

**BILLING CODE: 4810-AM-P**

**BUREAU OF CONSUMER FINANCIAL PROTECTION**

**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)**

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Proposed rule.

**SUMMARY:** The Consumer Financial Protection Bureau (Bureau) seeks comment on regulations implementing amendments to the Fair Credit Reporting Act (FCRA) that assist consumers who are victims of trafficking. The proposed rule, which would implement a recent amendment to the FCRA, would establish a method for a victim of trafficking to submit documentation to consumer reporting agencies, including information identifying any adverse item of information about the consumer that resulted from certain types of human trafficking, and prohibit the consumer reporting agencies from furnishing a consumer report containing the adverse item(s) of information. The Bureau is taking this action as mandated by the National Defense Authorization Act for Fiscal Year 2022 and to assist consumers who are victims of trafficking in building or rebuilding financial stability and personal independence.

**DATES:** Comments on the proposed rule must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** You may submit comments, identified by Docket No. CFPB-2022-0023 or RIN 3170-AB12, by any of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email:* 2022-NPRM-FCRAtrafficking@cfpb.gov. Include Docket No. CFPB-2022-0023 or RIN 3170-AB12 in the subject line of the message.
- *Mail/Hand Delivery/Courier:* Comment Intake—FCRA Trafficking, Bureau of Consumer Financial Protection, 1700 G Street, NW, Washington, DC 20552. Please note that due to circumstances associated with the COVID–19 pandemic, the Bureau discourages the submission of comments by hand delivery, mail, or courier.

*Instructions:* The Bureau encourages the early submission of comments. All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, comments received will be posted without change to <https://www.regulations.gov>. In addition, once the Bureau’s headquarters reopens, comments will be available for public inspection and copying at 1700 G Street, NW, Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. At that time, you can make an appointment to inspect the documents by telephoning 202-435-7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Proprietary information or sensitive personal information, such as account numbers or Social Security numbers, or names of other individuals, should not be included. Comments will not be edited to remove any identifying or contact information.

**FOR FURTHER INFORMATION CONTACT:** Daniel Tingley, Counsel, or Lanique

Eubanks, Senior Counsel, Office of Regulations, at 202-435-7700 or <https://reginquiries.consumerfinance.gov/>. If you require this document in an alternative electronic format, please contact [CFPB\\_Accessibility@cfpb.gov](mailto:CFPB_Accessibility@cfpb.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Summary of the Proposed Rule**

The Bureau is proposing several amendments to Regulation V to implement new section 605C of the Fair Credit Reporting Act (FCRA),<sup>1</sup> added by the National Defense Authorization Act for Fiscal Year 2022 (2022 NDAA).<sup>2</sup> In brief, section 605C 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.<sup>3</sup> Under section 605C, the Bureau is required to issue implementing regulations within 180 days of the enactment of the 2022 NDAA. Section 605C is effective 30 days after the Bureau issues its final implementing regulations.

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;

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<sup>1</sup> Fair Credit Reporting Act, 15 U.S.C. 1681 *et seq.*

<sup>2</sup> 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), <https://www.congress.gov/117/plaws/publ81/PLAW-117publ81.pdf> (last visited Mar. 28, 2022). The sponsors of this section of the 2022 NDAA and some advocates refer to this law as the “Debt Bondage Repair Act,” in reference to H.R. 2332 (introduced in the 117<sup>th</sup> Cong. on Apr. 1, 2021).

<sup>3</sup> For purposes of this rule, the terms “severe forms of trafficking in persons” and “sex trafficking” will be referred to individually (as defined in the Section-by-Section Analysis of section 1022.142(b)) or collectively as “trafficking.”

- 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.

## **II. Background**

### *A. Introduction*

According to the United States Department of State, in the United States human traffickers compel victims to engage in commercial sex and to work in legal and non-legal industries and sectors, including, for example, agriculture, janitorial services, construction, landscaping, restaurants, factories, child care, care for persons with disabilities, domestic work, salon services, massage parlors, peddling and begging, and drug smuggling and distribution.<sup>4</sup> As the State Department has noted, it is difficult to find reliable statistics related to human trafficking for a number of reasons, including the hidden nature of the crime and barriers to identifying victims of trafficking and sharing information about them.<sup>5</sup>

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<sup>4</sup> U.S. Dep’t of State, *About Human Trafficking*, <https://www.state.gov/humantrafficking-about-human-trafficking> (last visited Mar. 16, 2022).

<sup>5</sup> *Id.*

U.S. Government efforts to respond to the needs of victims of trafficking recognize that victims need both immediate and longer-term services, including services to improve financial stability to support their long-term independence.<sup>6</sup> Accurate consumer reporting that does not disadvantage victims<sup>7</sup> with adverse information resulting from them having been trafficked is critical to the ability of victims to be able to take basic steps such as obtaining housing and employment and to move toward greater financial stability and independence.

### *B. The Fair Credit Reporting Act*

The FCRA, enacted in 1970 and significantly amended in 1996, 2003, 2010, and 2018, regulates consumer reporting. It was enacted to protect consumers by preventing the transmission of inaccurate information in consumer reports and establishing confidential and responsible credit reporting practices.<sup>8</sup> The FCRA's statutory scheme was designed to ensure that consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce in a manner which is fair and equitable to consumers and protects the confidentiality, accuracy, relevancy, and proper utilization of consumer information.<sup>9</sup>

Together with its implementing regulation, Regulation V,<sup>10</sup> the FCRA creates a regulatory framework for furnishing, using, and disclosing information in reports associated with

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<sup>6</sup> Coordination Collaboration Capacity, *Federal Strategic Action Plan on Services for Victims of Human Trafficking in the United States 2013-2017*, at 9, (Jan. 2014),

<https://ovc.ojp.gov/sites/g/files/xyckuh226/files/media/document/FederalHumanTraffickingStrategicPlan.pdf>.

<sup>7</sup> The Bureau recognizes that some individuals and advocates prefer the term “survivor” to “victim.” As the State Department explained, “[b]oth terms are important and have different implications when used in the context of victim advocacy and service provision. For example, the term ‘victim’ has legal implications within the criminal justice process and refers to an individual who suffered harm as a result of criminal conduct. The laws that give individuals particular rights and legal standing within the criminal justice system use the term ‘victim.’ . . . ‘Survivor’ is a term used widely in service providing organizations to recognize the strength and courage it takes to overcome victimization.” See Off. for Victims of Crime, Training & Tech. Assistance Ctr., U.S. Dep’t of Justice, *Human Trafficking Task Force e-Guide*, <https://www.ovcttac.gov/taskforceguide/eguide/1-understanding-human-trafficking/13-victim-centered-approach/> (last visited Mar. 21, 2022). In this proposed rule, we have used the term “victim” because that is the wording of section 6102 of the 2022 NDAA.

<sup>8</sup> *Guimond v. Trans Union Credit Info. Co.*, 45 F.3d 1329, 1333 (9th Cir. 1995).

<sup>9</sup> 15 U.S.C. 1681(b).

<sup>10</sup> 12 CFR part 1022.

credit, insurance, employment, and other decisions made about consumers. In doing so, the FCRA and Regulation V impose obligations on entities that qualify as “consumer reporting agencies.” They also impose obligations on those who use consumer report information or furnish information to consumer reporting agencies (furnishers).

### *C. The National Defense Authorization Act for Fiscal Year 2022*

Section 6102 of the 2022 NDAA amended the FCRA by inserting a new section 605C, which provides at section 605C(b) 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. As described in more detail in the Section-by-Section Analysis parts of this proposed rule, section 605C(a) provides statutory definitions for a number of the terms used therein. Section 605C(c)(1) directs the Bureau to issue implementing rules within 180 days of enactment, and section 605C(c)(2) mandates that the rules must establish a method by which consumers must submit trafficking documentation to consumer reporting agencies.

## **III. Legal Authority**

The Bureau is issuing this proposal pursuant to its authority under the FCRA, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act),<sup>11</sup> and section 6102 of the 2022 NDAA.

### *A. Dodd-Frank Act Section 1022(b) and the FCRA*

Section 1022(b)(1) of the Dodd-Frank Act authorizes the Bureau to prescribe rules as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes

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<sup>11</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Pub. L. 111-203, 124 Stat. 1376 (2010).

and objectives of the Federal consumer financial laws, and to prevent evasions thereof.<sup>12</sup> Effective July 21, 2011, section 1061 of the Dodd-Frank Act transferred to the Bureau the rulemaking and certain other authorities of the Federal Trade Commission (FTC) and the prudential banking regulators (i.e., the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), and the Office of the Comptroller of the Currency (OCC)) relating to specific “enumerated consumer laws” listed in the Dodd-Frank Act, including most rulemaking authority under the FCRA.<sup>13</sup> Likewise, section 1088 of the Dodd-Frank Act made conforming amendments to the FCRA, transferring rulemaking authority under much of the FCRA to the Bureau.<sup>14</sup> As amended by the Dodd-Frank Act, section 621(e) of the FCRA authorizes the Bureau to issue regulations as may be necessary or appropriate to administer and carry out the purposes and objectives of the FCRA, and to prevent evasions thereof or to facilitate compliance therewith.<sup>15</sup> The Bureau is issuing this proposed rule pursuant to its authority under section 1022(b)(1) of the Dodd-Frank Act and section 621(e) of the FCRA.

*B. The National Defense Authorization Act for Fiscal Year 2022*

Section 6102(a) of the 2022 NDAA directs the Bureau to issue a rule implementing the new section 605C of the FCRA. Section 6102(c) provides that the rule issued to implement section 605C shall be limited to preventing a consumer reporting agency from furnishing a consumer report containing any adverse item of information about a consumer (as such terms are

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<sup>12</sup> Dodd-Frank Act section 1022(b)(1), 124 Stat. 1980.

<sup>13</sup> Dodd-Frank Act section 1002(12)(F), 124 Stat. 1957. Section 1002(12)(F) of the Dodd-Frank Act designates most of the FCRA as an “enumerated consumer law.”

<sup>14</sup> Dodd-Frank Act section 1061, 124 Stat. 2037.

<sup>15</sup> Dodd-Frank Act section 1088(a)(10)(E), 124 Stat. 2090 (codified at 15 U.S.C. 1681s(e)).

defined, respectively, in section 603 of the FCRA (15 U.S.C. 1681a)) that resulted from trafficking.

#### **IV. Section-by-Section Analysis**

##### *Section 1022.142 Prohibition on Inclusion of Adverse Information in Consumer Reporting in Cases of Human Trafficking*

###### *142(a) Scope*

The Bureau is proposing to apply the requirement to prohibit the furnishing of adverse items of information about victims of trafficking to any “consumer reporting agency” as defined in section 603(f), as directed by section 6102(c) of the 2022 NDAA. Thus, consistent with section 603(f) of the FCRA, the Bureau is proposing to define “consumer reporting agency” to apply to all consumer reporting agencies. This means that the nationwide consumer reporting agencies, nationwide specialty consumer reporting agencies, and all other consumer reporting agencies such as those focused on employment screening, tenant screening, check and bank screening, personal property insurance, medical, low-income and subprime, supplementary reports, utilities, retail, and gaming would be covered.<sup>16</sup>

###### *142(b) Definitions*

###### *142(b)(1) 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. This section, which concerns proof of identify for consumers regarding identity theft, provides that consumer reporting agencies must develop and implement reasonable requirements specifying what

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<sup>16</sup> A list of many self-identified consumer reporting companies is available on the Bureau’s website at <https://www.consumerfinance.gov/consumer-tools/credit-reports-and-scores/consumer-reporting-companies/companies-list/> (last visited Mar. 21, 2022).

information consumers must provide to constitute proof of identity. The requirements of proposed section 1022.142(b)(1) are not prescriptive; the Bureau is proposing this approach in light of the challenges commonly faced by victims of trafficking. For instance, certain victims may have been displaced, may live at an address not reported to consumer reporting agencies, or may lack access to information or documentation commonly used for proof of identity. While a consumer reporting agency would need to take reasonable steps to ensure that the required information in the context of human trafficking is sufficient to enable it to match the consumer with a credit file and commensurate with an identifiable risk of harm arising from misidentifying the consumer, the requirements to establish proof of identity should be sensitive to the particular needs of victims of trafficking. For example, consumer reporting agencies could include methods of validation of a person's identity such as the consumer's ability to answer questions to which only the consumer might be expected to know the answer.

#### *142(b)(2) Consumer Report*

Proposed section 1022.142(b)(2) defines the term “consumer report” to have the same meaning as that provided in section 603(d) of the FCRA. The use of this definition is directed by section 6102(c) of the 2022 NDAA (which provides that the Bureau's rule shall be limited to preventing a consumer reporting agency from furnishing a consumer report containing any adverse item of information about a consumer that resulted from trafficking as the terms used in that provision are defined in section 603 of the FCRA).

#### *142(b)(3) Consumer Reporting Agency*

Proposed section 1022.142(b)(3) defines “consumer reporting agency” to have the meaning provided in section 603(f) of the FCRA. The use of this definition is directed by section 6102(c) of the 2022 NDAA.

#### *142(b)(4) Severe Forms of Trafficking in Persons*

Section 605C(a)(2) provides that the term “severe forms of trafficking in persons” has the meaning given in section 103 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7102). Proposed section 1022.142(b)(4) accordingly adopts the definition set forth in that statute, which defines “severe forms of trafficking in persons” as:

- (i) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- (ii) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

#### *142(b)(5) Sex Trafficking*

Section 605C(a)(2) provides that the term “sex trafficking” has the meaning given in section 103 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7102). Section 103 of the Trafficking Victims Protection Act of 2000 was amended by section 108 of the Justice for Victims of Trafficking Act of 2015, 22 U.S.C. 7102(12). Proposed section 1022.142(b)(5) adopts the definition in section 103 as amended in 2015. Under that definition, the term means the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act.

#### *142(b)(6) Trafficking Documentation*

##### *142(b)(6)(i)(A) and (B)*

Section 605C(a)(1) defines “trafficking documentation” as documentation of a determination that a consumer is a victim of trafficking, made by a Federal, State, or Tribal

governmental entity, or by a court of competent jurisdiction; and documentation that identifies items of adverse information that should not be furnished by a consumer reporting agency because the items resulted from a severe form of trafficking in persons or sex trafficking of which the a consumer is the victim. The Bureau is proposing to incorporate this statutory definition with certain clarifying interpretations regarding documentation identifying a consumer who is a victim of trafficking involving a “court of a competent jurisdiction,” to clarify that the documentation may consist of one or more documents as long as the collective documentation satisfies the definition. As discussed in detail below, the proposed rule would define “trafficking documentation” to include documents filed in a court of competent jurisdiction indicating that a consumer is a victim of trafficking.

As provided above, the proposed definition of “trafficking documentation” applies to a “Federal governmental entity.” In drafting the proposed rule, the Bureau sought information from other Federal agencies and consumer and industry groups about the types of documentation issued by various governmental entities that consumers may be able to provide to consumer reporting agencies as trafficking documentation.<sup>17</sup> The Bureau found that documentation directly identifying a person as a victim of trafficking is scarce and is primarily limited to foreign-born persons.<sup>18</sup> The Bureau has also learned that victims of trafficking are often not

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<sup>17</sup> For purposes of discussing the documentation requirements and options identifying victims of trafficking, the Bureau held meetings with: (1) Bureau of Indian Affairs (BIA); (2) Department of Health and Human Services (HHS): Office of Trafficking in Persons (OTIP); (3) Department of Homeland Security (DHS): Center for Countering Human Trafficking; (4) Department of Justice: Money Laundering and Asset Forfeiture Section, Office for Victims of Crime (OVC), Human Trafficking Prosecution Unit, Executive Office of the United States Attorneys; and the (5) Federal Trade Commission. The Bureau separately held meetings with industry and consumer advocacy groups for input on section 6102 of NDAA.

<sup>18</sup> For example, HHS issues certification letters to foreign national adults who have experienced a severe form of trafficking in persons after receiving notification that DHS has granted the person a continued presence, a T visa, or that a bona fide T visa application has not been denied. This certification letter provides that foreign national adult victims of trafficking are eligible for certain Federal and state benefits (health insurance, housing, food assistance,

identified and thus many victims will not have documentation determining that they are a victim of trafficking. One reason victims are not identified is because persons in the best position to identify people who may be victims of trafficking are not properly trained to do so.<sup>19</sup> Another possible reason may be because some victims do not self-identify as a victim of trafficking even if they meet the definition.<sup>20</sup> To the extent a person self-identifies as a victim of trafficking (or is so identified by others such as health care or social service providers, law enforcement officials, or judges), the victim's names, addresses, phone numbers, and any other identifying information are often protected for confidentiality and privacy reasons.

The Bureau is aware of programs in which government agencies grant money to certain organizations to assist victims of trafficking.<sup>21</sup> For instance, the Department of Justice's Office for Victims of Crime (OVC) is the largest Federal funder of services for human trafficking victims in the United States.<sup>22</sup> The Bureau understands this office does not make or document determinations as to who is a victim of trafficking. However, grantees that are non-governmental organizations who receive funding from the OVC to provide trafficking services to clients do make determinations that individuals are victims of trafficking, even when the person

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cash assistance, Federal student financial aid). Whereas, U.S. citizens and lawful permanent residents do not need a Certification Letter to access services and benefits available to victims of trafficking and such as a letter identifying persons as victims of trafficking is generally not provided to U.S. citizens or permanent residents. This information is available at <https://www.acf.hhs.gov/otip/victim-assistance/certification> (last visited Mar. 2, 2022).

<sup>19</sup> Off. for Victims of Crime, U.S. Dep't of Justice, *Faces of Human Trafficking Video 2: An Introduction to Sex Trafficking*, YouTube (Jan. 15, 2016) <https://youtu.be/JygGZH0cGV4>.

<sup>20</sup> *Id.*

<sup>21</sup> A map and list of OVC-funded human trafficking services and task forces is available on OVC's website at <https://ovc.ojp.gov/program/human-trafficking/map>. (last visited Mar. 21, 2022). HHS also provides funding to various organizations offering trafficking assistance to victims. A list of the grantees is available at <https://www.acf.hhs.gov/otip/grants> (last visited Mar. 21, 2022).

<sup>22</sup> Off. for Victims of Crime, U.S. Dep't of Justice, *Matrix of OVC-Funded Human Trafficking Services Grantees and Task Forces*, <https://ovc.ojp.gov/matrix-ovc-funded-human-trafficking-services-grantees-and-task-forces> (last visited Mar. 14, 2022).

does not self-identify as a victim.<sup>23</sup> The Bureau anticipates that these non-governmental organizations may be able to provide documentation that would support a determination that an individual is a victim of trafficking comparable to the documentation that might be available from governmental sources. The Bureau is interested in comments about whether and how such non-governmental sources of information might be considered in making a determination under section 605C. For example, might entities that receive funding from a governmental entity, and are subject to the terms and conditions of a government program, provide documentation in the form of a determination identifying a person as a victim of trafficking that would satisfy section 605C(a)(1)(A)? Could an attestation or documentation submitted to a Federal, State, or Tribal governmental entity by a person who self-identifies as a victim of trafficking, or by another person or entity acting on that person's behalf, constitute a documented determination under section 605C(a)(1)(A)?

The Bureau is proposing to treat documentation of a determination that a consumer is a victim of trafficking by a "State governmental entity" as including documentation created at both the state and local level. Local law enforcement, as part of a local government, may have documentation of a determination identifying victims of trafficking, including but not limited to items in a police report. The Bureau understands that there are Federal and State victims' rights acts in addition to Tribal codes that depend on a determination that a victim has been identified as such, including by Federal, State, Tribal, or local jurisdictions.<sup>24</sup> In fact, some state laws explicitly contemplate local entities making this determination for sex trafficking victims which

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<sup>23</sup> Off. for Victims of Crime, U.S. Dept of Justice, *OVC Human Trafficking Program FAQs*, at comment 33 "Can I provide services to a client who does not self-identify as a victim of human trafficking?", <https://ovc.ojp.gov/program/human-trafficking/ovc-human-trafficking-program-faqs> (last visited Mar. 16, 2022).

<sup>24</sup> See, e.g., Victims' Rights & Restitution Act of 1990, 42 U.S.C. 10607; Crime Victims' Rights Act, 18 U.S.C. 3771. In these Federal statutes and in some state laws, victims' rights attach during an investigation (and independent of trial) and therefore rely on a law-enforcement determination, which is quite often made by a local governmental entity.

triggers various rights for the victim and obligations for the government under State and Federal law.<sup>25</sup> While sometimes documentation determining that a person is a victim may be shared with State, Federal, or Tribal governmental entities, it is likely that sometimes it is not, and that as a result some victims of trafficking would not be able to take steps under section 605C to prohibit the furnishing by consumer reporting agencies of adverse information about them that results from their having been trafficked under too narrow a definition. For these reasons, the Bureau is proposing to include local governmental entities, such as local law enforcement, as entities that may make determinations of someone's status as a victim under state law. The Bureau is concerned that a narrower definition could substantially limit the availability of documentation for victims of trafficking to submit to consumer reporting agencies. By proposing to interpret documentation of a determination that a consumer is a victim of trafficking by a "State governmental entity" as discussed above, the Bureau is making clear that trafficking documentation consumers are to use will prevent consumer reporting agencies from furnishing consumer reports containing adverse items of information about a consumer that resulted from trafficking. This provision of the rule is also supported by the Bureau's regulatory authority under section 621(e) of the FCRA, which authorizes the Bureau to prescribe regulations that promote accuracy and fairness in credit reporting, and on the general rulemaking authority granted the Bureau under section 1022(b)(1) of the Dodd-Frank Act. Therefore, the Bureau is proposing that documentation generated by both statewide and local entities should be understood as having been generated by a "State governmental entity" for the purposes of this rule.

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<sup>25</sup> See, e.g., 23 Pa. Cons. Stat. § 5702(a) (requiring county agencies to report to law enforcement children whom they "identif[y] as being a sex trafficking victim" within 24 hours); Va. Code Ann. § 9.1-116.5 (creating a statewide Sex Trafficking Response Coordinator who is responsible for "creat[ing] a statewide plan for local and state agencies to identify and respond to victims of sex trafficking").

The Bureau is soliciting comments on whether it should interpret the phrase “a determination that a consumer is a victim of trafficking made by a Federal, State, or Tribal governmental entity” to mean any determination, including those made by local government officials, where a Federal, State or Tribal governmental entity could reasonably be construed as making a determination that a consumer is a victim of trafficking. For example, determinations made by local governments, including local law enforcement, may qualify a trafficking victim to avail themselves of Federal, State or Tribal victims’ rights laws. The Bureau is also interested in comments concerning the nature of information on trafficking in the possession of local governments, the extent to which such information is or might usefully be shared with Federal, State, and Tribal governmental entities, and the sort of documentation generated by these governmental entities.

The Bureau is proposing to include two categories of documentation involving a “court of competent jurisdiction” in the definition of “trafficking documentation.” The first category of documents concerning a “court of competent jurisdiction,” is documentation, in the form of a determination, that the consumer is a victim of trafficking made by a court of competent jurisdiction.<sup>26</sup> The second category is documentation consisting of documents filed in a court of competent jurisdiction indicating that a consumer is a victim of trafficking.<sup>27</sup> The Bureau is also interested in comments on whether it should clarify in the regulation what documents filed in a

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<sup>26</sup> Examples of court documents made by a court of competent jurisdiction could be a restitution order that provides a victim of trafficking with restitution after a criminal conviction or a criminal record relief court order (such as a vacatur, expungement, or sealing of records) where victims of trafficking may obtain an order to clear convictions of criminal offenses the victims were forced to commit.

<sup>27</sup> An example of a document filed in a court of competent jurisdiction indicating a consumer is a victim of trafficking could be where victims of trafficking file suit against their traffickers where they identify as a victim of trafficking. A prior iteration of section 6102 of the 2022 NDAA in H.R. 2332 (introduced in the 117<sup>th</sup> Cong.) and S. 2040 (introduced in the 117<sup>th</sup> Cong.) provided that “trafficking documentation” included “documentation of . . . a determination by a court of competent jurisdiction that a consumer is a victim of trafficking.” This language was subsequently changed and enacted into law to instead read “documentation of . . . by a court of competent jurisdiction.”

court of competent jurisdiction indicating that a consumer is a victim of trafficking means. For example, can or should a filing in a court or a court opinion in which a consumer's status as a victim of trafficking is an accepted fact, but not the central issue in the case, be considered a "determination" sufficient to satisfy section 605C(a)(1)(A)? Would such an interpretation allow more victims of trafficking to make use of the procedure created by section 605C?

As discussed above, the proposed "trafficking documentation" definition does not contain a description or example of what is a "determination that a consumer is a victim of trafficking." Furthermore, the Bureau has not identified any standard "determination" procedures or forms in use by any governmental entities or courts concerning human trafficking for persons who are not foreign national adults (i.e., U.S. citizens or lawful permanent residents). Accordingly, rather than propose to prescribe a specific form of determination, the Bureau is proposing to adopt the statutory definition with the proposed changes discussed in this section above. This approach affords the greatest flexibility to victims of trafficking seeking to gather and submit to consumer reporting agencies the documentation of determinations specified in section 605C(a)(1)(A). The Bureau may consider issuing interpretations in the future that provide specific examples to provide clarity on the types of "determinations" that establish a consumer is a "victim of trafficking." The Bureau seeks comment on this issue and solicits feedback on the types of documents that could serve as a "determination."

*142(b)(6)(ii)*

In addition to specifying that the source of trafficking documentation be a Federal, State, or Tribal governmental entity or a court of competent jurisdiction, section 605(C)(a)(1)(B) provides that "trafficking documentation" is documentation that identifies items of adverse information that should not be furnished by a consumer reporting agency because the items

resulted from a severe form of trafficking in persons or sex trafficking of which the consumer is a victim. The Bureau has incorporated the statutory provision into proposed section 1022.142(b)(6)(ii) with a clarification that this documentation may consist of a statement by the consumer identifying such information. This part of the definition is significant because it identifies for victims information that must be provided to consumer reporting agencies in order to prohibit them from furnishing adverse information in their consumer report when the information results from human trafficking.

The Bureau is not proposing to prescribe what an “adverse item of information” in a “consumer report” is, because it may vary depending on the weight each individual user of a consumer report gives to certain items of information as well as the consumer’s individual circumstances. This information could include the evaluation of factors enumerated in section 603(d) of the FCRA on consumer reports such as: credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living. In addition, victims of trafficking may wish to have items of information blocked from their consumer report that are the result of trafficking because they do not believe those items accurately reflect them even if the item does not result in, for example, a lower credit score or less favorable evaluation by a user. Examples of adverse items of information include records containing derogatory information, such as payment delinquencies or defaults, reported to a consumer reporting agency on a loan or large purchase, records of coerced debt where a loan is taken out by a trafficking victim under force or threat, records of criminal arrests and convictions, and records of evictions or non-payment of rent.

#### *142(b)(7) Victim of Trafficking*

Section 605C(a)(3) defines “victim of trafficking” as a person who is a victim of a severe form of trafficking in persons or sex trafficking. Proposed section 1022.142(b)(7) adopts this definition.

#### *142(c) Prohibition on Inclusion of Adverse Information of Trafficking Victims*

Section 605C(b) provides that a consumer reporting agency may not furnish 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. The Bureau is proposing to interpret this provision to mean a consumer reporting agency may not furnish any adverse item of information in a consumer report to the extent such information resulted from the consumer’s involvement in a severe form of trafficking or sex trafficking and the consumer submitted trafficking documentation to the consumer reporting agency. Proposed section 1022.142(c) adopts this statutory language. The Bureau is interested in comments on whether this provision warrants further clarification.

#### *142(d) Method of Submission to Consumer Reporting Agencies*

##### *142(d)(1)-(d)(3)*

Section 605C(c) requires that the Bureau’s implementing rules establish a method by which consumers shall submit trafficking documentation to consumer reporting agencies. The information to be provided by the consumer to a consumer reporting agency is by nature highly sensitive and confidential. Under proposed section 1022.142(d)(1), consumer reporting agencies would provide a mailing address or website address if the consumer reporting agency allows for electronic submissions, for a consumer to submit trafficking documentation. To facilitate this,

proposed section 1022.142(d)(2) provides that a consumer reporting agency must add information on the publicly available website stating how submissions for the blocking of adverse items of information resulting from trafficking can be submitted. Consumer reporting agencies must accept submissions of trafficking documentation at the mailing address used for disputes under section 611 of the FCRA. Also, if the consumer reporting agency takes disputes under section 611 of the FCRA through a website, it must also accept submission of trafficking documentation at that same website by establishing a secure online portal. Further, a consumer reporting agency must maintain another mailing address and, if the consumer reporting agency accepts electronic submissions of trafficking documentation, another website address dedicated to blocking adverse items of information resulting from trafficking.

In addition, proposed section 1022.142(d)(3) provides that consumer reporting agencies must allocate a reasonable amount of personnel to respond to inquiries about the process for and status of trafficking documentation submissions at the toll-free number for disputes and establish a toll-free telephone number dedicated to blocking adverse items of information resulting from trafficking.

The Bureau proposes these requirements under its authority in sections 605C(c) and 621(e) of the FCRA as necessary to assist victims in their efforts to prevent a consumer reporting agency from furnishing a consumer report containing an adverse item of information that resulted from trafficking. Trafficking victims seeking to block adverse items of information may have difficulty receiving communications from consumer reporting agencies because, for example, they may be in the process of establishing new permanent residence or may have inconsistent or no access to the internet. To ensure that consumer reporting agencies are not furnishing adverse items of information for which the consumer has provided the necessary

trafficking documentation, consumers need to be able to understand where and how to submit trafficking documentation and to be able to verify that a consumer reporting agency has received and acted upon such documentation. The reason the Bureau is proposing that a consumer reporting agency needs to accept submissions of trafficking documentation at both the specific address(es) the consumer reporting agency uses for FCRA section 611 disputes and at separate address(es) the consumer reporting agency uses only for submission of trafficking documentation is to maximize the chances of consumers being able to find an address to which to submit documentation. Some consumers may use the address for disputes as that may be the most widely known and available address, while other consumers may seek a specific address for trafficking documentation and may not understand that they can submit to the address for disputes. The Bureau solicits comment on these proposed provisions.

#### *142(e)-(h) Overview*

In order to fully implement the consumer protection provisions of section 605C, the Bureau looked at pre-existing statutory and regulatory requirements concerning the procedures used by consumers in reporting identity theft and in disputing the accuracy of information in consumer files and consumer reports and the obligations those regulations place on consumer reporting agencies to identify what aspects of those regulations might be useful in helping a consumer seeking to report items of adverse information that result from a severe form of trafficking or sex trafficking of which the consumer is a victim. Proposed paragraphs 142(e)-(h) set forth: (1) provisions to address limited situations in which the consumer reporting agency may decline or rescind a block pursuant to section 605C; (2) the obligations on consumer reporting agencies to notify the consumer of the outcome of its actions with respect to the submission; (3) a record retention requirement of seven years from the date the submission is

received by consumer reporting agencies; and (4) a requirement that consumer reporting agencies establish and maintain written policies and procedures to ensure and monitor compliance with section 605C and these implementing regulations.

The Bureau is proposing these procedural requirements under its authority in FCRA section 621(e) to prescribe regulations that are necessary and appropriate to administer and carry out the purposes and objectives of the FCRA, and to prevent evasions or to facilitate compliance. If the consumer is not notified of the outcome by the consumer reporting agency, the consumer would either have to separately request a copy of their credit report, perhaps incurring a fee, or wait to see if they are subject to an adverse action the next time their consumer report is used which may mean missing out on credit, employment, or housing opportunities. Many victims of trafficking will be in particularly urgent need of housing, employment, or credit, and knowing within a reasonable time that a consumer reporting agency has blocked adverse items of information may facilitate a victim's ability to obtain these vital services. The Bureau also believes that these requirements are necessary for preventing a consumer reporting agency from furnishing a consumer report containing any adverse item of information about a consumer that resulted from trafficking because it provides consumers with the opportunity to review the outcome and if the consumer reporting agency incorrectly rejected a submission to dispute that outcome.

Section 605C of the FCRA does not expressly address the development of written policies and procedures or notification by consumer reporting agencies to furnishers of the adverse items of information blocked for a victim of trafficking. Notifying the furnisher of the block could give a furnisher the opportunity to cease furnishing the blocked information to the consumer reporting agency that provided the notification, which can help ensure that blocked

information is not refurnished and reinserted in a consumer report. If the furnisher stops furnishing to other consumer reporting agencies it may also help to prevent the adverse items of information from being furnished by those consumer reporting agencies. 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.

*142(e) Authority to Decline or Rescind a Block*

The Bureau understands consumer reporting agencies may encounter difficulty confirming certain information submitted by consumers. Under proposed section 1022.142(e), the Bureau is proposing to provide consumer reporting agencies with the authority to decline to act, or to rescind action (if applicable) on a submission. This provision is similar to section 605B(c) of the FCRA, which allows a consumer reporting agency to decline to block information relating to a consumer, or to rescind any block, if the consumer reporting agency makes certain reasonable determinations.<sup>28</sup>

Proposed section 1022.142(e) provides that a consumer reporting agency may decline to block, or may rescind any block, of adverse items of information resulting from a severe form of trafficking in persons or sex trafficking where: (1) the consumer reporting agency requests and cannot reasonably confirm the appropriate proof of identity under paragraph (b)(1); (2) the consumer cannot provide documentation under paragraph (b)(6)(i); or (3) the consumer reporting agency cannot properly identify the adverse items of information under paragraph (b)(6)(ii).

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<sup>28</sup> 15 U.S.C. 1681c-2(c).

The Bureau is not proposing to interpret section 605C as giving the consumer reporting agency the discretion to contest the merits of the submitted trafficking documentation, if it meets the definition in section 605C(a) and in proposed 1022.142(b)(6)(i), and is interested in comments on this approach. The Bureau also is not proposing to interpret the statute as giving a consumer reporting agency the discretion to challenge a consumer's determination that an adverse item of information resulted from a severe form of trafficking in persons or sex trafficking under 1022.142(b)(6)(ii), and is interested in comments on this approach.

The Bureau is proposing to clarify in paragraph (e) that consumer reporting agencies can request appropriate proof of identity of the consumer who is a victim of trafficking as defined in paragraph (b)(1) and that consumer reporting agencies can decline or rescind a block if it cannot reasonably confirm the appropriate proof of identity. In order for consumer reporting agencies to prevent the furnishing of consumer reports that contain adverse items of information about a consumer who is a victim of trafficking, the consumer reporting agency must be able to identify the specific consumer to whom the report relates. The Bureau is relying on its regulatory authority under section 621(e) of the FCRA, which authorizes the Bureau to prescribe regulations that promote accuracy and fairness in credit reporting, and on the general rulemaking authority granted the Bureau under section 1022(b)(1) of the Dodd-Frank Act. Proposed section 1022.142(e) also requires a consumer reporting agency, prior to exercising its authority to decline or rescind a block, notify the consumer and attempt to resolve any deficiency in the consumer's submission. Requiring consumer reporting agencies to notify the consumer and attempt to resolve any deficiencies in the consumer's submission will facilitate compliance and is appropriate to prevent a consumer reporting agency from furnishing a consumer report containing any adverse item of information about a consumer that resulted from trafficking by

providing consumers an opportunity to complete their submission or correct mistakes with respect to information or documentation they provide initially, and making it less likely that a consumer reporting agency will decline to block or a rescind a block in error.

The Bureau requests comment on whether additional clarification on the manner in which a consumer reporting agency must notify the consumer and attempt to resolve any deficiencies in the submission is warranted. For example, should the Bureau use or adapt the procedures in the existing process in Regulation V for consumer reporting agencies to make reasonable requests for additional information for the purpose of determining the validity of alleged identity theft?<sup>29</sup> The Bureau also seeks comment on whether the adverse items of information should simply be blocked from being reported as proposed, or should be deleted from the consumer's file (or the file be modified as appropriate).<sup>30</sup>

#### *142(f) Notification to Consumer of Actions Taken in Response to Trafficking Documentation Submission*

The Bureau is proposing in section 1022.142(f)(1) to require a consumer reporting agency to provide written notice to a consumer of the results of a submission within five calendar days of receipt of the submission (or, if rescinding a previously applied block, five calendar days after rescinding). The notification to the consumer may be sent by mail or by other means available to the consumer reporting agency, if authorized by the consumer.

Proposed section 1022.142(f)(2) would require a consumer reporting agency to provide notice in writing informing the consumer that the review of the submission is completed, a statement explaining the outcome, a consumer report provided at no cost to the consumer that is

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<sup>29</sup> See 12 CFR 1022.3(i)(1)(iii).

<sup>30</sup> Section 611(a)(5) of the FCRA takes the latter approach with respect to successfully disputed information. 15 U.S.C. 1681i(a)(5).

based upon the consumer's revised file (if applicable), a description of the procedures used to determine the outcome, a method for contacting the consumer reporting agency to appeal the determination or revise the submission to cure any of the noted reasons for declining to block the requested adverse information, and the webpage consumers can use to submit complaints to the Consumer Financial Protection Bureau. Requiring a notice to the consumer of the outcome of the consumer reporting agency's review of the submission and providing the consumer with information on how to appeal or cure and how to submit a complaint to the Bureau will facilitate compliance and is appropriate to prevent a consumer reporting agency from furnishing a consumer report containing any adverse item of information about a consumer that resulted from trafficking by providing consumers with the information they need to determine if a consumer reporting agency declined to block or a rescind a block in error and with information about how to get any such error corrected. The Bureau is soliciting comments on whether, similar to section 611(a)(6)(B) of the FCRA, a consumer reporting agency should provide the consumer with a consumer report that is based upon the consumer's revised file (if applicable) or a consumer reporting agency should be required to provide the consumer with instructions for how to obtain a copy of the revised report in order to protect the consumer's privacy.

#### *142(g) Record Retention*

Proposed section 1022.142(g) requires a consumer reporting agency to retain evidence of submissions under section 605C. The proposal would also require a consumer reporting agency to maintain documentation concerning the outcome of the submissions, reasons for declining or rescinding to act (if applicable), and compliance with section 1022.142. Consumer reporting agencies would need to retain this information for a period of seven years after the date the submission by the consumer is received. Under section 605 of the FCRA, most adverse

information would be excluded from consumer reports after seven years automatically.

Requiring consumer reporting agencies to maintain records of compliance is appropriate to administer the rule by enabling the Bureau to assess consumer reporting agencies' compliance with the rules and to facilitate compliance by supporting effective and efficient enforcement of the rule in order to prevent a consumer reporting agency from furnishing a consumer report containing any adverse item of information about a consumer that resulted from human trafficking. The Bureau requests comment on the record retention requirement, particularly with respect to the proposed seven-year retention period.

*142(h) Policies and Procedures to Ensure and Maintain Compliance*

Proposed section 1022.142(h) would require consumer reporting agencies to establish and maintain written policies and procedures reasonably designed to ensure and monitor the compliance of the consumer reporting agency and its employees with the requirements of this section. Rather than proposing a one-size-fits-all approach, proposed section 1022.142(h) specifies that these written policies and procedures must be appropriate to the nature, size, complexity, and scope of the activities of the consumer reporting agency and its employees. For example, consumer reporting agencies must develop policies and procedures that address how requests are evaluated and processed, and the limited circumstances a consumer reporting agency may decline or rescind a block under section 1022.142(e). Requiring consumer reporting agencies to maintain written policies and procedures is appropriate to administer the rule by enabling the Bureau to assess consumer reporting agencies' compliance with the rules and to facilitate compliance in order to prevent a consumer reporting agency from furnishing a consumer report containing any adverse item of information about a consumer that resulted from human trafficking.

## **V. Proposed Effective Date for Final Rule**

Pursuant to section 6102 of the 2022 NDAA, the amendments to the FCRA shall apply 30 days after the Bureau issues a final rule. The Bureau proposes that the amendments included in this proposal take effect 30 days after the date of the final rule's publication in the *Federal Register*. Under section 553(d) of the Administrative Procedure Act, the required publication or service of a substantive rule must be made not less than 30 days before its effective date, with certain exceptions not applicable here.<sup>31</sup> Thus, the final rule would take effect at the same time as section 605C, which would avoid uncertainty for consumers who are victims of trafficking as well as for consumer reporting agencies. The Bureau seeks comment on the proposed effective date.

## **VI. Dodd-Frank Act Section 1022(b)(2) Analysis**

In developing this proposed rule, the Bureau has considered the proposed rule's potential benefits, costs, and impacts in accordance with section 1022(b)(2)(A) of the Consumer Financial Protection Act of 2010 (CFPA).<sup>32</sup> The Bureau requests comment on the preliminary analysis presented below as well as submissions of additional data that could inform the Bureau's analysis of the benefits, costs, and impacts. In developing the proposed rule, the Bureau has consulted or offered to consult with the prudential banking regulators (the FDIC, FRB, NCUA, and OCC) and the Bureau of Indian Affairs, several offices in the Department of Justice, Department of Health and Human Services, Department of Homeland Security, and the FTC, including regarding consistency of this rule with any prudential, market, or systemic objectives administered by those agencies, in accordance with section 1022(b)(2)(B) of the CFPA.

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<sup>31</sup> 5 U.S.C. 553(d).

<sup>32</sup> 12 U.S.C. 5512(b)(2)(A).

The Bureau expects that the proposed rule would benefit consumers who are victims of a severe form of trafficking in persons or sex trafficking and have adverse information on file with a consumer reporting agency as a result of that trafficking. The potential benefits to individual consumers who are victims of trafficking could be considerable—adverse information from consumer reporting agencies could negatively affect a consumer’s ability to obtain housing, employment, credit or other immediate and longer-term services necessary to support long-term independence and financial stability.

Conversely, the proposed rule would impose costs on consumer reporting agencies in the form of compliance costs associated with processing requests from consumers to block adverse information and effecting the necessary blocks. While the Bureau does not have data to quantify these costs, the Bureau expects the costs of complying with the requirements of the proposed rule to be small in magnitude. Consumer reporting agencies are already required by 15 U.S.C. 1681c-2 to have systems in place to accept reports of identity theft, and to respond to those reports by suppressing information on any consumer reports. Consumer reporting agencies also have systems in place to address treatment of inaccurate and unverifiable information as required by 15 U.S.C. 1681i(a)(5) and concerning the notice of results of reinvestigation under 15 U.S.C. 1681i(a)(6). This proposed rule’s procedural requirements are modeled on these requirements.

Although the Bureau characterizes qualitatively the nature of the benefits to consumers and the costs to firms above, it is not able to quantify the overall magnitude of the likely costs and benefits of the proposed rule. Quantifying these costs and benefits would require an estimate of the number of consumers likely to submit information to support a block under the proposed rule in a typical year. Not all victims of trafficking will necessarily have adverse information with a consumer reporting agency, and among those who do, not all will make a submission or

be able to provide the required documentation.<sup>33</sup> The Bureau does not have a way to estimate the number of trafficking victims who will make a request, and according to the State Department, there is no reliable estimate of the annual number of trafficking victims in the United States.

To provide a rough sense of scale, the Bureau compares available statistics on human trafficking in the United States to statistics on identity theft, which have a similar treatment under the FCRA as under the proposed rule. In 2020, the National Human Trafficking Hotline made 8,701 referrals for potential victims of trafficking.<sup>34</sup> For comparison, the FTC received nearly 1.4 million complaints related to identity theft in 2020.<sup>35</sup> Both the number of referrals from the National Human Trafficking Hotline and the number of identity theft complaints to the FTC likely undercount the true incidence of trafficking and identity theft, respectively. However, given that not all victims of trafficking will have adverse information with a consumer reporting agency, it seems reasonable to assume that the annual number of consumer submissions to consumer reporting agencies under the proposed rule would be at least two orders of magnitude less than the volume similar requests related to identity theft. As a result, the Bureau expects that although the potential benefits of the proposed rule to individual consumers

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<sup>33</sup> This may occur if the consumer is not aware of the adverse information, or is not seeking any product or service that might rely on a consumer report including that information (e.g., if the adverse information relates to credit and the consumer is not currently seeking new credit). In addition, although the proposed rule is intended to make the submission process as straightforward as possible for victims of trafficking and intends to conduct outreach to ensure that victims are aware of their rights, consumers may not utilize the reporting process if they do not know their right to make a request, because they lack the required documentation, or because they believe the process to be more costly in time and effort than the potential benefits of blocking the adverse information.

<sup>34</sup> Off. to Monitor and Combat Trafficking in Persons, U.S. Dep't of State, *2021 Trafficking in Persons Report* 591, <https://www.state.gov/reports/2021-trafficking-in-persons-report/> (last visited Mar. 21, 2022).

<sup>35</sup> Fed. Trade Comm'n, *Consumer Sentinel Network Data Book 2020*, at 7 (Feb. 2021), [https://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-2020/csn\\_annual\\_data\\_book\\_2020.pdf](https://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-2020/csn_annual_data_book_2020.pdf).

who are victims of trafficking may be considerable, the aggregate benefits to consumers and the aggregate costs to consumer reporting agencies are likely to be small.<sup>36</sup>

The proposed rule may increase consumer access to credit, to the extent that consumers who are victims of trafficking and have adverse information related to that trafficking present on a credit report, and blocking that adverse information makes it easier for those consumers to obtain credit.

The proposed rule would not have a unique impact on insured depository institutions or insured credit unions with less than \$10 billion in assets described in section 1026(a) of the Dodd-Frank Act. Finally, the proposed rule would not have a unique impact on rural consumers.

## **VII. Regulatory Flexibility Act Analysis**

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.<sup>37</sup> The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.<sup>38</sup> The proposed rule would apply to all consumer reporting agencies, including all those that are small businesses under the RFA. However, it is unlikely that any small business will experience a significant economic impact as a result of the proposal. As discussed in section VI above, the number of

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<sup>36</sup> It is possible that consumer reporting agencies may incur some costs associated with submissions from individuals who claim fraudulently that adverse items of information in their consumer reports result from a severe form of trafficking or sex trafficking of which they allege to be a victim. Given the documentation requirements in the proposed rule, the Bureau does not expect this would happen often. The Bureau seeks comment on this assessment.

<sup>37</sup> 5 U.S.C. 601 through 612.

<sup>38</sup> 5 U.S.C. 609.

submissions for blocking adverse information each year are likely to be small, and consumer reporting agencies are already required to have processes in place for processing similar requests due to existing requirements related to identity theft and dispute procedures under section 611 of the FCRA. Accordingly, the Director of the Bureau certifies that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities. Thus, neither an IRFA nor a small business review panel is required for this proposal. The Bureau requests comment on the analysis above and requests any relevant data.

### **VIII. Paperwork Reduction Act**

Under the Paperwork Reduction Act of 1995 (PRA),<sup>39</sup> Federal agencies are generally required to seek approval from the Office of Management and Budget (OMB) for data collection, disclosure, and recordkeeping requirements (collectively, information collection requirements) prior to implementation. Under the PRA, the Bureau may not conduct or sponsor, and, notwithstanding any other provision of law, a person is not required to respond to, an information collection unless the information collection displays a valid control number assigned by OMB. As part of its continuing effort to reduce paperwork and respondent burden, the Bureau conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on the information collection requirements in accordance with the PRA. This helps ensure that the public understands the Bureau's requirements or instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, information collection instruments are clearly understood, and the Bureau can properly assess the impact of information collection requirements on respondents.

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<sup>39</sup> 44 U.S.C. 3501 *et seq.*

This proposed rule would amend 12 CFR part 1022 (Regulation V). The Bureau's OMB control number for Regulation V is 3170. As described below, the proposed rule would create the following new information collection requirements in Regulation V:

- The proposed rule would require consumer reporting agencies to accept trafficking and other documentation from consumers, process the submissions, and block any adverse item of information identified by the consumer that resulted from a severe form of trafficking in persons or sex trafficking under proposed section 1022.142(d)-(e). Consumer reporting agencies would be required to inform consumers of their decision and actions with respect to the submission under proposed section 1022.142(f).
- The proposed rule would require consumer reporting agencies to retain evidence of all submissions by consumers pursuant to these regulations, including actions taken in response to the submissions, reasons for declining or rescinding the block requests, and compliance with this section for a seven-year period under proposed section 1022.142(g).
- The proposed rule would require consumer reporting agencies to establish and maintain written policies and procedures reasonably designed to ensure and monitor the compliance of the consumer reporting agency and its employees with the requirements of this rule under proposed section 1022.142(h).

The collections of information contained in this proposed rule, and identified as such, have been submitted to OMB for review under section 3507(d) of the PRA. A complete description of the information collection requirements (including the burden estimate methods) is provided in the information collection request (ICR) that the Bureau has submitted to OMB

under the requirements of the PRA. Please send your comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Bureau of Consumer Financial Protection. Send these comments by email to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov) or by fax to 202-395-6974. If you wish to share your comments with the Bureau, please send a copy of these comments as described in the ADDRESSES section above. The ICR submitted to OMB requesting approval under the PRA for the information collection requirements contained herein is available at [www.regulations.gov](http://www.regulations.gov) as well as on OMB's public-facing docket at [www.reginfo.gov](http://www.reginfo.gov).

*Title of Collection:* Regulation V: Fair Credit Reporting Act.

*OMB Control Number:* 3170-0002.

*Type of Review:* Revision of a currently approved collection.

*Affected Public:* Private Sector; Federal, State, and Tribal Governments.

*Estimated Number of Respondents:* The Bureau does not have enough information to estimate the number of respondents and is assuming de minimis. The Bureau invites comment on this assumption.

*Estimated Total Annual Burden Hours:* The Bureau does not have enough information to know how frequently this collection will occur or the burden it will impose. The Bureau invites comment on this collection.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to

minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notification will be summarized and/or included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record.

If applicable, the final rule will inform the public of OMB's approval of the new information collection requirements proposed herein and adopted in the final rule. If OMB has not approved the new information collection requirements prior to publication of the final rule in the *Federal Register*, the Bureau will publish a separate notification in the *Federal Register* announcing OMB's approval prior to the effective date of the final rule.

#### **List of Subjects in 12 CFR Part 1022**

Banks, banking, Consumer protection, Credit unions, Holding companies, National banks, Privacy, Reporting and recordkeeping requirements, Savings associations.

#### **Authority and Issuance**

For the reasons set forth above, the Bureau proposes to amend Regulation V, 12 CFR part 1022, as set forth below:

#### **PART 1022—FAIR CREDIT REPORTING ACT (REGULATION V)**

1. Revise the authority citation for part 1022 to read as follows:

**Authority:** 12 U.S.C. 5512, 5581; 15 U.S.C. 1681a, 1681b, 1681c, 1681c-1, 1681c-3, 1681e, 1681g, 1681i, 1681j, 1681m, 1681s, 1681s-2, 1681s-3, and 1681t; Sec. 214, Public Law 108-159, 117 Stat. 1952.

#### **Subpart O—Miscellaneous Duties of Consumer Reporting Agencies**

2. Add § 1022.142 to read as follows:

**§ 1022.142 Prohibition on inclusion of adverse information in consumer reporting in cases of human trafficking.**

(a) *Scope.* This section applies to any consumer reporting agency as defined in section 603(f) of the FCRA, 15 U.S.C. 1681a(f).

(b) *Definitions.* For purposes of this section:

(1) *Appropriate proof of identity* means proof of identity that meets the requirements in section 1022.123.

(2) *Consumer report* has the meaning provided in section 603(d) of the FCRA, 15 U.S.C. 1681a(d).

(3) *Consumer reporting agency* has the meaning provided in section 603(f) of the FCRA, 15 U.S.C. 1681a(f).

(4) *Severe forms of trafficking in persons* has the meaning provided in section 103 of the Trafficking Victims Protection Act of 2000, 22 U.S.C. 7102(11).

(5) *Sex trafficking* has the meaning provided in section 103 of the Trafficking Victims Protection Act of 2000, as amended by section 108 of the Justice for Victims of Trafficking Act of 2015, 22 U.S.C. 7102(12).

(6) *Trafficking documentation* means one or more documents that satisfy paragraph

(b)(6)(i) and (ii) of this section:

(i) Documentation that:

(A) Is of a determination that a consumer is a victim of trafficking made by a Federal, State, or Tribal governmental entity or a court of competent jurisdiction; or

(B) Consists of documents filed in a court of competent jurisdiction indicating that a consumer is a victim of trafficking; and

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

(7) *Victim of trafficking* means a person who is a victim of a severe form of trafficking in persons or sex trafficking.

(c) *Prohibition on inclusion of adverse information of trafficking victims.* A consumer reporting agency may not furnish 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.

(d) *Method of submission to consumer reporting agencies.* (1) *Mailing and website address.* A consumer reporting agency must provide a mailing address for a consumer to submit required documentation and may also establish a secure online portal for submissions. A consumer reporting agency must accept trafficking documentation sent to the mailing and, if applicable, website addresses used for disputes under section 611 of the FCRA, and a consumer reporting agency must maintain a dedicated mailing and, if applicable, website address for blocking adverse items of information resulting from trafficking.

(2) *Disclosing methods for submission.* A consumer reporting agency must add information on the publicly available website stating how submissions for the blocking of adverse items of information resulting from trafficking can be submitted.

(3) *Toll-free telephone number.* A consumer reporting agency must:

(i) Allocate a reasonable amount of personnel to respond to consumer inquiries about the process for and status of trafficking documentation submissions at the toll-free telephone number used for disputes under section 611 of the FCRA; and

(ii) Establish a toll-free telephone number dedicated to addressing submissions from consumers seeking to block adverse items of information resulting from trafficking.

(e) *Authority to decline or rescind a block.* A consumer reporting agency may decline to block, or may rescind any block, of adverse items of information resulting from a severe form of trafficking in persons or sex trafficking only where the consumer reporting agency requests and cannot reasonably confirm the appropriate proof of identity under paragraph (b)(1) of this section, the consumer cannot provide documentation under paragraph (b)(6)(i) of this section, or the consumer reporting agency cannot properly identify the adverse items of information under paragraph (b)(6)(ii) of this section. A consumer reporting agency may decline or rescind a block only after notifying the consumer and attempting to resolve any deficiency in the consumer's submission.

(f) *Notification to consumer of actions taken in response to trafficking documentation submission—(1) In general.* A consumer reporting agency must provide written notice to a consumer of actions it has taken in response to a submission of trafficking documentation not later than five calendar days after the receipt of the submission (or, if rescinding a previously applied block, five calendar days after rescinding), by mail or, if authorized by the consumer for that purpose, by other means available to the consumer reporting agency.

(2) *Contents.* The notice must include the following:

(i) A statement that the review of the submission is completed;

(ii) A statement of the outcome of the review of the submission, including the reason(s) if the consumer reporting agency declined or rescinded to block the requested adverse information under paragraph (d) of this section;

(iii) A consumer report, provided at no cost to the consumer, that is based upon the consumer's revised file (if applicable) as a result of the consumer's submission;

(iv) A description of the procedure used to determine the outcome;

(v) A method for contacting the consumer reporting agency to appeal the determination or revise the submission to cure any of the noted reasons for declining to block the requested adverse information; and

(vi) The webpage consumers can use to submit complaints to the Consumer Financial Protection Bureau.

(g) *Record retention.* For a period of seven years after the date the submission by the consumer is received under paragraph (d)(2) of this section, a consumer reporting agency must retain evidence of all such submissions, including the actions taken by the consumer reporting agency, reasons for declining or rescinding the block requests, and compliance with this section.

(h) *Policies and procedures to ensure and maintain compliance.* A consumer reporting agency must establish and maintain written policies and procedures reasonably designed to ensure and monitor the compliance of the consumer reporting agency and its employees with the requirements of paragraphs in this section. These written policies and procedures must be appropriate to the nature, size, complexity, and scope of the activities of the consumer reporting agency and its employees.

/s/Rohit Chopra

**Rohit Chopra,**  
*Director, Consumer Financial Protection Bureau.*