Americans for Financial Reform Education Fund

Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

October 5, 2024

Re: Petition Request for FCRA Rulemaking

To whom it may concern:

Americans for Financial Reform Education Fund (AFREF) appreciates the opportunity to support the National Consumer Law Center and the Center for Survivor Agency and Justice's petition requesting the Bureau to open rulemaking under the Fair Credit Reporting Act (FCRA) to provide relief to victims of coerced debt. AFREF is a nonpartisan and nonprofit coalition of more than 200 civil rights, consumer, labor, business, investor, faith-based, and civic and community groups dedicated to advocating for policies that shape a financial sector that serves workers, communities and the real economy, and provides a foundation for advancing economic and racial justice. The petition addresses significant barriers to financial inclusion for vulnerable survivors of intimate partner abuse, especially for women and people of color who are far more likely to face compromised credit scores from coerced debt that result from structural racial inequalities.

AFREF supports the petition to provide critically needed relief to victims of coerced debt (a form of economic abuse) and further protect consumers who are survivors of intimate partner violence. The Fair Credit Reporting Act (FCRA) provides remedies for people who have had their credit reports and credit scores impaired by identity theft, but the same mechanisms can and should be used to address the coerced debt intimate partner abusers impose on their victims. The CFPB should amend the definition of identity theft under the Fair Credit Reporting Act's (FCRA) Regulation V to:

- modify the definition of "identity theft" to include the phrase "or without the effective consent of that person" to the end of 12 CFR §1022.3(h),[1]
- modify the definition of "identity theft report" to reflect this modified definition of "identity theft,"[2] and
- allow victims of coerced debt to block disputed information using the process available under 15 USC §1681c-2 (c)(1)(C) for victims of identity theft.

These modifications would align with and fulfill the FCRA's Congressionally-mandated purpose, "to require that consumer reporting agencies adopt reasonable procedures…in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information."[3] But the proposed modifications are especially important to protect the survivors of intimate partner violence, especially Black, Indigenous, Latine and other survivors of color, as well as survivors with marginalized identities, all of whom — under the existing FCRA

[1] 12 CFR §1022.3(h).
[2] 12 CFR §1022.3(i)(1).
[3] 15 USC §1681(b).

regulatory framework — are more likely to have incurred coerced debt, in larger amounts, and with fewer forms of available relief.

These changes are essential to address the coerced debt that results in part from the economic inequities stemming from a historical and ongoing legacy of structural racism across areas that include employment, housing, access to suitable and affordable financial services and products, and the injustice of racist mass incarceration and police violence. Black, Latine, Indigenous and other survivors of color are more likely to have lower incomes and fewer assets, and to incur higher levels of debt. But these factors also mean they are considerably more likely to have higher amounts of coerced debt.

For survivors of color, the same hardships and barriers resulting in coerced debt make it harder to eliminate debt and coerced debt from their credit reports, which harms their credit scores. Physically and emotionally abusive partners often coerce their partners to act as financial surrogates or proxies, such as approving the use of a credit card, co-signing for a loan, financing a car, or incurring debts (and unpaid balances) from coercive financial abuse such as lying about paying bills, fraudulently using credit cards, overcharging accounts, or other financial extraction that affect the credit records and credit scores of survivors of intimate partner violence. The extreme racial bias in policing, sentencing, and mass incarceration, means that Black, Latine, and Indigenous men are far more likely to be involved with the justice system as defendants and those re-entering their communities. These justice-involved men can have financial penalties (such as unpaid civil or criminal fines) imposed on their credit reports, more difficulty obtaining employment, and more difficulty accessing the traditional financial system, which puts an additional financial strain on these justice-involved people and makes them more likely to rely on surrogates (family members, friends, or partners) to access financial services.

Without adequate relief, coerced debt and the damage it inflicts on a survivor's credit report further exacerbates the same historic and ongoing racist policies and practices that make it harder for survivors of color to find affordable housing for themselves and their children, employment that pays a living wage, access to health care, and access to affordable and suitable credit through traditional banking services — all factors critical to creating the economic stability necessary to leave an abusive relationship.

Compounding such economic abuse, survivors of color are also less likely to seek and find recourse through legal or police engagement. Filing identity theft charges are one of the few pathways available under current law and the FCRA to undo the harms of coerced debt. Due to the negative impacts of the criminal justice system on communities of color, reaching out to the police (either to report intimate partner violence, or to file an identity theft report per FCRA's current requirements) may not be an option for survivors of color.

Black, Latine, and Indigenous people are reluctant to call for intervention because the police response's shoot-first mentality can kill people — the very people who are calling for help. Abuse survivors do not want to put themselves, their children, or their abuser at risk of death. These police violence risks are heightened for justice-involved people. Immigrant survivors may also hesitate to contact the police due to deportation and immigration status concerns. Even short of the risk of police violence, police contact could have negative ramifications for the survivor (such as losing shelter for allowing justice-involved people into publicly supported housing) or the abuser (re-entry into the justice system) that can substantially deter survivors from pursuing traditional legalistic routes to address the debts that abusers coercively impose on survivors.

For these reasons, we urge the Bureau to broaden the definitions of "identity theft" and "identity theft report," and to expand FCRA's powerful blocking remedy, currently only available to victims of identity theft, to also cover victims of coerced debt. This proposal will not prevent intimate partner violence or remedy the racial inequities that drive and compound it, but the proposed FCRA modifications are a critical and necessary step to curb future economic abuse and help Black, Latine, other survivors of color, and survivors with marginalized identities repair their credit and rebuild the stable economic foundation necessary for a violence-free future.

The impact of coerced debt on survivors of color.

Coerced debt includes "all nonconsensual, credit-related transactions that occur in a violent relationship."[4] This debt stems from economic abuse that occurs when one partner in an abusive relationship uses coercive control (a form of intimate partner violence), through fraud, coercion, or manipulation, to "create debt in a partner's name by taking out loans, using credit cards, or putting household bills in their partner's name."[5] Forms of debt may include mortgages, apartment rental leases, vehicle loans, personal loans, payday loans, student loans, credit card bills, household utility bills, and phone bills.[6]

The overwhelming majority of abusive partners use economic means to exert power over their victims and to extract resources that could be used by victims to pursue security and safety.[7] Because of historic and ongoing structural racism, Black, Latine, and Indigenous people have lower incomes and wealth due to occupational segregation, educational segregation, residential redlining, and more, which leaves them more vulnerable to economic tactics like coerced debt that deprives them of the resources to secure safety for themselves and their children. And victims of abuse frequently lose their jobs, are demoted, or lose income after missing work because of abuse, which creates extreme economic precarity.[8] Economic abuse and coerced debt exacerbate the typical isolation and estrangement from their familial and social networks that abused partners experience, and which makes them more likely to be reliant on their own financial resources to achieve a safe exit from abusive relationships.

Credit reporting and an individual's credit report impact people's financial well-being, including access to affordable and suitable credit, employment opportunities, and housing. Credit scoring itself replicates and amplifies the systemic racial biases of the financial system because Black, Latine, and Indigenous people with lower incomes, more medical debt, lower homeownership rates, fewer assets, and less credit history are deemed less "creditworthy."[9] Black and Latine consumers who have credit scores have lower average scores than white consumers (8 percent and 5 percent lower, respectively)[10]

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[4] Littwin, Angela. "Coerced Debt: The Role of Consumer Credit in Domestic Violence." *California Law Review*. Vol. 100, No. 4. August 2012 at 954.
[5] Adams, Adrienne. (Adams 2022). Center for Survivor Agency and Justice. "Understanding Coerced Debt." October 2022 at 4.
[6] *Ibid.*
[7] Center for Survivor Agency & Justice. "Guidebook on Consumer & Economic Civil Legal Advocacy for Survivors." 2017 at 6.
[8] Alliance for Safety and Justice. "Lost Work, Pay, and Safety: Victims of Violence Urgently Need Safe Leave." April 2024.
[9] National Consumer Law Center. "Past Imperfect: How Credit Scores and Other Analytics 'Bake In' and Perpetuate Past Discrimination." May 3, 2016.
[10] Sandberg, Erica. "How race affects your credit score." *US News and World Report*. August 9, 2022.

and are 60 percent more likely to have no or invisible credit scores than white consumers (28 percent, 27 percent, and 16 percent, respectively).[11] A 2022 Urban Institute study found that far more people received subprime credit scores from the credit rating bureaus in Black, Indigenous, and Latine communities than in white communities (41 percent, 43 percent, 29 percent, and 17 percent, respectively).[12]

Coerced debt damages the credit scores of all survivors and has a devastating impact on those who try to escape abusive relationships. In addition to the physical and security challenges of fleeing an abusive relationship, victims saddled with coerced debt may be cut off from access to transportation, housing for themselves and their children, employment, and other resources tied to and reliant upon the financial industry's measures of credit and one's so-called "creditworthiness."[13] Landlords, utility companies, even employers can legitimately refuse to provide access to housing or employment to survivors with lower credit scores. Nearly three-quarters (73 percent) of survivors stayed longer in an abusive relationship due to coerced debt.[14] Financial hardships may be further compounded when wages are garnished in debt collection (using debt collection methods that mirror abuse and may retraumatize survivors),[15] or survivors are trapped in complicated legal battles over coerced debt that may require them to be in some contact with their abusers. These additional hardships lessen a survivor's chance of long-term financial stability and safety.[16]

Survivors of color and survivors from marginalized communities (such as Indigenous, immigrant, and limited English proficiency populations) are particularly vulnerable to the impacts of coerced debt, both from taking on larger amounts of coerced debt, and from being saddled with a higher percentage of coerced debt from predatory lending sources. An in-depth study on coerced debt in divorce revealed that in general, women of color are more likely than white women to have coerced debt (80 percent and 63 percent, respectively),[17] owed more money in coerced debt going into divorce than white women ($7,937 and $4,062),[18] and were significantly more likely to have personal loans as part of their coerced debt (19 percent and 9 percent).[19] In this instance, "personal loans" include subprime loans with exploitative terms, such as payday loans and car title loans. At the time of a divorce, significantly more women of color have some form of coerced debt compared to white women (70 percent and 54 percent, respectively).[20]

Coerced debt exacerbates other systems of oppression.

The financial impacts of structural racism for families of color are severe, making it more difficult to afford household expenses, build wealth, pay off debt, and repair credit. Survivors of color are more likely to be left with coerced debt—in larger amounts—and face additional challenges eliminating this

[11] Brevoort, Kenneth P., Philipp Grimm, and Michelle Kambara. Consumer Financial Protection Bureau. "Data Point: Credit Invisibles." May 2015.
[12] Urban Institute. "Credit Health During the COVID-19 Pandemic." March 8, 2022.
[13] Vondelinde, Katie Ciorba et al. (Vondelinde et al. 2022). Center for Survivor Agency and Justice. "Compendium on Coerced Debt." October 2022 at 3.
[14] *Ibid.* at 9.
[15] *Ibid.*
[16] *Ibid.* at 3.
[17] Adams, Adrienne et. al. (Adams et al. 2023). Webinar. Center for Survivor Agency and Justice. "New Research on Addressing Coerced Debt in Divorce: Findings from an in-depth study of coerced debt." November 8, 2023 at slide 29.
[18] *Ibid* at slide 58.
[19] *Ibid.* at slide 31.
[20] *Ibid.* at slide 55.

debt. Structural racism and racist institutional policies and practices have contributed to higher levels of debt and coerced debt for Black, Latine, and Indigenous survivors of intimate partner abuse.

This coerced debt further undermines the financial precarity and resilience of people of color who have lower incomes, less wealth and resources, and less access to suitable and affordable financial products because of the ongoing legacy of structural racism and discrimination, including occupational segregation, residential redlining, policing and incarceration, educational barriers and segregation, and more. People of color — especially women of color — have significantly lower incomes and less wealth than white people, leaving victims of color with less financial capacity to pursue security for themselves and their families. In 2023, the typical (median) household incomes of Black and Indigenous families were more than one-third lower and Latine families were more than one-fourth lower than white families ($56,490, $57,270, $65,540, and $89,050, respectively).[21] The racial income gaps are far wider for women of color. Black- and Latine-headed families without partners have typical household incomes that are more than 40 percent lower than all white households ($49,970 and $51,350, respectively) and single Black and Latine women have typical household incomes about two-thirds lower than all white households ($31,810 and $27,260).[22] (The Census Bureau and other federal data collecting agencies frequently either do not collect or do not report economic data on Indigenous families.[23])

The racial household wealth gaps are even larger, especially for Black and Latine women. Families with lower incomes have a harder time building wealth and the structural racism barriers from occupational segregation and residential redlining foreclose the two biggest assets white families use to build wealth: homeownership and retirement savings. Today, the racial homeownership gap is at its highest point in a decade, with the Black homeownership rate currently 29 percentage points lower than the white homeownership rate, while the Latino rate is 22 percentage points lower.[24] And retirement assets are more out of reach. In 2022, white families were about twice as likely to have retirement accounts than Black or Latine families (62 percent, 35 percent, and 28 percent respectively) and had about twice as much money in these accounts ($100,000, $39,000, and $55,000, respectively).[25] These racial gaps mean that Black and Latine families owned a tiny sliver of stock equities and mutual funds (0.7 percent and 0.6 percent, respectively), while white families held 84 percent of stock and mutual fund value in 2020.[26]

As a result families of color have far less household wealth. In 2022, the household wealth of white families was more than six times higher than Black families and more than four times higher than Latine families ($284,000, $44,000, and $62,000, respectively).[27] Families headed by Black and Latine women have the lowest household wealth. The Federal Reserve Bank of St. Louis found that

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[21] Guzman, Gloria and Melissa Kollar. U.S. Census Bureau. "Income in the United States: 2023." Report No. P60-282. September 2024 at 2 and 25. Census racial categories are for Black, white non-Hispanic, Hispanic (any race), and American Indian and Native Alaskan alone.

[22] U.S. Census Bureau. "Selected Characteristics of Households by Total Money Income." Series HINC-01. August 21, 2024.

[23] Capriccioso, Rob. "Census fails to include Native American data in new poverty, income and health insurance reports." *Tribal Business News*. October 4, 2021.

[24] National Association of Realtors. [Press release]. "More Americans Own Their Homes, but Black-White Homeownership Rate Gap is Biggest in a Decade, NAR Report Finds." March 2, 2023.

[25] Federal Reserve Board (FRB). Survey of Consumer Finances (SCF). Retirement Accounts by race or ethnicity. 2022.

[26] FRB. Distributional Financial Accounts. Corporate equities and mutual fund shares by race 3Q 2023.

[27] FRB SCF 2022. Median Household Net Worth. 2023.

households headed by white men had 20 times more household wealth than families headed by Black women and 10 times more than families headed by Latine women.[28]

Debts drag down on families' ability to build wealth and families of color have higher debt burdens than white families and often must rely on more expensive and often predatory credit, like payday loans, that further burden finances and erode wealth building.[29] Black and Latine families pay a far greater share of their income — nearly one-third — on housing and to cover debt payments than white families (27.6 percent, 30.4 percent, and 17.4 percent, respectively).[30] Medical debts can further exacerbate financial distress and inequities for people of color.[31] Medical debts are the most common reason debt collectors contact people,[32] including survivors of color, and debt collections, lawsuits and judgments, and wage garnishments are 60 percent more common in communities of color than white communities, due to systemic and historical discrimination in financial services, housing, employment, and the criminal justice system.[33] Medical debt can harm a survivor's credit score and constrain their ability to secure the credit needed to rebuild their life outside of an abusive relationship. The same harms can occur for "aging and disabled survivors, transgender survivors, and survivors of severe physical abuse [who] may already have unpaid medical bills that are compounded by coerced debt."[34]

Long-standing structural racism in residential housing — redlining, mortgage discrimination, environmental injustice, food deserts, and more — creates a never-ending cycle of harm that cuts off housing options for survivors of color, many of whom may have felt forced to remain in an abusive relationship due to housing needs. More than half a century after the enactment of the Fair Housing Act, the legacy of federal, state, and local racial exclusion policies, restrictive covenants that prohibited home sales to people of color, home lending and housing discrimination, and the violence that created and enforced racially segregated communities, continue to make it difficult for survivors to find affordable and safer housing options, even more so after incurring coerced debt.

Proposed FCRA modifications will help bring relief for survivors of color and other marginalized survivors.

Repairing damaged credit is a critical piece of undoing the economic damage rendered by coerced debt, yet traditional methods of relief for coerced debt under FCRA may be risky for survivors of domestic abuse, especially survivors of color and survivors who belong to immigrant communities. FCRA's Regulation V currently defines "identity theft" as "a fraud committed or attempted using the identifying information of another person without authority."[35] Under this current definition, it is unclear whether victims of coerced debt would qualify as victims of identity under FCRA.

[28] Kent, Ana Hernández. Federal Reserve Bank of St. Louis. "Gender Wealth Gaps in the U.S. and Benefits of Closing Them." September 29, 2021.
[29] Weller, Christian. "Households Of Color Owe Costlier, Riskier Debt, Hurting Their Chances To Build Wealth." *Forbes*. April 21, 2022.
[30] Aladangady, Aditya, Andrew C. Chang, and Jacob Krimmel. FRB. "Greater Wealth, Greater Uncertainty: Changes in Racial Inequality in the Survey of Consumer Finances." October 18, 2023.
[31] Adams 2022 at 11.
[32] Consumer Financial Protection Bureau. "Consumer Experiences with Debt Collection." January 2017 at 21.
[33] Braga, Breno et al. Urban Institute. "Local Conditions and Debt in Collections." June 2016.
[34] Vondelinde et al. 2022 at 11.
[35] 12 CFR §1022.3(h).

To clarify that coerced debt is a form of identity theft, we propose the definition of "identity theft" under 12 CFR §1022.3(h) be amended as follows (addition in *italics*):

"Identity theft means a fraud committed or attempted using the identifying information of another person without authority, *or without the effective consent of that person*."

Currently, victims of coerced debt may not be considered a victim of "identity theft" under FCRA, and survivors are unable to use the quicker identity theft blocking method available under FCRA.[36] Instead, survivors face the additional barrier of trying to resolve coerced debt through the lengthier and more tedious dispute process under FCRA's reinvestigation procedure (30 or more days rather than 15 days).[37] The traditional dispute resolution process also potentially requires multiple rounds of disputes, and may freeze an individual's ability to obtain credit, housing, or employment until that dispute is resolved, further foreclosing the survivor's ability to restore their economic independence during a vulnerable and critical time.

The Bureau should also broaden the categories of allowable documents needed to establish that an "identity theft" has occurred. Currently under Regulation V, this documentation must, at a minimum, be a report "that is a copy of an official, valid report filed by a consumer with an appropriate Federal, State, or local law enforcement agency, including the United States Postal Inspection Service, or such other government agency deemed appropriate by the Bureau."[38] This requirement creates an often prohibitive barrier for survivors, but even more so for survivors of color, and survivors from marginalized communities, such as immigrant populations. During the precarious and dangerous period when survivors are disentangling themselves from an abusive partner, victims of coerced debt may be unwilling to engage with the police fearing potentially fatal violence against themselves, their children, or their partner.

Survivors of domestic abuse can re-experience trauma stepping into a police department or interacting with law enforcement. Survivors of color frequently fear interactions with law enforcement, given the ongoing history of police brutality and racial bias in the criminal justice system towards people of color. Immigrant survivors often hesitate to engage with law enforcement due to fears of deportation. To more sensitively consider the safety of survivors, particularly the most vulnerable survivors who have a justified fear of law enforcement, the Bureau should consider allowing an "identity theft report" to include a self-attestation such as the Federal Trade Commission's identity theft report. This method does not expose survivors to as much physical risk and also protects their confidentiality.

For survivors of color who are also victims of coerced debt, the proposed FCRA modifications provide a critical way to repair credit scores and lessen the systemic racial impacts of the credit reporting system. Mentioned above, the combination of lower incomes, lower household wealth, poorer health conditions and health care access, and lack of affordable housing create additional hurdles for overcoming coerced debt and stabilizing and improving credit scores necessary to help build an economically stable future for that survivor. Providing tools to make it more accessible to remove coerced debt from credit reports can go a long way toward improving a survivor's credit score.

[36] 15 USC §1681c–2 states, "a consumer reporting agency shall block the reporting of any information in the file of a consumer that the consumer identifies as information that resulted from an alleged identity theft."
[37] 15 USC §1681i.
[38] 15 USC §1681a(q)(3); Title 12, Chapter X, Part 1022.3(i)(1)(ii), Regulation V (2024).

An in-depth study of divorced women with coerced debt found that a majority (54 percent) of the participants improved their credit scores when the coerced debt was removed. More women of color than white women benefited from taking off the coerced debt (41 percent and 27 percent, respectively).[39] One-third (32 percent) of women who removed their coerced debt gained 20 or more points on their credit score – enough to improve a mortgage interest rate[40] or qualify an individual for more affordable loan terms that can generate many long-term benefits.

The proposed petition to modify FCRA definitions of "identity theft" and "identity theft report" are critical for the future economic security of survivors of domestic violence and victims of coerced debt. Requiring "consent" to be added as an element of "identity theft" and broadening its definition to cover coerced debt would make it easier for all survivors to remove coerced debt from their credit reports, which could lead to improvements in their credit reports and help improve their path to economic security. These modifications are especially critical for survivors of color and other survivors with marginalized identities who are victims of coerced debt and are more likely to face barriers rebuilding and repairing their credit due to the structural racism in housing, employment, financial services, mass incarceration and policing, and health care.

Acknowledging coerced debt more officially under the FCRA definitions of "identity theft" and "identity theft report," will not alleviate underlying racial inequities that have driven the coerced debt in the first place, but it could limit the further amplification of these injustices and inequities in future credit eligibility determinations needed for survivors to establish economic security. We support the petition to initiate and finalize rulemaking on coerced debt and urge the Bureau to act swiftly on this matter that is a life and death issue for too many survivors of color and their families.

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[39] Adams et al. 2023 at slide 39.

[40] *Ibid.* at slide 38.