

August 9, 2024

By Electronic Submission

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

**RE: Prohibition on Creditors and Consumer Reporting Agencies Concerning Medical Information (Regulation V)
RIN 3170-AA54 (Docket No. CFPB-2024-0023)**

To Whom It May Concern:

This letter is submitted on behalf of State Collection Service, Inc. (“State”) in response to the Consumer Financial Protection Bureau’s (“CFPB” or “Bureau”) request for comment on a proposed rule amending Regulation V, which implements the Fair Credit Reporting Act (“FCRA”), concerning medical information issued on June 11, 2024.

State is an industry leading third-generation family business specializing in healthcare receivables within the Accounts Receivable Management Industry (“ARM”). State’s clients include the smallest of rural family practices and independent physicians that operate within a limited geographic range of a single rural community to some of the largest healthcare systems that operate nationwide. State was founded in 1949 in Madison, WI by Hilding Haag. Established on the foundation of serving the needs of local creditors, Hilding and State employees developed a culture and value system based on ethical business practices, integrity, and hard work. Today, State is solely owned by the Haag family and is in its third generation of Haag family leadership.

State is also a highly active member of ACA International, Inc. Founded in 1939, and with offices in Washington, D.C. and Minneapolis, Minnesota, ACA represents approximately 1,700 members, including credit grantors, third-party collection agencies, asset buyers, attorneys, and vendor affiliates in an industry that employs more than 150,000 employees worldwide. Tom Haag, State’s late chairman and chief executive officer, served as President of ACA International in 1995. Tim Haag, State’s current president and chief executive officer is the current President of ACA International. In addition to the companies work and devoting to ACA International, State is an active member at HFMA and various other trade associations focusing on healthcare receivables. State was named one of the Best Places to Work in collections and Best In KLAS, debt collection services category in 2024.

As part of the process of providing accounts receivable management services to various size healthcare providers throughout the United States, State is more of an extension of its clients and the communities that they serve. State is just one example of the thousands of ARM industry

members that work with these healthcare businesses, large and small, to obtain payment for the goods and services already received by patients. In years past, the combined effort of ACA members has resulted in the annual recovery of billions of dollars – dollars that are returned to and reinvested by businesses and dollars that would otherwise constitute losses on the financial statements of those businesses. Without an effective collection process, the economic viability of these businesses and, by extension, the American economy in general, is threatened. Recovering rightfully owed consumer debt enables organizations to survive, helps prevent job losses, keeps credit, goods, and services available, *maintains the ability for rural communities throughout the United State to obtain access to healthcare*, and reduces the need for tax increases to cover governmental budget shortfalls.

I. The Rule on Medical Debt Credit Reporting as Proposed has Potential Pitfalls for Market Transparency

As noted on June 11, 2024, the CFPB published a proposed rule (the “Proposed Rule”) to remove a regulatory exception in Regulation V that presently excludes medical debt information from the general prohibition against utilizing medical information in consumer credit reports. The CFPB notes that Congress restricted lenders from obtaining or using medical information in 2003, but that federal agencies carved out an exception for medical debt information. The CFPB asserts that its Proposed Rule closes a regulatory loophole by eliminating this exception so that lenders are prospectively prohibited from using medical debt information in credit determinations. In addition, the Proposed Rule would prohibit consumer reporting agencies (“CRAs”) from publishing or otherwise sharing a consumer report containing information on medical debt that the creditor is prohibited from using with any potential lender.¹

While the intention behind this rule is to protect consumers from the negative financial consequences of medical debt, several concerns have been raised about its potential impact on market transparency and the overall credit reporting system. Here, we explore the arguments against the Proposed Rule and its possible unintended consequences.

Credit reports are designed to provide a comprehensive view of an individual's creditworthiness. By excluding certain types of debt, such as medical debt, the Proposed Rule could undermine the accuracy and completeness of credit reports. Credit reports would no longer fully reflect an individual's financial obligations and history, making it more difficult for lenders to assess the true credit risk of potential borrowers.

Lenders rely on accurate credit reports to make informed decisions about extending credit. If medical debt is excluded from credit reports or restricted from lenders in consideration of an extension of consumer lending, lenders might not have a complete picture of a borrower's financial situation and unintentionally overextend a consumer. This could lead to increased lending risks and potentially higher default rates. To compensate for this increased risk, lenders will raise interest rates or tighten lending criteria, making credit more expensive and less

¹ The Proposed Rule may be found at: <https://www.federalregister.gov/documents/2024/06/18/2024-13208/prohibition-on-creditors-and-consumer-reporting-agencies-concerning-medical-information-regulation-v>

accessible for all consumers, even those that have diligently worked to maintain a high credit rating.

While the rule aims to improve access to credit for consumers with medical debt, it could have the opposite effect. If lenders perceive credit reports as less reliable due to the exclusion of medical debt, they may become more cautious in extending credit. Or worse, lenders may continue to rely on the accuracy of credit reports and overextend consumer borrowing, unintentionally. This could particularly impact consumers with limited credit histories, who rely on a full and accurate representation of their credit behavior to obtain loans and credit cards.

By treating medical debt differently from other types of debt, the rule will introduce distortions into the credit market. Credit reports will no longer be a level playing field, as certain debts are given preferential treatment. This preferential treatment could lead to inconsistencies in how different types of debt are perceived and managed by both consumers and lenders, potentially skewing financial behavior and decision-making. The thought of restricting specific debt types is a slippery slope and one that is in direct opposition to the Fair and Accurate Credit Transactions Act (FACTA).

Not all consumers incur medical debt in the same way. While some may face unexpected medical emergencies, others might have recurring medical expenses due to chronic conditions or elective surgery. The Proposed Rule does not distinguish between these different scenarios, potentially leading to inequities in how consumers are treated. Those with recurring medical expenses might benefit less from the rule, as they may continuously face new medical debts. Furthermore, the Proposed Rule does not clearly identify what constitutes medical debt and what may be excluded from the rule so ambiguity in the definitions will likely lead to litigation.

While the Proposed Rule aims to protect consumers, it raises significant concerns regarding market transparency and the accuracy of credit reports. By excluding paid medical debt, the rule could undermine the reliability of credit reports, increase lending risks, and potentially create inequities among consumers. It is crucial to carefully consider these potential pitfalls and weigh them against the intended benefits to ensure that the credit reporting system remains fair, accurate, and transparent for all stakeholders, pursuant to current law.

II. The Proposed Rule Will Have Unintended Consequences for Healthcare Providers and Healthcare Insurance Companies

The Proposed Rule is aimed at reforming the reporting of medical debt on credit reports. While the primary objective of this rule is to protect consumers from the financial repercussions of medical debt, it is essential to consider its potential unintended consequences for healthcare providers. These consequences could have far-reaching implications for the healthcare industry, ultimately affecting the quality and accessibility of care for patients.

Healthcare providers rely on timely payments from patients to maintain their operations and provide quality care. The proposed restrictions on the reporting of medical debt and the use of

said reports by lending institutions could lead to delays in collection of patient payments. If patients know they have additional time to settle their medical bills without immediate repercussions on their credit reports, they may be less incentivized to pay promptly or to pay at all. This delay in patient payment or increase in non-payments can strain the revenue cycle management of healthcare providers, particularly small, rural practices that operate on tighter margins.

The Proposed Rule will result in an increased administrative burden for healthcare providers. Removing the viability of reporting medical debt to credit reporting agencies will require providers to invest more resources in tracking and managing unpaid bills over a longer period. This will involve additional staff time, increased use of billing and collections software, and more extensive follow-up with patients or even an increased use of the legal system to recover unpaid accounts. The administrative costs associated with these efforts could divert resources away from patient care, other essential services or even cause small, rural medical facilities to close, limiting the effectiveness of emergency care and other vital services.

For many healthcare providers, particularly those in underserved or rural areas, the financial viability of their practices is already a concern. Delays in payment collections and increased administrative costs could exacerbate these challenges, potentially leading to financial instability. In extreme cases, providers may be forced to reduce services, limit patient intake, or even close their practices. This would negatively impact patient access to care, especially in communities that already face healthcare shortages.

Healthcare providers often offer interest free payment plans to help patients manage their medical expenses. However, if patients perceive that they have more time to settle their debts without immediate credit consequences, they may be less likely to adhere to these payment plans. This could reduce the effectiveness of such arrangements, making it harder for providers to recover costs and manage cash flow. As a result, providers might become less inclined to offer flexible payment options, ultimately disadvantaging patients who rely on these plans.

The Proposed Rule will lead to an increase in bad debt for healthcare providers. If patients delay payments or fail to pay altogether due to the exclusion of medical debt from credit reports, providers may face higher levels of uncollectible accounts. This increase in bad debt can significantly impact the financial health of healthcare organizations, leading to higher costs for services and potentially reducing the quality of care.

Healthcare providers are primarily focused on delivering quality care to patients. However, the Proposed Rule will shift their focus and resources toward more aggressive collections practices. To mitigate the risk of delayed payments and increased bad debt, providers may need to invest more in collections efforts, potentially leading to a more adversarial relationship with patients. This shift in focus and resources may be traded off on investment in technology, equipment and could radically undermine the patient-provider relationship and detract from the overall patient experience.

While the Proposed Rule aims to protect consumers, it raises significant concerns about its unintended consequences for healthcare providers. By excluding medical debt or restricting lenders use of medical debt in lending practice, liquidation and recovery rates will be reduced creating a strained revenue cycle management, increase administrative burdens, and impact the financial viability of healthcare practices. These challenges will lead to reduced access to care, higher costs, and a shift in focus away from patient care. It is crucial to carefully consider these potential impacts and strive for a balanced approach that protects consumers while also supporting the sustainability of healthcare providers.

III. The Proposed Rule Will Lead to Higher Uninsured Patients

The Proposed Rule to reform how medical debt is reported on credit reports is intended to protect patients from the adverse effects of medical debt on their credit reports. However, there are concerns related to the inadvertent encouragement for patients to discontinue maintaining healthcare insurance. Healthcare insurance serves several critical purposes, providing financial protection, access to healthcare services, and promoting overall well-being. By covering a sizable portion of medical expenses, health insurance reduces the likelihood of individuals falling into medical debt, which can have long-term financial consequences. Removing the accountability of patients to pay medical debt, the Proposed Rule reduces the market demand for healthcare insurance leading to a higher rate of uninsured patients and a much higher rate of bankruptcy filings.

One of the primary motivations for maintaining health insurance is to avoid large, unmanageable medical bills. Health insurance helps cover a sizable portion of medical expenses, reducing the financial burden on individuals. However, if the Proposed Rule reduces the impact of medical debt on credit scores, consumers might perceive less risk associated with not having insurance. They may believe that even if they incur medical debt, it will not harm their credit score as severely as before, leading them to not pay for medical services rendered and consider discontinuing their health insurance. After all, why would a patient pay the expense for healthcare insurance if they are not held accountable for paying for medical services received?

While the Proposed Rule might reduce the immediate credit impact of medical debt, it does not eliminate the debt itself. Patients who choose to forgo health insurance to save on premiums may face substantial out-of-pocket expenses if they experience significant medical events. Without insurance, these costs can quickly become overwhelming, leading to financial distress and a significant increase in personal bankruptcy filings.

Healthcare providers often charge higher rates for uninsured patients compared to those with insurance. Without the negotiating power of insurance companies, individuals without insurance may end up paying more for the same services. This can result in larger medical bills, further exacerbating financial difficulties. The Proposed Rule does not address these higher costs, leaving patients vulnerable to significant financial strain.

If more individuals opt out of health insurance, there could be increased reliance on public health systems and emergency services. Uninsured patients are more likely to delay seeking medical

care until their conditions become severe, leading to higher treatment costs and increased pressure on emergency services. This strain on public health systems can lead to longer wait times, reduced quality of care, and higher costs for taxpayers.

Discontinuing health insurance can have detrimental effects on health outcomes. Individuals without insurance are less likely to seek preventive care and early treatment for medical conditions, which can lead to worse health outcomes over time. Chronic conditions may go unmanaged, and serious health issues may be diagnosed at later, less treatable stages. This not only impacts the individuals' quality of life but also increases overall healthcare costs due to more intensive and expensive treatments required later. The Proposed Rule will reduce the efficiency of healthcare utilization and reduce the overall health of the population of the United State of America.

If healthier individuals decide to drop their health insurance coverage because they feel protected by the new rule, insurance pools could be left with a higher proportion of sicker individuals. This adverse selection can drive up insurance premiums, making it more expensive for those who remain insured. Higher premiums could further discourage people from maintaining their insurance, creating a vicious cycle that undermines the stability of health insurance markets.

While the Proposed Rule reporting aims to shield patients from the financial harm of medical debt, it carries significant risks of unintended consequences. By potentially reducing the perceived necessity of health insurance, the rule could lead individuals to discontinue their coverage, exposing them to greater financial and health risks. Additionally, this could strain public health systems, worsen health outcomes, and destabilize insurance markets. Policymakers must carefully consider these potential outcomes to ensure that efforts to protect consumers do not inadvertently undermine the broader healthcare and insurance systems.

IV. The Proposed Rule Creates a Potential Issue with Equity and Fairness

The Proposed Rule is aimed at reforming the reporting of medical debt on credit reports. While the intention behind this rule is to protect consumers from the negative financial consequences of medical debt, it raises significant concerns about equity and fairness among different types of debt.

One of the primary concerns with the Proposed Rule is that it creates unequal treatment of different types of debt. Currently, all debts are generally treated similarly in credit reporting, whether they are related to medical expenses, credit cards, personal loans, or mortgages. This uniform treatment ensures that credit reports provide a comprehensive and unbiased view of an individual's financial behavior.

By excluding paid medical debt from lender valuations, the Proposed Rule would give preferential treatment to medical debt over other types of debt. This could be seen as unfair to consumers who diligently manage other forms of debt but still see those debts reflected in their credit reports. Credit reports and scores are designed to provide an accurate assessment of an individual's creditworthiness. They help lenders evaluate the risk of extending credit to a

particular borrower. By excluding the reporting of medical debt, credit reports may no longer fully reflect an individual's financial obligations and history.

This distortion can lead to inaccurate assessments of credit risk. Lenders might extend credit based on incomplete information, potentially leading to higher default rates and financial instability. Conversely, individuals with other types of debt may find it harder to obtain credit, as their reports still reflect all their obligations, creating an uneven playing field between consumers that hold medical debt versus consumers that hold other types of reportable debt. The preferential treatment of medical debt could create a moral hazard, where individuals might be incentivized to prioritize certain debts over others. Knowing that medical debt will not impact their credit scores as severely, consumers might choose to delay paying their medical bills while focusing on other debts that are still reported. This behavior can exacerbate financial irresponsibility and lead to larger long-term financial issues.

The integrity of the credit market relies on the consistent and fair reporting of all types of debt. By treating medical debt differently, the Proposed Rule will undermine this integrity. Credit reports will no longer provide a standardized measure of creditworthiness, making it more challenging for lenders to make informed decisions. Additionally, the rule will set a precedent for other types of debt to seek similar exclusions or preferential treatment. This could lead to a fragmented credit reporting system where various debts are reported inconsistently, further complicating the credit evaluation process and violate current law like FACTA.

The Proposed Rule also raises equity concerns among consumers. While it aims to protect those with medical debt, it does not address the broader issue of debt inequality. Individuals with substantial student loan debt, for example, do not receive similar protections, even though student loans can also be financially burdensome. This selective approach to debt reporting could create divisions among consumers, where certain groups feel unfairly disadvantaged compared to others. A more holistic approach to debt management and reporting might be necessary to ensure that all consumers are treated equitably.

While the Proposed Rule seeks to alleviate the financial burden on consumers with medical debt, it raises significant concerns about equity and fairness among different types of debt. By creating preferential treatment for medical debt, the Proposed Rule will distort creditworthiness assessments, undermine the integrity of the credit market, and lead to moral hazard. Moreover, it fails to address the broader issue of debt inequality among consumers. Policymakers must carefully consider these potential impacts to ensure that the credit reporting system remains fair, accurate, and equitable for all individuals.

V. The CFPB Lack of Legal Authority to Promulgate the Proposed Rule and the Proposed Rule Conflicts with Current Law

The Proposed Rule raises significant concerns regarding the CFPB's legal authority to implement such changes and how the rule aligns with current law.

The CFPB's mandate, as outlined in the Dodd-Frank Wall Street Reform and Consumer Protection Act, is to protect consumers in the financial marketplace. However, there are questions about whether the Proposed Rule on medical debt reporting falls within the scope of the CFPB's regulatory powers. The rule represents an overreach of the CFPB's authority, as it seeks to regulate aspects of medical debt that is beyond its jurisdiction.

The Dodd-Frank Act, which established the CFPB, aimed to create a regulatory body focused on consumer financial protection. However, the extent to which Congress intended the CFPB to involve itself in the specifics of credit reporting for medical debt is debatable. The Proposed Rule might be seen as stretching the boundaries of the CFPB's mandate, potentially encroaching on areas better suited for legislative action.

State laws play a significant role in regulating credit reporting and debt collection practices. The Proposed Rule could potentially preempt existing state laws, leading to a conflict between federal and state regulations. This preemption raises legal concerns about the balance of power between state and federal authorities and the appropriate jurisdiction over credit reporting matters.

The Fair Credit Reporting Act (FCRA) governs the collection, dissemination, and use of consumer credit information. It establishes the framework for how credit reporting agencies operate and how consumer information is reported. The Proposed Rule does not align with the FCRA's provisions, nor the provisions of FACTA, as it introduces new reporting requirements and exclusions that are not explicitly covered by the FCRA and prohibited under FACTA.

The Proposed Rule could face legal challenges from various stakeholders, including credit reporting agencies, lenders, and healthcare providers. These challenges may argue that the CFPB is exceeding its statutory authority under the FCRA, FACTA, and other relevant laws. Additionally, there may be concerns about the rule's compliance with administrative law principles, such as the Administrative Procedure Act, which governs the process by which federal agencies develop and implement regulations. Credit reporting agencies operate within a legal framework that requires them to provide accurate and comprehensive information about consumers' credit histories. The Proposed Rule will absolutely impose new obligations on these agencies, potentially conflicting with their existing legal duties. This conflict will likely lead to legal disputes over the proper interpretation and application of credit reporting laws.

While the Proposed Rule on medical debt credit reporting aims to protect consumers, it raises significant concerns about the agency's legal authority and alignment with current law. The rule may represent an overreach of the CFPB's regulatory powers, potentially conflicting with congressional intent and preempting state laws. Additionally, the rule's alignment with the FCRA, FACTA and other relevant law is questionable, and it may face legal challenges from various stakeholders.

Policymakers must carefully consider these legal and regulatory concerns to ensure that any changes to credit reporting practices are both legally sound and effective in achieving their

intended consumer protection goals. A more balanced approach, possibly involving legislative action, may be necessary to address the complexities of medical debt reporting while respecting the boundaries of existing legal frameworks.

VI. The Proposed Rule Impact on the Long-Term Financial Behaviors of Patients

The Proposed Rule has been designed to protect consumers from the negative impacts of medical debt on their credit scores. However, there is significant concern that the rule will inadvertently influence the long-term financial behaviors of patients in negative ways.

One of the primary concerns is that the Proposed Rule will reduce patients' incentives to pay their medical bills promptly. If patients know that they will not be held accountable for their medical debt since it will no longer appear on their credit reports or be considered in lending practices, patients will likely prioritize other expenses over medical bills. This will lead to increased financial irresponsibility and larger accumulated debts over time.

Credit reports and scores are designed to provide a comprehensive view of an individual's financial behavior and creditworthiness. Excluding medical debt from these reports can distort this picture, giving a false sense of financial health. Consumers might overestimate their ability to manage new debt, leading to over-borrowing and higher default rates. This misrepresentation can result in financial instability and long-term credit damage. By potentially minimizing the perceived urgency of paying medical debts, the Proposed Rule will negatively impact consumers' overall financial planning and saving behaviors. When individuals do not feel the immediate pressure to pay off medical debt, they may neglect to build emergency savings or invest in long-term financial goals or even forgo the continuation of current healthcare insurance plans. This lack of financial preparedness can have detrimental effects in times of unexpected financial crises.

The Proposed Rule may also exacerbate disparities in how different types of debt are managed. While medical debt would receive preferential treatment, other types of debt, such as credit card debt and student loans, would continue to impact credit scores. This uneven treatment can create confusion among consumers about the relative importance of managing different debts, potentially leading to poor financial decisions. In the long run, the Proposed Rule will undermine consumers' financial health by fostering a culture of delayed payment and reduced accountability. Financial habits formed under the assumption that certain debts can be deprioritized might extend beyond medical bills to other financial obligations, resulting in broader financial mismanagement and instability.

While the Proposed Rule aims to protect consumers from the adverse effects of medical debt on their credit scores, it raises significant concerns about its potential impact on long-term financial behaviors. By reducing the perceived urgency and consequences of paying medical bills, the rule could encourage financial irresponsibility, distort creditworthiness assessments, and foster reliance on credit.

Policymakers must carefully consider these potential negative impacts to ensure that any changes to credit reporting practices promote responsible financial behavior and long-term financial stability. A more balanced approach, one that encourages timely payment of medical bills while providing protections for consumers, may be necessary to achieve the intended goals without compromising financial responsibility.

VII. Conclusion

Against this backdrop, State appreciates every policymaker that has taken the time to read and consider our concerns with the Proposed Rule and the very real negative impact the Proposed Rule will have on healthcare providers, patients, banks, lending institutions, and the US credit system if promulgated. State is also extremely concerned about the direct impact on our staff and the more than 140,000 US Tax Paying Citizens that our industry employs.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tim Haag', written over a horizontal line.

Tim Haag
President and CEO
State Collection Service, Inc.