



August 12, 2024

The Honorable Rohit Chopra
Director
Consumer Financial Protection Bureau
1700 G St NW
Washington, D.C. 20552

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

Dear Director Chopra:

AARP, which advocates for the more than 100 million Americans aged 50 and older, is pleased to submit comments on the Consumer Financial Protection Bureau's (CFPB) proposed rule amending Regulation V. We support the removal of the exception in Regulation V to the Fair Credit Reporting Act's (FCRA) limits on creditors obtaining or using information on medical debt collection information, including prohibiting consumer reporting agencies from including medical debt collection tradelines on consumer reports furnished to creditors.

According to recent data from the Congressional Research Service, which studied the growth in debt of older Americans between 1989 and 2016, Americans ages 50 and older carried almost three times more debt (inflation adjusted) in 2016 than in 1989.¹ This increase in debt jeopardizes the financial security of millions of older Americans and their families. This issue is particularly problematic for this population, given that when people retire and leave the workforce, their income becomes fixed, often decreasing, while their medical expenses may increase as they age. Given that studies show medical debt is an unreliable predictor of consumer credit performance, it should not be used to determine consumers' eligibility for credit.

1. Older Americans report increasing amount of medical debt, despite high levels of health insurance among the population.

AARP estimates that among families that have debt, about one in ten families with a head of household age 50 and older faced a debt burden greater than 40% in 2019. This means these families must devote over 40% of their gross income to debt payments. After paying for other essential expenses -- like food, medical care, and utility costs -- these families have little, if any, income left for other purposes.

¹ Li, Zhe, "Household Debt Among Older Americans, 1989-2016," Congressional Research Service, September 11, 2019, <https://crsreports.congress.gov/product/pdf/R/R45911>.

Some mistakenly assume that because Americans age 65 and older are eligible for Medicare, they do not face the same medical debt problems as other age demographics. While Medicare mitigates some of the impacts of medical debt on older Americans, this population is not immune to this type of debt. Medicare provides critically needed health coverage to older adults, but gaps remain that can result in substantial unforeseen out-of-pocket costs. A KFF Health Care Debt Survey conducted in June 2022 found that 22% of American adults 65 and over had medical debt.² A May 2023 CFPB report found that while 98% of adults 65 and over had health insurance coverage in 2020, nearly four million reported having unpaid medical bills. Seventy percent of these respondents had coverage from two or more health insurance sources.³ Services that are not generally covered by Medicare -- including long-term care, dental, and hearing care -- contribute to unforeseen medical costs that result in medical debt for older Americans. Also, unlike private-payer insurance or Medicare Advantage, traditional Medicare does not have a cap on out-of-pocket expenses.

2. This proposed rule aligns regulations with Congressional intent in the Fair Credit Reporting Act and changes to the market.

When Congress enacted the FCRA, it recognized a need to ensure that credit reporting agencies “exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer’s right to privacy.”⁴ In 2003, Congress further acknowledged the need for consumers’ privacy when it passed the Fair and Accurate Credit Transactions (FACT) Act, which amended the FCRA to specifically restrict the use and transfer of sensitive medical information.⁵ The FCRA gave regulators authority to create exceptions to this provision. These exceptions enable creditors to obtain and use medical information only in circumstances that are “necessary and appropriate to protect legitimate operational, transactional, risk, consumer, and other needs (including administrative verification purposes).” However, regulators have never provided evidence or justification that this exception was needed for medical debts. Moreover, medical debts are not an accurate predictor of a consumer’s ability to repay a loan or manage credit. As such, we agree with the CFPB’s determination to remove the financial information exception that allows creditors to obtain and use medical financial information, such as information on medical debt, when determining credit eligibility.

3. Medical debt is unique, not an appropriate predictor of someone’s credit performance, and disproportionately affects certain populations.

Medical debt should be recognized for its unique nature, which raises problems when using it to make decisions about a consumer’s eligibility for credit. Unlike debt incurred because of planned spending, medical debt often arises because of unforeseen illness or injury. According to a KFF report, 72% of people with medical debt reported the debt resulted from a single hospital visit or

² Lopes, et al. “Health Care.”

³ “Medical Billing and Collections Among Older Americans,” CFPB Office for Older Americans, May 30, 2023, <https://www.consumerfinance.gov/data-research/research-reports/issue-spotlight-medical-billing-and-collections-among-older-americans/full-report/>.

⁴ FCRA section 602(a)(4) (15 U.S.C. 1681(a)(4))

⁵ FACT Act sections 411(a), 412(f)(2), 117 Stat. 1999-2000, 2003 (15 U.S.C. 1681b(g)(2)).

treatment for an accident.⁶ A 2014 CFPB study found that the existence of medical debt does not accurately reflect a person's creditworthiness or ability to pay. Someone with medical debt may otherwise be a responsible borrower, but face an unanticipated illness, a health emergency, or uncovered medical expense. Medical debt also often reflects challenges navigating complex billing systems, inaccurate billing, or difficulties receiving insurance reimbursement. The same CFPB study found that people with medical debt in collections were less likely to be delinquent on their payments than others with the same credit score who did not have medical debt. In fact, consumers with medical debts on their credit report repaid debts at the same rates as consumers whose credit scores were approximately 20 points higher.⁷ Certain populations are disparately affected by medical debt, in part due to differing rates in employer-sponsored health insurance coverage. According to an analysis done by KFF, 66% of white Americans had health insurance coverage through an employer, compared to 46% of Black, 41% of Latino, and 36% of American Indian/Alaskan Native Americans.⁸ Populations of color were also more likely to report medical debt than their white counterparts.⁹ For example, one study found older Black Americans were 2.6 times more likely to have medical debt, compared to white counterparts.¹⁰

Debt collection also impacts people of color disproportionately. On average, 11% of white Americans have medical debt in collections, compared with 15% for people of color.¹¹ Another study found that older Black Americans were contacted by collection agencies due to their medical debt at higher rates than their white counterparts (56.7% vs. 32.3%).¹² AARP encourages CFPB to consider not only the unique nature of medical debt, but also its disparate impact on certain populations, as it engages in this rulemaking.

4. Retaining elements of the exception related to income, benefits, and loan purpose helps Older Americans with disabilities.

AARP also agrees with the CFPB in retaining elements of the exception for income, benefits, and loan purpose. Keeping these elements of the exception will allow those who rely on disability benefits as income to apply for and receive credit or loans more easily. According to the Social Security Administration, as of December 2022, over 57% of Supplemental Security Income (SSI) beneficiaries aged 65 and over received SSI benefits as their only source of

⁶ Lopes, Lunna, et al., "Health Care Debt in the U.S.: The Broad Consequences of Medical and Dental Bills – Main Findings – 9957," KFF, June 16, 2022, www.kff.org/report-section/kff-health-care-debt-survey-main-findings/.

⁷ ta point: Medical debt and credit scores," Consumer Financial Protection Bureau, May 2014, https://files.consumerfinance.gov/f/201405_cfpb_report_data-point_medical-debt-credit-scores.pdf.

⁸ Bittker, Bobbi M., "Racial and Ethnic Disparities in Employer-Sponsored Health Coverage," American Bar Association, September 7, 2020, https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/health-matters-injections/racial-and-ethnic-disparities-in-employer-sponsored-health-coverage/.

⁹ Karpman M, "Most Adults With Past-Due Medical Debt Owe Money to Hospitals," Robert Wood Johnson Foundation, March 13, 2023, <https://www.rwjf.org/en/insights/our-research/2023/03/most-adults-with-past-duemedical-debt-owe-money-to-hospitals.html>.

¹⁰ Wiltshire, Jacqueline, et al., "Medical Debt and Related Financial Consequences Among Older African American and White Adults," American Journal of Public Health, April 14, 2016, <https://pubmed.ncbi.nlm.nih.gov/27077346/>.

¹¹ Santillo, Miranda, et al., "Communities of Color Disproportionally Suffer from Medical Debt," Urban Institute, October 14, 2022, <https://www.urban.org/urban-wire/communities-color-disproportionally-suffer-medical-debt>.

¹² Wiltshire et al., "Medical Debt."

income.¹³ If the exception is removed and a limit is placed on this income for credit and loan determinations, these beneficiaries would not otherwise be able to access credit or qualify for a loan.

5. Limits on Consumer Reporting Agency's Disclosure of Medical Debt Information.

Medical debt should be excluded from credit reports. AARP supports the proposed rule's limit on consumer reporting agencies' disclosure of medical debt information for credit eligibility purposes. We also urge the CFPB to require credit reporting agencies to establish a robust appeal process for consumers to address complaints and grievances should consumer reporting agencies erroneously or purposefully include their medical debt information to potential creditors.

Conclusion

Medical debt is unique due to its unpredictable nature, which is outside the control of the consumer and exacerbated by medical billing errors and the complexities of insurance coverage and reimbursement. Older Americans frequently find themselves subject to aggressive and deceptive medical debt-collection strategies that take an emotional toll. Studies have found medical debt is also not a good predictor of someone's creditworthiness, and yet its inclusion in credit reports can harm their ability to access housing, employment, and credit. As a result, medical debt negatively affects vulnerable populations and older Americans who have difficulty recovering financially. Worse, even the threat of medical debt and its subsequent impacts may cause older adults not to seek medical care, negatively impacting their physical health.

We appreciate the CFPB's commitment to ensuring that older Americans can focus on recovering from illness and injury rather than worrying about threats from debt collectors that a delinquent medical debt will negatively affect their credit score and impact their financial security. We welcome the opportunity to discuss these issues further. If you have any questions, please feel free to contact Clark Flynt-Barr of our Government Affairs office at cflyntbarr@aarp.org.

Sincerely,



David Certner
Legislative Counsel and Legislative Policy Director
Government Affairs

¹³ *Policy basics: Supplemental security income*. Center on Budget and Policy Priorities. (2024, March 24). <https://www.cbpp.org/research/social-security/supplemental-security-income>.