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June 11, 2024

Unofficial Redline of the Medical Debt Proposed Rule

On June 11, 2024, the Consumer Financial Protection Bureau (CFPB) issued a proposed rule to amend Regulation V, which implements the Fair Credit Reporting Act (FCRA), concerning medical information. The CFPB is proposing to remove a regulatory exception in Regulation V from the limitation in the FCRA on creditors obtaining or using information on medical debts for credit eligibility determinations. The proposed rule would also provide that a consumer reporting agency generally may not furnish to a creditor a consumer report containing information on medical debt that the creditor is prohibited from using.

The CFPB is releasing this unofficial, informal redline to assist industry and other stakeholders in reviewing the changes that this proposed rule would make to Regulation V's regulatory text.

The underlying (unmarked) text and asterisks in this document reflect the existing text of the relevant provisions of Regulation V that are not impacted by the proposed rule. The changes that the proposed rule makes to Regulation V are marked in red.

This redline is not a substitute for reviewing Regulation V or the proposed rule. If any conflicts exist between this redline and the text of Regulation V, or the proposed rule, the documents published in the *Federal Register* are the controlling documents.

PART 1022—FAIR CREDIT REPORTING (REGULATION V)

Subpart A—General Provisions

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§ 1022.3 Definitions.

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(j) *Medical debt information* means medical information that pertains to a debt owed by a consumer to a person whose primary business is providing medical services, products, or devices, or to such person’s agent or assignee, for the provision of such medical services, products, or devices. Medical debt information includes but is not limited to medical bills that are not past due or that have been paid.

(k) *Medical information* means:

(1) Information or data, whether oral or recorded, in any form or medium, created by or derived from a health care provider or the consumer, that relates to:

(i) The past, present, or future physical, mental, or behavioral health or condition of an individual;

(ii) The provision of health care to an individual; or

(iii) The payment for the provision of health care to an individual.

(2) The term does not include:

(i) The age or gender of a consumer;

(ii) Demographic information about the consumer, including a consumer’s residence address or e-mail address;

(iii) Any other information about a consumer that does not relate to the physical, mental, or behavioral health or condition of a consumer, including the existence or value of any insurance policy; or

(iv) Information that does not identify a specific consumer.

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Subpart D—Medical Information

§ 1022.30 Obtaining or using medical information in connection with a determination of eligibility for credit.

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(b) *General prohibition on obtaining or using medical information—(1) In general.* A creditor may not obtain or use medical information pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility, for credit, except as provided in this section.

(2) *Definitions.* (i) *Credit* has the same meaning as in section 702 of the Equal Credit Opportunity Act, 15 U.S.C. 1691a.

(ii) *Creditor* has the same meaning as in section 702 of the Equal Credit Opportunity Act, 15 U.S.C. 1691a.

(iii) *Eligibility, or continued eligibility, for credit* means the consumer's qualification or fitness to receive, or continue to receive, credit, including the terms on which credit is offered.

The term does not include:

(A) Any determination of the consumer's qualification or fitness for employment, insurance (other than a credit insurance product), or other non-credit products or services;

(B) Authorizing, processing, or documenting a payment or transaction on behalf of the consumer in a manner that does not involve a determination of the consumer's eligibility, or continued eligibility, for credit; or

(C) Maintaining or servicing the consumer's account in a manner that does not involve a determination of the consumer's eligibility, or continued eligibility, for credit.

(c) *Rule of construction for obtaining and using unsolicited medical information*—(1) *In general.* A creditor does not obtain medical information in violation of the prohibition if it receives medical information pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility, for credit without specifically requesting medical information.

(2) *Use of unsolicited medical information.* A creditor that receives unsolicited medical information in the manner described in paragraph (c)(1) of this section may use that information in connection with any determination of the consumer's eligibility, or continued eligibility, for credit to the extent the creditor can rely on at least one of the exceptions in § 1022.30~~(d)~~ or (e).

(3) *Examples.* A creditor does not obtain medical information in violation of the prohibition if, for example:

(i) In response to a general question regarding a consumer's debts or expenses, the creditor receives information that the consumer owes a debt to a hospital.

(ii) In a conversation with the creditor's loan officer, the consumer informs the creditor that the consumer has a particular medical condition.

~~(iii) In connection with a consumer's application for an extension of credit, the creditor requests a consumer report from a consumer reporting agency and receives medical information~~

~~in the consumer report furnished by the agency even though the creditor did not specifically request medical information from the consumer reporting agency.~~

~~(d) *Financial information exception for obtaining and using medical information*—(1) *In general.* A creditor may obtain and use medical information pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility, for credit so long as:~~

~~(i) The information is the type of information routinely used in making credit eligibility determinations, such as information relating to debts, expenses, income, benefits, assets, collateral, or the purpose of the loan, including the use of proceeds;~~

~~(ii) The creditor uses 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~~

~~(iii) The creditor does not take the consumer's physical, mental, or behavioral health, condition or history, type of treatment, or prognosis into account as part of any such determination.~~

~~(2) *Examples*—(i) *Examples of the types of information routinely used in making credit eligibility determinations.* Paragraph (d)(1)(i) of this section permits a creditor, for example, to obtain and use information about:~~

~~(A) The dollar amount, repayment terms, repayment history, and similar information regarding medical debts to calculate, measure, or verify the repayment ability of the consumer, the use of proceeds, or the terms for granting credit;~~

~~(B) The value, condition, and lien status of a medical device that may serve as collateral to secure a loan;~~

~~(C) The 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; or~~

~~(D) The identity of creditors to whom outstanding medical debts are owed in connection with an application for credit, including but not limited to, a transaction involving the consolidation of medical debts.~~

~~(ii) Examples of uses of medical information consistent with the exception. (A) A consumer includes on an application for credit information about two \$20,000 debts. One debt is to a hospital; the other debt is to a retailer. The creditor contacts the hospital and the retailer to verify the amount and payment status of the debts. The creditor learns that both debts are more than 90 days past due. Any two debts of this size that are more than 90 days past due would disqualify the consumer under the creditor's established underwriting criteria. The creditor denies the application on the basis that the consumer has a poor repayment history on outstanding debts. The creditor has used medical information in a manner and to an extent no less favorable than it would use comparable non-medical information.~~

~~(B) A consumer indicates on an application for a \$200,000 mortgage loan that she receives \$15,000 in long-term disability income each year from her former employer and has no other income. Annual income of \$15,000, regardless of source, would not be sufficient to support the requested amount of credit. The creditor denies the application on the basis that the projected debt-to-income ratio of the consumer does not meet the creditor's underwriting criteria. The creditor has used medical information in a manner and to an extent that is no less favorable than it would use comparable non-medical information.~~

~~(C) A consumer includes on an application for a \$10,000 home equity loan that he has a \$50,000 debt to a medical facility that specializes in treating a potentially terminal disease. The creditor contacts the medical facility to verify the debt and obtain the repayment history and current status of the loan. The creditor learns that the debt is current. The applicant meets the income and other requirements of the creditor's underwriting guidelines. The creditor grants the application. The creditor has used medical information in accordance with the exception.~~

~~(iii) *Examples of uses of medical information inconsistent with the exception.* (A) A consumer applies for \$25,000 of credit and includes on the application information about a \$50,000 debt to a hospital. The creditor contacts the hospital to verify the amount and payment status of the debt, and learns that the debt is current and that the consumer has no delinquencies in her repayment history. If the existing debt were instead owed to a retail department store, the creditor would approve the application and extend credit based on the amount and repayment history of the outstanding debt. The creditor, however, denies the application because the consumer is indebted to a hospital. The creditor has used medical information, here the identity of the medical creditor, in a manner and to an extent that is less favorable than it would use comparable non-medical information.~~

~~(B) A consumer meets with a loan officer of a creditor to apply for a mortgage loan. While filling out the loan application, the consumer informs the loan officer orally that she has a potentially terminal disease. The consumer meets the creditor's established requirements for the requested mortgage loan. The loan officer recommends to the credit committee that the consumer be denied credit because the consumer has that disease. The credit committee follows the loan officer's recommendation and denies the application because the consumer has a potentially terminal disease. The creditor has used medical information in a manner inconsistent with the~~

~~exception by taking into account the consumer's physical, mental, or behavioral health, condition, or history, type of treatment, or prognosis as part of a determination of eligibility or continued eligibility for credit.~~

~~(C) A consumer who has an apparent medical condition, such as a consumer who uses a wheelchair or an oxygen tank, meets with a loan officer to apply for a home equity loan. The consumer meets the creditor's established requirements for the requested home equity loan and the creditor typically does not require consumers to obtain a debt cancellation contract, debt suspension agreement, or credit insurance product in connection with such loans. However, based on the consumer's apparent medical condition, the loan officer recommends to the credit committee that credit be extended to the consumer only if the consumer obtains a debt cancellation contract, debt suspension agreement, or credit insurance product from a nonaffiliated third party. The credit committee agrees with the loan officer's recommendation. The loan officer informs the consumer that the consumer must obtain a debt cancellation contract, debt suspension agreement, or credit insurance product from a nonaffiliated third party to qualify for the loan. The consumer obtains one of these products and the creditor approves the loan. The creditor has used medical information in a manner inconsistent with the exception by taking into account the consumer's physical, mental, or behavioral health, condition, or history, type of treatment, or prognosis in setting conditions on the consumer's eligibility for credit.~~

(d) [Reserved].

(e) *Specific exceptions for obtaining and using medical information—(1) In general.* A creditor may obtain and use medical information pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility, for credit:

(i) To determine whether the use of a power of attorney or legal representative that is triggered by a medical condition or event is necessary and appropriate or whether the consumer has the legal capacity to contract when a person seeks to exercise a power of attorney or act as legal representative for a consumer based on an asserted medical condition or event;

(ii) To comply with applicable requirements of local, State, or Federal laws;

(iii) To determine, at the consumer's request, whether the consumer qualifies for a legally permissible special credit program or credit-related assistance program that is:

(A) Designed to meet the special needs of consumers with medical conditions; and

(B) Established and administered pursuant to a written plan that:

(1) Identifies the class of persons that the program is designed to benefit; and

(2) Sets forth the procedures and standards for extending credit or providing other credit-related assistance under the program;

(iv) To the extent necessary for purposes of fraud prevention or detection;

(v) In the case of credit for the purpose of financing medical products or services, to determine and verify the medical purpose of a loan and the use of proceeds;

(vi) Consistent with safe and sound practices, if the consumer or the consumer's legal representative specifically requests that the creditor use medical information in determining the consumer's eligibility, or continued eligibility, for credit, to accommodate the consumer's particular circumstances, and such request is documented by the creditor;

(vii) Consistent with safe and sound practices, to determine whether the provisions of a forbearance practice or program that is triggered by a medical condition or event apply to a consumer;

(viii) To determine the consumer’s eligibility for, the triggering of, or the reactivation of a debt cancellation contract or debt suspension agreement if a medical condition or event is a triggering event for the provision of benefits under the contract or agreement; ~~or~~

(ix) To determine the consumer’s eligibility for, the triggering of, or the reactivation of a credit insurance product if a medical condition or event is a triggering event for the provision of benefits under the product; ~~or~~

(x) So long as the conditions in paragraphs (e)(1)(x)(A) through (C) of this section are met:

(A) The medical information relates to income, benefits, or the purpose of the loan, including the use of proceeds. Medical information relating to income and benefits include, for example, the 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.

(B) The creditor uses 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.

(C) The creditor does not take the consumer’s physical, mental, or behavioral health, condition or history, type of treatment, or prognosis into account as part of the determination of the consumer’s eligibility, or continued eligibility, for credit.

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(6) Example to comply with applicable requirements of local, State, or Federal laws. A consumer applies for a mortgage loan subject to §§ 1026.43(c) or 1026.34(a)(4) of this chapter, or an open-end (not home-secured) credit card account subject to § 1026.51(a) of this chapter.

The application does not specifically request medical information, but the consumer provides unsolicited medical information on the application. The creditor or the card issuer is permitted to use such medical information in connection with any determination of the consumer's eligibility, or continued eligibility, for credit only to the extent required by the applicable Federal law and implementing regulation. For example, assume a consumer applies for a mortgage loan subject to § 1026.43(c) of this chapter. Assume further that the creditor has not specifically requested medical information on the application, but the consumer provides information on a current debt obligation, such as a monthly medical payment plan, that is medical information. The creditor is permitted to consider the existence and the amount of the medical payment plan as required in considering factors under § 1026.43(c)(2) of this chapter, such as the current debt obligations, consumer's monthly debt-to-income ratio, and residual income, in making the repayment ability determination required under § 1026.43(c)(1) of this chapter. In this circumstance, the creditor would not be required to independently verify the existence and amount of the monthly medical payment plan, as provided for under § 1026.43(c)(3)(iii) of this chapter. See also comment 43(c)(3)-6, describing a situation in which a consumer provides a creditor with information on a debt obligation that is not listed on a consumer report. Further, a creditor or card issuer is not permitted to obtain or use any medical information from a consumer reporting agency to comply with the ability-to-repay rule under § 1026.43(c) of this chapter for closed-end mortgages, the repayment ability rule under § 1026.34(a)(4) of this chapter for open-end, high-cost mortgages, or the ability-to-pay rule under § 1026.51(a) of this chapter for open-end (not home-secured) credit card accounts, because the creditor or card issuer can comply with those rules using information provided by the consumer.

(7) Example of medical information relating to income and benefits. A consumer indicates on an application for a \$200,000 mortgage loan that she receives \$15,000 in long-term disability income each year from her former employer and has no other income. Annual income of \$15,000, regardless of source, would not be sufficient to support the requested amount of credit. The creditor denies the application on the basis that the projected debt-to-income ratio of the consumer does not meet the creditor's underwriting criteria. The creditor has used medical information in a manner and to an extent that is no less favorable than it would use comparable non-medical information.

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§§ 1022.33-1022.37 [Reserved]

§ 1022.38 Duty of consumer reporting agencies regarding medical debt information.

(a) Scope. This section applies to any consumer reporting agency as defined in section 603(f) of the FCRA, 15 U.S.C. 1681a(f).

(b) Limitation regarding prohibited medical debt information. A consumer reporting agency may include medical debt information, as defined in § 1022.3(j), in a consumer report furnished to a creditor only if the consumer reporting agency:

(1) Has reason to believe the creditor intends to use the medical debt information in a manner not prohibited by § 1022.30; and

(2) Is not otherwise prohibited from furnishing to the creditor a consumer report containing the medical debt information, including by a State law that prohibits furnishing to the creditor a consumer report containing medical debt information.

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