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Via electronic mail to: MedicalDebtRFI_2023@cfpb.gov

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Re: Request for Information Regarding Medical Payment Products (Docket No. CFPB–2023–0038; Docket No. CMS–2023–0106; Docket No. TREAS–DO–2023–0008).

The Bank Policy Institute[1] and the Consumer Bankers Association[2] are providing these comments in response to the Request for Information Regarding Medical Payment Products issued by the Consumer Financial Protection Bureau, the Department of Health and Human Services, and the United States Treasury Department.[3] The agencies assert that they "seek comment on policy options to address practices by health care providers, health insurance issuers, employer-sponsored health plans, and financial companies that result in consumers paying excess costs" and that the "RFI builds upon recent work by CFPB, HHS, Treasury, and other Federal agencies to assist consumers with managing health care

[1] The Bank Policy Institute is a nonpartisan public policy, research and advocacy group, representing the nation's leading banks and their customers. Our members include universal banks, regional banks and the major foreign banks doing business in the United States. Collectively, they employ almost 2 million Americans, make nearly half of the nation's bank-originated small business loans, and are an engine for financial innovation and economic growth.

[2] CBA is the only national trade association focused exclusively on retail banking. Established in 1919, the association is a leading voice in the banking industry and Washington, representing members who employ nearly two million Americans, extend roughly $3 trillion in consumer loans, and provide $270 billion in small business loans.

[3] 88 Fed. Reg. 44281 (July 12, 2023).

costs and medical bills, and to protect patients and consumers from paying inaccurate or inflated medical bills."[4]

The agencies' stated goals are "to lower health care costs and reduce the burden of medical debt," and we encourage continued work and engagement on those fronts by the appropriate agencies and policymakers.[5] The RFI's purported focus on "medical payment products," however, is misplaced. The RFI recites a series of criticisms about health care costs and the practices of providers, hospitals, and insurance companies that the agencies believe harm consumers and attempts to draw a causal connection between those concerns and so-called "medical payment products." First, the term "medical payment product" is not defined and does not constitute a separate product category in the marketplace. There are simply different options available to consumers to pay for medical care and services just as they pay for any other goods or services in the economy.

Second, it is surprising that the agencies do not attempt to determine whether the presence of multiple payment options, including credit options, actually ***expands*** consumers' ability to obtain health care. The RFI includes one brief statement that "[i]n some cases, medical payment products may allow patients to access care they would otherwise have to forgo," but otherwise does not engage in any discussion about the benefits that result from consumers having credit options—including "medical payment products"—to pay for health care.[6] These expanded options that allow for additional ways to fund medical treatment would seem to overwhelmingly benefit consumers.

Rather than seeking to understand whether payment options benefit consumers, the RFI makes several assertions that "medical payment products" "may" cause or exacerbate the high cost of care or other aspects of the healthcare ecosystem that the agencies disfavor. But the RFI provides no evidentiary support for those assertions. This is likely because there ***is no such evidence***: the way consumers pay for medical care – whether through a "medical payment product" or through any other means a consumer uses to pay for care – has no bearing on:

- The pricing of medical services by providers, hospitals, or insurance companies;
- The coverage provided by insurance companies;
- Access to insurance in the United States;

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[4] 88 Fed. Reg at 44282. This statement, however, cites only two White House Fact Sheets about medical debt: The White House, "FACT SHEET: New Data Show 8.2 Million Fewer Americans Struggling with Medical Debt Under the Biden-Harris Administration" (Feb 14, 2023), *available at:* FACT SHEET: New Data Show 8.2 Million Fewer Americans Struggling with Medical Debt Under the Biden-Harris Administration | The White House and The White House, "FACT SHEET: The Biden Administration Announces New Actions to Lessen the Burden of Medical Debt and Increase Consumer Protection" (April 11, 2022), *available at*: https://www.whitehouse.gov/briefing-room/statements-releases/2022/04/11/fact-sheet-the-biden-administration-announces-new-actions-to-lessen-the-burden-of-medical-debt-and-increase-consumer-protection/.

[5] 88 Fed. Reg. at 44281.

[6] 88 Fed. Reg. at 44282.

- Hospitals', providers', or insurance companies' billing practices or reimbursement policies;
- Inaccurate or inflated medical bills;
- Hospitals' failing to offer or provide charity or reduced cost care; or
- Unlawful medical industry debt collection or reporting.

Healthcare providers, hospitals, and insurance companies set the costs for medical care that is criticized in the RFI, not credit card issuers, debit card issuers, or banks. Financial institutions merely provide different payment products that consumers may use to purchase goods and services across the economy. As noted, rather than being harmful to consumers, as the RFI contends, the fact that consumers have different options to pay for healthcare costs is in fact a benefit to consumers that the RFI does not acknowledge, which seems to be at odds with the CFPB's mandate to ensure that consumers have access to markets for consumer financial products and services that are fair, transparent, and competitive.[7] We expand on these points below.

I. **<u>The availability of different means of payment expands consumers' access to health care</u>**.

The availability of different means of payment for healthcare services provides consumers with important benefits. For example, by having more choices to fund necessary or desired healthcare, consumers are more frequently able to access such care. Absent payment options, consumers may be limited to paying for healthcare services at the time services are rendered using immediately available funds, such as cash. However, many consumers do not have access to sufficient funds to pay the full cost of a particular healthcare service using liquid funds. Having different options to pay for medical care, each with different terms and features, provides consumers with the ability to select a payment product that best suits his or her individual needs and finances.

For example, consumers' ability to defer payment for health care (*e.g.*, through use of a credit card or installment loan) enables consumers who do not have access to sufficient funds to cover the entire cost of a healthcare service at the time of service to nevertheless be able to access that service or care by paying over time. Thus, the availability of payment tools that allow for deferred payment expands access to health care, just as the availability of deferred payments makes homes, cars, and many other goods and services more accessible. This fact is barely acknowledged in the RFI. Nor do the agencies make any attempt to solicit information about how "medical payment products" or the availability of credit more generally expands access to medical care and the benefits provided to consumers by such expanded access. While we do not believe that regulating or restricting the availability of payment products would address the issues the agencies highlight in the RFI, as described herein, should the agencies consider any future regulatory or other action, the agencies must consider these questions.

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[7] 12 U.S.C. § 5511(a).

II. <u>The RFI wrongly attributes the high cost of health care and harmful practices of healthcare providers, hospitals, and insurance companies to the availability of "medical payment products</u>."

The RFI criticizes the high cost of healthcare and insufficient insurance, charity, and reduced-cost care benefits and suggests that consumers are being harmed by the ways in which hospitals and medical providers charge, bill, and communicate with consumers about medical services, insurance and other benefits, and payment for those services. The RFI attempts to attribute these ills in part to the availability of "medical payment products." But this attempt to lay blame on those products specifically– and indeed the suggestion that the availability of different payment options (including "medical payment products") somehow drives healthcare costs set by providers, hospitals, and insurance companies – is misguided and not grounded in evidence.

The RFI is rife with unsupported statements attempting to draw a causal link between the availability of options to pay for healthcare and the criticisms of the healthcare system more broadly, as articulated by the agencies in the RFI. For example, the RFI states that:

- "Health care providers ***may*** be incentivized to promote medical credit cards and loans because these products result in faster payment, lower administrative costs, and more revenue overall for the health care provider.[8]

- "Easy access to credit ***may*** encourage patients to consume more health care from providers who offer medical credit products, resulting in more overall revenue for these providers."[9]

- "Providers ***may*** turn to medical payment products in response to growing deductibles, copayments, and coinsurance charged by private group health plans and health insurance issuers, which many patients cannot afford to pay in cash up front;"[10]

- "[S]low insurance reimbursement and frequent insurance denials, downcoding, or appeals ***may*** also make medical payment products an attractive alternative to insurance payment;"[11]

- "Availability of medical payment products ***may*** enable health care providers to charge higher prices to uninsured, self-pay, or out-of-network patients who would otherwise be unable to pay such prices and might instead seek more affordable care;"[12] and

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[8] 88 Fed. Reg at 44286 (emphasis added).

[9] *Id*. (internal citations omitted; emphasis added).

[10] *Id*. (emphasis added).

[11] *Id*. (emphasis added).

[12] 88 Fed. Reg at 44285 (emphasis added).

- "Health care providers ***might*** offer medical payment products to uninsured patients instead of helping these patients determine their eligibility for health insurance coverage through medicaid, medicare, or subsidized marketplace plans."[13]

But the RFI fails to provide any evidence that the availability of payment options for health care has ***any*** bearing on the cost of care, patients' access to or use of insurance, or the practices of insurance companies, providers, or hospitals. Regardless of what methods are available to pay for care, if care that consumers wish to access is not covered by some benefit, such as an insurance plan or charity care, patients will have to pay "out of pocket" in some fashion, which is one of the main criticisms underlying the RFI. The availability of options to finance that "out of pocket" cost is a benefit to consumers who otherwise may not be able to access those services.

The fundamental criticisms of the cost of care and the practices of providers, hospitals, and insurance companies, which lie at the heart of the RFI, can only be changed by those entities themselves or by legislators or other policymakers with authority over those entities. The concerns highlighted in the RFI cannot be solved by eliminating or restricting consumers' access to payment products that may be used for healthcare costs; if card products or other payment methods were prohibited or restricted from being used to pay for medical care or services, the concerns highlighted in the RFI would persist: healthcare providers, hospitals, and insurance companies would continue to set the costs for medical care and engage in the practices criticized in the RFI. Credit card issuers, banks, and other financial institutions have no control or influence over those functions.

Moreover, consumers may actually be worse off, as they would have fewer options to pay for medical care or treatment. Without the ability to pay for desired medical care through credit cards or other products offered through well-regulated financial institutions, such as banks, consumers may be forced to turn to less-regulated consumer credit providers, such as payday lenders, to cover the costs of the medical care sought or to simply forego needed or desired medical services.

III. Deferred interest promotions provide consumers with expanded options to obtain products and services, including medical care.

The RFI also criticizes the offering by "medical payment products" of "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."[14] Yet these statements are not supported, and indeed are contradicted by, the Bureau's own data.

First, deferred interest promotions are not unique to any particular product or card or to the healthcare industry but are offered in connection with a variety of cards and other payment products.

[13] *Id*. (emphasis added).

[14] 88 Fed. Reg. at 44284, note 23.

These promotions are popular with consumers because they understand the product and the benefit it affords them – namely the ability to obtain an interest-free loan.[15]

Second, the agencies provide no support for the allegation that deferred interest is "complex" or somehow confusing to consumers. To the extent consumers' understanding of deferred interest has been surveyed, the Bureau's own 2015 CARD Act Report concluded that the Bureau's focus group research revealed that most consumers did understand that paying the minimum payment amount would not be sufficient to pay off the deferred interest balance in full before the end of the promotional period.[16] In addition, virtually all consumer finance products and services are subject to extensive disclosure requirements administered by the Bureau.[17] The CFPB's regulations specifically address how lenders should disclose the terms associated with deferred interest financing.[18]

The agencies also allege that deferred interest promotions can "significantly increase the cost of their care if [consumers] do not pay in full during the promotional period." However, deferred interest promotions do not increase the cost of credit relative to what the interest would be if the balance accrued interest at the time of the initial transaction. Moreover, the RFI fails to note that deferred interest promotions actually ***reduce*** the cost of credit for the vast majority of consumers who take advantage of the promotional period to repay the balance in full. The Bureau's most recent CARD Act Report found that in connection with deferred interest plans, repayment rates within the promotional period have generally increased since the Bureau last reported this rate, with the most recent promotion payoff rate being 81 percent.[19] The CFPB's Report that focused specifically on "Medical Credit Cards and

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[15] The Bureau's most recent Card Act Report issued in 2021 explains that "[d]eferred interest promotions are a large feature of the retail consumer credit card market. Almost always associated with private label and retail co-brand cards, deferred interest promotions are generally presented to consumers as an option to finance larger purchases" and notes that these promotions "remain ***generally popular with consumers***, with purchase volumes relatively high despite pandemic-era disruptions in retail sales." (emphasis added). *See* CFPB, *The Consumer Credit Card Market* (Sept. 2021) at 91-93, *available at* https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2021.pdf

[16] *See* CFPB, *The Consumer Credit Card Market* (Dec. 2015) at 152, note 20, *available at*: 201512_cfpb_report-the-consumer-credit-card-market.pdf (consumerfinance.gov).

[17] For example, the Truth in Lending Act and Regulation Z administered by the CFPB require comprehensive, uniform disclosures of the terms and conditions for open-end credit products. 15 U.S.C. § 1601 *et seq.* and 12 CFR 1026.5–1026.16.

[18] *See*, *e.g.,* 12 C.F.R.§ 1026.7(b)(14); Comment 1026.7(b)(1).

[19] Specifically, the Bureau's 2021 Report explained that its "2015 Report found that overall promotion-level and balance-level payoff rates from 2009 to 2013 lay between 76 and 82 percent. The Bureau's 2017 Report found that promotion payoff rates on six-to-17-month promotions originated in 2015 were 72 percent, and balance payoff rates were 74 percent. This report finds promotion payoff rates of 81 percent and balance payoff rates of 82 percent in 2020, a marked increase from previous years. Cardholders of all credit score tiers increased payoff rates in 2020, but the effect was most notable for consumers with below-prime scores." *See* CFPB, *The Consumer Credit Card Market* (Sept. 2021) at 97 (internal citations omitted), *available at*: https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2021.pdf.

Financing Plans" found similarly high promotion payoff rates – between 2018 and 2020, the payoff rate was nearly 80 percent, hitting a low of 76 percent in 2020.[20]

Thus, the RFI presents a one-sided, negative view of deferred interest promotions, asserting that these programs can increase the cost of care, but failing to mention that most consumers realize significant benefit from taking advantage of deferred interest programs.

IV. Conclusion

We appreciate the opportunity to comment on the RFI. However, we do not believe that the agencies' will achieve their goals of lowering health care costs and reducing the burden of medical debt by seeking to further regulate or even eliminate "medical payment products" or by focusing on the way in which consumers pay for health care more broadly. Consumers benefit from having different payment options with various features that meet different consumers' needs and preferences. The concerns regarding the practices of health care providers, hospitals, and insurance companies that the RFI seeks to remedy are best addressed head-on by Congress, state legislatures, insurance regulators, or other appropriate policymakers and not via the backdoor channel of attempting to regulate the payment options available to consumers for healthcare services.

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If you have any questions, please contact Paige Pidano Paridon by phone at 703-887-5229 or email at paige.paridon@bpi.com.

Respectfully submitted,

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[20] CFPB, "Medical Credit Cards and Financing Plans" (May 2018) at 18; *available at*: cfpb_medical-credit-cards-and-financing-plans_2023-05.pdf.