



Freedom Network USA

May 9, 2022

Office of Regulations
Bureau of Consumer Financial Protection

VIA [regulations.gov](https://www.regulations.gov)

RE: Freedom Network USA's Response to Prohibition on Inclusion of Adverse Information in Consumer Reporting in Cases of Human Trafficking, Docket No. Bureau-2022-0023 or RIN 3170-AB12

Freedom Network USA (FNUSA)¹, established in 2001, is a coalition of 91 non-governmental organizations and individuals that provide services to, and advocate for the rights of, trafficking survivors in the US. Since the enactment of the Trafficking Victims Protection Act of 2000 (TVPA), FNUSA members have worked to ensure effective implementation of the law and that trafficking survivors receive the full array of legal and social services needed. FNUSA members include: survivors who experienced both sex and labor trafficking in the US, prosecutors who have criminally prosecuted sex and labor trafficking cases, civil attorneys who have brought cutting-edge lawsuits against traffickers, criminal attorneys who have represented survivors wrongly charged with a crime, immigration attorneys who have represented hundreds of individuals granted T and U visas, and social service providers who have assisted thousands of survivors --- both US citizens and foreign nationals, minors and adults, across the gender spectrum.² FNUSA's long and diverse experience with survivors of human trafficking, and ongoing collaboration with survivors, allows us a unique and critical view into how proposed rules will impact survivors.

FNUSA applauds the Consumer Financial Protection Bureau's (the Bureau) careful consideration of the spirit and letter of the amendments to the Fair Credit Reporting Act that are the focus of this Proposed Rule. It is clear that the Bureau, in the limited time available, has sought input from experts to better understand the intended and unintended consequences that might result from the proposed rule. FNUSA shares these concerns and has identified others that we strongly recommend the Bureau to carefully consider before moving forward with this rulemaking. FNUSA also notes that colleagues, including the National Consumer Law Center, Her Justice, and the Center for Survivor Agency and Justice have submitted extensive comments and recommendations. FNUSA believes that those recommendations complement the information and recommendations presented here and urges the Bureau to implement their recommendations as well. In fact, we note that the comment period has been very short and

¹ More information on FNUSA is available on our website at <https://freedomnetworkusa.org/about-us/>.

² From January 1, 2019 to December 31, 2020, for example, our members worked with over 3,400 survivors. Freedom Network USA 2022 Member Report, available at https://freedomnetworkusa.org/app/uploads/2021/12/FRN_21121-Member-Report-2021_Final.pdf.

has precluded FNUSA to engage fully with partners and colleagues to fully consider all of the questions presented by the Bureau. Therefore, FNUSA urges the Bureau to take the time needed to fully consider the comments received and publish a revised Proposed Rule with an additional comment period before implementing the Rule.

1. Clarify the definition used to identify eligible consumers: severe form of trafficking in persons.

In defining eligible consumers, the legislation defines a ‘victim of trafficking’ as “a person who is a victim of a severe form of trafficking in persons or sex trafficking” without pointing to a specific definition. Pub. Law 117-81 Section 6102. The proposed rule identifies two separate definitions, severe form of trafficking in persons located at 22 USC 7102 (11) and sex trafficking located at 22 USC 7102 (12). However, this distinction is a misinterpretation of the law, which renders the definition of sex trafficking meaningless.

First, the definition of severe form of trafficking in persons at 22 USC 7102 (11) already includes victims of sex trafficking. It defines the victims of trafficking who are eligible for services as including what are generally referred to as sex and labor trafficking. Both forms of trafficking include the element of force, fraud, or coercion, except in the case of a person who is under 18:

The term “severe forms of trafficking in persons” means ---

- (A) sex trafficking in which a commercial sex act is induced by force, fraud, coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- (B) 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 definition of sex trafficking simply adds the means of the crime, to mirror the labor trafficking definition, namely, “recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act.” Alone, this definition is not used to describe a crime or a crime victim.

Second, the comprehensive definition of a severe form of trafficking in persons at 22 USC 7102(11) is the definition that is repeatedly used in the law to define survivor eligibility for services and protections. 22 USC 7105(b) Victims in the United States instructs, “the Secretary of Health and Human Services, the Secretary of Labor, the Board of Directors of the Legal Services Corporation, and the heads of other Federal agencies” to “expand benefits and services to victims of severe forms of trafficking in persons in the United States[.]” 22 USC 7105(c) Trafficking Victim Regulations, subsection describes eligibility for Continued Presence (a short term immigration protection) as someone who is “a victim of a severe form of trafficking and may be a witness to such trafficking[.]”³ Assistance for US Citizens and Lawful Permanent Residents is similarly established at 22 USC 7105(f)(1) for “victims of severe forms of trafficking[.]” The Bureau should, similarly, refer to the established interpretation of the

³ 22 USC 7105(c)(3)(A)(i).

eligibility definition.

Third, the definition of ‘sex trafficking’ at 22 USC 7102(12) does not describe a federal crime, therefore there is way to identify a ‘victim’ of this purported crime. The federal trafficking crimes are in Chapter 77 of the US Code, codified at 18 USC 1581-1597. Sections 1581 -1590 address crimes related to slavery and labor trafficking. Section 1591 defines the crime of sex trafficking which includes the element of force, fraud or coercion unless the victim is under 18. This mirrors the definition of a severe form of trafficking in persons. There is no crime defined that mirrors the definition at 22 USC 7102 (12). Therefore, there is no documentation of such victimization that could be provided.

Therefore, all references to a separate definition of ‘sex trafficking’ will cause confusion and undermine the implementation of this legislation. The only definition of a victim that should be used is the definition of a severe form of trafficking in persons, which includes both labor and sex trafficking (as they are commonly referred to). This is also the only interpretation that is consistent with existing federal law and regulations related to eligibility to services and support for trafficking survivors.

2. Ensure that Consumer Reporting Agencies accept a wide range of proof of identity

FNUSA agrees with the Bureau’s analysis, trafficking survivors “may lack access to information or documentation commonly used for proof of identity.” Traffickers routinely confiscate identity and financial documents from their victims as a method of isolating victims. Survivors are often moved by traffickers, or are forced to move repeatedly in order to escape the trafficker, or to avoid the traumatization of revisiting the locations of the victimization. Survivors are often forced to use falsified identity documents as part of the trafficking scheme. Survivors rarely have access to leases, insurance, pay stubs, school records, bank account information, or other common forms of identification. These tactics have created the very harm that this legislation seeks to address. Therefore, we recommend that the Bureau provide further instruction to Consumer Reporting Agencies (CRAs) to ensure that survivors will be allowed to use alternative methods of proving their identity, and multiple opportunities to provide acceptable proof. FNUSA recommends that the Bureau follow the recommendations of the National Consumer Law Center and their colleagues.

3. Ensure that Consumer Reporting Agencies accept all appropriate evidence proving the consumer is a trafficking survivor, and do not request unnecessary information or create additional barriers to services.

As discussed by the Bureau, this requirement is complicated. There is no process through which victims of any crime in the US are ‘identified’ by a government agency. Trafficking victims are not unique in this regard. In fact, most crime victims will never contact a government agency regarding their victimization. Many will take steps to hide their victimization, and their very identity and existence, from all government entities. FNUSA applauds the Bureau’s understanding of this complexity and its interest in making this remedy as widely available as possible. However, there are countervailing interests that need to be thoroughly considered to ensure that no victims are categorically excluded from relief, no victims are further harmed by

steps taken to comply with these requirements, the confidentiality of victims is not breached, and trafficking investigations and civil actions are not impacted by information shared with credit agencies. Therefore, FNUSA recommends that the Bureau pause its rulemaking to gather additional information and recommendations from survivors, service providers, and advocates to ensure that the best possible rule is adopted.

FNUSA urges the Bureau to consider these factors:

a. Survivors have different experiences leading to different documentation.

Survivors travel many different paths in escaping their trafficking situation. Some survivors seek services and support *before* they escape and the support is critical in ensuring that they *can* escape.

Law Enforcement Involvement. Some survivors have interacted with law enforcement agencies who have recognized their trafficking experience. Some have interacted with law enforcement who have failed to recognize the trafficking or actually denied that it existed. Some have been or are being exploited by law enforcement or other government officials. Other survivors fear law enforcement, or refuse to engage with law enforcement for religious, ethical, cultural, or other reasons.

Court involvement. As mentioned above, many survivors have not been involved with law enforcement, thus there is no criminal prosecution. In cases that are criminally prosecuted, some victims are left out of the documents filed by the prosecutors for strategic reasons or because the prosecutors have been unable to identify all of the victims. Some survivors are involved in a civil case, but those cases are also incredibly limited and generally do not identify all of the victims of a case. Survivors who were trafficked by their family members or when they were a minor may interact only with a family or juvenile court. Survivors may face eviction and end up in landlord-tenant court. Many survivors have been arrested for activities related to the trafficking experience, some of those survivors have been granted post-conviction relief such as vacatur, expungement, or record sealing. Many survivors will never engage with a court of any kind.

Immigration Status. Foreign national survivors may have been granted a T Visa that is only granted to trafficking survivors. Others have been granted a status that neither proves nor disproves their trafficking: U Visa (granted to a variety of crime victims), Special Immigrant Juvenile Status (survivors of child abuse or neglect), protection under the Violence Against Women Act (survivors of spousal, parental, or child abuse), Temporary Protected Status (immigrants from countries experiencing a disaster), Deferred Action for Childhood Arrivals, or any number of other forms of immigration status. Other foreign nationals have not yet been granted immigration status and may be too fearful to apply for immigration protection.

Services. Some survivors receive specialized services provided only to trafficking victims. Others receive general support based on their income or other qualifications, including subsidized housing, Temporary Assistance for Needy Families (TANF), Supplemental Nutrition Assistance Program (SNAP or food stamps), or any other program. The providers of these non-trafficking services may or may not know about the trafficking experience because it is not required for access and the survivor may

prefer to keep that information confidential. Some services or documentation of eligibility are provided by government employees. Others are provided by government contractors, grantees, or consultants. Other survivors have never received services or support from any government agencies or programs.

Therefore, as the Bureau has noted, there is no single document, or even a short list of documents, that can be required. FNUSA urges the Bureau to be as expansive as possible to ensure that this remedy is accessible to all trafficking survivors.

b. Interpret ‘governmental entity’ as broadly as possible.

FNUSA notes that the legislation does not define ‘governmental entity.’ FNUSA, therefore, urges the Bureau to interpret this phrase to include all government employees, officials, offices, contractors, grantees (both direct and indirect) in order to ensure the most expansive application of this remedy. Thus an NGO that receives Federal, State, County, City, or Tribal funding would qualify as a governmental entity. Schools that are publicly funded, including elementary, secondary, and higher education institutions. Child welfare offices that are operated as a state agency would qualify, as would those that are contracted to an NGO.

c. Do not require additional sharing of information.

The Bureau has posed questions about 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.” Examples of the types of agencies and documentation that various government agencies might have are discussed in section a, above, and listed in the appendix. FNUSA urges the Bureau to avoid any requirement that information be shared between any agencies for the purpose of this remedy. Most survivors hesitate to share any information about their trafficking experience. Each disclosure can be retraumatizing. Survivors should be accorded as much control over the sharing of their information as possible, and it should not be shared or distributed unless it is necessary. Instead, FNUSA recommends interpreting the term “Federal, State, or Tribal governmental entity” more broadly.

d. Do not create barriers by requiring new forms of approval/oversight.

The Bureau has proposed a process to allow non-governmental organizations (NGOs) to prepare a ‘certification’ that would be signed by the government funding agency. While we applaud the effort to consider creative solutions, this proposal raises several concerns.

First, this requires creating a new form of approval/oversight that is not currently required. We strongly urge the Bureau to not introduce new requirements through this process that could lead to unintended barriers to services. Generally, NGOs are not required to disclose the identity of the survivors being served to funders. By establishing this new process and requirement, funders may decide that this process should apply to

services generally, and not just for the purpose of this remedy. This would disrupt access to services for all survivors, increase the burden on NGOs, and would delay or deny services to survivors who are not willing to disclose their identity to a government agency.

Second, this raises confidentiality concerns. Confidentiality requirements often prohibit the disclosure of personally identifiable information (PII) to funders. The Bureau's proposal would cause NGOs to submit PII to funders in order to get their signature on this certification. This would raise ethical concerns for legal, mental health, and some social service providers as it would implicate duties of confidentiality. For all providers, this would raise issues of privacy, as it would require disclosure that is not currently required for access to services.

Third, this 'certification' requirement may conflict with the restriction on 'certification' for US Citizens and lawful permanent residents at 22 USC 7105(b)(1)(F) which states,

No requirement of official certification for United States citizens and lawful permanent residents. 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.

This section demonstrates the Congressional intent to avoid creating barriers to services through the requirement of specific certification. Additionally, this further demonstrates that victims will have different forms of documentation from governmental entities.

e. Allow consumer self-attestation

The best, least restrictive, and most confidential approach is to allow survivors to provide a self-attestation. This would ensure that no barriers are added to this or any other remedies available to survivors. If the self-attestation, alone, is determined to be insufficient to meet the statutory requirements, it could be required in conjunction with additional documentation that has a governmental connection. In other words, the Bureau could allow victims to submit either: a single document that fully meets the requirements of establishing that the consumer is a trafficking victim and is made by a governmental entity; or a combination of documents that together fully meet the requirements.

f. Ensure minimal information is collected and submitted.

The Bureau must ensure that CRAs are collecting the least amount of information needed. Without guidance, a well-intentioned agency or official may provide extensive information or documentation that includes potentially harmful information such as: personally identifying information of the trafficker, details about the trafficking

situation, details about the types and intensity of harm experienced by the victim. These details should not be requested or accepted. Merely providing this type of information can be traumatizing to a survivor, as each disclosure of the trauma can trigger a trauma response. Trafficking cases that are currently, or may in future be, criminally prosecuted can be derailed by inconsistent information about the trafficking experience shared with multiple sources such as CRAs and service providers. Additionally, there is no way to ensure that the employees, contractors, or affiliates of the CRA that receives this information are not connected to the trafficker. While unlikely, this disclosure could be provided to the trafficker, putting the victim at further risk of harm.

Therefore, if the Bureau directs CRAs to accept documentation that is created for the purpose of this remedy, FNUSA *strongly recommends* providing a sample form that includes only: the name and limited identifying information for the consumer, statement that the consumer is a survivor of a severe form of human trafficking (literally the statement, “I attest that I believe that the above-named individual is a victim of human trafficking”), and signature and identifying information of the official. It should be noted that no further information is needed or wanted.

g. Accept documentation from all governmental entities and courts.

As noted above, trafficking survivors may have interacted with a wide range of governmental entities and courts. FNUSA agrees with the Bureau's assessment that the legislation should be interpreted to include local and county governmental agencies. FNUSA also agrees that ‘a court of competent jurisdiction’ should be interpreted to include any court, including but not limited to: criminal, civil, juvenile, family, landlord-tenant, and administrative courts. Trafficking victims may pursue justice in many different courts, depending on the impact of the trafficking experience and their relationship to the trafficker. FNUSA also believes that the legislation should be interpreted to include NGOs that are funded by governmental agencies.

The Bureau should ensure that any documentation that survivors already have available to them is accepted. FNUSA has included, as an appendix, a preliminary list of some of the possible forms of documentation that a survivor may have available to them. FNUSA recommends that the Bureau engage further with subject matter experts, including survivors and direct service providers, to expand this list. It is important to note that agencies and programs have different names in different localities, and that some jurisdictions combine into one agency what is handled by multiple agencies in another. FNUSA recommends that the Bureau provide an extensive, but non-exhaustive, list to ensure that CRAs understand the true breadth of documentation that must be accepted.

4. Privacy of consumers’ information.

Trafficking survivors’ information can be especially sensitive. They may still be in the trafficking situation. They may be currently fleeing or hiding from the trafficker. There may be an on-going criminal investigation or prosecution which could be undermined by disclosure of any details related to the trafficking. They may have obtained a confidential address or changed their

Social Security Number or name. These issues may be related to ongoing threats to their safety, the trauma associated with the trafficking (and being confronted with names, addresses, and dates connected with the trafficking), evidence of their victimization that is available on the internet (survivors may change their identities or move so that they are not recognized) or stigma associated with their victimization.

It is also true that CRAs are often targets of cyber attacks, and data breaches are not uncommon. Therefore, it is critical that the Bureau work to both reduce the amount of data collected that is PII (especially PII that is related to the victim or the trafficker) or details of the trafficking experience, and the Bureau must also ensure that CRAs are taking all possible steps to protect the information that is received. That includes limiting the handling of this data to the fewest number of people, systems, and contractors possible; and also ensuring that the highest levels of encryption and data protection are used.

5. Limit discretion of Consumer Reporting Agencies (CRAs).

Human trafficking is a crime that is often sensationalized in the media, but is largely misunderstood in the US. It is likely that employees and contractors of CRAs, like many others, have limited or false beliefs about human trafficking. They may have incorrect assumptions and beliefs about who can be a trafficking victim, where trafficking occurs, how trafficking impacts a victim, where victims may seek assistance, and what documentation should be available to victims. These beliefs may cause CRAs to question the documentation, information, or requests of trafficking survivors. Therefore, it is critical that CRAs are given very limited discretion regarding the documents required to prove eligibility for this remedy. CRAs should be required to accept all documentation that is considered acceptable by the Bureau.

6. Continue to interpret 'adverse items' broadly.

FNUSA deeply appreciates the Bureau's understanding that 'adverse items' could vary widely due to the many ways in which traffickers exploit their victims and the often unexpected ways that can impact survivors. The types of items can be diverse, and they can occur at any time (including years or decades after the trafficking experience has ended). FNUSA supports the Bureau's broad interpretation, and allowing survivors to determine which items have been adverse and resulted from the trafficking situation without requiring any further documentation of the impact of the information or the connection to the trafficking.

7. Receipt of document submissions.

FNUSA agrees with the Bureau that CRAs should be required to receive requests from survivors in any method that they receive requests for disputes about credit reports. However, FNUSA urges the Bureau to add a requirement that all such requests be assessed by a unit that is specifically trained on these special provisions. The documentation requirements are different from other disputes and it is important to ensure that they are handled correctly. Each CRA should be required to identify specific staff members or a specific unit that is responsible for handling these requests. Those involved in adjudicating these requests should be provided with specific training on the documentation and privacy requirements related to this remedy. CRAs should also be required to follow enhanced security and confidentiality protocols to

ensure that sensitive information is minimally shared.

8. Contacting the furnisher of information.

FNUSA appreciates the questions posed by the Bureau regarding contacting the furnisher of information. As the Bureau notes, notifying the furnisher may reduce the chance that the information will be returned to the consumer report, it seems more likely that the notification would cause yet another disclosure of the victim's status. This likelihood of harm would outweigh the possible benefit, in FNUSA's opinion. Therefore, FNUSA recommends not requiring the CRA to notify the furnisher at this time.

9. Provision of a revised consumer report.

FNUSA recommends that the CRA should be required to provide the consumer with a consumer report based on the revised file. The CRA should be required to ask the consumer for the manner in which they prefer to receive all notifications (including requests for additional information, notices of the CRA's decision and method to appeal) and should include a copy of the report along with the CRA's decision regarding the request. The CRA should be required to offer the consumer options other than mail to ensure access for survivors who have no fixed address, are in the process of relocating, are in the process of obtaining a confidential address, or for any other reason are not able to safely and confidentially receive mail.

10. Include other useful resources in notice.

The Bureau should take this opportunity to provide notice to survivors of other resources or protections that they may need. Trafficking survivors often struggle to address complex and intertwined issues that result from the trafficking experience. Addressing the implications of the adverse credit information alone may require multiple systems and efforts. The information may have already led to homelessness, unemployment, discrimination, abuse, or ongoing exploitation. Removing the adverse information is necessary, but not sufficient, to address the impacts of the adverse information. Therefore, FNUSA recommends adding to the notice requirements at 1022.142(d) that CRAs must also include information or links about available civil legal services, confidential mailing addresses, public benefits assistance, and the National Human Trafficking Hotline.

I hope that you find this information helpful as you continue the rulemaking process. Please contact me (jean@freedomnetworkusa.org) if you have any questions or need further information.

Sincerely,



Jean Bruggeman
Executive Director
Freedom Network USA

Appendix: List of potential documents

Court Documents

Civil court filing

Civil court judgment

Criminal court indictment

Criminal court filing

Subpeona for victim/witness

Victim/witness statement (allow redacting of all details)

Criminal conviction

Criminal record relief motions (vacatur, expungement, record sealing, or other remedies)

Criminal record relief grants

Attestation from court personnel (including judges, pretrial services, probation and parole, and others) that the consumer is a victim of trafficking

Federal, State, and Tribal Government Documents

US Government issued immigration relief- including T Visa, U Visa, VAWA Self-Petition, Removal of Conditions, Special Immigrant Juvenile Status, Asylum, and others; Receipt Notice, Approval Notice, Employment Authorization Document (work permit), visa, or I-94

Documentation of Continued Presence- Employment Authorization Document (work permit), Approval Notice, or I-94

Police report (allow redacting of all details regarding the trafficking incident)

Charging document from law enforcement (allow redacting of all details regarding the trafficking incident)

Documentation of approved address confidentiality for survivors

Documentation of child protective services/child welfare involvement (allow redacting of all details)

Receipt of public benefits including SNAP, WIC, TANF, subsidized housing, or other benefits

Documentation from a publicly funded school, college, or university

US Department of Health and Human Services ORR Certification or Letter of Eligibility

State confirmation letters for human trafficking-related benefits

Attestations from any governmental entities including all employees, contractors, grantees