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May 9, 2022

Via Electronic Submission

Comment Intake—FCRA Trafficking
Bureau of Consumer Financial Protection
1700 G Street NW
Washington, DC 20552

RE: Docket No. CFPB-2022-0023, RIN 3170-AB12 — Prohibition on Inclusion of Adverse Information in Consumer Reporting in Cases of Human Trafficking (Regulation V)

Dear Sir or Madam:

The Independent Community Bankers of America (“ICBA”)¹ welcomes the opportunity to comment on the Consumer Financial Protection Bureau’s (“Bureau”) proposed rule, the prohibition on inclusion of adverse information in consumer reporting in cases of human trafficking. Given that victims of human trafficking often have their credit exploited by the perpetrators of the crime, community banks firmly agree that survivors should be provided with tools and opportunities for financial stability that will support their long-term recovery.

Part of that opportunity for recovery includes a credit report that retracts adverse information due to human trafficking. The proposed rule mainly requires Credit Reporting Agencies (“CRA”) to act as a central repository, maintaining a database of victims of human trafficking, and in turn, ensuring adverse information on those victims are not furnished to users of credit reports. Given CRAs’ position in the ecosystem of credit information, acting as central repository for both furnishers and users of information, ICBA believes that CRAs are best positioned to meet

¹*The Independent Community Bankers of America® creates and promotes an environment where community banks flourish. ICBA is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education, and high-quality products and services.*

With nearly 50,000 locations nationwide, community banks constitute roughly 99 percent of all banks, employ nearly 700,000 Americans and are the only physical banking presence in one in three U.S. counties. Holding nearly \$5.9 trillion in assets, over \$4.9 trillion in deposits, and more than \$3.5 trillion in loans to consumers, small businesses and the agricultural community, community banks channel local deposits into the Main Streets and neighborhoods they serve, spurring job creation, fostering innovation and fueling their customers’ dreams in communities throughout America. For more information, visit ICBA’s website at www.icba.org.

The Nation’s Voice for Community Banks.®

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the goals of this rule. As such, ICBA believes that the proposed rule strikes the right scope by focusing exclusively on CRAs.

Background

The CFPB is proposing to revise Regulation V, which would reflect a recent amendment made to the Fair Credit Reporting Act (“FCRA”). The proposal would establish a method for a victim of trafficking to submit documentation to consumer reporting agencies. The proposal provides that a consumer reporting agency may not furnish a consumer report containing any adverse item of information concerning a consumer that resulted from a severe form of trafficking in persons or sex trafficking if the consumer has provided trafficking documentation to the consumer reporting agency.

The Bureau is proposing to amend Regulation V as follows:

- Create a new section in subpart O, the subpart on miscellaneous duties of consumer reporting agencies, to add the provisions implementing section 605C of the FCRA;²
- Apply the proposed regulations to any “consumer reporting agency” as defined in section 603(f) of the FCRA, namely nationwide consumer reporting agencies, nationwide specialty consumer reporting agencies, and all other consumer reporting agencies;
- Define terms including, in particular, “trafficking documentation,” “severe forms of trafficking in persons,” “sex trafficking,” and “victim of trafficking;” and
- Establish procedures for implementation of the new prohibition, including establishing how affected consumers should submit the required documentation to consumer reporting agencies and recordkeeping requirements to ensure compliance.

In addition, the Bureau is seeking comment on whether a consumer reporting agency should be required to notify a furnisher about the consumer’s submission to prevent a consumer reporting agency from furnishing a consumer report containing any adverse item of information about a consumer that resulted from trafficking.

ICBA Comments

ICBA firmly supports the goal of this proposed rule. Community banks exist to support and meet the financial services needs of the members of their community. This includes protecting their financial wellbeing if they fall victim to criminal activity, when possible, or helping the victims financially recover from the crime. As relationship-based banks, community banks rise to this challenge and often provide additional resources to help victims better than any other

² National Defense Authorization Act for Fiscal Year 2022 (2022 NDAA), Pub.L. 117-81, section 6102, 135 Stat. 2383-84 (2021)(to be codified at 15 U.S.C. 1681c-3).

financial institution since community banks are often integrated into the whole suite of resources that victims will need to recover in their communities. This includes other support systems, such as mental health counseling, housing, food security, personal security, and other resources found in a typical community. As pillars in their communities, community banks are tied into these other resource providers and they can work in tandem to helping victims recover.

Part of that recovery includes removal of adverse information that was the direct result of illegal activity or extortion. A credit reporting framework is only as valid as the quality and veracity of the information collected and reported. Adverse information that results from human trafficking is not valid. It is fraudulent and its inclusion in credit reports would cause further harm to these victims. As such, the proposed rule rightly focuses on credit reports and CRAs. As the central node of receiving and disbursing credit-related information, CRAs are best positioned to receive reports of human trafficking from victims, remove adverse information from credit reports, and disburse reports that have been purged of the human trafficking-linked adverse information.

However, as the Bureau considers the finalization of this proposed rule, ICBA encourages the CFPB to limit the scope to CRAs. In particular, ICBA believes that the Bureau should not require CRAs to notify furnishers of information that adverse information is blocked for a victim of trafficking as a means to reduce adverse information.

On its face, Section 605C of the FCRA does not require CRAs to notify furnishers of the status of the victims. This is presumably to maintain the privacy of the victims by limiting that information to the fewest sources possible. If CRAs were to report that status to all furnishers of information, that would create the potential for dozens of entities to know that a consumer was victimized. Further, it is not clear what benefit would be gained by notifying all furnishers as to the victimization status of their customers. It is much better to focus the rule and requirement on the CRAs, as they are the entities with the most control and awareness of the credit data and the status of the consumer.

ICBA appreciates this opportunity to comment. We believe that this proposed rule will help victims of human trafficking recover. We further believe that the scope of the proposed rule should be maintained and that the privacy of victims be safeguarded as much as possible by not broadcasting their status to dozens of entities, but is better maintained and controlled by the few CRA firms. Should you want to discuss this comment further, please contact me at Michael.Emancipator@icba.org or 202-821-4469.

Sincerely,

/s/

Michael Emancipator
Vice President and Regulatory Counsel

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