ongoing reporting of amounts **over** \$500 continues to have devastating effects on consumers¹. It is estimated that 20% of the country is impacted by medical debt and over 30% of Americans are grappling with the collateral consequences and permanent punishments of impact from the criminal legal system. When these realities are layered upon each other - particularly in communities of high poverty and in states where Medicaid has not been expanded - individual consumers, their families, and communities writ large are limited in the credit vehicles they can pursue and often must rely on many of the same predatory creditors the CFPB regulates. As such, we support the Bureau's interpretation of the consistency in the FACT Act's purposes for protecting privacy of consumers' medical information related to closing the loophole found in Regulation V. Additional comments requested by the Bureau can be found below.

Interpretation of "Owes and Owed"

As requested by the Bureau in this NPRM, JLUSA and the JCC also support the CFPB's focus and distinction with regard to those that buy medical debt as an included entity subject to this rulemaking. In order to maximize the benefit to consumers and to truly capture the spirit of the FCRA's statutes related to terms like "necessary" and "appropriate" through this rulemaking, however, a more general inclusion of both buyers of medical debt AND third party credit instruments to pay medical debt should be viewed as derivatives from a health care providers. As stated in the NPRM, "Such loans are new debt obligations used to pay the medical debt obligation owed to a health care provider²." Such credit tools including services like CareCredit, PrimaHealth Credit, etc, used to ease medical debt through health service credit cards or third party payment plans not only can be predatory due to inflated interest rates and targeting of high-poverty communities, they also currently compound harm through how healthcare debt credit services are reported. As such, we implore the CFPB to include both those who are sold medical debt AND third-party lenders whose services can be clearly linked to medical debt in this rulemaking. We

¹<https://investor.equifax.com/news-events/press-releases/detail/1286/equifax-experian-and-transunion-remove-medical-collections>

² https://files.consumerfinance.gov/f/documents/cfpb_fcra-med-debt-proposed-rule_2024-06.pdf

also support and encourage the Bureau to move to full implementation no later than the sixty (60) days proposed in the NPRM.³

Definition of “Medical Debt”

As part of the recommended broader interpretation outlined above between those that purchase medical debt and those that provide third-party instruments to address medical debt, the inclusion of the term “assignee” is essential in the proposed rule to ensure that implementation matches intention and we support the alignment of these definitions.

Necessary and Appropriate Determination

Regarding the question of inclusion of medical debt being necessary and appropriate for CRAs, our organization and coalition support the Bureau’s interpretation of medical debt not meeting the FCRA standard of being necessary or appropriate ways to ascertain credit “worthiness” by creditors. As stated in the NPRM, consumers frequently have no control over the need for medical services and incurred costs. In many situations, consumers also have little choice about which providers to choose from that will accept their insurance - if they have coverage to begin with. This is true as well for those experiencing a period of incarceration. Reporting over the last several years has shed light on what our network of leaders know from personal experience - the imposition of copays and other surcharges on individuals incarcerated both in local jurisdictions and within the Federal Bureau of Prisons⁴. For illnesses and procedures that are necessary but beyond the scope of contracted carceral healthcare providers, often patients incarcerated are transported to outside medical providers. In either, while varying greatly from state to state, the use of fees for medical services - even in correctional settings - can leave individuals and their families grappling with the cost of care. While medical debt from incarceration is rarely sold to collectors following a person’s release, in jurisdictions where a support person may enroll in a third-party credit instrument to offset the financial needs of their loved one, the impact can still certainly be felt in the community. This is just one of many examples our coalition members have experienced firsthand and is a glaring example of debt affiliated with medical bills that in no way is appropriate or necessary in determining credit fitness.

Consumer Impact and Other Considerations

After reviewing the estimated consumer impact statements that have the most bearing on our community of directly impacted individuals, we support and agree with the Bureau’s appraisal. In particular, the reality of having one less potential barrier on a credit report to address is most certainly beneficial. All-too-often individuals who are incarcerated fall victim to identity theft and other types of fraud that can create additional barriers to credit upon release. While accruing medical debt through fraud is a less common type of cost, removing this from reporting will benefit the credit reports of the

³ Id

⁴ <https://prismreports.org/2022/10/31/prison-health-care-hidden-costs/>

hundreds of thousands of individuals across the country who are incarcerated with no other way to improve their credit. We also agree with the Bureau's response to criticisms regarding the availability of healthcare and credit in general in the absence of medical debt reporting. While certainly usage rates both for credit vehicles and health services may increase, the idea that there would be an overcorrection by the system with regard to interest rates or access to care does indeed seem to be an occurrence unlikely to occur at regular rates. As stated, nothing in this rule prevents the collection of debt nor the communication regarding medical billing and debt to consumers. We concur and support the Bureau's remarks on each of these types of impact.

An added opportunity within the proposed rule for stronger guidance and additional positive consumer impact is ensuring that CRAs used for both employment and tenant screening are held to the same standard regarding using medical debt when both reporting and using logarithmic approaches to assessing applicant fitness or "risk." As many partner organizations and individuals in our coalition know firsthand, the reliance on credit reporting in the tenant application process can be debilitating and create an impediment to a basic human need. Yet in 9 out of 10 instances, property managers, owners, and the CRAs they use to screen applicants rely on credit as a key component for acceptance or rejection⁵. This very issue has been tackled in recent guidance from HUD as well as by several national consumer and tenant advocacy groups who are members of our coalition⁶. We implore the Bureau to include both employment and tenant screening CRAs within the scope of this regulation to begin to curtail the ongoing harms and barriers to basic human needs already disproportionately impacting those struggling to recover from medical debt.

⁵ https://files.consumerfinance.gov/f/documents/cfpb_tenant-background-checks-market_report_2022-11.pdf

⁶ https://www.hud.gov/sites/dfiles/FHEO/documents/FHEO_Guidance_on_Screening_of_Applicants_for_Rental_Housing.pdf#page=16

