



August 12, 2024

Submitted through <https://www.regulations.gov>

Rohit Chopra
Director
Consumer Financial Protection Bureau
1700 G St. NW
Washington, DC 20552

**Re: Comment in Response to the Consumer
Financial Protection Bureau’s Notice of
Proposed Rule Making Addressing the Use of
Medical Debt for Credit Eligibility
Determinations Docket No. CFPB-2024-0023;
RIN 3170-AA54**

Dear Consumer Financial Protection Bureau Director Rohit Chopra:

The William E. Morris Institute for Justice (“MIJ”) is a non-profit organization that works on systemic issues impacting low-income and other vulnerable Arizonans in historically marginalized communities. As part of MIJ’s priority work, we focus on stopping unfair and abusive credit reporting and debt practices affecting Arizonans. We prioritize advocacy to ensure that Arizonans have access to credit, housing, employment, and other life-affirming opportunities free from harmful and inequitable barriers. Medical debt is a scourge on American society, and today we write on behalf of nearly one million Arizonans who are burdened with medical debt.

We appreciate the opportunity to provide comments and observations responsive to the Consumer Financial Protection Bureau’s (“CFPB”) Notice of Proposed Rule Making Addressing the Use of Medical Debt for Credit Eligibility Determinations Docket No. CFPB-2024-0023; RIN 3170-AA54 addressing the use of medical debt for credit eligibility determinations. Medical debt is a byproduct of a broken healthcare system and can cause Americans extreme financial harm and hardship. As of 2022, 16% of Arizonans with credit

on file have medical debt in collections.¹ In communities of color, this statistic increases to nearly 22%.² The appearance of medical debt on credit reports is unfortunately one of the consequences of accessing the United States healthcare system, especially for individuals without health insurance, as well as others with chronic health conditions or disabilities. Data-tracking and reporting of medical debt causes fluctuations in credit scores that can cause extreme and opportunity-prohibitive barriers for applicants for loans, mortgages, employment, or rental housing.

Our team at MIJ includes attorneys with decades of experience in litigation ranging from housing justice matters to public benefits to predatory debt practices. Our comments and responses are informed by our practice experiences and our collaboration with Arizona civil legal aid attorneys on statewide advocacy strategies.

General Observations

The CFPB prioritizes consumer protection functions and broadly helps American consumers seek redress for predatory harms they experience at the hands of businesses and enterprises. Such harms include unfair credit reporting practices, and the adverse impacts that consumer debt has on individuals. Over the last decade, healthcare has become the largest source of consumer debt in collections.³ Medical debt is unique though because it is incurred without choice or control of the individual incurring the debt. As outlined by the CFPB, medical debt often arises out of unexpected incidents such as a sudden illness, accident, or emergency.⁴ Due to the brevity in decision-making time an individual has when they suddenly need medical intervention, the person usually has no ability to price shop or secure cheaper and/or more effective alternative care.⁵ These inevitable decisions

¹ Predatory Debt Collection Protection Act Policy Paper, Grand Canyon Institute, Feb. 18, 2022, [Predatory-Debt-Collection-Protection-Initiative-Policy-Paper-003.pdf](#).

² *Id.*

³ [Medical Debt Policy Scorecard, Innovation for Justice, \(last updated July 24, 2024\), https://medicaldebtpolicyscorecard.org](#)

⁴ Prohibition on Creditors and Consumer Reporting Agencies Concerning Medical Information (Regulation V), Consumer Financial Protection Bureau, June 18, 2024, <https://www.federalregister.gov/d/2024-13208/p-191>

⁵ *Id.* at 196.

often leave patients at the mercy of predatory lenders who pass on exorbitant interest rates and costs to patients.

Medical debt has limited value in determining a person’s credit worthiness.⁶ The CFPB has found that medical debt is a poor metric for credit determinations⁷, especially when it comes to a potential future employee or tenant. Illustrative of the point, some major credit reporters have begun reducing the weight that medical debt bears on credit reports.⁸ While this trend is promising, many companies continue to use outdated credit eligibility metrics that leave consumers at the mercy of their reported medical debt.

In response to this pressing issue, state and local governments – including Arizona – have taken preventative measures to either exclude medical debt from credit reporting or forgive medical debt altogether. Arizona voters overwhelmingly passed a medical debt protection ballot initiative last election cycle.⁹ Additionally, on April 24, 2024, the Governor of Arizona announced a program that will help forgive medical debts for Arizonans in certain prescribed circumstances.¹⁰ Other states such as Minnesota have fully banned credit reporting of medical debt by hospitals and or debt collectors.¹¹ Citizen and

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ Innes, Stephanie, Proposition 209: Arizona voters back lowering maximum interest rates on medical debt, (updated Nov. 11, 2023), <https://www.azcentral.com/story/news/politics/elections/2022/11/08/arizona-proposition-209-election-results-change-rules-debt-collection/8244902001/>

¹⁰ Medical Debt Relief FAQ, Office of the Arizona Governor (last visited Aug. 12, 2024), <https://azgovernor.gov/office-arizona-governor/medical-debt-relief-faq>

¹¹ State Protections Against Medical Debt: A Look at Policies Across the U.S., The Commonwealth Fund, September 7, 2023, <https://www.commonwealthfund.org/publications/fund-reports/2023/sep/state-protections-medical-debt-policies-across-us>

state action across the country confirms that reporting medical debt on credit reports is a problematic practice of limited value in predicting credit worthiness. CFPB’s action on this issue is an important step towards ensuring Americans have equitable access to credit.

We strongly support the proposed rule, which will likely benefit almost one million consumers burdened by medical debt in Arizona. MIJ additionally urges CFPB to go further to protect people from the harmful impact of medical debt. CFPB should expand the scope of the proposed rules and do the following:

1. Prevent employers and landlords from using and or considering someone’s medical debt in credit reports used for screening.
2. Expand the prohibition on reporting negative credit information to medical loans or other forms of credit used to make medical payments, especially medical credit cards.
3. No longer permit use of deferred interest schemes on medical credit cards and prohibit services from being charged to a credit card before they are rendered.

I. The CFPB Should Prevent Employers and Landlords from Using and or Considering Someone’s Medical Debt in Credit Reports Used for Screening

Arizona is currently experiencing a housing crisis. One-fifth of Arizona renters are extremely low income and are working to support a household of four with \$26,500 in annual income or less.¹² According to HUD’s guidance, the necessary income to afford a two-bedroom house is over \$62,252 a year.¹³ One effect of the income and housing affordability disparity is that Arizona has more than a 100,000-unit shortage of affordable homes. As a result, many Arizona households are severely cost-burdened, meaning over 30% of their income is spent on housing. When households spend over 30% of their income on housing, they may not be able to afford necessities such as healthcare. The inability to afford healthcare out of pocket or through insurance forces individuals to incur medical debt that later harms their credit reports and subsequently their ability to attain housing and employment. No one should ever have to worry that receiving necessary medical care may one day affect their ability to obtain housing or a job.

¹² *Id.*

¹³ *Id.*

Housing providers and landlords are often not transparent about the criteria they use to evaluate applicants for housing opportunities. As a result, most rental housing applicants in Arizona are not aware of how their applications will be judged. It is common for landlords to use tenant screening services that help landlords review applications and determine tenants’ eligibility for housing. However, the companies providing tenant screening services – essentially a specialized version of credit reporting – do not always operate within the best practices and parameters of fair credit reporting. These tenant screening companies have been observed to keep outdated and sometimes inaccurate records of consumer data. Inaccuracies may include debts that have already been repaid, debts that never existed, or positive changes in medical debt that were never addressed in the credit report.

Even when some level of disclosure of screening criteria occurs, it is often not at the level of specificity to ensure that rental housing applicants can make informed decisions about whether to pursue housing opportunities for which they simply may not be eligible. Of those that are reported, many are attributed to poor credit. When “negative information” arises in housing providers’ and landlords’ reviews of rental housing applications, usually that is the end of the process for the applicants. Landlords are unlikely to take the initiative to inquire for detailed clarifications or explanations regarding negative information they collect and receive about applicants. And, in general, Arizona housing providers and landlords do not utilize procedures allowing rental housing applicants to explain mitigating circumstances, like family and personal hardships, or inaccurate information in the evaluation of credit. It is increasingly common for rental housing application processes to be digitized which does not allow for individual assessments of a potential tenants’ circumstances or opportunities for prospective tenants to clarify portions of the report. Consequently, an applicant for housing can be denied for no other reason than medical debt they incurred without choice or which may be inaccurate. In some cases, they may not even know medical debt was the reason for their denial.

Medical debt is involuntary, and a patient should not be denied the opportunity to work or secure housing because of it. Housing application denials based on medical debt will only work to perpetuate the current housing crisis in Arizona and in many other states and communities around the United States. We urge the CFPB to extend the ban on credit reporting to employers and tenant screening. If medical debt is a bad predictor for credit worthiness, it is even worse for predicting whether someone will be a good candidate for housing or employment.

II. CFPB Should Expand the Prohibition on Reporting Negative Credit Information

CFPB should extend its ban to include medical debt incurred on medical and general credit cards as well as loans from medical lending services. Many low-income patients

only qualify for certain credit cards and loans. The services low-income patients use out of necessity are plagued by extremely high interest rates, as well as deceiving deferred interest plans.¹⁴ Over the last ten years, consumer use of medical credit cards has sharply increased.¹⁵ CFPB reports that “CareCredit,” a common medical credit card provider, grew from 4.4 million cardholders nationwide to 11.7 million cardholders.¹⁶ Providers of these credit cards also more than doubled in size.¹⁷

The mass increase in the utilization of medical credit cards makes the need to ban these services from credit reporting even more critical. Banning credit reporting for medical credit cards is especially helpful in Arizona as it will fill in a gap created by the citizen-passed Prop 209, which unfortunately fails to apply restrictions to medical credit cards.

It should make no difference what form or format consumers utilize credit services and incur debts to pay for their medical care. Whether it is a general credit card or some other service, patients should be shielded from credit reporting on these debts because they are incurred without a patient’s functional choice. MIJ urges the CFPB to extend the ban on medical debt reporting to medical and general use credit cards, as well as loans.

III. CFPB Should Put Limits on Specialized Medical Payment Products

The National Consumer Law Center (NCLC) stated the following regarding specialized medical payment products in a comment on the proposed medical debt rule, joined by MIJ and over 100 other advocacy organizations:

The problems with specialized medical payment products go way beyond negative reporting. NCLC’s report *Health Care Plastic: The Risk of Medical Credit Cards* documented numerous harms to consumers from these products, such as being confused by deferred interest, not being screened for financial assistance before medical bills were charged to a card, charging procedures to a credit card that were covered by insurance, being sued or sustaining credit reporting damage, and having services pre-charged to the card that were ultimately never provided. The CFPB’s

¹⁴ Medical Credit Cards and Financing Plans, May 2023, [cfpb_medical-credit-cards-and-financing-plans_2023-05.pdf](https://www.consumerfinance.gov/and-financing-plans_2023-05.pdf) (consumerfinance.gov)

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

most recent Supervisory Highlights report noted several problems with these products as well, including misrepresentations about deferred interest and that consumers “felt pressured by healthcare providers to open a credit card while receiving treatment.”

We appreciate that the CFPB has opened an inquiry into medical payment products. Since these are clearly lending products, the CFPB has broad authority to regulate them, including under numerous federal statutes. We urge the CFPB to do so, including by banning deferred interest on credit cards, prohibiting issuance of medical credit cards or loans to consumers whose insurance covers a procedure or qualify for financial assistance, and prohibiting services from being charged to a credit card before they are rendered.¹⁸

MIJ reiterates the expression of concerns in NCLC’s comment and recommendations to the CFPB regarding the regulation of specialized medical payment products.

Conclusion

Medical debt should not be the factor that determines whether some is able to obtain a loan, housing, or employment. The proposed rule includes promising guidance but could go further to safeguard patients to minimize the harm that medical debt has Arizonans everyday life and in obtaining vital and necessary accommodations such as housing or employment.

Thank you for your consideration of MIJ’s perspective on the proposed rule. Please do not hesitate to reach out if you have any questions or if we can provide any additional information.

Sincerely,

/s/ Ian Bankhead

/s/ MJ Simpson

/s/ Drew P. Schaffer

William E. Morris Institute for Justice

¹⁸ NCLC Comment on CFPB Medical Debt Reporting Rule, August 9, 2024, available at <https://www.nclc.org/wp-content/uploads/2024/08/Coalition-comments-sign-ons-to-CFPB-medical-debt-proposal.pdf>

