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August 12, 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: Prohibition on Creditors & Consumer Reporting Agencies Concerning Medical Information (Reg. V)
Docket No. CFPB-2024-0023; RIN 3170-AA54

To whom it may concern:

On behalf of Wisconsin's credit unions® and their 3.8 million members, the Wisconsin Credit Union League ("The League") is pleased to comment on the CFPB's proposed amendments to Reg. V, which implements the Fair Credit Reporting Act (FCRA).

Background

The FCRA bars creditors from obtaining or using information on medical debts to help determine a consumer's eligibility for credit. In 2005, the federal financial regulators issued a regulatory exception to the FCRA's prohibition, allowing creditors that meet certain conditions to obtain and use consumers' medical financial information for credit underwriting.

The CFPB is proposing to amend Reg. V by:

- Removing that 2005 exception (with limited exceptions related to income, benefits, and loan purpose); and
- Limiting the circumstances under which consumer reporting agencies (CRAs) could furnish medical debt information to creditors in connection with credit eligibility determinations.

The League understands the reasons for this proposal. Credit unions (unlike banks) are member-owned financial cooperatives, whose mission is to serve their member-owners on a not-for-profit basis. We certainly empathize with credit union members who struggle with high medical debt. Every day, Wisconsin's credit unions find innovative ways to help their members achieve financial well-being, and that includes working with members when medical bills mount.

In fact, *some* credit unions have voluntarily stopped considering medical debt when underwriting consumer credit applications, or at least discounting the weight they might otherwise assign to such debts. That is a laudable practice, but we have misgivings about the CFPB proposal, which would force *all* consumer lenders to do the same.

This rulemaking needs a more balanced approach

"For tens of millions of consumers, medical debt is an unexpected and unwanted expense that can lead to financial hardships," the CFPB wrote. We agree. Excessive medical debt is a critical national issue. But is the solution to amend

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Reg. V and prohibit all creditors from “obtaining or using medical information in connection with a determination of eligibility for credit” (with only limited exceptions)? Wouldn’t Washington better serve American consumers (and consumer lenders) by addressing the root causes of excessive medical debt in the U.S.? For example:

- The CFPB points out that “medical debt is often plagued with inaccuracies and errors.” True. But wouldn’t it be a better solution for the CFPB to require that those who report medical debt to CRAs observe higher standards of care to ensure the accuracy of their reports?
- The CFPB also points to the prevalence of “consumer confusion about their medical bills.” Also true; medical billing can be bewildering. But wouldn’t it be a better solution for the CFPB to require transparency in medical pricing and billing?

Instead, the CFPB proposal addresses symptoms instead of causes. It would force all creditors to simply pretend that medical debt does not exist. That approach, we believe, would undermine the integrity of the credit reporting system; lead to unintended consequences, such as higher interest rates on consumer loans; push default rates up, because credit may be unknowingly extended to higher risk consumers; and simply mask consumer financial problems that credit unions and their members could work together to resolve.

We urge the CFPB to take a more balanced approach to this rulemaking, and to find solutions that address the real issues. Please focus on the systems and practices that heap excessive medical debt on U.S. consumers. Do not impose a misguided rule that will prevent consumer lenders from understanding (and appropriately addressing) the full scope of a consumer’s financial circumstances.

Ability-to-repay concerns

From a legal perspective, The League worries that this proposal will hamper credit unions’ compliance with Reg. Z’s two ability-to-repay requirements:

- Under Reg. Z §1026.43(c)(1), “A creditor shall not make a [dwelling-secured mortgage] loan ... unless the creditor makes a reasonable and good faith determination at or before consummation that the consumer will have a reasonable ability to repay the loan according to its terms.” In making this determination, creditors must consider “the consumer's current debt obligations” Reg. Z §1026.43(c)(2)(vi). The CFPB’s Staff Commentary lists examples of “current debt obligations,” including “student loans, automobile loans, revolving debt, and existing mortgages that will not be paid off at or before consummation.” It goes on to say: “Creditors have significant flexibility to consider current debt obligations in light of attendant facts and circumstances, including that an obligation is likely to be paid off soon after consummation” or that a debt is in forbearance or deferral. The rules do not exclude medical debts from the calculation.
- Similarly, under Reg. Z §1026.51(a), “A card issuer must not open a credit card account for a consumer under an open-end (not home-secured) consumer credit plan, or increase any credit limit applicable to such account, unless the card issuer considers the consumer's ability to make the required minimum periodic payments under the terms of the account based on the consumer's income or assets and the consumer's current obligations.” The CFPB’s Staff Commentary says only that, “A card issuer may consider the consumer's current obligations based on information provided by the consumer or in a consumer report.” The rules do not exclude medical debts from the calculation.

Neither of these ability-to-repay rules even suggests that creditors can, may, or should ignore a consumer's medical debts. Yet the CFPB's new proposal would leave creditors blind to such obligations, since they would not even appear on credit reports.

In releasing its new proposal, the CFPB wrote that the rules "would allow creditors to use medical debt information that consumers *provide in credit applications* to satisfy ability to repay requirements." (Emphasis added.) That is hardly sufficient. Why would consumers volunteer medical debts information in their applications, knowing that such debt will not appear on their credit reports? Bear in mind that the ability-to-repay rules are there *to protect consumers*. The rules prevent creditors from making loans with higher default risks by requiring them to consider whether a consumer will be able to make the loan payments. This new Reg. V proposal guts those consumer protections. Creditors will make new mortgage loans or issue new credit cards without any real understanding of the magnitude of an applicant's current obligations or any way to make a "reasonable and good faith" determination about ability-to-repay. In other words, creditors may violate Reg. Z by complying with Reg. V.

This cannot be the CFPB's intent. At the very least, the CFPB needs to either amend the Reg. Z ability-to-repay requirements or update the Reg. Z Staff Commentary if it wants lenders to stay in compliance with those rules while still obeying this new Reg. V prohibition on considering medical debts.

Wisconsin credit unions' concerns

Here are the points that our credit unions have raised in response to this proposal. They reflect concerns about the broader implications of removing medical debt from credit reports, emphasizing the need for a balanced approach that addresses critical issues without undermining the integrity of the credit reporting system.

- Impact on credit risk assessment and distortion of credit scores. Removing medical debt would distort an accurate assessment of an individual's credit risk, as medical debt is a significant financial obligation that can indicate overall financial health.
- Inconsistent credit profiles. The absence of medical debt information could lead to inconsistent credit profiles, making it difficult for lenders to evaluate an applicant's complete financial situation.
- Increased risk for lenders. Lenders rely on comprehensive credit reports to make informed lending decisions. Removing medical debt could lead to higher default rates as lenders might unknowingly approve loans for higher-risk individuals.
- Higher interest rates. To compensate for the increased risk due to incomplete credit information, lenders might raise interest rates, affecting all borrowers, not just those with medical debt.
- Reduced accountability. Eliminating medical debt from credit reports might reduce the incentive for consumers to pay off their medical bills promptly, knowing it will not affect their credit score.

Our credit unions also stressed the administrative and operational challenges they would expect under this proposal:

- Implementation complexity. The process of removing medical debt from all credit reports could be complex and costly, requiring significant changes to existing credit reporting systems and practices.

- Potential for errors. There is a risk of errors during the removal process, which could lead to further complications and disputes.
- Equity concerns and unintended consequences. Removing medical debt might disproportionately benefit those who can afford health care but choose not to pay their medical bills (because there would be no negative impact for not paying), while those struggling with other types of debt would receive no similar relief.

Finally, our credit unions asked us to urge the CFPB to consider alternative solutions:

- Better practices for reporting. Instead of removing medical debt, the CFPB could focus on improving the accuracy and fairness of medical debt reporting, ensuring only legitimate and verified debts are reported.
- Health care cost reforms. Addressing the root causes of high medical debt, such as more transparent billing practices.

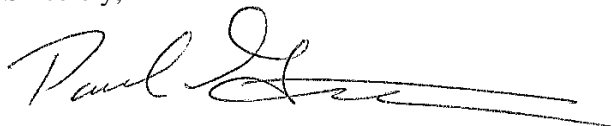
Conclusion

Wisconsin's credit unions want their member-owners to achieve financial well-being, working with them when medical bills mount. We understand the reasons for the CFPB's well-intentioned rule. But the solution is not to bar all creditors from "obtaining or using medical information in connection with a determination of eligibility for credit." That approach, we believe, would undermine the integrity of the credit reporting system; lead to unintended consequences, such as higher interest rates on consumer loans; push default rates up, because credit may be unknowingly extended to higher-risk borrowers; and simply mask consumer financial problems that credit unions and their members could work together to resolve. It would also undermine creditors trying to make reasonable, good faith determinations about a consumer's current debts, as required under Reg. Z's ability-to-repay rules.

We urge the CFPB to address the root causes of high medical debt, such as drafting rules to 1) require that health care providers and insurers adopt more transparent pricing and billing practices; and 2) improve the accuracy and fairness of medical debt reporting by allowing only legitimate and verified debts to be reported.

Thank you for taking the time to consider The League's comments. If I can be of any further help, please do not hesitate to contact me. I can be reached at pguttormsson@theleague.coop or 608-640-4052.

Sincerely,



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Senior Vice President & General Counsel
The Wisconsin Credit Union League