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April 7, 2025

Via Electronic Delivery to
ANPR-Coerced-Debt@cfpb.gov

Identity Theft and Coerced Debt
c/o Legal Division Docket Manager
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Re: Docket No. CFPB-2024-0057; Fair Credit Reporting Act (Regulation V); Identity Theft and Coerced Debt

To Whom It May Concern:

The Consumer Data Industry Association ("CDIA")[1] submits this comment letter in response to the Advance Notice of Proposed Rulemaking on the Fair Credit Reporting Act (Regulation V) ("FCRA"); Identity Theft and Coerced Debt ("ANPRM")[2] issued by the Consumer Financial Protection Bureau ("CFPB" or "Bureau"). The ANPR was published in the Federal Register on December 13, 2024, after receiving comments to the National Consumer Law Center's ("NCLC") petition for rulemaking on coerced debt ("Petition").[3] The NCLC petition alleges that "coerced debt" is a form of economic abuse suffered mostly by domestic violence victims in which the victim is forced to open credit accounts or in which the perpetrator makes unauthorized charges or lies about payments made in the victim's name.

The Petition encourages the CFPB to amend the "identity theft" and "identity theft report" definitions under the FCRA by specifying that the identity theft occurred without the consumer's "effective consent" ("Definitional Changes"). The Petition also encourages the CFPB to "clarify" that 15 U.S.C. § 1681c-2(a)(4) (requiring the consumer to affirmatively state that the information was not related to any transaction made by the consumer) and 15 U.S.C. § 1681c-2(c)(1)(C) (permitting a block to be rescinded if the consumer obtained possession of the goods, services, or money as a result of the blocked information) would not apply to information blocked as a result of coerced debt ("Additional Changes", together with Definition Changes, "Proposed Rule").

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[1] CDIA is the voice of the consumer reporting industry, representing consumer reporting agencies ("CRAs"), including the nationwide credit bureaus, regional and specialized credit bureaus, background check and residential screening companies, and others. Founded in 1906, CDIA promotes the responsible use of consumer data to help consumers achieve their financial goals and to help businesses, governments, and volunteer organizations avoid fraud and manage risk. Through data and analytics, CDIA members empower economic opportunity all over the world, helping ensure fair and safe transactions for consumers, facilitating competition, and expanding consumers' access to financial and other products suited to their unique needs.

[2] 89 Fed. Reg. 100922.

[3] https://downloads.regulations.gov/CFPB-2024-0037-0001/attachment_1.pdf (filed with CFPB on Aug. 5, 2023).

CDIA recognizes the intent of the Petition is to assist victims of economic abuse and CDIA is empathetic to those concerns; however, the CFPB does not have the authority to promulgate the Proposed Rule. The definition of "identity theft" under the FCRA allows the Bureau to "further define" identity theft, but it does not give the Bureau the ability to fundamentally alter the definition to fit a very particular set of facts expressly not covered by the definition in the first place. Additionally, Congress did not give the Bureau any authority to change or "further define" the definition of "identity theft report" or to make the Additional Changes contemplated. Absent direct Congressional intent, the Bureau has no authority to engage in this rulemaking effort.

The Proposed Rule ignores the statutory definitions in the FCRA, which has many consequences, including but not limited to frustrating the intended purpose of allowing a block of information that is the result of a thief stealing identity information of another person. Additionally, the Proposed Rule will have a significant economic effect and violates the major questions doctrine without a direction from Congress to the contrary. Importantly, victims have remedies available that more appropriately involve the creditor and courts to adjudicate the merits of the claims. The FCRA is unambiguously not the appropriate avenue to assist victims. Finally, CRAs have experienced rampant abuse of the protections afforded by blocking mechanisms under the FCRA for identity theft and as created by the disastrous human trafficking rule – credit repair companies take advantage of mechanisms designed to protect victims by encouraging consumers to submit false identity theft reports and to abuse the unchecked mechanisms of documenting human trafficking victim status in an effort to remove accurate but negative information from their consumer report. These experiences should insist the CFPB take a more thoughtful approach.

I. The CFPB Lacks Authority to Promulgate the Proposed Rule.

The CFPB confirmed in the ANPRM that it "will issue a proposed rule" to help victims of domestic violence and others by redefining "identity theft" to address "coerced debt," which will necessitate the Additional Changes defined above.[4] However, this Bureau does not have the authority to promulgate the Proposed Rule.

a. The CFPB Cannot Ignore How Terms Are Defined in the FCRA.

The FCRA defines the term "identity theft" as "a fraud committed using the identifying information of another person, subject to such further definition as the Bureau may prescribe, by regulation."[5] Regulation V[6] further defines "identity theft" as "a fraud committed or attempted using the identifying information of another person without authority."[7]

While the CFPB may have the authority to further define "identity theft" in Regulation V, it may not ignore the definition in the statute. This definition necessarily involves the use of someone else's identifying

[4] 89 Fed. Reg. at 100922.
[5] 15 U.S.C. § 1681a(q)(3).
[6] 12 C.F.R. §1022 *et seq.*
[7] 12 C.F.R. § 1022.3(h).

information. As described by the Bureau in the ANPRM, coerced debt is debt incurred by the consumer.[8] Thus, the Bureau's change would impermissibly alter the statutory definition, since the fact that someone was forced to take out a debt does not equate to theft of their identity. Therefore, the Bureau's proposal clearly exceeds the authority granted to it to further define the term.[9]

A consumer who incurs debt in their own name is not the same as an individual who fraudulently uses the consumer's information. While economic abuse is an unfortunate reality for domestic violence victims and others, addressing these problems through the credit reporting system is neither appropriate nor legally permissible and could lead to increased fraudulent activity. CDIA recognizes that the CFPB's proposed rulemaking stems from policy concerns[10] regarding the consumer debt incurred through coercion or force; however, Congress is the proper forum for addressing these policy concerns. Congress, if it so chooses, can act to address the underlying policy concerns; a rulemaking impermissibly extending the definitions contained in the FCRA is not.

In *Insurance Marketing Coalition, Ltd. v. Federal Communications Commission*,[11] the Eleventh Circuit Court of Appeals recently set aside a Federal Communications Commission ("FCC") rule that suffered from the same defects seen here. In that case, the statute generally permitted robocalls only with "prior express consent." Instead of giving authority to the underlying statute, the FCC prohibited any prior express consent from applying to multiple entities.[12] The FCC also required that the consented-to robocalls "be logically and topically associated with the interaction that prompted the consent."[13] The FCC justified the regulations by referencing a generic grant of authority to promulgate regulations to implement the statute, similar to the CFPB's arguments here.[14] The court in *Insurance Marketing* held that these restrictions "conflict with the ordinary statutory meaning of 'prior express consent.'"[15]

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[8] Question 5 requests comment on the proposed definition of "coerced debt" as "all non-consensual, credit-related transactions that occur in a relationship where one person uses coercive control to dominate the other person." 89 Fed. Reg. at 10093.

[9] The CFPB has also preliminarily determined that addressing this issue is well within the statutory authority of the CFPB to define "identity theft." 89 Fed. Reg. at 100922.

[10] The CFPB cites to the Petition and comments to the Petition as evidence that the Proposed Rule would alleviate the lasting and significant impact that coerced debt can have on victims of domestic violence and others. "After a review of the petition and comments received on the petition, the CFPB has determined that a rulemaking is warranted and will issue a proposed rule. The evidence contained in the petition and comments received on the petition persuasively suggest that amending Regulation V to specifically account for coercion, and absence of effective consent, in the definition of identity theft could enable survivors to regain control of their financial lives and further their physical safety and independence from abusers." 89 Fed. Reg. 100922, 100923.

[11] *Cf.* 127 F.4th 303, 306 (11th Cir. 2025).

[12] *Cf.* Second Report and Order, *In the Matter of Targeting and Eliminating Unlawful Text Messages, Rules and Reguls. Implementing the Tel. Consumer Prot. Act of 1991, Advanced Methods to Target and Eliminate Unlawful Robocalls*, 38 FCC Rcd. 12247 (2023).

[13] *Id.* at 12297.

[14] 127 F.4th at 310.

[15] *Id.* at 308.

The same is true here; the Bureau's proposed addition to the definition of "identity theft" conflicts with the ordinary definition of the statute. Nothing in the statutory text suggests that the definition of "identity theft" can be modified to remove the primary component, use of "another person's identity information," just like nothing in the statutory text at issue in *Insurance Marketing* limited the prior express consent to one party or one transaction. Because of this defect, the CFPB should abandon the intent to change the definition of "identity theft."

b. The Change Contemplated by the Bureau Also Runs Afoul of the "Major Questions Doctrine."

Under the major questions doctrine, an agency cannot promulgate a regulation with "economic or political significance" unless there is "clear congressional authorization" to do so.[16] This is necessary because of "both separation of powers principles and a practical understanding of legislative intent."[17]

The changes contemplated by the CFPB in the ANPRM will have substantial economic significance. As discussed more fully throughout this comment letter, the effects are likely to include increased cost of credit to consumers and to consumer reporting agencies.

The CFPB cites its rulemaking on human trafficking as an analogous example to the work contemplated in the ANPRM. The Human Trafficking Rule, however, was promulgated by the CFPB through the specific mandate made to it under the Debt Bondage Repair Act.[18] The CFPB does not have such mandate here, and there is no clear Congressional authorization to change the definition of "identity theft" or "identity theft report" by removing a fundamental element of the definition.

Thus, in light of the substantial effects outlined throughout this comment letter, and absent clear Congressional intent, the CFPB's rulemaking is in clear violation of the Major Questions Doctrine and must be abandoned.

II. Victims of Coerced Debt Have Remedies Available Under State Law and Through the Courts.

There are several state law protections and remedies available for victims of domestic violence. In the housing context, state and local eviction laws often set standards for what it takes to evidence domestic violence victim status to prevent eviction. For example, Colorado requires a police report or a protective court order.[19]

Additionally, certain states have enacted laws which specifically address a consumer's liability for coerced debt in the credit context. For example, Connecticut enacted a coerced debt law regarding unsecured

[16] *W. Virginia v. EPA,* 597 U.S. 697, 721, 723 (2022).
[17] *Id.* at 723.
[18] 15 U.S.C.A. § 1681c-3.
[19] Colo. Rev. Stat. § 38-12-402(2)(a).

credit card debt which requires the collector to stop collecting, investigate allegations, and inform the original creditor that the debt was the result of coercion.[20]

Imposing an "effective consent" requirement after the transaction has occurred (*i.e.,* at the consumer reporting stage) will be problematic. CRAs would be required to adjudicate a legal decision; but, CRAs are not courts and are not equipped to answer such a question. Having to undertake such a preliminary determination would be unduly burdensome and hinder a CRA's ability to timely complete a reinvestigation. These are exactly the reasons why the courts that have examined the question of whether a CRA is liable to a consumer for damages under the FCRA for failing to conduct a reasonable investigation of a dispute that raises a legal question have answered in the negative. Requiring CRAs to act as arbiters of legal disputes in the first instance would turn the district courts into novel appellate panels, further clogging an already burdened judiciary. Not to mention the fact that consumers might be misled to believe that the CRA's determination carries some legal effect on the enforceability of the debt outside of credit reporting. As the Seventh Circuit in *Denan v. Trans Union* explained "neither the FCRA nor its implementing regulations impose a comparable duty upon consumer reporting agencies, much less a duty to determine the legality of a disputed debt."[21] That is because a consumer must identify a factual inaccuracy in the consumer's file that can be rectified by the reinvestigation of a CRA. In *DeAndrade*, for example, the consumer argued that the furnished mortgage was invalid because the consumer never agreed to allow a lien to be placed on their home to finance the installation of their windows.[22] As the court explained

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[20] Conn. Gen. Stat. Ann. § 36a-651; s*ee also*, Minn. Stat. § 332.71, Cal. Civ. Code § 1798.97.2. Colorado law also includes provisions related to furnishing information to CRAs, Colo. Rev. Stat. § 5-18-109, but those specific provisions likely are preempted by the FCRA. 15 U.S.C. § 1681t(b)(1)(F).

[21] *Denan v. Trans Union LLC*, 959 F.3d 290, 295 (7th Cir. 2020). The Seventh Circuit is by no means standing alone on this issue. In fact, at least seven circuit courts have applied the collateral attack doctrine to hold that the FCRA does not impose civil liability on a CRA where the dispute really raises a legal challenge to the validity of a debt or other account. *Mader v. Experian Info. Sols, Inc.,* 56 F.4th 264 (2d Cir. 2023) (holding that the kind of legal inaccuracy alleged by Plaintiff is not cognizable as an "inaccuracy" under the FCRA); *Batterman v. BR Carroll Glenridge, LLC*, 829 F. App'x 478, 481 (11th Cir. 2020 (finding plaintiff's theory of inaccuracy was actually "a contractual dispute" to be resolved by a court and not a CRA) (per curiam); *Wright v. Experian Info. Sols., Inc.*, 805 F.3d 1232, 1242 (10th Cir. 2015) (providing that FCRA's reinvestigation provisions "do[] not require CRAs to resolve legal disputes about the validity of the underlying debts they report"); *Okocha v. Trans Union LLC*, 488 F. App'x 535, 536 (2d Cir. 2012) (affirming "well-reasoned order," including holding that plaintiff's theory of inaccuracy "is a collateral legal attack on the validity of the debt … not a factual inaccuracy") (unpublished); *Carvalho v. Equifax Info. Servs., LLC*, 629 F.3d 876, 891 (9th Cir. 2010) (explaining that "courts have been loath to allow consumers to mount collateral attacks on the legal validity of their debts" in the guise of FCRA claims against CRAs because "CRAs are ill equipped to adjudicate contract disputes," and agreeing that such claims are improper); *DeAndrade v. Trans Union LLC*, 523 F.3d 61, 68 (1st Cir. 2008) (finding plaintiff "crossed the line between alleging a factual deficiency that Trans Union was obliged to investigate pursuant to the FCRA and launching an impermissible collateral attack against a lender by bringing an FCRA claim against a [CRA]"); *Saunders v. Branch Banking and Tr. Co. of VA*, 526 F.3d 142, 150 (4th Cir. 2008) (noting that "[c]laims brought against CRAs based on a legal dispute of an underlying debt raise concerns about 'collateral attacks' because the creditor is not a party to the suit, while claims against furnishers … do not raise this consideration because the furnisher is the creditor on the underlying debt").

[22] *DeAndrade*, 523 F.3d at 68.

"[w]hether the mortgage is valid turns on questions that can only be resolved by a court of law, such as whether DeAndrade ratified the loan. This is not a factual inaccuracy that could have been uncovered by a reasonable reinvestigation, but rather a legal issue that a credit agency such as Trans Union is neither qualified nor obligated to resolve under the FCRA."[23] Under the FCRA dispute procedures, CRAs, after assuring that the alleged inaccuracy was not the result of their own actions, are to refer disputes to the furnishers, who have more information regarding the underlying account, and are therefore in a better position to determine whether the consumer's dispute has merit.

Additionally, the effects of a rule requiring a CRA to act as arbitrators of a legal decision cannot go unaddressed. The cost of compliance will rise astronomically, as employees will need to be trained to recognize authentic submissions due to the unavoidable abuse that will follow the CFPB's rulemaking, potentially barring smaller CRAs from operating altogether. For those CRAs that can continue to operate, costs to end users will rise, potentially affecting available credit options for consumers. Further, the resources available to assist with legitimate consumer requests would be reduced due to time required to handle the fraudulent submissions.

An "effective consent" standard, if imposed, should be imposed at the front of the transaction – requiring lenders to ensure the consumer entering into the transaction is providing their consent voluntarily. If this approach is not taken, then only a court can determine if consent was voluntarily provided.

III. Lessons Learned from the Identity Theft and the Human Trafficking Rules

If the CFPB is granted authority to promulgate a rule addressing coerced debt in the future, it should only consider such a rule if it contains provisions to address potential misuse by fraudsters and credit repair clinics, as has happened with the Identity Theft and the Human Trafficking Rules. As CDIA warned in its comment letter on the proposed human trafficking rule, based on experience with the Identity Theft Rules, credit repair clinics, fraudulent actors and criminals have taken advantage of this mechanism to remove accurate information from consumer reports. The limited ability of CRAs to investigate human trafficking block requests, coupled with the restrictions against communicating with the underlying furnisher, have impeded the ability of CRAs to address obvious fraud in the consumer reporting system.

The rule contemplated by the CFPB in the ANPRM would likely create yet another avenue for credit repair organizations to fraudulently remove accurate negative information from consumer reports so consumers appear more creditworthy than they actually are (a practice often referred to as "credit washing"). This potential is exacerbated by the amorphous proposed definition of coerced debt, which will allow overbroad claims of coerced debt that will be difficult to verify, leading to rampant abuse.

The ANPRM asks for guidance on how a consumer can prove that they are a victim of coerced debt, including documentation that should be required, what self-attestation mechanism could suffice, and whether there should be presumption of coercion under certain circumstances.[24] CDIA members have experienced abuse of mechanisms designed to block information on a consumer report, particularly

[23] *Id.*

[24] Question 7, 89 Fed. Reg. at 100923.

where there is not a strong mechanism that allows CRAs to verify claims. Even with traditional identity theft block requests which require a law enforcement report or similar report signed under penalty of perjury,[25] CRAs have received falsified police reports and reports claiming to be filed with the Federal Trade Commission ("FTC").[26]

In promulgating the Identity Theft Rule, the FTC recognized that identity theft block process could be an attractive tool for credit repair and fraud[27] given its speed and the inability of CRAs to conduct full investigations into claims of identity theft within the statutory period, and the FTC recognized the need to provide CRAs with discretion in identifying invalid Identity Theft Reports.[28] For example, the FTC explained, that should a CRA recognize repeat filers, "a pattern" in the filings, or other indicators of false reports or credit repair organizations, the CRA "could consider such information as a factor in determining the validity of the identity theft report."[29] Based on this guidance, CRAs have relied on their experience, the experience of creditors and other industry participants, and quantifiable observations to identify patterns or characteristics of identity theft block requests that more likely than not fall within these categories.

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[25] "Identity Theft Report" is defined as "a report: (i) That alleges identity theft with as much specificity as the consumer can provide; (ii) That is a copy of an official, valid report filed by the consumer with a Federal, state, or local law enforcement agency, including the United States Postal Inspection Service, the filing of which subjects the person filing the report to criminal penalties relating to the filing of false information, if, in fact, the information in the report is false; and (iii) That may include additional information or documentation that an information furnisher or consumer reporting agency reasonably requests for the purpose of determining the validity of the alleged identity theft, provided that the information furnisher or consumer reporting agency: (A) Makes such request not later than fifteen days after the date of receipt of the copy of the report form identified in Paragraph (i)(1)(ii) of this section or the request by the consumer for the particular service, whichever shall be the later; (B) Makes any supplemental requests for information or documentation and final determination on the acceptance of the identity theft report within another fifteen days after its initial request for information or documentation; and (C) Shall have five days to make a final determination on the acceptance of the identity theft report, in the event that the consumer reporting agency or information furnisher receives any such additional information or documentation on the eleventh day or later within the fifteen day period set forth in Paragraph (i)(1)(iii)(B) of this section." 12 C.F.R. § 1022.3(i)(1).

[26] *See, e.g.,* https://www.ftc.gov/news-events/news/press-releases/2019/06/ftc-stops-operators-fake-credit-repair-scheme (FTC enforcement action against credit repair operator that, among other things, "advised consumers to mislead credit bureaus by filing false identity theft affidavits . . . .").

[27] "An FTC analysis of the complaints received during the first 6 months of calendar year 2021 revealed significant patterns that suggest a possible fraudulent use of IdentityTheft.gov. These patterns foretell a risk to the credibility of a high number of complaints within the system." Federal Trade Commission Office of Inspector General, *Fiscal Year 2021 Report on the Federal Trade Commission's Top Management and Performance Challenges* (Sept. 30, 2021), at p. 8, available at https://oig.ftc.gov/sites/default/files/reports/2024-11/oigfy2021ftctopmanagementchallengesfinalreport9-30-21-1.pdf.

[28] Specifically, section 605B(c) of the FCRA permits a CRA to deny or rescind a block if the CRA reasonably determines that (1) the block was made or requested by the consumer in error; (2) the block was based on material misrepresentation of fact by the consumer; or (3) the consumer obtained possession of goods, services, or money as a result of the blocked transaction.

[29] *See, e.g.,* 69 Fed. Reg. 63922, 63928-29 (Nov. 3, 2004).

While the CFPB's intentions may be noble, the actual effect is to undermine the efficacy of credit reporting and to jeopardize the accuracy standards that form a fundamental element to Congress's original intent when it enacted the FCRA. This is a very slippery slope. Ultimately, the more the CFPB continues to erode this intrinsic element of the statute, the more creditors will be forced to tighten credit policies – making credit less available and more expensive, especially for those consumers already on the margin.

If a rule regarding coerced debt is promulgated in the future, the CFPB should ensure appropriate controls are in place to prevent creating yet another mechanism vulnerable to fraudulent actors. These controls should include methods to validate or verify the information provided by the consumer, such as establishing a centralized government source that validates a request to remove or block adverse information from a consumer's file, or at a minimum, the ability for a CRA to communicate the consumer's claim to the furnisher and allow a furnisher and CRA to ask for more information and documentation related to the consumer's situation which led to the consumer's claim.

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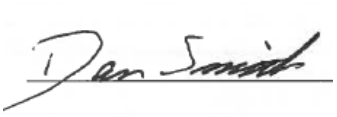
Given the lack of statutory authority for the changes in the ANPRM, the availability of other remedies for consumers, and the industry's experience with identity theft and human trafficking blocks, CDIA urges the Bureau to cease this rulemaking. Thank you for the opportunity to respond to and share our views on the ANPRM. Please contact us if you have any questions or need further information based on these comments.

Sincerely,



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