



May 9, 2022

The Honorable Rohit Chopra  
Consumer Financial Protection Bureau  
1700 G Street, NW  
Washington, DC 20552  
E-mail: [CFPB\\_FederalRegisterComments@cfpb.gov](mailto:CFPB_FederalRegisterComments@cfpb.gov)

Re: Docket No. CFPB-2022-0023—Prohibition on Inclusion of Adverse Information in Consumer Reporting in Cases of Human Trafficking (Regulation V)

Dear Director Chopra,

We appreciate the important work of the Bureau to protect survivors of human trafficking from living with a damaged credit history with adverse items that resulted from human trafficking. We support the detailed comment submitted by the National Consumer Law Center in partnership with the Center for Survivor Agency and Justice, in addition to other experts in the area of human trafficking, sex trafficking, and coerced debt.

We are submitting an additional comment to highlight the opportunity this rulemaking provides to address coerced debts on the credit reports of survivors of domestic violence, elder financial abuse, financial abuse of people with disabilities, and financial abuse of vulnerable youth. The CFPB has the authority to expand applicability of the credit reporting protections to other victims of abuse and crimes, and we encourage the Bureau to consider taking such action.

Over the past four years, Texas has taken important steps to protect victims of coerced debt through amending statutory definitions of identity theft to include coerced debts. These tools are starting to make a difference for people affected by this type of abuse. However, we have seen two major barriers arise for victims of coerced debts that expansion of this rulemaking could address:

1. Consumer Reporting Agencies' (CRAs) reluctance or failure to remove coerced debts from credit reports based on police reports, civil court action, or the FTC identity theft report; and
2. Survivors' fear of disclosing location information (addresses) as required by the CRAs because of the security risk to the survivor should the abuser access the information.

## Coerced Debt

Coerced debt is non-consensual debt incurred within an abusive relationship. Debt is considered coerced if there is either no consent by the victim or if consent is coerced because of duress, including through force, threat, or fraud. Coerced debt is a form of economic abuse,<sup>1</sup> and economic abuse is a form of coercive control found in abusive relationships.<sup>2</sup>

Though coerced debt is most often associated with intimate partner abuse, it is also found in cases of elder financial abuse, financial abuse of a person with disabilities, or in child abuse/exploitation of youth. With ever-expanding online loan opportunities, as well as the newly expanded reporting of buy-now-pay-later transactions and the depersonalization of the credit system, an abuser with knowledge of a person's identifying information can wreak financial havoc that the victim must live with long after leaving the abusive relationship.

In 2019 and the first half of 2020, the National Domestic Violence Hotline reported between 30% and 31% of all calls from Texas involved economic or financial abuse.<sup>3</sup> Nationally, the hotline found 25% of callers reported economic or financial abuse in 2019 and 27% in 2020.<sup>4</sup> Financial and economic abuse is not only prevalent - it is a primary barrier to leaving abusive relationships.<sup>5</sup> Access to economic resources is a major indicator of successful separation of a victim<sup>6</sup> from an abuser.<sup>7</sup> In today's world, a good credit history is an important economic resource that can impact access to jobs, low-cost loans, and housing. Too many survivors of abuse carry around the credit scars of abusive relationships, hindering financial stability.<sup>8</sup>

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<sup>1</sup> Other forms of economic abuse include, but are not limited to, stealing or depleting money and other assets; preventing a survivor from working or controlling the money received from working; preventing a survivor from accessing individually held or jointly held money or assets; and hiding financial information.

<sup>2</sup> Other forms of coercive control include, but are not limited to, physical and sexual violence, psychological and emotional abuse, spiritual abuse, and harm or threats of harm to family members, pets, or even to the abuser.

<sup>3</sup> National Domestic Violence Hotline, Texas State Report, 2019 Annual Report and January-June 2020 Report, available at <https://www.thehotline.org/about-the-hotline/state-reports/>.

<sup>4</sup> National Domestic Violence Hotline, *2020 A Year of Impact* and *2019 A Year of Impact*, available at <https://www.thehotline.org/wp-content/uploads/media/2020/09/Impact-Report-2019.pdf> and [https://www.thehotline.org/wp-content/uploads/media/2021/06/Hotline-EOY-Impact-Report-2020\\_FINAL.pdf](https://www.thehotline.org/wp-content/uploads/media/2021/06/Hotline-EOY-Impact-Report-2020_FINAL.pdf).

<sup>5</sup> Adams AE, Littwin AK, Javorka M, "The Frequency, Nature, and Effects of Coerced Debt Among a National Sample of Women Seeking Help for Intimate Partner Violence," *Violence Against Women* (Sept. 2020);26(11):1324-1342.

<sup>6</sup> Advocates interchangeably use the terms "victim" and "survivor" depending on the preference of the person who experienced the abuse. If a person continues to be victimized by the abuse, or the abuse is ongoing, the person most often identifies with the term "victim." If a person has escaped an abusive relationship and is free from ongoing abuse, the term "survivor" is more often preferred. We refer to victims of coerced debt specifically and survivors of abuse more generally in these comments.

<sup>7</sup> Erika Sussman, *The Civil Protection Order as a Tool for Economic Justice*, from the *Guidebook on Consumer & Economic Civil Legal Advocacy for Survivors*, Center for Survivor Agency and Justice, 172 (2017).

<sup>8</sup> For more information, see: Ann Baddour and Marissa Jeffery, *Abuse by Credit: The Problem of Coerced Debt in Texas*, Texas Appleseed (Jan. 2019).

## Legislative Changes in Texas to Address Coerced Debt

In 2019 and again in 2021, Texas adopted important changes to state law to help victims of coerced debt access the same relief provided to other victims of fraud and identity theft. In 2019, the definition of identity theft under the Texas Penal Code was amended to include situations where the victim knew about the use of her identity to, for example, incur a debt, but could not oppose the action of the abuser due to fear from threats or force.<sup>9</sup>

Though the change was beneficial in opening up avenues for relief for victims of coerced debt under the Fair Credit Reporting Act (FCRA), feedback from attorneys and survivors highlighted barriers to accessing police reports, with some police departments calling the issue a family matter and refusing to issue a report. Even with police reports, CRAs often declined to block coerced debt or delete accounts if furnisher continued to verify accounts disputed by the victim of coerced debt.

To address the barrier of accessing a police report, the Texas Legislature amended its civil identity theft statute.<sup>10</sup> “Effective consent” was added to the statutory definition of identity theft.<sup>11</sup> Effective consent is defined as:

- (a-1) For purposes of this section, "effective consent" includes consent given by a person legally authorized to act on behalf of the person from whom consent is required. Consent is not effective if:
  - (1) induced by force, threat, fraud, or coercion; or
  - (2) given by a person who by reason of youth, mental illness, or intellectual disability is known by the actor to be unable to make reasonable decisions.

This legal change is relatively new, effective September 1, 2021. This process has been beneficial to victims of coerced debt, removing the institutional barrier many survivors of abuse face when engaging with law enforcement. However, survivors of abuse continue to face the resistance of CRAs and furnishers to recognize coerced debts as identity theft, and for the CRAs to block the adverse information found in credit reports that resulted from coerced debt despite requirements to do so under the FCRA.

## Key Issues to Address for Victims of Coerced Debt

Though not covered by the current rulemaking, coerced debt is aligned with the purpose of protecting survivors of abuse from credit damage caused by perpetrators of that abuse. We are working at the state level to build tools for victims of coerced debt to find relief, so that their

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<sup>9</sup> Tex. Penal Code §32.51 (b)(2) includes in the crime of fraudulent use of identifying information, information used without the “consent or effective consent” of another person. Under §1.07 (19) of the Texas Penal Code , “Consent is not effective if: (A) induced by force, threat, or fraud...”

<sup>10</sup> See Texas Business and Commerce Code Ch. 521. Under the statute, a victim of identity theft obtains a declaratory judgment from the court finding the person is a victim of identity theft and specifying all information, including financial accounts, that resulted from the identity theft.

<sup>11</sup> See Texas Business and Commerce Code §521.051

abuse does not follow them for years after leaving an abusive relationship. For these tools to be effective, it is important for rules to be adopted to protect victims of coerced debt, similar to those designed to protect victims of trafficking. CRAs should be required recognize coerced debts as identity theft and protect all victims of abuse. We would like to highlight two steps the Bureau has the power to implement to address these barriers:

1. *Require CRAs to remove coerced debts from credit reports based on police reports, civil court action, or the FTC identity theft report.*

Despite the important changes made at the state level in Texas, survivors of abuse who have coerced debt struggle to have those debts blocked. Even when a survivor submits police reports or the FTC identity theft report, the CRAs decline to block the information. CRAs and furnishers complain of an onslaught of identity theft reports that may not be legitimate,<sup>12</sup> but that is not a reason to wholesale deny identity theft claims by victims of coerced debt. Often, legal counsel is required to successfully block coerced debts, which means that few victims are able to access their rights under state and federal law.

A recent media story highlighted a Texas couple who were outright victims of identity theft. They provided all of the required documentation and were still sued by a major bank to collect over \$17,000 in fraudulent charges. They had to hire an attorney and a reporter had to take interest in the story in order for the bank to address the fraud and make them whole. In the meantime, they were unable to move forward with their financial lives.<sup>13</sup> Imagine adding abuse to this scenario and it becomes clear how challenging it is under the current system for victims of coerced debt to access their legal rights to block coerced and fraudulent debts created by and for the benefit of an abuser.

The Bureau could ameliorate this situation by adding coerced debts to this rulemaking and requiring the CRAs, with appropriate evidence, to block these debts. Though the focus of our work has been on providing relief to survivors of domestic violence, coerced debts also impact older Americans, Americans with disabilities, and vulnerable young people. It is essential that these victims access the relief to which they are legally entitled, thus eliminating an obstacle to financial recovery after abuse.

2. *Protect survivors' location information should it be requested.*

Another pervasive issue that the Bureau has the power to address is enabling survivors of abuse to pursue the process of addressing coerced debts without alerting the abuser to a safe address. Abusers who have perpetrated coerced debt often know the social security number and other personal information of their victim. In fact, they often know more about existing debts because they initiated the debt.

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<sup>12</sup> For example, last legislative session in Texas (87<sup>th</sup> Legislative Session in 2021), there was an attempt to pass a bill ([HB 4266](#)) that was designed to limit challenges to debts by credit repair organizations. This bill was advocated for by furnishers and consumer reporting agencies.

<sup>13</sup> Yamil Berard, "How Texas Couple Won 2-Year Battle Against Bank of America, Credit Bureaus Over Fraudulent Charges," *Houston Chronicle* (May 9, 2022), available at: <https://www.msn.com/en-us/news/us/how-texas-couple-won-2-year-battle-against-bank-of-america-credit-bureaus-over-credit-card-fraud/ar-AAX4rio>.

Currently, an abuser can use that knowledge to access a victim's credit report and obtain the victim's location information, including safe or confidential addresses. Creating a system whereby a victim's safe address is held as confidential or accessible only in limited circumstances would make a meaningful difference for survivors of abuse.

Thank you for considering these comments. The Bureau has an important opportunity, with this rulemaking, to protect other victims of abuse in addition to those who have faced trafficking. We hope that you use this opportunity to help survivors of domestic violence, elder financial abuse, and vulnerable youth recover their financial lives.

Sincerely,



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