

May 9, 2022

The Hon. Rohit Chopra
Director
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

***Re: Proposed Rule on Prohibition of Inclusion of Adverse Information in
Consumer Reporting in Cases of Human Trafficking
Docket No. CFPB-2022-0023***

Dear Director Chopra:

The American Financial Services Association (AFSA)¹ appreciates the opportunity to comment on the proposed rule to prohibit inclusion of certain adverse information in consumer reports for persons affected by types of human trafficking or sex trafficking (the Rule).² AFSA shares the profound sorrow felt by all communities when faced with the horrors of trafficking, and AFSA commends the Consumer Financial Protection Bureau (the Bureau) for bringing attention to this issue.

AFSA members are creditors who interact with consumer reporting agencies and consumer reports in several ways. These creditors review consumer reports and scores when making underwriting decisions, they furnish information to the consumer reporting agencies regarding the payment behavior of customers, and they respond to consumer reporting disputes.

For underwriting purposes, creditors seek the maximum possible accuracy in consumer reports and scores. Accurate credit reporting protects the consumer as well as the creditor, by maximizing the prospects that the credit applicant has the financial resources and demonstrated ability to pay credit obligations over time. In the event that a consumer report accurately demonstrates past late payments, defaults, or similar events, such information should not be removed from the credit report absent the most compelling reasons, including removal as set forth in Section 6102 of the National Defense Authorization Act for Fiscal Year 2022 (the Act).

The Act establishes the obligation for consumer reporting agencies to eliminate adverse information in a consumer report that resulted from certain types of trafficking. The Act fails to define “adverse information” and generally appears to provide relief similar to relief already available to consumers by fraud alerts.

¹ Founded in 1916, AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including traditional installment loans, mortgages, direct and indirect vehicle financing, payment cards, and retail sales finance.

² 87 Fed. Reg. 20771 (April 8, 2022). For the purposes of this comment letter, the term “trafficking” includes any form of conduct covered by the Rule’s prohibition on adverse information reporting prohibition.

Under the Act, a victim of trafficking must submit “trafficking documentation” to the credit reporting agencies to have adverse items resulting from the trafficking to be removed from their credit reports. The Act requires two pieces of documentation to be submitted:

- (A) documentation of--
 - (i) a determination that a consumer is a victim of trafficking made by a Federal, State, or Tribal governmental entity; or
 - (ii) by a court of competent jurisdiction; and
- (B) 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.³

The Act ordered the Bureau to issue rules to implement this section, including the statute’s definition of trafficking documentation provided above.⁴ However, the proposed rule adds an alternative way to prove the determination of trafficking based on “documents filed in a court of competent jurisdiction indicating that a consumer is a victim of trafficking.”⁵

Allegations filed in court are not the same as a “determination” by a court. In adopting the Act, Congress unambiguously established a mechanism to provide relief for consumers who demonstrate they suffered certain kinds of trafficking by providing a determination by a court or governmental agency. The statute leaves no ambiguity regarding which consumers are eligible for relief. The Rule as proposed oversteps the legislative scheme by including the ability for consumers to demonstrate injury by providing allegations. The Bureau should not add new elements to the requirements in the statute, and AFSA respectfully requests the Bureau to revise the Rule to bring it into alignment with the Act’s provisions.

Based on long experience, this distinction between allegations and findings by courts or agencies is important to creditors. Removal of otherwise accurate information in consumer reports should be based on something more than an allegation. The initial portion of the “trafficking documentation” definition in the proposed Rule calls for a determination by a governmental entity or court, which carries an expectation of impartiality and diligent review. This is the requirement set forth in the Act. The second portion of the definition in the proposed Rule, calling only for documents that are “filed in a court of competent jurisdiction,” invites abuse. Anyone can file documents with a court making any allegation that suits the filer. The allegations may not be true and may not rise to the standards a governmental entity or court will follow. Allegations alone should not be allowed as the basis for eliminating otherwise accurate information in consumer reports.

If allegations instead of a determination are the standard for removing credit reporting information, creditors will not be able to rely on credit reporting agencies removing information from a consumer’s credit report as determinative as to the underlying debt as there has been no actual

³ 15 USCA § 1681c-3(a)(1).

⁴ 15 USCA § 1681c-3(c).

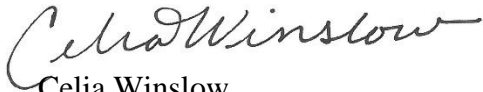
⁵ 12 CFR § 1022.142(b)(6)(i)(B).

determination. By retaining the proof required by the Act, creditors may be more inclined to rely on a credit reporting agencies actions relating to the consumer’s credit report due to credit reporting than if the rule adds a standard not contemplated by the Act.

As proposed, the Rule permits a consumer to provide either a determination from a governmental entity or court that the consumer is the victim of trafficking, or documents filed in a court indicating that a consumer is a victim of trafficking.⁶ AFSA respectfully requests that the Bureau remove the option for documentation filed in a court as an alternative to an independent determination by a governmental entity or court.

AFSA appreciates the careful consideration that the Bureau has given this rulemaking. We look forward to continuing to work with the Bureau on this rulemaking. Please contact Celia Winslow at cwinslow@afsamail.org or 202-776-7300 with any questions.

Sincerely,

A handwritten signature in black ink that reads 'Celia Winslow'. The signature is written in a cursive style and is positioned to the left of the printed name.

Celia Winslow
Senior Vice President
American Financial Services Association

⁶ 12 CFR § 1022.142(b)(6)(i).