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March 22, 2022

Director Rohit Chopra  
Consumer Financial Protection Bureau  
1700 G Street, NW  
Washington, DC 20552

RE: Additional actions the CFPB should take to protect consumers with medical debt

Dear Director Chopra:

Thank you for the recent announcements and guidance regarding reporting and collection of alleged medical debts by the Consumer Financial Protection Bureau (CFPB).<sup>1</sup> We believe that these strong actions, along with the CFPB's clear expression of ongoing concerns, directly led to last week's announcement by the nationwide consumer reporting agencies (CRAs) that they will be adopting changes resulting in the removal of nearly 70% of debt collection items from credit reports.<sup>2</sup>

We are writing to highlight important additional actions that the CFPB should take to protect and assist consumers with medical debts in collection.

### **Medical Debt Ombuds**

We encourage the CFPB to create a medical debt ombuds similar to the role that already exists within the Bureau for student loans. Issues related to medical debt cut across a variety of areas of financial regulation, including: credit reporting, debt collection, and regulation of lending products. This office should ensure a cross-disciplinary focus on medical debt within the Bureau

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<sup>1</sup> Consumer Fin. Protection Bur., [Medical Debt Burden in the United States](#) (Feb. 2022); Consumer Fin. Protection Bur., Bulletin 2022-01: [Medical Debt Collection and Consumer Reporting Requirements in Connection with the No Surprises Act](#); Jim Rice, Consumer Fin. Protection Bur., [New VA rule relieves financial distress for thousands of veterans with medical bills](#) (Feb. 7, 2022).

<sup>2</sup> Joint Press Release, [Equifax, Experian, and TransUnion Support U.S. Consumers With Changes to Medical Collection Debt Reporting](#) (Mar. 18, 2022).

and also coordinate work with other federal agencies on related issues. It should also focus on racial disparities in medical debt<sup>3</sup> and center these disparities in the Bureau's work to address medical debt and consumer protections. Finally, the ombuds should be empowered to resolve consumer complaints to the CFPB involving credit reporting and debt collection over medical debts.

## Credit Reporting

The CFPB should prohibit reporting of *all* medical debt collection items by the nationwide CRAs, given the lack of predictiveness of medical debt; the unexpected and involuntary nature of medical bills; and the complicated, dysfunctional nature of medical billing in the United States.<sup>4</sup> Short of a total prohibition, the CFPB should:

- **Require Screening for Financial Assistance:** Before a medical debt owed to a nonprofit hospital can be reported by a CRA, both the collector/furnisher and CRA should be required to ensure that the consumer was screened for eligibility for financial assistance as required by the regulations issued under the Affordable Care Act.<sup>5</sup> The same screening should be required for consumers who reside in states with their own financial assistance laws.<sup>6</sup>
- **Exclude Disputed Medical Debt:** If a consumer disputes a medical debt on the basis that it should have been paid by an insurer or other third-party payer, the collector should not furnish the debt to CRAs and the CRAs should not report it until any insurance or other appeals have been exhausted and the consumer given time to pay the debt after exhaustion. Given the complexity and dysfunction in medical billing, if the consumer disputes the debt as incorrect, the debt should not be reported at all until the CFPB medical debt ombuds resolves the dispute.

## Debt Collection

- **Information about Financial Assistance.**
  - Require debt collectors to include notice about any financial assistance policy in their communications with consumers.

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<sup>3</sup> See, e.g., Berneta L. Haynes, National Consumer Law Center, [The Racial Health and Wealth Gap: Impact of Medical Debt on Black Families](#) (Mar. 2022); Urban Institute, [Debt in America: An Interactive Map](#) (Mar. 31, 2021) (showing 17% of individuals in communities of color have medical debt compared to 13% of individuals in predominantly white communities).

<sup>4</sup> Cf. Michael Best, et al., National Consumer Law Center, [Don't Add Insult to Injury: Medical Debt & Credit Reports](#) (Nov. 2019) (summarizing state protections).

<sup>5</sup> 26 C.F.R. § 1.501(r) et seq.

<sup>6</sup> For a list of such laws, see Andrea Bopp Stark and Jennifer Bosco, National Consumer Law Center, [An Ounce of Prevention: A Review of Hospital Financial Assistance Policies in the States](#) (Nov. 2021); National Consumer Law Center, Collection Actions § 9.4.3 (5th ed. 2020), updated at [www.nclc.org/library](http://www.nclc.org/library)

- Require debt collectors to provide notice about any financial assistance policies when consumers indicate that they are experiencing financial hardship - even if the consumer does not specifically ask about financial assistance.
- Prohibit misrepresentations about financial assistance or the consumer's eligibility for such assistance.
- **Disputes.** Clarify that a consumer claim that an alleged medical debt should be covered by insurance is a dispute under the Fair Debt Collection Practices Act.<sup>7</sup> Require debt collectors to cease collection of alleged medical debts when they are advised that an insurance appeal is pending or otherwise informed that the consumer is seeking to resolve the account with the insurer.
- **Credit Parking.** During CFPB supervisory visits and in response to consumer complaints, investigate compliance with Regulation F requirements<sup>8</sup> to provide notice prior to furnishing collection tradelines. Bring enforcement actions when violations are identified. Strengthen Regulation F to increase the likelihood that consumers will actually receive notices from debt collectors that comply with notice requirements before credit reporting.<sup>9</sup>
- **Communications about Credit Reporting.** The CFPB should issue guidance to debt collectors to clarify that threats to report medical debts during the one year credit reporting pause or for amounts smaller than \$500 to credit bureaus violate the FDCPA since credit bureaus will no longer be displaying such amounts on consumer credit reports.<sup>10</sup>
- **Collection Calls.** Put meaningful limits on collection calls and make those limits per consumer and not per account. The current presumptive call limits in Regulation F<sup>11</sup> are 7 calls in 7 days *per account in collection*. Consumers with medical debts frequently have multiple accounts in collection, which may result in high volumes of collection calls. For example, a consumer with five medical accounts in collection could receive up to 35 calls in a 7-day period under Regulation F.

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<sup>7</sup> See [15 U.S.C. § 1692e\(8\)](#) (prohibiting debt collectors from “[c]ommunicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed.”); [15 U.S.C. § 1692g\(b\)](#) (“If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) . . . that the debt, or any portion thereof, is disputed . . . the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or a copy of a judgment . . . and a copy of such verification or judgment . . . is mailed to the consumer by the debt collector.”).

<sup>8</sup> [12 C.F.R. § 1006.30\(a\)](#).

<sup>9</sup> See NCLC, [Comments Re: Debt Collection Practices \(Regulation F\) Delay of Effective Date](#) (May 19, 2021) (highlighting consumer protection concerns related to oral delivery of validation notice and provision of validation notice in an initial electronic communication).

<sup>10</sup> Joint Press Release, [Equifax, Experian, and TransUnion Support U.S. Consumers With Changes to Medical Collection Debt Reporting](#) (Mar. 18, 2022).

<sup>11</sup> [12 C.F.R. § 1006.14\(b\)\(2\)\(i\)\(A\)](#).

- **Default.** Clarify when a medical debt is “in default”<sup>12</sup> and issue guidance to so-called “early out” or “first-party collectors” to clarify when they are covered under the Fair Debt Collection Practices Act.

## Credit

- **Prohibit Deferred Interest Promotions.** One of the biggest uses of deferred interest promotions is for medical expenses.<sup>13</sup> Deferred interest is an inherently deceptive product and its use for medical necessities make the abuses of the product even worse.
- **General Purpose Credit.** Research the use of general purpose credit products (e.g., credit cards, payday loans, home equity loans, etc.) to better understand what percentage of such credit is incurred to pay for medical debts. Also research indirect use of credit to pay for other expenses (e.g., rent, food, childcare, etc.) where consumers are attempting to pay medical bills.
- **Medical Credit.** Research credit card and loan products that specifically target consumers paying for medical expenses. Research should investigate the business models of specific medical credit and medical loan products. Provide guidance about how to avoid consumer harms. Bring enforcement actions or collaborate with other agencies as needed to bring enforcement actions against actors that are outside of CFPB jurisdiction.
- **Hidden Debt Buying.** Clarify that entities engaging in debt buying under the guise of providing buy now pay later or other types of credit are debt buyers covered by the Fair Debt Collection Practices Act and Regulation F. Bring enforcement actions where appropriate.

## Collaboration with Other Federal Agencies

- **Internal Revenue Service.** Advocates who represent clients directly have reported that low-income patients who should be eligible for hospital financial assistance often cannot access this assistance, and may face collection actions and lawsuits for debt that should have been reduced or forgiven by the non-profit hospital. These observations have been supported by analyses of hospital financial assistance and spending on

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<sup>12</sup> The definition of “debt collector” in the Fair Debt Collection Practices Act excludes “any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity . . . (iii) concerns a debt which was not in default at the time it was obtained by such person.” [15 U.S.C. § 1692a\(6\)\(F\)\(iii\)](#).

<sup>13</sup> Consumer Financial Protection Bureau, [The Consumer Credit Card Market](#) 104 (December 2017) (about 15% of deferred interest purchases are healthcare services; superprime cardholders concentrate spending on home improvement purchases, but subprime and deep subprime tend to make more of their purchases for healthcare); Chi Chi Wu, National Consumer Law Center, [Deceptive Bargain: The Hidden Time Bomb of Deferred Interest Credit Cards](#) (Dec. 2015).

community benefits.<sup>14</sup> The CFPB should meet with the team at the Internal Revenue Service that is responsible for compliance with non-profit hospital financial assistance rules, pursuant to the Affordable Care Act and 26 CFR 1.501(r). The agencies should consider issuing joint guidance regarding the duty of nonprofit hospitals to provide financial assistance to low-income patients, and the hospitals' responsibility to refrain from credit reporting or collection activity until after eligibility for financial assistance has been determined. Otherwise, those who collect or report those debts for the hospitals may be in violation of the FDCPA, since the correct amount of the debt has not been established.

- **Department of Defense.** Civilians who receive care at military hospitals may face significant medical debt and government debt collection efforts.<sup>15</sup> The CFPB should support ongoing efforts<sup>16</sup> to protect consumers from the burden of medical debt collection for procedures at military hospitals and encourage the adoption of additional reforms similar to those implemented by the Department of Veterans Affairs.<sup>17</sup>

Thank you for your time and attention. We look forward to the opportunity to discuss these ideas with the appropriate staff at the CFPB. Please contact April Kuehnhoff at [akuehnhoff@nclc.org](mailto:akuehnhoff@nclc.org) with any questions about this letter.

Sincerely,

NCLC Staff Attorneys:

Jenifer Bosco  
Berneta Haynes  
April Kuehnhoff  
Kyra Taylor  
Chi Chi Wu

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<sup>14</sup> *E.g.*, Kaiser Health News, [Patients Eligible For Charity Care Instead Get Big Bills](#) (Oct. 14, 2019); Department of the State Treasurer of North Carolina, [N.C. Nonprofit Hospitals Bill the Poor](#) (Jan 26, 2022).

<sup>15</sup> Jared Bennett and Olga Khazan, The Atlantic, [America's Most Powerful Medical-Debt Collector](#) (Feb. 10, 2020); [Letter from Representative Joaquin Castro to Chairman Adam Smith and Ranking Member Mac Thornberry](#) (March 31, 2020).

<sup>16</sup> Joint Base San Antonio, [BAMC launches initiatives to help alleviate billing concerns](#) (Sept. 1, 2021).

<sup>17</sup> Department of Veterans Affairs, [VA establishes new threshold for reporting benefit and medical debt](#) (Feb. 2, 2022).