August 9, 2024

Consumer Financial Protection Bureau
c/o Comment Intake Consumer Financial Protection Bureau
1700 G Street NW
Washington, D.C. 20552
VIA EMAIL: **2024-NPRM-MEDICAL-DEBT@cfpb.gov**

RE: Docket No. CFPB-2024-2023 or RIN 3170-AA54

Dear Director Chopra and Bureau Staff:

My name is Jennifer Whipple, and I am the owner of a woman owned collection agency in Missoula, Montana. I represented the accounts receivable industry as a small entity representative (SER) for collection agencies during the SBREFA process of this proposal. Our small agency provides invaluable services to many individuals, businesses, and government entities across the great state of Montana, and beyond. My grandfather, Gilbert Koch, the founder of Collection Bureau Services, Inc. (CBSI) always said, "Treat consumers with respect, you never know when you will meet them again as potential customers." My father learned the business from him and, in turn, has passed his expertise on to me. Today, I am proud to be the third generation of Collection Bureau Services, Inc. As a local agency we understand the needs of Montana businesses and consumers alike. Over the years we've found that our clients appreciate our willingness to work with consumers and also our understanding that a client may need additional flexibility on a specific account. At CBSI, we prioritize excellence in employee training and compliance with all state and federal laws. Our agency is accredited, and our staff maintains certification through ACA International, the trade association for credit and collection professionals.

ACA International is the leading trade association for credit and collection professionals. 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.

ACA members include the smallest of businesses that operate within a limited geographic range of a single state, and the largest of publicly held, multinational corporations that operate in every state. The majority of ACA-member debt collection companies, however, are small businesses. According to a survey, 44 percent of ACA member organizations (831 companies) have fewer than nine employees. About 85 percent of members (1,624 companies) have 49 or fewer employees and 93 percent of members (1,784) have 99 or fewer employees.

As part of the process of attempting to recover outstanding payments, ACA members are an extension of every community's businesses. ACA members work with these businesses, large and small, to obtain payment for the goods and services already received by consumers. 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, and reduces the need for tax increases to cover governmental budget shortfalls.

An academic study about the impact of debt collection confirms the basic economic reality that losses from uncollected debts are paid for by the consumers who meet their credit obligations:

> In a competitive market, losses from uncollected debts are passed on to other consumers in the form of higher prices and restricted access to credit; thus, excessive forbearance from collecting debts is economically inefficient. Again, as noted, collection activity influences on both the supply and the demand of consumer

> credit. Although lax collection efforts will increase the demand for credit by consumers, the higher losses associated with lax collection efforts will increase the costs of lending and thus raise the price and reduce the supply of lending to all consumers, especially higher-risk borrowers.[1]

In short, consumer harm can result in several ways when unpaid debt is not addressed, and ACA members work to help consumers understand their financial situation and what can be done to address it and improve it.

ACA members play a critical role in protecting both consumers and lenders. ACA members work with consumers to resolve consumers' debts, which in turn saves every American household, on average, more than $700, year after year. The accounts receivable management ("ARM") industry is instrumental in keeping America's credit-based economy functioning with access to credit at the lowest possible cost. For example, in 2018 the ARM industry returned over $90 billion to creditors for goods and services they had provided to their customers. And in turn, the ARM industry's collections benefit all consumers by lowering the costs of goods and services—especially when rising prices are impacting consumers' quality of life throughout the country.

ACA members also follow comprehensive compliance policies and high ethical standards to ensure consumers are treated fairly. The Association contributes to this end goal by providing timely industry-sponsored education as well as compliance certifications. In short, ACA members are committed to assisting consumers as they work together to resolve their financial obligations, all in accord with the Collector's Pledge that all consumers are treated with dignity and respect.

I'm honored to serve as the current President-Elect of ACA International for 2024-2025.

My agency, Collection Bureau Services, Inc. (CBSI) provides debt collection and billing work for many medical providers here in rural Montana, as well as government, utility and many other private types of businesses who provide service to our Montana consumers. I'm committed to our clients, the accounts receivable industry, and the work that we do to help every American consumer

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[1] Todd Zywicki study

keep costs low in our economy by returning monies to healthcare, government and every other industry too. My background in our industry starts earlier than most, in 2001 when I was a sophomore in high school I started working in the business. Today, I'm the president of our company with a staff of 22 under me. I take such pride in being an employer in Montana and for being the one to carry on the legacy of my father and grandfather.

In my tenure with CBSI, I've helped create many policies and procedures to ensure that clients are listing accounts that are accurate, consumers are receiving statements that are accurate, agents on calls are providing information that is accurate, and credit reporting is accurate. Accuracy is key in our industry, and my agency and the agencies who are part of ACA International work hard every day to make certain accurate information is received and presented in every segment of our businesses. I've studied, received training, and provided training on Confidentiality, HIPAA, 501(R), FDCPA, GLBA, FCRA, Identity Theft, Red Flags, Accuracy & Integrity, Bankruptcy and more. I've even met with you, Director Chopra, in 2021, to discuss rural banking in Montana, to provide you insight to my agency, and answer questions in-person.

Throughout the SBREFA process, I learned that the CFPB was presenting high-level and vague ideas about medical credit reporting, data brokers, permissible purpose and legitimate business need. It was difficult for me to quantify some of the information requested because of the "vague" and "high-level" concepts the CFPB staff spoke of. I shared my personal and professional belief that this proposal was presented prematurely and the CFPB should have withdrawn the proposal to take time to reconsider if it is the best course of action for America. Fast forward seven months, the CFPB has released a proposed rule that partially covers topics we discussed in the SBREFA panel. While there were a few clarifications made that were helpful to clarify for all, including a definition of medical debt, and several items removed that were overreaching, such as the data broker and data header sections, there are still many facets of this proposed rule that have not been properly researched and a full economic study has not been

completed by the government. As the CFPB quickly pushed forward and released the proposal with a short comment deadline and no studies to understand the economic scope of such a large change, I still wonder if this serves the best interest of protecting more American consumers than it will harm? I believe there will be more consumers harmed than helped.

The Proposal as written will have significant negative impacts and will violate existing law:

- The CFPB lacks authority to rewrite laws passed by Congress that are unambiguous by their plain terms.
- While a consumer may use a financial product to pay for medical care, and debt incurred for that care may be reported to a CRA, payment providers and credit agencies have no role in the underlying transaction that gives rise to the consumer's obligation to pay for that transaction. Determinations of when, how, and at what price a consumer may purchase medical goods or services is entirely outside the purview of the CFPB.
- The data analysis supporting the proposal has serious methodological defects and did not consider data that reflects the current state of the industry or the critical economic impacts of medical debt reporting. Data used in this proposal dates back to 2014, which is prior to the No Surprises Billing Act, CFPB's Regulation F, recent changes made by the CRA's to remove paid collections on medical, and the CRA's recent limitation on not reporting medical debts incurred under $500.00. For a rule that will affect every consumer in American who seeks credit and/or healthcare, an updated study and economic impact should be conducted and reviewed prior to a rule going into effect.
- The Proposal will create overly burdensome costs to small businesses, which will likely result in the reduction of consumer choice, increased upfront costs and costs overall, and less access for patients to critical care services. This Proposal will increase the cost and availability of credit for ACA members, as well as their medical provider clients since this fundamentally changes the law and will make it harder to collect payment for medical bills. Stymieing collections and changing the credit reporting process, will hurt both clients and their third-party collection agencies' bottom lines.
- This proposal will directly impact my office negatively. It will lead to reduced access to credit for me and my small business, it will also lead to loss of income which trickles down to my clients, my employees and beyond.
- The Proposal fails to consider, and has done no research, on less expensive alternatives that avoid the significant constitutional problems and reduce monetary impacts on small businesses, and consumers, and governments, such as implementing a waiting period before a medical debt can be reported; allow for deletion of paid medical debt; review marketplace responses to the issue including the vantage score model that reduces the weight of a medical debt on the consumer's score.
- By the CFPB's own admission, medical debt information is less predictive, not "not predictive". Thus, underwriters will have less information to make credit determinations and credit will be extended in situations when consumers do not have the ability to repay. As such, the host of negative consequences that the CFPB itself has outlined in its ability to repay test

in mortgage[2], and other rules when creditors do not have accurate information will come into play. Similar to the factors of the 2008 financial crisis, which led to the creation of the CFPB, lenders will be operating with blind spots and overlooking debt and legal obligations for consumers who are seeking credit.

- Medical providers and their third-party collection agency partners will need to consider changes to their collection practices for unpaid medical care including litigation, denial of care, or pulling out of a market all together. If the CFPB removes the incentive to maintain good credit, consumers will have no reason to continue paying for private health insurance or pay their medical bills, which will force stakeholders to turn to other remedies sooner and more often. This will ultimately lead to more costs for consumers as a whole to absorb the highs costs associated with non-payment and increased costs for these small businesses. Increased litigation does not benefit the consumer. Reduced access to providers or medical care does not benefit more consumers than it harms.

- In this proposal the CFPB proposes to remove all medical debt from lending decisions. The proposal discusses the fact that medical debt can arise from unplanned circumstances. I agree, it can. Medical debt can also arise from planned circumstances and can include elective medical services that were not necessity. Like anything in life, bad actors take advantage and choose to not pay when they can and should. An example is kevinthecreditguy on Instagram. This post in particular "When the hospital gives you your bill and you let it go to collections because you know how to remove them"[3] insinuates to consumers that they shouldn't pay their medical debts to a provider and that they should let them go to collection.

  Another post from kevinthecreditguy "They placed a rule to where medical collections cannot hurt your credit score anymore…."[4] is posted to his page with a video of Kamala Harris stating, "and we have now put in place a rule that is in the process of being implemented where we have required that medical debt cannot be a part of your credit score."

  This rule as proposed is confusing to consumers. Even sophisticated consumers are taking this rule to mean they aren't going to be responsible for medical debts or that they shouldn't pay their medical bills anymore.

- Even for medical providers and collection agencies that do not credit report, data suggests that the "message behind the message" that you do not have to pay medical debt. This has already harmed providers and their collection agency partners, my agency included. This will lead to a variety of consequences including the need for more cash-upfront payments, dismissal of patients with outstanding balances, and an increase in medical providers turning directly to litigation to seek to recover payment. The full economic analysis showing this and anecdotal support is provided in comment by ACA International.

- The Affordable Care Act requires that nonprofit hospitals establish "charity care"—essentially financial assistance policies—for patients unable to cover their expenses. IRS Regulation 501(r) already addresses extraordinary collection activities. For providers in many states, ACA members have seen the threshold at 200% or 300% of the Federal Poverty Level as the starting point before any copays or deductibles need to be paid to a non-profit provider. Since there are already many programs and laws in place to help consumers that truly cannot afford medical debt, the CFPB's efforts are more likely to encourage people that can pay their debt not to

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[2] https://www.consumerfinance.gov/rules-policy/final-rules/ability-to-pay-qualified-mortgage-rule/#:~:text=The%20Ability%2Dto%2DRepay%2F,loan%20according%20to%20its%20terms.

[3] https://www.instagram.com/reel/C9-fR9sSbxX/?igsh=MzRlODBiNWFlZA==

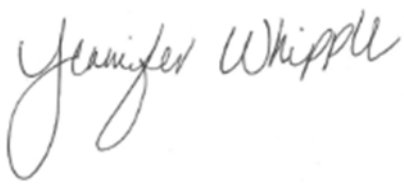
[4] https://www.instagram.com/reel/C-URZHLR0h5/?igsh=ZTUyZm92ajZhY3kz

address it. This may not benefit them since hospitals or medical providers can take legal action, or in the case of non-emergency care, not provide care.

- The FCRA was established to improve accuracy of consumer reports, this proposal does the opposite, it hides data from lenders in credit decisions. Forcing lenders to incorporate higher amounts into the cost-of-living factor to offset the unknown medical debts that a consumer is making payments on or being litigated on. This will impact all loan types including auto, personal, recreational vehicle, and home loans. Lenders cannot ignore TILA, which requires the reasonable and good-faith determination that the consumer has the ability to repay before a mortgage loan is made.
- The proposed rule makes clear that a lender would not be able to use medical debt in credit or lending decisions and that credit reporting companies could not furnish a consumer report containing medical debt information to a creditor making a credit or lending decision. The proposed rule is unclear if there is a safe harbor to a medical provider or its third-party debt collector who reports the debt to the CRA for other purposes. Reporting a medical debt to the CRA is still a viable way to create a contact card of sorts to a consumer. Many consumers use Credit Karma or other credit tracking tools to keep up to date on creditors whom they owe monies and have misplaced the mail for. I urge the CFPB to clarify that the act of reporting the debt by the creditor or third-party is still acceptable for accurate and owed debts.
- In the proposed rule, the CFPB asserts "As a result of these changes, consumers' sensitive medical information would be protected, and consumers would no longer be unfairly penalized in the credit market for having medical debt. Consumers with and without medical debt would have equal access to credit at comparable terms and debt collectors would have less leverage over consumers to pressure consumers into paying medical debts that they may not owe." I ask that the CFPB consider a change to distinguish between debts a consumer may not owe and valid or validated debts and allow for such debts to reflect for credit making decisions.

The Proposed Rule will not provide the economy or consumers the benefit that the CFPB is looking for. This proposal will lead to additional wait times at a doctors office before a visit, closure of doctor offices, reduction in future medical staff and students seeking education in the medical field, requirements of cash at time of service, consumers waiting for services or procedures until they have the monies to pay up front, increased use of emergency room visits at hospitals for both emergent and non-emergent care, reduced access to credit for all U.S. consumers, increased delinquency and charge-off rates for creditors and more. I urge the CFPB to put a hold on this proposed rule, conduct studies and if it finds viable alternatives, to start anew with a new proposal and SBREFA process.

Please find attached with this letter a discussion and analysis of the Proposal along with data and supportive materials from my comments as a SER during the SBREFA process.



Attachments (1)