

**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:** Final rule.

**SUMMARY:** The Consumer Financial Protection Bureau (Bureau) is amending Regulation V, which implements the Fair Credit Reporting Act (FCRA), to address recent legislation that assists consumers who are victims of trafficking. This final rule establishes 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 prohibits 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 to assist consumers who are victims of trafficking in building or rebuilding financial stability and personal independence.

**DATES:** This final rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**FOR FURTHER INFORMATION CONTACT:** Daniel Tingley, Counsel; Lanique Eubanks or Brandy Hood, Senior Counsels, 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 Final Rule**

The Bureau is adopting 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 amending Regulation V as follows:

- Create new section 1022.142 in subpart O, the subpart on miscellaneous duties of consumer reporting agencies, to add the provisions implementing section 605C;

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<sup>1</sup> Fair Credit Reporting Act, 15 U.S.C. 1681 *et seq.* For ease of reference, section 605C of the FCRA is generally referred to as a “section 605C” throughout this notice.

<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>. 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 117th Congress 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 § 1022.142(b)) or collectively as “trafficking.”

- Apply the new section 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”;
- Clarify that “trafficking documentation” includes certain determinations made by a non-governmental organization or member of a human trafficking task force when authorized by a Federal, State, or Tribal governmental entity, and that, for purposes of the new section, documentation by a State governmental entity includes documentation at both the State and local level;
- Permit a consumer to self-attest as a victim of trafficking if the document or an accompanying document is signed or certified by a Federal, State, or Tribal governmental entity, a court of competent jurisdiction, or the representatives of these entities;
- Clarify that a document filed in a court of competent jurisdiction is an acceptable determination that a consumer is a victim of trafficking where: (1) a central issue in the case is whether the consumer is a victim of trafficking; and (2) where the court has conducted an initial review of the victim’s claim for purposes of a motion to dismiss or motion for summary judgment and the result is in favor of the victim; and
- Establish procedures explaining how consumers should submit the required documentation to consumer reporting agencies, what actions a consumer reporting agency must perform when it receives that documentation, the limited

circumstances under which a consumer reporting agency may ask for additional information, written policies and procedures, and recordkeeping requirements to monitor compliance.

## **II. Background**

### *A. Trafficking in the United States*

According to the United States Department of State (State Department), 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>

Congress enacted the first significant Federal legislation addressing human trafficking in 2000. The Trafficking Victims Protection Act of 2000<sup>6</sup> (TVPA) established the “three Ps” framework for combating human trafficking by providing increased protections for victims, enhanced tools to prosecute perpetrators of trafficking, and additional resources for prevention.<sup>7</sup> Among other things, the TVPA added new criminal provisions prohibiting “severe forms of trafficking in persons.” This term includes two components of human trafficking defined to

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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 June 20, 2022).

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

<sup>6</sup> Pub. L. 106-386, 114 Stat. 1464.

<sup>7</sup> U.S. Dep’t of Just., *Key Legislation*, <https://www.justice.gov/humantrafficking/key-legislation> (last visited June 20, 2022).

include sex trafficking of children or by force, fraud, or coercion of adults, as well as forced labor trafficking with respect to involuntary servitude, peonage, debt bondage, or slavery, commonly referred to as “sex trafficking” and “labor trafficking,” respectively.<sup>8</sup> Since 2000, Congress has reauthorized the TVPA on several occasions and continued to dedicate additional tools and resources to the fight against trafficking on a regular basis, including the creation and funding of the National Human Trafficking Hotline.<sup>9</sup>

Efforts by the United States Government to respond to the needs of victims of trafficking recognize that victims have both immediate and longer-term needs, including the need to improve financial stability to support their long-term independence.<sup>10</sup> Adverse consumer report information resulting from having been trafficked can reduce the ability of victims<sup>11</sup> to take basic steps to obtain housing and employment and to move toward greater financial stability and independence.

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<sup>8</sup> *Id.*; see also 18 U.S.C. 1589 through 1591.

<sup>9</sup> See, e.g., William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. 110-457, 122 Stat. 5044; Justice for Victims of Trafficking Act of 2015, Pub. L. 114-22, 129 Stat. 227 (creating the National Human Trafficking Hotline by directing the Secretary of Health and Human Services (HHS) to make grants for a national communication system to assist victims of severe forms of trafficking in persons in communicating with service providers and give priority to grant applicants that have experience in providing telephone services to victims of severe forms of trafficking in persons).

<sup>10</sup> Coordination Collaboration Capacity, *Federal Strategic Action Plan on Services for Victims of Human Trafficking in the United States 2013-2017* (Jan. 2014), at 9,

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

<sup>11</sup> The Bureau recognizes that some individuals and advocates prefer the term “survivor” to “victim.” As the Department of Justice (DOJ) has 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 Training & Tech. Assistance Ctr., Off. for Victims of Crime, U.S. Dep’t of Just., *Human Trafficking Task Force e-Guide*, <https://www.ovcttac.gov/taskforceguide/eguide/1-understanding-human-trafficking/13-victim-centered-approach/> (last visited June 20, 2022). In this final rule, the Bureau is using the term “victim” because that is the wording of section 6102 of the 2022 NDAA.

### *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>12</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>13</sup>

Together with its implementing regulation, Regulation V,<sup>14</sup> the FCRA creates a regulatory framework for furnishing, using, and disclosing information in reports associated with 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, based on an earlier bill known as the Debt Bondage Repair Act.<sup>15</sup> Section 605C(b) 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

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<sup>12</sup> *Guimond v. Trans Union Credit Info. Co.*, 45 F.3d 1329, 1333 (9th Cir. 1995).

<sup>13</sup> 15 U.S.C. 1681(b).

<sup>14</sup> 12 CFR part 1022.

<sup>15</sup> *See* note 2 *supra*.

agency. As described in more detail in the section-by-section analysis below, section 605C(a) provides statutory definitions for a number of the terms, including from the TVPA. 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. Summary of the Rulemaking Process**

On April 8, 2022, the Bureau published a proposed rule in the *Federal Register* to implement section 605C.<sup>16</sup> The comment period ended on May 9, 2022. In response to the proposal, the Bureau received over 60 comments from survivors of trafficking, consumers, consumer groups, anti-trafficking advocacy groups, industry trade associations, and others.

Many commenters expressed general support for the proposed rule, discussing, for example, the importance of section 605C's goal of helping victims of trafficking recover financially. Some commenters expressed general support for the proposed rule and stated that they believed the proposal would help victims regain access to credit, employment, housing, bank accounts, utilities, and other services. The Bureau also received requests from commenters to alter, clarify, or remove specific provisions of the proposed rule, with some comments focusing on issues relating to potential fraud or abuse and others focusing on revisions that would permit more consumers to take advantage of the proposed amendments. As discussed in more detail below, the Bureau has considered these comments in adopting this final rule.

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<sup>16</sup> See 87 FR 20771 (Apr. 8, 2022).

#### IV. Legal Authority

The Bureau is issuing this final rule pursuant to its authority under the FCRA, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act),<sup>17</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 and objectives of the Federal consumer financial laws, and to prevent evasions thereof.<sup>18</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>19</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>20</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

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<sup>17</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Pub. L. 111-203, 124 Stat. 1376 (2010).

<sup>18</sup> *Id.* § 1022(b)(1), 124 Stat. 1980 (codified at 12 U.S.C. 5512(b)(1)).

<sup>19</sup> *Id.* § 1061(b)(5)(A), 124 Stat. 2037 (codified at 12 U.S.C. 5581(b)(5)(A)). Section 1002(12)(F) of the Dodd-Frank Act designates most of the FCRA (codified at 15 U.S.C. 1681 *et seq.*) as an “enumerated consumer law” except with respect to sections 615(e) and 628 (codified at 15 U.S.C. 1681m(e), 1681w). Dodd-Frank Act § 1002(12)(F), 124 Stat. 1957 (codified at 12 U.S.C. 5481(12)(F)).

<sup>20</sup> Dodd-Frank Act § 1088, 124 Stat. 2086 (codified at 15 U.S.C. 1681 *et seq.*).



purposes and objectives of the FCRA, and to prevent evasions thereof or to facilitate compliance therewith.<sup>21</sup> The Bureau is issuing this final rule pursuant to its authority under § 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. 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 defined, respectively, in section 603 of the FCRA (15 U.S.C. 1681a)) that resulted from trafficking.

**V. 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 proposed 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. Consistent with section 6102(c) of the 2022 NDAA, the Bureau proposed to apply new § 1022.142 to any “consumer reporting agency” as defined in section 603(f) of the FCRA. Thus, consistent with section 603(f), the requirement prohibiting a consumer reporting agency from furnishing any adverse items of information about a consumer that resulted from a severe form of trafficking in persons or sex trafficking applies to all consumer reporting agencies, including the nationwide consumer

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<sup>21</sup> *Id.* § 1088(a)(10)(E), 124 Stat. 2090 (codified at 15 U.S.C. 1681s(e)).

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.<sup>22</sup>

A few commenters addressed the proposed scope. Consumer advocate commenters generally supported applying the requirement to all consumer reporting agencies. However, one industry commenter suggested that the final rule should provide an exception for resellers, as defined by section 603(u) of the FCRA, that do not maintain a consumer file, similar to the exception from the requirement to block information resulting from identity theft in section 605B(d) of the FCRA. The commenter reasoned that these resellers do not maintain a file on consumers and, therefore, do not have the means to block such information for use in future consumer reports.

For the reasons discussed below, the Bureau is finalizing § 1022.142(a) as proposed. Section 6102(c) of the NDAA provides that any rule issued by the Bureau to implement section 605C applies to all consumer reporting agencies. Unlike the identity theft provision identified by the commenter,<sup>23</sup> the FCRA does not except or exempt any types of consumer reporting agencies from this prohibition. Even if a reseller does not maintain a file on consumers, if the reseller has received a request to block information from a consumer, the reseller can comply by ensuring that any consumer report it provides does not contain items of adverse information requested by

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<sup>22</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 June 20, 2022).

<sup>23</sup> 15 U.S.C. 1681c-2(d).

the consumer to be blocked. Thus, the Bureau declines to provide exceptions for any types of consumer reporting agencies.

#### *142(b) Definitions*

##### *142(b)(1) Appropriate Proof of Identity*

Section 605C is silent regarding whether and how consumers must establish their identity when submitting trafficking documentation to a consumer reporting agency. The Bureau proposed to define “appropriate proof of identity” as proof of identity that meets the requirements in § 1022.123.<sup>24</sup> This section, which concerns proof of identify for consumers regarding identity theft, fraud and active duty alerts, consumer report information blocks, and truncation of Social Security numbers, provides that consumer reporting agencies must develop and implement reasonable requirements specifying what information consumers must provide to constitute proof of identity.

The Bureau received several comments supporting the proposed approach. Multiple commenters observed that trafficking survivors often lack documentation that is frequently requested for proof of identity, such as a driver’s license, bank account statements, or utility bills. Two commenters observed that many victims of trafficking may make use of State-run address confidentiality programs, which shield the actual addresses of victims of certain offenses in public records.<sup>25</sup> For these reasons, several commenters insisted on the importance of requiring consumer reporting agencies to accept non-documentary means of proof of identity.

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<sup>24</sup> See 12 CFR 1022.123.

<sup>25</sup> See, e.g., N.Y. Dep’t of State, *Address Confidentiality Program*, <https://dos.ny.gov/address-confidentiality> (last visited June 20, 2022) (explaining that New York’s address confidentiality program is available to victims of human trafficking).

A small number of comments recommended alterations to the definition. Some individual consumers and consumer groups called for the Bureau to describe a universal method to ensure all consumer reporting agencies are held to the same standard when identifying victims and proposed that the Bureau mandate the use of alternative methods of identification validation. One commenter stated that the Bureau should clarify Regulation V or provide other guidance to prohibit excessive requirements for identification in order to ensure that Congress's intent to protect trafficking survivors is not undermined. This commenter emphasized that consumer reporting agencies currently demand unnecessary amounts of identification or reject a consumer's proof for minor discrepancies, and that these demands are not commensurate with the risk of harm arising from misidentifying the consumer. Additionally, another consumer group suggested providing consumer reporting agencies with a safe harbor for reasonable proof of identity procedures to offset the adoption of conservative and inflexible procedures to mitigate criticism consumer reporting agencies are not rigorous enough in their proof of identity standards.

For the reasons discussed below, the final rule adopts § 1022.142(b)(1) as proposed, with additional clarifying text. Given the particular needs and challenges of consumers, a universal, one-size-fits-all standard specified in detail by the Bureau may not be a workable solution. Section 1022.123 of Regulation V requires consumer reporting agencies to develop and implement "reasonable" requirements for what information consumers shall provide to constitute proof of identity that are sufficient to enable the consumer reporting agency to match consumers with their files and adjust the information to be commensurate with an identifiable risk of harm arising from misidentifying consumers. Section 1022.123 describes these requirements with respect to section 605A (identity theft prevention and fraud and active duty alerts), section 605B

(consumer report information blocks), and section 609(a)(1) (truncation of Social Security numbers) of the FCRA. The final rule clarifies that, as used in § 1022.142, the requirements in § 1022.123 should be applied for purposes of section 605C.

The Bureau recognizes that the reasonableness of proof of identity requirements depends on the context and may differ between consumers trying to resolve problems caused by, for example, identity theft and those who are victims of trafficking. The Bureau also recognizes the importance of matching consumers who are victims of trafficking with their files and adjusting information to be commensurate with an identifiable risk of harm arising from misidentifying the consumer. Accordingly, the Bureau is clarifying that the requirements in § 1022.123 should be used for purposes of section 605C and tailored to the needs of victims of trafficking for purposes of establishing a consumer's identity. The Bureau expects consumer reporting agencies to explore and implement a risk-based approach to verifying a consumer's identity through both "documentary"<sup>26</sup> and "non-documentary" means.<sup>27</sup> The Bureau will also monitor the identification procedures for victims of trafficking to ensure consumer reporting agencies are not applying excessive requirements for identification and that the standards protect the confidentiality and personal safety of survivors. Moreover, appropriate proof of identity for the purposes of this section requires consumer reporting agencies to develop reasonable requirements for victims of trafficking, recognizing the challenges many victims might face in

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<sup>26</sup> Consumer reporting agencies could, for example, require consumers to provide a social security number or card issued by the Social Security Administration, a certified or official copy of a birth certificate issued by the entity authorized to issue the birth certificate, or a copy of a driver's license, an identification card issued by the motor vehicle administration, or any other government issued identification.

<sup>27</sup> The Bureau encourages consumer reporting agencies to confer with consumer groups, anti-trafficking advocacy groups and survivors of trafficking for information on the types of identification, including by non-documentary means, and confirmation questions a victim of trafficking could easily answer to prove their identity. Consumer reporting agencies should refer to the customer identification program requirements for banks in 31 CFR 1020.220 for examples.

establishing proof of identity by conventional methods used for other purposes. The Bureau expects consumer reporting agencies to develop standards specific to victims of trafficking such that Congress's intent to protect survivors of trafficking is not undermined.

*142(b)(2) Consumer Report*

Proposed § 1022.142(b)(2) defined 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 are defined in section 603 of the FCRA.

The Bureau did not receive any comments on proposed § 1022.142(b)(2) and is finalizing it as proposed.

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

Proposed § 1022.142(b)(3) defined “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.

The Bureau did not receive any comments on proposed § 1022.142(b)(3) and is finalizing it as proposed.

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

Proposed § 1022.142(b)(4) adopted the definition of “severe forms of trafficking in persons” set forth in section 605C(a)(2) from section 103 of the TVPA.<sup>28</sup> Under that definition, the term “severe forms of trafficking in persons” means:

(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.

The language in the first paragraph of this definition is commonly referred to as the “sex trafficking” component, and the language in the second paragraph is commonly referred to as the “labor trafficking” component.<sup>29</sup>

The Bureau received few comments on this proposed definition.<sup>30</sup> One consumer group stated that there may be circumstances where this definition is overly narrow, arguing that all forms of trafficking in persons or sex trafficking should be included as “severe forms of trafficking in persons.”

The Bureau is finalizing this definition as proposed. Section 605C(a)(2) provides that the term “severe forms of trafficking in persons” has the meaning given in section 103 of the TVPA,

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<sup>28</sup> Section 605C(a)(2) provides that the term “severe forms of trafficking in persons” has the same meaning given in section 103 of the TVPA, Pub. L. 106-386, 114 Stat. 1464, 1470, which is currently codified at 22 U.S.C. 7102(11).

<sup>29</sup> Off. on Trafficking in Persons, U.S. Dep’t of Health & Human Servs., *Fact Sheet: Human Trafficking*, <https://www.acf.hhs.gov/otip/fact-sheet/resource/fshumantrafficking> (last visited June 20, 2022).

<sup>30</sup> One commenter argued that the sex trafficking component of the definition of “severe forms of trafficking in persons” rendered the separate inclusion of victims of “sex trafficking” under this rule redundant and confusing. The Bureau disagrees, for the reasons explained in the section-by-section analysis of § 1022.142(b)(7) below.

which is the definition set out above and in the proposed rule. Consistent with the statute, the Bureau is adopting this definition in the final rule.

*142(b)(5) Sex Trafficking*

Proposed § 1022.142(b)(5) adopted the definition of “sex trafficking” set forth in section 605C(a)(2).<sup>31</sup> Under that definition, the term “sex trafficking” means the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act.

The Bureau received one comment on this definition which is discussed in the section-by-section analysis of § 1022.142(b)(7) below.

*142(b)(6) Trafficking Documentation*

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 consumer is the victim. The Bureau proposed to incorporate this statutory definition with certain modifications regarding documentation identifying a consumer who is a victim of trafficking involving a “court of a competent jurisdiction.” Proposed § 1022.142(b)(6)(i) described documentation requirements for a determination that a consumer is a victim of trafficking (victim determination) and proposed § 1022.142(b)(6)(ii) described documentation

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<sup>31</sup> Section 605C(a)(2) provides the term “sex trafficking” has the same meaning given in section 103 of the TVPA, Pub. L. 106-386, 114 Stat. 1464, codified at 22 U.S.C. 7102. This definition was amended by section 108 of the Justice for Victims of Trafficking Act of 2015, Pub. L. 114-22, 129 Stat. 227, 238-39. This definition is currently codified at 22 U.S.C. 7102(12).



requirements for identified adverse items of information. Accordingly, the Bureau is naming § 1022.142(b)(6)(i) as “victim determination” and § 1022.142(b)(6)(ii) as “identified adverse items of information” to make it clear that “trafficking documentation” under section 605C consists of two components: victim determinations and identified adverse items of information. Each component is discussed in the section-by-section analysis below.

#### *142(b)(6)(i) Victim Determination*

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

Section 605C(a)(1)(A)(i) provides the term “trafficking documentation” means documentation of—a determination that a consumer is a victim of trafficking made by a Federal, State, or Tribal governmental entity. The Bureau proposed to adopt this statutory definition of “trafficking documentation.” Under this definition, a determination made by a Federal, State, or Tribal governmental entity in the form of documentation that a consumer is a victim of trafficking would have satisfied the requirements in proposed § 1022.142(b)(6)(i)(A). As noted in the proposed rule, the Bureau found through outreach that documentation directly identifying a person as a victim of trafficking is scarce and is primarily limited to foreign-born persons, a fact echoed by many commenters.<sup>32</sup> The Bureau also learned that victims of trafficking are often not identified and thus many victims will not have documentation directly determining that they are a victim of trafficking. For these reasons, as discussed further below, the Bureau sought

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<sup>32</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 the Department of Homeland Security (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, cash assistance, Federal student financial aid). United States citizens and lawful permanent residents do not need a Certification Letter to access services and benefits available to victims of trafficking and such a letter identifying persons as victims of trafficking is generally not provided to United States citizens or permanent residents. This information is available at <https://www.acf.hhs.gov/otip/victim-assistance/certification> (last visited June 20, 2022).

comment on multiple possible ways a consumer might be able to document a determination by a governmental entity that a consumer is a victim of trafficking.

The Bureau has considered the comments and is adopting § 1022.142(b)(6)(i)(A), with revisions to provide that victim determinations include those made by certain non-governmental entities and human trafficking task forces authorized by a Federal, State, or Tribal governmental entity to make such determinations and that documentation by a “State governmental entity” includes documentation at both the State and local level.

*Non-Governmental Organizations and Other Non-Governmental Sources.* In the proposed rule, the Bureau noted programs in which government agencies grant money to certain organizations to assist victims of trafficking. The Bureau discussed how, for example, the Office for Victims of Crime (OVC) in the Department of Justice (DOJ) is the largest Federal funder of services for human trafficking victims in the United States.<sup>33</sup> However, the Bureau understands this office does not make or document determinations as to who is a victim of trafficking. Instead, non-governmental organizations that receive grants from the OVC to provide services to clients make determinations that individuals are victims of trafficking, in some cases even when the person does not self-identify as a victim.<sup>34</sup> The Bureau sought comments about whether and how such non-governmental sources of information might be considered in making a determination that a consumer is a victim of trafficking under section 605C. Specifically, the

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<sup>33</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 June 20, 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 June 20, 2022).

<sup>34</sup> Off. for Victims of Crime, U.S. Dept of Just., *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 June 20, 2022).

Bureau asked for comments on whether entities that receive funding from a governmental entity, and are subject to the terms and conditions of a government program, may provide documentation in the form of a determination identifying a person as a victim of trafficking that would satisfy section 605C(a)(1)(A).

Commenters were largely in favor of treating determinations that individuals are victims of trafficking made by non-governmental sources receiving government money as determinations made by a governmental entity, with few exceptions. One consumer group commenter suggested that the Bureau should broaden the allowable categories of documentation to show that the consumer is a trafficking survivor. The commenter suggested that the Bureau promulgate a definition that includes documentation from government-funded organizations under section 605C itself, or that the Bureau use its broad general rulemaking authority under section 621(e) to prescribe regulations as may be necessary or appropriate to administer and carry out the purposes and objectives of the FCRA. The commenter observed that trained professionals who work in these organizations are generally in the best position to speak with a client, understand their personal background and history, and assess whether the consumer is a victim of trafficking. An anti-trafficking advocacy group commenter stated that trafficking survivors may have no or extremely limited interactions with government agency personnel since trafficking-specific services are primarily outsourced to non-governmental organizations rather than administered by government agencies in the United States and that social service providers at non-governmental agencies regularly conduct trafficking assessments and are often better positioned to identify trafficking survivors.

An industry group commenter agreed with the Bureau's preliminary assessment discussed in the proposed rule that non-governmental sources might be best suited to provide

support for a determination that a consumer is a victim as compared to a government agency or a court. However, the commenter noted the risk for potential fraud and suggested that the Bureau be cognizant of the fraudulent use of identity theft reports under section 605B of the FCRA. The commenter suggested that if the Bureau were to include determinations made by non-governmental entities it should require that the entities be legitimate non-profit organizations supported by government funding subject to the terms and conditions of a government program and that these entities submit trafficking documentation in good faith on behalf of a victim with the permission and knowledge of the victim. The commenter further suggested that consumer reporting agencies should be provided with a way to verify that the entity is a legitimate non-profit organization and has the victim's permission to act on the victim's behalf by, for example, requiring these non-governmental sources to provide notice to the Bureau which could be used by a consumer reporting agency for verification purposes.

An individual commenter who regularly provides legal representation to victims of trafficking encouraged the Bureau to include human trafficking task force members<sup>35</sup> as entities that can provide a determination that a consumer is a victim of trafficking. The commenter stated that governmental entity personnel do not typically work directly with a consumer in the context of their victimization and that task force members—who usually include service providers that regularly screen and work closely with victims to provide housing, medical care, financial assistance, counseling, legal aid, and other recovery services—may be better positioned to attest to a consumer's victim status.

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<sup>35</sup> As explained in more detail below, multidisciplinary task forces made up of local law enforcement agencies, victim service providers, and Federal and State investigative, enforcement, and regulatory agencies are a common approach to combatting human trafficking in many jurisdictions.

A national membership group representing prosecutors asked the Bureau to provide a broad definition of “trafficking documentation” to encompass victims who may not yet have come into contact with the criminal justice system or with an appropriate service provider. The commenter recommended the Bureau allow for documentation that applies to instances when a victim may receive mental or medical care or evidence the person has been identified by law enforcement as a victim of trafficking in an investigation. This commenter noted that the burden of verifying the documented victim determinations should lie with the consumer reporting agency as the entity reviewing the consumer request to ensure that such victim service provider or law enforcement agency was in contact with the individual victim and stated the Bureau or the appropriate consumer reporting agency should ensure the identification of the victim is authentic.

One anti-trafficking advocacy group commenter that receives grants from State and Federal programs suggested that a statement from a grantee organization confirming that a consumer seeking relief under this rule is receiving services as a human trafficking victim should qualify as a determination that the consumer is a victim of trafficking. This commenter also urged the Bureau to provide that documented referrals by a government entity to a program providing specialized services to human trafficking survivors should similarly qualify as documentation of trafficking victimization.

One sex workers and anti-trafficking advocacy group stated that non-governmental organizations should not be required to prepare certifications to be signed by governmental funding entities, because these organizations are not generally required to disclose the identity of victims and this would raise confidentiality concerns. This commenter mentioned that non-governmental organizations may be prohibited from providing a determination that a consumer is a victim of trafficking because of pre-existing statutory language concerning restrictions on

certifications of United States citizens or lawful permanent residents who are victims of severe forms of trafficking.<sup>36</sup> A large banking industry trade group did not specifically oppose including documentation from non-governmental entities receiving governmental funding, but recommended the Bureau advocate for the development of a compassionate and reliable means of providing documentation set forth in section 605C.

The Bureau is finalizing § 1022.142(b)(6)(i)(A) with certain modifications. The Bureau finds the definition of “trafficking documentation” includes a determination made by a Federal, State, or Tribal governmental entity and is adopting this definition by renumbering § 1022.142(b)(6)(i)(A) to § 1022.142(b)(6)(i)(A)(1) for these governmental entities. The reference to a court of competent jurisdiction has been moved to § 1022.142(b)(6)(i)(B), as discussed below in the section-by-section analysis.

The Bureau created new § 1022.142(b)(6)(i)(A)(2) to clarify that trafficking documentation includes a determination that a consumer is a victim of trafficking made by a non-governmental organization or member of a human trafficking task force, including victim service providers affiliated with the organization or task force, when authorized by a Federal, State, or Tribal governmental entity to make such a determination.

The Bureau agrees that trained professionals providing services to victims of trafficking, including those affiliated with a trafficking task force, are often best suited to identify and make

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<sup>36</sup> 22 U.S.C. 7105(b)(1)(F) (“Nothing in this section may be construed to require United States citizens or lawful permanent residents who are victims of severe forms of trafficking to obtain an official certification from the Secretary of Health and Human Services in order to access any of the specialized services described in this subsection or any other Federal benefits and protections to which they are otherwise entitled.”).

determinations that a person has been or is being trafficked.<sup>37</sup> The Bureau understands that Federal, State, and Tribal governmental entities often rely on the expertise these non-governmental organizations—including multi-disciplinary human trafficking forces—possess in making victim determinations. For instance, as of fiscal year 2020, there were over 47 multi-disciplinary trafficking task forces using an enhanced collaborative model to combat human trafficking.<sup>38</sup> OVC and the Bureau of Justice Assistance in the DOJ use this model to: (1) employ victim-centered approaches to identifying trafficking survivors; (2) provide services to victims of all forms of human trafficking; and (3) investigate and process all forms of trafficking. These task force stakeholders are usually law enforcement, prosecutors, victim services providers, and others at the local, State, and Federal levels,<sup>39</sup> who work with victim service providers affiliated with the task forces to provide services to victims of trafficking such as counseling, housing, referral to medical services, and financial assistance.<sup>40</sup> Typically, victims of trafficking are referred to victim service providers for services from medical providers, other victim service providers, law enforcement, and community organizations and members. Often these victim service providers will conduct an initial screening and assessment to determine whether the person has experienced human trafficking followed by performing a victim-centered comprehensive assessment used to identify services and assistance programs. Under this model,

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<sup>37</sup> The Bureau notes that the TVPA also recognizes the important role of non-governmental organizations by requiring HHS and DOJ, in establishing a program to assist United States citizens and lawful permanent residents, to consult with non-governmental organizations that provide services to victims of severe forms of trafficking in the United States. See 22 U.S.C. 7105(f).

<sup>38</sup> Nat'l Inst. of Just., Off. of Just. Programs, U. S. Dep't of Just., *Federally Backed Human Trafficking Task Force Model Yields Progress, and Opportunities for Continued Growth*, <https://nij.ojp.gov/topics/articles/federally-backed-human-trafficking-task-force-model-yields-progress> (last visited June 20, 2022).

<sup>39</sup> Off. of Just. Programs, U.S. Dep't of Just., *National Criminal Justice Reference Sheet* (May 2021), at 15, <https://www.ojp.gov/pdffiles1/nij/grants/300863.pdf>. Other participants involved in task forces and viewed as integral to anti-trafficking work are non-government and non-profit organizations, coalition and community awareness groups, healthcare agencies, child welfare and family services, and housing and homeless agencies.

<sup>40</sup> *Id.* at 21.

non-governmental organizations or members in a human trafficking task force could provide an individual with a documented determination after an initial screening and assessment if authorized to do so by a Federal, State, or Tribal governmental entity.

The Bureau concludes that the purpose of section 605C—to help survivors of human trafficking restore their credit and gain access to consumer financial products and services—is better served by providing in the final rule that non-governmental organizations and members in a human trafficking task force, including service providers affiliated with these entities, may make determinations that a consumer is a victim of trafficking if authorized to do so by a Federal, State, or Tribal governmental entity. This means that where a Federal, State, or Tribal governmental entity has authorized non-governmental organizations or members in a human trafficking task force to make a determination that a consumer is a victim of trafficking, documentation of that determination by one of these entities satisfies the trafficking documentation definition under § 1022.142(b)(6)(i)(A). The Bureau interprets the authorization by Federal, State, or Tribal governmental entities as having effectively delegated authority to these non-governmental organizations and human trafficking task forces along with service providers affiliated with these entities. The Bureau concludes that victim determinations made by a non-governmental organization, human trafficking task force, or a non-governmental-affiliated victim service provider in the form of identifying an individual as a victim of trafficking must be accepted by consumer reporting agencies if authorized to make such a determination by a Federal, State, or Tribal governmental entity.

The final rule does not limit Federal, State, and Tribal governmental entities to authorizing only those non-governmental entities and human trafficking task forces that receive funding from these governmental entities. Nor does the final rule prescribe how a Federal, State,



or Tribal governmental entity may authorize non-governmental organizations to make victim determinations, but certain factors such as whether non-governmental organizations and human trafficking task forces receive government funding and are subject to the terms and conditions of a government program could be a factor evaluated by a governmental entity. To clarify, the final rule does not permit a non-governmental entity or human trafficking task force to provide an authorization to make a victim determination under this section for itself or another entity. Instead, the authorization must be made by a Federal, State, or Tribal governmental entity, and each governmental entity may establish their own criteria for making such authorizations. The Bureau has concluded that victim determinations made by a non-governmental organization, human trafficking task force, or victim service provider affiliated with an organization or task force must be accepted by consumer reporting agencies if the entity has been authorized to make such a determination by a Federal, State, or Tribal governmental entity.

The Bureau understands there may be concerns with non-governmental organizations or members of human trafficking task forces, including affiliated victim service providers, providing attestations or certifications to be signed by these entities because doing so may raise confidentiality concerns and these entities are not generally required to disclose the identity of victims. The final rule does not require governmental entities or non-governmental organizations to submit such documentation. Rather, the final rule permits a consumer to submit a victim determination from a governmental entity or a non-governmental organization or human trafficking task force authorized by a governmental entity in order to block adverse items of information that resulted from a severe form of trafficking in persons or sex trafficking. Moreover, under the final rule the decision to obtain a victim determination is with the victim

and the final rule does not require or permit anyone to submit a victim determination to a consumer reporting agency without the permission of the victim.

One commenter questioned whether non-governmental organizations may be prohibited from providing a determination that a consumer is a victim of trafficking because of pre-existing statutory language concerning restrictions on certifications of United States citizens or lawful permanent residents who are victims of a severe form of trafficking in persons.<sup>41</sup> The Bureau does not believe that this provision of the TVPA conflicts with section 605C or the final rule since section 605C, among other things, does not require an official certification from the Department of Health and Human Services (HHS) in order to block adverse items of information from a consumer report that resulted from having been trafficked.

The Bureau is adopting § 1022.142(b)(6)(i)(A) under section 605(c) as well as under its authority under section 621(e) of the FCRA, which authorizes the Bureau to prescribe regulations that promote accuracy and fairness in credit reporting, and under the general rulemaking authority granted the Bureau under § 1022(b)(1) of the Dodd-Frank Act.

*State governmental entity.* The Bureau proposed treating documentation of a determination that a consumer is a victim of trafficking by a “State governmental entity” as including documentation created at either the State or local level. The Bureau noted that 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 noted 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,

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<sup>41</sup> 22 U.S.C. 7105(b)(1)(F).

Tribal, or local jurisdictions.<sup>42</sup> The Bureau also noted that some State laws explicitly contemplate local entities making this determination for victims of sex trafficking which triggers various rights for the victim and obligations for the government under State and Federal law.<sup>43</sup> The Bureau further noted, however, that the local entity may not always share that determination with State, Federal, or Tribal governmental entities and thus that some victims of trafficking would not be able to utilize such documentation.

The Bureau solicited 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. The Bureau also sought 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.

Commenters were largely in favor of including documentation generated by local governmental entities. Specifically, one commenter stated that local governmental entities at all levels, including county and municipal law enforcement and prosecutors, are in as much of a

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<sup>42</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.

<sup>43</sup> See, e.g., 23 Pa. Cons. Stat. sec. 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. sec. 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”).

position to identify victims of trafficking as State and Federal government entities. Another commenter agreed with the Bureau's proposed treatment of local governmental entities and stated their belief that a police report could serve as an example of documentation establishing a person as a victim of trafficking. One association of State attorneys general expressed support for the Bureau's proposed interpretation to include both State and local law enforcement agencies as entities that can make determinations of a victim's status under State law because of their collaboration on victim advocacy and enforcement work.

A commenter representing banks expressed concern with treating a local governmental entity as "State governmental entity." This commenter contended that the Bureau's reference to treating documentation from local law enforcement, such as police reports, as a determination identifying victims of trafficking undermines and is contrary to the intent of the statute providing that consumer reports be accurate and reliable.

The Bureau is finalizing its proposal that documentation of a determination that a consumer is a victim of trafficking made by a "State governmental entity" includes documentation created at either the State or local level. The Bureau finds that 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. This is particularly relevant since there is not a uniform mechanism in place within most governmental entities to provide lawful permanent residents and United States citizens with a certification that a person is a victim of trafficking. In furtherance of assisting survivors of human trafficking in restoring their credit and obtaining access to consumer financial products, and the integral role of local law enforcement in the identification and investigation of sex trafficking, the Bureau concludes that it is imperative for local governments, including local law enforcement, to possess

the ability to make documented victim determinations for purposes of this rule.<sup>44</sup> This means victim determinations made by local governmental entities could include victim advocates within local prosecutorial or local law enforcement agencies and offices administering specific services for victims of trafficking, such as address confidentiality programs within State attorney general offices.

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. Interpreting documentation of a determination that a consumer is a victim of trafficking by a “State governmental entity” to include local government entities will further the statutory goal of preventing consumer reporting agencies from furnishing consumer reports containing adverse items of information about a consumer that resulted from trafficking.

The Bureau agrees with commenters that local law enforcement, as typically the lead investigative agency, is often in the best position to identify victims of sex trafficking. In response to comments and to facilitate compliance, the Bureau interprets final § 1022.142(b)(6)(i)(A)(I) as providing that documented victim determinations made by a local governmental entity must be treated as made by a State governmental entity for purposes of this rule.

In adopting this interpretation, the Bureau concludes that the final rule will promote the purposes of section 605C by ensuring victims are able to block adverse items of information resulting from trafficking and further promote the accuracy and reliability of consumer reports.

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<sup>44</sup> An evaluation of multi-disciplinary human trafficking task forces identified law enforcement as leading half of the task forces and as the most frequently cited referral stream to victim service providers. William Adams et al., *Evaluation of the Enhanced Collaborative Model to Combat Human Trafficking, Technical Report* (May 2021), at 10, 14, 22, <https://www.ojp.gov/pdffiles1/nij/grants/300863.pdf>.

The Bureau foresees victim determinations made by local governments as likely being initiated by local law enforcement after having interviewed victims of trafficking when receiving referrals (from hotlines, tip lines, other law enforcement agencies, victim service providers, other government agencies), performing sting operations, or conducting routine traffic stops. The Bureau’s adoption of this interpretation is further supported by 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 the general rulemaking authority granted under section 1022(b)(1) of the Dodd-Frank Act.

*142(b)(6)(i)(B)*

Section 605C(a)(1)(A)(ii) provides the term “trafficking documentation” means documentation of—by a court of competent jurisdiction. The Bureau stated in the proposal it was incorporating this statutory definition of “trafficking documentation” with certain clarifying interpretations regarding documentation identifying a consumer who is a victim of trafficking involving a “court of competent jurisdiction,” and to clarify that the documentation may consist of one or more documents as long as the collective documentation satisfies the definition. To implement this, the Bureau proposed 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 in proposed § 1022.142(b)(6)(i)(A).<sup>45</sup> The second category is

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<sup>45</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.

documentation consisting of documents filed in a court of competent jurisdiction indicating that a consumer is a victim of trafficking in proposed § 1022.142(b)(6)(i)(B).<sup>46</sup> The Bureau sought comments on whether it should clarify in the regulation what documents filed in a court of competent jurisdiction indicating that a consumer is a victim of trafficking means. For example, the Bureau asked if 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, could be considered a “determination” sufficient to satisfy section 605C(a)(1)(A)(ii) and whether such an interpretation would allow more victims of trafficking to make use of the procedure created by section 605C.

Many commenters supported including a broad variety of court documents in the definition, including court documents in which a consumer’s status as a victim of trafficking is an accepted fact, but not the central issue in the case. Several industry commenters, however, expressed concern that the approach would permit consumers to block adverse items of information based only on unverified allegations. One commenter stated the indicator of reliability would be significantly higher if the document has to be filed under penalty of perjury, such as verified petitions, affidavits, deposition transcripts, and trial transcripts. Other commenters expressed concerns about perpetrators of crimes using this provision to block accurate criminal record information relied upon by potential employers and landlords.

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<sup>46</sup> In the proposed rule, the Bureau stated 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> Congress) and S. 2040 (introduced in the 117<sup>th</sup> Congress) 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.”

The Bureau is finalizing § 1022.142(b)(6)(i)(B) by modifying the regulatory text concerning language associated with a court of competent jurisdiction. First, the category of court documentation, in the form of a determination, that the consumer is a victim of trafficking made by a court of competent jurisdiction in proposed § 1022.142(b)(6)(i)(A) is moved to § 1022.142(b)(6)(i)(B). The Bureau believes these court documents could include criminal record relief orders (sealing, expungement, or vacatur of records), civil suit decisions involving human trafficking, and restitution orders. Due to the sensitive nature involving victims of trafficking and because the Bureau does not believe the details surrounding one's victimization must be provided to consumer reporting agencies, consumer reporting agencies must accept these documents with redactions that omit any details that exceed what is sufficient to confirm an individual has been identified as a victim of trafficking.

The second category of court documentation in proposed § 1022.142(b)(6)(i)(B) consisted of documents filed in a court of competent jurisdiction indicating that a consumer is a victim of trafficking. After reviewing the comments, the Bureau is modifying language in proposed § 1022.142(b)(6)(i)(B) to clarify documents filed in a court of competent jurisdiction where a central issue in the case is whether the consumer is a victim of trafficking and the court has, at a minimum, affirmed the consumer's claim either by accepting certain pieces of evidence which are assumed to be true or finding that there is no genuine dispute as to any material fact supporting a judgment in favor of the victim as a matter of law constitutes an acceptable victim determination under section 605C. The Bureau believes this could include instances where victims of trafficking sue their traffickers using private right of action provisions under Federal or State victim protection laws where the court has conducted an initial review of the victim's claim for purposes of a motion to dismiss or motion for summary judgment and the result is in



favor of the victim. This approach could also allow more victims the opportunity to obtain a victim determination even in instances where the civil suit was dismissed without prejudice or not pursued because of intimidation by the trafficker against the victim.

The Bureau is not interpreting documentation filed in a court of competent jurisdiction to include court documents filed where the consumer's status as a victim of trafficking is not a central issue in the case. However, the Bureau believes that in many such cases a consumer would be able to provide documentation obtained by other means. For example, court records where a trafficker is being criminally prosecuted for a crime other than for trafficking, but where the consumer is identified as a victim of trafficking would not meet the definition under § 1022.142(b)(6)(i)(B). However, a consumer often may instead be able to obtain a copy of the law enforcement affidavit or other documented statements from a governmental entity or entity with delegated authority from a governmental entity filed in the criminal court proceedings on behalf of the prosecution which would then constitute a victim determination made by a governmental entity under § 1022.142(b)(6)(i)(A).

One of the primary purposes of section 605C is to assist victims of trafficking by restoring their credit and helping them obtain access to consumer financial products and services which will prevent revictimization and place the victims on a path to financial stability. The Bureau is aware that some victims, given the nature of their victimization and subsequent involvement in crimes they were forced to commit as a result of having been trafficked, are apprehensive to interact with and obtain relief from a governmental entity or a court. The Bureau finds that accepting documents filed in a court of competent jurisdiction where the consumer's status as a victim of trafficking is a central issue and the court's actions after an initial review of the consumer's claim passes a level of verification from the court will prevent a

consumer reporting agency from furnishing a consumer report containing adverse 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 concludes that documentation filed in a court of competent jurisdiction where the consumer’s status as a victim of trafficking is a central issue and the court has, at a minimum, affirmed the consumer’s claim either by accepting certain pieces of evidence which are assumed to be true or finding that there is no genuine dispute as to any material fact supporting a judgment in favor of the victim as a matter of law satisfies section 605C.

*142(b)(6)(i)(C)*

The Bureau is adding § 1022.142(b)(6)(i)(C) to the final rule to provide that a signed statement by the consumer attesting that the consumer is a victim of trafficking is an acceptable victim determination if such statement or an accompanying document is signed or certified by a representative of an entity described in § 1022.142(b)(6)(i)(A) and (B). In the proposed rule, the Bureau did not propose a provision to describe the specific types of documents that could serve as a determination that a consumer is a victim of trafficking. However, the Bureau asked for feedback on whether 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, may constitute a documented determination. The Bureau also sought comment on the types of documents that could serve as a “determination that a consumer is a victim of trafficking.” The Bureau stated it 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.*, United States citizens or lawful permanent residents).

The Bureau received few comments on whether to include a person's self-attestation as a victim of trafficking or an attestation by another person or entity acting on that person's behalf. One anti-trafficking organization deemed self-attestation the best approach while providing the least restrictions and the most confidentiality. A consumer advocacy group and a group focused on assisting victims of trafficking, domestic violence, and sexual violence requested the Bureau permit self-attestation of trafficking if an authorized third party (such as an employee in a government-funded organization that serves survivors, a government employee, or court personnel) signs off on the self-attestation after performing an interview or assessment. This commenter also suggested that in the alternative, the Bureau could provide that the authorized third party may write a simple attestation/certification identifying the name of the survivor and that the survivor is a victim of trafficking.

An industry group representing banks urged the Bureau to not permit self-attestations for purposes of establishing a consumer is a victim of trafficking. This commenter stated that Congress did not provide for an attestation in section 605C, unlike section 605B in reporting identity theft, and that the text of section 605C requires the victim determinations to be made by a "Federal, State, or Tribal governmental entity." The commenter also noted that allowing a person to self-attest to being a victim of trafficking or someone acting on their behalf may lead to abuse by permitting persons who fraudulently self-identify as victims of trafficking to block accurate information.

A consumer group and anti-trafficking organization requested the Bureau provide a specific non-exhaustive list of example documents that would prove a consumer is a victim of

trafficking. The consumer group stated that if an enumerated list of acceptable documentation is not provided then the rule may not be sufficiently concrete and clear to require the consumer reporting agencies to implement section 605C's protections effectively. The commenter urged the Bureau to clarify that a victim who does not have such documents would still qualify for relief under section 605C by providing alternative forms of documentation. Another commenter recommended the Bureau create a form similar to a declaration of a law enforcement officer used to provide that a person is a victim of trafficking.<sup>47</sup> The commenter also urged the Bureau to create a sample attestation form that can be used by organizations that receive government funding, so that the organizations will have a template document for producing the trafficking documentation required by the rule. An industry group also requested examples of acceptable "victim determinations" and recommended the Bureau issue an interim final rule with an open comment period to allow industry members to continue to provide feedback on this point, which will further help victims in identifying appropriate documentation to be provided to consumer reporting agencies. A commenter representing a group of anti-trafficking organizations stated victims of trafficking should be able to obtain documentation through State human trafficking coordinators or by showing that they have sought a benefit or access to a program that they qualify for on the basis of their victimization (*e.g.*, crime victim compensation or address confidentiality programs).

The Bureau has considered the comments and is modifying the final rule by permitting a consumer to self-attest as a victim of trafficking if the statement or an accompanying document is signed or certified by a Federal, State, or Tribal governmental entity or court of competent

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<sup>47</sup> U.S. Customs & Immigr. Servs., Dep't of Homeland Sec., Form I-914 Application for T Nonimmigrant Status, *Supp. B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons* (Dec. 2, 2021), <https://www.uscis.gov/sites/default/files/document/forms/i-914supb.pdf>.

jurisdiction, or representative of an entity authorized by a Federal, State, or Tribal governmental entity or court of competent jurisdiction to provide victim determinations. Specifically, § 1022.142(b)(6)(i)(C) provides that a victim determination includes documentation of a signed statement by the consumer attesting that the consumer is a victim of trafficking if such statement is also signed by a representative of an entity described in § 1022.142(b)(6)(i)(A) or (B). The Bureau concludes that the statute requires only that the consumer provide documentation of a determination that they are a victim of trafficking made by a Federal, State, or Tribal governmental entity or documentation of or by a court of competent jurisdiction. For purposes of submitting trafficking documentation to consumer reporting agencies, consumers are not required to reveal the details of their trafficking to consumer reporting agencies since doing so may cause some consumers to suffer additional harm. Therefore, the Bureau concludes that so long as a self-attestation made by a consumer is supported by a determination made by a Federal, State, or Tribal governmental entity or a court of competent jurisdiction, as described in § 1022.142(b)(6)(i)(A) or (B), it satisfies the trafficking documentation requirement as provided by § 1022.142(b)(6)(i)(C).

The Bureau is finalizing § 1022.142(b)(6)(i) without adding to the text of the regulation a non-exhaustive list of documents that serve as a “determination that a consumer is a victim of trafficking” or a model self-attestation form. However, the Bureau notes that a victim may self-attest by making a statement to the effect that “I attest that I am a victim of trafficking for purposes of section 605C of the Fair Credit Reporting Act. The signature of [NAME], employee of [ORGANIZATION] certifies this statement.” The Bureau believes 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,” such as by issuing advisory opinions or consumer education materials. To clarify, the Bureau’s decision to not provide an exhaustive list of example documents or a self-attestation form does not mean victims of trafficking should not submit or consumer reporting agencies should not accept certain documents referenced by commenters to establish a victim determination under § 1022.142(b)(6)(i)(A).<sup>48</sup> The Bureau encourages victims of trafficking to utilize pre-existing documentation that may be accessible based on their participation in certain victim assistance programs.

*142(b)(6)(ii) Identified Adverse Items of Information*

In the proposed rule, the Bureau incorporated section 605(C)(a)(1)(B), the second component of “trafficking documentation,” into proposed § 1022.142(b)(6)(ii). 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 did not propose 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

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<sup>48</sup> For example, one commenter referenced the following documents as consisting of victim determinations: (1) Certification Letters (issued by HHS); (2) Child Eligibility Letters (issued by HHS); (3) Continued Presence (issued by DHS); (4) T Visas (issued by United States Citizenship and Immigration Services); (5) Bona fide T Visa application; (6) U Visas with a Form I-918 Supplemental B filled out indicating that the victim experienced human trafficking; (7) Restitution orders; (8) Crime victim compensation; (9) Criminal record relief court orders; (10) Civil suit decisions related to human trafficking (such as suits brought by victims of trafficking through the TVPA’s private right of action provisions); and (11) Documents issued by State government agencies (such as a Notice of Confirmation as a Human Trafficking Victim in New York State issued by New York State’s Office of Temporary and Disability Assistance).

consumer report gives to certain items of information as well as the consumer's individual circumstances. The Bureau stated 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. The Bureau also stated that 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. In the proposed rule, the Bureau provided examples of adverse items of information that 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 victim of trafficking under force or threat, records of criminal arrests and convictions, and records of evictions or non-payment of rent.

Consumer and anti-trafficking groups as well as individual commenters largely supported the proposed rule's approach of allowing consumers to determine which items of adverse information resulted from trafficking without requiring further documentation connecting the information to trafficking. Numerous individuals, anti-trafficking, and consumer groups urged the Bureau to permit victims to identify adverse items of information that could have been reported to consumer reporting agencies during and after the period during which a victim was under the control of the trafficker and that resulted from having been trafficked. A consumer group stated that consumer reporting agencies often reject disputes from consumers if a family member, attorney, or third party assists the consumer. This consumer group urged the Bureau to require consumer reporting agencies to accept requests from third parties using a document

authorizing the third party to act on a consumer's behalf along with identification of the third party such as a driver's license. An anti-trafficking advocacy group suggested that consumer reporting agencies should be required to identify which information would be deemed adverse and required to block that information since they are likely in a better position to evaluate what is adverse information than the victim of trafficking.

Several industry groups expressed concerns, arguing that a broad, vague definition might lead to inconsistent application by consumer reporting agencies and that certain factual items should not be deemed "adverse items of information," such as non-expunged criminal records. The commenters also urged the Bureau to require consumers to specify the time period during which they were trafficked and state the reason why each item resulted from trafficking. The commenters also stated that allowing consumers to identify items of adverse information and prohibiting consumer reporting agencies from evaluating whether those identified items resulted from trafficking may permit fraud. These commenters asked the Bureau to consider limiting the ability to submit trafficking documentation resulting from trafficking to the victim, an attorney acting in the capacity as attorney for the victim, or an individual employed by a non-profit counseling agency approved by the Bureau and acting under a power of attorney for the victim in order to avoid potential fraud and requests submitted without the victim's authorization or knowledge.

An industry group commented that a consumer who requests criminal records to be blocked should provide a court order consisting of a determination that a consumer was a victim of a severe form of trafficking in persons at the time the crime was committed. This commenter also encouraged the Bureau to exclude from being blocked information that the consumer has identified as resulting from trafficking where the information being reported relates to the



revocation or failure to renew a professional license or certification by a State entity and the reason for the revocation or failure to renew will not be evident from the records. A few industry groups asked the Bureau to create a form to include the adverse items of information along with contact information, a description of the trafficking, list of adverse items with a statement on how each item resulted from trafficking, when the trafficking occurred, and a pre-printed statement that the consumer is making the statement under penalty of perjury.

The Bureau is adopting § 1022.142(b)(6)(ii) with revisions to clarify that, in addition to the consumer, a representative designated by the consumer may identify items of adverse information that should not be furnished by a consumer reporting agency and that the consumer must provide a preferred contact method relating to the consumer's request to block adverse information that resulted from trafficking. The text below in this section-by-section analysis also discusses the Bureau's response to comments asking the Bureau to define what an "adverse item of information" in a "consumer report" is and the request for the Bureau to create a form that a consumer could use to identify adverse information.

The Bureau is revising the text of the rule in § 1022.142(b)(6)(ii) to specifically provide that the documentation, which may consist of a statement prepared by the consumer, identifying adverse items of information may also be prepared by a designated representative on behalf of the consumer. However, the final rule provides that the designated representative cannot be a credit repair organization as defined in section 403(3) of the Credit Repair Organizations Act or an entity that would be a credit repair organization, but for section 403(3)(B)(i) of the Credit Repair Organizations Act.<sup>49</sup> The Bureau notes this approach will reinforce the need for

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<sup>49</sup> 15 U.S.C. 1679a(3); 15 U.S.C. 1679a(3)(B)(i).

consumer reporting agencies to accept trafficking documentation, as required under § 1022.142(d)(1), from third parties identified as assisting with or acting on behalf of the consumer while acknowledging the concern raised by some commenters of potential abuse and fraud.

New § 1022.142(b)(6)(ii)(A) contains language from the proposed rule providing that the documentation submitted to consumer reporting agencies must include 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.

New § 1022.142(b)(6)(ii)(B) provides that documentation identifying the adverse items of information must also contain a preferred method for a consumer reporting agency to contact the consumer. As explained in the section-by-section analysis of § 1022.142(f) below, the final rule requires a consumer reporting agency to provide written or electronic notice to the consumer within five days of reaching a final determination on a submission. Many commenters underscored that victims of trafficking frequently have a heightened need to keep their location confidential as well as to ensure their request to block information is not communicated to a location where their trafficker may be able to receive the information. The Bureau is concerned that fear of a victim's safe address or phone number reaching their trafficker may deter some victims from seeking to block adverse information. For this reason, the final rule provides that victims of trafficking must submit a preferred method of contact for use by the consumer reporting agency. Consumer reporting agencies are required to use that method of contact and are prohibited from using that information for any purpose other than to communicate about the consumer's request as described in § 1022.142 (d) through (f). The Bureau also understands some consumers who are victims of trafficking may prefer to provide the physical or email

address contact information of the consumer's designated representative instead of the consumer's contact information. Accordingly, consumer reporting agencies must use the preferred method of contact identified by consumer pursuant to § 1022.142(b)(6)(ii) for communications under § 1022.142 (d) through (f) even if the preferred contact is the consumer's designated representative and not the consumer.

The Bureau concludes that a victim of trafficking is in the best position to reliably identify which adverse items of information resulted from being trafficked. The Bureau is adopting the proposed rule's approach of not defining 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 and adding this language to the rule. The Bureau notes this approach will allow a victim of trafficking the opportunity to include adverse items of information that may not affect credit status, but resulted from victimization. As discussed below under § 1022.142(c) of the final rule, the Bureau is not adopting any exceptions to the requirement that consumer reporting agencies block adverse information that resulted from trafficking. Under the final rule, if a consumer has identified information resulting from trafficking as adverse, a consumer reporting agency must block that information. For example, the Bureau is concerned that some trafficking documentation may reference the time period the consumer was trafficked, but the consumer may request to block adverse items of information that arose after the victim was trafficked. A consumer who has been trafficked may have, for example, incurred debt or been evicted as a consequence of financial strain that was the result of having been trafficked. Under the final rule a consumer reporting agency must block adverse items of information that the consumer

identifies as having resulted from trafficking and may not choose to only block adverse items of information that are the same or overlap with the time period the consumer was trafficked.

The Bureau received requests from a few commenters to create a form that a consumer could use to identify adverse information. Commenters suggested that the form could include information such as the consumer's personal information, contact information, period of time the consumer was trafficked, items of adverse information with an explanation why the information is the result of trafficking, identification of who is submitting the form, and the signature of the victim subject to penalty of perjury. The Bureau understands the ease of access a form could provide to consumers as well as to consumer reporting agencies and may determine to issue guidance in the future. However, the final rule provides flexibility to consumers by only requiring that consumers identify adverse items of information that resulted from trafficking, and the Bureau has determined that there is no need to include a form in the final rule.

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

Proposed § 1022.142(b)(7) adopted the definition of “victim of trafficking” set out in section 605C(a)(3), which defines the term as a person who is a victim of a “severe form of trafficking in persons” or “sex trafficking.” Several individual commenters recommended that the Bureau use the term “survivor” rather than “victim.” These commenters observed that many believe that the use of “survivor” minimizes any stigma associated with victimhood and empowers individuals who have suffered harm from trafficking.

One advocacy group suggested that the Bureau remove the reference to victims of sex trafficking in this definition, leaving only a victim of “severe forms of trafficking in persons” within the definition of a “victim of trafficking.” This commenter argued that the reference to “sex trafficking” is unneeded and may lead to confusion because “severe forms of trafficking in

persons” already includes a sex trafficking component. According to the commenter, “severe forms of trafficking in persons” is the term generally used in Federal law to define eligibility for services and protections, and there is no Federal offense of “sex trafficking” as it is defined in the TVPA, 22 U.S.C. 7102(12), thus there are no “victims” of that offense.

The Bureau is finalizing this definition as proposed. First, this rule uses the term “victim” primarily because that is the wording of section 6102 of the 2022 NDAA and the TVPA.<sup>50</sup> While the Bureau recognizes that the term “survivor” is preferred by many individuals, service providers, and advocacy groups in other contexts, “victim” is used more commonly in laws giving individuals rights and formal standing within the justice system.<sup>51</sup> Second, regarding the inclusion of “sex trafficking” in the definition of “victim of trafficking,” section 605C(a)(3) expressly provides that “victim of trafficking” means a person who is a victim of (1) a severe form of trafficking in persons or (2) sex trafficking. As discussed in the section-by-section analysis of § 1022.142(b)(5) above, “sex trafficking” means the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act. Only some kinds of sex trafficking are included within the definition of “severe forms of trafficking in persons,” namely 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. The Bureau concludes that the inclusion of a victim of sex trafficking within the definition of “victim of trafficking” is not superfluous or likely to lead to confusion.

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<sup>50</sup> Consistent with the TVPA, the Bureau is interpreting section 605C to mean that a “victim” is a person who was subjected to an act or practice described in the definitions of “severe forms of trafficking in persons” and “sex trafficking.” A person who engaged in or perpetrated a severe form of trafficking in persons or sex trafficking—but who was not subjected to such an act or practice by another person—is not a “victim” of those acts or practices.

<sup>51</sup> See note **Error! Bookmark not defined.** *supra*; Training & Tech. Assistance Ctr., Off. for Victims of Crime, U.S. Dep’t of Just., *Human Trafficking Task Force e-Guide*, <https://www.ovcttac.gov/taskforceguide/eguide/1-understanding-human-trafficking/13-victim-centered-approach> (last visited June 20, 2022).

Indeed, the fact that Congress expressly included victims of sex trafficking as victims of trafficking suggests that Congress intended the scope of this rule to apply more broadly than just to victims of severe forms of trafficking in persons.

The Bureau understands that “severe forms of trafficking in persons,” as defined in the TVPA, 22 U.S.C. 7102(11), is often the definition used to define trafficking under Federal law.<sup>52</sup> The Bureau expects that many, if not most, victims of trafficking seeking to make use of the procedure set out in this section will have documentation identifying them as victims of conduct that qualifies as a “severe form of trafficking in persons” which includes components of “sex trafficking” and “labor trafficking,” as opposed to “sex trafficking” as defined in the TVPA, 22 U.S.C. 7102(12). However, the Bureau is concerned that limiting the definition of “victim of trafficking” to only victims of sex trafficking as defined in a “severe form of trafficking in persons” could potentially limit the scope of the remedy created by this section, in direct contradiction to the plain language of the statute. Additionally, even if there is no Federal criminal offense of “sex trafficking” as defined in the TVPA, a person could still be identified as a victim of the conduct meeting that definition.<sup>53</sup> Finally, the Bureau does not believe that the inclusion of victims of sex trafficking in general within this definition is likely to lead to confusion among consumers, even if eligibility for other programs and services is limited to victims of severe forms of trafficking, since all victims who qualify for those other programs and

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<sup>52</sup> See, e.g., 8 CFR 214.11(b) (explaining that a person must be “a victim of a severe form of trafficking in persons” to be eligible for a temporary T-1 immigration benefit); Off. to Monitor & Combat Trafficking in Persons, U.S. Dep’t of State, *2021 Trafficking in Persons Report* (Jun. 2021), at 26-27, <https://www.state.gov/reports/2021-trafficking-in-persons-report/> (describing the “acts,” “means,” and “purpose” elements of sex trafficking under Federal law).

<sup>53</sup> Notably, many States have sex trafficking statutes that deviate from Federal law, such that a person may be legally identified as a perpetrator or victim of conduct that meets the statutory definition of “sex trafficking” under Federal law. Training & Tech. Assistance Ctr., Off. for Victims of Crime, Dep’t of Just., *Human Trafficking Task Force e-Guide: State Laws*, <https://www.ovcttac.gov/taskforceguide/eguide/1-understanding-human-trafficking/14-human-trafficking-laws/state-laws/> (last visited June 20, 2022).

services will also be eligible under this section. For these reasons, the Bureau finalizes this definition as proposed.

*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. Proposed § 1022.142(c) would have adopted this statutory language. The Bureau sought comments on whether this provision warrants further clarification.

The Bureau received several comments on this aspect of the proposal. Consumer and anti-trafficking advocacy groups were largely in favor of blocking all items of adverse information, including criminal convictions and eviction histories. Several individual commenters asked the Bureau to apply the final rule to victims of domestic violence, arguing that there are similarities in financial hardship between victims of domestic violence and human trafficking. An industry commenter asked the Bureau to clarify that the types of adverse information that should be excluded from a consumer report is limited to only those adverse items that were related to the trafficking. Similarly, another industry commenter urged the Bureau to require victims to provide sufficient information to identify the adverse information that must be removed. The commenter also suggested that information on criminal convictions should require additional documentation in the form of a court order showing that the record has been expunged or the conviction underlying the record was reversed. This commenter urged the Bureau to consider including a specific exception permitting a consumer reporting agency to provide a Federal, State, or local law enforcement agency with access to the blocked information

as provided for in section 605B(f) of the FCRA concerning identity theft information. Further, this commenter argued that information related to the revocation or non-renewal of required professional licenses or certifications should be excluded from the final rule because it is factual in nature and that the reason for revocation or non-renewal will not be evident from the records. They also asked the Bureau to create an exemption similar to section 605B(f) of the FCRA that would allow consumer reporting agencies to provide blocked information to law enforcement agencies.

After considering the comments, the Bureau is finalizing § 1022.142(c) as proposed with minor technical revisions. The Bureau concludes that the final rule applies to all types of adverse information, including criminal and license records, and should not contain an exception for law enforcement agencies to access such information.<sup>54</sup> The statute does not exclude adverse information about licensure, criminal convictions, or any other type of adverse information from this provision. Excluding these categories of information would contradict the purpose of section 605C and the final rule. The Bureau understands that a large number of victims of trafficking have a criminal record as a result of being trafficked. According to a recent study, a criminal record impacts one's current or prospective employment opportunities because of background checks, family law issues involving visitation and child custody, the ability to obtain safe and affordable housing, medical care in the form of discrimination by healthcare providers, education where college applicants are required to answer criminal history questions as part of the admissions process, student loans as eligibility for Federal aid may be suspended if convicted

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<sup>54</sup> The Bureau notes, however, that there are limited circumstances in which law enforcement agencies are able to obtain certain consumer report and consumer file information from consumer reporting agencies notwithstanding any other provision of the FCRA. *See* sections 626 and 627 of the FCRA, 15 U.S.C. 1681u, 1681v.



of a drug offense, and immigration relief.<sup>55</sup> Thus, the Bureau finds that such information is clearly “adverse,” and if the criminal history is a result of trafficking the Bureau concludes that it must be blocked. Applying § 1022.142 to all types of adverse information is consistent with section 605C and will provide victims with the best ability to secure financial integration and independence. Similarly, section 605C does not contain an exception for consumer reporting agencies to provide blocked information to law enforcement agencies and the Bureau concludes that such an exception is not warranted because such information would be blocked only after a consumer obtained a victim determination by an entity pursuant to § 1022.142(b)(6)(i).

The Bureau also declines to expand the final rule to cover victims of domestic violence who have not been victims of “severe forms of trafficking in persons” or “sex trafficking.” Congress did not apply section 605C to victims of domestic violence. Moreover, section 6102(c) of the 2022 NDAA limits the Bureau’s present rulemaking to preventing a consumer reporting agency from furnishing a consumer report containing any adverse item of information about a consumer that resulted from “trafficking” which section 605C defines as “severe forms of trafficking in persons” and “sex trafficking” under the TVPA. This does not mean, however, that consumers who are victims of domestic violence cannot be victims of trafficking if they otherwise meet the definition.

As explained in the proposal, the Bureau interprets § 1022.142(c) to mean that 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 in persons or sex trafficking and the consumer submitted trafficking documentation

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<sup>55</sup> Polaris, *State Report Cards: Grading Criminal Record Relief Laws for Survivors of Human Trafficking* (Mar. 2019), at 6-7, <https://polarisproject.org/wp-content/uploads/2019/03/Grading-Criminal-Record-Relief-Laws-for-Survivors-of-Human-Trafficking.pdf>.

to the consumer reporting agency. In other words, this provision applies to information contained in the consumer report, and not the furnishing of a consumer report more generally. A consumer reporting agency may furnish a consumer report about a consumer who is a victim of trafficking so long as the report does not contain information that is required to be blocked by § 1022.142. The Bureau concludes that final § 1022.142(c) is sufficiently clear because: (1) section 1022.142(b)(6)(ii)(A) limits the definition of “trafficking documentation” to documentation that identifies any 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; and (2) section 1022.142(e)(4), described in the section-by-section analysis below, clarifies that a consumer reporting agency may decline to block, or may rescind any block of, adverse information if the consumer reporting agency cannot properly identify the adverse items of information under § 1022.142(b)(6)(ii).

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

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

Proposed § 1022.142(d) established a method for consumers to submit trafficking documentation to consumer reporting agencies, as required in section 605C(c)(2). Proposed § 1022.142(d)(1) stated that consumer reporting agencies must provide mailing addresses for a consumer to submit required documentation and may also establish a secure online portal for submissions. The proposed rule specifically required consumer reporting agencies to accept documentation sent to: (1) the mailing, and if applicable, website address used for disputes under section 611 of the FCRA; and (2) the new dedicated mailing address and, if applicable, a website address a consumer reporting agency must maintain to block adverse items of information resulting from trafficking. Proposed § 1022.142(d)(2) provided that a consumer reporting

agency must add information on its publicly available website stating how submissions for the blocking of adverse items of information resulting from trafficking can be submitted. Proposed § 1022.142(d)(3) provided that consumer reporting agencies must allocate a reasonable amount of personnel to respond to consumer inquiries about the process for and status of submissions at the existing toll-free number for disputes under section 611 of the FCRA and establish a separate toll-free telephone number dedicated to addressing submissions from consumers seeking to block adverse items of information resulting from trafficking. For the reasons discussed below, the Bureau is finalizing § 1022.142(d) largely as proposed, with revisions to clarify consumer reporting agencies are required to provide and accept submissions at two mailing addresses and these addresses must be provided to a consumer and consumer representative as described in § 1022.142(b)(6)(ii), submissions must consist of an appropriate proof of identification under § 1022.142(b)(1) and trafficking documentation under § 1022.142(b)(6), and to address comments received regarding application of the toll-free telephone number requirement to all consumer reporting agencies.

One consumer group commented in support of the requirement to accept trafficking documentation at both existing addresses used for disputes under section 611 and dedicated addresses established to accept submissions under this section. Comments from industry groups varied. One financial institution recommended that the Bureau require consumer reporting agencies to use *either* the address used for section 611 disputes or a dedicated address for trafficking, while two trade associations recommended that the Bureau require the use of existing channels to limit costs for consumer reporting agencies and complexity for consumers. Another trade association recommended that the Bureau limit the requirement for additional mailing addresses (and web addresses, if applicable) and a toll-free number to only nationwide consumer

reporting agencies as defined in section 603(p) of the FCRA.<sup>56</sup> A different trade association stated its opposition to requiring consumer reporting agencies to create a toll-free number for submissions under this section. This commenter argued that since the existing toll-free number requirement for disputes is only applicable to nationwide consumer reporting agencies under section 609(c)(1)(B), requiring a toll-free number for disputes is beyond the scope of this rulemaking and would be an unnecessary, new expense that may lead to consumer confusion.

Several consumer groups urged the Bureau to require consumer reporting agencies to post detailed information about how information submitted by trafficking survivors is accessed, used, stored, and protected on relevant websites. Another consumer group recommended requiring consumer reporting agencies to provide links to other resources, such as information about available civil legal services, confidential mailing addresses, public benefits assistance, and the National Human Trafficking Hotline.

For the reasons discussed below, the Bureau is finalizing § 1022.142(d) with revisions to the proposal. Final § 1022.142(d)(1) clarifies that a consumer reporting agency must provide two mailing addresses for a consumer, or consumer representative as described in § 1022.142(b)(6)(ii), to send a submission consisting of an appropriate proof of identification under § 1022.142(b)(1) and trafficking documentation under § 1022.142(b)(6). The final rule also provides that a consumer reporting agency may establish a secure online website portal for a

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<sup>56</sup> Section 603(p) defines “consumer reporting agency that compiles and maintains files on consumers on a nationwide basis” (also known as a “nationwide consumer reporting agency”) as follows: “a consumer reporting agency that regularly engages in the practice of assembling or evaluating, and maintaining, for the purpose of furnishing consumer reports to third parties bearing on a consumer’s credit worthiness, credit standing, or credit capacity, each of the following regarding consumers residing nationwide: (1) Public record information. (2) Credit account information from persons who furnish that information regularly and in the ordinary course of business.” 15 U.S.C. 1681a(p). The three consumer reporting agencies that meet that definition are Equifax, TransUnion, and Experian.

consumer to upload a submission. This means if a consumer reporting agency intends to accept a submission electronically, it must create a secure online website portal and provide information on its website informing consumers where to upload the submission. New § 1022.142(d)(1) requires consumer reporting agencies to accept a submission sent to: (1) the mailing, and if applicable, website address used for disputes under section 611 of the FCRA; and (2) the mailing address and, if applicable, the website address dedicated to blocking adverse items of information resulting from a severe form of trafficking in persons or sex trafficking under § 1022.142.

The Bureau finds that the small costs related to requiring consumer reporting agencies to establish a mailing address (or website address, if applicable) specifically dedicated to trafficking are justified by the benefits this approach would provide to consumers. Allowing consumer reporting agencies to use either their existing address under section 611 of the FCRA for disputes or a new address to receive documentation from victims of trafficking would add confusion and complexity for consumers, particularly if the consumer reporting agency does not make clear the distinction between disputes and block requests for victims of trafficking under this section. Additionally, the Bureau is concerned about the potential confusion caused by various consumer reporting agencies taking different approaches. These concerns are equally valid for all types of consumer reporting agencies, so the Bureau declines to apply this requirement to only the nationwide consumer reporting agencies under section 603(p) of the FCRA. The Bureau has determined that requiring all consumer reporting agencies to establish dedicated addresses for each procedure will allow consumers to make use of this section most efficiently and effectively at a relatively low cost.

Section 1022.142(d)(2) of the final rule provides that a consumer reporting agency must add information on its publicly available website stating how submissions for the blocking of adverse items of information resulting from a severe form of trafficking in persons or sex trafficking should be provided to a consumer reporting agency.

For § 1022.142(d)(3), the Bureau agrees, however, with comments recommending that the toll-free telephone number requirement be limited to nationwide consumer reporting agencies. As noted by several industry commenters, nationwide consumer reporting agencies are currently required to have toll-free telephone numbers at which personnel are accessible to consumers during normal business hours under section 609(c)(1)(B) of the FCRA,<sup>57</sup> so this requirement adds minimal extra expense for those agencies. Requiring nationwide consumer reporting agencies to make personnel available by phone to answer questions about this process will provide significant benefits to consumers. Providing an avenue for consumers to ask questions before submitting trafficking documentation will make the process more efficient, and allowing consumers to check the status of their submissions will allow them to confirm that the process is working as intended. The Bureau recognizes that the costs associated with staffing a toll-free telephone number are greater for consumer reporting agencies that are not already subject to a similar requirement, and the Bureau anticipates that smaller, non-nationwide consumer reporting agencies are likely to receive less contact from consumers. For those reasons, the Bureau has limited the scope of this requirement to nationwide consumer reporting agencies as provided for in § 1022.142(d)(3).

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<sup>57</sup> See 15 U.S.C. 1681g(c)(1)(B).

The Bureau declines to adopt further requirements requiring consumer reporting agencies to post detailed information about how information submitted by victims of trafficking is accessed, used, stored, and protected. The Bureau's primary focus is on ensuring that information on how a consumer may submit documentation to the consumer reporting agency is made publicly available to consumers in a clear, easy-to-understand format. Requiring other information risks making that information more difficult for a consumer to find. If a consumer reporting agency wishes to include information about other resources for victims of trafficking, such as links to the National Human Trafficking Hotline, relevant government agencies, or other service providers, it may do so, but the Bureau declines to impose such a requirement.

#### *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 in persons or sex trafficking of which the consumer is a victim.

Section 1022.142(e) through (h) set forth below describe: (1) provisions to address the blocking of adverse information identified by the consumer, a requirement to notify the consumer and attempt to resolve deficiencies, the timing of the final determination, and limited situations in which the consumer reporting agency may decline or rescind a block; (2) the obligations of consumer reporting agencies to notify the consumer of the outcome 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 proposed these procedural requirements under its authority in section 621(e) of the FCRA 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.<sup>58</sup>

*142(e) Block of Adverse Information Resulting from Trafficking*

*142(e)(1)-(e)(3)*

In the proposed rule, the Bureau acknowledged consumer reporting agencies may encounter difficulty confirming certain information submitted by consumers. Under proposed § 1022.142(e), the Bureau proposed 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. The Bureau also sought feedback on the use or adoption of procedures in the existing process in Regulation V for consumer reporting agencies that make reasonable requests for additional information for the purpose of determining the validity of alleged identity theft.<sup>59</sup> As discussed in more detail in the section-by-section analysis of § 1022.142(f) below, the Bureau also proposed in § 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

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<sup>58</sup> Section 605C does not expressly address these issues, but they are addressed in other statutory and regulatory provisions that apply to other processes for identity theft and disputing information in a consumer report.

<sup>59</sup> See 12 CFR 1022.3(i)(1)(iii).



calendar days after rescinding). The Bureau requested 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 of trafficking documentation is warranted.

The Bureau also sought 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>60</sup> Additionally, the Bureau requested comment on whether a consumer reporting agency should be required to notify a furnisher about the consumer's trafficking documentation submission to prevent a consumer reporting agency 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.

In relation to comments on the proposed five-calendar-day notice period in § 1022.142(f), an industry group stated the timeframe for blocking the adverse information is insufficient and should be separate from the timeframe to notify the victim. This commenter urged the Bureau to adopt timing that mirrors section 605B of the FCRA for ease of implementation and allow at least four business days for blocking and five business days to provide notice to the consumer after the placement or rejection of a requested block to provide notice to a consumer. The commenter also requested that the Bureau modify the timing from calendar days to business days to account for Federal holidays and weekends.

In response to the request for comment on whether information should be blocked from being reported, deleted, or modified as appropriate, a consumer advocate commenter was supportive of deletion of the adverse information to ensure it was not accidentally reinserted or

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<sup>60</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).

did not reappear after being “soft deleted” or suppressed. An industry commenter stated the Bureau should require the consumer reporting agency or furnisher to delete the items of adverse information or modify the credit file with some indication to align with current identity theft disputes procedures instead of suppressing the information. A commenter encouraged the Bureau to require adverse information to be blocked, not deleted, because the blocked information could be useful to law enforcement and prosecutors who are prosecuting traffickers. However, this commenter suggested that the information should be maintained in a secure fashion that can only be accessed through proper legal service. The commenter also suggested that consumer reporting agencies should be required to either flag that information has been suppressed without disclosing the reason for the suppression or suppress the information without any flag. One consumer group suggested that in some cases it may be better for the consumer if the item is not deleted because permanent deletion of consumer information could be detrimental to the consumer’s record and the act of deleting the information will likely result in reinsertion because a furnisher is likely to provide it again. This commenter encouraged the Bureau to issue regulations that could require a consumer reporting agency to do what is in the best interest of the consumer on blocking or deletion.

Commenters were divided on whether consumer reporting agencies should be required to notify a furnisher of an item of adverse information when it receives a submission from a consumer. One individual commenter, a financial institution, a consumer group, and an industry group supported notification because it would prevent the furnisher from re-furnishing the information to that consumer reporting agency and from providing the information to other agencies, providing more benefits to consumers. Two other consumer groups and three industry trade associations opposed furnisher notification, citing concerns about the further dissemination

of sensitive consumer information and potential compliance obligations that it would place on furnishers that receive this information. Two consumer groups advocated for allowing a consumer to opt in or out of furnisher notification at the time of submission, arguing that this approach would attain many of the benefits of automatic notification while allowing victims to control the dissemination of their personal information.

The Bureau has considered the comments, and for the reasons set forth below, is finalizing § 1022.142(e) with several revisions and is renumbering the section. The Bureau is moving proposed § 1022.142(e), which addresses the authority to decline or rescind a block, to § 1022.142(e)(4) and renaming final § 1022.142(e) to reflect that it addresses the blocking of adverse information resulting from trafficking. The Bureau is further finalizing the rule with new § 1022.142(e)(1) through (e)(3) to cover the block of adverse information identified by the consumer as resulting from a severe form of trafficking in persons or sex trafficking, the requirement to notify the consumer and attempt to resolve deficiencies, and the final determination on blocking the reporting of adverse information identified by the consumer as resulting from a severe form of trafficking in persons or sex trafficking. These new provisions cover timing and procedural questions raised in response to the Bureau's request for feedback on the adoption of procedures used for identity theft in Regulation V for supplemental requests. The Bureau is also finalizing the rule without also requiring the deletion of adverse information in a consumer's file resulting from a severe form of trafficking in persons or sex trafficking or notification to furnishers.

The Bureau is implementing a multi-step process that a consumer reporting agency must follow when it receives a submission under § 1022.142(d)(1). First, § 1022.142(e)(1) provides that a consumer reporting agency has four business days from receipt of the consumer's

submission to block items of adverse information identified by the consumer or their representative from appearing in a consumer report. The Bureau concludes that four business days provides consumer reporting agencies with adequate time to institute a block of the items of adverse information identified by the consumer or their representative. Action within this timeframe is important since the Bureau recognizes a consumer may be in urgent need of housing or employment that could be facilitated by the block of the adverse information.

Second, the Bureau is imposing a time period of five business days under which a consumer reporting agency must notify the consumer and attempt to resolve any deficiency in the consumer's submission in new § 1022.142(e)(2)(i). The Bureau recognizes in some cases the submission may not be complete, and the consumer reporting agency may need to obtain additional information from the consumer on a case-by-case basis in order to confirm the submission is complete. Section 1022.142(e)(2)(i) of the final rule provides that a consumer reporting agency is required to notify the consumer and attempt to resolve any deficiencies limited to instances where: (1) the consumer reporting agency cannot reasonably confirm the appropriate proof of identity for the consumer and, if applicable, the consumer's representative under § 1022.142(b)(1); (2) the consumer did not provide documentation consisting of a victim determination under § 1022.142(b)(6)(i); or (3) the consumer reporting agency cannot properly identify the adverse items of information under § 1022.142(b)(6)(ii). The final rule also provides that a consumer reporting agency may not ask for information on the validity of the facts or circumstances detailed in the contents of the submitted trafficking documentation establishing the consumer is a victim of trafficking or whether the identified adverse information resulted from a severe form of trafficking in persons or sex trafficking under § 1022.142(b)(6).

Third, § 1022.142(e)(2)(ii) provides a consumer reporting agency with a maximum of 25 business days after receiving the consumer's submission under § 1022.142(d)(1) to make a final determination on whether the submission is complete in order to perform the final determination of the block under § 1022.142(e)(3) or decline to block or rescind any block under § 1022.142(e)(4). The Bureau expects consumer reporting agencies to make any requests for clarifying information as expeditiously as possible (and limited to the reasons in § 1022.142(e)(2)(i)) in order to allow consumers with an adequate amount of time to provide the requested information. For example, the Bureau expects a consumer reporting agency to send a request for additional information, if needed to complete the submission, to the preferred method of contact identified by the consumer required by § 1022.142(b)(6)(ii)(B). If the consumer reporting agency does not receive a response from the consumer, the consumer reporting agency must send an additional request to the consumer with sufficient time for a response within the 25-business day limit for a final determination in § 1022.142(e)(2)(ii). The Bureau's timeframe for action by the consumer reporting agency reflects a balance between the four-business-day timeframe for a consumer reporting agency to block the reporting of information in the context of alleged identity theft (under section 605B) and the 30-day timeframe a consumer reporting agency generally has to conduct a reasonable reinvestigation of the completeness or accuracy of a disputed item (under section 611). The Bureau concludes that these timeframes are reasonable and addresses concerns noted by commenters.

Fourth, § 1022.142(e)(3) requires the consumer reporting agency to initiate a block (if the consumer reporting agency lacked enough information to perform a block under § 1022.142(e)(1)) or maintain a block initiated pursuant to § 1022.142(e)(1) upon confirming the

completion of the consumer's submission and in accordance with the requirements of § 1022.142(e)(2).

The Bureau is not requiring consumer reporting agencies to notify a furnisher about the consumer's submission in the final rule. The Bureau requested comment on requiring a consumer reporting agency to notify the furnisher of the block in order to give a furnisher the opportunity to cease furnishing the blocked information to the consumer reporting agency that provided the notification. In the proposed rule, the Bureau evaluated whether this could then help ensure that blocked information is not refurnished and reinserted in a consumer report and help prevent the adverse items of information from being furnished by other consumer reporting agencies. However, the Bureau is declining to require notification to furnishers given the serious privacy and data security concerns raised by commenters who noted a risk that information that is passed to a furnisher could more easily reach a trafficker and put the consumer at risk. The Bureau encourages consumer reporting agencies to develop a process to ensure the reinsertion of adverse items resulting from a severe form of trafficking in persons or sex trafficking after being blocked from the consumer's file does not occur. However, the Bureau cautions that consumer reporting agencies should not provide furnishers with information about the consumer's request or the reason for the block.

The final rule also does not require consumer reporting agencies to delete adverse items of information identified by the victim of trafficking from the consumer's credit file. The Bureau has determined that requiring consumer reporting agencies to delete that information would be counterproductive because, as explained above, the final rule does not require a consumer reporting agency to notify the furnisher of adverse information that a consumer has submitted the required documentation. If the information is deleted, but the furnisher is not

provided with a reason, there is a substantial risk that the information will be reinserted into the report, whereas a block without deletion makes it more likely that the consumer reporting agency will not include the adverse information in future reports after the information is confirmed to remain blocked in § 1022.142(e)(3).

*142(e)(4) Authority to Decline or Rescind a Block*

In the proposed rule, the Bureau stated consumer reporting agencies may encounter difficulty confirming certain information submitted by consumers. Under proposed section 1022.142(e), the Bureau proposed to provide consumer reporting agencies with the authority to decline to act, or to rescind action (if applicable) on a submission. The proposed provision was 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>61</sup>

Proposed § 1022.142(e) provided 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 § 1022.142(b)(1); (2) the consumer cannot provide documentation under § 1022.142(b)(6)(i); or (3) the consumer reporting agency cannot properly identify the adverse items of information under § 1022.142(b)(6)(ii).

The section-by-section analysis of § 1022.142(e) of the proposed rule discussed how the Bureau is not proposing to interpret section 605C as giving a consumer reporting agency the

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<sup>61</sup> 15 U.S.C. 1681c-2(c).

discretion to contest the merits of the submitted trafficking documentation, if such documentation meets the definition in section 605C(a) and in proposed § 1022.142(b)(6)(i). In the section-by-section analysis of § 1022.142(e) in the proposed rule, the Bureau did not propose to interpret section 605C 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). However, the Bureau sought comments on these approaches.

The Bureau proposed to clarify in § 1022.142(e) that consumer reporting agencies can request appropriate proof of identity of the consumer who is a victim of trafficking as defined in § 1022.142(b)(1) and that consumer reporting agencies can decline or rescind a block if it cannot reasonably confirm the appropriate proof of identity. Proposed § 1022.142(e) also required a consumer reporting agency, prior to exercising its authority to decline or rescind a block, to notify the consumer and attempt to resolve any deficiency in the consumer's submission.

The Bureau received comments from industry and consumer advocates on certain aspects of this provision. Several consumer advocates supported the Bureau's proposed approach and urged the Bureau not to give consumer reporting agencies discretion to decide whether consumers were victims of trafficking beyond confirming that the consumer has provided required trafficking documentation and identified the adverse information that resulted from trafficking. At least one consumer advocate urged the Bureau to provide an enumerated list of acceptable documentation, prohibit a consumer reporting agency from rejecting that documentation, and expressly state that a consumer reporting agency cannot reject a request for any reason other than those listed in § 1022.142(e). The same commenter also asked that the final rule specifically state that a consumer reporting agency cannot decline to block adverse



information because the consumer reporting agency questions the merits of the submitted trafficking documentation or the consumer's determination that an adverse item of information resulted from trafficking. An industry commenter generally supported the proposed provision, but asked that the reasons for rescinding or declining a block be expanded to cover two additional scenarios: (1) a material misrepresentation of fact; and (2) criminal record information if the victim is required to register as a sex offender.

For the reasons discussed below, the Bureau is adopting its proposal by renumbering proposed § 1022.142(e) to § 1022.142(e)(4) and by clarifying the limited circumstances under which a consumer reporting agency may decline or rescind a block. New § 1022.142(e)(4) provides that a consumer reporting agency may only decline or rescind a block only if the consumer reporting agency cannot reasonably confirm the appropriate proof of identity for the consumer and, if applicable, the consumer's representative under § 1022.142(b)(1), the consumer cannot provide documentation consisting of a victim determination under § 1022.142(b)(6)(i), or the consumer reporting agency cannot properly identify the adverse items of information under § 1022.142(b)(6)(ii). This means a consumer reporting agency can request appropriate proof of identity of the consumer who is a victim of trafficking as defined in § 1022.142(b)(1) and, if applicable, the consumer's representative, and that consumer reporting agencies can decline or rescind a block if it cannot reasonably confirm the appropriate proof of identity. Similar to the section-by-section analysis of § 1022.142(e) in the proposed rule, the Bureau does not 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 § 1022.142(b)(6)(i), nor does it 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). Accordingly, the Bureau is amending the text of new § 1022.142(e)(4) to provide that a consumer reporting agency may not decline to block or rescind any block of adverse information identified by the consumer or if applicable, the consumer's representative, based on the validity of the facts or circumstances detailed in the contents of the submitted trafficking documentation under § 1022.142(b)(6) of this section.

Section 1022.142(e)(4) also provides that a consumer reporting agency may decline or rescind a block only after the consumer is notified using the method of contact specified by the consumer in § 1022.142(b)(6)(ii)(B) and the consumer reporting agency attempted to resolve any deficiency in the consumer's submission as required in § 1022.142(e)(2). The Bureau believes 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. In doing so, 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.

The Bureau concludes that giving consumer reporting agencies additional discretion to evaluate the validity of the facts or circumstances detailed in the contents of trafficking documentation, as defined in § 1022.142(b)(6), would make it difficult for consumers to

understand how to properly submit a request, may decrease the Bureau's ability to monitor for compliance, and could also lead to invalid reasons for declining or rescinding a block. As discussed in more detail above in the section-by-section analysis of § 1022.142(c), Congress did not provide an exception for criminal convictions and the final rule does not provide such an exception. The Bureau also concludes that the final rule should not provide a material misrepresentation of fact as a reason a consumer reporting agency may decline or rescind a block since the Bureau does not interpret section 605C(a)(1) as permitting a consumer reporting agency to make factual determinations on whether a consumer is a victim of trafficking or if adverse items of information identified by the consumer resulted from a severe form of trafficking in persons or sex trafficking. The Bureau also finds doing so could lead to confusion and result in improper denials if the consumer reporting agency inappropriately concludes that a material misrepresentation of fact was made. Accordingly, the Bureau is finalizing the proposed rule, with the clarifications noted above.

*142(f) Notification to Consumer of Actions Taken in Response to the Consumer's Submission*

The Bureau proposed in § 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). As proposed, § 1022.142(f)(2) would have required 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 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 Bureau.

The Bureau received mixed comments on the proposed notice requirements. Several individual and consumer group commenters expressed their general support for the proposal. Two industry trade associations objected to the proposed five-calendar-day notice period. One of these commenters specifically urged the Bureau to mirror section 605B of the FCRA for ease of implementation and allow at least four business days for blocking and five business days to provide notice to the consumer. This commenter also argued that the requirement to provide written notice is beyond the scope of the rulemaking directed by section 605C. The other commenter stated five days is an insufficient time to require consumer reporting agencies to provide a written notice for documents that are submitted, but not rescinded. This commenter also proposed the Bureau change “provide” to “send” to address the delivery time that is not typically within the control of a consumer reporting agency. One consumer group recommended that the Bureau require consumer reporting agencies to use a preferred mailing address provided by the victim because of safety and privacy concerns. An industry trade association made a similar request, noting that consumer reporting agencies may not have a current address or contact information for the consumer.

Multiple individual commenters and consumer groups supported requiring a consumer reporting agency to automatically send a revised consumer report to the consumer. Other commenters recommended that the Bureau require consumer reporting agencies to provide instructions for obtaining a current copy of their credit report rather than automatically mailing a copy, in accordance with existing procedures to protect the privacy of victims. One industry commenter questioned how this requirement would apply to consumer reporting agencies like

background screeners that do not maintain a file from which to draft new reports. The Bureau also received several comments urging the adoption of other requirements not addressed in the proposal. One consumer group commenter urged the Bureau to require a consumer reporting agency to include in the notice details on the appeals process if a request is declined, and another opposed allowing the consumer reporting agency to demand specific additional items of information before it would approve a trafficking block.

For the reasons discussed below, the Bureau is finalizing § 1022.142(f) largely as proposed, with some revisions to address certain comments received regarding timing requirements. As described above, § 1022.142(e) of the final rule adopts certain timeframes for the consumer reporting agency to block the reporting of information after receipt of documentation from the consumer. Final § 1022.142(f) has been modified to account for the timing requirements in new § 1022.142(e) by changing the allotted time for a consumer reporting agency to provide notice to the consumer from five calendar days after receipt of the submission to five business days after a final determination on a consumer's submission under § 1022.142(e)(3) (or, if rescinding a previously applied block, five business days after rescinding under § 1022.142(e)(4)) in order to improve implementation of this section.

The Bureau concludes that the contents of the notice required by § 1022.142(f) are appropriately tailored to providing consumers the information they need to ensure that their submission was handled correctly by the consumer reporting agency. This information ensures that the consumer is provided with a thorough explanation of the outcome and the appeals process, and providing a copy of the revised consumer report allows the consumer to verify that the correct items have been blocked. Moreover, requiring a notice to the consumer on 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.

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 finds that these requirements in § 1022.142(f) are necessary to prevent 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.

The Bureau recognizes that certain consumer reporting agencies may not maintain a file from which they produce reports, including some background screeners. The final text accounts for this situation, as it requires the consumer reporting agency to provide a report “that is based upon the consumer's revised file (*if applicable*) as a result of the consumer's submission.”<sup>62</sup> Accordingly, the Bureau declines to adopt a special exception for consumer reporting agencies

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<sup>62</sup> Emphasis added.

that do not maintain files on consumers. Finally, the Bureau adopts a minor clarification that the notice must be sent by the preferred communication method specified by the consumer in the submission as provided for in § 1022.142(b)(6)(ii)(B).

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

Proposed § 1022.142(g) would have required a consumer reporting agency to retain evidence of submissions under section 605C. The proposal would have also required 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 § 1022.142. In the proposed rule, consumer reporting agencies would have needed 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.

The Bureau received comments from individuals, industry, and consumer groups on this proposed provision. While most commenters supported a record retention requirement, all who commented suggested revisions. A few commenters suggested that record retention requirements should be extended to 10 years because certain bankruptcies may be reported for 10 years. Another commenter suggested that consumer reporting agencies should be required to publish their policies on recordkeeping and data collection. Similarly, a consumer advocate urged the Bureau to provide additional information about the data protection obligations of consumer reporting agencies so that survivors understand how their information will be protected. The commenter also suggested that the Bureau communicate any exceptions to the general record retention rule so that survivors can better determine whether they want to submit a request.

Two industry commenters opposed the proposed record retention requirements because they believe that the requirements are antithetical to current data privacy and data security regulation and could increase the scope of, and risk related to, a data breach. They suggested that the requirements are too broad or too long, and one suggested that victims may hesitate to provide information because victims may fear that their information will be shared with others. One commenter argued that submitted information should be destroyed under standard data retention timeframes, which are often much shorter than seven years. The other commenter suggested aligning record retention requirements with the statute of limitations or statute of repose for the FCRA.

For the reasons stated below, the Bureau is finalizing § 1022.142(g) with minor revisions to cross references within the rule. The final rule provides that a consumer reporting agency must retain evidence of submissions and compliance with this section for a period of seven years after the consumer's submission, which the Bureau has determined is an appropriate period of time to require consumer reporting agencies to retain records. The Bureau concludes that it is not appropriate to tie record retention requirements to the statute of limitations or statute of repose because it would unnecessarily complicate the requirements. Those time periods can be difficult to determine and provide less clarity for all involved. While some adverse information remains on a consumer report for longer than seven years, the Bureau has determined that seven years strikes the right balance because most adverse information will be excluded from a consumer report after seven years.

The Bureau finds that requiring consumer reporting agencies to maintain records of compliance will enable the Bureau to assess consumer reporting agencies' compliance with the rules. This requirement will also 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 a severe form of trafficking in persons or sex trafficking.

The final rule contains several clarifying revisions, including one technical correction to clarify that the record retention requirements apply to all submissions sent to the mailing or website address made available under § 1022.142(d)(1). The final rule also clarifies the types of evidence that must be retained under this section by including cross-references to actions taken by a consumer reporting agency under § 1022.142(e)(1) through (e)(3) and (f) as well as the reasons provided under § 1022.142(e)(4) for declining to block or rescinding any block of items of adverse information identified by the consumer.

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

Proposed § 1022.142(h) required 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 § 1022.142(h) specified 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 § 1022.142(e).

The Bureau received few comments on this provision. A consumer advocate recommended requiring policies and procedures to detail how trafficking-specific information will be used, shared, and protected and making such policies and procedures available to review

before submitting a request. One commenter asked the Bureau to specify penalties for failing to comply with this provision.

The Bureau is finalizing § 1022.142(h) as proposed. The Bureau believes requiring consumer reporting agencies to maintain written policies and procedures is necessary to administer the rule by enabling the Bureau to assess consumer reporting agencies' compliance with the rule 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. Written policies and procedures will help consumer reporting agencies ensure they have developed practices that fully implement the requirements of this section that are tailored to the nature, size, complexity, and scope of the activities of the consumer reporting agency and its employees. The Bureau understands that some, if not all, consumer reporting agencies have pre-existing policies and procedures to ensure compliance of the FCRA and Regulation V and these policies and procedures also describe how consumer's information submitted to them will be used, shared, and protected.

The Bureau expects consumer reporting agencies to make information available to consumers who are victims of trafficking information on how their submission of information will be used, shared, and protected. The Bureau believes this is particularly important given the treatment and harm inflicted upon victims of trafficking by their trafficker.

## **VI. Effective Date**

Pursuant to section 6102(c) of the 2022 NDAA, the amendments to the FCRA shall go into effect 30 days after the Bureau issues a final rule. In accordance with procedures for the issuance of Bureau rules, a final Bureau rule is deemed to be issued on the earlier of "(a) [w]hen the final rule is posted on the Bureau's website; or (b) [w]hen the final rule is published in the

Federal Register.”<sup>63</sup> This means the effective date of section 605C could be based on the date the final rule is posted on the Bureau’s website instead of the date the final rule is published in the *Federal Register*, if posting on the Bureau’s website is first. Under section 553(d) of the Administrative Procedure Act,<sup>64</sup> 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.

In the proposed rule, the Bureau proposed an effective date of 30 days after the date of the final rule’s publication in the *Federal Register* so that the final rule would take effect at the same time as section 605C. The Bureau received two comments requesting a later effective date to give the industry more time to implement the rule. One commenter explained that this extra time is needed to allow the consumer reporting agencies to train employees and implement necessary compliance controls.

The Bureau has considered these comments and has determined that, as proposed, the final rule will become effective 30 days after publication in the *Federal Register*. Thus, the final rule will take effect as close to the effective date of section 605C as possible. The Bureau finds that an effective date of a rule that is contemporaneous to the statutory effective date will avoid uncertainty for consumers who are victims of trafficking as well as for consumer reporting agencies. To the extent a consumer reporting agency receives a submission between any time period that section 605C is in effect and the effective date of the rule, the Bureau expects consumer reporting agencies to otherwise comply with section 605C(b) by not furnishing a consumer report containing any adverse item of information about a consumer that resulted from

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<sup>63</sup> 12 CFR 1074.1.

<sup>64</sup> 5 U.S.C. 553(d).

a severe form of trafficking in persons or sex trafficking if the consumer has provided trafficking documentation to the consumer reporting agency.<sup>65</sup>

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

In developing this final rule, the Bureau has considered the 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>66</sup> In developing the final 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 DOJ, the Office on Trafficking in Persons in HHS, Department of Homeland Security (DHS), 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. Most commenters did not specifically address the Bureau's proposed section 1022(b) analysis; the Bureau discusses those comments that were relevant to the analysis below.

The Bureau expects that the final rule will 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 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.

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<sup>65</sup> Consumer reporting agencies could look to new section 1022.142 on how to handle submissions between the statutory and rule effective date to the extent there is a gap.

<sup>66</sup> 12 U.S.C. 5512(b)(2)(A).

Conversely, the final rule will 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 final 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 rule's procedural requirements are modeled on these requirements.

Some industry commenters noted that the proposed requirement to have a dedicated toll-free phone number to receive requests to block adverse information related to trafficking would be particularly burdensome for smaller consumer reporting agencies, as the regime for identity theft block requests only requires the nationwide consumer reporting agencies to maintain a dedicated toll-free phone number. The Bureau has modified this provision in the final rule to only impose this requirement on consumer reporting agencies that already maintain a dedicated toll-free number for identity theft. As a result, the final rule will not impose this cost on covered persons.

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 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>67</sup> For instance, a report by the non-profit Polaris, cited by both industry and consumer advocate commenters, found that 26 percent of trafficking victims had bank accounts or credit cards fraudulently opened in their names.<sup>68</sup> While illustrating the importance of the problem this rule is intended to address, this statistic also indicates that not all victims of trafficking necessarily have adverse information with a consumer reporting agency. 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 final rule. In 2020, the National Human Trafficking Hotline made 8,701 referrals for potential victims of trafficking.<sup>69</sup> For comparison, the FTC received nearly 1.4 million complaints related to identity theft in 2020.<sup>70</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,

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<sup>67</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>68</sup> Polaris Project, *On-Ramps, Intersections, and Exit Routes* (July 2018), at 23, <https://polarisproject.org/wp-content/uploads/2018/08/A-Roadmap-for-Systems-and-Industries-to-Prevent-and-Disrupt-Human-Trafficking-Financial-Industry.pdf>.

<sup>69</sup> Off. to Monitor & Combat Trafficking in Persons, U.S. Dep't of State, *2021 Trafficking in Persons Report* (Jun. 2021), <https://www.state.gov/reports/2021-trafficking-in-persons-report/>.

<sup>70</sup> Fed. Trade Comm'n, *Consumer Sentinel Network Data Book 2020* (Feb. 2021), at 7, [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).

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 final 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 benefits of the final rule to individual consumers 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>71</sup>

The final 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 final rule will 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 final rule would not have a unique impact on rural consumers.

### **VIII. 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

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<sup>71</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 in persons 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. One individual commenter specifically supported this assessment, asserting that the documentation requirements in the Proposed Rule would reduce or eliminate the possibility of fraud.

substantial number of small entities.<sup>72</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>73</sup> The final rule will 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 rule. As discussed in section VII above, the number of 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 certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Thus, a FRFA is not required for this final rule.

## **IX. Paperwork Reduction Act**

Under the Paperwork Reduction Act of 1995 (PRA),<sup>74</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

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<sup>72</sup> 5 U.S.C. 601 through 612.

<sup>73</sup> 5 U.S.C. 609.

<sup>74</sup> 44 U.S.C. 3501 *et seq.*



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.

This final rule amends 12 CFR part 1022 (Regulation V). The Bureau's OMB control number for Regulation V is 3170-0002. As described below, the final rule creates the following new information collection requirements in Regulation V:

- The final rule will 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 § 1022.142(d)-(e). Consumer reporting agencies will be required to inform consumers of their decision and actions with respect to the submission under § 1022.142(f).
- The final rule requires 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 § 1022.142(g).
- The final rule requires 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 § 1022.142(h).

The collections of information contained in this final 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. A separate comment period on the information collections concluded on June 17, 2022. OMB received no comments.

*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 requested comment on this assumption, but received no comments addressing this point.

*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 received no comments directly addressing the burden of this collection. Two industry trade associations submitted comments arguing for a shorter record retention period under § 1022.142(g), but neither commenter argued that the proposed requirement was too burdensome or provided an estimate of the burden of the proposed requirement in terms of time or financial resources.

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.

The Bureau has a continuing interest in the public's opinion of its collections of information. At any time, comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, may be sent to the Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW, Washington, DC 20552, or by email to CFPB\_PRA@cfpb.gov.

Where applicable, the Bureau will display the control number assigned by OMB to any documents associated with any information collection requirements adopted in this rule.

## **X. Congressional Review Act**

Pursuant to the Congressional Review Act,<sup>75</sup> the Bureau will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to the rule's published effective date. The Office of Information and Regulatory Affairs has designated this rule as not a "major rule" as defined by 5 U.S.C. 804(2).

## **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 amends Regulation V, 12 CFR part 1022, as set forth below:

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<sup>75</sup> 5 U.S.C. 801 *et seq.*

## **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, Pub. L. 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 § 1022.123, for purposes of section 605C of the FCRA.

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

(i) *Victim determination*. Documentation that:

(A) Is of a determination that a consumer is a victim of trafficking made by a:

(1) Federal, State, or Tribal governmental entity; or

(2) Non-governmental organization or members of a human trafficking task force, including victim service providers affiliated with the organization or task force, authorized by a Federal, State, or Tribal governmental entity to make such a determination;

(B) Is of a determination that a consumer is a victim of trafficking made by a court of competent jurisdiction or determination consisting of documents filed in a court of competent jurisdiction where a central issue in the case is whether the consumer is a victim of trafficking and the court has, at a minimum, affirmed the consumer's claim either by accepting certain pieces of evidence which are assumed to be true or finding that there is no genuine dispute as to any material fact supporting a judgment in favor of the victim as a matter of law; or

(C) Is of a signed statement by the consumer attesting that the consumer is a victim of trafficking if such statement or an accompanying document is signed or certified by a representative of an entity described in paragraph (b)(6)(i)(A) or (B) of this section.

(ii) *Identified adverse items of information*. Documentation, which may consist of a statement prepared by the consumer or by any designated representative on behalf of a consumer (except for a credit repair organization as defined in section 403(3) of the Credit Repair Organizations Act, 15 U.S.C. 1679a(3), or an entity that would be a credit repair organization, but for section 403(3)(B)(i) of the Credit Repair Organizations Act, 15 U.S.C. 1679a(3)(B)(i)), that:

(A) Identifies any 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; and

(B) Must contain a preferred method for a consumer reporting agency to contact the consumer electronically or in writing such as an email address or physical address where mail can be received. A consumer reporting agency shall use only the consumer's preferred method of contact for communications under paragraphs (d), (e), and (f) of this section about the consumer's submission and shall not use the consumer's preferred contact information for any other purpose.

(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 as defined under paragraph (b)(6) of this section to the consumer reporting agency.

(d) *Method of submission to consumer reporting agencies.* (1) *Mailing and website address.* A consumer reporting agency must provide two mailing addresses for a consumer or consumer representative, as described in paragraph (b)(6)(ii) of this section, to send a submission consisting of an appropriate proof of identification under paragraph (b)(1) of this section and trafficking documentation under paragraph (b)(6) of this section. A consumer reporting agency may also establish a secure online website portal for a consumer to upload a submission. A consumer reporting agency must accept a submission sent to the mailing and, if applicable,

website address used for disputes under section 611 of the FCRA, and must accept a submission sent to a mailing and, if applicable, website address dedicated to blocking adverse items of information resulting from a severe form of trafficking in persons or sex trafficking under this section.

(2) *Disclosing methods for submission.* A consumer reporting agency must add information on its publicly available website stating how submissions for the blocking of adverse items of information resulting from a severe form of trafficking in persons or sex trafficking should be provided to a consumer reporting agency.

(3) *Toll-free telephone number.* A consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, as defined in section 603(p) of the FCRA, 15 U.S.C. 1681a(p), must:

(i) Allocate a reasonable amount of personnel to respond to consumer inquiries about the process for and status of a consumer's submission 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 a severe form of trafficking in persons or sex trafficking under this section.

(e) *Block of adverse information resulting from trafficking.* (1) *Block upon receipt of the submission.* Except as otherwise provided in this section, within four business days of receipt of the consumer's submission under paragraph (d)(1) of this section, a consumer reporting agency must block the reporting of any adverse item of information identified by the consumer (or their representative) as resulting from a severe form of trafficking in persons or sex trafficking.

*(2) Requirement to notify the consumer and attempt to resolve deficiencies. (i) In general.*

Within five business days of receipt of the consumer's submission under paragraph (d) of this section, a consumer reporting agency must notify a consumer if additional information is necessary for the purpose of completing the submission and attempt to resolve any deficiency in the consumer's submission. A consumer reporting agency may only request additional information where the consumer reporting agency cannot reasonably confirm the appropriate proof of identity under paragraph (b)(1) of this section for the consumer or, if applicable, the consumer's representative, the consumer did not provide victim determination 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 not, however, ask for information on the validity of the facts or circumstances detailed in the contents of the submitted trafficking documentation establishing the consumer is a victim of trafficking or whether the identified adverse information resulted from a severe form of trafficking in persons or sex trafficking under paragraph (b)(6) of this section.

*(ii) Timing of final determination.* A consumer reporting agency must make a final determination on the consumer's submission no later than 25 business days after receiving the submission provided in paragraph (d)(1) of this section.

*(3) Final determination of the block.* Upon confirming completion of the submission from the consumer under paragraph (d)(1) of this section and in accordance with the requirements under paragraph (e)(2) of this section, the consumer reporting agency must initiate or maintain the action described in paragraph (e)(1) of this section by blocking the reporting of the items of adverse information on the consumer.



(4) *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, in accordance with the timing requirements under paragraph (e)(2)(ii) of this section, only where the consumer reporting agency cannot reasonably confirm the appropriate proof of identity under paragraph (b)(1) of this section for the consumer, and, if applicable, the consumer's representative, the consumer cannot provide documentation consisting of a victim determination 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 not, however, decline to block or rescind any block of adverse information identified by the consumer or if applicable, the consumer's representative, based on the validity of the facts or circumstances detailed in the contents of the submitted trafficking documentation as defined in paragraph (b)(6) of this section. A consumer reporting agency may decline or rescind a block only after notifying the consumer using the method of contact specified by the consumer in paragraph (b)(6)(ii)(B) of this section and attempting to resolve any deficiency in the consumer's submission as required in paragraph (e)(2) of this section.

(f) *Notification to consumer of actions taken in response to the consumer's submission—*

(1) *In general.* A consumer reporting agency must provide written or electronic notice to a consumer of actions performed in response to a consumer's submission no later than five business days after a final determination on a consumer's submission under paragraph (e)(3) of this section (or, if rescinding a previously applied block, five business days after rescinding under paragraph (e)(4) of this section). The consumer reporting agency must use the method of contact specified by the consumer in paragraph (b)(6)(ii)(B) of this section.

(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 submission, including the reason(s) if the consumer reporting agency declined to block the adverse information identified by the consumer, or rescinded such a block, under paragraph (e)(4) 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 adverse information identified by the consumer; 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 consumer's submission is received at the mailing or website address made available under paragraph (d)(1) of this section, a consumer reporting agency must retain evidence of all such submissions and compliance with this section, including the actions taken by the consumer reporting agency under paragraphs (e)(1) through (e)(3), and (f) of this section and the reasons provided under paragraph (e)(4) of this section for declining to block or rescinding any block of items of adverse information identified by the consumer.

(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 the 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.*