American Bankers Association

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Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS–2023–0106
P.O. Box 8016
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U.S. Department of the Treasury
1500 Pennsylvania Ave., NW
Washington, DC 20220

Via Electronic Submission

RE: Request for Information Regarding Medical Payment Products
(Docket Nos. CFPB-2023-0038, CMS–2023–0106, and TREAS–DO–2023–0008)

To whom it may concern:

The American Bankers Association (ABA)[1] appreciates the opportunity to comment on the Request for Information (RFI) regarding medical payment products, issued jointly by the Consumer Financial Protection Bureau (CFPB), Department of Health and Human Services Centers for Medicare & Medicaid Services (HHS), and Department of the Treasury (Treasury).

I. Summary of the Comment

The ABA recognizes the importance of addressing difficulties consumers may face in paying for healthcare. The interagency RFI seeks comment on subjects that arise from healthcare issues including healthcare costs, error-prone medical billing systems, complex insurance coverage, delays in insurance reimbursement, and heightened risk of nonpayment. These issues can only be addressed through healthcare policy, not financial services policy. However, supporting consumers' access to credit can help support their ability to access care.

The CFPB does not have statutory authority to regulate healthcare, either directly or through financial services providers. The RFI "[B]uilds upon recent work by CFPB, HHS, Treasury, and other Federal agencies to assist consumers with managing health care costs and medical bills, and to protect patients and consumers from paying inaccurate or inflated medical

[1] The American Bankers Association is the voice of the nation's $23.5 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2.1 million people, safeguard $18.6 trillion in deposits and extend $12.3 trillion in loans.

bills."[2] However, there is no evidence cited that suggests that the availability of credit or other payment products offered by banks create these challenges; but they can help consumers access health-related products and services.

The CFPB can support consumers' access to credit, which in turn can improve access to care for consumers who face difficulties paying for health-related products and services. Consistent with its mandate to "ensure all consumers have access to markets for consumer financial products and services and that . . . they are fair, transparent and competitive,"[3] the CFPB should avoid policies that would discourage lending and reduce consumers' credit options. Reducing access to these credit products would reduce access to medical care and health-related products for consumers. Instead, the CFPB should pursue policies that promote a variety of fair and responsible options to pay for healthcare-related products and services, permitting consumers to choose the option that meets their needs.

The RFI's references to "medical payment products" and "medical credit cards" suggests a misunderstanding of the products available to help pay for health-related expenses. The RFI suggests that these products can be used to pay any medical expenses and only medical expenses. However, the leading health and wellness credit cards in the market either are available to pay for a wide range of health and wellness products including more than just medical care (e.g. veterinarians, dentists, gyms, pharmacies), or are available only to pay for a narrow subset of elective medical care that generally is not covered by insurance. Contrary to the CFPB's assertions, they are not commonly used in a hospital setting or to pay for medical care that is covered by insurance.

Consumers are given comprehensive information about credit products before applying for them. Though the RFI suggests that consumers do not understand the terms of medical payment products, Federal law and CFPB regulations require consumer lenders to provide multiple disclosures explaining to consumers what they are borrowing, how much they must pay, when they must pay, and what will result if they do not pay on time. These are highly regulated products.

Despite the RFI's unfavorable characterization of deferred interest promotions, they are popular and valuable to consumers. They allow consumers to make needed purchases and spread the payments over time without incurring interest charges, provided they repay the purchase in full before the end of the deferred interest promotional period. Deferred interest promotions are particularly useful to help pay for unexpected health-related expenses like (often uninsured) dental work.

Indeed, the RFI's criticism of deferred interest promotions is surprising because the CFPB's research suggests that most consumers understand the terms of deferred interest promotions and can plan ahead to avoid paying interest altogether. Nearly 80% of deferred

[2] Joint RFI Regarding Medical Payment Products, 88 Fed. Reg. 44281,.44282.
[3] 12 USC § 5511(a).

interest purchases are paid in full before the end of the promotional period meaning those borrowers pay no interest—and have benefited from an interest free loan. In the absence of evidence that deferred interest promotions are commonly misunderstood by consumers, the CFPB should not create barriers for consumers who wish to use these products.

II. CFPB Lacks Authority over Healthcare Policy and Should Not Make Financial Services Policy that Would Reduce Consumers' Credit Options

The concerns outlined in the RFI relate to medical billing, insurance coverage, nonprofit hospital management, and other healthcare policy issues that neither the CFPB nor credit card issuers are positioned to address. HHS and Congress are the appropriate bodies to address the issues raised in the RFI, which fall squarely within the realm of healthcare policy.

The RFI frames the agencies' concerns as relating to the cost of medical care, "complexities of health care coverage determinations," and "medical billing and payment systems that can result in inaccuracies and errors."[4] For example, the RFI speculates that consumers may use credit products to pay bills that should be covered by insurance or by financial assistance from nonprofit hospitals, that are inaccurate, or that they might be able to negotiate with the provider. These issues fall squarely in the realm of healthcare policy. Moreover, the agencies have not pointed to evidence that consumers widely use "medical payment products" to pay hospital bills. In fact, as stated above, one health and wellness credit card issuer reports that fewer than 1% of transactions were made at hospitals.

The RFI also identifies conditions within the healthcare system that may contribute to some providers choosing to make credit options available to patients in-office, including administrative burdens and delays in obtaining insurance reimbursement, as well healthcare-sector specific concerns relating to nonpayment risks and difficulties in collecting outstanding payments. Because many consumers cannot or prefer not to pay with cash or a debit card, credit products are important tools for consumers to access healthcare.

In short, the concerns outlined in the RFI are not caused by credit products but by issues relating to insurance coverage complexity, medical billing system errors, and other healthcare policy issues. The CFPB's authority is limited to overseeing consumer financial services, not healthcare policy.

Congress gave the CFPB a specific mandate. The agency's statutory purpose is "ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive."[5] Policies that restrict or deter banks from offering credit to help cover the cost of medical and wellness expenses would *reduce* access to credit and make the marketplace for financing *less*

[4] RFI at 44282-44283.
[5] 12 USC § 5511(a).

competitive. As the RFI concedes, "medical payment products may allow patients to access care they would otherwise have to forgo."[6] As this correctly suggests, the ability to access credit directly affects the ability to access care. Financial services policies that reduce the availability of credit would not solve any underlying healthcare policy issues, but they could create barriers to accessing care.

Credit products help consumers access medical care and fill gaps in their access to health and medical products and services. The demand for these credit options is driven by products and services that are not covered by insurance. For example, medical and wellness focused credit cards are often used to pay for elective procedures, dental care, and veterinary care for pets. Credit providers do not cause gaps in access to healthcare and wellness products and services, but they can help consumers bridge them. Losing access to these credit options would tangibly harm those consumers who lose access to certain health-related products and services as a result.

Availability of credit options is particularly important for consumers who would otherwise have difficulty paying for non-routine expenses, such as replacing a dental crown or purchasing a hearing aid. A Federal Reserve survey in October 2022 found that 37% of adults could not cover an unexpected $400 expense with cash or cash equivalents including savings.[7] Notably, the need for credit to meet unexpected expenses is greater in historically underserved communities. A CFPB Data Point publication analyzing the Federal Reserve Survey concluded that 52% and 45% of Black, non-Hispanic and Hispanic consumers could not meet an unexpected $400 expense.[8]

Reducing the availability of credit cannot address the underlying conditions in the healthcare space and, in fact, would increase consumers' barriers to accessing healthcare and health-related products and services.

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[6] RFI at 44282.

[7] Federal Reserve, Survey of Household Economics and Decisionmaking, October 2022, https://www.federalreserve.gov/publications/2022-economic-well-being-of-us-households-in-2021-dealing-with-unexpected-expenses.htm (hereinafter "Federal Reserve survey").

[8] CFPB, Emergency Savings and Financial Security, CFPB Office of Research Data Point No. 2022-01, March 22, p. 13 n. 24, https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/cfpb_mem_emergency-savings-financial-security_report_2022-3.pdf. An example of how reduced access to credit could affect consumers in this context is to consider unexpectedly chipping a tooth and requiring a dental crown. A dental crown costs $1,288 on average. *See* Forbes Advisor, How Much Does Dental Work Cost?, August 23, 2023 (using data provided by the American Dental Association) https://www.forbes.com/advisor/health-insurance/dental-insurance/dental-work-cost/. 33.6% of adults do not have dental benefits, and for those who do coverage of various procedures may vary. American Dental Association, Dental coverage, access & outcomes, https://www.ada.org/en/resources/research/health-policy-institute/coverage-access-outcomes#:~:text=For%20adults%20ages%2019%2D64,dental%20services%20for%20adult%20enrollees%3F. However, even if consumers on average had insurance that covered 50% of the cost for this procedure it would still cost them more than $400 out of pocket, meaning a significant number would still need access to credit options to pay for the procedure.

III. The Terms “Medical Payment Products” and “Medical Credit Cards” Are Misleading

The term “medical payment products,” used throughout the RFI, does not have a legal or technical meaning. Consumers use many different payment products to pay for medical and health care expenses, and there are a range of consumer credit options that can help them meet their health care needs.

In particular, the term “medical credit cards” misleadingly implies that there is a distinct category of credit card that can be used to pay any medical expense and only medical expenses. But it is not clear that these products exist.

For example, one of the largest health and wellness cards is accepted by a wide range of health and wellness businesses including gyms, veterinarians, dentists, retail pharmacy stores, and others. ABA understands that more than 50% of the payments made with this card are to veterinary and dental providers. By contrast, ABA understands that fewer than 1% of payments are made to hospitals. Moreover, the card issuer does not receive transaction-level data distinguishing medical expenses from other expenses, such as whether a purchase at a retail pharmacy chain is for medication or shampoo.

Other cards focused on healthcare may only be used to pay for a small subset of medical expenses that generally are not covered by health insurance. For example, one issuer of these cards contractually prohibits medical providers who accept the card from submitting transactions for any amounts that are covered by insurance. Another large issuer only enters into agreements with dental offices and offices that offer only elective procedures, such as liposuction and hair removal.

Referring to the broad range of payment options available to consumers as “medical credit cards” suggests that all such cards can be used to pay for any medical treatment and that all such cards can only be used to pay for medical treatment. In fact, that is not the case. There are many different credit options to help consumers access medical and health-related services, including those that are not covered by health insurance.

IV. Credit Products, Including “Medical Payment Products” and “Medical Credit Cards,” Are Subject to a Comprehensive Disclosure Regime

Lenders must provide borrowers comprehensive disclosures about the terms of credit products, including “medical payment products.” The CFPB’s Regulation Z, which implements the Truth in Lending Act (TILA), specifies numerous disclosures lenders must provide, including interest rates, fees, and applicable repayment periods.

The disclosure requirements for open-ended credit (including cards intended to pay for health-related expenses) are particularly extensive. The regulation mandates various disclosures at each stage of engaging with consumers: advertising, soliciting or providing an application to a consumer, opening an account, periodic statements, and required annual disclosures.[9] On the application and again before a consumer makes their first transaction on a credit card, the lender must provide detailed information about important account terms in an easy-to-read and easy-to-understand format. Terms include the interest rate, any initial or variable rates, penalty rates, balance computation methods, any issuance fees, late payment fees, over the limit fees, returned payment fees, and many other terms.[10] On each periodic statement, the lender is required to disclose clearly and conspicuously the APR, due date, late payment costs, balance, previous balance, transactions, credits to the account, minimum payment estimate, and more.[11] To highlight important terms, the rule also specifies where and how certain disclosures must appear in the documents lenders provide consumers.[12]

TILA and Regulation Z reflect Congress' determination that robust disclosures of the terms and conditions of consumer financial products are the best means to protect consumers and encourage competition. Nothing in the RFI suggests a failure of this time-tested disclosure regime. However, the RFI posits without data or support, "In general, coupling the sale of financial products to consumers with the provision of medical care may create consumer harm."[13]

Banks that allow health care providers to make credit cards available in their offices have extensive vendor management programs to monitor the third-party relationship and ensure compliance with all applicable consumer financial protection laws and regulations. Banks administer their third-party risk management programs in accordance with interagency regulatory guidance issued by the federal banking regulators and include a variety of control and oversight mechanisms, including third-party due diligence, contractual requirements, and ongoing monitoring. In addition, the federal banking agencies examine bank third-party risk management programs for safety and soundness and compliance with applicable laws and regulations, including consumer protection requirements. To the extent that there may be isolated instances of overreach or abuse, we believe supervision and enforcement are the appropriate remedy, not additional regulation.

[9] *See generally* Regulation Z, 12 CFR §§ 1026.5-1026.16.
[10] 12 CFR §§ 1026.5(b), 1026.16.
[11] 12 CFR § 1026.7.
[12] *See e.g.* 12 CFR §§ 1026.5(a), 1026.60(a)(2), 1026.6(b)(1), 1026.7(b)(6), 1026.7(b)(13), 1026.7(b)(12).
[13] RFI at 44283.

V. Deferred Interest Products Can Provide Unique Consumer Benefits

The RFI expresses concern that consumers using "medical payment products" may face "deferred interest charges, and other adverse impacts,"[14] implying that deferred interest is adverse to consumers' best interests. However, deferred interest promotions allow consumers to make large purchases while delaying interest payments until the end of a set period. Frequently, this option is provided at no cost to the consumer. Deferred interest promotions are not unique to financing health-related expenses.

Deferred interest is popular because it allows consumers to make needed purchases and spread the payments over time without incurring interest charges, provided they repay the card's balance during the agreed-upon period. In the health and wellness context, this is particularly useful for consumers who need to meet an unexpected expense such as veterinary care for an injured pet or dental care for a chipped tooth.

Consumers are given detailed and specific information about what they must pay and by what date if they wish to avoid paying interest, and what will happen if they do not pay the purchase amount in full before the end of the deferred interest promotional period. Lenders must disclose specific terms of deferred interest promotions, in addition to providing standard credit card disclosures. Further, there are specific requirements relating to the advertisement of deferred interest promotional offers.[15] Written marketing materials must explain that if the consumer does not pay a deferred interest promotional purchase in full before the end of the promotional period, they will be charged interest from the date the consumer incurred the balance. [16] The first page of each periodic statement must display (in a form similar to the CFPB's sample disclosure) the date by which a deferred interest promotional balance must be fully paid for the borrower to avoid paying finance charges.[17] And, each periodic statement must clearly and conspicuously disclose the APR and deferred interest balance.[18]

In fact, consumers repay a substantial majority of deferred interest purchases before the end of the deferred interest promotional period, and therefore, benefit from receiving an interest free loan. According to a recent CFPB study, "the payoff rate on deferred interest healthcare products . . . remained just shy of 80 percent, between 2018 and 2020."[19] This demonstrates that most consumers not only understand the terms but also are able to plan their finances to take advantage of the deferred interest financing without paying interest.

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[14] Id.
[15] 12 CFR § 1026.16(h).
[16] Id.
[17] 12 CFR § 1026.7(b)(14).
[18] *See* 12 CFR § 1026.7(b)(1), Official Interpretation 1026.7(b)(1).
[19] CFPB, Medical Credit Cards and Financing Plans, May 2023, p. 15, https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/cfpb_medical-credit-cards-and-financing-plans_2023-05.pdf.

Deferred interest is a popular and valuable option for consumers. The CFPB's policymaking should not deprive consumers of this choice when paying for medical and wellness expenses.

VI. Conclusion

ABA welcomes the opportunity to work constructively with CFPB to advance consumers' access to affordable healthcare financing options. While the CFPB lacks authority to make healthcare policy and cannot solve the fundamental healthcare concerns of the RFI through financial services policy, it can help consumers by considering how to improve access to credit and therefore to health-related services. The CFPB should consider the many consumer protections in place to promote informed decision making by borrowers and should avoid reducing consumers' choices of credit products.

ABA appreciates the opportunity to comment on the RFI. If you have any questions or want to discuss any of these topics, please contact Hallee Morgan at hmorgan@aba.com or 202-663-7605.

Sincerely,

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