September 26, 2022

Dear Director Chopra:

The undersigned consumer, civil rights, healthcare advocacy, and ___ groups urge you to begin the process of issuing a rule that would prohibit medical debts from appearing on credit reports if the debts arose from medically necessary services. While there have been great strides in recent months in reducing the amount of medical debt on credit reports, we believe rulemaking is ultimately necessary to protect consumers, particularly vulnerable consumers. We implore you to begin this rulemaking expeditiously, given the amount of time needed for the notice-and-comment process.

We recognize and applaud the exemplary work that you and the Consumer Financial Protection Bureau staff have already done on this issue. During the one year since your confirmation as Director, the CFPB has put forth numerous issuances on medical debt, such as reports on the Medical Debt Burden in the United States and Medical Debt Among Older Adults before the Pandemic, as well as the Compliance Bulletin about Debt Collection and Credit Reporting in Connection with the No Surprises Act and the Consumer Financial Protection Circular concerning debt collection and consumer reporting practices involving invalid nursing home debts.

Likely in response to this heightened scrutiny, the nationwide consumer reporting agencies (CRAs) – Equifax, Experian and TransUnion - have announced major changes regarding their treatment of medical debt, *i.e.*, the removal of paid medical debts and medical debts under $500 and the one year delay in reporting other medical debts. The credit scoring modeler VantageScore has announced that it will no longer include medical debts in its two latest scoring models (VantageScore 3 and 4).

These changes would not have been possible without the excellent work of the CFPB staff, both recently and over the years. And we suspect the changes are driven in no small part by your statements that the CFPB will be examining the appropriateness of including medical debts in credit reports at all.

However, while the nationwide CRAs' voluntary reforms will result in the removal of the majority of medical debt, the debts that will remain are held by the most vulnerable consumers. These include consumers who may be facing catastrophic or chronic medical issues and thus have larger medical bills, and low-and-moderate income consumers who cannot afford to pay off the debts.

The recent announcement by VantageScore, which is owned by the nationwide CRAs, unequivocally establishes that these debts are simply not ***necessary*** for credit scores to be predictive. And if they are not necessary to be predictive, they are not necessary to include in credit reports for the purposes of credit underwriting.

Some stakeholders might argue that medical debts should not be prohibited from credit reports because they do have some predictive value.[1] However, there are many factors that would have some predictive value, but are not necessary for underwriting and are not included in credit scores for various reasons. For example, credit reports do not include income, occupation, educational attainment, and various protected class statuses.

We have no indication whether FICO will follow VantageScore's lead in excluding medical debt from scoring models. And even if FICO does exclude medical debt from credit *scores*, medical debt on credit *reports* will continue to harm consumers. Certain critical uses of credit information can involve a review of the full credit report, such as employment decisions (which ostensibly do not use credit scores), mortgage applications, and tenant screening. The possible harms if medical debts continue to appear on credit reports include:

- The appearance of multiple medical debts, especially in larger dollar amounts, may indicate to an employer or housing provider that the consumer has a chronic health condition. This may result in rejections by less-than-upstanding employers worried that the consumer will require frequent sick leave or result in higher health insurance premiums. Housing providers may reject applicants they believe are sick and require some sort of accommodation.

- Mortgage lenders almost always use full credit reports. While Fannie Mae, Freddie Mac and FHA do not require consideration of medical debt collection items, there may be lenders that have additional requirements, *i.e.*, overlays, requiring the collections to be paid off.

- Consumers with a disability are disproportionately impacted by medical debt. According to the Kaiser Family Foundation's Burden of Medical Debt report, adults with a disability are more likely than those without a disability to report owing over $250 in medical debt (15% vs. 7%). Consumers with a disability already face significant barriers in obtaining employment and housing. Medical debts on a credit report might be what tips an already tentative employer or housing provider from hiring a disabled consumer or renting an apartment to them. While such actions violate federal and state anti-discrimination laws, illegal activity does happen. Removing medical debts from credit reports is one way to reduce the potential for such violations.

The CFPB has ample regulatory authority to prohibit the appearance of medical debt on credit reports. First, there is the CFPB's broad general rulemaking authority under Section 621(e), 15 U.S.C. § 1681s(e) to "prescribe regulations as may be necessary or appropriate to administer and carry out the purposes and objectives of [the FCRA]." One of the objectives of the FCRA is

[1] The debt collection industry has also argued that placing medical debts on credit reports provides notice to patients that they have a bill or that their insurance company didn't cover their care. However, there are legal notice requirements for both medical billing and health insurance denials of coverage. Any problems with notices should be handled in other forums and not addressed through potentially harmful credit reporting.

that credit reporting “meet[] the needs of commerce … in a manner which is fair and equitable to the consumer,…” 15 USC 1681(b). Removing medical debts from appearing in credit reports furthers the objective of treating consumers fairly and equitably.

Second, the FCRA provides the CFPB with specific rulemaking authority concerning medical information. The Act prohibits creditors from considering medical information under Section 604(g)(2), 15 U.S.C. § 168b(g)(2), unless the use is permitted by regulations issued by the CFPB under Section 604(g)(5), 15 U.S.C. § 168b(g)(5). The current regulations, which were promulgated by the banking regulators in 2005, do allow the use of medical debt information. Regulation V, 12 C.F.R. § 1022.30(d). However, the CFPB could remove this provision from Regulation V and instead prohibit the inclusion of medical debt in credit reports, given that it is not necessary for credit underwriting.

Thus, we urge the CFPB to use its clearly delineated rulemaking authority to prohibit the inclusion of medical debts in credit reports. If you have any questions about this letter, please contact Chi Chi Wu at cwu@nclc.org or 617-542-8010. Thank you for your consideration, and for all your work to protect consumers.

Sincerely,

National Consumer Law Center (on behalf of its low-income clients)