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

Sent via electronic submission: ANPR-Coerced-Debt@cfpb.gov
and
Submitted via https://www.regulations.gov

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

To Whom It May Concern:

The Receivables Management Association International ("RMAI") appreciates this opportunity to submit the following responses to its Advance Notice of Proposed Rulemaking concerning coerced debt (Regulation V).

RMAI supports the Bureau's efforts to develop clear and concise rules concerning the expectations on how businesses should furnish and compile consumer credit information. However, we believe the Bureau would exceed its statutory authority if it were to adopt the rule as proposed by Petitioner, the National Consumer Law Center. Further, we believe the Petition is deficient of data supporting its proposal, ignores the recommendations of experts in the subject matter, ignores due process, and would cause material reputational harm to countless consumers.

About RMAI

RMAI is the nonprofit trade association that represents more than 600 companies that purchase or support the purchase of performing and non-performing receivables on the secondary market. The existence of the secondary market is critical to the functioning of the primary market in which credit originators extend credit to consumers. An efficient secondary market lowers the cost of credit extended to consumers and increases the availability and diversity of such credit.

RMAI is an international leader in promoting strong and ethical business practices within the receivables management industry. RMAI requires all its member companies who are purchasing receivables on the secondary market to become certified through RMAI's Receivables Management Certification Program ("RMCP")[1] as a requisite for membership. The RMCP is a

[1] RMAI, *RMAI Receivables Management Certification Program*, https://rmaintl.org/certification/.

comprehensive and uniform source of industry standards that the Bureau recognizes as "best practices."[2] In fact, the recently adopted Uniform Consumer Debt Default Judgment Act "seeks to incorporate . . . standards set by Receivables Management Association International, a debt collections trade organization."[3]

A majority of RMAI members are small businesses. Most of its debt buyer members have annual receipts of less than $47 million. Most of its debt collector members have annual receipts of less than $19.5 million.[4] Many vendors to debt buyers and debt collectors would also fall within the U.S. Small Business Administration's (SBA) small business threshold.

I. Summary

The activities that create economic coercion are individualized and highly nuanced.[5] It occurs when a person is subject to violence or the threat of violence or the exposure of a secret (blackmail). In these instances, the victim takes action to incur a financial liability for the benefit of the bad actor. Whether coercion was the root cause of an extension of credit is a highly individualized inquiry and would necessitate information from both the victim and the purported bad actor.

Unlike identity theft where 95 % of the victims do not know the person who caused the harm, a person alleging coercion would know the alleged bad actor or have sufficient facts to allow identification. After all, the alleged victim has suffered violence or the threat of violence or blackmail.

Moreover, coercion is a serious and often violent crime, and depending on the allegations, a felony crime. Because the bad actor is known or readily identifiable, allegations of coercion involve the potential for significant and irreparable reputational harm. A furnisher or credit

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[2]Consumer Financial Protection Bureau, *Small Business Review Panel for Debt Collector and Debt Buyer Rulemaking, Outline of Proposals Under Consideration*, July 28, 2016, p. 38, http://files.consumerfinance.gov/f/documents/20160727_cfpb_Outline_of_proposals.pdf.

[3] https://www.uniformlaws.org/committees/community-home/librarydocuments?attachments=&communitykey=c57ddc7a-bebd-41df-b48a-018a850eeec3&defaultview=&libraryentry=a6c364be-ca2e-4d61-aa23-018a85e8ba79&libraryfolderkey=&pageindex=0&pagesize=12&search=&sort=most_recent&viewtype=row&5a583082-7c67-452b-9777-e4bdf7e1c729=eyJsaWJyYXJ5ZW50cnkiOiJhNmMzNjRiZS1jYTJlLTRkNjEtYWEyMy0wMThhODVlOGJhNzkifQ%3D%3D, archived at https://perma.cc/56CH-CBUU

[4] See U.S. Small Business Administration, *Table of Small Business Size Standards Matched to North American Industry Classification System Codes*, Effective December 19, 2022, publicly available at https://www.sba.gov/sites/default/files/2022-12/Table%20of%20Size%20Standards_Effective%20December%2019%2C%202022.xlsx and archived at https://perma.cc/ED7C-PZHQ . Debt buyers have a NAICS classification code of 522299, collection agencies 561440.

[5] Angela Littwin, *Escaping Battered Credit: A Proposal for Repairing Credit Reports Damaged by Domestic Violence*, 161 U. Pa. L. Rev. 363, 365 (Jan. 2013).

reporting agency cannot be the arbiter of whether a person has committed a violent crime and creating a rule that requires such a determination likely violates the alleged bad actor's right to due process. Causing a furnisher or credit reporting agency to label the alleged bad actor's conduct as coercive *before* a court enters such a judgment is not only prejudicial to the alleged bad actor, it exposes the furnisher and the credit reporting agency to civil liability.

II. Economic Coercion Shares Little in Common with Identity Theft

Coercion is a crime and so too is what is commonly known as identify theft. However, the two are markedly different. Unlike identify theft, a silent, faceless crime, a victim of coercion is confronted by the offender. Petitioner, the National Consumer Law Center, conflates coercion and identity theft, suggesting that the two are the same. Common sense tells us otherwise. Identity theft occurs when a person uses another's uses another's "personal or financial information without . . . permission."[6] An identity theft victim may not know that their personal or financial information was impermissibly used.[7] It can occur in the form of unauthorized credit card charges, check fraud, or fake peer-to peer payments. According to the U.S. Department of Justice, 76% of identity theft crimes in 2021 were attributed to the use of existing credit card accounts. [8] Only 7% reported the crimes to the authorities.[9] Only 5% of these victims "knew something about the offender's identity."[10]

Coercion is quite the opposite. Coercion involves the use of violence or the threat of violence to either the victim's property or person to cause the victim "to act or refrain from acting."[11] It can also take the form of threatening to expose a secret. Other forms of coercion include compelling someone to engage in specific sexual acts.[12]

Thus, there are two significant differences between coercion and identity theft.[13] The first is that in the case of identity theft, nearly 95% of the victims have no idea who caused them harm. And, whether an account is opened, or credit is extended fraudulently can be ascertained by information available to the creditor/furnisher and the victim.

In the case of coercion, the alleged bad actor is known and readily identified. In fact, the Petition in its discussion "What is Coerced Debt?" only identifies scenarios where the alleged bad actors are either an "abusive partner," "intimate partner," or the coercion occurs in a "family" or "dating" relationship.

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[6] https://www.usa.gov/identity-theft, archived at https://perma.cc/NJ4X-3BNU .
[7] *Id.*
[8] https://bjs.ojp.gov/document/vit21.pdf, archived at https://perma.cc/9SFP-E3HT .
[9] *Id.,* p. 13.
[10] *Id.,* p. 6.
[11] See *e.g.*, N.Y. Penal Law §§135.60, 135.61, 135.65.
[12] *Id.*
[13] RMAI is aware that identify theft can occur in familial relationships and existing law, including Regulation V, provides protections in those instances. Petitioner does not suggest otherwise.

- "Abusive *partners* utilize different methods to control their victims"[14]
- "99% of women seeking services for *intimate partner* violence have experienced economic abuse"[15]
- "We use the term 'victim of coerced debt' throughout this petition for rulemaking and use the more general term 'survivor' to refer to consumers who have experienced *domestic violence* or another form of *family or dating violence*."[16]
- "Although economic abuse surfaces most in the context of *intimate partner* violence (also termed domestic violence or domestic abuse), it can occur in other coercive and abusive *familial relationships*."[17]
- "Abusive partners destroy a survivor's credit record. . ."[18]
- "In addition to experiencing coerced debt, most survivors will experience reduced income and negative rental history as a result of fleeing an abusive partner."[19]

Thus, as Petitioner explains it, the alleged bad actor is likely a partner, spouse, family member, or date. The alleged bad actor is easily identified. And, in the context of its proposal, the requested rule would identify a person alleged to have engaged in "*domestic violence* or another form of *family or dating violence*."

Petitioner asks for a rule that would allow the family member to be labeled a criminal coercer based solely on a consumer's "self-attestation."[20] In fact, such a rule is needed, the Petitioner states, because law enforcement and courts sometimes find accusations of coercion untenable:

> Interactions with law enforcement may have been difficult or traumatic. Survivors of domestic violence may have attempted to file police reports and *have their reports dismissed*, their credibility questioned, and their safety put at risk. *Survivors of domestic violence may have had similar negative interactions with courts*.[21]

Thus, Petitioner, having determined that the criminal justice system is failed,[22] believes it necessary for furnishers and credit reporting agencies to reject the findings of courts and law

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[14] Petition, p.3 (emphasis added)
[15] *Id.* (emphasis added)
[16] *Id.,* n. 10 (emphasis added)
[17] *Id.,* p 4 (emphasis added)
[18] *Id.*
[19] *Id.,* p. 5.
[20] *Id.*, p. 8.
[21] *Id.* p. 8 (emphasis added).
[22] *Id.,* p. 8, n., 36-39.

enforcement. Instead, a federal ID Theft report should serve as an official record that a person has committed a violent criminal act.[23]

It is not the Bureau's, a credit reporting agency's, or a furnisher's role to determine who has committed a violent act. Petitioner's unsupported assertions concerning law enforcement and the justice system are not a basis for rulemaking. RMAI urges the Bureau to reject the Petition not only as an impermissible expansion of its authority, but because the risk of harm arising from such a rule outweighs any possible benefit.

III. Reponses to Questions

1. *What information exists regarding the prevalence and extent of harms to victims of economic abuse, particularly coerced debt? How does the consumer reporting system, including provisions relating to identity theft, currently contribute to or reduce those harms?*

Numerous studies exist regarding the prevalence and extent of harms to victims of "economic abuse." A 2024 study from New Zealand found 15 percent of "ever-partnered women" experienced economic abuse, "with the most prevalent act 'refused to give money for household expenses. . .'"[24] "Coerced debt," is a category of economic abuse defined as "[a] new form of domestic violence . . . that takes the form of 'nonconsensual, credit-related transactions [made] in a violent relationship.'"[25] These studies identify coerced debt being a "pervasive form of abuse" in a "violent relationship."[26] A 2020 study of 1,823 female callers to the National Domestic Violence Hotline found that 52 percent of respondents reported debt was "generated debt in their name via a coercive or *fraudulent* transaction."[27] It is unclear how many of these debts were created by fraud or coercion.

Current provisions of the Fair Credit Reporting Act and Regulation V would address instances of a "fraudulent transaction."[28]

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[23] *Id.,* p. 8 ("The CFPB should clarify that the FTC ID theft report constitutes an official, valid report filed with an appropriate federal law enforcement agency under the FCRA and is sufficient to prove that a consumer is a victim of identity theft.").
[24] Brooklyn M Mellar, Janet Lynn Fanslow, Pauline J Gulliver, Tracey K D McIntosh, *Economic Abuse by An Intimate Partner and Its Associations with Women's Socioeconomic Status and Mental Health,* Journal of Interpersonal Violence, Vol. 39, Issue 23-24 (Dec. 2024), pp. 4415-4437 available at https://pubmed.ncbi.nlm.nih.gov/39380255/#:~:text=Overall%2C%2015%25%20of%20ever%2D,;%20domestic%20violence;%20violence%20exposure., archived at https://perma.cc/BTD9-WQWC .
[25] NOTES: Pathways to Financial Security: A New Legal Avenue for Survivors of Coerced Debt in California, Michaela Park, 111 Calif. L. Rev. 605, 606 (Apr. 2023).
[26] *Id.,* at 614.
[27] *Id.,* at 615 (emphasis added).
[28] 15 USC § 1681a(q)(3); 12 C.F.R. §§ 222.90 – 222.91.

2. *To what extent do protections under the FCRA or other Federal or State laws exist for victims of economic abuse with respect to consumer reporting information? What barriers exist that may prevent survivors of economic abuse from availing themselves of existing protections?*

As noted above, "economic abuse" is a broad term that includes such things as a domestic partner refusing to provide money for household expenses. We know of no federal law addressing this issue. We understand every state and U.S. Territory provides persons with access to, for example, a family court, domestic relations court, or a juvenile court. These courts of limited jurisdiction address what is widely called "interpersonal violence" among partners and families and other forms of familial abuse, including economic abuse. These courts have the power to order support payments and other injunctive relief, such as debt payments. We know of no barriers to these courts. The Petitioner has not identified any barrier.

Several states have adopted what is commonly known as "coerced debt law."[29] Common among these statutes is that all parties, the alleged victim, the alleged bad actor and the creditor are afforded due process. Ultimately, a court will enter judgment determining the parties' rights and responsibilities. Similar bills have been introduced across the nation.[30]

3. *Does coerced debt reflect the survivor's credit risk independent of the abuser? Why or why not? Is there any data addressing the relevance of coerced debt to the survivor's credit risk independent of the abuser?*

A September 2024 paper from Laura Johnson at Temple University notes that "research on the prevalence of economic abuse within the United States is limited."[31] As we explain above, "economic abuse" is a broader subject matter than "coerced debt," and given Johnson's observations, and our own efforts, we have found little information useful in answering the question. However, in any circumstance where one party assumes a liability for the benefit of another, several factors would be assessed for each party, such as existing liabilities, available credit, past credit performance and income. We know of no data examining these factors in the context of coerced debt. The 2020 study of 1,823 female callers to the National Domestic Violence Hotline we identified in our answer to Question 1, which is also identified in the Petition at note 19, indicates that 46% of callers reported a "damaged" credit report or credit score. The study was careful to note that its findings were based on what was *said* by "callers who took our survey."[32] Credit histories and credit scores were not reviewed by the authors to verify respondents' statements. The study did not define what constituted a "damaged" credit score or credit report.

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[29] See e.g., Cal Civ Code § 1798.97.1, *et seq.*; Conn. Gen. Stat. § 36a-649; MRSA §1310-H, sub-§2-A; Minn. Stat. Ann. § 332.71, et seq.
[30] See e.g., New York A.3038-A (A.M. Rosenthal)/S.1353-A (Sen. Cleare).
[31] https://perma.cc/W97N-QCNX
[32] https://csaj.org/wp-content/uploads/2022/10/CSAJ-CCD_Part-2_Understanding-Coerced-Debt.pdf, archived at https://perma.cc/EVS9-ED2Q, p. 8.

4. *What are the costs and benefits of the proposed amendment outlined by the petition for rulemaking?*

RMAI has continually supported well-crafted coerced debt legislation in the states and will continue to do so. Key to these laws is a recognition that all concerned parties are afforded due process, an opportunity to be heard and to present evidence. We support efforts to punish the significant harms of economic abuse and in particular the practice of coercion and remedies for victims. A finding that sufficient evidence exists that a person has engaged in such heinous, violent practices is not the realm of the Fair Credit Reporting Act. Persons will be identified and those wrongly accused will suffer significant reputational harm. We have observed many allegations of ID Theft that are baseless. Such claims have grown so prevalent that it recently led to one consumer attorney to write:

> We've had clients we filed lawsuits for, and it later came out the account was in fact theirs - meaning they lied to us. In Miami Beach and I think Las Vegas, credit repair firms and police officers were arrested, for collaborating to file false reports. If you go online, you'll hear about "credit sweeps" which are basically the use of police reports and identity theft claims, to remove accounts from credit reports.[33]

Given the availability of courts to make these determinations, we do not support a rule that would allow such information to be made part of the public record absent due process protection. The harm to those wrongly identified of committing a violent crime, either purposefully or by mistake, cannot by quantified.

5. *The petition defines "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." What alternatives to that language should the CFPB consider?*

We reject the definition as too broad and not reflective of the overwhelming consensus that coerced debt is "all non-consensual, credit-related transactions that occur in a *violent* relationship." This definition has been widely adopted ever since it was identified by Professor Angela Littwin in 2012, a subject matter expert cited throughout the Petition.[34]

6. *Comments to the petition identify survivors of intimate partner violence, domestic abuse, and gender-based violence as groups that would benefit from explicit inclusion of*

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https://www.reddit.com/r/CRedit/comments/1fi6mbt/credit_attorney_tip_dont_lie_about_being_a_victim/?utm_source=share&utm_medium=web3x&utm_name=web3xcss&utm_term=1&utm_content=share_button .

34 Angela Littwin, *Coerced Debt: The Role of Consumer Credit in Domestic Violence*, 100 Calif. L. Rev. 951, 954-55 (2012) (surveying professionals who work with victims and survivors of domestic abuse who had been coerced into debt).

coerced debt as a form of identity theft. Commenters noted specific vulnerabilities for older Americans, children in foster care, and survivors of color.

We have no information responsive to question 6.

7. *Should the CFPB propose the amendments outlined by the petition for rulemaking? What alternatives should the CFPB consider?*

No, the CFPB should ***not*** propose the amendments outlined by the Petition for rulemaking for the many reasons we outlined above. We suggest you follow the advice of Professor Littwin:

> My proposal would allow family courts handling the divorces of abusive marriages to rule on whether alleged coerced debt is, in fact, coerced. The victim could then submit the court's certification to credit reporting agencies (CRAs), which would block the reporting of coerced debt to the extent that this would not unduly harm future creditors. The family court's decision would not affect a domestic violence victim's underlying liability for the coerced debt, but it would enable her to move forward with a credit report that better reflected her risk profile.[35]

Please let us know if you have questions or if we can be of any assistance.

Sincerely,

Michael Becker

Michael E. Becker
Executive Director
Receivables Management Association International

cc: RMAI Board of Directors

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[35] Littwin, *supra,* at 365-366.