



The State of CFPB Focus on Credit Reporting of Medical Debt

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The COVID-19 pandemic's impact on medical debt has spurred the Consumer Financial Protection Bureau into action, particularly as it relates to the credit reporting of medical debt. Since 2020, the CFPB has received a steadily increasing number of complaints related to credit reporting.

As of December 2023, the CFPB has received a staggering 1.5 million complaints since December 2020, which far exceeds the number of complaints related to any other consumer product.^[1]

In an apparent response to this increase in the number of credit reporting complaints and an uptick in the number of complaints related to medical debt, the CFPB recently announced sweeping changes to credit reporting of medical debts.

Specifically, the CFPB proposed a Fair Credit Reporting Act rulemaking that seeks to remove medical bill tradelines from consumer reports.

Additionally, the CFPB's Fair Debt Collection Practices Act Annual Report for 2023, which **focuses** on medical debt in credit reporting, evidences the fact that the CFPB will prioritize oversight of credit reporting of medical debt for the foreseeable future.

The CFPB's Focus on Medical Debt

In February 2022, the CFPB issued a report titled "Medical Debt Burden in the United States," which summarized its findings related

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to the impact medical debt has on consumers.

In its report, the CFPB said that as of June 2021, there was \$88 billion in debt on consumer credit reports, and medical debt was the most common collection tradeline reported.

The CFPB also believes that medical debt collections are less predictive of creditworthiness and is concerned that some models evaluate medical and nonmedical debt equally.

As part of its report, the CFPB outlined federal and state-level regulatory developments designed to protect consumers with respect to medical debt.

At the federal level, the CFPB noted its debt collection final rule, which took effect Nov. 30, 2021, and revised Regulation F, the rule implementing the FDCPA.

While the FDCPA does not apply to medical providers seeking to collect their own debt, the debt collection final rule prohibits debt parking, which involves medical debt collectors furnishing information about a debt to consumer reporting agencies before notifying the consumer about the debt.

The debt collection final rule seeks to combat this practice by requiring debt collectors to convey information about the debt before furnishing information to consumer reporting agencies.

Additionally, the CFPB commented on the No Surprises Act's impact on the collection of medical debt. Effective Jan. 1, 2022, the No Surprises Act seeks to protect consumers enrolled in health insurance plans from surprise medical bills under certain circumstances.

Under the No Surprises Act, healthcare facilities and providers are required to disclose certain patient protections against balance billing. The CFPB cautioned that if a medical debt collector seeks to collect a charge that the No Surprises Act prohibits, it may violate the FDCPA. The collection of such charges may also create liability under the FCRA.

CFPB Seeks to Remove Medical Bills from Credit Reports

As part of its continued efforts to regulate credit reporting of medical debt, on Sept. 21, the CFPB announced it is undertaking a rulemaking process to remove medical bill tradelines from consumer reports and prohibit creditors from relying on medical bills during underwriting.

Under the Small Business Regulatory Enforcement Fairness Act and the Dodd-Frank Act, the CFPB is required to consult with representatives of small entities that would likely be directly affected by the CFPB's proposed regulations.

To that end, the Small Business Advisory Review Panel for Consumer Reporting Rulemaking was formed to address consumer reporting rulemaking, and the CFPB's proposal is included in the recent Small Business Advisory Panel's Outline of Proposals and Alternatives Under Consideration. The CFPB is convening a panel

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of small entity representatives to obtain feedback on the proposal and complete a report.

Although the Fair Credit Reporting Act restricted creditors' ability to use medical debts in credit decisions, Congress authorized the federal banking agencies and the National Credit Union Administration to create regulatory exemptions to that restriction.

Until now, the CFPB has left this exemption relatively undisturbed. If the CFPB finalizes its proposal to remove medical debt, the proposal would remove medical bill tradelines from consumer credit reports; and prohibit creditors from relying on medical collections information for underwriting decisions.

However, creditors would be able to use medical bill information for purposes such as verifying the need for medical forbearances or evaluating loan applications to pay for medical services.

The CFPB's Annual Report 2023

Additional activity from the CFPB suggests that it will continue to scrutinize the collection and credit reporting of medical debt. On Nov. 16, the CFPB issued its Fair Debt Collection Practices Act Annual Report 2023, which provides a comprehensive summary of the CFPB's activity in 2022 as it relates to debt collection.

Significantly, the annual report and the CFPB's press release of the same underscored the CFPB's focus on medical debt. According to the CFPB, 17.8% to 35% of American adults have unpaid medical bills.

In 2022, the CFPB reported that roughly 15% of the 60,000 debt collection complaints it received from consumers related to unpaid medical bills.

Consumers specifically complained that the medical bills being collected had already been paid, the medical bills were being collected long after services were provided, medical debts were not disclosed to consumers before it appeared on their credit report, or the amount owed was inaccurate.

The CFPB's focus on medical debt arises from purported inaccuracies in credit reporting. And, according to the CFPB, medical debt collectors' response to complaints about medical debt bolstered the CFPB's belief that medical debt tradelines are inaccurate.

In response to complaints, the CFPB reported that medical debt collectors would close the account, return the account to their client, or both. Often, medical debt collectors would delete the tradeline in response to a dispute without any follow-up questions. The CFPB therefore believes that medical debt collectors lack confidence in the information in their possession.

In its annual report, the CFPB commented that "closer attention should be paid" to collection of medical debt. The CFPB also "has substantial continued concerns ... about the medical collection ecosystem." Thus, the CFPB intends to continue investigating issues surrounding the collection and reporting of medical debt and work with states to protect consumers.

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Given the CFPB's continued efforts to regulate the reporting of medical debt, furnishers of information must be cognizant of regulatory updates in this landscape.

Because the CFPB believes that a furnisher's willingness to delete a tradeline in response to a dispute suggests that the medical debt is not legitimate, furnishers must also work to ensure accuracy in their credit reporting of medical debts and ensure they properly respond to consumer disputes.

Finally, furnishers should ensure they have robust policies and procedures related to credit reporting and responding to consumer disputes.

[1] For instance, the CFPB has received 194,209 complaints about debt collection, 109,551 complaints about credit cards or prepaid cards, and 71,999 complaints about mortgages since December 2020. CFPB, Consumer Complaint Database, available [here](#). (last visited Dec. 4, 2023).