August 11, 2024

Comment Intake—2024 NPRM FCRA Medical Debt Information
c/o Legal Division Docket Manager
Consumer Financial Protection Bureau
1700 G Street NW, Washington, DC 20552

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

To Whom It May Concern,

The Ohio Credit Union League (OCUL) represents the collective interests of Ohio's 209 credit unions and their more than three million members. Of those 209 credit unions, 114 are federally chartered; 55 state-chartered, federally insured; and 40 state-chartered, privately insured, with an average asset size of $224 million. OCUL appreciates the opportunity to comment on the Consumer Financial Protection Bureau's (CFPB's) proposed rule amending Regulation V, which implements the Fair Credit Reporting Act (FCRA), concerning medical information. Specifically, the CFPB is proposing to remove a regulatory exception in Regulation V from the limitation in the FCRA on creditors obtaining or using information on medical debts for credit eligibility determinations.

OCUL is concerned because this proposed rule would eliminate credit unions' ability to obtain and consider medical debt in calculating an applicant's ability-to-repay in the loan underwriting and approval process. Credit unions are already required to balance mission[1] against preexisting regulatory requirements and are now being asked to remove basic due diligence components that may already be required by their prudential regulator. For the reasons outlined below, OCUL opposes the CFPB's total elimination of financial institutions' ability to access medical debt as part of the underwriting process.

I. Credit unions rarely, if at all, limit credit based solely on an applicant's medical debt; however, credit unions and their members benefit from the knowledge and awareness of a complete credit history.

The CFPB is proposing this rule to address concerns that information about medical debt is not necessary and appropriate for credit underwriting.[2] While credit unions rarely consider medical debt in the credit decision making or credit eligibility process, there is an inherent necessity to see all outstanding items that are unpaid to help in decisioning all loans. The very fabric of the credit union philosophy is to put people first, and to put people over profit. To put members in the best position to succeed, credit unions need to be able to get a clear, complete picture of a member's credit history, background, and ability-to-repay; otherwise, the credit union is unable to establish a realistic risk profile, hampering its compliance and adherence to risk tolerance policies.

While medical debt is often a smaller amount, there are times when the amount is sufficiently significant to warrant acknowledgment, especially in unsecured loan requests, as this debt may cause a higher risk of default or bankruptcy, if the medical debt is excessive. For example, many credit unions will not turn applicants down solely because of medical debt if other factors exist to otherwise mitigate the concern such as making car payments. If lenders are unable to see what debt exists, lenders will be forced to blindly accept, and base lending decisions on

[1] See ORC 1733.03, "The purpose for which a credit union may be formed is to promote thrift among its members, and to that end to establish, on a cooperative basis, facilities for savings, credit for provident and productive purposes, assistance to members in budgeting and money management and the effective use of their assets and resources, and all activities necessary or incidental thereto. See also 12 USC 1751, "The American credit union movement began as a cooperative effort to serve the productive and provident credit needs of individuals of modest means."
[2] 89 FR 51682, Section I.A.

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an applicant's credit score. Since medical debt is derogatory, their credit score would be lower meaning applicants would be forced into paying a higher rate without any sort of ability to justify their score.

Moreover, one of the most important factors in any lending determination is the applicant's capacity to repay. Credit unions are already required to accurately determine their member's ability-to-repay as a risk management requirement. Determining the member's ability to make their payments logically requires that the lender know the totality of a borrower's current debt obligations. However, if some debts are not reported and left unconsidered, a borrower's ability-to-repay could be dangerously overstated. This lack of information will increase the likelihood the lender will make a poor lending decision, overburden the borrower from a payment capacity perspective, and increase the risk for potential loan delinquency or default.

OCUL believes incomplete or inaccurate information leading to poor lending decisions will harm credit unions and their members alike. If implemented, this proposed rule could create situations where a member is able to qualify for a loan they cannot otherwise repay because the CFPB is choosing to eliminate a well-established and wise exemption to include medical debt in loan underwriting. This scenario is not in the best interest of credit unions or their member-owners, as it puts the credit union's overall portfolio at risk, as well as putting a member in a precarious financial situation. Thus, because this proposed rule creates an irreconcilable regulatory contradiction between what the financial regulators require and what the CFPB prohibits, OCUL asks the CFPB to withdraw this proposal.

II. Completely removing a credit union's ability to see an applicant's credit history and ability to make a well-informed decision around their ability-to-repay, not only puts the credit union at increased risk, but also the member.

Members show trust in their credit unions every day by simply choosing to be, and remain, a member-owner. However, once that trust is tarnished, it is difficult to repair. That is why restrictions that could put member trust in jeopardy need to be adequately vetted. This proposed rule will create scenarios where credit unions lose trust in member applications, and members lose trust in their credit unions to give them the credit they may need in order to meet the kitchen table realities of today's economic climate.

Ability-to-repay analysis requirements exist for both parties to a credit relationship: financial institutions and applicants. When a credit union member applies for a loan, medical debts, much like student loans, are not inherently considered a bad thing, especially considering other, positive credit history. Eliminating the ability to see medical debt harms the member by not allowing a credit union to feel comfortable making a credit determination, but also because it could put them in a serious financial position that they cannot adequately handle. Moreover, there could be a scenario where a significant medical debt could impair a fair ability-to-repay calculus. Extending credit to a member without regard to their ability to repay could be predatory in nature and inherently detrimental to a credit union's priority to offer affordable credit access.

Under this proposed rule, financial institutions must also willingly accept increased risk. For example, a credit union could review an applicant's credit, see a strong score and history, and determine whether the applicant is eligible for credit. Under this proposal, this could all happen with an applicant who has a sizeable amount of medical debt that would otherwise make them ineligible. Additionally, this puts lenders at risk of lending to an applicant who has a lien or judgment against their debt. This puts the lender at risk of not being repaid, at risk of losing collateral, and at risk of losing a member who feels they were not adequately educated or protected.

OCUL believes the CFPB should focus on fostering greater medical debt education and information access for impacted consumers. The CFPB even cites a large portion of medical debt is either unknown to the individual or potentially disputable. Under this proposed rule, the responsibility for this lack of awareness is now being shifted from the consumer to their financial institution. It is contradictory to deputize financial institutions with consumer protection requirements to only remove an important piece of information necessary to protect the consumer. For this reason, OCUL asks that the CFPB withdraw this proposed rule as it places not only an undue burden on credit unions, but it also places too much unnecessary risk on both credit unions and their members without providing

any material benefit.

III. The CFPB fails to account for the downstream ramifications of forcing credit unions to make incomplete credit eligibility determinations.

OCUL believes that there should be a balance between the cost of regulation and the burden it places on credit unions. This proposed rule provides very little benefit to credit union members, who are already receiving the intended goal of not having medical debt hampering credit access and places an unknown burden on credit unions as the unintended consequences of this rule could be vast.

Credit unions' mission is to serve those who need financial assistance the most, and historically, credit unions are a trusted, pro-consumer alternative lender for riskier loans. This risk is mitigated by mutual trust; however, the very nature of this proposed rule erodes that trust, or willingness to trust, and will create negative unintended outcomes. First, the most logical outcome of this proposal will be damage to credit unions' safety and soundness, and damage to their members' financial stability. Incomplete information about a member's credit history will inevitably lead to incomplete lending decisions. Poor lending decisions will lead to an increase in delinquent and distressed loans which can inflict financial harm on both credit unions and their members. Subsequently, delinquencies and defaults will increase eventual loan write-offs which will negatively impact a credit union's ability to serve other members. The immediate and sustained harm that can come from this proposed rule is not entirely unforeseeable. If credit unions absorb more risk due to a calculation that includes an incomplete credit history, affordable loan pricing and consumer-friendly terms will also be negatively impacted.

Also, this proposal is likely to lead to increased CFPB enforcement, unnecessary litigation, and a scenario where smaller lenders decide the risk is too great and ultimately leave the lending market. Over the last decade, financial technology companies (FinTechs) have taken hold in the financial services sector. Their ability to refinance loans, offer competitive rates, and reach customers digitally, makes them a formidable competitor in debt consolidation. The CFPB assumes medical debt is clearly determined through credit report events, however, consolidated medical debt may also reside in a visible, unsecured loan provided by a FinTech or another third-party financial services provider. This may unintentionally create a scenario where enforcement can be taken against a credit union for due diligence efforts. Moreover, even where the CFPB chooses not to take action, members could now use this proposed rule as a basis for objection to any denial. Not being able to access credit is already a contentious, stressful endeavor, and this proposed rule can enhance it, exposing credit unions to further reputation, litigious, and enforcement risks that could outweigh providing the loan in certain circumstances.

OCUL appreciates the opportunity to engage with CFPB on ways to better serve credit union members and to find new ways to ensure fair, equitable lending; however, the purported benefit of this proposed rule is vastly outweighed by the potentially negative unintended consequences, and as such, OCUL objects to this proposed rule and asks the CFPB allow prudentially regulated financial institutions continue to make safe, sound, and complete lending determinations.

Respectfully,

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President

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