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June 24, 2022

To: Clients and Friends

From: David F. Dulock

Subject: Regulation V— Prohibition on Inclusion of Adverse Information in Consumer Reporting in Cases of Human Trafficking

In the June 24, 2022, issue of the *Federal Register* ([87 FR 37700](#)) the Consumer Financial Protection Bureau (Bureau) published a final rule amending Regulation V (12 CFR part 1022), which implements the Fair Credit Reporting Act (FCRA), by adding new §1022.142, Prohibition on inclusion of adverse information in consumer reporting in cases of human trafficking, to Subpart O—Miscellaneous Duties of Consumer Reporting Agencies, that assists a consumer who is a victim of trafficking (defined in 1022.142(b)(7) as “a person who is a victim of a severe form of trafficking in persons or sex 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 human trafficking, and prohibits the consumer reporting agencies from furnishing a consumer report containing the adverse item(s) of information.

New §1022.142 implements new section 605C of the FCRA added 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.

This final rule is effective July 25, 2022.

While this final rule only applies to consumer reporting agencies as defined in section 603(f) of the FCRA (15 U.S.C. 1681a(f)), and not to lenders, the purpose of this memorandum is to make lenders aware of these new sections to the FCRA and Regulation V concerning adverse information about a consumer that resulted from human trafficking.

The following summary of Regulation V §1022.142 is taken from the preamble to the final rule published in the above cited *Federal Register*:

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

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