U.S. Chamber of Commerce

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Washington, DC 20062-2000
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September 11, 2023

Comment Intake
Request for Information Regarding Medical Payment Products
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

**Re: Request for Information Regarding Medical Payments Products; Consumer Financial Protection Bureau, Centers for Medicare & Medicaid Services, Department of Health and Human Services, and Department of the Treasury (88 Fed. Reg. 44,281-44,290, July 12, 2023)**

To Whom It May Concern:

The Center for Capital Markets Competitiveness ("CCMC") appreciates the opportunity to submit comments regarding the Request for Information regarding medical payment products (the "RFI").[1]

Medical care providers play an important role in Americans' lives, allowing them to live longer and better than ever before. Congress and relevant regulators have taken numerous policy actions to make this medical care more accessible and affordable. These actions include the creation of Medicaid and Medicare, the establishment of health insurance exchanges, and establishing protections for Americans when they seek care in an emergency room.

Practically speaking, financial services companies play an important role for Americans seeking healthcare, since they provide payment options to consumers making use of medical care when it is not paid for by insurance. However, we note as a threshold matter that there are significant limitations on the scope of payment providers' role in the context of medical care. These limitations also result in a corresponding limitation in the authority of the CFPB and inform the scope of our comments today in two primary ways.

First, payments products do not have a role in the underlying transactions that give rise to an obligation to pay a medical provider. Given the structure of medical billing practices, Americans frequently use various payment cards, checks, or other payments products to satisfy whatever obligation they have incurred. The role of

[1] *See Request for Information Regarding Medical Payment Products*, CFPB-2023-0038, 88 Fed. Reg. 44281 (July 12, 2023).

payments products in the medical sector is not unique. As in other sectors, consumer financial services providers have no role in the underlying transaction that gives rise to an obligation. Rather, they simply allow a consumer to pay for an incurred financial obligation once incurred. Here, this means that consumer financial services providers do not have a role in the sale or delivery of medical services, the medical insurance market, or the medical billing system. As the RFI acknowledges, these matters are likewise outside the authority of the CFPB. We consequently do not focus on those activities in our comments today.

Second, we also note that there are a range of specialized financial products that receive special treatment under the tax code and that play an important role in paying for medical care. Such financial products include Health Savings Accounts and Flexible Spending Accounts. These important products are also outside the CFPB's authority, however. We accordingly do not address such products in these comments.

Given these limitations, we focus our comments on issues within the authority of the CFPB: use of payments products offered by financial services companies without preferred tax treatment in the medical services context. While obligations vary widely based on insurance coverage and other factors, individual patients often have financial responsibility for a portion of the cost of medical care. A variety of payment products make it easier for Americans to cover these expenses. These general payment products (such as credit cards, debit cards, etc.) are subject to numerous regulatory requirements, including transparent disclosures and responsible underwriting. Consumers are likewise entitled to—and already receive—appropriate protections when such debts enter the collections process, including from errors or inappropriate conduct in debt collection, just like they do in other contexts.

The CFPB should not attempt to impose discrete regulations on "medical payments" since, from a financial services perspective, there are no distinctive payments features that would merit such specialized treatment. This is because it could very well result in unintended consequences, reducing Americans' access to payment and credit products and making it more difficult for Americans to pay for the care they need. Making it more difficult for creditors to collect on debt to which they are contractually entitled would likewise increase the cost of medical care. (Debt collection activities support the existing payment system by allowing recovery on these obligations—thereby keeping borrowing costs low and encouraging lenders to continue to offer popular products.) Similarly, making it harder for creditors, and other companies, to rely on the information provided to credit bureaus would make it more challenging to assess a borrower's ability to repay a loan, leading to a higher cost of credit for consumers and reduced access to credit.

We accordingly would ask the CFPB to consider three key points as it evaluates the information it receives in response to this RFI.

- The CFPB should not try to use payment regulations to address perceived concerns with medical billing and business practices.

- Any policy actions based on the distinctive treatment of medical debt would be misplaced.

- The CFPB should not discourage the use of any particular payment product.

## I. The CFPB should not try to use payment regulations to address perceived concerns with medical billing and business practices.

The RFI identifies several perceived concerns with the way that medical services are provided and billed. These concerns do not relate to how Americans choose to pay for these products and services, however. Rather, they relate to dynamics in the underlying transaction between a patient and a medical provider and/or insurance company—matters that, as noted above, are outside the CFPB's statutory authority. In short, the CFPB is not a healthcare regulator. It has neither the knowledge nor the appropriate tools to address issues it perceives in how patients interact with their doctors or their insurance companies. The CFPB should not use its authority over payments products to address any such matters.

We certainly acknowledge that payments products are regularly used by Americans to pay for medical products and services. Products with medical benefits are a constant presence in our lives. Whether putting on a bandage, taking a pain reliever, using sunscreen, measuring your child's temperature, putting on contacts, or wearing a hearing aid, an American consumer may use a handful of different products with medical benefits before breakfast. Many Americans purchase such products with general purpose credit cards, much like they use such cards to pay for a co-pay for a doctor's visit.

There is nothing distinctive, however, about the use of a payment product in this manner. From a payments perspective, this is just another transaction on a credit card. The payment is not treated differently from the purchase of other products, including non-medical products that may be purchased in the same transaction. As a result, there is no appropriate policy basis for treating the use of a payment card to pay for medical products or services differently than payments for other products.

The CFPB consequently should not attempt to address medical billing or business practices through special regulation of "medical payments products." The

CFPB has not—and cannot—define this term in a way that would limit it to a distinctive set of payments products that merit distinctive regulation. Neither Congress nor other regulatory agencies have defined this term in the past, and the CFPB offers only ambiguous and conflicting definitions of the term here.

To that end, the RFI appears to view the term as covering "medical credit cards" and "installment loans" that are "limited to" paying for "medical procedures, items, or services at participating medical service providers, including primary and specialty care, labs and diagnostics, inpatient and outpatient services, dental, vision, and pharmacy care."[2] But, to our knowledge, there are no such products that meet the CFPB's own definition since the cited products can be used to pay for products unrelated to healthcare. Other than certain payment products associated with Flexible Spending Accounts and Health Savings Accounts, which are not addressed in this letter, we are aware of no credit cards that are exclusively used as a "medical payments product" (if this is what the Bureau is suggesting)—i.e., permitting use *only* for medical products or services. Rather, these products typically allow for consumers to purchase non-medical services—in the same way that a card marketed at consumers to buy flights or make transactions at a particular retailer can be used for other purposes. Indeed, the CFPB itself acknowledges that one of the examples it cites allows for payment for "veterinary services."[3]

## II. Any policy actions based on the distinctive treatment of medical debt would be misplaced.

The CFPB appears to be contemplating policy actions that would attempt to address concerns it has identified with medical debt. Indeed, the RFI repeatedly mentions apparent concerns with the overall medical debt burden. The RFI suggests, for example, that the federal government is already working to "reduce the burden of medical debt."[4] Likewise, the RFI refers to the CFPB's own report, produced in March 2022, on "Medical debt burden in the United States."[5] Similarly, the RFI cites to the White House's April 11, 2022 Fact Sheet pointing to concerns with overall medical debt in the United States.[6] But payments and debt collection policy is not the right tool to address the cost of medical care. We would urge the CFPB not to attempt to use its authority to address issues that are outside its purview.

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[2] 88 Fed Reg at 44283.
[3] 88 Fed. Reg. at 44283 n.18.
[4] 88 Fed. Reg. at 44281 (characterizing the RFI as "[i]n line with the agencies' work to lower health care costs and reduce the burden of medical debt…").
[5] *Id.* at 44282 n.9.
[6] *Id.* at 44282 n.8.

As a general matter, different types of debt should not be subject to different regulatory frameworks. Whether a debt was incurred in a doctor's office or a grocery store does not change the importance of repayment of debt or change the appropriate policy approach to such debt. Moreover, imposing different regulatory frameworks would be impossible to administer.[7] Practically speaking, payments processors do not code payments to medical providers as "medical payments," nor do they include information about such "medical payments" in information provided to debt collectors. As a result, debt collectors are not able to treat certain debts as "medical debts." This means that any rule imposing special requirements on the collection of "medical debts" would result in confusion and/or require massive—and unjustified—reworkings of existing payments and debt collection practices. Consider, for example, the collection of a debt on a credit card that was used to purchase medical services, among many other things. It would be virtually impossible for a debt collector to know whether, and to what extent, a charged off balance on that card constituted a "medical debt." Similarly, a debt collector could not know whether a borrower had used a "medical credit card" to purchase medical or veterinary services. Only a significant reworking of existing approaches could make this possible. But this would not make them appropriate.

The CFPB must not disrupt the debt collection marketplace by introducing unjustified and impractical distinctions. The regulation of debt collectors should not vary based on how such debt is recognized. Any other approach that restricts collection of medical debt would likely increase the cost of credit and reduce the availability of payments products that consumers want.

Relatedly, the CFPB also should not make credit reporting less reliable by limiting the reporting of medical debts. The Chamber strongly cautions against the banning of reporting any information related to medical debt (or otherwise) to credit bureaus. Making more information available strengthens the risk-based pricing system that has been historically proven to expand access to credit.[8] This information enables creditors, such as banks and credit unions, to understand a borrower's ability to repay a loan. Not only does this information protect the safety and soundness of the financial institution depending on a credit report, but it plays a critical consumer protection function since it helps institutions avoid extending credit to borrowers who

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[7] The three nationwide credit reporting companies recently removed all paid medical debt from consumer credit reports and the time period before unpaid medical collection debt will appear on a consumers' credit report was increased from six months to one year. These measures are designed to address specific circumstances, rather than all credit reporting relating to medical debt.
[8] US Chamber, *Supporting and Strengthening Risk-Based Pricing to Benefit All U.S. Consumers* (April 15, 2021), https://www.uschamber.com/finance/supporting-and-strengthening-risk-based-pricing-benefit-all-us-consumers

are more likely to default. Any action by the CFPB to restrict the reporting of medical debts (or any other class of debt) would have significant unintended negative consequences.

## III. The CFPB should not discourage the use of any particular payments product.

Consumers choose to use a wide range of payments products to make payments to medical (and other) providers. While not every consumer will need or benefit from each particular payment product, many rely upon them to gain access to the care they need. These responsible payment products are designed to succeed: no financial institution benefits from consumer default. These responsible products are also already heavily regulated, with clear disclosures and sound underwriting practices required by existing law. Current laws covering credit require extensive disclosures; In particular, Truth in Lending Act disclosures that show the cost of credit must be provided to the consumer. This information can be used by the customer to compare financing options. Lenders also perform credit underwriting for new accounts, which includes an analysis of the borrower's ability to repay. The CFPB consequently should not treat these responsible credit products as inherently risky or problematic, and should not discourage their use by informed consumers.

The CFPB should not discourage the use of any payment product that is offered in compliance with existing law. To that end, we are concerned that the CFPB provides unjustified criticism of deferred interest in connection with "medical payment products." To this end, the RFI notes that "[m]any medical payment products offer complex deferred interest promotions, which consumers often do not understand fully, and which can significantly increase the cost of their care if they do not pay in full during the promotional period." Deferred interest is offered in payment products throughout the economy, oftentimes via credit cards, and is not exclusive to "medical payment products." And despite the misplaced criticism in this RFI, the CFPB's 2021 CARD Act report finds that promotions by private label and retail co-brand cards to use deferred interest as an option to finance larger purchases "remain generally popular with consumers, with purchase volumes relatively high despite pandemic-era disruptions in retail sales."[9] The CFPB should not impose distinctive negative treatment on this broadly popular and well-regulated product feature.

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[9] CFPB, The Consumer Credit Card Market 93 (2021), https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2021.pdf

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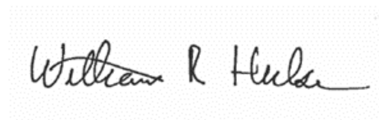
We thank you for your consideration of these comments and would be happy to discuss these issues further.

Sincerely,



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