



Legal Strategies to Address Coerced Debt

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Introduction

Coerced debt happens at the intersection of economic abuse and identity theft.¹ In relationships where economic abuse is present, an abuser utilizes credit and debt to control, harm, or in other ways limit their partner², resulting in coerced debt. Coerced debt encompasses both traditional identity theft and transactions where coercion was used to force a victim to take on debt. It is a common misconception that identity theft occurs only when a stranger—not an intimate partner—steals someone's personal identifying information; it is also a widely held though mistaken belief that, "an identity theft victim is responsible for repaying debt when the identity theft is [committed by] his or her spouse."³

Coerced debt creates barriers to economic independence for survivors of domestic violence.⁴ This chapter provides legal strategies to help victims of coerced debt by using identity theft protections under federal and state law. Additionally, the Texas Coalition on Coerced Debt offers a coerced debt toolkit with helpful resources and information that can be accessed at: <http://financialabusehelp.org>. It includes a coerced debt screening tool, guidance on identifying and disputing coerced debts, and helpful forms. The Center for Survivor Agency and Justice, in conjunction with the National Consumer Law Center, provides a screening tool for consumer lawyers to use to identify domestic violence and economic abuse more generally.⁵

Using federal law to help victims of coerced debt

A. THE FAIR CREDIT REPORTING ACT

The Fair Credit Reporting Act (FCRA)⁶ provides relief for consumers with inaccurate information in their consumer reports, including specific protections for identity theft victims.⁷ Since credit reporting affects almost every aspect of our financial system, the appearance of coerced debt on a victim's consumer report is one of the most negative consequences of coerced debt. It impacts the ability of a survivor to get housing, employment, a car loan, or other access to credit.

The FCRA includes unique protections for identity theft recovery such as fraud alerts and a block of all inaccurate information on a consumer report that resulted from the identity theft.⁸ Other rights under the FCRA include, but are not limited to:

1. The right to obtain a free security freeze restricting access to the consumer's credit report;⁹
2. The right to dispute fraudulent or inaccurate information appearing on a consumer report and the right to receive results of the investigation of the dispute;¹⁰
3. The right to obtain a free copy of a consumer's credit report every twelve months from each of the three nationwide consumer reporting agencies; and¹¹
4. The right to obtain all information in the consumer's credit file.¹²

Security Freeze

A security freeze (or a credit freeze) is a protection guaranteed by the FCRA to all consumers, not just victims of coerced debt. It is the most secure way to protect a coerced debt victim's credit because it restricts access to the victim's consumer report.¹³ A security freeze will not help with accounts that have already been opened, but it will prevent any new accounts from being opened by the abuser. As a result, this is usually one of the very first steps a victim of coerced debt should take to prevent further coerced debt.

A security freeze prevents coerced debt victims and anyone else from opening accounts in the victim's name since it prevents a lender (user) from accessing credit reports altogether.¹⁴ Security freezes are free¹⁵, and no documentation, (i.e. a police report or identity theft affidavit), is required to obtain the freeze.

When a victim places a security freeze, potential creditors and, in some cases, other third parties will not be able to get access to the consumer's credit report, unless the consumer temporarily or permanently lifts the freeze.¹⁶ A security freeze does not prevent victims of coerced debt from accessing their own reports to verify that no new accounts or other fraudulent activity has occurred.¹⁷

There are exceptions as to who can view the victim's credit report while a freeze is in place¹⁸, some of which include:

- Creditors of existing accounts; ¹⁹
- Certain government entities like child support agencies;²⁰
- Any federal, state, local, private collection, or law enforcement agency, or trial court acting pursuant to a court order, warrant, or subpoena;²¹
- Companies hired to monitor credit file to prevent fraud;²²
- Insurance underwriting;²³
- Any entity using the information for employment, tenant, or background screening purposes.²⁴

However, it may be a good idea for a victim of coerced debt to temporarily lift a freeze if they know they will be applying for housing or employment as some advocates have heard stories where the freeze may create obstacles in these scenarios.

In order to place a security freeze, the victim must request the freeze from each of the CRAs and send proper identification.²⁵ The CRAs must place the freeze within one business day if the request was made by telephone or electronic means, (for example, on the CRA's website), and within three business days if the request was made by mail.²⁶ Once the CRA has placed the freeze, it has five business days to send confirmation of the freeze's placement to the victim and provide the victim information on how to remove the freeze.²⁷ This will usually include a PIN that the victim will need to lift the freeze.

A security freeze remains in place until the victim removes it²⁸ or chooses to temporarily lift it²⁹, (often called a thaw). If the victim requests a thaw, they can specify the time period of the thaw; they can even request that the freeze be lifted for one creditor in particular. If the victim requests a removal or a thaw³⁰, then CRA must remove it within one hour if the request was made by phone or electronic means, or three business days if the request was made by mail.³¹

A security freeze is the best way to prevent new accounts from being opened in the victim's name, but because a victim will need to be proactive to lift a freeze everytime they may need credit, a victim should consider the timing of the freeze and weigh any immediate need for credit with the possible threat of further coerced debt.

Fraud Alerts

Fraud alerts are a protection offered by the FCRA to identity theft victims. Coerced debt victims can request two types of fraud alerts to be included in their credit files, an initial fraud alert and an extended alert.³² A fraud alert is a safety mechanism that is supposed to protect a victim's credit file when their personal information has been compromised. The fraud alert notifies lenders and other businesses (users of the credit reports) that the victim does not authorize the establishment of any new credit plan or an extension of credit, issuance of an additional card on an existing credit account, or any increase in the credit limit on any existing account; but an extension of credit under an existing open-end credit account (e.g., a credit card) is exempt.³³

The most common coerced debt occurs when an abusive partner opens new credit card accounts in the name of the victim. Since the fraud alert "protection" exempts new open-end credit accounts, it is often ineffective at preventing additional coerced debt. When a victim requests a fraud alert from any one of the three nationwide CRAs, then that CRA must notify the other two³⁴ who must also include the alerts in their files.³⁵

Initial Fraud Alerts

Victims of coerced debt do not need to have an identity theft report to request an initial fraud alert; they must merely assert a “good faith suspicion” that they are or might be a victim of identity theft or fraud.³⁶ This standard makes an initial fraud alert appealing for coerced debt victims who are unable to provide an identity theft report. The victim does, however, need to provide proof of identity to obtain the initial fraud alert.³⁷ An initial alert only lasts one year³⁸, so if a coerced debt victim can provide an identity theft report, the extended fraud alert may be a better option. A victim can renew the initial fraud alert every twelve months if need be.

Once the alert is included in the victim’s credit file, the CRAs must present to users of the report a “clear and conspicuous” view of the alert³⁹, notifying them that the victim may be a victim of fraud, including identity theft.⁴⁰ A user of a report containing an initial fraud alert may not proceed with a credit transaction, unless the user “utilizes reasonable policies and procedures to form a reasonable belief that the user knows the identity of the person making the request.”⁴¹ It is important for a victim of coerced debt to provide a means of contact such as an email or phone number should any potential creditors attempt to verify the identity of the person attempting to obtain credit.

The “reasonable policies and procedures” that are supposed to be put in place by creditors do not actually prevent identity thieves from taking out new credit if, for example, the application is completed online. Additionally, an initial fraud alert does not prevent the opening of new credit card accounts in the victim’s name, since credit card accounts are exempted from this provision.⁴²

In addition to placing the fraud alert, the CRA must notify the victim of their right to a free consumer report and provide a requested report within three business days of the request.⁴³ This means that a victim of coerced debt will get two free reports every twelve months.

Extended Fraud Alerts

The extended fraud alert operates similarly to the initial fraud alert in that a victim need only notify one of the three nationwide CRAs who must then inform the others.⁴⁴ Again, once an extended fraud alert is included in the victim’s file, the CRAs must provide a “clear and conspicuous view” of the alert to any person requesting the consumer report.⁴⁵ In addition to placing the fraud alert, the CRA must notify the victim of the right to receive two free consumer reports over the following twelve-month period⁴⁶ and provide a requested report within three business days of the request.⁴⁷ This means the victim is allowed three free reports every twelve months.

Unlike the initial fraud alert, a victim must provide an identity theft report along with proof of identity in order to obtain an extended fraud alert.⁴⁸ The extended fraud alert lasts seven years instead of just the one year under the initial fraud alert⁴⁹, and victims who obtain an extended fraud alert are also excluded from any prescreened lists generated and sold by the CRAs to users for five years.⁵⁰

A user of a report containing an extended fraud alert may not proceed with a credit transaction unless the user contacts the victim in person or by using the contact method designated by the consumer.⁵¹ So, if you are assisting a victim in requesting an extended fraud alert, make sure to include in your request what phone number or other contact method (email, physical address) the victim wants to have users confirm their identity. However, as already mentioned, an extended fraud alert does not prevent new credit card accounts from being opened under the victim's name.⁵²

Identity Theft Block

A powerful protection under the FCRA available only to identity theft victims is the identity theft block. The three nationwide consumer reporting agencies, (Trans Union, Experian, and Equifax, also known as the Big 3), must block theft-related information (accounts, inquiries, phone numbers, etc.) from appearing on a coerced debt victim's report.

Although most victims think only to request fraudulent account information in a block, it is important to also include phone numbers, addresses, and inquiries in the request to block. An address that an abuser used to open an account may be tied to the victim and she may receive correspondence at that address; the same would be true with phone numbers. Inquiries are requests from users (creditors and lenders) to view the victim's consumer report either in determining to extend credit or to review an account that was fraudulently opened. Although there are different types of inquiries and only hard inquiries impact a victim's credit score, for safety reasons it's important to make sure that no creditor has access to the victim's report if it's as a result of the ID theft. For example, if the abuser opened up fraudulent accounts in the victim's name, then there will be many companies that looked at the victim's consumer report and should not have had access to it. As a result, the victim should request that both the fraudulent account and any inquiries associated with the account be blocked.

To activate the block, the coerced debt victim must provide the following to the consumer reporting agency (CRA):⁵³

- A letter explicitly requesting an identity theft block and explaining what information is fraudulent because of the identity theft. The letter should state that the information does not relate to any transaction that the consumer made or authorized. It is also helpful to include a copy of the relevant credit report with the information highlighted or marked in some way.
- Proof of identity, which may include a copy of the victim's social security card (or other document evincing their social security number), a driver's license, a copy of a recent utility bill or bank statement, and any other personal information requested by the CRA; and
- A copy of an identity theft report.

Identity Theft Reports

Regulation V defines the term "identity theft report."⁵⁴ To qualify as an "identity theft report" under the FCRA, the report must meet the following criteria:

1. Allege identity theft with as much specificity as the consumer can provide;
2. Be a copy of an official, valid report filed by the consumer with a law enforcement agency; and
3. Expose the person to criminal penalties relating to the filing of false information if the information in the report is false.⁵⁵

After a victim sends the identity theft report with the letter requesting the identity theft block, a CRA or a furnisher (the creditor or other entity reporting the debt to the CRA), may require the report to include "additional information" to determine the validity of the "alleged identity theft."⁵⁶ However, the CRA or the furnisher must make the request within fifteen days of receiving the report.⁵⁷ Since the regulation allows a furnisher or CRA to demand more information before accepting the identity theft report, it may require more specificity than "a law enforcement agency would require to make a criminal report."⁵⁸

As a practical matter, it is often best to submit the FTC identity theft report as well as a police report. However, if the coerced debt was incurred through threat or force, it is important to analyze the victim's state's law definition of identity theft to see if either a police report or FTC identity theft report could be used. If use of the mail was involved in the identity theft, an identity theft report may also be filed with the U.S. Postal Inspection service.⁵⁹

Practitioners should note that often victims of coerced debt may be reluctant to file a police report because of past interactions with law enforcement. Some of these may include:

- Past traumatic experiences with law enforcement, especially if the victim is a person of color;
- Law enforcement accusing a victim of making a false report or not understanding identity theft within the context of a dating relationship;
- Law enforcement not taking domestic violence seriously and refusing to investigate domestic abuse allegations;
- Fear of retaliation by an abuser if the victim names them in the report;
- Fear of deportation if the victim is undocumented.

For this reason, practitioners may provide important advocacy by assisting the victim in filing a report, requesting assistance from victims' advocates, or informing the victim of options to make the report over the phone or online.

B. CRA RESPONSIBILITIES

If the CRA accepts the identity theft report, they must block the fraudulent information the victim has identified within four business days after accepting the identity theft report.

The CRA must also notify the furnishers of the fraudulent information:

- That the information furnished may be a result of identity theft;
- That the victim has filed an identity theft report;
- That a block has been requested; and
- The effective dates of the block.⁶⁰

The CRA may also refuse to block the disputed information, or it may remove an existing block, if it reasonably determines that the victim:

- Has not told the truth (made a material misrepresentation of fact) relevant to the request to block;
- The information was blocked in error or the block was requested by the victim in error; or
- The victim obtained possession of goods, services, or money as a result of the transactions identified in the blocking request.⁶¹

The CRA must also notify the victim if it refuses to place or remove the block.⁶²

Dispute/Reinvestigation Under Section 1681i

Even if the coerced debt victim is unable to request a block under §1681c-2 because the victim is unable to get an identity theft report, the victim still can dispute the inaccurate information and trigger the reinvestigation procedures under §1681i as this mechanism is available for all consumers. The inaccurate information can be anything from name variations, social security numbers, addresses, phone numbers, employment history, inquiries, or any accounts (tradelines) in the reports. Identity theft victims often have incorrect addresses, phone numbers, and even employment history on their reports because the thief falsified this data or listed their contact information for an account. Additionally, if the inaccurate information appears on a consumer report that is not prepared by one of the three nationwide CRAs, (e.g. a tenant screening CRA), the only avenue a victim may have to remove the inaccurate information is through §1681i as the block is a remedy provided only for the Big 3 (Trans Union, Experian, and Equifax).⁶³

After a CRA receives a dispute from the victim, it must delete the disputed information or conduct a reinvestigation.⁶⁴ The dispute letter should have as much detail and specificity as to why the information is inaccurate. If the victim has supporting documentation, (for example, a police report or a court order), that should be included with the dispute letter as well. If the dispute letter is not specific enough, it may be difficult to impose liability on a CRA or a furnisher for failure to conduct a reasonable investigation.⁶⁵

There are numerous court cases surrounding the question of what constitutes a reasonable investigation⁶⁶, but the FCRA does delineate deadlines for conducting a reinvestigation and notifications. For example:

1. A CRA must send notification of the dispute to the furnisher within 5-business days of receipt of the dispute, along with all relevant information provided by the victim regarding the dispute;⁶⁷
2. A CRA must complete a reinvestigation within thirty days of receipt of the dispute⁶⁸;
3. A CRA must delete information that is inaccurate, incomplete, or cannot be verified⁶⁹; and
4. A CRA must provide written notice of the results of the investigation to the victim within five business days after completion of the reinvestigation along with a statement that the reinvestigation is completed, a copy of the revised consumer report, and notice that consumer has right to add a statement to file disputing accuracy or completeness of disputed information.⁷⁰

A CRA can later reinsert information that was deleted if the furnisher certifies that the information is complete and accurate⁷¹, but the CRA must notify the victim in writing within 5 business days of the reinsertion.⁷² The notice must include⁷³:

- A statement that disputed information has been reinserted;
- The business name and address of furnisher, including the telephone number if available; and
- Notice that the victim has the right to add a statement to their file disputing the accuracy or completeness of the disputed information.

In practice, it often takes multiple disputes with the CRAs to ensure that a victim's report is accurate. Additionally, reinvestigation results can appear confusing or incomplete.⁷⁴ Even though the CRAs are supposed to include a copy of the revised report, they often do not include it, especially when CRAs send multiple responses to a victim (several letters) regarding each request the victim made in the dispute letter—for example, if the victim requested a block, a security freeze, and/or deletion of inaccurate information if a block is denied.

As a result of the COVID-19 pandemic, the CRAs have stated that consumers will have access to their credit reports for free every week at <http://www.annualcreditreport.com> through the end of 2022. This can be helpful if you are currently assisting a victim in verifying what is being reported by each CRA on a victim's report, even after a dispute.

Note that if the victim cannot answer the security questions or provide any multi-factor authentication codes, then the victim will have to request a copy of their reports in writing and include ID documentation. Many survivors of intimate partner violence encounter issues requesting consumer reports when needing to provide ID documentation. The CRAs require a state issued photo ID with a current address, or a bill or bank statement with the victim's current address and name, as well as a copy of the survivor's social security card or other document showing their social security number (like a tax return). However, if the survivor fled her abuser and left documents behind, they may not have any of these documents. Additionally, if the

survivor is currently staying at a shelter⁷⁵, they may not have any ID or bank statement with the shelter's address- nor would they want to. If the victim submits any documentation with a shelter address, that address will permanently become a part of the victim's credit file and appear on their consumer report. For this reason, it is important to advise the victim that the address they use to prove their identity and to receive dispute responses will appear on their consumer report and, if the abuser is able to obtain a copy of the report, the abuser may discover the victim's location.

Unfortunately, there is not an easy solution to the ID documentation problem faced by victims of coerced debt, but they should be discussed with a victim so that they can make an informed choice about how to proceed. It may be worthwhile to advise a victim of coerced debt to obtain a P.O. Box address if at all possible. If the victim is part of an address confidentiality program, that address can be used to receive mail, including bank statements, and to include as the address for receiving credit report dispute responses.

Responsibilities of Furnishers Under 1681s-2

Furnishers also have responsibilities under the FCRA when a victim disputes inaccurate information.⁷⁶ Although a CRA must forward the dispute and all relevant documents to a furnisher⁷⁷, it is best practice to send a copy of the dispute letter sent to a CRA directly to each furnisher.⁷⁸

When the furnisher receives notice of the dispute from the CRA⁷⁹, it must conduct a reasonable investigation⁸⁰ that looks at the merits of the dispute, including a review of "all relevant information" the victim provided with the dispute letter.⁸¹

Multiple disputes are often necessary when disputing an account based on identity theft. Furnishers often verify the account information as accurate based on a cursory review of a victim's name, social security number, and address. If the thief lives at the same address as the victim and knows all their personal identifiers, which is almost always the case with coerced debt, this cursory review will not be enough to determine the account was fraudulent. This is why it is very important to include this relevant information in a dispute letter, namely to explain why the identifying information such as address, date of birth, social security number, etc. is the same but it is still identity theft. If there is a different email or phone number on the account that is the abuser's, then this should also be mentioned to show it's not the same person. It is also very helpful to dispute the account or fraudulent charges under other consumer statutes⁸² while also disputing under the FCRA.

Legal Remedies for Failure to Comply with FCRA

Failure to comply with each of the provisions above subjects a CRA and/or a furnisher to liability under the FCRA. A victim has the right to seek actual damages, punitive damages, attorneys' fees, and costs for violations of the FCRA. However, punitive damages are only available if the conduct that led to the violation was willful.⁸³

The statute of limitations for FCRA violations is two years from discovery or five years from the date of the violation.⁸⁴ If the violation is failure to conduct a reasonable investigation in response to a dispute, each new dispute can restart the two-year period⁸⁵ and the initial dispute can still be used as evidence regarding the violation.⁸⁶

Besides the violations of the provisions discussed above, a coerced debt victim can have other claims under the FCRA⁸⁷. Examples of other claims include: if a user accessed the victim's credit report without a permissible purpose⁸⁸; if a CRA failed to follow reasonable procedures to assure maximum possible accuracy of the information in the victim's credit report⁸⁹; or if a CRA failed to provide a victim with her report when requested.⁹⁰ In some instances, a CRA may still allow a furnisher to access a consumer's report even after the victim has disputed that the victim never applied for or authorized an account to be opened with that furnisher and the account was deleted or blocked from the victim's file. If the victim has no other accounts with that furnisher, any future access can be an impermissible purpose.

C. THE TRUTH-IN-LENDING ACT

The Truth in Lending Act⁹¹ (TILA) was created to ensure that consumers are treated fairly by businesses in the lending marketplace and are informed about the true cost of credit.⁹² TILA requires lenders to disclose credit terms in an easily understood manner so that consumers can confidently comparison shop interest rates and conditions. Although TILA covers a wide range of consumer transactions, the sections below focus only on open-end credit (i.e. credit card accounts) in the context of coerced debt. Under TILA, a victim of coerced debt can dispute the unauthorized use of a credit card account:

- Under the Fair Credit Billing Act as a billing error;
- Under the unauthorized use provision; and/or
- Raise "claims and defenses" she may have against a merchant for unauthorized use.

Billing Error Disputes under the Fair Credit Billing Act (FCBA)

Part D of the Truth in Lending Act governs credit card billing practices and is also known as the Fair Credit Billing Act (FCBA)⁹³. The FCBA protects consumers from unfair billing practices and provides a method for disputing errors. Billing errors include math errors, charges for the wrong date or amount, and unauthorized charges. The act also covers statements mailed to a wrong address or failure to credit payments to an account.

The billing error procedures covered by the FCBA apply to unauthorized charges as well as an entire unauthorized account⁹⁴, which can both happen to coerced debt victims when an abuser opens an account in the victim's name or when the abusive partner uses an already existing credit account belonging to the victim to make unauthorized charges. Other covered fact patterns may include:

- When an abuser coerced the victim to open a credit card account, but subsequently only the abuser used the credit card without the victim's permission and the abuser was not an authorized user. The victim can dispute the entire account as unauthorized.
- When an abuser coerced the victim to open a credit card account, the victim used the credit card account, but the abuser then also used the credit card without the victim's permission and the abuser was not an authorized user. The victim can dispute the unauthorized charges made by the abuser.
- When an abuser fraudulently added themselves as an authorized user, without the victim's permission or knowledge. The victim can either dispute the unauthorized charges, or the entire account if it was opened up by the abuser without the victim's knowledge or permission.

In order to dispute an account or a charge under the billing error provisions of the FCBA, the victim must assert that the disputed account or charge fits within one of the enumerated billing errors under 1666(b). Most often in the case of coerced debt, the billing error is "an unauthorized extension of credit no⁹⁵t made to the consumer or to a person who has actual, implied, or apparent authority to use the consumer's credit card or open-end credit plan."⁹⁶

The billing error dispute must be in writing⁹⁷ and received by the creditor within 60 days of receiving the first bill or statement that contains the error.⁹⁸ This is particularly challenging for coerced debt victims who may not have discovered the account or the charge within the 60-day period where the creditor first sends a statement containing that charge. Coerced debt victims may not discover the existence of an account until months or years after it has been opened, especially if the abuser kept the mail from the victim (one very common form of coercive control)⁹⁹. The dispute must also be sent to the address on the statement¹⁰⁰ designated for "billing error inquiries" or it does not trigger the protections of the FCBA.¹⁰¹

There is no specific format required for the dispute,¹⁰² but it must contain sufficient information to enable the creditor to identify the cardholder's name and account number.¹⁰³ If the coerced debt victim did not open the account, the victim will likely not have the entire account number; however, providing the victim's name and social security number or unique address should be enough for the creditor to identify the account.¹⁰⁴ The dispute must indicate that the victim believes the credit card statement contains a billing error, including the amount, date, and type of error, and the reasons for the victim's belief.¹⁰⁵ Even though victims do not have to provide any type of affidavit or police report¹⁰⁶, they should include this documentary evidence, especially if they are not providing any other facts or information to allow the creditor to properly investigate the billing error. Another best practice is to request copies of documents the creditor uses in its investigation.¹⁰⁷ Victims of coerced debt often lack any documents (such as the credit application or all statements on the account) and failure to provide these documents can subject a creditor to liability.¹⁰⁸

A victim should not pay any unauthorized amount made by the abuser, whether it is a single charge or series of charges or the entire account. The FCBA provides protections to victims who choose to withhold payment of the disputed amount(s) and charge(s), but the victim should inform the creditor about the intent to withhold payment in the billing error notice dispute.¹⁰⁹ Sometimes the victim does not know what charges (i.e. late fees or interest) relate to an unauthorized amount so it may be helpful to withhold payment of the principal only and notify the creditor in the billing error notice that the victim expects an appropriate refund in the event the error is confirmed. Another alternative is to request in the billing error notice a clarification of the related charges that the victim need not pay pending resolution of the dispute. Although the victim can pay the disputed amount without waiving billing error rights and still receive a refund if the error is confirmed¹¹⁰, paying the disputed amount does waive a separate TILA right, to assert merchant-related claims or defenses against the card issuer.¹¹¹

Once the creditor receives the dispute, it must acknowledge receipt of dispute within 30 days¹¹² and complete its investigation before the end of 90 days of receipt of the dispute¹¹³. After the investigation, the creditor must either remove the unauthorized charge(s) or conclude that the amount is still owed.¹¹⁴ Regardless of the outcome of the investigation, the creditor must notify the victim of its decision.¹¹⁵ If the creditor fails to complete an investigation and fails to provide a written explanation as to why there was no error or a different error, the creditor must credit the disputed amount and related finance or other charges.¹¹⁶

If the investigation is resolved in the victim's favor, the creditor must credit the disputed amount and related charges; send the correction notice to the victim¹¹⁷; and update any reporting to each CRA notified of a delinquency as a result of the investigation.¹¹⁸ The creditor cannot subsequently reverse a credit given on a billing error, even if it obtains evidence after the error resolution time period that the billing error did not occur as asserted by the victim.¹¹⁹

If the investigation is not resolved in the victim's favor, the creditor must mail or deliver to the victim an explanation of its reasons¹²⁰; give copies of any documentary evidence the victim requested; correct any different error discovered¹²¹; and promptly notify the victim in writing of the amount owed and time for payment.¹²²

While a billing error dispute investigation is pending, the disputed amount or disputed account cannot be reported to a CRA as delinquent¹²³, though it can be reported as in dispute¹²⁴. After the investigation is concluded (not in favor of the victim), and the victim is given 10 days to pay and fails to pay, then the creditor may report the disputed amount or account as delinquent.¹²⁵ However, if within the 10-day period the victim sends the creditor a written notice that the amount is still disputed, then the amount or account must be reported as "in dispute." In this case, the disputed account or amount can be reported as delinquent¹²⁶, if the creditor notifies the victim of the name and address of each party to whom the creditor is reporting information concerning the delinquency, provides a copy of a credit report¹²⁷, and reports any later resolution of the delinquency to each of those parties.¹²⁸

Unauthorized Use Disputes

Since the billing error notice provisions under the FCBA require timely, written notification, a coerced debt victim may be unable to properly trigger those protections as discussed above. However, a coerced debt victim may be protected against liability under TILA's unauthorized use provision.¹²⁹ A victim can invoke a dispute for unauthorized use orally¹³⁰, though the best practice is to follow-up in writing. In fact, there are no requirements as to timing, form, address, or phone number used to make the dispute.¹³¹ This means that the coerced debt victim can dispute the unauthorized use at any point in time¹³² by contacting the card issuer at any number or address, or even at the card issuer's physical location.

TILA defines unauthorized use as "the use of a credit card by a person other than the cardholder who does not have actual, implied, or apparent authority for such use and from which the cardholder received no benefit."¹³³ Whether a person has actual, implied, or apparent authority is a matter of state law¹³⁴, but there is no actual, implied, or apparent authority when the transaction was initiated by a person who obtained the credit card from the victim through fraud or robbery.¹³⁵

If the abuser made themselves an authorized user, the abusive partner would be considered to have authority to make credit transactions on the account.¹³⁶ The victim can still challenge these transactions if the entire account was opened by the abuser without the victim's knowledge or consent or if the abusive partner fraudulently made themselves an authorized user on the victim's existing account¹³⁷, but it would be harder to challenge these transactions if the victim added the abuser as an authorized user under duress.¹³⁸

Another challenge faced by coerced debt victims in asserting protections under TILA's unauthorized use provision is the requirement that the cardholder cannot benefit from the unauthorized use.¹³⁹ As a result, if the abuser purchased a good or service using the account without authorization but the victim benefited from the purchase of the good or service, the victim would not be able to assert protections under the unauthorized use provision, though the victim could still dispute the purchase under FCBA's billing error provision.

Once notice is given by the victim to the card issuer of the unauthorized use, the liability for unauthorized use is frozen at the amount of unauthorized use or \$50, whichever is less.¹⁴⁰ In order to impose the \$50¹⁴¹, the card issuer must have given notice to the victim prior to the unauthorized use of the maximum potential liability and how to notify the card issuer of loss or theft¹⁴²; prove that the card was accepted by the cardholder¹⁴³; and prove that they provided a means to identify the cardholder or authorized user¹⁴⁴, such as a signature, picture, etc.¹⁴⁵ If the unauthorized use occurred by telephone, mail, or internet, the card issuer cannot hold the victim liable for the unauthorized use.¹⁴⁶

Unauthorized use is also considered a billing error¹⁴⁷, so the creditor must attempt to resolve the dispute by conducting a "reasonable" investigation¹⁴⁸, even if the consumer has not met the requirements of the billing error notice¹⁴⁹. The resolution of the investigation is the same as that discussed above for billing errors, and billing error restrictions on adverse credit reporting also apply.¹⁵⁰

Raising Claims and Defenses

Even when a coerced debt victim is unable to assert the protections of the FCBA or TILA's unauthorized use provision, the victim may be able to raise claims and defenses against a merchant against the credit card issuer.¹⁵¹ The claims or defenses must have to do with the purchase of goods or services purchased from a merchant using the credit card, so unauthorized use of the card to buy a good or a service can be raised as a claim or defense.¹⁵²

A credit card issuer can be subject to all claims (except tort claims)¹⁵³ and defenses of a victim against a merchant when:

1. The victim made a good faith attempt to obtain satisfactory resolution with the merchant¹⁵⁴; (fact question)
2. The amount of the credit transaction exceeds \$50¹⁵⁵; and
3. The place where the transaction occurred was in the same state as the victim's current address or within 100 miles from that address.¹⁵⁶ This is a question of state contract law, so if the credit transaction occurred over the phone or by mail, it could be made at the address where the person making the transaction (whether the abuser or the victim) resided when they made the transaction.¹⁵⁷

However, even if the amount of the transaction is less than \$50 and the transaction occurred out of state, a victim can still raise claims and defenses where:

- The card issuer and the merchant are the same;
- The card issuer controls the merchant;
- The card issuer and merchant are both controlled by the same third party;
- The merchant is a franchised dealer in the card issuer's products or services; or
- The merchant obtained the order through a mail solicitation made by or participated in by the card issuer.¹⁵⁸

A victim must withhold payment to invoke the right to assert claims and defenses under TILA or as a defense in a collection action by the creditor; no written dispute is needed.¹⁵⁹ There is no independent right of action under this provision¹⁶⁰, so a victim must wait for a credit company to sue them in order to assert these defenses or claims in court. However, that does not mean that a victim is without any other protection. The card issuer must still conduct a reasonable investigation assessment based on the information provided by both the merchant and the victim.¹⁶¹ Also, as with billing errors, the card issuer cannot make an adverse credit report¹⁶² based on the consumer's withholding payment "until the dispute is settled or judgment rendered."¹⁶³ As a result, if a card issuer doesn't conduct a reasonable investigation or makes an adverse credit report, the victim should be able to bring an action for TILA violations.

Legal Remedies for Failure to Comply with TILA

A creditor's failure to comply with any of the provisions described above subjects them to civil liability including actual damages, statutory damages, attorney's fees, and court costs.¹⁶⁴ A lawsuit based on violation of these TILA provisions must be brought within one year from the date of the violation¹⁶⁵, but a victim can assert a violation of these provisions in an action to collect the debt as a matter of defense by recoupment or set-off¹⁶⁶ even if the debt collection suit is over a year after the violation happened.¹⁶⁷

CASE STUDY: DILLARD DEPT. STORES, INC. V. OWENS¹⁶⁸

This case involves the unauthorized use of a credit card account by a spouse.

In 1970, Owens opened a credit account with Dillard, a department store; twenty years later, he married.¹⁶⁹ A month after the marriage, he and his wife separated, and he filed for divorce.¹⁷⁰ While the divorce was pending, his wife obtained a temporary charge card on the account and purchased about \$5,000 worth of goods.¹⁷¹ When Owens got his statement a month after the purchases were made, he sent a dispute letter to Dillard alleging the charges were unauthorized.¹⁷² Dillard acknowledged the dispute; asked Owens to go into its store, examine receipts, and sign an affidavit

that the purchases were fraudulently made; contacted his wife who said the purchases had been authorized; and then sent a letter to Owens denying the fraud claims.¹⁷³

Dillard sued Richard Owens to collect a debt owed on the credit account under theories of breach of contract, quantum meruit, implied contract, unjust enrichment, and community debt. Owens counterclaimed for a declaratory judgment and raised claims and defenses under TILA's Section 1666i.¹⁷⁴

The jury found that, "while Owens complied with Section 1666i by making a good faith attempt to obtain a satisfactory resolution of the billing error, Dillard did not comply with the requirement of Section 1666(a)(B)(ii) concerning a written explanation or clarification setting forth the reasons the account was correctly shown."¹⁷⁵

Dillard did send a letter responding to Owens' dispute, but the court found it to be insufficient.¹⁷⁶ Here is the language of the letter:

"We are in receipt of a fraud affidavit in [sic] which you completed. However, after research and investigation, we find that you and Dianna McKay Owens were legally married at the time the purchases in question were made. For this reason, we are unable to process your request as fraud. We feel this should be handled as a civil matter."¹⁷⁷

The court further stated that, "although Dillard did mention Owens' marriage to Davis as an impediment to "processing" his fraud claim, this ambiguous and conclusory statement offers no justification as to the basis on which Dillard asserted that Owens remained liable for such purchases."¹⁷⁸

While Dillard did not plead a counterclaim based on a TILA violation (and thus did not obtain actual or statutory damages), the court concluded that the trial court did have authority to award attorney's fees to Owens under TILA for the successful defense of Dillard's claim.¹⁷⁹ More specifically, "had Dillard attempted to comply with TILA by stating its full theory of liability in a proper written explanation to Owens, it is likely that the futility of its attempt to enforce the debt against him would have become obvious at that time, and both parties could have avoided the time and expense of the present proceedings."

Attorneys should keep this case in mind when assisting victims of coerced debt with credit card debt involving unauthorized use. In this case, counsel for Owens did not assert TILA violations as a counterclaim when he could have, but rather raised claims and defenses under 1666i. The court's discussion of TILA, Congressional intent, and the Fifth Circuit's analysis of attorney's fees under TILA is worth digesting.

FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)

The Fair Debt Collection Practices Act (FDCPA)¹⁸⁰ was enacted to curb abusive practices in the collection of consumer debts. It provides consumers with a means to verify information concerning a debt and to dispute that debt. These protections are extremely important to coerced debt victims since often they have very little or no information regarding the coerced debt. Many victims of coerced debt first learn about an account when contacted by a debt collector by the phone or through a collection letter, and in some cases, when sued by a debt collector.

Although many other consumer law treatises and trainings have focused on the FDCPA, an important protection that is vital to assisting victims of coerced debt is the requirement that a debt collector respond to a verification request and refrain from further collection of a disputed debt until the dispute is verified.¹⁸¹ Obtaining more information about the account is crucial in determining what possible recourse a victim of coerced debt has. Since one component of economic abuse is the hiding of important financial information, coerced debt victims do not always know about the nature or amount of debt their abusers took out in their names.

The challenge with this provision, however, is that the verification request must be made thirty days from when the consumer (in this case the victim) received notice of the verification rights.¹⁸² Especially in the context of domestic violence and identity theft, the consumer may not receive the validation notice within the limited time given to dispute a debt. Nevertheless, it is vital that a victim dispute the debt and notify the collector that they believe it is a debt resulting from identity theft. If the victim already knew about the debt and filed a police report, this should be included with the dispute letter. Debt collectors often continue to collect debt after it is disputed, or even continue to report the debt to the CRAs without noting that it is in dispute. This can lead to an FDCPA violation.¹⁸³ Because debt collectors often make misrepresentations about actions it can take even when a victim has advised them that they are victims of identity theft, it is important for victims of coerced debt to keep a log of all calls, names of creditors, copies of any letters or written communications, and if possible, save recordings of any messages from the debt collectors.

Another important protection provided by the FDCPA for victims of coerced debt is the requirement that the debt collector stop contacting the victim. A victim can request that a debt collector only contact them by email, text, phone, or mail- whichever method the victim prefers. Or the victim can tell the collector to stop contacting them by only one method- like email or phone. Finally, the victim can request the collector stop contacting them all together- but this last request to cease all communication must be in writing- either at the physical address or electronic address provided by the debt collector.¹⁸⁴

Because coerced debt is often only one component of the many forms of abuse a victim suffered, the debt collection process can retraumatize victims of domestic violence, sexual assault, and human trafficking. Consider this account from an advocate who routinely works with survivors facing debts related to their abuse:

I have had clients who have been abused over and over by financial institutions and by their partners, creating financial situations that become nearly impossible to get out of. A client of mine was an immigrant from India. Her abusive ex-husband brought her to the U.S. and kept her locked in their house for two years. She wasn't able to leave; she wasn't able to have a bank account or any financial access. She was only able to leave her husband when he abused her to the point that she had to go to the hospital. After this, she racked up numerous medical debts and also **found out that her husband had opened six credit card accounts in her name.** She has been contacted by collection agencies over and over. Through her incredibly hard work, she was able to pay most of the debts off (debts that shouldn't belong to her) on her own, but still it plagues her. Recently, we set up a payment arrangement with a collections company who had been harassing her, and after we got off the phone with them, she sat next to me and cried. When she was able to speak, she told me that it was like he was abusing her all over again. **Every time she had to be reminded of this debt and every time she used her money to pay it off, she was reminded of the abuse she suffered at his hands.**¹⁸⁵

Attorneys play a vital role in advising a victim of coerced debt of their rights under the FDCPA, assisting survivors with disputing a debt, requesting more information (verification) about coerced debts, and requesting that debt collectors refrain from contacting victims. Additionally, when debt collectors fail to comply with these protections, attorneys can help victims file suits and obtain monetary relief.

MILITARY LENDING ACT (MLA)

The MLA caps interest rates to active duty military service members and their dependents at 36%. Before October 3, 2016, the MLA only applied to payday, title, and restricted tax refund loans. Since October 3, 2016, the MLA applies to a wider group of non-mortgage loans. Any credit agreement, promissory note, or other contract prohibited by the Act is void and unenforceable from its inception. A person who violates the MLA or its regulations is liable for damages of not less than \$500 for each violation, punitive damages, costs, and attorney fees. As a result, if your client took out a loan or obtained credit due to the abuser's coercion and if the abuser or the victim is an active duty military service member, then the MLA will allow that credit agreement, promissory note, or other contract to be void and unenforceable where otherwise it would not be.

Using state laws to help victims of coerced debt

A few states have passed legislation that specifically addresses the challenges victims of coerced debt face in gaining a fresh start from their abuser. Texas law provides protection for victims of coerced debt by amending its definition of identity theft to include debts incurred through coercion. Maine amended its state credit reporting statute to require a credit reporting agency to reinvestigate a debt if the consumer provides documentation that the debt is the result of economic abuse. Maine also amended its state debt collection statute to prohibit the collection of debt resulting from economic abuse. As of January 2022, the California Family Code authorizes courts to make a finding in a domestic violence restraining order that specific debts were incurred as a result of domestic violence, such as through identity theft or coercion.

TEXAS

Using The Texas Penal Code To Help Victims Of Coerced Debt

The Texas Penal Code includes two offenses that victims of coerced debt can report to law enforcement. The type of offense reported will depend on the type of debt incurred and when the debt was incurred. Credit or debit card abuse¹⁸⁶ occurs when the perpetrator has not obtained **“effective consent”** to use a victim’s credit or debit card. Consent is not effective if “induced by force, threat, or fraud.”¹⁸⁷ This definition fits all coerced debt transactions, since they occur through fraud, force, or threat. However, the offense of credit or debit card abuse is limited to coerced debt accrued by use of a credit or debit card.

If the coerced debt was something other than credit or debit card debt, then the victim of coerced debt could assert the broader offense of identity theft, termed “fraudulent use or possession of identifying information” in the Texas penal code.¹⁸⁸ However, prior to September 1, 2019, effective consent was not included in the definition of identity theft. **As a result, if you are assisting a victim of coerced debt in Texas whose debt was obtained with her consent but without her effective consent prior to September 1, 2019, the victim will be unable to report identity theft to law enforcement, though she may be able to report credit or debit card abuse.** In other words, in order to report identity theft prior to September 1, 2019, the victim must not have known about the debt and the abuser must have obtained it through fraud only. If the victim obtained the debt through threat or force (coercion or duress), then it would not be covered under the old definition.

As of September 1, 2019, identity theft is defined in Texas as follows:

- (b) A person commits an offense if the person, with the intent to harm or defraud another, obtains, possesses, transfers, or uses an item of:
 - (1) identifying information of another person without the other person's consent or **effective consent;**¹⁸⁹

This change allows victims of coerced debt to report identity theft to law enforcement for any coerced debt transaction obtained without effective consent on or after September 1, 2019. The result is that attorneys representing victims of coerced debt now have a wider range of tools to challenge coerced debts as identity theft.

Making a police report, also called a criminal complaint or an identity theft report, is extremely helpful. Having a copy of the report enables a victim of coerced debt to more effectively assert protections and remedies available to victims of identity theft discussed in the previous sections of this article.

Using Texas Business And Commerce Code Chapter 521 To Help Victims Of Coerced Debt

Chapter 521 of the Texas Business and Commerce Code offers an important opportunity to provide relief to victims of coerced debt.¹⁹⁰ If a case is successful, a victim will receive an order from the court declaring the person a victim of identity theft.¹⁹¹ The court order can include all debt that resulted from identity theft as well as any other harm caused by identity theft (such as false criminal charges). A court order declaring a person a victim of identity theft can be a powerful tool to remove coerced debt from a credit report, compel the owner of a debt to cease collection activities, and to defend against a debt claim lawsuit. An order can also be used to challenge a previous court order when there is an avenue to reopen a judgment such as a bill of review.

A Chapter 521 order can also help victims remove their identity from fraudulent public records and help those who have received no cooperation from creditors in removing their identity from fraudulent accounts.¹⁹² In the court order, a victim lists the different accounts or information that resulted from the identity theft. Accounts can include a range of debts, such as a car loan, a mortgage loan, or a credit card debt, making this the most holistic relief for victims of coerced debt.

In order to use this remedy, a victim of coerced debt will need to file a criminal complaint if the debt was obtained without effective consent after September 1, 2019 but prior to September 1, 2021. This is because the Chapter 521 remedy requires that a person have filed a criminal complaint or meet the definition of identity theft in the Texas Business and Commerce Code.¹⁹³ The definition of identity theft in the Texas penal code was amended and became effective September 1, 2019. However, the definition of identity theft in the Texas Business Commerce Code was not amended to include coercion until September 1, 2021. As a result, **if the coerced debt was incurred after September 1, 2021, then the victim does not need to file a criminal complaint. If the coerced debt was obtained without consent, then a criminal complaint is not necessary.**¹⁹⁴ In other words, this remedy can be used for any debt that was obtained without the victim's consent but can only be used for any debt that was obtained without the victim's effective consent for debts incurred after September 1, 2019. It is of vital importance that any application for a Ch. 521 order exclude any personal identifying information of the victim to avoid having this information in the public record. The final order is sealed and is not publicly available.

MAINE

In 2019, Maine's Legislature passed "An Act to Provide Relief to Survivors of Economic Abuse."¹⁹⁵ The Act made changes to Maine's credit reporting statute and its debt collection statute. The Act added a section to Maine's credit reporting act to prohibit the reporting of any debt or portion of a debt that resulted from economic abuse by a consumer reporting agency.¹⁹⁶

Economic abuse is defined as "causing or attempting to cause an individual to be financially dependent by maintaining control over the individual's financial resources, including, but not limited to:

- unauthorized or coerced use of credit or property,
- withholding access to money or credit cards,
- forbidding attendance at school or employment,
- stealing from or defrauding of money or assets,
- exploiting the individual's resources for personal gain of the defendant or
- withholding physical resources such as food, clothing, necessary medications or shelter.¹⁹⁷

This definition for economic abuse is expansive and covers more than just coerced debt. As a result, it is especially useful to domestic violence survivors whose abusers limited their access to bank accounts, stole assets (like retirement account funds or a paycheck), or otherwise interfered with their credit as a form of coercive control.

Once a survivor provides documentation to a consumer reporting agency that a debt or any portion of it resulted from economic abuse (including coerced debt), the CRA must investigate the debt.¹⁹⁸ If it determines the debt resulted from economic abuse, the CRA must remove from a survivor's credit report any reference to the debt or any portion of the debt determined to result from economic abuse.¹⁹⁹

Under the Act, the following types of documentation are sufficient to show that a debt or portion of the debt resulted from economic abuse²⁰⁰:

1. A statement signed by a Maine-based sexual assault counselor as defined in 16 M.R.S.A. § 53-A(1)(B), an advocate as defined in 16 § 53-B(1)(A), or a victim witness advocate as defined in 16 M.R.S.A. § 53-C (1)(C);
2. A statement signed by a healthcare provider, mental health care provider or law enforcement officer, including the license number of the health care provider, mental health care provider or law enforcement officer if licensed;
3. A copy of a protection from abuse complaint or a temporary order or final order of protection;
4. A copy of a protection from harassment complaint or a temporary order or final order of protection from harassment;
5. A copy of a police report prepared in response to an investigation of an incident of domestic violence, sexual assault or stalking; and
6. A copy of a criminal complaint, indictment or conviction for a domestic violence, sexual assault or stalking charge.

Maine also amended its state debt collection statute to prohibit debt collectors from attempting to collect a debt resulting from economic abuse.²⁰¹ The victims of economic abuse must provide documentation to show the debt resulted from economic abuse, and this documentation is the same listed above; once that documentation is provided, all debt collection activity must cease.²⁰²

This new law could result in an absolute bar to the collection of economic abuse debt because it does not specify circumstances under which a debt collector may resume collection of such debt. For example, if a consumer provides a final order of protection from harassment as documentation that the debt is the result of economic abuse, it is unclear whether, and if so when, a debt collector could attempt to collect the debt.

Finally, Maine amended its Protection from Abuse Chapter to expressly empower courts to provide monetary compensation to victims of economic abuse.²⁰³ This change authorizes courts to "enter a finding of economic abuse" and "[o]rder payment of monetary relief to the plaintiff for losses suffered as a result of the defendant's conduct." While economic abuse is not specified as a type of conduct for which a protection from abuse order may be sought, if a protection from abuse order is issued, the court has expanded discretion to order appropriate monetary relief to help address the impact of any economic abuse, including coerced debt, that the court may find.

CALIFORNIA

California amended its Family Code § 6342.5, effective January 1, 2022 to authorize courts in a domestic violence restraining order matter to find that specific debts were incurred as a result of domestic violence and “without the consent of a party.”²⁰⁴ The court may also issue an order “determining the use, possession, and control of real or personal property of the parties during the period the order is in effect and the payment of any liens or encumbrances coming due during that period.”²⁰⁵ These two provisions may help victims of coerced debt by requiring their abusers to pay for any mortgage debt or auto loan that a victim was coerced into obtaining. A court order could also be used to help a victim dispute the debt with creditors or consumer reporting agencies.

A victim of coerced debt in California may also be able to bring a claim under California’s ID theft statute²⁰⁶ if they meet the state’s definition of a victim of identity theft.²⁰⁷ Under the statute, a victim can bring an action against any creditor seeking to collect a debt and obtain various forms of relief, including a declaration that the victim is not liable for the debt, that a security interest against the victim is void and unenforceable, and an injunction restraining a creditor from collecting on the debt or trying to enforce a security interest or execute a judgment.²⁰⁸ A victim may be entitled to actual damages, attorney’s fees, and costs, and even a civil penalty for up to \$30,000 under certain circumstances.²⁰⁹

STATE DEBT COLLECTION STATUTES

States may have their own debt collection statutes that provide powerful remedies for coerced debt victims.²¹⁰ State debt collection statutes may even provide greater protections and relief for consumers than the FDCPA. In several states, the debt collection statute applies to original creditors who are not covered under the protections of the federal FDCPA. The statutes can also cover licensing laws that allow for a private right of action for consumers injured by abusive debt collection practices, specific types of misconduct that would result in relief for consumers, and criminal penalties for abusive debt collection practices.²¹¹

OTHER STATE LAW REMEDIES

Unfair and Deceptive Acts and Practices (UDAP) laws

UDAP laws are promulgated by each state and prohibit some combination of unfair, deceptive, and/or unconscionable practices in an effort to protect consumers from predatory business practices. The scope of the statute and available remedies vary from state to state, and not all UDAP statutes have a private remedy.

Some state UDAP statutes do not apply to credit, debt collection, landlord-tenant matters, realty, securities or business opportunities. Some state UDAP statutes also exempt from coverage insurance companies, utilities, banks, or other regulated industries. It is essential to examine the provisions in the state UDAP statute to determine if the misconduct fits within the scope of the statute.²¹² Practices resulting in coerced debt that are between private parties will not be covered under a state UDAP statute, but a debt collector's unfair or deceptive attempts to collect coerced debt would most likely be considered "trade and commerce" under a state's UDAP statute and could potentially be actionable.²¹³

A current version of all state UDAP statutes can be found in Appendix A of the National Consumer Law Center, Unfair and Deceptive Acts and Practices (10th ed. 2021). A state UDAP statute may also be incorporated into other state statutes, making certain conduct a *per se* violation of the UDAP statute.²¹⁴

State usury caps

Many states limit the maximum interest rate that creditors can charge a consumer in specific types of loans. These types of claims arise most often when a payday or title lender disguises the loan and charges high fees. Remedies for violations vary from state to state, ranging from voiding the loan at its inception to prohibiting the collection of the excess interest.²¹⁵ As a result, a victim of coerced debt may have some defense to collection of a loan that was obtained under duress (but not by fraud) if the loan violates a usury law. If the loan was obtained fraudulently, then the coerced debt victim can utilize contract law defenses to avoid liability altogether.

Licensing laws

In many states, debt collectors are regulated by licensing laws. Where they apply, these laws usually specify the permissible terms of the covered transactions and often contain significant penalties for debt collectors who fail to comply. Where obtaining the license is a precondition to the collection of a debt, failure to do so may give rise to a usury claim in addition to a violation of the licensing law. It may also be a violation of a state's debt collection statute. Lawyers representing coerced debt victims may utilize a violation of these laws to offset liability on a debt that was obtained through coercion.

Using counterclaims to help victims of coerced debt in defending debt collection lawsuits

A victim of coerced debt has a powerful tool at their disposal—the ability to assert counterclaims for the violation of consumer rights as described in all the sections above, especially when those bringing these affirmative claims would be outside of the statute of limitations.²¹⁶ Victims of coerced debt may have additional affirmative claims based on other consumer protection statutes if the coerced debt is an auto loan²¹⁷, a mortgage loan²¹⁸, or other unsecured loan.²¹⁹

State procedural rules may only permit counterclaims during a specific period of time.²²⁰ For this reason, it is key that an attorney representing a victim of coerced debt conduct a thorough interview and investigation of all the facts and circumstances surrounding the coerced debt as soon as they are aware of a debt collection lawsuit.

In addition to asserting counterclaims under the FCRA and TILA, attorneys should consider whether the debt collector violated either the FDCPA or state debt collection statute by filing suit in the wrong venue²²¹, by filing suit on time-barred debt²²², or by failing to be bonded/licensed as a debt collector²²³. Attorneys can also examine whether the debt collector or creditor violated the Telephone Consumer Protection Act²²⁴ in seeking to collect payment for a coerced debt- this is especially likely when a victim of coerced debt never provided consent to be contacted about the debt. Finally, attorneys should consider the availability of tort claims against a debt collector or creditor such as negligence, defamation, malicious prosecution or the like.²²⁵

Regardless of the ability to assert other counterclaims, a coerced debt victim should almost always assert a counterclaim under the Uniform Declaratory Judgments Act (UDJA).²²⁶ The UDJA allows a victim of coerced debt to request that the court “settle and afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations between the parties,”²²⁷ including the determination of legal rights as to a contract.²²⁸ Debt collectors often dismiss a debt collection suit without prejudice after a victim of coerced debt raises any defense (like identity theft). Asserting this counterclaim prevents a debt collector from depriving a victim of coerced debt with an adjudication of the merits of a debt collection claim.

Conclusion

The protections and defenses outlined in this paper offer important tools to help victims of coerced debt. Though this paper discussed the effects of coerced debt within the context of intimate partner violence, the rights and remedies discussed will likely also apply to victims of elder financial abuse, persons with disabilities who rely on a caretaker for day-to-day needs, and even foster youth who experience abuse and coercive control by their foster or biological family. As a result of the COVID-19 pandemic, both financial hardship and domestic abuse are on the rise. This concerning trend raises the likelihood of victims becoming saddled with coerced debt and creates a growing need for attorneys to help victims access the available legal tools to rebuild their financial lives.

ENDNOTES

- 1 Ann Baddour and Marissa Jefferies, "Abuse by Credit: The Problem of Coerced Debt in Texas," Texas Appleseed (Jan. 2019).
- 2 Megan E. Adams, Assuring Financial Stability for Survivors of Domestic Violence: A Judicial Remedy for Coerced Debt in New York's Family Courts, 84 Brook. L. Rev. (2019).
- 3 Amy Cao, Identity Theft & Survivors of Domestic Violence, from the Guidebook on Consumer & Economic Civil Legal Advocacy for Survivors, Center for Survivor Agency and Justice, 70 (2017).
- 4 See Angela Littwin, Coerced Debt: The Role of Consumer Credit in Domestic Violence, 100 CALIF. L. REV. 951,954 (2012).
- 5 The tool is available at https://csaj.org/document-library/CRDVSIScreening_Tool.pdf
- 6 15 U.S.C. §§ 1681-1681x.
- 7 The FCRA also provides a remedy unique to survivors of trafficking. Consumer reporting agencies cannot report any adverse item of information about a consumer that resulted from either a severe form of trafficking or sex trafficking if the consumer provides certain documentation. 15 U.S.C. §§ 1681c-1(3).
- 8 15 U.S.C. § 1681c-1(a)(1); 15 U.S.C. §1681c-1(b); 15 U.S.C. § 1681c-2. A victim also has the right to receive copies of records from a business entity that extended credit or accepted payment or other consideration for a commercial transaction with a copy of the application and business transaction records related to the identity theft. 15 U.S.C. § 1681g(e).
- 9 15 U.S.C. §§ 1681c-1(i).
- 10 15 U.S.C. § 1681i.
- 11 15 U.S.C. § 1681j(a).
- 12 15 U.S.C. § 1681g(a).
- 13 "The term 'security freeze' means a restriction that prohibits a consumer reporting agency from disclosing the contents of a consumer report . . . to any person requesting the consumer report." 15 U.S.C. § 1681c-1(i)(1)(C).
- 14 15 U.S.C. § 1681c-1(i)(1)(C).
- 15 Congress passed the Economic Growth, Regulatory Relief, and Consumer Protection Act in response to the Equifax breach. Pub. L. No. 115-174, 132 Stat. 1296 (May 24, 2018). See also 15 U.S.C. § 1681c-1(i).
- 16 15 U.S.C. § 1681c-1(i)(3).
- 17 "... for the purpose of providing a consumer with a copy of the consumer's consumer report or credit score, upon the request of the consumer." 15 U.S.C. § 1681c-1(i)(4)(G).
- 18 15 U.S.C. § 1681c-1(i)(4).
- 19 15 U.S.C. § 1681c-1(i)(4)(A).
- 20 15 U.S.C. § 1681c-1(i)(4)(C)
- 21 15 U.S.C. § 1681c-1(i)(4)(B).
- 22 15 U.S.C. § 1681c-1(i)(4)(F).

23 15 U.S.C. § 1681c-1(i)(4)(H).

24 15 U.S.C. § 1681c-1(i)(4)(I).

25 15 U.S.C. § 1681c-1(i)(2)(A).

26 15 U.S.C. § 1681c-1(i)(2)(A)(i), (ii).

27 15 U.S.C. § 1681c-1(i)(2)(B)(ii)(II). Usually, this involves assigning the victim a PIN that is required to lift the freeze.

28 15 U.S.C. § 1681c-1(i)(3)(C).

29 15 U.S.C. § 1681c-1(i)(3)(E).

30 15 U.S.C. § 1681c-1(i)(3)(E), (j)(4)(D).

31 15 U.S.C. § 1681c-1(i)(3)(C) (ordinary consumers), § 1681c-1(j)(4)(C) (requests from a protected consumer sixteen or older or a protected consumer's representative).

32 15 U.S.C. § 1681c-1(a).

33 15 U.S.C. § 1681c-1(h)(1)(A) (initial fraud alerts), § 1681c-1(h)(2)(A) (extended fraud alerts).

34 15 U.S.C. § 1681c-1(a)(1)(B) (initial fraud alerts), § 1681c-1(b)(1)(C) (extended fraud alerts).

35 15 U.S.C. § 1681c-1(e).

36 15 U.S.C. § 1681c-1(a)(1).

37 Id.

38 15 U.S.C. § 1681c-1(a)(1)(A).

39 15 U.S.C. § 1681a(q)(2)(B).

40 15 U.S.C. § 1681a(q)(2)(A).

41 15 U.S.C. § 1681c-1(h)(1)(B)(i).

42 Id.

43 15 U.S.C. § 1681c-1(a)(2).

44 15 U.S.C. § 1681c-1(b)(1)(A).

45 15 U.S.C. § 1681a(q)(2)(B).

46 15 U.S.C. § 1681c-1(b)(2). Note how the extended fraud alert provides for two additional free reports within the subsequent twelve-month period as compared to just one additional free report provided under the initial fraud alert.

47 Id.

48 15 U.S.C. § 1681c-1(b)(1).

49 15 U.S.C. § 1681c-1(b).

50 15 U.S.C. § 1681c-1(b)(1)(B).

51 15 U.S.C. § 1681c-1(h)(2)(B)(i).

52 *Id.*

53 15 U.S.C. § 1681c-2(a).

54 12 C.F.R. § 1022.3. For a detailed discussion on the challenges consumers face in meeting this statutory definition, see section 9.2.2.3.2 of NCLC's FCRA manual. National Consumer Law Center, Fair Credit Reporting (9th ed. 2017), updated at www.nclc.org/library.

55 12 C.F.R. §§ 1022.3(i)(1)(i) to 1022.3(i)(1)(ii).

56 12 C.F.R. § 1022.3(i)(1)(iii)(A).

57 *Id.* Also note that the furnisher or CRA can make a second request for information within another fifteen days of its first request for information. 12 C.F.R. § 1022.3(i)(1)(iii)(B).

58 National Consumer Law Center, Fair Credit Reporting (9th ed. 2017), Section 9.2.2.3.2, updated at www.nclc.org/library.

59 See <https://ehome.uspis.gov/mailtheft/idtheft.aspx>.

60 15 U.S.C. § 1681c-2(b).

61 15 U.S.C. § 1681c-2(c)(1).

62 15 U.S.C. § 1681c-2(c)(2).

63 However, under the new 1681c-3 provision for victims of trafficking, a block can be request from any consumer reporting agency, not just the big 3.

64 15 U.S.C. § 1681i(a).

65 See e.g., *Brooks v. Citibank (South Dakota)*, 2009 WL 2870046 (9th Cir. Sept. 8, 2009) (unpublished) (upholding summary judgment where dispute letter "did not indicate that [plaintiff's] domestic partner was responsible for [the debt], nor did it claim that [plaintiff] was the victim of fraud; rather, [plaintiff] simply made generic claims of inaccurate account information"). See also National Consumer Law Center, Fair Credit Reporting (9th ed. 2017), Section 4.5.2.2, updated at www.nclc.org/library.

66 See National Consumer Law Center, Fair Credit Reporting (9th ed. 2017), Section 4.5.3.4, updated at www.nclc.org/library.

67 15 U.S.C. § 1681i(a)(2).

68 15 U.S.C. § 1681i(a)(1)(A). If the dispute is sent after receiving a free annual report from a nationwide CRA via the centralized source, (i.e. www.annualcreditreport.com), the CRA has forty-five days to complete the reinvestigation. 15 U.S.C. § 1681j(a)(3).

69 15 U.S.C. § 1681i(a)(5).

70 15 U.S.C. § 1681i(a)(6).

71 15 U.S.C. § 1681i(a)(5)(B)(i).

72 15 U.S.C. § 1681i(a)(5)(B)(ii).

73 15 U.S.C. § 1681i(a)(5)(B)(iii).

74 Frequently, the victim must live with the consequences of identity theft for months or years. See National Consumer Law Center, Automated Injustice Redux (2019), https://www.nclc.org/images/pdf/credit_reports/automated-injustice-redux.pdf (inability of consumers, including identity theft victims, to correct inaccurate information on credit reports). When CRAs are ineffective in keeping corrected information in the file and incorrect information from repeatedly reappearing in the file, the consumer's frustration and injury goes on for years. See, e.g., *Drew v. Experian*, 690 F.3d 1100 (9th Cir. 2012).

75 If the victim is homeless, they will encounter these same challenges.

76 15 U.S.C. § 1681s-2(b).

77 15 U.S.C. § 1681i(a)(2).

78 Whenever any dispute letter is sent, the best practice is to send by certified mail return receipt requested in order to have proof of receipt.

79 The dispute must come from the CRA pursuant to 1681i in order to trigger the responsibilities under 1681s-2(b).

80 12 C.F.R. § 1022.43(e)(1); 16 C.F.R. § 660.4(e)(1) (FTC).

81 16

82 For example, the victim should also dispute under the Truth in Lending Act if the account is a credit account or under the Fair Debt Collection Practices Act if the account is reported by a debt collector.

83 Punitive damages are only available if the conduct was willful. 15 U.S.C. § 1681(n).

84 15 U.S.C. § 1681p.

85 *Broccuto v. Experian Info. Solutions Inc.*, 2008 WL 1969222 (E.D. Va. May 6, 2008); *Larson v. Ford Credit*, 2007 WL 1875989 (D. Minn. June 28, 2007). *Contra Blackwell v. Capital One Bank*, 2008 WL 793476 (S.D. Ga. Mar. 25, 2008); *Bittick v. Experian Info. Solutions, Inc.*, 419 F. Supp. 2d 917 (N.D. Tex. 2006). See also *Anderson v. Equifax Info. Serv. L.L.C.*, 292 F. Supp. 3d 1211 (D. Kan. 2017) (declining to decide whether new dispute is subject to new statute of limitations because new inaccurate information had appeared within two years).

86 See, e.g., *Bryant v. TRW, Inc.*, 487 F. Supp. 1234, 1236 (E.D. Mich. 1980), aff'd, 689 F.2d 72 (6th Cir. 1982); *Lazar v. Trans Union, L.L.C.*, 195 F.R.D. 665 (C.D. Cal. 2000).

87 For a more thorough discussion of other violations and FCRA compliance generally, see National Consumer Law Center, Fair Credit Reporting (9th ed. 2017), updated at www.nclc.org/library.

88 15 U.S.C. § 1681b(f).

89 15 U.S.C. § 1681e(b).

90 15 U.S.C. § 1681g.

91 15 U.S.C. §§ 1601–1666j.

92 15 U.S.C. § 1601(a) (congressional findings and declaration of purpose). See, e.g., *Cappuccio v. Prime Capital Funding L.L.C.*, 649 F.3d 180 (3d Cir. 2011) (“Congress enacted TILA to guard against the danger of unscrupulous lenders taking advantage of consumers through fraudulent or otherwise confusing practices.”); *Hauk v. JP Morgan Chase Bank USA*, 552 F.3d 1114 (9th Cir. 2009) (“Congress enacted TILA ‘to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available . . . and avoid the uninformed use of credit. . . .’”) (citing 15 U.S.C. § 1601); *Williams v. Chartwell Fin. Servs., Ltd.*, 204 F.3d 748 (7th Cir. 2000) (“Congress enacted TILA to ensure that consumers receive accurate information from creditors in a precise and uniform manner

that allows them to compare the cost of credit."); Rodash v. AIB Mortgage Co., 16 F.3d 1142 (11th Cir. 1994) (TILA intended to promote informed use and awareness of cost of credit; ensure meaningful disclosure to enable ready comparison of credit terms); First Nat'l Bank v. Office of the Comptroller, 956 F.2d 1456 (8th Cir. 1992) (fundamental purpose of the Act is to require disclosure of true cost of credit so consumers can make informed choice); Taylor v. Countrywide Home Loans, 2010 WL 750215 (E.D. Mich. Mar. 3, 2010) ("TILA's purpose is twofold: to facilitate the consumer's acquisition of the best credit terms available and to protect the consumer from divergent and at times fraudulent practices stemming from the uninformed use of credit.") (citing Mourning Family Publication Serv., 411 U.S. 356 (1973)).

93 15 U.S.C. §§ 1666–1666j.

94 Individuals who are liable on an account (an "obligor") and those whom the creditor alleges are obligors are protected under FCBA. See National Consumer Law Center, *Truth in Lending* (10th ed. 2019), Section 7.9.2.1 updated at www.nclc.org/library.

95 See e.g. Stafford v. Cross Country Bank, 262 F. Supp. 2d 776, 790 (W.D. Ky. 2003) (holding that a "wrong person" error, which consisted in that case of charging a person who claimed to have never opened the account, qualified as a billing error under the FCBA); Lau v. Credit Concepts, 2007 WL 583, 623 (N.D. Okla. Feb. 21, 2007) (billing error dispute for a charge by a collection agency when he was not the underlying debtor for the collection account).

96 15 U.S.C. § 1666(b)(1); Reg. Z § 1026.13(a)(1).

97 15 U.S.C. § 1666(a); Reg. Z § 1026.13(b).

98 Reg. Z § 1026.13(b)(1).

99 The victim can still dispute new charges within the sixty-day period, even if the dispute would also relate to older charges. See Burrell v. DFS Servs., L.L.C., 753 F. Supp. 2d 438 (D.N.J. 2010) (plaintiff could recover any charges, along with late fees, finance charges, and penalties included on the billing statement issued by the credit card company for a year-long series of identity theft charges when disputed within the sixty-day period).

100 See 15 U.S.C. § 1637(b)(10).

101 15 U.S.C. § 1666(a); Reg. Z § 1026.13(b)(1).

102 See Burrell v. DFS Servs., L.L.C., 753 F. Supp. 2d 438 (D.N.J. 2010), (court held a completed and submitted "Affidavit of Fraud" form provided by the creditor was a sufficient billing error notice).

103 Reg. Z § 1026.13(b)(2).

104 Official Interpretations § 1026.13(b)(2)-1.

105 Reg. Z § 1026.13(b)(3).

106 Official Interpretations § 1026.13(f)-3.

107 "Copies of documentary evidence of the obligor's indebtedness" as described in 15 U.S.C. § 1666(a)(3)(B).

108 15 U.S.C. § 1640. Note that the outcome of the dispute does not absolve the creditor of its obligations under FCBA. See Lyon v. Chase Bank, 656 F.3d 877, 885 (9th Cir. 2011); Catanach v. Citi Cards/Bank, 2008 WL 11451608, at *8 (D.N.M. Mar. 18, 2008) (pro se; "That a billing error did not in fact occur does not absolve a creditor of all obligations under the FCBA"; citing cases); Belmont v. Associates Nat'l Bank, 119 F. Supp. 2d 149, 159, n.6 (E.D.N.Y. 2000) ("Section 1666's requirements that a creditor promptly respond to consumer inquiries is triggered upon receipt of a timely notice of 'billing error' regardless of whether the consumer who sent the notice was correct in his belief that an error had been made. Simply put, the fact that a TILA plaintiff was incorrect in his belief that a billing error had occurred is not a defense to an action under § 1640").

109 Reg. Z § 1026.13(d)(1). After the victim gives notice of the billing error, the victim may withhold payment of the amount in dispute and related charges.

110 Official Interpretations § 1026.13(d)(1).

111 Official Interpretations § 1026.12(c)-1. See *Hasan v. American Express Centurion Bank*, 2017 WL 727166 (D. Colo. Feb. 17, 2017) (consumer could not assert claim that merchant failed to deliver his order because he had already paid issuer several years earlier for the charge); *Hasan v. Chase Bank USA, N.A.*, 2016 WL 9735767 (D. Colo. Oct. 12, 2016) (same).

112 Reg. Z § 1026.13(c)(1); *Belmont v. Assocs. Nat'l Bank*, 119 F. Supp. 2d 149 (E.D.N.Y. 2000) (creditor liable where it did not acknowledge consumer's notice of billing error or provide its substantive response within thirty-day period).

113 15 U.S.C. § 1666(a).

114 Id. Note that if the victim disputes a second time, reasserting the same dispute which has already been investigated, responded to, resolved, etc., the creditor need not respond again, unless it is not "substantially the same" billing error(s). Reg. Z § 1026.13(h). See, e.g., *Zevallos v. Citibank*, 2010 WL 3743864 (N.D. Cal. Sept. 20, 2010) (subsequent reiteration of the same dispute did not trigger creditor's obligations under FCBA); *Capital One Bank USA, N.A. v. Ponte*, 2013 WL 6692511 (Mich. Ct. App. Dec. 19, 2013) (creditor under no further obligation to respond to substantially the same allegation of dispute).

115 15 U.S.C. § 1666(a).

116 Official Interpretations § 1026.13(c)(2)-2.

117 Reg. Z § 1026.13(e). The correction notice may be sent separately, or on or with the periodic statement, but the amount of the billing error must be specifically identified. If the creditor sends a separate billing error correction notice, the periodic statement can merely identify the corrected amount as "credit." Official Interpretations § 1026.13(e)-2.

118 15 U.S.C. § 1666a(c).

119 Official Interpretations § 1026.13(c)(2)-2. However, a creditor can reverse a credit for a billing error if the credit reversal is because the merchant also refunded the amount. Id.

120 An ambiguous and cursory statement without an explanation of a legitimate justification for rejecting the dispute is insufficient. See *Dillard Dep't Stores, Inc. v. Owens*, 951 S.W.2d 915 (Tex. App. 1997) (interprets parallel provisions regarding unauthorized use) discussed below.

121 15 U.S.C. § 1666(a)(3)(b)(ii); Reg. Z § 1026.13(f); Official Interpretations § 1026.13(f).

122 Reg. Z § 1026.13(g)(1).

123 15 U.S.C. § 1666a. See *Belmont v. Assocs. Nat'l Bank*, 119 F. Supp. 2d 149 (E.D.N.Y. 2000) (creditor liable for notifying credit bureau of alleged delinquency and threatening consumer's credit rating while dispute was pending).

124 Official Interpretations § 1026.13(d)(2)-1. A creditor can still report any undisputed unpaid amount as delinquent. Reg. Z § 1026.13(d)(4).

125 Reg. Z § 1026.13(g). See *Zevallos v. Citibank*, 2010 WL 3743864 (N.D. Cal. Sept. 20, 2010) (creditor permitted to report consumer as delinquent after terminating investigation in compliance with FCBA).

126 15 U.S.C. § 1666a(b).

127 Official Interpretations § 1026.13(g)(4)-2.

128 Reg. Z § 1026.13(g).

129 15 U.S.C. § 1643. Unauthorized use of a credit card may be asserted as a billing error or as a claim or defense under TILA provisions discussed below. See Official Interpretations § 1026.12(b)(3)-3, (c)-1.

130 Reg. Z § 1026.12(b)(3). See *Bromfield v. HSBC Bank Nevada*, 2014 WL 183895, at *3 (D. Or. Jan. 13, 2014) (pro se) (notification to issuer via telephone is sufficient under § 1643(a)(2)).

131 Reg. Z § 1026.12(b)(3); Official Interpretations § 1026.12(b)(3)-1; 15 U.S.C. § 1643(a)(2). Notice can be given to any employee of the creditor and is effective even if not forwarded to proper department. *Id.*

132 The Federal Reserve Board declined to impose a time period in which a claim of unauthorized use must be made, remarking that the statute does not do so. 74 Fed. Reg. 5244, 5362 (Jan. 29, 2009).

133 15 U.S.C. § 1602(p).

134 Official Interpretations § 1026.12(b)(1)-1. See *Asher v. Chase Bank, N.A.*, 310 Fed. Appx. 912 (7th Cir. 2009) (state law on agency governs whether user is authorized); *Minskoff v. Am. Express Travel Related Servs. Co.*, 98 F.3d 703 (2d Cir. 1996); *Mas de Leon v. Banco Popular de Puerto Rico*, 312 F. Supp. 3d 279, 284 (D. P.R. 2018) (noting that “federal common law [is] in accord with the Restatement (Second) of Agency on the issue of apparent authority”, citing *Asher*); *Presta Oil v. Van Waters & Rogers Corp.*, 276 F. Supp. 2d 1128 (D. Kan. 2003) (unauthorized use under TILA is defined by incorporating the common law of agency); *First Nat'l Bank v. Fulk*, 566 N.E.2d 1270 (Ohio Ct. App. 1989) (former wife was “authorized user” under state law).

135 Official Interpretations § 1026.12(b)(1)(ii)-4.

136 Reg. Z § 1026.12(b)(1)(i). For a more detailed discussion of misuse by authorized users or whether a person is considered an authorized user, see National Consumer Law Center, *Truth in Lending* (10th ed. 2019), Sections 7.10.2.2 and 7.10.2.3 updated at www.nclc.org/library.

137 If a consumer didn’t apply for or request a credit card, the use of the card by another should meet the definition of unauthorized use. See *North Am. Capital Corp. v. O’Hara*, 2001 N.Y. Misc. Lexis 1078 (N.Y. Dist. Ct. Aug. 24, 2001) (father not liable for charges on a credit card that was sent unsolicited to him, which his son with a similar name had used without authorization). There is some ambiguity whether an identity theft victim is a “cardholder” under 15 U.S.C. § 1602(p).

138 In Texas, a victim of coerced debt may be able to challenge the charges made by her abuser as a result of duress under the Texas credit card abuse statute or the Texas identity theft statute if they were made after September 1, 2019.

139 15 U.S.C. § 1643; Reg. Z § 1026.12(b)(1)(i).

140 Official Interpretations § 1026.12(b)(1)-2.

141 For a more detailed discussion of these conditions, see National Consumer Law Center, *Truth in Lending* (10th ed. 2019), Section 7.10.2.4 updated at www.nclc.org/library.

142 Reg. Z § 1026.12(b)(2)(ii).

143 Reg. Z § 1026.12(b)(2)(i). An “accepted credit card” is defined as a card that “is requested, received, signed, and used by the consumer or authorized for another to use by the consumer.” 15 USC § 1602(m).

144 15 U.S.C. § 1643(a)(1)(F); Reg. Z § 1026.12(b)(2)(iii); *Crestar Bank v. Cheevers*, 744 A.2d 1043 (D.C. Ct. App. 2000) (consumer not liable for \$50 because creditor did not prove it provided means of identification).

145 Official Interpretations § 1026.12(b)(2)(iii)-1.

146 Official Interpretations § 1026.12(b)(2)(iii)-3.

147 Reg. Z § 1026.13(a)(1).

148 For a more detailed description of a reasonable investigation of an unauthorized use claim, see National Consumer Law Center, *Truth in Lending* (10th ed. 2019), Section 7.10.2.6 updated at www.nclc.org/library.

149 Official Interpretations § 1026.12(b)(3)-3.

150 See Reg. Z § 1026.13(a)(1).

151 15 U.S.C. § 1666i(a).

152 For a discussion on how claims of unauthorized use can be used to defeat a collection action based on an account stated claim, see National Consumer Law Center, *Truth in Lending* (10th ed. 2019), Section 7.10.8 updated at www.nclc.org/library.

153 15 U.S.C. § 1666i(a).

154 Reg. Z § 1026.12(c)(3)(i)(A).

155 Reg. Z § 1026.12(c)(3)(i)(B).

156 *Id.*

157 Official Interpretations § 1026.12(c)(3)(ii)-1. See, e.g., *In re Standard Fin. Mgmt. Corp.*, 94 B.R. 231 (Bankr. D. Mass. 1988) (telephone credit card sale of coins made in consumer's home, stating "[s]ocial policy favors finding that the transaction took place in the customer's home"); *Citibank (South Dakota) v. Mincks*, 135 S.W.3d 545 (Mo. Ct. App. 2004) (mail order transaction occurred in Missouri because Missouri courts deemed a contract to have been made where the parties performed the last act necessary to complete the contract); *Citibank South Dakota, N.A. v. Schmidt*, 744 S.W.2d 829 (S.D. 2008) (whether transaction occurred within 100 miles or in consumer's home state depends on where contract formed). Cf. Conn. Gen. Stat. §§ 36a-770(c)(9) (when retail installment sale deemed made in Connecticut), 42-133c (when open-end credit plan deemed made in Connecticut), 51-345(d) (venue in consumer transactions); *Turner v. Aldens*, 433 A.2d 439 (N.J. Super. Ct. App. Div. 1981) (New Jersey Retail Installment Sales Act applies to New Jersey mail orders sent to Illinois). But see *Plutchok v. European Am. Bank*, 540 N.Y.S.2d 135 (N.Y. Dist. Ct. 1989), (where a call from a New York consumer to a fraud artist in Florida was deemed to have occurred in Florida)

158 Reg. Z § 1026.12(c)(3)(ii).

159 15 U.S.C. § 1666i; Reg. Z § 1026.12(c). See *Schwartz v. Comenity Capital Bank*, 2015 WL 410321, at *9 (S.D.N.Y. Feb. 2, 2015) (requirement to raise dispute in writing not found in Reg. Z, 12 C.F.R. § 1026.12(c) or § 1666i).

160 See *Baker v. Capital One Bank (USA)*, N.A., 2012 WL 5930094, at *4 (S.D. Ind. Nov. 26, 2012) (an independent cause of action is not available under 15 U.S.C. § 1666i); *Beaumont v. Citibank (South Dakota) N.A.*, 2002 WL 483431 (S.D.N.Y. Mar. 28, 2002); *Baccellieri v. HDM Furniture Indus., Inc.*, 2013 WL 1088338, at *8 (Del. Super. Ct. Feb. 28, 2013) (section 1666i does not create an independent cause of action), aff'd, 74 A.3d 653 (Del. 2013). See also *Rigby v. FIA Card Servs.*, 2011 WL 6669052 (S.D. Ala. Nov. 21, 2011) (declaratory judgment not available to assert claim under § 1666i; citing Beaumont), adopted by 2011 WL 6703955 (S.D. Ala. Dec. 21, 2011), rev'd on other grounds, 490 Fed. Appx. 230 (11th Cir. 2012); *Moynihan v. Providian Fin. Corp.*, 2003 WL 21841719 (D. Md. July 14, 2003) (following Beaumont).

161 Official Interpretations § 1026.12(c)(2)-2.

162 An adverse credit report can include reporting the account is delinquent, in collections, or charged off. However, the account can be reported as "disputed." Official Interpretations § 1026.12(c)(2)-1.

163 Reg. Z § 1026.12(c)(2).

164 15 U.S.C. § 1640(a).

165 15 U.S.C. § 1640(e).

166 *Id.*

167 Additionally, under Texas law, if the victim is sued by the credit card issuer in a debt collection action, the victim may file a counterclaim for these TILA violations even if they are outside of the one-year statute of limitations so long as it is filed within thirty days of the answer due date.

168 *Dillard Dept. Stores, Inc. v. Owens*, 951 S.W.2d 915 (Tex. App. ---Corpus Christi 1997, no writ).

169 *Id.* at 915.

170 *Id.*

171 *Id.*

172 *Id.*

173 *Id.*

174 *Id.* at 916.

175 *Id.* at 917-918.

176 *Id.* at 918.

177 *Id.*

178 *Id.*

179 *Id.* at 919.

180 15 U.S.C. §§ 1692-1692p

181 15 U.S.C. § 1692g(b).

182 15 U.S.C. § 1692g(a)(3). See *Henaffer v. Simeone & Raynor, L.L.C.*, 2016 WL 6305939 (D.N.J. Oct. 27, 2016); *Diaz v. Residential Credit Solutions, Inc.*, 965 F. Supp. 2d 249 (E.D.N.Y. 2013); *In re Turner*, 2010 WL 3211030 (M.D. Ala. Aug. 13, 2010); *Rivera v. Amalgamated Debt Collection Services, Inc.*, 462 F. Supp. 2d 1223 (S.D. Fla. 2006); *Cavallaro v. Law Offices of Shapiro & Kriesman*, 933 F. Supp. 1148 (E.D.N.Y. 1996). See also *Jacobson v. Healthcare Fin. Serv., Inc.*, 516 F.3d 85, 90-92 (2d Cir. 2008) (notice's clear statement that thirty days started from receipt of notice was obscured by request for notice within thirty days); *Monokrounos v. Computer Credit, Inc.*, 984 F. Supp. 233 (S.D.N.Y. 1997) (collector's second letter shortened thirty-day time); *In re Hathcock*, 437 B.R. 696 (Bankr. M.D. Fla. 2010); *Spears v. Brennan*, 745 N.E.2d 862 (Ind. Ct. App. 2001) (omitted thirty days was calculated from receipt).

183 15 U.S.C. § 1692f (any unfair practice); 15 U.S.C. § 1692e(5) (threatening to take any action that cannot be legally taken); 15 U.S.C. § 1692e(8) (communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed).

184 15 U.S.C. § 1692c(c).

185 Center for Survivor Agency and Justice, Texas RioGrande Legal Aid, Inc., and undersigned comments on proposed rulemaking on debt collection practices (Regulation F) submitted to the CFPB, September 18, 2019.

186 Tex. Penal Code § 32.31(b).

187 Tex. Penal Code § 1.07(a)(19).

188 Tex. Penal Code § 32.51(b).

189 Tex. Penal Code § 32.51(b).

190 If you are a Texas lawyer, a detailed overview of the application process for suits under Chapter 521 may be found by accessing the following article from the Texas State Bar's CLE materials: Paula Pierce, *Know Your 521: Tips for Assisting Identity Theft Victims*, 14 Advanced Consumer & Commercial Law (2019), State Bar of Texas.

191 Tex. Bus. & Com. Code § 521.103.

192 Tex. Bus. & Com. Code §§ 521.101.

193 "A person who is injured by a violation of Section 521.051 or who has filed a criminal complaint alleging commission of an offense under Section 32.51, Penal Code, may file an application with a district court for the issuance of an order declaring that the person is a victim of identity theft." Tex. Bus. & Com. Code §521.101(a).

194 Id. See also Tex. Bus. & Com. Code § 521.051.

195 2019 Me. Laws 1062-64, which was codified at Me. Rev. Stat. Ann. tit. 10, § 1310-H(2-A) and called the "Economic Abuse Debt Reporting Act."

196 10 M.R.S.A. § 1310-H(2-A).

197 19-A M.R.S.A. § 4002(3-B).

198 10 M.R.S.A. § 1310-H(2-A).

199 Id.

200 14 M.R.S.A. § 6001(6)(H). In determining what documentation a consumer can provide to demonstrate the disputed debt resulted from economic abuse, Maine looked at its existing landlord/tenant law which provides certain protections for victims of domestic violence, sexual assault, or stalking.

201 32 M.R.S.A. §11014(2-A).

202 Id.

203 19-A M.R.S.A. § 4007(1).

204 Cal. Fam. Code § 6342.5(b).

205 Cal. Fam. Code § 6342.5(a).

206 Cal. Civ. Code § 1798.93.

207 As defined by Cal. Penal Code § 530.5.

208 Cal. Civ. Code § 1798.93(c).

209 Cal. Civ. Code § 1798.93(c)(5) and (6).

210 See National Consumer Law Center, Fair Debt Collection (10th ed. 2022), updated at www.nclc.org/library. Six states do not have debt collection statutes: Kentucky, Mississippi, Missouri, Montana, Ohio, and South Dakota. The Georgia statute, Ga. Code Ann. §§ 7-3-1 to 7-3-29, deals only with debt collectors working for industrial loan companies.

211 *Id.*

212 National Consumer Law Center, Unfair and Deceptive Acts and Practices §2.1 (10th ed. 2021), updated at www.nclc.org/library.

213 National Consumer Law Center, Unfair and Deceptive Acts and Practices §2.2.2 (10th ed. 2021), updated at www.nclc.org/library.

214 For example, in Texas the debt collection statute is a tie-in to the UDAP statute; a violation of the debt collection statute is a violation of the UDAP statute.

215 Note that state usury caps may not apply to federally chartered banks or banks chartered in states with a high cap (or no cap).

216 See e.g. Tex. Civ. P. Rem. Code §16.069.

217 A victim of coerced auto loan debt could have claims under a state's UCC for unlawful repossessions, claims against an assignee under the FTC holder rule for UDAP or TILA violations that are apparent on the face of the document, or other potential auto fraud claims such as violations of the Magnuson-Moss Warranty Act.

218 Some possible claims on mortgage loans include violations of RESPA, TILA, or debt collection/property code violations for wrongful foreclosure.

219 Other types of unsecured loans could be payday loans, loans to purchase furniture, loans for medical procedures, and/or educational loans. All these loans can be subject to TILA and other consumer protection statutes such as UDAP statutes.

220 In Texas, for example, counterclaims that would otherwise be outside of the applicable statute of limitations must be filed within thirty days of the answer due date. See Tex. Civ. P. Rem. Code §16.069.

221 15 U.S.C. § 1692(i)(a).

222 A time-barred suit on debt the collector knew or should have known was barred by the statute of limitations, constitutes a false representation regarding the character or legal status of the debt and a false representation or deceptive means to collect a debt in violation of 15 U.S.C. § 1692(e)(2)(A).

223 Many states have codified the UDJA, see e.g. Tex. Fin. Code §392.101.

224 47 U.S.C. § 227.

225 For a more detailed discussion of tort claims in the context of debt collection, see NCLC National Consumer Law Center, Fair Debt Collection (9th ed. 2018), Section 15.1.5 updated at www.nclc.org/library.

226 See e.g. Tex. Civ. P. Rem. Code Ch. 37.

227 Tex. Civ. Prac. & Rem. Code §37.002(b).

228 Tex. Civ. Prac. & Rem. Code §37.004(a).