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Executive Summary of the FCRA Medical Information Rule

On June 11, 2024, the Consumer Financial Protection Bureau (CFPB) issued a notice of proposed rulemaking regarding amendments to Regulation V, which implements the Fair Credit Reporting Act (FCRA), concerning medical information.¹ On January 7, 2025, the CFPB issued a final rule, which, among other things:

- Removes a regulatory exception in Regulation V that previously permitted creditors to obtain or use medical information, including medical debt information, in connection with credit eligibility determinations;
- Amends existing exceptions for use of medical information related to credit eligibility determinations; and
- Limits the circumstances under which consumer reporting agencies are permitted to furnish medical debt information to creditors in connection with credit eligibility determinations.

This final rule is effective 60 days from publication in the *Federal Register*.

¹ This is a Compliance Aid issued by the Consumer Financial Protection Bureau. The Bureau published a Policy Statement on Compliance Aids, available at <https://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/policy-statement-compliance-aids/>, that explains the Bureau's approach to Compliance Aids.

Covered Entities

COVERED CREDITORS

Most provisions of the final rule apply to users of consumer reports that are creditors, as that term is defined in existing Regulation V in Subpart D. The final rule makes clear the creditor provisions do not include any person excluded under that definition, such as certain auto dealers.

COVERED CONSUMER REPORTING AGENCIES

The final rule includes provisions regarding consumer reporting agencies' furnishing of consumer reports. The provisions apply to consumer reporting agencies, as defined in the FCRA.

Covered Medical Debt Information

The final rule's restriction on information that consumer reporting agencies may include in consumer reports furnished to creditors applies to medical debt information. Under the final rule, "medical debt information" is a subset of medical information, as that term is currently defined in existing Regulation V and the FCRA. For purposes of the final rule, medical debt information is medical information that pertains to a debt a consumer owes to a person whose primary business is providing medical services, products, or devices (i.e., a health care provider), which also includes debt owed to a health care provider's agent or assignee for the provision of such medical services, products, or devices (i.e., medical care). For example, medical debt information includes the dollar amounts, repayment terms, repayment history, and the identity of health care providers to whom the outstanding debt is owed. Medical debt information includes such information related to a debt arising from the health care provider's provision of medical care, including medical care that is elective, or otherwise not medically necessary (e.g., some cosmetic surgeries). Medical debt information also includes credit scores that weighed medical debt information and civil judgments arising from medical debt collection legal actions. Medical debt information includes but is not limited to medical bills that are not past due or have been paid. It also includes medical debt originally owed to a health care provider, that has been assigned to a third-party debt collector or debt buyer.

Medical debt information does not include debts incurred with third party creditors in order to pay for medical care. For example, it does not include medical expenses charged to credit cards, including specialty credit cards offered only for payment of medical services, where the consumer's debt is owed to the credit card issuer and not originally owed directly to the health care provider.

Creditor Prohibition Changes

PROHIBITION ON OBTAINING OR USING MEDICAL INFORMATION RELATED TO DEBTS, EXPENSES, ASSETS, AND COLLATERAL IN CREDIT ELIGIBILITY DETERMINATIONS UNDER CERTAIN CONDITIONS

The final rule removes an exception in existing Regulation V which, among other things, broadly permitted creditors to obtain or use medical information related to debts, expenses, assets, and collateral in credit eligibility determinations. Under the final rule, a creditor is generally prohibited from obtaining or using medical information related to debts (i.e., covered medical debt information), expenses, assets, or collateral, in connection with a credit eligibility determination. This means, generally, creditors cannot consider medical debts in credit underwriting, and cannot use information about medical devices in order to use the medical device as collateral for a loan. This creditor prohibition applies generally, regardless of whether the medical information was provided on a consumer report, by the consumer on a credit application, or if the creditor learned of the medical information through other means. However, as discussed below, a creditor is not prohibited from obtaining or using medical information related to income, benefits, or the purpose of the loan. Additionally, the final rule and existing Regulation V contain specific exceptions that may apply to a creditor's consideration of medical information under certain conditions.

NEW EXCEPTION FOR PERMITTED USE OF INFORMATION OBTAINED FROM CONSUMER-AUTHORIZED TRANSACTION HISTORY IN CREDIT ELIGIBILITY DETERMINATIONS UNDER CERTAIN CONDITIONS

The final rule adds an exception to the prohibition discussed above permitting creditor consideration of medical information that is included in the transaction information of a consumer's account, if the medical information is accessed with the consumer's authorization and included in the transaction information of certain credit card and checking account consumer financial products or services (e.g., checking accounts, credit card accounts, products to facilitate access to such accounts) covered in the CFPB's October 2024 Personal Financial Data Rights (PFDR) Rule. Such products or services include checking accounts, savings accounts, digital wallets, and other accounts that provide data about a consumer's income, expenses, and spending. The CFPB created this exception to permit cash-flow underwriting, in recognition that it would be practically difficult to remove medical expenses from account transaction histories.

This exception may be applied when a creditor is:

- using the medical information in a manner and to an extent that is no less favorable than it would use comparable information that is not medical information in a credit transaction; and

- not taking the consumer’s physical, mental, or behavioral health condition, history, treatment type, or prognosis into account for the eligibility or continued eligibility determination.

REVISED EXCEPTION FOR PERMITTED USE OF MEDICAL INFORMATION RELATED TO INCOME, BENEFITS, OR THE PURPOSE OF THE LOAN IN CREDIT ELIGIBILITY DETERMINATIONS UNDER CERTAIN CONDITIONS

The final rule retains, in revised form, an existing exception in Regulation V to the prohibition discussed above that permits the use of medical information related to income, benefits, or the purpose of the loan in connection with a credit eligibility determination under certain conditions. This means consumers can continue to use medical related benefits as income in a loan application, and lenders can continue to verify when a loan is being taken out to pay for a medical procedure or device. The same conditions for use of this exception continue to apply, as discussed above.

The final rule provides examples of the types of financial information related to income and benefits. These examples include information such as dollar amount and continued eligibility for disability income, workers’ compensation income, or other benefits related to health or a medical condition that is relied on as a source of repayment. The final rule also includes a revised example illustrating a permitted use of medical information in relation to income and benefits for a credit eligibility determination.

NEW EXAMPLE OF THE EXISTING EXCEPTION PERMITTING USE OF MEDICAL INFORMATION TO COMPLY WITH APPLICABLE LEGAL REQUIREMENTS IN CREDIT ELIGIBILITY DETERMINATIONS UNDER CERTAIN CONDITIONS

The final rule includes a new example illustrating the intersection of this final rule with ability-to-repay requirements in Regulation Z. The example illustrates how a creditor is permitted to use medical information provided by a consumer in connection with a determination of a consumer’s eligibility or continued eligibility, for credit only to the extent required to comply with applicable requirements of local, State, or Federal laws. Generally, given the prohibition discussed above, creditors may rely on this exception only to use medical information provided by the consumer (or with the consumer’s authorization) as necessary to comply with the ability-to-repay requirements in Regulation Z.

Consumer Reporting Agency Provisions

LIMITATION ON FURNISHING MEDICAL DEBT INFORMATION

The final rule explains the limitations on consumer reporting agencies furnishing consumer reports containing medical debt information in light of the creditor provisions in the final rule. As described above, the final rule defines “medical debt information” as a subset of medical information. Under the final rule, a consumer reporting agency is permitted to include medical debt information in a consumer report furnished to a creditor for credit eligibility purposes if the following criteria are met:

- The consumer reporting agency has reason to believe the creditor intends to use the medical debt information in a manner not prohibited by the creditor prohibition described above; and
- The consumer reporting agency has reason to believe the creditor is not otherwise legally prohibited from obtaining or using the medical debt information, including by a State law that prohibits a creditor from obtaining or using medical debt information.

Additional Resources

More information about the final rule, including any available additional implementation resources, is available at <https://www.consumerfinance.gov/compliance/compliance-resources/other-applicable-requirements/fair-credit-reporting-act/>.