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Comment Intake
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Re: Prohibition on Inclusion of Adverse Information in Consumer Reporting in Cases of Human Trafficking, Docket No. CFPB–2022–0023/RIN 3170-AB12.

The undersigned survivor advocacy and consumer groups are pleased to submit these comments in response to the Consumer Financial Protection Bureau (CFPB)'s Notice of Proposed Rulemaking regarding the Prohibition on Inclusion of Adverse Information in Consumer Reporting in Cases of Human Trafficking, Docket No. 2022-0023, issued April 8, 2022.¹ This prohibition was added as Section 605C to the Fair Credit Reporting Act by the National Defense Authorization act (NDAA) of 2022, and is codified at 15 U.S.C. § 1681c-3.

The following comments are based on the experiences of organizations who advocate for or work with trafficking survivors² and consumer groups who have seen the difficulty consumers have in obtaining identity theft blocks.³ In summary:

A. We support the proposed rule's coverage of all consumer reporting agencies (CRAs), including specialty CRAs such as tenant screening and employment background check CRAs. Trafficking survivors can be harmed by criminal or eviction histories that resulted from the trafficking; such information in tenant screening and background check reports should not be a barrier for them to be able to access housing, employment, and other services to rebuild their lives. We also urge the CFPB to clarify that CRAs that report sealed or expunged criminal or eviction records risk violating the FCRA. Preventing reporting of sealed or expunged records will also help trafficking survivors avoid harmful information resulting from their trafficking.

B. The proposed rule's use of Regulation V's definition of "appropriate proof of identity" could prove to be a serious barrier to a trafficking survivor's ability to invoke the protections of Section 605C. The nationwide CRAs require onerous levels of identification that sometimes prevent consumers from placing an identity theft block or obtaining their file disclosures. The CFPB must prohibit the CRAs from demanding excessive requirements for identification in order to prevent undermining the purpose of Section 605C.

¹ 87 Fed. Reg. 20,771 (April 8, 2022).

² We recognize that the CFPB uses the term "victim" because that is the term in Section 605C. We use the term "survivor" in these comments.

³ These comments were authored by Chi Chi Wu, Carla Sanchez-Adams, and Ariel Nelson of National Consumer Law Center; Eliza Duggan of the Center for Consumer Law & Economic Justice at UC Berkeley School of Law; Naomi Young and Emily Sun of Her Justice; Teal Inzunza of Urban Resource Institute; and Erika Sussman of the Center for Survivor Agency and Justice.

C. The CFPB should broaden the allowable categories of documentation to show that the consumer is a trafficking survivor. Trafficking documentation should include determinations from any local, state, federal, or tribal organization that receives government funding to provide services to trafficking survivors. The CFPB should provide specific examples of documentation that would prove that a consumer is a trafficking survivor and a sample form. Documentation should be easily accessible by the survivor, and should not require any sensitive and personal information.

D. The proposed rule appropriately allows consumers to submit a statement self-attesting as to which items on their consumer reports are the result of human trafficking. The CFPB should also make clear in the Rule that survivors may seek removal of *any* items on their reports that are the result of trafficking, because whether an item is adverse may vary depending on the user of the report as well as the survivor's individual circumstances. The mere presence of information resulting from trafficking can be negative because it can remind the survivor of the abuse suffered from the trafficking and trigger heightened trauma responses by the survivor.

E. The proposed rule rightfully restricts when CRAs can decline a block to limited situations, but should make explicit in the rule itself that CRAs do not have the discretion to contest the survivor's trafficking documentation or their self-attestation that information resulted from trafficking. The rule should also state that if the survivor provides a type of documentation on an enumerated list, the CRAs have no discretion to reject it or deny relief. We also support the proposed rule's requirement to notify the survivor of the CRA's decision and to inform the survivor of a method to provide additional information or appeal a CRA's decision to decline or rescind a block.

F. We urge the CFPB to address the issue of coerced debt affecting survivors of other coercive and abusive familial relationships such as intimate partner abuse, elder abuse, and child abuse. Abusers use a multitude of methods to control survivors, including actual economic abuse or threats of such. Economic abuse affects an estimated 94% to 99% of women seeking services for intimate partner violence, and damage to credit is a common tactic. Foster youth and victims of elder abuse also experience coerced debt. The CFPB has broad regulatory authority, including expanding FCRA protections to other victims of coerced debt.

G. The CFPB should ensure there are no unintended consequences from the fact that Section 605C explicitly mentions court documentation regarding trafficking status. The Bureau should note that this fact does not undermine the determinative effect of other court decisions for other FCRA sections, such as Section 611 or 621.

A. The Protection for Trafficking Survivors Should Apply to Credit Reports and Specialty Reports.

- 1. Trafficking survivors can be harmed by criminal or eviction histories that resulted from the trafficking.*

We agree with the CFPB's decision to include all consumer reporting agencies (CRAs) in this rulemaking, including not just the nationwide CRAs but also specialty CRAs such as those

providing tenant screening reports and background checks. Not only do survivors of human trafficking need to be able to access the financial services that require credit, such as loans and credit cards, but they also need to be able to access housing, employment, and other services to rebuild their lives. Because many landlords, employers, and others rely on consumer reports — especially specialty reports — it is critical that survivors not be penalized for negative information on those reports that stemmed from trafficking.

Landlords and employers frequently use specialty consumer reports to evaluate potential tenants and employees. One survey from TransUnion found that 9 in 10 landlords use a tenant screening report when considering prospective tenants.⁴ Similarly, a survey conducted by HR.com and the Professional Background Screening Association found that 94% of employers use at least one type of background screening for prospective employees.⁵

Given the ubiquity of these reports, survivors of trafficking are particularly vulnerable to further abuse and poverty if their consumer reports contain records related to their survivor status — especially criminal and eviction records. In one survey, “over 90% of the survivors reported that they had been arrested at least once during the course of being trafficked.”⁶

Survivors also face eviction due to trafficking. In a survey from the anti-trafficking organization Polaris, 64% of survivors reported losing their housing due to trafficking and abuse.⁷ Eviction records and criminal records make it extremely difficult to find new housing and employment,⁸ which might push survivors back into the hands of traffickers. It is therefore crucial that survivors be able to remove criminal records and evictions resulting from trafficking from their consumer reports.

⁴ *How Tenant Screening Reports Make It Hard for People to Bounce Back from Tough Times*, Consumer Reports (Mar. 11, 2021), <https://www.consumerreports.org/algorithmic-bias/tenant-screening-reports-make-it-hard-to-bounce-back-from-tough-times-a2331058426/>.

⁵ H.R. Research Institute & Professional Background Screening Association, *Background Screening: Trends and Uses in Today’s Global Economy* (2020), <https://pubs.thepbsa.org/pub.cfm?id=459B8AB7-0CEA-625E-0911-A4A089DE5118>.

⁶ Ashleigh Pelto, *Criminal Record Relief for Human Trafficking Survivors: Analysis of Current State Statutes and the Need for a Federal Model Statute*, 27 Mich. J. Gender & L. 473, 475 (2021), <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1282&context=mjgl>.

⁷ Brittany Anthony, Polaris, *On-Ramps, Intersections, and Exit Routes: A Roadmap for Systems and Industries to Prevent and Disrupt Human Trafficking – Housing & Homelessness Systems* (July 2018) at 31, <https://polarisproject.org/wp-content/uploads/2018/08/A-Roadmap-for-Systems-and-Industries-to-Prevent-and-Disrupt-Human-Trafficking-Housing-and-Homelessness-Systems.pdf>.

⁸ See Sophie Beiers, Sandra Park, & Linda Morris, *Clearing the Record: How Eviction Sealing Laws Can Advance Housing Access for Women of Color*, ACLU (Jan. 10, 2020), <https://www.aclu.org/news/racial-justice/clearing-the-record-how-eviction-sealing-laws-can-advance-housing-access-for-women-of-color>; Rebecca Vallas & Sharon Dietrich, *One Strike and You’re Out: How We Can Eliminate Barriers to Economic Security and Mobility for People with Criminal Records* 9–10, 16–20 (Dec. 2014), <https://cf.americanprogress.org/wp-content/uploads/2014/12/VallasCriminalRecordsReport.pdf>.

Survivors need to be able to ensure the accuracy of all consumer reports that might be obtained about them and to remove items that would prevent them from accessing employment, housing, bank accounts, utilities, and other services. If some categories of CRAs are excluded, survivors will continue to face serious hurdles in accessing these necessary services.

For these reasons, we concur with the Bureau that the Rule should apply to all companies that generate consumer reports.

2. *Preventing reporting of sealed or expunged records will also help trafficking survivors avoid harmful information resulting from their trafficking.*

We also urge the Bureau to clarify that CRAs that report sealed or expunged criminal or eviction records risk violating the FCRA. Recognizing that lingering criminal records are a barrier to housing, jobs, and economic stability, forty-five states now have record-clearing laws that enable people to seal, expunge, or set-aside their convictions, and nearly all states authorize sealing of certain non-conviction records.⁹ Many states have provisions that specifically address offenses related to human trafficking, including some states that lack more general conviction-clearing laws.¹⁰ Similarly, a growing number of states have adopted eviction record-sealing laws.¹¹

These record-clearing laws should give survivors another way to keep criminal records and evictions resulting from trafficking off of their consumer reports. However, some specialty CRAs still report these sealed or expunged records to prospective landlords, employers, and others, often because of their reliance on outdated or imprecise data. In so doing, these specialty CRAs cause survivors to suffer additional harm.

To help ensure accurate reporting for survivors and all beneficiaries of record-clearing laws, the Bureau should clarify that reporting public records that have been sealed, expunged, or subject to similar relief may contravene the requirement in Section 1681e(b) that CRAs follow reasonable procedures to assure maximum possible accuracy of the information they report. The Bureau should further clarify that the reporting of sealed or expunged records may also violate the requirement in Section 1681k that a CRA that provides reports for employment purposes must “maintain strict procedures designed to insure that whenever public record information which is likely to have an adverse effect on a consumer’s ability to obtain employment is reported it is complete and up to date.”

⁹ Expungement, Sealing & Other Record Relief, Restoration of Rights Project, <https://ccresourcecenter.org/state-restoration-profiles/50-state-comparison-judicial-expungement-sealing-and-set-aside-2/> (last visited May 5, 2022).

¹⁰ *Id.*

¹¹ See National Consumer Law Center, *Defenses to Collection of Rental Debt*, NCLC Digital Library (Jan. 13, 2022), <https://library.nclc.org/defenses-collection-rental-debt#content-3>.

B. “Appropriate Proof of Identity” Could Be an Insurmountable Barrier for Trafficking Survivors Seeking to Invoke Their Right to Block Information.

The proposed rule’s use of Regulation V’s definition of “appropriate proof of identity” at 12 C.F.R. § 1022.123 could prove to be a serious barrier to a trafficking survivor’s ability to invoke the protections of Section 605C. CRAs, especially the nationwide CRAs, have a history of requiring onerous levels of identification in some cases, preventing consumers from placing an identity theft block or obtaining their file disclosures. The CFPB must clarify Regulation V or provide other guidance to prohibit excessive requirements for identification in order to ensure that Congress’s intent to protect trafficking survivors is not undermined. The CFPB must also ensure that whatever method is used by the CRAs to verify identity also protects the information and personal safety of survivors.¹²

The FCRA and Regulation V require proof of identity for good reason, *i.e.*, to ensure that a thief is not impersonating the consumer and stealing their information. However, it appears the CRAs are demanding unnecessary amounts of identification or rejecting a consumer’s proof for minor discrepancies, and that these demands are not “commensurate with an identifiable risk of harm arising from misidentifying the consumer” under Regulation V, § 1022.123(a)(2).

Proof of identity when consumers use the CRAs’ websites to obtain file disclosures usually involves being required to answer a series of questions, presumably allowed under Regulation V. *See* § 1022.123(b)(2) (additional proof of identity can include “answering questions to which only the consumer might be expected to know the answer”). However, these questions are frequently too difficult for consumers to answer, tripping them up. They often refer to non-existent credit accounts, which have been characterized as “trick questions.”¹³

Trafficking survivors, who may not have much information in their credit files, may be especially prone to receiving these trick questions.¹⁴ For example, due to the nature of the abuse they experience, many survivors of trafficking are moved from location to location without knowing the different addresses they have resided at, making it difficult to answer these questions. As a result of trauma, many survivors’ memories may make specific items of information (*e.g.*, accounts) difficult if not impossible to remember. This experience is very common with survivors of sexual violence. Or, as is often the case, when the information is the result of coerced debt or identity theft by the trafficker, the survivor likely does not know the answers to the questions.

¹² For example, Trans Union currently asks consumers for an email or phone number to send an authentication code that the consumer then utilizes to gain access to their consumer report. If the trafficker has utilized a phone number or email that does not belong to the survivor, then the trafficker can impersonate the survivor quite easily without the survivor’s consent.

¹³ *DeVries v. Experian Info. Sols.*, 2018 WL 1426602, at *1 (N.D. Cal. Mar. 22, 2018).

¹⁴ *Hicks v. Smith*, 2020 WL 5824031, at *1 (W.D. Ky. Sept. 30, 2020) (CRA asked consumer 3 security questions about non-existent mortgage and credit card accounts, denying him file disclosure and leading consumer to believe he had been the victim of ID theft).

If the consumer cannot answer the identification questions, the CRA may require them to provide a copy of a driver's license or state ID, utility bill, and bank or insurance statement.¹⁵ CRAs sometimes reject these documents for the flimsiest of reasons. In *Ogbon v. Beneficial Credit Services*,¹⁶ a CRA refused to place an identity theft block on a consumer's credit record because of insufficient proof of identity, even though the consumer provided a copy of her Social Security card, state-issued learners permit, and utility bill. The CRA rejected the block request due to a small discrepancy in the consumer's address (no unit number) on the latter two documents. In *Hicks v. Smith*, the consumer submitted a Social Security card, driver's license, and auto insurance bill, but Equifax refused to send a file disclosure because the driver's license did not list the consumer's current address even though the SSN card and insurance bill did.¹⁷

CRAs impose these onerous identification requirements despite the fact Regulation V provides that the CRA can ask for only the *minimum* amount of personal information necessary to be able to properly identify the consumer.¹⁸ Unfortunately, the courts have not given due weight to the use of the word "minimum," and have upheld the CRAs' overly onerous requirements for information. In *Singletery v. Equifax Info. Services*, the court held that it was reasonable under this "minimum of personal information" standard for a CRA to require that the address provided by the consumer be an exact match with the address on file with the CRA, even though the discrepancy was very minor.¹⁹

The CRAs' nitpicking about identification documents is compounded by the fact that trafficking survivors may not even have the required documentation because they do not have driver's licenses or state IDs, bank accounts, or insurance bills. Utility bills are not likely to be in their names. Their traffickers may have seized the survivors' other documents, such as passports, or the survivors might not have any documents at all if they do not have legal status in the U.S. or are minors. And as for matching addresses, trafficking survivors will have an especially hard time given they may have moved locations. Address matching also becomes more complex when trafficking survivors flee to domestic violence shelters whose addresses are intentionally kept confidential.

Note that in contrast to the excessive documentation requirements for an identity theft block or a free file disclosure, a consumer can obtain a file disclosure for a fee (or presumably with a credit monitoring subscription product) by simply providing first and last name, middle initial, current address, any generational information, and SSN.²⁰ And as noted by plaintiff's expert in *Singletery v. Equifax Info. Services*, there is an irony in that "Equifax's use of an 'exact match' protocol for identifying consumers requesting a disclosure defaults in favor of denying

¹⁵ DeVries v. Experian Info. Sols., 2018 WL 1426602, at *1 (N.D. Cal. Mar. 22, 2018).

¹⁶ Ogbon v. Beneficial Credit Serv., Inc., 2013 WL 1430467 (Apr. 8, 2013).

¹⁷ Hicks v. Smith, 2020 WL 5824031, at *1 (W.D. Ky. Sept. 30, 2020).

¹⁸ 12 C.F.R. §§ 1022.136(b)(2)(ii), 1022.137(a)(2)(ii).

¹⁹ Singletery v. Equifax Info. Servs., L.L.C., 2012 WL 4329273 (N.D. Ala. Sept. 18, 2012) (CRA permitted to reject consumer's request for file disclosure where house number listed on report was "116," and house number in his request was "1667"), *aff'd on other grounds*, 540 F. App'x 939 (11th Cir. 2013).

²⁰ DeVries v. Experian Info. Sols., 2018 WL 1426602, at *2 (N.D. Cal. Mar. 22, 2018).

disclosure, even though Equifax uses a ‘partial matching algorithm’ when searching for a consumer credit file in response to an inquiry from a subscriber creditor.”²¹

Dealing with the CRAs’ onerous requirements for identification is difficult enough for ordinary consumers, but it is often more burdensome and even traumatizing for survivors. If the survivors are foreign-born, they could face significant language barriers. If the survivor experienced trafficking as a minor, this process is essentially unavailable to them as they would not have access to most, or any, of the information requested. The necessity of having to recall addresses where survivors experienced multiple types of abuse and trafficking can interfere with the healing process of survivors, triggering heightened trauma responses.

Trafficking survivors will likely need a third party to assist them with blocking information, yet CRAs also impose significant identification and authorization barriers on third parties assisting consumers. In *Connecticut Fair Housing v. Arroyo*, specialty CRA Rental Property Solutions rejected repeated attempts by the mother of a disabled consumer to obtain a file disclosure.²² The CRA’s denial was based on the lack of an embossed seal on the copy of the certificate of conservatorship that the mother sent – despite the fact that the certificate was otherwise legible, and the mother also sent her driver’s license and the disabled consumer’s driver’s license.²³ It seems farfetched for the CRA to have been concerned that an identity thief would go to the trouble of obtaining and submitting physical copies of a court certificate and two driver’s licenses in order to obtain a tenant screening report. And as the CFPB knows, the CRAs often reject disputes if they believe a third party has assisted the consumer with a dispute, even if the third party is not a credit repair organization but a family member or even an attorney.²⁴

The CFPB should amend Regulation V or provide other guidance to prohibit the CRAs from imposing these types of excessive requirements for identification. The amendments or guidance should apply generally to all consumers, since the CRAs’ onerous requirements impact all sorts of vulnerable consumers – domestic violence survivors, foster youth, limited English proficient (LEP) consumers, and consumers with physical or mental challenges.

Most importantly, any amendments or guidance should require that CRAs must use a flexible, risk-based approach in their requirements for proof of identification. Thus, minor discrepancies must be not a barrier to a trafficking block, an identity theft block, or file disclosure. Consumers with no or thin files should not be given trick questions for identification. CRAs should not use identification measures for consumers that are more onerous than what they use for either users (creditors or collectors) or when they sell paid products.

Additionally, CRAs should be required to accept requests from third parties who are assisting vulnerable consumers such as trafficking survivors, LEP consumers, or disabled consumers

²¹ *Singletery v. Equifax Info. Servs., L.L.C.*, 2012 WL 4329273, at *6 (N.D. Ala. Sept. 18, 2012).

²² *Connecticut Fair Hous. Ctr. v. CoreLogic Rental Prop. Sols., LLC*, 478 F. Supp. 3d 259, 280-282 (D. Conn. 2020)

²³ *Id.*

²⁴ See Consumer Fin. Prot. Bureau, *Annual Report of Credit and Consumer Reporting Complaints* (2022), at 28 <https://bit.ly/3kkEWnq>; National Consumer Law Center, *Fair Credit Reporting* § 4.5.2.5 (9th ed. 2017), updated at www.nclc.org/library.

using a simple authorization form and limited documentation such as a driver's license. Or, similar to child welfare agencies helping foster youth, CRAs should be required to set up partnerships with state and local agencies and nonprofits – such as organizations that specifically work with survivors of abuse; crisis organizations (such as hotlines or walk-in centers); domestic violence and/or sexual violence agencies that provide counseling or advocacy services; trafficking-specific programs within non-profits; and any city, state, or federally funded program serving trafficking survivors – to allow them to assist survivors with trafficking blocks.

C. The CFPB Should Broaden the Allowable Categories of Documentation to Show That the Consumer Is a Trafficking Survivor.

1. “Trafficking documentation” should be interpreted broadly, to include determinations from any local, state, federal, or tribal organization that receives government funding to provide services to trafficking survivors and is subject to the terms and conditions of a government program.

We applaud the CFPB's emphasis on “flexibility” in determining the forms of documentation a trafficking survivor must provide to qualify for relief under Section 605C. It is critical that the Bureau not adopt an overly narrow interpretation of “trafficking documentation” that would cut off relief under Section 605C for all but a fraction of trafficking survivors. As the CFPB rightfully points out, nearly all trafficking survivors lack formal documentation from a government agency that states that they are a victim of trafficking.

The forms of government documentation for trafficking that currently exist are extremely limited in scope and are almost exclusively designed to provide immigration relief to survivors who are also undocumented. Thus, as the Bureau itself appears to recognize,²⁵ almost all trafficking survivors who do not require immigration relief (for example, those born in the US, those who have Legal Permanent Resident status, and those who have naturalized) will be unable to provide any formal governmental documentation stating that they are a victim of trafficking.

For these reasons, the CFPB must adopt an interpretation of “trafficking documentation” that is as broad as possible. Specifically, we advocate that allowable trafficking documentation should include documents from organizations that receive funding from the government to provide services to trafficking survivors, and not just the federal, state, local, or tribal government itself. We propose that any local, state, federal, or tribal organization that receives funding from a government agency to provide services to trafficking survivors and is subject to the terms and conditions of a government program should qualify as “a Federal, State, or Tribal governmental entity” under Section 605C(a)(1)(A).

The CFPB could promulgate a definition that includes documentation from government-funded organizations under Section 605C itself, or it could use its broad general rulemaking authority under Section 621(e) to “prescribe regulations as may be necessary or appropriate to administer and carry out the purposes and objectives of [the FCRA].” In order to carry out the purposes and objectives of Section 605C, the Bureau needs to expand the scope of allowable trafficking

²⁵ See 87 Fed. Reg. 20,773 (“documentation directly identifying a person as a victim of trafficking is scarce and is primarily limited to foreign-born persons”).

documentation to government-funded organizations, especially for survivors who do not need immigration relief.

Many of the government-funded organizations will be non-profit organizations that work directly with survivors and are well-known and trusted in their communities. These organizations are by far the most likely to have had actual contact with a trafficking survivor. The trained professionals who work in these organizations are in the best position to speak with a client, understand their personal background and history, and assess whether they are a trafficking survivor — all outside of systems that often directly harm or else exclude trafficking survivors, including the criminal legal system and many areas of law enforcement.

2. To make Section 605C actionable, the CFPB should provide specific examples of documentation that would prove a consumer is a trafficking survivor.

We appreciate that the CFPB is being sensitive to the harms of being overly narrow and prescriptive in its interpretation of “trafficking documentation.” But in order to have the relief contemplated by Section 605C be actually practicable and actionable, the CFPB should provide at least some concrete examples of what documentation would qualify as sufficient under Section 605. Otherwise, the proposed rule may not be sufficiently concrete and clear to require the CRAs to implement Section 605C’s protections effectively. Within this enumerated list of acceptable documentation, the CFPB should specify that an approved application for T Nonimmigrant Status and a grant of Continued Presence from the Center for Countering Human Trafficking (CCHT) would in all cases be sufficient for relief under Section 605C.

Importantly, while this list should include items that would always qualify as “trafficking documentation,” the rule should also emphasize that a survivor who does not have such documents would still qualify for relief under Section 605C by providing alternative forms of documentation. This should include, for example, documents from a government-funded organization that provides services to trafficking survivors, as discussed above.

3. Documentation that qualifies as “trafficking documentation” should be as easy to access as possible, and should not include any sensitive and personal information.

Many trafficking survivors are extremely traumatized by their experiences of being trafficked. In addition, many survivors are forced to navigate vast institutional systems as a result of their trafficking, including law enforcement, the criminal legal system, federal immigration law, and federal, state, and local victim services agencies. Having to interface with these systems can be an additional source of trauma. This is not surprising, given that many of these systems actively harm survivors, ranging from direct harm, such as when a survivor is subject to criminal prosecution for acts they were forced to engage in by their traffickers, to more indirect harm, such as when a survivor must recount their trauma in order to access a provider’s services.

In addition, many survivors live on the margins of society even before their trafficking, which results in constant discrimination or being treated as invisible. This marginalization both makes them vulnerable to trafficking in the first place and makes navigating institutional systems like the courts, healthcare providers, and supportive services extremely difficult. A trafficking survivor may face multiple barriers to access, including poverty, housing instability, general fear

and mistrust of institutions, language barriers, and lack of culturally competent services. It is thus not surprising that many survivors choose not to engage with institutional systems if they are able to avoid doing so. Many engage with these systems only when they have few alternatives, such as, for example, when they face the risk of deportation.

For these reasons, the process of obtaining the required “trafficking documentation” should be as simple and easy as possible for survivors to access. The steps required to obtain documentation should be brief and straightforward, and require minimal contact with federal, state, local, and tribal government programs and with the courts. This is fundamental to a trauma-informed approach. For survivors who are not seeking immigration relief, there should be a wide range of other documentation that qualifies and such documentation should be simple to obtain.

Specifically, we urge the Bureau to allow for self-attestation of trafficking, *i.e.*, that a trafficking survivor can self-identify as having been trafficked, provided that an authorized third party signs off on the self-attestation after an interview. The authorized third-party could be an employee in a government-funded organization that serves survivors, a government employee, or court personnel. Alternatively, the regulation could provide that the authorized third party may write a simple attestation/certification, such as: “I, [NAME], employee of [ORGANIZATION], certify that [NAME OF SURVIVOR] is a victim of trafficking.”

In signing off on a survivor’s self-attestation and/or certifying a survivor’s victim status, we emphasize that the language in the document must not contain any sensitive or personally identifying information. It is paramount that the details of a survivor’s experience remain confidential. A CRA does not need to know the specifics of a survivor’s trafficking victimization. Not only would requiring such information be potentially traumatic for a trafficking survivor, it would also be entirely irrelevant for the work of a CRA.

We suggest the language of any “trafficking documentation” be modeled after the language currently used by the DHS Center for Countering Human Trafficking when issuing notices of approval for Continued Presence. Such notices contain only the survivor’s name, with no further identifying information and no details about the person’s trafficking.

4. The CFPB should create a sample attestation form that can be used by local, state, federal, and tribal organizations that receive government funding.

In order to make the protections of Section 605C easily actionable, the proposed rule should provide a model attestation form that can be widely distributed to federal, state, and local non-governmental organizations that receive funding from the government. Then, when a trafficking survivor seeks to have negative information removed by a CRA and approaches a non-governmental organization for assistance in doing so, that non-government organization will have a template document for producing the trafficking documentation required by the proposed rule.

As noted above, we suggest the follow language: “I, [NAME], employee of [ORGANIZATION], certify that [NAME OF SURVIVOR] is a victim of trafficking.” The only other information that might be required is a brief explanation of how and under what terms the named organization receives government funding to provide services to trafficking survivors (*e.g.*, a public school; a

public hospital; a government-funded organization that provides counseling or advocacy services to domestic violence and/or sexual violence survivors; or a non-profit with a trafficking specific program).

D. The Proposed Rule Appropriately Allows Self-Attestation Regarding Which Items Are the Result of Trafficking.

We strongly support the provision of the Proposed Rule that allows consumers to submit a statement to CRAs identifying which items on their consumer reports are the result of human trafficking.²⁶ The Bureau should also make clear in the Rule that survivors may identify *any* items on their reports that are the result of trafficking.

The self-attestation provision is critical. Only survivors know which items on their consumer reports have resulted from being trafficked. Allowing survivors to identify these items to the CRAs will help ensure an accurate and expedient process. Requiring any extra documentation proving that the individual items were the result of trafficking would place needless burdens on survivors.

The self-attestation used to create an FTC Identity Theft Report serves as an instructive example. The FTC allows consumers to generate an Identity Theft Report by self-attesting that items on their credit reports resulted from identity theft.²⁷ Under section 605B of the FCRA, if the consumer presents an FTC Identity Theft Report, CRAs must honor a request to block this information from the consumer report.²⁸ Survivors of human trafficking should similarly be able to self-attest that items on their consumer reports are the result of trafficking and should be removed.

Further, the CFPB should include in the rule itself that survivors of human trafficking may identify *any* piece of information on their reports resulting from trafficking. In the Supplementary Information, the Bureau states that it “is not proposing to prescribe what an ‘adverse item of information’ in a ‘consumer report’ is, because it may vary depending on the weight each individual user of a consumer report gives to certain items of information as well as the consumer’s individual circumstances.”²⁹ This important concept should be included in the regulation itself.

Given the breadth of information captured in consumer reports, survivors likely could identify a wide swath of information that arose from trafficking. Traffickers coerce survivors into taking

²⁶ Proposed 1022.142(b)(6)(ii) (“Documentation, which may consist of a statement by the consumer, that identifies items of adverse information that should not be furnished by a consumer reporting agency because the items resulted from a severe form of trafficking in persons or sex trafficking of which the consumer is a victim.”).

²⁷ Federal Trade Commission, IdentityTheft.gov, <https://www.identitytheft.gov/> (last visited Apr. 28, 2022).

²⁸ 15 U.S.C. § 1681c-2(a).

²⁹ 87 Fed. Reg. at 20,775.

out large loans,³⁰ or make them take out credit cards and put thousands in expenses on the cards³¹ — and then never pay the bills. Such information may readily be categorized as arising from trafficking and should be removed from a consumer’s report.

But information that arose from trafficking beyond loans and credit cards can also appear on a survivor’s report. Therefore, survivors should be able to identify and remove any information that arose from trafficking — even if that information does not seem inherently “adverse.”

For instance, survivors of human trafficking are likely to move frequently. Survivors of sex trafficking in particular might be convinced to move to new towns by a potential intimate partner who may promise love or a relationship, and then be forced to go to various locations that become popular for sex work.³² As a result of the trafficking, a survivor might have many residential addresses on their reports. A prospective landlord might interpret a large number of residential addresses on a survivor’s consumer report to mean that they would be a high-risk tenant. A survivor should therefore be able to have CRAs remove such information as the result of trafficking.

Survivors should be able to identify inaccurate pieces of information even if they do not result in a lower credit score or less favorable evaluation by a user.³³ In addition to promoting accuracy and the purposes of Section 605C, the continued presence of information resulting from trafficking can remind the survivor of the abuse suffered from the trafficking and trigger the survivor.

Allowing survivors to self-attest to which information on their reports arose from trafficking will help ensure the maximum possible accuracy of the reports. In sum, the Bureau should include the self-attestation provision in the rule and clarify that survivors may attest to any information on their reports that resulted from trafficking.

E. The Proposed Rule Rightfully Limits When CRAs Can Decline a Block and Requires Them to Notify the Survivor of Their Decision.

Proposed section 1022.142(e) provides that a consumer reporting agency may decline or rescind a trafficking block for only three reasons: (1) the CRA cannot reasonably confirm the appropriate proof of identity; (2) the consumer cannot provide documentation of their status as a trafficking survivor; or (3) the CRA cannot properly identify the adverse items of information that the consumer has identified as resulting from trafficking under proposed § 1022.142(b)(6)(ii). The

³⁰ Brittany Anthony, Polaris, *On-Ramps, Intersections, and Exit Routes: A Roadmap for Systems and Industries to Prevent and Disrupt Human Trafficking – Housing & Homelessness Systems*, (July 2018) 4, <https://polarisproject.org/wp-content/uploads/2018/08/A-Roadmap-for-Systems-and-Industries-to-Prevent-and-Disrupt-Human-Trafficking-Financial-Industry.pdf>.

³¹ Polaris, *New Legislation Provides Survivors with a Path to Financial Freedom* (Jan. 4, 2022), <https://polarisproject.org/blog/2022/01/new-legislation-provides-survivors-with-a-path-to-financial-freedom/>.

³² Aryn Baker, *She Survived Sex Trafficking. Now She Wants to Show Other Women a Way Out*, Time (Jan. 17, 2019), <https://time.com/longform/windie-jo-lazenko-sex-trafficking-survivor/>.

³³ 87 Fed. Reg. at 20775.

CFPB states in the Supplemental Information that the proposed rule does not give CRAs the discretion to contest the merits of the submitted trafficking documentation or to challenge a consumer's determination that an adverse item of information resulted from trafficking. We support the proposed rule as well as the statement in the Supplemental Information, but we have a number of concerns.

First, we have concerns regarding the requirement to submit appropriate proof of identity, which we discuss in Section B, and we believe the sources of allowable documentation of trafficking should be expanded, as discussed in Section C. Second, we urge the CFPB to explicitly state in the proposed rule that CRAs do not have the authority to reject the survivor's documentation of trafficking or their determination that information resulted from trafficking. As discussed in Section C, the proposed rule should include an enumerated list of acceptable documentation and should state that if the survivor provides a type of documentation on this list, the CRAs have no discretion to reject it or deny relief.

Explicit statements are necessary because a prohibition by omission may not be enough to protect trafficking survivors from such rejections, and courts may very well allow such rejections by the CRAs without a clear statement. We urge the CFPB to make the CRAs' lack of discretion explicit because courts have allowed CRAs to reject consumers' requests to block identity theft-related items for reasons that are not set forth in Section 605B(c). That subsection only permits CRAs to decline or rescind a block on the basis that:

- (A) the information was blocked in error or a block was requested by the consumer in error;
- (B) the information was blocked, or a block was requested by the consumer, on the basis of a material misrepresentation of fact by the consumer relevant to the request to block; or
- (C) the consumer obtained possession of goods, services, or money as a result of the blocked transaction or transactions.

15 U.S.C. 1681c-2(c).

Yet in the limited number of cases interpreting Section 605B, courts have permitted CRAs to decline blocks because supposedly the identity theft reports were insufficient. The minor technical flaws that allowed CRAs to reject blocks include:

- That a police report lacked dates of birth, SSNs, or sufficient details about the identity theft, even though the consumer provided such information separately.³⁴
- That a police report was not an "identity theft report" because the report was initiated by a police investigation and not originally filed by the consumer.³⁵

These decisions ignore the fact that Section 605B(c) does not give a CRA the authority to decline a block based on any of these factors.

³⁴ *Huffman v. Experian Info. Sols., Inc.*, 2021 WL 1561304 (N.D. Cal. Apr. 14, 2021).

³⁵ *Thomas v. Early Warning Serv., L.L.C.*, 2012 WL 37396 (D. Md. Jan. 5, 2012).

As discussed in Section B, courts have also allowed CRAs to decline blocks for nitpicky flaws in the proof of identity documents. Again, Section 605B does not give CRAs the authority to decline a block because the address in the request did not exactly match the address in the consumer's file, such as omitting an apartment number, especially when the consumer has submitted more than sufficient information that the consumer is who they claim to be (*e.g.*, by providing drivers licenses and Social Security cards). Indeed, FCRA practitioners have complained that CRAs have refused to institute blocks for the flimsiest of reasons, such as a police report does not bear the individual officer's signature or an official police department seal – which many police reports do not include.

Thus, we urge the CFPB to explicitly include in the rule a statement that a CRA cannot decline a trafficking survivor's request to block items that they have identified as resulting from trafficking for reasons other than those listed in proposed § 1022.142(e). The rule should state that invalid reasons for declining a block include a challenge to the merits of the submitted trafficking documentation or the consumer's determination that an adverse item of information resulted from trafficking.

Furthermore, we support the requirement in proposed § 1022.142(f)(2)(V) that CRAs must provide a method for a survivor to appeal a determination or revise their submission to cure any stated reasons for declining to a block, and must inform the survivor of these procedures. The survivor should be given an opportunity to contest a determination or provide additional information. However, we oppose allowing the CRA to demand specific additional items of information before it will approve a trafficking block. In the context of identity theft blocks, while Regulation V, § 1022.3(i)(1)(iii) states that such requests for additional information should be "reasonable," CRAs appear to have ignored that word. As discussed in this Section and Section B, a number of court decisions have upheld nitpicky and onerous requests by CRAs for specific items in an identity theft report or for proof of identity.

F. The CFPB Should Address the Problem of Coerced Debt Generally.

The passage and implementation of Section 605C demonstrate that it is not only possible to protect trafficking victims from the adverse effects of debt arising from abuse, but it is critical to do so. The very nature of the relationship between the trafficker and the victim is one of coercive control. As a result, many debts in a trafficking victim's consumer report are likely the result of coercion. These types of coercive debts are akin to those found in other coercive and abusive relationships such as intimate partner abuse, elder abuse, and child abuse.

Thus, we petition the CFPB to use its broad regulatory authority to expand FCRA protections for other victims of coerced debt.

1. The problem of coerced debt.

Abusive persons in coercive relationships with survivors utilize different methods to control them, including actual or perceived threats of physical, emotional, psychological, and economic abuse. Economic abuse involves behaviors that control a person's ability to acquire, use, or

maintain economic resources, therefore destabilizing that person's financial security.³⁶ Economic abuse surfaces most in the context of intimate partner violence, where researchers estimate that between 94 and 99% of women seeking services for intimate partner violence have experienced economic abuse.³⁷ Foster youth and victims of elder abuse also experience coerced debt.³⁸

While economic abuse spans a wide array of abusive behavior, damage to credit is one predominant tactic abusers use to exert control over survivors. This phenomenon has become increasingly prevalent, as consumer lending has permeated American life, making "the consumer credit system an unknowing party to domestic violence."³⁹ Abusive partners destroy credit by fraudulently opening accounts in a survivor's name, lying about paying bills in a survivor's name, overcharging credit accounts, or coercing survivors to sign for loans, credit lines, or other expenses. This type of activity is known as "coerced debt," defined as "all non-consensual credit related transactions that occur in a violent relationship."⁴⁰ The credit transactions happen either as fraudulent transactions, where the survivor had no knowledge of the transaction, or under force, duress, and coercion, where a survivor enters into the credit transaction out of fear of continued abuse or retaliation for refusing to do so.⁴¹ Thus, coerced debt encompasses debt obtained through fraud, coercion, or a mixture of both.

Evidence of coerced debt has emerged in several studies. One recent study found that 52% of survivors experience coerced or fraudulent debt.⁴² In a qualitative study of 187 women stalked by former intimate partners, 22.5% had abusive partners who exerted financial control over them, including opening credit cards in their names.⁴³ In developing the Scale of Economic Abuse (SEA), researchers found that 39% of the 103 women who were interviewed and were seeking services for domestic violence had debt built under their name by their partners putting a car, apartment/house, or credit card in their name; 53% reported that their partner had used their checkbook, ATM card, or credit card without their permission and/or knowledge; and 68% reported that their partner had forced them to give him money or let him use their checkbook,

³⁶ A.E. Adams et al., *Development of the scale of economic abuse*, 14 *Violence Against Women* 563 (2008).

³⁷ *See id.*; J.L. Postmus et al., *Understanding economic abuse in the lives of survivors*, 27 *J. of Interpersonal Violence* 411 (2011). It should also be noted that LGBTQ survivors and minorities experience economic abuse at heightened levels.

³⁸ Though most studies on coerced debt focus on women, advocates have noted that men experience coerced debt as well.

³⁹ A. Littwin, *Coerced Debt: The role of consumer credit in domestic violence*, 100 *Calif. L. Rev.* 951-1026 (2012).

⁴⁰ *Id.* at 954.

⁴¹ *Id.* *See also* Texas Coalition on Coerced Debt, *Coerced Debt Toolkit 5* (accessed January 6, 2022) <https://static1.squarespace.com/static/5b58f65a96d455e767cf70d4/t/5db9b935e23d740b8a63a3e1/1572452676432/CD+Toolkit+PDF+version.pdf>

⁴² Adams, A.E., Littwin, A.K., & Javoroka, M., *The Frequency, Nature and Effects of Coerced Debt Among a National Sample of Women Seeking Help for Intimate Partner Violence*, *Violence Against Women* (2019).

⁴³ M.P. Brewster, *Power and control dynamics in prestalking and stalking situations*, 18 *J. of Fam. Violence* 207 (2003).

ATM card, or credit card.⁴⁴ The connection between abuse and debt is substantiated by findings from the 2007 Consumer Bankruptcy Project (CBP), showing that 17.8% of the 258 married and cohabitating female participants experienced intimate partner abuse in the year they filed for bankruptcy. This rate is much higher than the rates of abuse found in studies of the general population of women, which range from 1.5% to 9.8% in samples of women most comparable with that of the CBP, suggesting a strong connection between abuse and financial distress.⁴⁵

As part of its report to the Maine Commission on Domestic and Sexual Abuse, the Maine Coalition to End Domestic Violence (MCEDV) asked survivors of domestic violence a series of questions related to economic abuse, including coerced debt. MCEDV found that 40% of the respondents indicated that their partners falsely used their identity without their knowledge; 36% reported that their identities were used to access credit or set up utilities; and 72% of the respondents said their partners often claimed they were paying bills when they were not.⁴⁶ In fact, 57% of those surveyed reported that their abusive partners incurred debt using their name.⁴⁷

Coerced debt has a long-lasting impact on whether a survivor will have access to credit, employment, or housing. As already discussed, because consumer reports are routinely used by creditors, potential employers, and landlords to make determinations about an applicant, the appearance of coerced debt negatively impacts survivors' ability to obtain desperately needed credit, employment, or housing. Abusive partners utilize the consumer credit system to leave many survivors of domestic violence with hundreds or thousands of dollars of coerced debt appearing on their credit report; 46% of domestic violence survivors who experience coerced or fraudulent debt reported damage to their credit histories.⁴⁸

If survivors with credit damage due to coerced debt are unable to obtain credit from traditional lenders, they may be driven to borrowing from predatory sources such as payday lenders. These high-cost loans aggravate an already desperate financial situation, trapping survivors in insurmountable debt.⁴⁹ Consumer debt judgments may lead to wage garnishment and bank account restraint, leaving survivors unable to afford their day-to-day needs. In New York City,

⁴⁴ A.E. Adams et al., *Development of the scale of economic abuse*, 14 *Violence Against Women* 563 (2008).

⁴⁵ A. Littwin, *Coerced Debt: The role of consumer credit in domestic violence*, 100 *Calif. L. Rev.* 954 (2012).

⁴⁶ *A Report on the Impact of Economic Abuse on Survivors of Domestic Violence in Maine*, Presented to the Joint Standing Committee on Judiciary, February 7, 2019, at 14, www.mcedv.org/wp-content/uploads/2019/02/Economic-Abuse-Report_FINAL.pdf.

⁴⁷ *Id.* In recognition of the dangers of economic abuse, Maine passed a law amending its debt collection and credit reporting statutes; more specifically, the law prohibits CRAs from reporting debt that resulted from economic abuse. See 10 MRSA §1310-H(2-A).

⁴⁸ Adams, A.E., Littwin, A.K., & Javoroka, M., *The Frequency, Nature and Effects of Coerced Debt Among a National Sample of Women Seeking Help for Intimate Partner Violence*, *Violence Against Women* (2019).

⁴⁹ One advocate in Texas interviewed a survivor who had obtained a high-cost payday loan to pay off coerced debt fraudulently obtained by an abuser. While she would have had a legal defense to non-payment of the fraudulent coerced debt, she had no recourse for the high cost loan used to pay it off, and had sacrificed other necessities to repay the high cost loan.

more than one in three survivors who seek domestic violence-related legal services also has a consumer debt issue.⁵⁰

Furthermore, survivors of domestic violence are apt to stay in abusive relationships if ending the relationship would result in poverty or homelessness. If children are involved, survivors are even more prone to stay in an abusive relationship in order to shield their children from economic instability. The number one reason why survivors do not leave abusive relationships is because they cannot afford to leave or to stay safe if they leave.⁵¹ The threat of homelessness⁵² is not an idle threat; approximately 22%-55% of women experience homelessness as a result of domestic violence, with approximately 38% of all domestic violence survivors becoming homeless at some point in their lives.⁵³ As a result, perpetrators use the damage to credit histories that they inflict to gain further financial control over survivors' current and future economic choices.⁵⁴

Without the ability to remove adverse items resulting from abuse from their credit reports, survivors of economic abuse and coerced debt in the United States are unlikely to recover and find independence and safety. Because coerced debt encompasses debt that is taken out in the name of a victim without their consent, some survivors may already have an avenue for relief under 15 U.S.C. §§ 1681c-2, 1681i, and /or 1681s-2. However, survivors' experiences with coerced debt do not always fit neatly within legal definitions of identity theft. For those survivors who were coerced into credit transactions, there is no explicit existing relief under the FCRA. These survivors may have no legal recourse for removing adverse items from credit reports unless they can allege identity theft⁵⁵ or, now with the passage of Section 605C, that the debt arose from human trafficking.

We urge the CFPB to consider how its role in regulating CRAs through the implementation of 605C may be extended to provide relief for all survivors of economic abuse and coerced debt.

2. The CFPB has regulatory authority to address coerced debt under the FCRA.

The CFPB has broad rulemaking authority under the FCRA. Section 621 of the FCRA, 15 U.S.C. § 1681s(e), authorizes the CFPB to “prescribe regulations as may be necessary or

⁵⁰ *Denied! How Economic Abuse Perpetuates Homelessness for Domestic Violence Survivors (“Denied! Report”)*, www.fordham.edu/download/downloads/id/11883/denied_how_economic_abuse_perpetuates_homelessness_for_domestic_violence_survivors.pdf (accessed January 24, 2022).

⁵¹ *Id.* at 3. Consumer debt judgments may lead to wage garnishment and bank account restraint, leaving survivors unable to afford their day-to-day needs.

⁵² Among mothers with children experiencing homelessness, more than 80% had previously experienced domestic violence. Y. Aratani, *Homeless Children and Youth, Causes and Consequences*, Nat’l Ctr. For Child. In Poverty (2009).

⁵³ *Domestic Violence and Homelessness Statistics*, Fam. & Youth Services Bureau (2016), www.acf.hhs.gov/fysb/resource/dv-homelessness-stats-2016.

⁵⁴ A. Littwin, *Coerced Debt: The role of consumer credit in domestic violence*, 100 Calif. L. Rev. 954 (2012) at 951.

⁵⁵ Some states may have identity theft statutes or definitions of identity theft that incorporate coercion. See Texas Penal Code §§ 32.51(b) and 1.07(a)(19); Texas Business and Commerce Code § 521.051.

appropriate to administer and carry out the purposes and objectives of [the FCRA], and to prevent evasions thereof or to facilitate compliance therewith.”⁵⁶

One of the key purposes of the FCRA is to ensure that CRAs “exercise their grave responsibilities with fairness [and] impartiality.” 15 U.S.C. § 1681(a)(4). There is no fairness in allowing a survivor to be saddled with negative information about debts that impair their ability to obtain life necessities, when such debts were the result of coercion and fraud by an abuser. We therefore urge the CFPB to use its authority under the FCRA to address the problem of coerced debt in consumer reports.

G. The CFPB Should Avoid Unintended Consequences from the Section 605C Trafficking Provisions on Section 611 Disputes.

The CFPB should ensure there are no unintended consequences from Section 605C that would impact the ability of consumers under Section 611 to remove inaccurate information from their credit report. Section 605C provides that documentation of status as a trafficking survivor can include a determination made by a court of competent jurisdiction. The fact that Section 605C explicitly mentions court decisions regarding trafficking status should not imply that other types of court decisions, such as a dismissal with prejudice of a collection action because the debt collector has failed to prove a consumer owes a debt, are not determinative for other FCRA sections, such as Section 611 or 621.

This is especially important because the nationwide CRAs have a history of ignoring court determinations that a consumer does not owe a debt, even after the consumer sends them a dispute with the court decision. NCLC’s report *Automated Injustice Redux* includes several examples of this problem,⁵⁷ which is a result of the nationwide CRAs’ bias in favor of furnishers in Section 611 disputes. The nationwide CRAs will often uncritically accept or “parrot” a furnisher’s response to a dispute, even a court decision is to the contrary.

It would be ironic and terrible if Section 605C — passed to help and protect a class of vulnerable consumers — resulted in hurting other consumers by making it even harder for other consumers to remove inaccurate information from their credit reports. The CFPB should prevent this result by making clear that Section 605C’s mention of court determinations does not have any implications for the determinative effect of other court decisions under any other section of the FCRA, including Section 611.

H. Other Questions.

The CFPB asks for comment about a number of other specific issues or provisions in the proposed rule. The following are our responses.

⁵⁶ As added by the Dodd-Frank Act § 1088(a)(10)(E), 124 Stat. 2090.

⁵⁷ Chi Chi Wu, et al., National Consumer Law Center, [Automated Injustice Redux: Ten Years after a Key Report, Consumers Are Still Frustrated Trying to Fix Credit Reporting Errors](#), Feb. 25, 2019.

1. The CFPB asks whether CRAs should be required to send a notification to information furnishers that information has been blocked because it resulted from trafficking.

Response: We normally would support notifying the furnisher of the deletion or blocking of information. However, we are concerned that providing a notification in this case could result in negative consequences to the survivor by alerting the trafficker about the survivor's activities. For example, if a debt collector learns that a trafficking survivor has blocked a collection item, the collector might then start contacting the trafficker in seeking to collect on the debt.

2. The CFPB asks for comments regarding its proposed § 1022.142(d), which would require CRAs to accept trafficking documentation at the mailing and website addresses used for disputes under Section 611 of the FCRA.

Response: We support the proposed requirement for CRAs to accept requests for trafficking at any addresses and via any channels that consumers can use to submit a dispute under Section 611.

3. The CFPB has asked whether adverse items resulting from trafficking should simply be blocked from being reported as proposed, or should be deleted from the consumer's file (or the file be modified as appropriate).

Response: We believe the adverse items should be deleted. We have seen too many instances where inaccurate information was "soft deleted" or merely suppressed after a dispute, only to reappear or be "reinserted."⁵⁸

4. The CFPB asks for comments regarding its proposed § 1022.142(f) requiring CRAs to provide a notice to the consumer of whether it is accepting or declining/rescinding a block request, along with a copy of a revised consumer report if the block is instituted.

Response: We support the CFPB's proposed notification. Consumers should not be left in the dark as to a CRA's decision to accept or decline a block request. And if the block is accepted, obtaining a revised report helps the survivor confirm the block and see the impact in context.

Finally, we support the CFPB's proposed record retention requirement as reasonable.

⁵⁸ See National Consumer Law Center, Fair Credit Reporting § 4.7 (9th ed. 2017), *updated at* www.nclc.org/library.

* * *

Thank you for the opportunity to submit these comments and for your work to ensure that survivors have the ability to remove information that resulted from trafficking. If you have questions about these comments, please contact Chi Chi Wu at cwu@nclc.org or 617-542-8010.

Respectfully submitted,

Organizations

National Consumer Law Center
(on behalf of its low-income clients)
Center for Survivor Agency and Justice
Center for Consumer Law & Economic Justice, UC Berkeley School of Law
Her Justice
Americans for Financial Reform Education Fund
Center for Digital Democracy
Consumer Action
Consumer Federation of America
Domestic Violence & Consumer Law Working Group of New York City
National Association of Consumer Advocates
Public Law Center
Texas Appleseed
Texas Council on Family Violence
The Legal Aid Society (NY)
The National Domestic Violence Hotline
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