

12 CFR §1022.142 - Prohibition on inclusion of adverse information in consumer reporting in cases of human trafficking.

§1022.142 Prohibition on inclusion of adverse information in consumer reporting in cases of human trafficking.

(a) **Scope.** This section applies to any consumer reporting agency as defined in section 603(f) of the FCRA, 15 U.S.C. 1681a(f).

(b) **Definitions.** For purposes of this section:

(1) **Appropriate proof of identity** means proof of identity that meets the requirements in §1022.123, for purposes of section 605C of the FCRA.

(2) **Consumer report** has the meaning provided in section 603(d) of the FCRA, 15 U.S.C. 1681a(d).

(3) **Consumer reporting agency** has the meaning provided in section 603(f) of the FCRA, 15 U.S.C. 1681a(f).

(4) **Severe forms of trafficking in persons** has the meaning provided in section 103 of the Trafficking Victims Protection Act of 2000, 22 U.S.C. 7102(11).

(5) **Sex trafficking** has the meaning provided in section 103 of the Trafficking Victims Protection Act of 2000, as amended by section 108 of the Justice for Victims of Trafficking Act of 2015, 22 U.S.C. 7102(12).

(6) **Trafficking documentation** means one or more documents that satisfy paragraphs (b)(6)(i) and (ii) of this section:

(i) **Victim determination.** Documentation that:

(A) Is of a determination that a consumer is a victim of trafficking made by a:

(1) Federal, State, or Tribal governmental entity; or

(2) Non-governmental organization or members of a human trafficking task force, including victim service providers affiliated with the organization or task force, authorized by a Federal, State, or Tribal governmental entity to make such a determination;

(B) Is of a determination that a consumer is a victim of trafficking made by a court of competent jurisdiction or determination consisting of documents filed in a court of competent jurisdiction where a central issue in the case is whether the consumer is a victim of trafficking and the court has, at a minimum, affirmed the consumer's claim either by accepting certain pieces of evidence which are assumed to be true or finding that there is no genuine dispute as to any material fact supporting a judgment in favor of the victim as a matter of law; or

(C) Is of a signed statement by the consumer attesting that the consumer is a victim of trafficking if such statement or an accompanying document is signed or certified by a representative of an entity described in paragraph (b)(6)(i)(A) or (B) of this section.

(ii) Identified adverse items of information. Documentation, which may consist of a statement prepared by the consumer or by any designated representative on behalf of a consumer (except for a credit repair organization as defined in section 403(3) of the Credit Repair Organizations Act, 15 U.S.C. 1679a(3), or an entity that would be a credit repair organization, but for section 403(3)(B)(i) of the Credit Repair Organizations Act, 15 U.S.C. 1679a(3)(B)(i)), that:

(A) Identifies any 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; and

(B) Must contain a preferred method for a consumer reporting agency to contact the consumer electronically or in writing such as an email address or physical address where mail can be received. A consumer reporting agency shall use only the consumer's preferred method of contact for communications under paragraphs (d), (e), and (f) of this section about the consumer's submission and shall not use the consumer's preferred contact information for any other purpose.

(7) Victim of trafficking means a person who is a victim of a severe form of trafficking in persons or sex trafficking.

(c) Prohibition on inclusion of adverse information of trafficking victims. A consumer reporting agency may not furnish a consumer report containing any adverse item of information about a consumer that resulted from a severe form of trafficking in persons or sex trafficking if the consumer has provided trafficking documentation as defined under paragraph (b)(6) of this section to the consumer reporting agency.

(d) Method of submission to consumer reporting agencies—(1) *Mailing and website address.* A consumer reporting agency must provide two mailing addresses for a consumer or consumer representative, as described in paragraph (b)(6)(ii) of this section, to send a submission consisting of an appropriate proof of identification under paragraph (b)(1) of this section and trafficking documentation under paragraph (b)(6) of this section. A consumer reporting agency may also establish a secure online website portal for a consumer to upload a submission. A consumer reporting agency must accept a submission sent to the mailing and, if applicable, website address used for disputes under section 611 of the FCRA, and must accept a submission sent to a mailing and, if applicable, website address dedicated to blocking adverse items of information resulting from a severe form of trafficking in persons or sex trafficking under this section.

(2) Disclosing methods for submission. A consumer reporting agency must add information on its publicly available website stating how submissions for the blocking of adverse items of information resulting from a severe form of trafficking in persons or sex trafficking should be provided to a consumer reporting agency.

(3) Toll-free telephone number. A consumer reporting agency that compiles and maintains files on consumer on a nationwide basis, as defined in section 603(p) of the FCRA, 15 U.S.C. 1681a(p), must:

(i) Allocate a reasonable amount of personnel to respond to consumer inquiries about the process for and status of a consumer's submission at the toll-free telephone number used for disputes under section 611 of the FCRA; and

(ii) Establish a toll-free telephone number dedicated to addressing submissions from consumer seeking to block adverse items of information resulting from a severe form of trafficking in persons or sex trafficking under this section.

(e) Block of adverse information resulting from trafficking—

(1) Block upon receipt of the submission. Except as otherwise provided in this section, within four business days of receipt of the consumer's submission under paragraph (d)(1) of this section, a reporting agency must block the reporting of any adverse item of information identified by the (or their representative) as resulting from a severe form of trafficking in persons or sex trafficking.

(2) Requirement to notify the consumer and attempt to resolve deficiencies—

(i) *In general.* Within five business days of receipt of the consumer's submission under paragraph (d) of this section, a consumer reporting agency must notify a consumer if additional information is necessary for the purpose of completing the submission and attempt to resolve any deficiency in the consumer's submission. A consumer reporting agency may only request additional information where the consumer reporting agency cannot reasonably confirm the appropriate proof of identity under paragraph (b)(1) of this section for the consumer or, if applicable, the consumer's representative, the consumer did not provide victim determination documentation under paragraph (b)(6)(i) of this section, or the consumer reporting agency cannot properly identify the adverse items of information under paragraph (b)(6)(ii) of this section. A consumer reporting agency may not, however, ask for information on the validity of the facts or circumstances detailed in the contents of the submitted trafficking documentation establishing the consumer is a victim of trafficking or whether the identified adverse information resulted from a severe form of trafficking in persons or sex trafficking under paragraph (b)(6) of this section.

(ii) **Timing of final determination.** A consumer reporting agency must make a final determination on the consumer's submission no later than 25 business days after receiving the submission provided in paragraph (d)(1) of this section.

(3) Final determination of the block. Upon confirming completion of the submission from the consumer under paragraph (d)(1) of this section and in accordance with the requirements under paragraph (e)(2) of this section, the consumer reporting agency must initiate or maintain the action described in paragraph (e)(1) of this section by blocking the reporting of the items of adverse information on the consumer.

(4) Authority to decline or rescind a block. A consumer reporting agency may decline to block, or may rescind any block of, adverse items of information resulting from a severe form of trafficking in persons or sex trafficking, in accordance with the timing requirements under paragraph (e)(2)(ii) of this section, only where the consumer reporting agency cannot reasonably confirm the appropriate proof of identity under paragraph (b)(1) of this section for the consumer, and, if applicable, the consumer's representative, the consumer cannot provide documentation consisting of a victim determination under paragraph (b)(6)(i) of this section, or the consumer reporting agency cannot properly identify the adverse items of information under paragraph (b)(6)(ii) of this section. A consumer reporting agency may not, however, decline to block or rescind any block of adverse information identified by the consumer or if applicable, the consumer's representative, based on the validity of the facts or circumstances detailed in the contents of the submitted trafficking documentation as defined in paragraph (b)(6) of this section. A consumer reporting agency may decline or rescind a block only after notifying the consumer using the method of contact specified by the consumer in paragraph (b)(6)(ii)(B) of this section and attempting to resolve any deficiency in the consumer's submission as required in paragraph (e)(2) of this section.

(f) Notification to consumer of actions taken in response to the consumer's submission—(1) In general. A consumer reporting agency must provide written or electronic notice to a consumer of actions performed in response to a consumer's submission no later than five business days after a final determination on a consumer's submission under paragraph (e)(3) of this section (or, if rescinding a previously applied block, five business days after rescinding under paragraph (e)(4) of this section). The consumer reporting agency must use the method of contact specified by the consumer in paragraph (b)(6)(ii)(B) of this section.

(2) Contents. The notice must include the following:

- (i) A statement that the review of the submission is completed;
- (ii) A statement of the outcome of the submission, including the reason(s) if the consumer reporting agency declined to block the adverse information identified by the consumer, or rescinded such a block, under paragraph (e)(4) of this section;

(iii) A consumer report, provided at no cost to the consumer, that is based upon the consumer's revised file (if applicable) as a result of the consumer's submission;

(iv) A description of the procedure used to determine the outcome;

(v) A method for contacting the consumer reporting agency to appeal the determination or revise the submission to cure any of the noted reasons for declining to block the adverse information identified by the consumer; and

(vi) The web page consumers can use to submit complaints to the Consumer Financial Protection Bureau.

(g) Record retention. For a period of seven years after the consumer's submission is received at the mailing or website address made available under paragraph (d)(1) of this section, a consumer reporting agency must retain evidence of all such submissions and compliance with this section, including the actions taken by the consumer reporting agency under paragraphs (e)(1) through (e)(3), and (f) of this section and the reasons provided under paragraph (e)(4) of this section for declining to block or rescinding any block of items of adverse information identified by the consumer.

(h) Policies and procedures to ensure and maintain compliance. A consumer reporting agency must establish and maintain written policies and procedures reasonably designed to ensure and monitor the compliance of the consumer reporting agency and its employees with the requirements of the paragraphs in this section. These written policies and procedures must be appropriate to the nature, size, complexity, and scope of the activities of the consumer reporting agency and its employees.

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