

Fast Facts: FCRA and Regulation V Human Trafficking Rule

Rule Summary: The FCRA and Regulation V Human Trafficking Final Rule (“Final Rule” or “Rule”) amends Regulation V to implement a recent amendment to the Fair Credit Reporting Act (FCRA). The Final Rule prohibits consumer reporting agencies from furnishing a consumer report containing adverse item(s) of information that resulted from certain types of human trafficking. It also establishes a method for victims of trafficking to submit trafficking documentation to consumer reporting agencies, procedures for consumer reporting agencies to review that documentation and make a determination, as well as consumer notification requirements.

Effective date: The Final Rule’s amendments to Regulation V are effective July 25, 2022. The amendments to the FCRA required by the 2022 National Defense Authorization Act (NDAA) will take effect 30 days after the Final Rule’s issuance.

Available at: <https://consumerfinance.gov/rules-policy/final-rules/prohibition-on-inclusion-of-adverse-information-in-consumer-reporting-in-cases-of-human-trafficking-regulation-v/>.

About this document: The Bureau has issued a Final Rule to amend Regulation V at 12 CFR 1022 to add a new subpart at 12 CFR 1022.142. This document provides a high-level overview of the topics covered in the Final Rule.

Coverage

Entity or article	Description in Final Rule	Location in Regulation V
Consumer Reporting Agency	<p>The Final Rule applies to any “consumer reporting agency.”</p> <p>The term “consumer reporting agency” is defined in section 603(f) of the FCRA and generally includes the nationwide consumer reporting agencies, nationwide specialty consumer reporting agencies, and all other consumer reporting agencies.</p>	1022.142(a); 1002.142(b)(3)
Consumer Report	<p>The Final Rule applies to “consumer reports.”</p> <p>The term “consumer reports” is defined in section 603(d) of the FCRA and means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in connection with either consumer credit, employment, or another authorized purpose.</p>	1002.142(b)(2)
Victim of Trafficking	<p>The Final Rule applies to persons who are “victims of trafficking.”</p> <p>The term victim of trafficking includes two types of trafficking: severe forms of trafficking in persons and sex trafficking.</p> <p>Severe forms of trafficking in persons is defined in the Trafficking Victims Protection Act of 2000, 22 U.S.C. 7102(11) 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.</p> <p>Sex trafficking is defined in the Trafficking Victims Protection Act of 2000, 22 U.S.C. 7102(12) as the recruitment, harboring, transportation, provision, obtaining, patronizing or soliciting of a person for the purpose of a commercial sex act.</p>	1002.142(b)(4)-(5); 1022.142(b)(7)

Documentation

Topic	Description in Final Rule	Location in Regulation V
<p>Trafficking Documentation</p>	<p>A consumer who is a victim of trafficking is required to include “trafficking documentation” as part of their submission to a consumer reporting agency to request a block of adverse items of information that resulted from trafficking.</p> <p>“Trafficking documentation” includes two categories of documentation: victim determination and identified adverse items of information.</p> <p>Victim determination is generally defined as documentation of a determination that a consumer is a victim of trafficking, made by either:</p> <ul style="list-style-type: none"> • a Federal, State, or Tribal governmental entity, • a court of competent jurisdiction, which includes certain documents filed in court; ; • a non-governmental organization or human trafficking task force, including victim service providers affiliated with these entities, authorized by a Federal, State, or Tribal government entity; or • a self-attestation by a consumer who identifies as a victim of trafficking that is signed or certified by a Federal, State, or Tribal government entity, court of competent jurisdiction, or an authorized representative of these entities. <p>Identified adverse items of information are generally documents that identify 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. The Final Rule does not define what an “adverse item of information” is but notes that it could include records containing derogatory information, such as payment delinquencies or defaults, records of coerced debt, records of criminal arrests and convictions, and records of evictions or non-payment of rent.</p>	<p>1022.142(b)(6)</p>
<p>Appropriate Proof of Identity</p>	<p>A consumer who is a victim of trafficking is required to include “appropriate proof of identity” as part of their submission to a</p>	<p>1022.142(b)(1); 1022.142(d)(1); 1022.123</p>

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	<p>consumer reporting agency to request a block of adverse items of information that resulted from trafficking.</p> <p>The Rule requires consumer reporting agencies to develop reasonable requirements for submissions of “appropriate proof of identity” similar to those in section 1022.123, which discusses proof of identity requirements for identity theft victims. The Rule requires consumer reporting agencies to tailor these requirements to the needs of victims of trafficking, by using, for example, confirmation questions a victim of trafficking could easily answer to prove their identity and other “non-documentary” means.</p>	
<p>Identified adverse items of information and preferred consumer contact method</p>	<p>As part of their submission to a consumer reporting agency, a consumer who is a victim of trafficking is required to identify adverse items of information that should not be furnished because they were the result of a severe form of trafficking in persons or sex trafficking. This may consist of a statement by the consumer or a designated representative.</p> <p>A consumer must also submit a preferred method for a consumer reporting agency to contact the consumer electronically or in writing. For all required communications under the Rule, a consumer reporting agency must use only use the consumer’s preferred contact method.</p>	<p>1022.142(b)(6)(ii)</p>
<p>Method of submission to consumer reporting agencies</p>	<p>All consumer reporting agencies are required to provide consumers with two mailing addresses to submit trafficking documentation and appropriate proof of identity:</p> <ul style="list-style-type: none"> • At a mailing address established specifically for consumer submissions of trafficking documentation and appropriate proof of identity. • At the same mailing address used for disputes under section 611 of the FCRA. <p>Consumer reporting agencies may also establish a website address specifically for consumer submissions of trafficking documentation and appropriate proof of identity. If a consumer reporting agency accepts disputes under section 611 of the FCRA at a website address, they must also accept</p>	<p>1022.142(d)</p>

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	<p>consumer submissions of trafficking documentation and appropriate proof of identity at that same website address.</p> <p>Additionally, all consumer reporting agencies are required to add information on their websites stating how consumers can submit trafficking documentation and appropriate proof of identity.</p> <p>Nationwide consumer reporting agencies must maintain a toll-free telephone number to respond to consumer inquiries regarding trafficking documentation submissions.</p>	

Conduct

Topic	Description in Final Rule	Location in Regulation V
<p>Requirement to block adverse information</p>	<p>A consumer reporting agency must block adverse information <i>within four business days</i> of receiving a consumer's submission.</p>	<p>1022.142(e)(1)</p>
<p>Notification to consumer and attempt to resolve deficiencies</p>	<p>A consumer reporting agency must notify the consumer within <i>five business days</i> of receiving a consumer's submission if additional information is necessary to complete the submission or if any of the required documentation is missing.</p> <p>Consumer reporting agency requests regarding additional or missing information are limited to situations where:</p> <ul style="list-style-type: none"> • the consumer reporting agency cannot reasonably confirm the consumer's (or consumer representative's) appropriate proof of identity; • the consumer did not provide a victim determination; or • the consumer reporting agency cannot properly identify the adverse items of information. <p>A consumer reporting agency does not have discretion to challenge a consumer's determination that an adverse item of</p>	<p>1022.142(e)(2); 1022.142(e)(4)</p>

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	<p>information resulted from a severe form of trafficking in persons or sex trafficking under the Rule.</p>	
<p>Final determination and authority to decline or rescind a block</p>	<p>A consumer reporting agency must make a final determination on the consumer's request <i>within 25 business days</i> of receiving a consumer's submission.</p> <p>A final determination under the Rule is either to initiate or maintain the block of adverse information initially placed or decline and rescind a block.</p> <p>A consumer reporting agency may only decline and rescind a block after notifying the consumer or the consumer's representative using the method of contact specified by the consumer and attempting to resolve any deficiencies in the consumer's submission. A consumer reporting agency may only decline and rescind a block where:</p> <ul style="list-style-type: none"> • the consumer reporting agency cannot reasonably confirm the consumer's (or consumer representative's) appropriate proof of identity; • the consumer did not provide a victim determination; or • the consumer reporting agency cannot properly identify the adverse items of information. <p>A consumer reporting agency may not make a determination based on the validity of the facts or circumstances in the consumer's trafficking documentation submission.</p>	<p>1022.142(e)(3)-(4)</p>
<p>Notification to consumer of actions taken</p>	<p>A consumer reporting agency must notify the consumer in writing <i>within five business days</i> after making a final determination.</p> <p>The notice to the consumer must include all of the following:</p> <ul style="list-style-type: none"> • A statement that the review is complete. • A statement explaining the outcome. • A new consumer report provided at no cost to the consumer (if applicable). • A description of the procedures used to make the determination. • An appeal method. 	<p>1022.142(f)</p>

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	<ul style="list-style-type: none"> <li data-bbox="529 327 1143 359">• A link to the CFPB’s consumer complaint portal. 	
Recordkeeping	A consumer reporting agency is required to maintain records of the outcome of consumer submissions and compliance with the Final Rule for a period of <i>seven years</i> after a consumer’s submission is received.	1022.142(g)