



NATIONAL DISTRICT ATTORNEYS ASSOCIATION

May 6th, 2022

Bureau of Consumer Financial Protection
1700 G St. NW
Washington, DC 20552

Submitted via <http://www.regulations.gov>
Docket Number: CFPB-2022-0023

RE: Prohibition on Inclusion of Adverse Information in Consumer Reporting in Cases of Human Trafficking (Regulation V)

I am reaching out on behalf of the National District Attorneys Association (NDAA), the oldest and largest national organization representing state and local prosecutors in the country. NDAA is a national, non-partisan, non-profit membership association providing training, technical assistance and services to prosecutors across the country. With more than 5,000 members nationwide, NDAA is recognized as the leading source of national expertise on the prosecution function and is a valuable resource for the media, academia, government, and community leaders. Today, I write in response to the Notice of Proposed Rulemaking, Prohibition on Inclusion of Adverse Information in Consumer Reporting in Cases of Human Trafficking (Regulation V) as the Bureau of Consumer Financial Protection (CFPB) begins to implement amendments to the Fair Credit Reporting Act (FCRA).

Prosecutors have long recognized¹ the challenges faced by victims of human trafficking and supported the changes adopted in the FCRA as part of the National Defense Authorization Act of 2021. Our partners at the Polaris Project, have confirmed reports of human trafficking incidents in all 50 States and multiple United States territories.² As the CFPB begins to enact these changes as part of Regulation V, our members have taken a particular interest in ensuring that processes exist to verify an individual has been affected by trafficking and provides information to the victims of trafficking to assist in removing adverse information from a consumer report.

NDAA applauds our partners at the CFPB, as the rulemaking takes important steps to recognize the need to verify survivors of trafficking without revictimizing those individuals. Law enforcement and prosecutors often face challenges in verification as bad actors may attempt to exploit the loopholes and benefits meant for victims by falsely claiming to have faced victimization themselves.³ Many victims of trafficking themselves are hesitant to come forward due to the dangers posed by their traffickers and the lack of knowledge surrounding laws meant to assist or benefit those who have broken free from the cycle of abuse.⁴ This can often lead to a lack of cooperation or trust by victims who stand to benefit from measures such as those adopted by the CFPB as a result of the changes to the FCRA.

¹ *National Human Trafficking Prosecution Best Practices Guide* (Jan. 1, 2020), <https://ndaa.org/wp-content/uploads/Human-Trafficking-White-Paper-Jan-2020.pdf>.

² *Myths, Facts, and Statistics* (May 4, 2022), <https://polarisproject.org/myths-facts-and-statistics/>.

³ See *National Human Trafficking Prosecution Best Practices Guide*.

⁴ David Okech, Whitney Morreau, and Kathleen Benson, *Human trafficking: Improving victim identification and service provision*, *International Social Work* Vol. 55, No. 4 (2011): 488-503 (489) citing (Angel, 2007; Joshi, 2002; Sigmon, 2008).

The Nation’s prosecutors are committed to assisting the CFPB in its work to implement this new benefit to victims by amending Regulation V. Our members offer specific answers to the questions posed by the agency as it works to follow Congress’s intent in enacting the new rule to assist in ensuring a consumer reporting agency may not furnish a consumer containing any adverse item of information concerning a consumer that resulted from a severe form of trafficking in persons or sex trafficking. In the following answers, NDAA focuses specifically on the topics and questions that are relevant to our membership and the role prosecutors can assist in adopting this new benefit for survivors of trafficking.

Recommended Considerations to Strengthen CFPB Rulemaking

Our membership has identified key areas where CFPB can assist in following Congressional intent and ensure that victims of trafficking can provide appropriate documentation without risking revictimization. NDAA points to the broad nature of the legislation to allow for the rulemaking to consider multiple factors when assessing whether an individual qualifies for the protections provided under the changes to Regulation V.

Specifically, the challenges related to what interaction a particular victim has had with the criminal justice system, victim services, community services, or other support opportunities will need to be captured by the rulemaking. The relational dynamics between victims and traffickers present challenging issues for prosecutors and law enforcement seeking to gain their cooperation or identification in an investigation. Many of them do not present as the typical crime “victim.” In some ways, they have more in common with domestic violence victims than victims of rape or kidnapping, due to the strong emotional bonds they have formed with the traffickers. The failure of many of these individuals to acknowledge being victimized impacts their willingness to work with law enforcement, address issues of safety, and recognize the value of support services.⁵

The rule will be best suited to recognize these challenges by allowing for a broader definition of “Trafficking Documentation” under Section 142(B)(6) required by statute, to encompass victims who may not yet have come into contact with the criminal justice system or with an appropriate service provider. The rule should ask for basic documentation that encompasses each of these scenarios in which a victim may receive services, such as medical or mental health care, or ask for simple evidence that the individual is cooperating with or was identified by law enforcement as a victim of a human trafficking investigation. Documentation can include basic information such as a form of attestation from a victim services provider or law enforcement agency, such as a prosecutor’s office or sheriff’s department. Verification should then fall on the agency reviewing the consumer request to ensure that such victim service provider or law enforcement agency was, in fact, in contact with the individual victim. Placing the burden of verification of legitimacy on the victim themselves creates the potential for revictimization and may push individuals who seek this relief away from the process. Rather once a basic form or document is provided by an individual victim, the CFPB or appropriate credit reporting agency should complete the follow up separately to ensure the legitimate identification of such victim.

Applying this process ensures legislative intent is realized by both creating a clear chain of custody to document the legitimate identification of a victim, while also ensuring safeguards are in place to avoid revictimization and exploitation of the rule. When implementing these rules, the CFPB should take note that standard forms to identify legitimate “victims” compared to exploiters do not often exist in the law enforcement field. Rather, creating a standardized form that victims can easily access and provide to an appropriate law enforcement agency or victim service providers may assist in the process, without creating additional hurdles or burdens for the victims involved in clearing their credit reports.

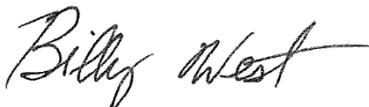
Furthermore, as noted in Definition 142(B)(1) the “Proof of Identity” should not encompass multiple identifiers but should rather mandate one clear piece of documentation to be provided to a consumer reporting agency that will not be stored or held for longer than the period needed to verify a victim’s identity. Requiring a basic form

⁵ See, *National Human Trafficking Prosecution Best Practices Guide*.

of documentation can be accompanied by additional questions that are specifically set up to assist the individual in answering questions specific to their circumstances. However, such questions should not be invasive or point back to the abuses suffered, as such probing could lead victims to pull back from the process fearing the oversharing of information could lead to further abuse.⁶ Therefore, “Proof of Identity” should consider the least invasive means of questions supplementing any written documentation and, as a matter of course, the reporting agency or CFPB should not store identifying information, rather only view it upon receipt of a request to clear a victim’s report.

NDAA is strongly aligned with the goals of the CFPB to avoid revictimization and ensure maximum usage of this benefit for those who have survived multiple forms of criminal trafficking. An additional measure that the agency should strongly consider when implementing the changes to Regulation V is adopting a nationwide education campaign to both prepare the law enforcement and advocate community that this new change is occurring, but also provide details for victims hoping to utilize this important benefit. Proactive measures by the CFPB to not only educate victims and the public, but specific law enforcement and community advocates will be vital to ensuring the successful implementation of the final rule. Campaigns conducted with national advocate and law enforcement organizations as well as local leaders will increase the visibility and importance of this measure to empower victims over offenders. Our prosecutors stand ready to assist the CFPB in implementation of the final rule and look forward to ensuring we accomplish our shared goal of supporting and empowering victims of trafficking. We appreciate your commitment to enacting this important legislation and look forward to working alongside your agency to implement the prohibition on inclusion of adverse information in consumer reporting in cases of human trafficking.

Sincerely,



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⁶ See Heather J. Clawson, Ph.D. and Nicole Dutch, B.A, *Case Management And The Victim Of Human Trafficking: A Critical Service For Client Success*, U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation <https://aspe.hhs.gov/system/files/pdf/75416/ib.pdf>.