



**America's  
Credit Unions**

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 and Consumer Reporting Agencies Concerning Medical Information (Regulation V) (Docket No. CFPB-2024-0023)**

Dear Sir or Madam:

On behalf of America's Credit Unions, I am writing in response to the Consumer Financial Protection Bureau's (CFPB or Bureau) proposed rule amending Regulation V, which implements the Fair Credit Reporting Act (FCRA), to remove a regulatory exception from the limitation in the FCRA on creditors obtaining or using information on medical debts for credit eligibility determinations and prohibiting consumer reporting agency (CRAs) from furnishing consumer reports containing information on medical debt. America's Credit Unions is the voice of consumers' best option for financial services: credit unions. We advocate for policies that allow the industry to effectively meet the needs of their over 140 million members nationwide.

America's Credit Unions and its member credit unions appreciate the opportunity to provide input on the proposed rule and are concerned about the prohibition of the use of medical debt information in credit decisions. Although many credit unions have chosen, based on internal policies, underwriting criteria, and risk appetite, to no longer consider medical debt information in credit eligibility decisions, many others continue to do so and should continue to have the ability to choose to do so. The Bureau's proposed rule lacks sufficient policy basis and may have unintended negative consequences for both lenders and consumers. Existing regulations already provide adequate protections for consumers regarding the use of medical debt information in credit evaluations. Therefore, America's Credit Unions suggests that instead of proceeding with the rulemaking, the Bureau should issue guidance to help financial institutions better understand the predictive value of medical debt. If the Bureau continues with the proposed rulemaking, it should do so by allowing lenders who consider medical debt to continue to do so, but to the extent the agency decides it must take immediate action consistent with this proposal, instead require that they assign it a lower weight, ensuring it has a reduced impact on creditworthiness decisions

## **General Comments**

Credit unions, as member-focused financial institutions, prioritize the financial well-being of their members while ensuring they have access to the necessary credit to live fulfilling lives. This dual focus means that credit unions must carefully balance the need to provide credit with the responsibility to maintain the financial health of all of their members. Medical debt information, like any other debt information, forms an essential part of the larger picture of a consumer's financial health and ability to manage debt responsibly. Some credit unions have opted not to consider medical debt in credit eligibility decisions, recognizing the unique and often uncontrollable nature of such debt. Others have chosen to use medical debt information but discount its predictive value, understanding that medical debt may not be as indicative of financial behavior as other types of debt. Still, many credit unions continue to rely on medical debt information to provide a comprehensive view of a member's financial situation. This varied approach helps each credit union make the most informed lending decision for their members, ultimately protecting both the institution and its members from potential financial pitfalls.

While America's Credit Unions appreciates the CFPB's concerns about the financial impact on consumer well-being related to issues with the U.S. healthcare system and insurance coverages, we believe that entirely removing medical debt information from credit eligibility decisions is misguided. Such a move could lead to a range of negative implications, including increased default rates and higher costs for credit unions and their members. Furthermore, it is foreseeable that such restrictions would cause increased financing for unqualified borrowers and decreased access to credit for credit-qualified borrowers.

Credit unions are dedicated to supporting their members' financial well-being and access to credit. Rather than eliminating the consideration of medical debt information, the CFPB should focus on better understanding its predictive value. By conducting thorough research and providing financial institutions with these findings, the CFPB can empower credit unions and other lenders to make informed, risk-based business decisions regarding the use of medical debt information. This approach would allow financial institutions, as they currently do, to choose whether to incorporate medical debt information into their credit eligibility assessments based on their internal policies, underwriting criteria, and risk appetite, ultimately preserving the balance between protecting consumers and maintaining the financial health of both members and the institutions themselves. Therefore, we urge the Bureau to concentrate on delivering clear, data-driven insights into the impact of medical debt on creditworthiness. If the results of that additional research indicate there is less predictive value for medical debt, instead of prohibiting consideration of medical debt information in a final rulemaking, require that lenders weigh it as being less predictive than other forms of debt information.

## **Current Regulations Suffice**

Existing regulations ensure that medical debt information is appropriately utilized by creditors and is not weighted more heavily than other forms of debt information. Section 411 of the Fair and Accurate Credit Transactions (FACT) Act amended the FCRA to enhance consumer

protections, particularly in areas such as combating identity theft and increasing the accuracy of consumer reports. This amendment provides consumers with greater control over the type and amount of marketing solicitations they receive, thereby protecting their privacy and financial information.

Following these amendments, section 604(g)(5)(A) of the FCRA mandates the Federal Financial Institutions Examination Council (FFIEC) agencies to establish regulations that permit necessary transactions while protecting against the inappropriate use of medical information. The agencies' regulation, which was adopted as Regulation V, outlines a comprehensive three-part test designed to ensure that creditors handle medical debt information with fairness and consistency. First, creditors must use information typically considered in credit evaluations, like debts, expenses, income, benefits, assets, and collateral, ensuring they do not overly rely on medical debt. Second, Regulation V requires that medical debt be treated as favorably as other types of debt, preventing it from unfairly affecting credit evaluations. Third, creditors cannot factor in a consumer's health condition, treatment, or prognosis, safeguarding against medical-based discrimination in credit decisions.

The Bureau has the authority to enforce these provisions and ensure that creditors comply with the requirements of Regulation V. By monitoring and enforcing these regulations, the CFPB can ensure that medical debt information is used appropriately, without disproportionately affecting a consumer's ability to obtain credit. This regulatory framework provides robust protection for consumers, ensuring that their credit information is reviewed fairly and that medical debt does not unduly impair their financial opportunities. The CFPB should continue to rely on its supervision and enforcement authority to maintain compliance with Regulation V, rather than implementing additional restrictions that could undermine the balanced approach already in place.

### **Lack of Policy Basis for Proposed Rule**

The Bureau does not possess a sufficient policy or factual basis for the proposed rulemaking to prohibit creditors and consumer reporting agencies from considering medical debt information in credit eligibility determinations. This initiative stems from broader policy concerns, issues that are beyond the CFPB's purview and more appropriately addressed by Congress and state legislatures. The FCRA was enacted to ensure accuracy and fairness in credit reporting, not to serve as a tool for resolving systemic healthcare and insurance problems.

The CFPB's assertion that medical debt is often inaccurate and has limited predictive value for future credit performance lacks robust empirical support. While the CFPB references its own studies and third-party surveys, some of these findings are more than a decade old and do not universally establish that medical debt is a poor predictor of creditworthiness. In fact, as noted in an Economic Analysis by ACA International, “[r]esearch by the CFPB indicates that medical debts are less predictive of default – but still predictive. Because medical debts have *some* predictive value, rules to limit underwriting consideration of medical debts will damage the

market.”<sup>1</sup> For instance, the exclusion of medical debt from credit reports might overlook the fact that the management of medical debt can reflect a consumer's financial responsibility and payment behavior, which are relevant to creditors' risk assessments. The Bureau's own study indicates that medical debt information included in consumer scoring is predictive of delinquency, although it may not be as predictive as other consumer collection accounts over the studied period. For instance, in the 2011-2013 period surveyed by the CFPB, scores and delinquency rates tracked closely for consumers with mostly medical or mostly non-medical collections.<sup>2</sup> This underscores the relevance of medical debt information in evaluating creditworthiness and contradicts the CFPB's position that such data should be excluded from credit reports entirely.

To justify the proposed rule and provide a supposed indicator of the lack of predictive utility of medical debt information, the Bureau cites to recent industry changes in its treatment:

Market participants, including in the consumer reporting industry and those most financially incentivized to assess the predictive value of medical debt, have reduced their reliance on medical debt in recognition of its limited utility. Consumer reporting agencies have removed certain medical debts from consumer reports. Major credit scoring companies have accorded less weight to, or excluded entirely, medical debt information in their newer models. Similarly, some creditors have adjusted how their underwriting standards treat medical debt information.<sup>3</sup>

Despite the Bureau's offhand conclusion about the motivations of the credit industry, none of the credit industry's voluntary initiatives regarding medical debt were related to the predictiveness of the information. Instead, these measures were designed to provide more time for insurance reimbursements to align with consumer debt obligations. For example, the waiting period for unpaid medical debt collections to appear on credit reports was voluntarily increased from six months to one year to accommodate delays in insurance payments. The CRAs statement on this change explicitly says that this move was done to give “consumers more time to address their debt before it is reported on their credit file,” not to ignore it altogether.<sup>4</sup> This indicates that the industry recognizes the unique nature of medical debt but does not dismiss its importance in credit risk assessments.

Additionally, the CFPB's statements regarding the accuracy of medical debt reported on consumer reports are unsubstantiated. The Bureau often cites the rate of disputes as indicative

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<sup>1</sup> Andrew Rodrigo Nigrinis, Ph.D., “Economic Analysis of the Consumer Financial Protection Bureau's Prohibition on Creditors and Consumer Reporting Agencies Concerning Medical Information (Regulation V)” (Jul. 11, 2024) *available at* <https://policymakers.acainternational.org/wp-content/uploads/2024/07/AndrewNigrinisEconomicAnalysis-CFPB-FCRA-NPRM-July2024.pdf>.

<sup>2</sup> CFPB, “Data Point: Medical Debt and Credit Scores” (May, 2014) Figs. 2. A, B, at 13 *available at* [https://files.consumerfinance.gov/f/201405\\_cfpb\\_report\\_data-point\\_medical-debt-credit-scores.pdf](https://files.consumerfinance.gov/f/201405_cfpb_report_data-point_medical-debt-credit-scores.pdf).

<sup>3</sup> CFPB, “Prohibition on Creditors and Consumer Reporting Agencies Concerning Medical Information (Regulation V)” (Jun. 18, 2024) *available at* <https://www.federalregister.gov/documents/2024/06/18/2024-13208/prohibition-on-creditors-and-consumer-reporting-agencies-concerning-medical-information-regulation-v#footnote-90-p51688>, 89 Fed. Reg. 51683.

<sup>4</sup> TransUnion, “Equifax, Experian and TransUnion Remove Medical Collections Debt Under \$500 From U.S. Credit Reports” (Apr. 11, 2023) *available at* <https://newsroom.transunion.com/equifax-experian-and-transunion-remove-medical-collections-debt-under-500-from-us-credit-reports>.

of errors in medical debt reporting.<sup>5</sup> However, disputes are just as likely to reflect broader societal challenges with medical debt generally, rather than inherent inaccuracies. Studies have shown that individuals with unpaid medical debts pose materially greater credit risks than those with no derogatory information.<sup>6</sup> Thus, excluding medical debt information could lead to less accurate assessments of a consumer's creditworthiness and increase the risk for lenders.

The proposed rule appears to conflate issues within the healthcare system—such as billing practices, insurance coverage complexities, and the handling of medical debt collections—with the objectives of credit reporting accuracy. By attempting to address these systemic healthcare issues through credit reporting regulations, the CFPB is overstepping its mandate. The appropriate resolution to these problems lies in healthcare policy reforms, which require legislative action by Congress and state governments, entities that have the jurisdiction and capacity to implement comprehensive healthcare and insurance reforms. The Bureau's focus on the reporting of medical debt information and its use in credit decisioning is misplaced and is a solution in search of a problem. Such a rule would only lead to unintended consequences that could negatively impact both lenders and consumers.

### Unintended Consequences

The CFPB's proposed rule, while well-intentioned, could have far-reaching and potentially detrimental effects on both the lending industry and consumers. This rule would significantly impair lenders' ability to accurately assess a borrower's creditworthiness, conflicting with existing regulatory guidance and potentially violating key financial regulations.

The *Dodd–Frank Wall Street Reform and Consumer Protection Act* (Dodd-Frank Act) explicitly requires consideration of a consumer's credit history, current obligations, and debt-to-income (DTI) ratio when determining ability to repay for residential mortgage loans.<sup>7</sup> By removing medical debt from this equation, lenders would be deprived of crucial information that contributes to a holistic view of a borrower's financial situation. This could lead to incomplete or inaccurate assessments of a borrower's ability to repay, potentially resulting in either overly restrictive lending practices or an increased risk of defaults due to approving loans for consumers who may not be able to afford them when all debts are considered. As noted in the Economic Analysis:

[E]xcluding medical debt from credit reports can distort the accuracy of these reports, potentially hindering lenders' ability to make accurate underwriting decisions. Research by the CFPB indicates that medical debts are less predictive of default – but still predictive. Because medical debts have

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<sup>5</sup> 89 Fed. Reg. 51682.

<sup>6</sup> Peterson-KFF, “How financially vulnerable are people with medical debt?” (Feb. 12, 2024) *available at* <https://www.healthsystemtracker.org/brief/how-financially-vulnerable-are-people-with-medical-debt>; FINRA, “National Financial Capabilities Survey” (Jul. 2022) *available at* <https://finrafoundation.org/sites/finrafoundation/files/NFCS-Report-Fifth-Edition-July-2022.pdf>.

<sup>7</sup> 12 U.S.C. § 5532(b).

some predictive value, rules to limit underwriting consideration of medical debts will damage the market.<sup>8</sup>

Moreover, this proposed rule appears to conflict with existing regulatory guidance. The CFPB and banking regulators have previously encouraged lenders to evaluate alternative data in making credit decisions, as evidenced by the CFPB's 2017 "Request for Information Regarding Use of Alternative Data and Modeling Techniques in the Credit Process."<sup>9</sup> By restricting access to medical debt information, the CFPB would be limiting the very type of alternative data it has previously endorsed.

The prohibition on using medical debt information in credit scoring could lead to cumulative higher costs for consumers in various aspects of their financial lives due to the moral hazard it creates. When a certain type of debt can be ignored without consequences to credit scores, some consumers may be incentivized to prioritize other debts or expenses over these protected debts, even if they have the means to pay. This behavior could result in widespread increases in costs across multiple sectors as lenders and service providers attempt to recoup losses and mitigate increased risks. The cost of credit itself would likely rise as lenders, including credit unions, would be forced to compensate for the inability to accurately assess a borrower's true financial risk. This could lead to higher interest rates and stricter lending criteria for all consumers, not just those with medical debts.

The proposed rule may also have unintended consequences in relation to other financial regulations. The FCRA allows for risk-based pricing of credit products.<sup>10</sup> By removing medical debt information, lenders may have a less accurate picture of a borrower's risk profile, potentially leading to mispriced loans and higher overall interest rates as lenders attempt to compensate for the increased uncertainty. Ironically, by prohibiting the consideration of medical debt, the CFPB may also inadvertently cause lenders to violate the Equal Credit Opportunity Act (ECOA).<sup>11</sup> The ECOA requires creditors to make credit equally available to all creditworthy customers without regard to protected characteristics. If lenders are unable to consider medical debt, they may inadvertently discriminate against individuals who have significant non-medical debt burdens, as these debts would be disproportionately weighted in credit decisions.

The proposed rule could also have a chilling effect on specialized lending products designed to help consumers consolidate or refinance medical debt. These financial products play a crucial role in providing relief to individuals burdened with medical expenses by allowing them to manage and pay off their debt more efficiently. However, if financial institutions are unable to accurately assess the risk associated with these loans due to restrictions on the use of medical debt information, they may be less inclined to offer such products. Accurate risk assessment is fundamental to the lending process. Lenders rely on comprehensive credit information to evaluate a borrower's ability to repay a loan. Medical debt, while unique, provides insights into

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<sup>8</sup> Nigrinis "Economic Analysis" (Jul. 11, 2024).

<sup>9</sup> CFPB, (Feb. 21, 2017) available at <https://www.federalregister.gov/documents/2017/02/21/2017-03361/request-for-information-regarding-use-of-alternative-data-and-modeling-techniques-in-the-credit>, 82 Fed. Reg. 11183.

<sup>10</sup> 15 U.S.C. § 1681m(h).

<sup>11</sup> 15 U.S.C. § 1691 et seq.

a consumer's overall financial behavior and repayment risk. Removing or heavily restricting this information could lead to an incomplete risk profile, making lenders hesitant to extend credit for specialized medical debt products. Without the ability to consider medical debt appropriately, financial institutions might either increase interest rates to mitigate perceived risks or discontinue these products altogether. This could leave consumers with fewer options to manage their medical debt, potentially forcing them to resort to high-interest credit cards or other less favorable financial solutions, exacerbating their financial strain.

Additionally, financial institutions would likely incur significant costs in updating their underwriting systems and processes to comply with the new rule. These costs could be substantial, as creditors would need to ensure they are not inadvertently using medical information in lending decisions outside the permitted exceptions. This would involve extensive modifications to existing systems to exclude medical debt information from consumer reports, which could require significant investment in new software and training. Moreover, if creditors rely on consumer reports that do not automatically exclude medical debt as required by the proposed rule, they would face additional expenses to manually identify and exclude such information.

Furthermore, for creditors that use information beyond consumer reports, there would be costs associated with identifying and excluding medical information from other sources used in their underwriting processes, except where permitted by exceptions to the prohibition. These compliance costs would, like all increased regulatory costs, ultimately be passed on to consumers in the form of higher fees or interest rates, ultimately harming the very individuals the CFPB aims to protect by making credit more expensive and less accessible. Such financial burdens on consumers could undermine the intended benefits of the proposed rule and exacerbate financial difficulties for those already struggling with medical debt.

Finally, this rule could set a dangerous precedent for the CFPB to unilaterally decide which types of debt can be considered in credit decisions. This power, exercised without explicit Congressional authority, could lead to the exclusion of other types of debt, such as Buy Now, Pay Later loans or rent/eviction history, that are important indicators of creditworthiness and ability to repay.

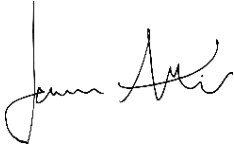
While the CFPB's proposed rule aims to protect consumers from the negative impacts of medical debt on their credit profiles, it could have severe and wide-ranging effects on the lending industry and consumers themselves. By impairing lenders' ability to accurately assess creditworthiness, conflicting with existing regulations, and setting a concerning precedent for future restrictions on credit information, this rule may ultimately do more harm than good. Financial institutions, regulators, and policymakers should carefully consider these potential impacts before implementing such a sweeping change to the credit reporting and lending landscape.

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## **Conclusion**

America's Credit Unions appreciates the opportunity to comment on the proposed rule. If you have any questions, please do not hesitate to contact me at 703-842-2268 or [jakin@americascreditunions.org](mailto:jakin@americascreditunions.org).

Sincerely,

A handwritten signature in black ink, appearing to read "James Akin". The signature is fluid and cursive, with a large initial "J" and "A".

James C. Akin  
Senior Regulatory Affairs Counsel