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

Re: 12 CFR Part 1022 [Docket No. CFPB–2022–0023] RIN 3170–AB12, Prohibition on Inclusion of Adverse Information in Consumer Reporting in Cases of Human Trafficking (Regulation V)

To Whom It May Concern:

The Consumer Data Industry Association (“CDIA”) is pleased to submit this comment to the proposed rule implementing the National Defense Authorization Act for Fiscal Year 2022 (“NDAA”)¹ to help survivors of human trafficking have their trafficking-related information blocked from consumer reports. CDIA was proud to support the legislation as it moved through the Congress last year. Our comment for this rulemaking is made in the spirit of our work to enable the effective block of trafficking-related information in a way that is expeditious and fair, and best serves victims.²

CDIA members recognize that victims of trafficking need assistance in obtaining independence and financial freedom. CDIA members stand ready to assist victims and present this comment letter with suggestions that will allow members to more easily help victims navigate the process for removing information thereby helping victims to take a step

¹ Pub. L. No. 117-81, § 6102, 135 Stat. 1541, 2383-2384 (2022).

² CDIA is the voice of the consumer reporting industry, representing consumer reporting agencies including the nationwide credit bureaus, regional and specialized credit bureaus, background check and residential screening companies, and others. Founded in 1906, CDIA promotes the responsible use of consumer data to help consumers achieve their financial goals, and to help businesses, governments and volunteer organizations avoid fraud and manage risk. Through data and analytics, CDIA members empower economic opportunity, helping ensure fair and safe transactions for consumers, facilitating competition and expanding consumers’ access to financial and other products suited to their unique needs. CDIA is an international trade association of companies that educates policymakers, consumers, and others on the benefits of using consumer data responsibly. CDIA also provides companies with information and tools to manage risks and protect consumers.

closer to achieving their goal of independence while, at the same time, avoiding scenarios that could result in further victimization and abuse of victims.

There are three key components CDIA recommends to developing an effective process: (1) the procedural aspects must be clear to victims and to consumer reporting agencies (“CRAs”); (2) the definitions that inform the substance of the requirements must be clear; and (3) Trafficking Documentation must contain elements that enable CRAs to timely effectuate a victim’s request. Further, because of the importance of this issue and the complexity of the procedures to effectively achieve the goal of the NDAA, CDIA requests that the Consumer Financial Protection Bureau (“CFPB”) implement the rule as an interim final rule and leave the comment period open. This will allow time for evaluation of the effectiveness of the regulations in meeting the goal of protecting trafficking victims and an opportunity to make adjustments, as needed.

As this letter will more fully address, CDIA proposes the following to better effectuate the proposed regulations and assist victims of trafficking:

Procedural

- Similar to FCRA § 605B(d), provide an express exception for resellers without consumer files.
- Consistent with FCRA § 605B(f) relating to identity theft blocks, allow CRAs to provide Federal, State, or local law enforcement agencies with access to blocked information.
- Eliminate the requirement for CRAs to have an additional (or dedicated) mailing address, toll-free telephone number, and website, as this would likely lead to consumer confusion.
- Clarify that there should be a timeframe for placement of the block and a separate timeframe for the notice to the victim, and that any timeframe be measured in business days.
- Eliminate the proposed seven (7) year record retention.
- Provide at least six (6) months following issuance of the Final Rules for members to implement methods to receive and process Trafficking Documentation.

Clarity on Definitions

- Add more clarity to the definitions of:
 - “Non-Governmental Sources”;
 - “Determination of trafficking”; and
 - “Filed in a court of competent jurisdiction.”

Trafficking Documentation

- Trafficking Documentation should include the preferred contact information for the victim, the victim's name, and the time period during which the victim was trafficked.
- Allow for an optional notice of rights that CRAs and the CFPB can make available and a simple form that victims may provide, under oath, along with the Trafficking Documentation that demonstrates the determination that the individual requesting the block was a victim of trafficking.
- Provide a safe harbor for reliance on Trafficking Documentation submitted by a victim.

I. Background

By way of background, the Trafficking Victims Protection Act of 2000 (the "Act")³ was passed to fight significant trafficking in persons.⁴ The Justice for Victims of Human Trafficking Act of 2015 requires that the United States Attorney General ("AG") create a National Strategy for Combating Human Trafficking to prevent human trafficking with integrated efforts at the state, local, and tribal level (the "Strategy").⁵ The AG's most recent Strategy⁶ takes into account the President's National Action Plan to Combat Human Trafficking (the "Action Plan") issued in December 2021.⁷

On December 27, 2021, Congress enacted the NDAA⁸ which, among other provisions, amended the Fair Credit Reporting Act ("FCRA").⁹ Specifically, the NDAA amended the FCRA to add Section 605C which prohibits a CRA from furnishing a "consumer report containing any adverse item of information about 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"¹⁰ (the "Amendment"). The Amendment relies on the definitions of "victim of trafficking," "severe form of trafficking," and "sex trafficking" as presented in the

³ 22 U.S.C. §§ 7101 *et seq.*

⁴ 22 U.S.C. § 7101(a).

⁵ 34 U.S.C. § 20711.

⁶ U.S. Department of Justice, *National Strategy to Combat Human Trafficking* (Jan. 2022), <https://www.justice.gov/opa/press-release/file/1467431/download>.

⁷ *The National Action Plan to Combat Human Trafficking* (Dec. 2021), <https://www.whitehouse.gov/wp-content/uploads/2021/12/National-Action-Plan-to-Combat-Human-Trafficking.pdf>.

⁸ Pub. L. No. 117-81, § 6102, 135 Stat. at 2383-2384.

⁹ 15 U.S.C. §§ 1681 *et seq.*

¹⁰ Pub. L. No. 117-81, § 6102, 135 Stat. at 2383.

Act.¹¹ The NDAA directed the CFPB to promulgate regulations to “establish a method by which consumers shall submit trafficking documentation to consumer reporting agencies.”¹²

The CFPB is charged with issuing a final set of rules within 180 days of the enactment of the NDAA (“Final Rules”). The CFPB proposed rules to implement the Amendment on April 8, 2022 (the “Proposed Rule”).¹³

CDIA appreciates that it is important from a public policy standpoint to “take all reports of human trafficking seriously.”¹⁴ At the same time, CDIA appreciates that the Final Rules must be carefully crafted to allow CRAs to assist true victims efficiently and effectively, while filtering inappropriate requests that are likely to come without sufficient controls. As the CFPB is aware, Section 607 of the FCRA imposes a duty upon CRAs to implement “reasonable procedures to assure maximum possible accuracy.”¹⁵ This duty extends to all information contained within a consumer report. Thus, it is important that the Final Rules allow balance among providing true victims the opportunity to block information related to their trafficking victimization, providing clarity so that the CRAs can meet their duty to report accurate information (including negative, accurate information), and preventing fraudulent actors from having another mechanism to remove accurate negative information or misuse the process that will further harm victims.

II. Process for Victims of Identity Theft as a Guideline

CDIA agrees that the CFPB should leverage the process that is currently in place under the FCRA provision that allows a consumer to request that a CRA block items of information on their consumer report resulting from identity theft, with some important adjustments to meet the goal of the NDAA.¹⁶ Under the FCRA, CRAs are required to block items of information resulting from alleged identity theft provided that the consumer provides (1) appropriate proof of identity; (2) an identity theft report; (3) the identification of information resulting from the alleged identity theft; and (4) confirmation that the information is not related to a transaction by the consumer.¹⁷ CRAs are required to block the

¹¹ 22 U.S.C. §§ 7102 *et seq.*

¹² Pub. L. No. 117-81, § 6102, 135 Stat. at 2384.

¹³ Prohibition on Inclusion of Adverse Information in Consumer Reporting in Cases of Human Trafficking (Regulation V), 87 Fed. Reg. 20771 (proposed April 8, 2022) (to be codified at 12 C.F.R. pt. 1022).

¹⁴ Emphasis added. U.S. Dept. of State, 2021 Trafficking in Persons Report, 34 (June 2021), <https://www.state.gov/wp-content/uploads/2021/09/TIPR-GPA-upload-07222021.pdf>.

¹⁵ 15 U.S.C. § 1681e(b).

¹⁶ 15 U.S.C. § 1681c-2.

¹⁷ 15 U.S.C. § 1681c-2(a).

information within four (4) business days and notify the furnisher of the information that the block has been placed because the information may be the result of identity theft.¹⁸

Further, the FCRA also allows CRAs to rescind or decline to block the information under particular circumstances, including that the consumer misrepresented a material fact in the request.¹⁹ The CRAs are also permitted to provide Federal, State, or local law enforcement agencies with access to blocked information.²⁰ Using this existing process as a starting point could provide some needed clarity for CRAs to assist victims of trafficking with removing adverse information on their file due to trafficking.

CDIA appreciates the lessons learned from the blocking process and welcomes the opportunity to work with the CFPB to ensure the Final Rules allow for CRAs to build in appropriate control measures and create a better and more efficient roadmap for assisting victims of trafficking. As part of a consumer's request to block information resulting from identity theft, consumers must submit an identity theft report²¹ along with their request to block information resulting from identity theft.²² CRAs have experienced a rash of fraudulent identity theft reports, sometimes submitted to the CRAs without consumers' knowledge. The Federal Trade Commission ("FTC") has observed abuse of the identity theft process as well.²³ In the absence of controls, the process created for victims of trafficking could similarly yield the abuse that has happened with identity theft.

The stakes are very high here. The 2021 Trafficking in Persons Report summarizes a general concern held by CRAs that will be subject to the Final Rules: "... service providers must take all reports of human trafficking seriously, which means that increased reports based on false information make it more difficult for responders to provide support to victims of human trafficking."²⁴ If the appropriate controls are not in place, the process anticipated by the Final Rules could allow for fraudulent actors and other criminals, including traffickers, to remove evidence of the trafficking (e.g., removing tradelines opened under duress) and to potentially continue to hide the true victim's location allowing for further victimization of individuals. This would have a devastating effect on an already vulnerable population.

¹⁸ 15 U.S.C. § 1681c-2(a), (b)(1).

¹⁹ 15 U.S.C. § 1681c-2(c).

²⁰ 15 U.S.C. § 1681c-2(f).

²¹ The identity theft report could be a police report.

²² 15 U.S.C. § 1681c-2(a)(2).

²³ The FTC Office of the Inspector General observed that "[d]eliberately false identity theft complaints are submitted for various reasons—including to elude payments on purchases, sell bogus credit repair services to unwitting consumers, or otherwise leverage the effects that a report can have on their credit scores." See https://www.ftc.gov/system/files/documents/reports/final-oig-fy-2021-report-ftcs-top-management-performance-challenges/oig_fy_2021_ftc_top_management_challenges_final_report_9-30-21.pdf, at p. 8.

²⁴ See 2021 Trafficking in Persons Report at 34.

The following provides CDIA's comment on the Proposed Rule following the format of the CFPB's "Section-by-Section Analysis" in Part IV of the Proposed Rule.²⁵

III. Comments to 142(a) Scope

A. Resellers Should be Exempted from Compliance with the Final Rules.

The Proposed Rule applies to all CRAs as defined in Section 603(f) of the FCRA.²⁶ As discussed by the CFPB in its "142(e)-(h) Overview" Section of Part IV of the Proposed Rule, the CFPB has leveraged existing identity theft requirements under Section 605B of the FCRA²⁷ and dispute procedures under Section 611 of the FCRA.²⁸ In doing so, however, an important exception to the application of these particular provisions of the FCRA has been left out of the Proposed Rule that CDIA believes is important. Specifically, these Sections of the FCRA incorporate special processes for CRAs that do not maintain a file on a consumer.²⁹

The Section 605B provisions related to placing a block of consumer report information resulting from identity theft are applicable to CRAs that maintain a file.³⁰ For reseller CRAs that do not maintain a file and are not otherwise including the information identified by the consumer in a consumer report, Section 605B requires that the reseller CRA inform the consumer that the consumer may report the identity theft to the CFPB and provide the consumer with the identity theft summary of rights.³¹

Likewise, Section 611 of the FCRA sets forth a separate process for resellers handling disputes of information obtained from another CRA.³² If the CRA is a reseller, the reseller must ensure that the inaccuracy was not the result of an error or process on the reseller's part and must convey the dispute to the CRA that provided the information under dispute to the reseller.³³ The CRA that maintains the information in a database for use in future consumer reports is required to then reinvestigate the dispute (including by forwarding relevant information to the furnisher of the information) and to forward the results of such reinvestigation back to the reseller who then forwards the results to the consumer.³⁴

²⁵ 87 Fed. Reg. at 20773 – 20778.

²⁶ *Id.* at 20773.

²⁷ 15 U.S.C. § 1681c-2.

²⁸ 15 U.S.C. § 1681i.

²⁹ A "file" means "all of the information on [a] consumer recorded and retained by a consumer reporting agency regardless of how the information is stored." 15 U.S.C. § 1681a(g).

³⁰ 15 U.S.C. § 1681c-2(a).

³¹ 15 U.S.C. § 1681c-2(d)(1).

³² 15 U.S.C. § 1681i(f).

³³ 15 U.S.C. § 1681i(f)(3).

³⁴ *Id.*

The Proposed Rule does not provide any exceptions or simplified processes as exemplified under Section 605B and Section 611 of the FCRA for CRAs that do not maintain a file on a consumer from which new consumer reports are produced. The exceptions are needed, however, and CDIA encourages the CFPB to include certain provisions related to such in the Final Rules. In particular, CRAs that do not maintain a file on a consumer do not have any means with which to block such information for use in future consumer reports. Thus, upon notice from a consumer, the most a CRA without a file would be able to do is (1) notify the CRA from which it received the information of the consumer's request, (2) notify the consumer of the CRA from which the information was obtained, or (3) point the consumer to the CFPB for more information on trafficking. CRAs want to ensure the victims are able to efficiently block information resulting from trafficking, and without this exemption, victims may be confused as to which CRAs can block information. Therefore, CDIA requests that the CFPB add in a definition for "reseller" mirroring the definition found in Section 603(u) and exclude resellers without a file from the scope of the Final Rules.

B. Criminal Records Present Unique Challenges and Should be Addressed Separately from Financial Tradelines.

Different risks are prevalent with different types of CRAs and different types of information included in a consumer report. CRAs that report criminal records envision a distinct and significant issue with blocking the reporting of public records containing criminal history based on any documents "filed" in another court. Of particular concern is that a perpetrator may seek to block accurate criminal record information from an employment or tenant screening report. When accurate criminal record information is presented in these types of consumer reports, it provides invaluable information on which a potential employer or landlord may rely. For this reason, CDIA believes that a careful and tailored approach should be taken with respect to criminal records in the Final Rules.

The following suggestions are discussed in more detail in the relevant sections below: (1) certain information that is factual in nature (e.g., licensure revocation, criminal convictions that have not been expunged or reversed) should not be considered adverse information subject to blocking; and (2) criminal record information may not be blocked based on documents "filed" in a court of competent jurisdiction.

IV. Comments to 142(b)(1) Definition of "Appropriate Proof of Identity"

Proposed Section 1022.142(b)(1) defines the term "appropriate proof of identity" as meaning proof of identity that meets the requirements in Section 1022.123. CDIA notes that it may be difficult for CRAs to confirm that the consumer submitting the request is actually the victim (and not the trafficker). "One challenge for many survivors is that they lack

'foundational' identity documents such as a birth certificate or driver's license needed to obtain access to the financial system.”³⁵ The Action Plan supports a “risk-based” approach to verifying a consumer's identity including through “non-documentary means.”

The difficulty in verifying a consumer's identity could be exacerbated by the circumstances surrounding the trafficking events. Victims of trafficking may have had their identity, financial, and account information stolen as part of the trafficking.³⁶ The CFPB notes in its discussion that a victim may “live at an address not reported to consumer reporting agencies.”³⁷ In these instances, without further verification, such as direct contact with the victim, it may be impossible for CRAs to determine whether the requestor is acting fraudulently, thereby continuing to victimize the true consumer, or if the requestor is the victim and thus, entitled to relief. At a minimum, and as discussed in various sections of this letter, it is important that the Trafficking Documentation include the preferred contact method for the victim and that the Proposed Rule allow for CRAs to contact the victim, if needed to effectuate the victim's block request. This will help ensure the victim's privacy and security by not sending various correspondence that the victim does not wish to receive and/or potentially to an address that jeopardizes the victim's safety, while ensuring the CRA has the information it needs to fulfill the victim's request.

V. Comments to 142(b)(6) Definition of “Trafficking Documentation”

CDIA agrees with the CFPB that further analysis and industry input is paramount to properly defining Trafficking Documentation requirements. At this point, there is much to be learned about the victims of trafficking and how they may interact with Federal, State, and Tribal entities, including with the criminal justice system as a whole. CDIA is particularly concerned that a lack of understanding could have unintended effects, such as those experienced with identity theft blocks submitted by credit repair agencies, and result in more harm to true victims.

It is in this vein that CDIA encourages the CFPB to: (1) add more clarity to the definitions of each of the following sections; (2) allow for a notice of rights and a form that victims may provide under oath with their Trafficking Documentation that includes sufficient detail about the period the victim was impacted by the trafficking and the items of information sought to be blocked; and (3) provide a safe harbor for CRAs that do rely on the Trafficking Documentation submitted by a victim as sufficient to block the information

³⁵ See *The National Action Plan to Combat Human Trafficking* at 38.

³⁶ Polaris, *On-Ramps, Intersection, and Exit Routes: A Roadmap for Systems and Industries to Prevent and Disrupt Human Trafficking*, 35 (Jul. 2018), <https://polarisproject.org/wp-content/uploads/2018/08/A-Roadmap-for-Systems-and-Industries-to-Prevent-and-Disrupt-Human-Trafficking-Financial-Industry.pdf>.

³⁷ 87 Fed. Reg. at 20773.

identified by the consumer as resulting from a severe form of trafficking from appearing in future consumer reports.

A. Identification of Person Submitting the Trafficking Documentation.

In addition to the controls discussed below in Section V(B), the CFPB should consider limiting the ability of a third party to submit the request to block information resulting from trafficking in the Final Rules. Specifically, the CFPB should limit the ability to: (a) the victim; (b) an attorney acting in the capacity as attorney for the victim; and (c) an individual, or individual employed by a non-profit counseling agency approved by the CFPB, acting under a power of attorney (“POA”) for the victim. Failing to limit the ability of a third party, whether it be a credit repair organization or another company or criminal enterprise purporting to assist victims of trafficking with financial relief, or a fraudulent actor, to submit a request without the victim’s knowledge or authorization to act would be directly contrary to the goal of the Act, the Strategy, and the Action Plan.

B. Further Clarification on Non-Governmental Sources is Needed.

The Proposed Rule includes discussion related to the use of non-governmental sources in making a determination that a consumer has been a victim of trafficking.³⁸ CDIA supports the use of non-governmental sources so long as the victim has authorized the source to act on the victim’s behalf. Likewise, CDIA agrees with the CFPB’s anticipation that these sources may in fact be better suited to provide support for a determination that a consumer is a victim comparable to a government agency or a court of competent jurisdiction.³⁹ This allowance would not be without risk, however, and as discussed above, lessons should be learned from the fraudulent use of identity theft reports to request a block of information.

If the Final Rules allow for the use of non-governmental sources, it is imperative that the Final Rules require that such entities be legitimate non-profit organizations supported by government funding (e.g., vetted by a government entity, “subject to the terms and conditions of a government program”)⁴⁰ and submitting Trafficking Documentation in good faith on behalf of a consumer with the permission and knowledge of the victim. Additionally, CRAs need to be provided with a way to verify that such an entity is a legitimate non-profit organization, and that the victim has given permission for the entity to act on the victim’s behalf. For example, the CFPB could require such sources to provide notice to the CFPB for inclusion on a list against which the CRAs could verify the authority of the entities.

³⁸ 87 Fed. Reg. at 20774.

³⁹ *Id.*

⁴⁰ *Id.*

These control measures, in addition to the control measures discussed above in Section V(A), if instituted in the Final Rules, would help ensure that the Final Rules are not providing another avenue for credit repair and other similar organizations to fraudulently request the deletion of information not truly related to trafficking.

C. Contents of Documentation.

The Amendment defines Trafficking Documentation as comprised of two parts: (1) documentation of a determination that the consumer is a victim of trafficking; and (2) documentation that identifies adverse information that was a result of trafficking of the victim.⁴¹ Though the Proposed Rule adds some clarity to this definition, CDIA requests that the CFPB add additional elements to ensure that the Trafficking Documentation includes information which will help CRAs to assist victims.

1. *The Trafficking Documentation Definition Should Require that the Documentation Include Information About the Victim and the Trafficking Event.*

As discussed above, CDIA believes that the Final Rules should require that the documentation provided at a minimum: (1) identify the consumer by name; and (2) specifically identify the timeframe during which the consumer was a victim, identified by the month and year that the trafficking period started and the month and year that the trafficking period ended. These pieces of information, if required, would help CRAs to process the consumer's request quickly and accurately.

Consistent with the CFPB's understanding, CDIA believes that courts and government agencies generally strive to protect victims' names and identifying information from public disclosure.⁴² However, the Trafficking Documentation submitted in support of the consumer's request needs to sufficiently identify the consumer so CRAs can identify the appropriate file belonging to the victim. CDIA can envision instances where Trafficking Documentation is submitted but the victim's name has been pseudonymized or anonymized along with a separate statement from the victim. In these instances, it may be impossible for the CRA to reasonably link the pieces of the Trafficking Documentation together.

In addition to being able to link the consumer to the appropriate file, it is just as important that the CRA is able to determine the timeframe that the trafficking occurred to identify adverse items of information related to such trafficking. The press release accompanying the CFPB's Proposed Rule indicates that the Proposed Rule "prohibits CRAs from providing consumer reports that contain any negative item of information about a

⁴¹ 15 U.S.C. § 1681c-3(a)(1).

⁴² 87 Fed. Reg. at 20774.

survivor of trafficking from any period the survivor was being trafficked.⁴³ The Proposed Rule, however, does not include any reference to the time period during which a consumer was the victim. CDIA believes this is a crucial fact that must be included in the Trafficking Documentation and requests that the CFPB add a requirement in the Final Rule that the Trafficking Documentation identify the time period during which the consumer was a victim of trafficking.

Importantly, CDIA requests that the definition of Trafficking Documentation be amended to include, in addition to the determination that the consumer is a victim of trafficking and identification of the adverse information that was the result of the trafficking, the following required information, which is needed for CRAs to assist victims expeditiously and effectively:

- First and last name
- Date of birth
- Social Security number or Individual Taxpayer Identification Number
- Designation of the preferred contact method for the CRA to contact the victim along with the contact information
 - Telephone number
 - Email address
 - Physical address
- Previous address(es)
- Period during which the victim was trafficked (identified by starting month/year and ending month/year)
- List of adverse information on the victim's consumer report resulting from the consumer being trafficked
 - Period during which each item of adverse information was affected (identified by starting month/year and ending month/year)
 - Identification of the reason that such information is the result of trafficking
 - Examples may include: account opened without the victim's permission or while the victim was under duress; unable to pay because trafficker would not allow victim access to payment accounts
- Identification of who is submitting the form (e.g., victim, attorney for the victim, name of the individual assisting the victim)

⁴³ Press Release, CFPB, CFPB Seeks to Halt Negative Credit Reporting for Survivors of Human Trafficking (Apr. 07, 2022) (emphasis added), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-seeks-to-halt-negative-credit-reporting-for-survivors-of-human-trafficking/>.

- Victim's signature, signed under penalty of perjury

CDIA requests that the CFPB collaborate with the industry to create a form that a victim may use as a tool to provide the necessary information identified above. As appropriate, the CRAs would have the flexibility to encourage victims to submit a completed form as part of their Trafficking Documentation. CDIA proposes that this form be made available on the CFPB's website for victims' ease of access. In addition to identifying the required information, the form could also include a summary of rights for victims of trafficking. CDIA would welcome the opportunity to work with the CFPB on the form and the summary of rights.

2. *Further Clarification on "Determination" is Needed; Request for Examples.*

As mentioned above, the Amendment requires that Trafficking Documentation include a "determination that a consumer is a victim of trafficking."⁴⁴ "There is currently no systematic way for a financial institution to recognize that an individual... is a trafficking survivor."⁴⁵ In other words, there is no "standard" way that a victim of trafficking can show that there has been an official determination of their victimization. Compounding this problem is that governmental agencies and Tribal entities may vary in the way they adjudicate crimes, define "victim of trafficking," "severe forms of trafficking in persons," and "sex trafficking," and whether and how they record victim statuses.

Thus, CDIA supports and appreciates the CFPB's request for feedback on what a "determination" might look like and to identify examples of documentation that may provide an appropriate determination that a consumer has in fact been a victim of trafficking.⁴⁶ For example, CDIA members are aware that a "T nonimmigrant status" visa ("T-Visa") is available through the United States Citizen & Immigration Service for non-resident/non-citizens of the United States who are victims of trafficking;⁴⁷ however, there does not appear to be a similar uniform document for residents or citizens of the United States.⁴⁸

CDIA would appreciate the opportunity to continue to collaborate with the CFPB on this point, further supporting the need for an interim final rule with an open comment period.

⁴⁴ 15 U.S.C. § 1681c-3(a)(1)(A).

⁴⁵ Polaris at 36.

⁴⁶ 87 Fed. Reg. at 20774.

⁴⁷ U.S. Citizenship and Immigration Services, *Victims of Human Trafficking: T Nonimmigrant Status*, (Oct. 20, 2021), <https://www.uscis.gov/humanitarian/victims-of-human-trafficking-and-other-crimes/victims-of-human-trafficking-t-nonimmigrant-status>.

⁴⁸ For example, victims of trafficking in Texas can obtain a protective order from a Texas court as specified in the Texas Code of Criminal Procedure which would identify the consumer with sufficient detail, but this protective order may not be available in all states. Art. 7B.001.

CDIA believes that an open comment period would allow industry members to continue to provide feedback on this point, which will further help victims in identifying appropriate documentation to be provided to CRAs. Additionally, by providing some further clarity on the types of documentation that may be received from these sources, CRAs will be in a better position to assist these consumers more efficiently and effectively.

3. *Further Clarification on “Documents **Filed** in a Court of Competent Jurisdiction” is Needed.*

The CFPB proposes to further expand the definition of Trafficking Documentation by allowing documents filed in a Court to be submitted.⁴⁹ The CFPB has requested comment on whether further clarification on the definition of “documents filed in a court of competent jurisdiction indicating that a consumer is a victim of trafficking” is needed.⁵⁰

Specifically, the CFPB has asked whether a filing accepting the fact that a consumer is a victim of trafficking should be considered a “determination” for purposes of satisfying the Trafficking Documentation requirement in the Proposed Rule.⁵¹ CDIA believes the answer here depends on which party has made the filing and in what context. For example, a statement in a pleading that a Court has adopted as a “presumption of fact” would likely hold more weight, regardless of whether the determination was a central issue in the case, than an unsubstantiated assertion made by a defendant in a debt collection lawsuit. Likewise, a supporting document from a known victim assistance organization⁵² or a prosecutor (such as a sentencing memorandum) may hold more merit. At a minimum, however the documentation needs to reflect indicia of reliability (such as a statement signed under penalty of perjury by the victim, and not a third party who may be acting upon information and belief in connection with a filing).

VI. Comments to 142(c) “Prohibition on Inclusion of Adverse Information of Trafficking Victims”

A. CRAs Need to Be Able to Identify Adverse Information.

Section 605C(b) provides that a CRA may not furnish a consumer report containing any adverse item of information about a consumer “that resulted from a severe form of trafficking...” CDIA interprets the Proposed Rule to impact only adverse information in the consumer’s file that is associated with human trafficking, not all adverse information

⁴⁹ 87 Fed. Reg. at 20775.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *See, e.g., Id.* at n. 21.

contained within a consumer's file during the time period in which the consumer was trafficked. To fulfill the requirement of the Amendment and refrain from including adverse information "resulting from" trafficking in consumer reports, CRAs will need to be able to definitively identify such information from the documentation.

If the Trafficking Documentation provided by the consumer does not include the items and the dates with particularity such that the CRA can identify the adverse information that was included in the consumer's file during the trafficking period and as a result of the trafficking, it may be impossible for the CRA to determine what information is impacted. Further, CRAs would not want to assume all information within a time period is related because some of the information may legitimately relate to the consumer. Thus, it is important that the Final Rules provide further guidance on specific information, including, at a minimum, the particular period that the victim was trafficked identified by a month and year that the trafficking period started and the month and year that the trafficking period ended.

Notably, the Trafficking Documentation needed for this interpretation appears to have two distinct and separate parts. First, the documentation must show a determination that the consumer is a victim. Second, the documentation must identify items of adverse information. This leaves the possibility that a victim may be able to obtain documentation that shows a determination, but the victim will then need to take the additional step individually to identify the items of adverse information. Of concern is that a victim may not have the resources available, or knowledge needed to identify such information and may instead indicate generally that "all information relating to me being trafficked" is adverse and should be blocked. The form suggested by CDIA above would assist the victim with identifying items that they are seeking to have blocked.

B. Statements of Fact and Criminal Convictions Should Require Additional Documentation.

Some CRAs, particularly those that report criminal record and licensure information in the employment context, are concerned about the lack of clarity related to the removal of criminal information identified by a consumer as resulting from trafficking. These CRAs often report information related to whether a consumer is licensed by a state to engage in a particular profession or skill (e.g., real estate professional), which can include information reflecting the revocation or failure to renew a license. This is a factual statement taken from a state licensure board. It seems logical that this type of information should be excluded from the type of information that a CRA should be required to block under the Final Rules because it is a fact reported by a state entity. The reason for the revocation or failure to renew a license will not be evident from the records.

Similarly, CDIA strongly encourages the CFPB to require that a consumer who requests criminal records be blocked under the Final Rules, provide a court order making a determination that a consumer was a victim of a severe form of trafficking at the time the crime was committed. In addition, CDIA requests that the CFPB specifically include in the Final Rules that a victim may not block criminal record information by providing documents merely filed in a court; rather, the documentation must show that the particular record has been expunged or the conviction underlying the record was reversed.

Additionally, CDIA requests that the CFPB consider including a specific provision permitting a CRA to provide a Federal, State, or local law enforcement agency with access to the blocked information, similar to the allowance in Section 605B(f) of the FCRA.

VII. Comments to 142(d)(1) – (d)(3)

The Proposed Rule requires that all CRAs establish a dedicated mailing address and toll-free telephone number for victims.⁵³ The Proposed Rule also requires that CRAs accept requests from the dedicated address(es) and from the address to which CRAs will accept Section 611 dispute correspondence.

CDIA appreciates that the intent of the CFPB's proposal was to make consumer contact under the circumstances easier by requiring CRAs to maintain multiple addresses; however, CDIA believes the addition of addresses, telephone numbers, and as discussed below, websites, will likely have the opposite effect. Consumers are likely to be confused by the presence of multiple addresses, telephone numbers and websites, and waste time needlessly trying to figure out which contact information is appropriate for their situation. For example, victims of trafficking may also be victims of identity theft.⁵⁴ When this is the case, the consumer may be left to conduct further research on which contact method should be used – the one for identity theft or the one for trafficking – with the end result being added frustration for the consumer. Furthermore, multiple addresses, telephone numbers and websites may make it harder for consumers to determine whether the information is legitimate or fraudulently posted.

The Proposed Rule also requires CRAs with website addresses for disputes to create websites for victims of trafficking and dedicated to blocking adverse items of information.⁵⁵ This requirement is not aligned with the risk-based approach discussed in the Action Plan and, like the multiple address requirement above, could create confusion for victims. Additionally,

⁵³ 87 Fed. Reg. at 20775-20776.

⁵⁴ Polaris at 28.

⁵⁵ 87 Fed. Reg. at 20775-20776.

imposing a requirement such as this will significantly delay the timeframe in which CRAs are able to implement the Final Rules.

Most importantly, victims should have an easily-accessible avenue to request a block of adverse information resulting from a severe form of trafficking. CDIA believes that CRAs would most effectively be able to assist consumers through existing channels. As such, CDIA proposes that the requirements related to a dedicated mailing address, telephone number and website be removed from the Final Rules in favor of a more flexible approach that will foster swift and effective handling of the victim's request.

The Proposed Rules also require that CRAs allocate a reasonable amount of personnel to respond to inquiries about the process and status of Trafficking Documentation at the toll-free telephone number used for disputes under Section 611. The Proposed Rules also require that CRAs established a separate toll-free number to address submissions under the Proposed Rules. Notably, the toll-free number is a requirement of Section 609(c)(2)(B) and is only applicable to nationwide CRAs under Section 603(p), not all CRAs, as assumed by the Proposed Rules. Through the Proposed Rules, the CFPB appears to be seeking to establish a new requirement for all CRAs to establish a toll-free telephone number for disputes, which is beyond the scope of rulemaking directed by the Amendment, and a new toll-free telephone number related to the new blocking process, where no such requirement exists for identity theft blocks. CDIA submits that these new additional requirements are an unnecessary, new expense, and that it will be less confusing for consumers – and will ease implementation – to allow CRAs to receive and process requests from consumers through existing channels.

VIII. Comments to 142(e) “Authority to Decline or Rescind a Block”

The Proposed Rule contemplates a CRA's ability to decline to implement a block request or to rescind a block request, but only in certain circumstances and only after consultation with the consumer.⁵⁶ Missing from the reasons under which a CRA can rely on declining a block or rescinding a block is that the consumer has made a material misrepresentation of fact. This is a reason allowed under the identity theft block notification provisions⁵⁷ and CDIA requests that it be added to the Final Rules. Permitting a decline or rescission of a block request is a necessary control to avoid abuse and fraud.

It is particularly significant in the context of sex trafficking, that the ability of the CRAs to decline to block, or rescind an existing block on, criminal record information that led to a consumer having to register as a sex offender be part of the Final Rules. It is quite possible that a court may determine that a consumer was a victim of trafficking but still require the

⁵⁶ 87 Fed. Reg. at 20776-20777.

⁵⁷ 15 U.S.C. § 1681c-2(c)(1)(B).

consumer to register as a sex offender. If a consumer is required to register as a sex offender, regardless of the determination that a consumer was a victim of a severe form of trafficking, then the CRA should retain the ability to decline to block the criminal record information.

IX. Comments to 142(f) “Notification to Consumer of Actions Taken in Response to Trafficking Documentation Submission”

A. The Timeframe for Blocking the Adverse Information is Insufficient and Should be Separate from the Timeframe to Notify the Victim.

The Proposed Rule does not establish a timeframe during which a block must be instituted, and instead provides an overarching timeframe during which the CRA should block the information and provide notice to the consumer. CDIA requests that CRAs that already have a 605B block process be permitted to closely track the existing requirements of Section 605B for ease of implementation. First, the Final Rules should track a business day requirement. For example, a four (4) business day timing under Section 605B for the placement of a block could also apply to Adverse Information from trafficking, although a longer timeframe would also be appropriate. Second, with respect to the timing to notify the consumer, the Final Rules should provide for at least five (5) business days following the placement or rejection of a requested block to provide notice to a consumer. In both instances, CDIA requests that the CFPB move away from a calendar day count and move to a business day count, which takes into account holidays and weekend days.

B. Further Clarification Is Needed to Provide the Written Notice.

The Proposed Rule would require CRAs to provide a “written notice to a consumer of actions it has taken in response to a submission of trafficking documentation,” that includes, among other things, “a consumer report.”⁵⁸ Generally, CDIA notes that this requirement is beyond the scope of the rulemaking directed by the Amendment.

As discussed above, CRAs may not have a current address or contact information for the consumer following her/his trafficking period. CDIA requests that as part of the Trafficking Documentation, the victim be required to include the address to which any notices are to be sent to the extent the CFPB insists that CRAs provide such a written notice as is described in the Proposed Rule.

⁵⁸ 87 Fed. Reg. at 20777.

X. Comments to 142(g) “Record Retention”

The Proposed Rule requires that CRAs retain all consumer submissions and evidence of action for seven (7) years.⁵⁹ The CFPB has noted that this record retention requirement is included to enable the CFPB to ensure that the CRA has complied with the requirements of the Proposed Rule and noting the 7-year timeframe is correlated back to obsolescence rules under the FCRA.⁶⁰ CDIA believes there is a difference between the FCRA’s requirement that adverse information be blocked from a file after seven years and requiring a CRA to keep sensitive information about a consumer for seven (7) years.

CDIA is concerned that this record retention requirement is antithetical to most, if not all, current data privacy and data security regulation. For example, the FTC’s Safeguard’s Rule requires that information be destroyed “no later than two years after the last date the information is used..., unless such information is necessary for business operations or for other legitimate business purposes... .”⁶¹ Here, the purpose for CRAs obtaining information from victims is to assist the victim with regaining financial freedom by removing adverse information resulting from a severe form of trafficking. Once the CRA has blocked the adverse information, the CRA should be able to delete/destroy the supporting documentation provided by the victim within the CRA’s standard data retention timeframes, which are frequently much shorter than seven (7) years.

In addition, a 7-year retention requirement could have a chilling effect on a victim’s willingness to engage in the process in the first instance. In other words, a victim who knows that the CRA receiving the victim’s information will retain it for seven (7) years solely for the purposes of being able to show the government that it complied with blocking requirements, may be discouraged from submitting the Trafficking Documentation for fear that it will be shared further. At its heart, the FCRA is a data privacy statute, with a “respect for the consumer’s right to privacy” being included in the Findings and Statement of Purpose by Congress.⁶² The Proposed Rule’s retention period does not appear to be aligned with the FCRA’s basic tenet of protecting consumers’ privacy.

XI. Comments to 142(h) “Policies and Procedures to Ensure and Maintain Compliance”

The CFPB has asked for comments as to whether the Final Rules should require a CRA to notify a furnisher about the consumer’s submission.⁶³ CDIA is sensitive to the fact that

⁵⁹ *Id.* at 20777.

⁶⁰ *Id.* at 20777 – 20778.

⁶¹ 16 C.F.R. § 314.4(c)(6)(i).

⁶² 15 U.S.C. § 1681(a)(4).

⁶³ 87 Fed. Reg. at 20776.

once a victim has left the trafficking situation, the victim may still be impacted financially. Thus, removing adverse information from a consumer report resulting from trafficking is only a part of the victim's overall recovery process.

CRA's that obtain information from furnishers directly will need the ability to notify the furnisher of the block as part of the process, similar to the process set forth in Section 605B. Notification to furnishers may assist victims who can work with furnishers to identify the appropriate perpetrator or to assist the CRA's and CFPB in identifying cases where the process is being used for fraudulent purposes.

XII. Comments to Proposed Effective Date for Final Rules

The CFPB has requested comments regarding the CFPB's proposed effective date of thirty (30) days after the Final Rules' publication in the Federal Register.⁶⁴ Because of the sensitive and complicated subject matter regulated by the rules, the unknown downstream effects, and the general lack of consistent understanding in how victims are identified and their harms redressed, it is important that the industry have a chance to provide further comment on the rules. For this reason, CDIA suggests that the CFPB implement the rule as an interim final rule, leaving the comment period open for a period of time, during which the CFPB can solicit ongoing feedback from industry and key stakeholders.

In addition, CDIA members request that they be given at least six (6) months after issuing the Final Rules to implement their method of receiving Trafficking Documentation. This time would allow CRA's to develop specialized training and other compliance controls necessary to handle these types of requests effectively and efficiently either through automation or other manual procedures.

XIII. Safe Harbor

The CFPB has indicated in the discussion of the Proposed Rule that it is not envisioning providing CRA's with the "discretion to contest the merits of the submitted trafficking documentation" or with the "discretion to challenge a consumer's determinations that an adverse item of information resulted from a severe form of trafficking in persons...".⁶⁵ Thus, CRA's will assume that the documentation submitted is sufficient and will rely upon this assumption in blocking information that a victim has identified as resulting from trafficking. Accordingly, if CRA's exclude blocked information that results in a subsequent crime or victimization of other vulnerable persons, CDIA respectfully requests that the CFPB include a safe harbor provision in the Final Rules which absolves the CRA of any civil or criminal liability

⁶⁴ *Id.* at 20778.

⁶⁵ *Id.* at 20777.

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to users of consumer reports stemming from the good faith reliance on the Trafficking Documentation to block adverse information.

Sincerely,

A handwritten signature in blue ink, appearing to read 'E. Ellman', with a long horizontal flourish extending to the right.

Eric J. Ellman

Senior Vice President, Public Policy & Legal Affairs