June 11, 2024

The Honorable Monique Limón
Member, California State Senate
1021 O Street, Suite 6510
Sacramento, CA 95814

RE: SB 1061 (Limón): Consumer Debt: Medical Debt – OPPOSE UNLESS AMENDED

The above noted organizations, representing original lenders doing business in California, must oppose Senate Bill 1061 as amended on April 29, 2024 unless the definition of medical debt is amended to mean those debts owed directly to a medical provider or medical facility. We recognize the importance of addressing difficulties consumers may face in both accessing and paying for healthcare, and we believe that supporting consumers' access to credit may in turn improve access to care for consumers who face difficulties in that regard. For these reasons, we thank you for introducing SB 1061 on this important topic; however, we oppose the measure's current definition of medical debt.

As amended, SB 1061 presents a number of concerns, as outlined below. These concerns are comprehensively addressed by ensuring that the definition of qualifying medical debt in SB 1061 is clearly described as debts that are owed directly to a medical provider or facility. Currently, the measure attempts to cast a net well beyond those parameters, impacting both credit cards and secured debts – with the threat of voiding those debts entirely if they are reported to a credit reporting agency – the consequences of which is further discussed below.

By including debts beyond those owed directly to a medical provider or medical facility, SB 1061 is not in alignment with the Consumer Financial Protection Bureau's proposal, which would prohibit reporting of medical debts to credit reporting agencies on the basis that medical debt is an unwanted and unexpected expense with no time to compare prices before seeking treatment in emergency situations[1]. The California Department of Financial Protection & Innovation (DFPI) takes a similar view, stating "medical debt is a debt that arises from a visit or interaction with a health care provider, such as a hospital, clinic, doctor, or nurse … Unlike

[1] https://files.consumerfinance.gov/f/documents/cfpb_medical-debt-burden-in-the-united-states_report_2022-03.pdf

many other consumer debts, people rarely plan to take on medical debt."[2] According to both entities, it is those emergency debts that are less indicative of a consumer's creditworthiness.[3] By including credit cards and secured debts – which a consumer proactively opts into during non-emergency scenarios which are more indicative of a consumer's creditworthiness and ability to repay future debts – SB 1061 is a drastic departure from the CFPB's and DFPI's studies and statements on the topic. We agree with the author's statement that "medical debt differs from other categories of consumer debt [and] is often non-discretionary," and we believe that the language of SB 1061 should reflect those assertions.

In order for credit markets to function, all parties must have accurate information. The purpose of credit reporting is to assess credit risk. Despite SB 1061's good intentions, this measure is likely to result in significant non-medical debts being hidden from lenders, therefore causing lenders to provide more credit – and more debt – to consumers who cannot afford it. The overextension of credit poses significant risks to the solvency of lenders. The Great Recession provides an all-too-recent example of the potential risks of large-scale lending to borrowers who cannot afford to repay their loans. Lending to borrowers who cannot afford to repay their loans is lose-lose for all involved parties.

Under SB 1061, significant non-medical debts are likely to be hidden from subsequent lenders as a result of the combination of Section 3(j)(1)'s language stating that medical debt is a "*debt related to, in whole or in part, a transaction, account, or balance arising from a medical service, product, or device*," and because a financial institution cannot ascertain which transactions or portions thereof are for medical purposes nor is it the case that financial institutions can ascertain medical necessity based on credit card transaction data. In other words, any debt containing, even in part, a transaction that could be medical-related is likely to fall within SB 1061's scope and therefore not be reported to a credit reporting agency. This is because retailers and card networks transmit limited data to credit card issuers when a transaction ensues. This data is typically limited to the amount of the transaction, and the time and date the transaction was processed. While an issuer may also receive data relative to the category of merchant retailer, the issuer does not have insight into specific products that are purchased. A credit card company may know that a purchase was made at a particular retailer, such as a drug store, but it would not know whether the purchased product was or was not related to a medical service, medical product, or device. As drafted, 1785.3(j)(2) would require an issuer of a card marketed for medical products and services, but that is also used for general purposes, to refrain from reporting all debt to avoid violating the measure's provisions, which propose to void debts that are reported; that standard is reliant on a clear definition of the term "medical debt" and compliance parameters are that achievable for financial institutions, both of which this measure currently lacks.

[2] https://dfpi.ca.gov/2023/02/13/medical-debt-collection-know-your-rights/

[3] https://www.consumerfinance.gov/about-us/newsroom/cfpb-study-finds-medical-debt-overly-penalizes-consumer-credit-scores/

In this context it is also worth noting that the April 29 amendments in 1785.3(j)(3) related to reconstructive and/or cosmetic surgeries is not a sound compliance practice for original lenders. Financial institutions do not – and should not – know details about the procedure that an individual receives and pays for with their credit. Credit card issuers do not – and should not – know nor determine whether a procedure is deemed medically necessary. As currently written, SB 1061 would force patient consumers to provide "proof" to their credit card companies about various procedures and expenses. This is an invasion to private medical information, placing personal information in the hands of those who are merely facilitating a financial transaction and who are *not* medical professionals involved in the treatment/care of that individual. This invasion of personal health information is avoided by ensuring that qualifying medical debts are those owed directly to a medical provider or facility.

Similarly, to avoid mass disruption in the financial marketplace, it is important that the measure ensures that secured debts are clearly excluded from the definition of medical debt. This could include financial products like second mortgages or home equity lines of credit (HELOC), which may be used for a wide variety of purposes under several transactions. There is concern that if a consumer takes out a second mortgage to pay for an elective cosmetic procedure, a medical service, and a boat, an issuer would refrain from reporting the entire secured debt to avoid violating the measure's provisions. To hide a debt of this size and type from future lenders is a disservice to the delicate balance of the financial ecosystem, likely resulting in the overextension of future credit to that borrower, trapping them in even more debt that they do not have the ability to repay. This is counterintuitive to the measure's stated purpose, to financially empower consumers who face barriers to achieving financial well-being. Again, ensuring that qualifying medical debts are those owed to a medical provider or facility alleviates these concerns.

Lastly, CFPB's recently proposed regulation[4] regarding the reporting of medical information to credit reporting agencies, released on June 11, 2024, proposes to definee medical debt information as "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." In its summary, the CFPB also stated, "generally, much of what Americans consider to be medical debt is owed directly to health care providers such as hospitals or doctors' or dentists' offices, even though, as noted previously, medical debt furnishing to consumer reporting agencies is usually done by third-party debt collectors. The CFPB believes that such directly owed debt is likely the type of debt a consumer would clearly consider medical debt."

In closing, our organizations support and encourage policies that promote a variety of fair and responsible options to pay for healthcare-related expenses, permitting consumers to choose the option that meets their needs. To the degree that problems exist with unscrupulous non-

[4] https://files.consumerfinance.gov/f/documents/cfpb_fcra-med-debt-proposed-rule_2024-06.pdf

bank lenders or medical service providers and medical facilities, we welcome a dialog around solutions that bring the oversight of those entities into regulatory parity of our financial institution members, who are already subject to robust oversight by multiple, on-site prudential regulators. With our proposed amendment, SB 1061 still represents a significant policy change for Californians.

For these reasons, the above-noted organizations respectfully oppose SB 1061 unless the measures definition of qualifying medical debt is amended to only impact those debts owed directly to a medical facility or a medical provider.

Sincerely,

California Bankers Association – Melanie Cuevas, Vice President of Government Relations
American Financial Services Association – Danielle Fagre Arlowe, Senior Vice President of State Government Affairs
California Chamber of Commerce – Robert Moutrie, Senior Policy Advocate
California Financial Services Association – Scott Govenar, Contract Lobbyist
California Mortgage Bankers Association – Indira McDonald, Contract Lobbyist
California Mortgage Association – Mike Belote, Contract Lobbyist
Card Coalition – Toni A. Bellissimo, Executive Director
Electronic Transactions Association – Brian Yates, Senior Director of State Government Affairs

cc: All Members, Assembly Committee on Judiciary
Shiran Zohar, Counsel, Assembly Committee on Judiciary
Daryl Thomas, Consultant, Assembly Republican Caucus

MC:ec