

February 20, 2024

United States Department of the Treasury
Office of Consumer Policy
1500 Pennsylvania Avenue NW
Washington, D.C. 20220

Re: Request for Information on Financial Inclusion

The National Consumer Law Center (“NCLC”), on behalf of our low-income clients, is pleased to respond to the Department of the Treasury’s (“Treasury” or the “Department”) Request for Information (“RFI”) on developing a national strategy for financial inclusion.¹

These comments begin with a cautionary discussion on the use of alternative data in credit reporting and continue with a discussion of challenges that generate or exacerbate exclusion from our financial system more generally. Finally, given the Department’s particular interest in the needs of underserved communities, our comments highlight factors that render specific vulnerable groups of consumers susceptible to exclusion from our financial system and limitations that may result in barriers to participating in our mainstream system. The groups we highlight are immigrants and consumers with limited English proficiency (“LEP”), domestic violence survivors, and justice-involved people.

In our view, financial inclusion is about the degree to which our system is positioned to accept traditionally underserved or marginalized consumers and communities, in a manner that meets their needs, without extracting resources from them in a predatory manner. These underserved communities must have access to platforms that enable them to participate in our economy, for example, access to bank accounts, while simultaneously ensuring that the financial services and products offered to these communities are appropriate, affordable, and do not result in harms that lead to exclusion. While financial inclusion is a worthwhile objective, it may have few benefits if low-income consumers do not have the means to provide for themselves or their families. In other words, financial inclusion does not necessarily equate to financial wellbeing. Thus, policies that seek to promote financial inclusion must also be pursued in conjunction with policies that support wellness, as a bank account is of little use to a consumer if it is empty.

While these comments seek to address several ways underserved communities— and low-income consumers more generally— experience *exclusion* from our financial system, these comments are not intended to be an exhaustive list of the communities that are disenfranchised by our system, the barriers they face, or the solutions to these problems. Nor do the policy solutions proffered address every aspect of financial wellness.

¹ The Request for Information is posted at <https://www.regulations.gov/document/TREAS-DO-2023-0014-0001>, and published at 88 Fed. Reg. 88702 (Dec. 22, 2023). These comments were written by NCLC attorneys Ariel Nelson, Caroline Cohn, Carla Sanchez-Adams, Chi Chi Wu, and Nicole Cabañez, with editorial oversight by NCLC Associate Director Lauren Saunders.

We recommend the Treasury Department, in collaboration with other federal agencies, take specific actions to ensure the financial inclusion of underserved consumers in our consumer financial markets. To this end, Treasury should work with and encourage relevant agencies to:

- Ensure that overly broad and discriminatory bank policies do not bar access to bank accounts and affordable credit by:
 - Reviewing bank customer identification protocols, investigating the reasons behind denials at the deposit account opening stage, and making their findings public whenever possible.
 - Specifically, the agencies should determine whether and how criminal background check reports and/or algorithms are used to (1) assess and manage credit risk, (2) assess and manage risk of fraud, (3) decide whether to give a prospective client an account, and (4) determine whether to close an existing client's account.
 - Investigating the reasons that deposit accounts are closed or frozen and develop a strategy to minimize the number of account closures for innocent consumers.
 - Bringing enforcement actions for failure to provide adverse action notices and for discrimination under any applicable law, such as the Fair Credit Reporting Act ("FCRA") and Equal Credit Opportunity Act.
 - Clarifying that an account closure or freeze that prevents an electronic fund transfer constitutes an error under the Electronic Funds Transfer Act, entitling consumers to invoke error resolution requirements.
 - Clarifying the distinction between unauthorized immigrants living in the United States and non-U.S. persons living abroad in the Federal Financial Institutions Examination Council Bank Secrecy Act/Anti-Money Laundering ("BSA/AML") examination manual and warning regulated entities that BSA/AML compliance is not a justification for unlawful discrimination.
 - Promulgating guidance clarifying the extent to which municipal IDs and prison IDs may meet the minimum identification requirements set out under the implementing regulations under the BSA and provide guidelines or standards for local governments and correctional facilities to follow when developing their ID programs.
 - Encouraging and supporting correctional facilities in helping people obtain official picture identification prior to leaving incarceration.
 - Clarifying and encouraging banks and lenders to permit applicants to provide non-traditional addresses, such as addresses of temporary group residences, homeless shelters, domestic violence shelters, and correctional facilities.
 - Clarifying that financial institutions may not maintain blanket policies and practices that bar people with any kind of criminal record from having an account. There must be reliable evidence that the specific policy or practice actually assists in preventing fraud and complying with other legal obligations.
- Ensure that Individual Taxpayer Identification Number ("ITIN") holders are not unnecessarily excluded from our credit markets by:

- Investigating the Big Three credit bureaus' (TransUnion, Equifax, and Experian) matching policies for consumers without Social Security Numbers ("SSNs") and making the findings public whenever possible.
 - Encouraging the Big Three credit bureaus to modernize their systems for fielding requests for file disclosures from ITIN holders, including adapting the centralized source to accept ITINs in the same field as SSNs.
 - Requiring the Big Three credit bureaus to more accurately respond to requests for a credit report by stating definitively if the consumer has no credit file or if the consumer has not provided sufficient information to prove their identity.
- Ensure that financial institutions are required to provide language assistance to consumers with limited English proficiency.
- Encourage financial institutions to develop policies addressing the specific safety concerns raised by domestic violence survivors regarding account closures – especially when one joint account holder seeks to be removed from an account or close an account without the consent of the joint account holder because of fear of stalking, violence, or further abuse.
 - These policies can include training to staff and personnel on how to assist domestic violence survivors in a manner similar to the training provided to staff in assisting elderly customers who may be subject to financial abuse and exploitation.
- Encourage the Consumer Financial Protection Bureau ("CFPB") to consider rulemaking under the FCRA to provide relief for domestic violence survivors similar to the relief provided by the Debt Bondage Repair Act. One way the CFPB can undertake this task is by using its authority under the FCRA to define identity theft and identity theft report under the act to include coerced debt.
- Ensure that currently incarcerated people can access consumer-facing materials that explain rights and remedies, file complaints with federal agencies, and more easily manage their finances.
 - This could include creating a webpage compiling resources from relevant federal agencies that are useful to justice-involved people.
- Protect the Earned Income Tax Credit (EITC) and Child Tax Credit (CTC) from offset to collect federal criminal court debt by:
 - Including recommendations to protect the EITC and CTC from offset in the Administration's FY 2025 request to Congress (the Greenbook);
 - Directing the IRS to make maximum use of its existing authority to waive offsets;
 - Updating IRS systems to make it easier to identify tax credits that should be protected in refunds; and

- Providing data to allow policymakers and the public to better understand the scope of EITC and CTC offset and how it is used to collect federal criminal court debt.

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I. A Prefatory Word on Alternative Data in Credit Reporting

One of the most discussed issues within the public discourse on enhancing financial inclusion for underserved consumers is the supposed need to help consumers who are “credit invisible.” These are consumers who do not have a credit history with the “Big Three” credit bureaus, *i.e.*, Equifax, Experian, and TransUnion, or their histories are too scant or old (“thin”) to generate a credit score. In 2015, 26 million Americans (or about 1 in 10) did not have a credit history, and another 18 million were unscorable.² In terms of racial disparities, about 15 percent of Black and Latino consumers have no credit history compared to 9 percent of white consumers; another 13 percent of Blacks and 12 percent of Latinos consumers are unscorable compared to 7 percent of white consumers.³

However, having a credit score is not an end in itself, and can generate its own problems, not only in terms of predatory credit offers, but also due to the myriad of ways credit scores are used. Another, perhaps more complex, side of this financial inclusion problem is the racial credit score gap. When Black and Latino consumers do have credit scores, the scores reflect dramatic and troubling disparities by race. A 2019 study by the Urban Institute found that over 50 percent of white households have credit scores over 700, but only 20 percent of Black households do.⁴ A multitude of older studies show similar results, while the Urban Institute’s Debt in America map consistently shows racial disparities in debts in collection, which translate into lower scores.⁵ The racial disparities in credit scores are due to deep structural factors, including the racial wealth gap,⁶ decades of redlining and housing segregation,⁷ historical and present-day employment discrimination,⁸ and racially biased criminal justice practices.⁹ Put simply, the data inputs in our credit scoring system are also stratified by race.

² Consumer Fin. Prot. Bureau, Data Points: Credit Invisibles, 6 (May 2015), https://files.consumerfinance.gov/f/201505_cfpb_data-point-credit-invisibles.pdf

³ *Id.*

⁴ Jung Hyun Choi, et al., Explaining the Black-White Homeownership Gap: A Closer Look at Disparities across Local Markets, Urban Inst., 8 (Nov. 2019), <https://www.urban.org/research/publication/explaining-black-white-homeownership-gap-closer-look-disparities-across-local-markets>.

⁵ Urban Inst., Debt in America: An Interactive Map, <https://apps.urban.org/features/debt-interactive-map/?type=overall&variable=totcoll> (last visited Feb. 20, 2024) (22% of white communities have debts in collection versus 35% in communities of color). These racial disparities show up consistently when data is examined from individual states and localities.

⁶ Aditya Aladangady, Andrew C. Chang, and Jacob Krimmel, Greater Wealth, Greater Uncertainty: Changes in Racial Inequality in the Survey of Consumer Finances, <https://www.federalreserve.gov/econres/notes/feds-notes/greater-wealth-greater-uncertainty-changes-in-racial-inequality-in-the-survey-of-consumer-finances-20231018.html> (“The typical White family had about six times as much wealth as the typical Black family, and five times as much as the typical Hispanic family”) (last visited Feb. 20, 2024).

⁷ Ricard Rothstein, *The Color of Law: A Forgotten History of How Our Government Segregated America* (2017)

⁸ Christian E. Weller, African Americans Face Systematic Obstacles to Getting Good Jobs, Center for American Progress, <https://www.americanprogress.org/article/african-americans-face-systematic-obstacles-getting-good-jobs/> (last visited Feb. 20, 2024).

⁹ Radley Balko, There’s overwhelming evidence that the criminal justice system is racist. Here’s the proof, Wash. Post (June 10, 2020) <https://www.washingtonpost.com/graphics/2020/opinions/systemic-racism-police-evidence-criminal-justice-system/>.

“Alternative data” is often promoted as a solution to credit invisibility, the racial credit score gap, and a means of providing financial inclusion. However, while alternative data can sometimes be helpful to some consumers, it can also be extremely harmful to other consumers dealing with the consequences of living in financial precarity. The benefit versus harm depends on the type of data, how it is supplied, and how it is used.

A. Alternative Data: Definition and Types

The Consumer Financial Protection Bureau (“CFPB”) has defined alternative data as information not in the traditional credit reports provided by the Big Three credit bureaus.¹⁰ This can encompass a wide variety of data, ranging from relatively conventional information (e.g., rent and utility payments; bank account transactions) to “Big Data” (e.g., web browsing, social media, educational background). We focus on conventional alternative data in this discussion, particularly rent, utility, and bank account data.

Each type of alternative comes with its own set of risks. As with so many aspects of credit and financial services, “the devil is in the details.”

1. Rent Payment Data

Rent payment data is one of the most aggressively promoted forms of alternative data, including by industry, government agencies, nonprofits, academics and the credit bureaus.¹¹ However, adding rent payment data to credit reports carries great risks for vulnerable tenants, because 90% of landlords use credit information in tenant screening.¹² Rent reporting should be limited to only positive payment information because programs that report negative or “full file” information have the potential to literally make struggling renters homeless.

A consumer lawyer providing pro bono services at a homeless shelter sent NCLC a troubling example of the potentially devastating consequences from full-file rent reporting with negative information:

I was shocked to find out that most of the problems had to do with credit reporting – right down my alley. Of the 10 or so folks I’ve met with so far, at least 6 were living in the shelter solely because a rent-related credit reporting issue had shut them out of the housing market. These are folks with enough income to pay market, non-subsidized rent, but were nevertheless forced to move their families into a homeless shelter simply because their credit history disqualified them from renting. And, it’s not a credit score

¹⁰ Consumer Fin. Prot. Bureau, Request for Information Regarding Use of Alternative Data and Modeling Techniques in the Credit Process, 82 Fed. Reg. 11,184 (Feb. 21, 2017) (defining alternative data as information not typically found in consumer’s credit files at nationwide CRAs).

¹¹ See NCLC, Even the Catch-22s Come With Catch-22s: Potential Harms & Drawbacks of Rent Reporting, (Oct. 2022), <https://www.nclc.org/resources/even-the-catch-22s-come-with-catch-22s-potential-harms-drawbacks-of-rent-reporting/>

¹² Transunion SmartMove, TransUnion Independent Landlord Survey Insights, <https://www.mysmartmove.com/SmartMove/blog/landlord-rental-market-survey-insights-infographic.page> (last visited Feb. 20, 2024).

problem. Folks with decent credit scores were automatically disqualified because of a past rent delinquency (even a single 30-day late). ... I'm keenly aware of the outsized role credit reporting can play in keeping folks in difficult financial situations in general, but I was shocked to see a direct connection to something as extreme as homelessness.¹³

Negative rent reporting has also been used by landlords as a cudgel against renters who exercise their statutory rights. In Harlem, New York, Guardian Realty used rent reporting to retaliate against tenants who withhold rent because of terrible conditions in their buildings, including broken elevators, rats running through the walls, and frequent shutoffs of heat and hot water.¹⁴ One tenant described how, when Guardian Realty began rent reporting “my credit took a huge hit” and that the practice “ensures it squashes out everyone [from rent withholding] except for the extremists...”¹⁵ The journalist who reported the story believed it was “a savvy way to basically soft blacklist tenants from getting apartments.”¹⁶

The weaponization of rent reporting is especially problematic in places like New York, because it circumvents protections against eviction or displacement when tenants complain about sanitary code violations or exercise their housing rights.¹⁷ Legal services attorneys expressed concerns that rent reporting would have “a chilling effect on people’s willingness to withhold rent,” which is harmful when exercising this legal right is the only way a tenant can get a landlord to make necessary repairs.¹⁸

The potential harms of rent reporting are further illustrated by the COVID-19 pandemic, when the federal, state, and local governments instituted eviction moratoria to address the public health crisis and economic disruption. At various times during the pandemic, between six million to thirteen million households were behind in rent.¹⁹ These were disproportionately renters of color; for example, in September 2020, about 1 in 4 Black and Asian renters and 1 in 5 Latino renters said they were not caught up on rent, compared to just 1 in 9 white renters.²⁰ The Urban Institute

¹³ Email from Kenneth Riemer to Chi Chi Wu. April 7, 2022, on file with authors.

¹⁴ Clio Chang, Landlords Are Tanking Their Tenants’ Credit Scores, Curbed (Nov. 30, 2023) <https://www.curbed.com/2023/11/landlords-credit-bureau-tenants-bad-credit-score.html>.

¹⁵ *Id.*

¹⁶ Amy Scott and Sofia Terenzio, Rent reporting is affecting tenants’ credit scores, NPR Marketplace, (Jan. 1, 2024), <https://www.marketplace.org/2024/01/01/rent-reporting-is-affecting-tenants-credit-scores/>.

¹⁷ New York Real Property Law, § 223-b.

¹⁸ Clio Chang, Landlords Are Tanking Their Tenants’ Credit Scores, Curbed, (Nov. 30, 2023), <https://www.curbed.com/2023/11/landlords-credit-bureau-tenants-bad-credit-score.html>.

¹⁹ Sarah Treuhaft, et al., National Equity Atlas, Rent Debt in America: Stabilizing Renters Is Key to Equitable Recovery, <https://nationalequityatlas.org/rent-debt-in-america> (last visited Feb. 20, 2024) (“Rent debt remains at crisis levels: nearly 6 million households are behind on rent”); Joseph Llobrera, et al., New Data: Millions Struggling to Eat and Pay Rent, Center for Budget and Policy Priorities, <https://www.cbpp.org/research/poverty-and-inequality/new-data-millions-struggling-to-eat-and-pay-rent> (last visited Feb. 20, 2024) (“One in 6 adult renters — or 17 percent — reported that they lived in a household that was not caught up on rent. That translates to roughly 13 million renters”)

²⁰ *Id.*

found even starker statistics, i.e., that 45% of Black renters missed or were late on at least one rent payment during a one-year period.²¹

With full-file rent reporting, these millions of tenants who missed rent payments would have negative information on their credit reports, which could literally keep them from obtaining shelter for their families. While financial inclusion is important, helping some consumers become credit visible or get a better score should not be at the expense of risking homelessness for financially vulnerable tenants and their families.

Finally rent payment reporting should always be with the consumer's active permission – it should be opt-in only. Not only should consumers always have control over whether their data is shared, renters often need to pay for rent reporting and thus should have a choice regarding this added expense.

2. Utility payments

Consumer advocates have consistently opposed efforts to promote “full file” monthly reporting of gas and electric bill payment data to the Big Three credit bureaus, unless such efforts are voluntary for consumers.²² Such efforts have the potential to harm low-income consumers by adding reports about payments that are only 30 or 60 days late. The impact could be especially harsh on families who need time to pay off winter or summer bill spikes. Reporting of late payments could also undermine state consumer protections, such as prohibitions against wintertime shut offs for elderly or other vulnerable consumers, by compelling them to immediately pay seasonally high bills at the expense of other necessities.

Like rent payments, racial disparities exist in utility payment data. As an NCLC report details:

African American and Latinx households are far more likely to experience a loss of heating or cooling due to an inability to pay bills and COVID-19 has only widened this gap. Survey data from Indiana University shows that low-income Black households are sent utility disconnection notices at two times the rate and have their electricity disconnected at five times the rate compared to low-income white households. Hispanic households receive notices at five times the rate and lost electricity at eight times the rate.²³

²¹ Jung Hyun Choi, Reducing the Black-White Homeownership Gap through Underwriting Innovations, Urban Inst., (Oct. 2022), at 9, <https://www.urban.org/sites/default/files/2022-10/Reducing%20the%20Black-White%20Homeownership%20Gap%20through%20Underwriting%20Innovations.pdf#page%3D15>

²² NCLC, Full Utility Credit Reporting: Risks to Low Income Consumers, (Dec. 2009), https://filearchive.nclc.org/credit_reports/credit_reports_full_utility_dec2009.pdf

²³ NCLC, Report: More Must Be Done to Prevent Utility Consumers from Losing Service Due to COVID-Driven Arrearages, 10 (Nov. 2021) https://www.nclc.org/wp-content/uploads/2022/10/Rpt_More_Covid_Util_Arrearage_Svc.pdf

3. Bank Account Transaction & Cashflow Data

Bank account transaction and cashflow information holds great promise as a form of alternative data. Research has shown that this data has the potential to help borrowers of color who might otherwise face constraints on their ability to access credit.²⁴

However, bank account transaction data can also be very sensitive and revealing and thus needs strong consumer protections. The data might show when the consumer gets paid, where they shop, what advocacy organizations they support, or which healthcare providers they use. The CFPB has proposed strong protections when bank account data is shared with a consumer's permission pursuant to Section 1033 of the Dodd-Frank Act.²⁵ These protections include:

- bank account data should only be used for the purpose for which the consumer granted permission;
- the user of the data should only obtain as much data as necessary for the permissioned use, i.e., a data minimization standard; and
- the user must be prohibited from engaging in secondary use of the data, i.e. the data can only be used for the reason that the consumer gave permission. The latter prohibition prevents the sale of the data or its use for cross-marketing.²⁶

Yet these Section 1033 protections, if finalized, would only apply when bank account data is shared pursuant to the consumer's permission. The primary statutory protection that prevents a bank from selling this data without a consumer's permission is the Gramm Leach Bliley Act, which is a much less protective statute because it only allows the consumer to opt out of some, but not all, secondary uses.²⁷

Finally, for purposes of financial inclusion, bank account data will almost certainly exhibit disparities by race. Black and Latino consumers are disproportionately unbanked – 11.3 percent of Black households and 9.3 of Latino households were unbanked compared to 2.1 percent of white households.²⁸ Being unbanked, of course, excludes consumers from the possibility of using cashflow data.

A key factor likely to be used by cashflow scoring models is overdrafts, and consumers of color are disproportionately affected by bank overdraft practices. As compared with white consumers, Black consumers are 69 percent more likely and Latino consumers are 60 percent more likely to

²⁴ FinRegLab, The Use of Cash-Flow Data in Underwriting Credit (July 2019) https://finreglab.org/wp-content/uploads/2019/07/FRL_Research-Report_Final.pdf

²⁵ CFPB, Required Rulemaking on Personal Financial Data Rights, 88 Fed. Reg. 74796 (Oct. 31, 2023).

²⁶ Proposed 12 C.F.R. § 1033.421(a)

²⁷ 15 U.S.C. § 6802(b). See generally, National Consumer Law Center, Fair Credit Reporting § 18.4.1.14 (10th ed. 2022), updated at www.nclc.org/library.

²⁸ Fed. Deposit Ins. Corp., 2021 FDIC National Survey of Unbanked and Underbanked Households, 2 (July 24, 2023), (Table ES.2) <https://www.fdic.gov/analysis/household-survey/2021report.pdf>

reside in a household charged at least one overdraft or NSF fee in the past year.²⁹ The CFPB has proposed reforms to lower the cost of overdraft fees unless banks comply with the protections of the Truth in Lending Act. If finalized, the rule will hopefully reduce the incentive to engage in abusive practices to increase overdraft fees and result in few overdrafts.³⁰

B. Alternative Data Has its Limits in Promoting Financial Inclusion and Reducing Racial Disparities

Alternative data will likely only have limited impact on promoting financial inclusion for the most vulnerable consumers. Low- and moderate-income (LMI) consumers deal with a host of financial struggles and challenges that prevent their economic advancement, such as insufficient and unstable incomes; little or no assets; unaffordable and ever-increasing rents; high childcare costs; burdensome medical and prescription costs; and more. These struggles to obtain financial wellbeing must all be addressed before LMI consumers are truly “included.”

The limits of alternative data are illustrated by a Government Accountability Office (GAO) study examining the impact of alternative data in qualifying more consumers for mortgages. The GAO noted that while alternative data could “improve or generate scores for [credit invisible or low scoring] consumers, it is unclear whether the increases would be sufficient to qualify many additional consumers for lower-cost mortgages.”³¹ The GAO also noted that nearly half (48 percent) of unscorable consumers were under 24 or over 65 years old, which the GAO characterized as “age groups less likely than most to be seeking mortgage credit.”³²

As for racial disparities in credit scores, alternative data will not eliminate them, and it is not a panacea for credit inequities. Any data that relies on financial information will still reflect racial disparities given the unequal economic positions of households of color and white households. To combat such disparities, credit scoring models need to be refined and improved with intentionality. Intentionality is key—the income disparities and wealth gaps reflected by credit scores are the product of centuries of intentional discrimination. They cannot and will not be reduced or resolved without the same level of intentionality. Without intentionality, feeding financially-based data with racial disparities into algorithms or machine learning models will instead replicate or amplify those disparities.

Most critically, there must be efforts to reduce the racial disparities in the underlying factors that create the divide in credit scores and other financial data— i.e., reducing the racial wealth gap, combatting housing segregation, preventing employment discrimination, and implementing

²⁹ Consumer Fin. Prot. Bureau, Overdraft and Nonsufficient Fund Fees: Insights from the Making Ends Meet Survey and Consumer Credit Panel, 25 (Dec. 2023)

https://files.consumerfinance.gov/f/documents/cfpb_overdraft-nsf-report_2023-12.pdf.

³⁰ Consumer Fin. Prot. Bureau, Overdraft Lending: Very Large Financial Institutions, (Jan. 17, 2024)

<https://www.consumerfinance.gov/rules-policy/rules-under-development/overdraft-lending-very-large-financial-institutions-proposed-rule/#:~:text=The%20Consumer%20Financial%20Protection%20Bureau,of%20similarly%20situated%20products%2C%20unless>.

³¹ Gov’t Accountability Off., Mortgage Lending: Use of Alternative Data Is Limited but Has Potential Benefits, 14 (Nov. 2021), <https://www.gao.gov/assets/gao-22-104380.pdf>.

³² *Id.*

criminal legal system reforms. The experience during the COVID-19 pandemic is instructive. With two stimulus payments and expanded federal unemployment benefits, credit scores stayed stable and even went up for some consumers.³³ The lesson is simple: if consumers have more financial resources, they can better pay their bills and their scores go up. Racism and its legacy drain precious resources from communities of color, which is directly reflected in credit scores and other financial data.

C. Keeping Alternative Data out of the Main Credit Reporting Files Is Best

In addition to the type of alternative data used in reporting and scoring, the manner in which alternative data is used is important. Attempts to address credit invisibility must take measures to avoid creating poor credit records instead. Credit invisibility is often temporary, especially for young consumers or immigrants, and starting off credit records with alternative data might do more harm than good. Some people may deliberately avoid using credit and others, such as older consumers, may no longer need or use credit.

For certain uses of credit history, such as employment and insurance, no history is better than a bad one. A negative credit report or low score could harm job prospects or increase insurance rates, whereas no credit history could be considered neutral.

Consumer choice is another critical consideration in how alternative data is used. The use of alternative data should be entirely voluntary—that is, consumers should have the right to make knowing and voluntary decisions to allow the collection and use of the data. It is much more likely to be helpful than harmful if consumers are allowed the choice.

Using alternative data to create special scores for otherwise unscorable consumers is preferable to the wholesale addition of the same data to traditional credit reports, where it might damage consumers who already have credit scores. A “second chance” score can give credit invisible consumers another shot to be seen, without potentially hurting some of the nearly 200 million consumers who do have a scorable credit history. This is one reason the use of bank account cash flow information is the most promising form of alternative data, because it does not necessarily involve the credit bureaus.

Despite the preferability of using alternative data outside of traditional credit reports, most efforts have focused on including alternative data in traditional credit reports to further financial inclusion due to heavy emphasis by both the Big Three credit bureaus³⁴ and organizations focused on credit building. The credit bureaus of course favor including the data in traditional credit reports because it provides them with significant new sources and amounts of data, which is the commodity they sell. One of the biggest criticisms of the credit bureaus is that they constitute an oligopoly, indeed a functional monopoly, because consumers cannot choose between them or

³³ NCLC, The Credit Score Pandemic Paradox and Credit Invisibility, (Feb. 2021), https://www.nclc.org/wp-content/uploads/2022/10/IB_Pandemic_Paradox_Credit_Invisibility.pdf

³⁴ For example, in a May 2021 Congressional hearing, the President of TransUnion Consumer Interactive touted the formation of that company’s Racial Equity Task Force and emphasized how “alternative data is critical for credit inclusion.”

walk away from them altogether. Including alternative data in credit reports has the effect of increasing their oligopoly power.

II. Challenges That Feed into Systemic Exclusion from Our Financial System

It is a widely held belief that participation in the U.S. financial system often begins with access to a bank account. However, financial institutions have broad discretion in setting risk tolerances for who they choose to allow as customers. This broad discretion often translates into policies that negatively impact the very consumers who are seeking entrance into the financial system.

A. Blunt-Fisted, Opaque Identification Requirements Exclude Vulnerable Consumers from Our Banking System and Allow for Discrimination

Financial institutions do not generally publicize which forms of identification they will accept from consumers when reviewing an application for a demand deposit account. This uncertainty means underserved consumers have no sense of whether they will be successful in opening an account.

Additionally, consumers are not often told why the financial institution denied a request to open a demand deposit account.³⁵ This generates an impression among consumers that they are not allowed to engage in our system because of some intrinsic quality around their situation, when it could ultimately be caused by the use of discretion among individual branch employees, a consumer report such as ChexSystems, or a regional or national bank policy. Regardless of the reason, being denied access to financial services can be embarrassing, especially when the denial occurs in person. One negative interaction with our financial system can influence the way a consumer will interact with the system for years to come. The industry opacity is unjustified given the stakes.

The excuse most often cited by the financial industry for this lack of transparency— and their unwillingness to accept certain alternative forms of ID for underserved consumers— is that they must comply with the Bank Secrecy Act (BSA). Among other requirements imposed by the BSA, financial institutions must implement a Customer Identification Program (CIP) to verify the identity of an applicant.

However, federal regulations implementing the BSA openly permit banks to use a wide range of identification methods to open accounts for their customers and to implement their CIP. At its core, the CIP must explain the bank's procedures for opening an account, including stating what identifying information will be obtained from each customer and how the bank will verify their customers' identities through both documentary and non-documentary methods.³⁶

³⁵ Because a demand deposit account does not meet the definition of credit under the Equal Credit Opportunity Act, no adverse notice is required to be provided to the applicant/consumer. However, if a financial institution relied on a consumer report from ChexSystems, for example, it should provide the consumer with an adverse action notice under the Fair Credit Reporting Act.

³⁶ 31 C.F.R. § 1020.220(a)(2)(ii).

A financial institution has broad discretion in what policies it adopts in its CIP. The only requirements BSA regulations impose are that a financial institution must obtain, at a minimum, the following information from a customer prior to opening an account:

- (1) Name;
- (2) Date of birth, for an individual;
- (3) Address; and
- (4) an Identification number, which must be a taxpayer identification number for “U.S. persons” or one or more of several options for non-U.S. persons, including an Individual Tax Identification Number issued by the IRS, a passport number and country of issuance, an alien identification card number, or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.³⁷

While the identifying information listed above is required for account opening, there is an additional requirement that financial institutions employ “risk-based procedures” for verifying the identity of each customer to the extent “reasonable and practicable,” and within a reasonable time after the account is opened.³⁸ These procedures must enable the financial institution to form a reasonable belief that it knows the true identity of each customer, and the procedures must be “based on the bank’s assessment of the relevant risks, including those presented by the various types of accounts maintained by the bank, the various methods of opening accounts provided by the bank, the various types of identifying information available, and the bank’s size, location, and customer base.”³⁹

It is the requirement to utilize “risk-based” procedures consistent with the bank’s level of risk tolerance that gives banks broad discretion in choosing who they bank. The “risk-based” procedures are often utilized as a shield for obfuscating account-opening policies. Without transparency into these policies, banks may ultimately engage in discriminatory practices, utilizing overly simplistic policies that exclude immigrants, domestic violence survivors, formerly incarcerated people and unhoused individuals who may lack access to various forms of government-issued identification.

More clarity is needed in the guidance federal regulators provide to financial institutions. For example, local advocates in New York City, along with the New York Bankers Association, wrote to the federal financial regulators in 2015, asking if the then-emerging municipal ID for the City of New York would meet the minimum standards for verifying identity at account opening.⁴⁰ The regulators’ response did clarify that accepting the city’s ID would not contradict the minimum

³⁷ 31 C.F.R. § 1020.220(a)(2)(i)(A)(1)-(4).

³⁸ 31 C.F.R. § 1020.220(a)(2).

³⁹ 31 C.F.R. § 1020.220(a)(2)

⁴⁰ Michael Corkery & Jessica Silver-Greenberg, Banks Reject New York City IDs, Leaving ‘Unbanked’ on Sidelines, NY Times, (Dec. 23, 2015), <https://www.nytimes.com/2015/12/24/business/dealbook/banks-reject-new-york-city-ids-leaving-unbanked-on-sidelines.html?login=smartlock&auth=login-smartlock>

standards in the regulations. But the regulators left the ultimate decision of whether to accept the municipal ID up to individual banks, writing that each institution “may determine that more information than the ID Card is necessary”⁴¹ to satisfy their duties under this regulatory regime. Since 2015, other cities have implemented their own municipal ID programs, yet banks still have no uniform practice of publicly displaying which municipal ID programs meet the requirements for their internal protocols, leaving consumers in the dark.

We later discuss our recommendations to reduce the impact of these identification barriers for the specific communities we highlight in these comments. But in general, the Department of Treasury should consider implementing more detailed guidelines on how banks should exercise their discretion to ensure that they meet the obligations of the Bank Secrecy Act while also not excluding consumers from our banking system. These guidelines should emphasize the importance of transparency in account opening requirements, particularly for underserved consumers that may experience barriers to obtaining traditional forms of ID; provide guidance for local governments on developing municipal ID programs; and explicitly name forms of ID that may be used as primary and secondary ID for individuals unlikely to have access to state-issued ID. Similarly, the regulators should specify that there is likely a corresponding risk of unfair, deceptive, or abusive practices associated with discriminating against consumers on the basis of race or national origin, and that a denial of a bank account that relies, at least in part, on information obtained within a consumer report triggers adverse action notice requirements under the Fair Credit Reporting Act.⁴²

B. Bank Account Closures and Freezes

Recently, many consumers have raised concerns about bank account closures and/or freezes that seem to occur without any sudden change of behavior by the consumer. Consumers report frustration and uncertainty tied to account closures and freezes— primarily the lack of information as to why the closure or freeze occurred and the inability to access funds in a timely manner.

The number of consumers who have complained about checking and savings account closures to the CFPB more than doubled since 2017,⁴³ and in 2022 the CFPB ordered Wells Fargo to pay \$160 million to over one million people for improperly freezing or closing bank accounts from

⁴¹ Id.

⁴² 15 U.S.C. § 1681m(a).

⁴³ Consumer Fin. Prot. Bureau, Consumer Complaint Database, trends data for complaints received due to checking or savings account closure, https://www.consumerfinance.gov/data-research/consumer-complaints/search/?chartType=line&dateInterval=Month&dateRange=All&date_received_max=2024-01-27&date_received_min=2011-12-01&has_narrative=true&issue=Closing%20an%20account%E2%80%A2Company%20closed%20your%20account&lens=Product&product=Checking%20or%20savings%20account&searchField=all&subLens=subproduct&tab=Trends. (last visited Feb. 20, 2024).

2011 to 2016 when it “believed that a fraudulent deposit had been made into a consumer deposit account based largely on an automated fraud detection system.”⁴⁴

There have been other stories featured by reporters detailing the devastating impact sudden account closures and freezes can have on consumers, especially when they are deprived of access to their funds, are not provided any information about the reason for the institution’s actions, and are not provided an opportunity to address any perceived risk.

Following are a few examples from a New York Times article detailing the responses consumers received after discovering their accounts were either frozen or closed and the attempts to communicate with their financial institutions about it:⁴⁵

- Naafeh Dhillon, 28 from Brooklyn, NY, learned his account had been closed after his debit card and credit card were declined. He was later told by a Chase representative that the “bank’s global security and investigation team had ultimately made the decision. Would the representative transfer him to that department? Nope... Since he wasn’t given a specific reason for the closure, he couldn’t disprove whatever raised suspicions in the first place.”
- Todd Zolecki, 47 of Media, PA, did not have his account closed, but they did lock him out of access to his account. “They said your account has been suspended for further review,” Why? “We can’t tell you that. The only thing we can tell you is it can take up to 60 days for this review.”

One of the reasons for the increase in account closures and freezes has to do with the increased adoption of tools utilized by financial institutions to combat payment fraud and detect suspicious activity, including adoption of artificial intelligence (AI) and machine learning technologies. Fraud vigilance is critical, and new technologies can play an important role. However, these tools may harm innocent consumers if not utilized properly and if institutions do not have clear procedures and timelines in place to restore access to funds that are improperly frozen.

Financial institutions have an obligation under the BSA and accompanying anti-money laundering (AML) regulations to ensure that they maintain and follow internal ongoing customer due diligence (CDD) policies. The CDD policies must allow the institution to understand “the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and [c]onducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information.”⁴⁶

⁴⁴ *In re. Wells Fargo Bank, N.A.*, CFPB No. 2022-CFPB-0011 (Dec. 20, 2022) (consent order), available at https://files.consumerfinance.gov/f/documents/cfpb_wells-fargo-na-2022_consent-order_2022-12.pdf.

⁴⁵ Barnard, Tara Siegel and Lieber, Ron, “Banks Are Closing Customer Accounts, With Little Explanation,” *N.Y. Times* (Apr. 8, 2023), https://www.nytimes.com/2023/04/08/your-money/bank-account-suspicious-activity.html?unlocked_article_code=1.QU0.szRm.kfoZRQdD7-O6&smid=url-share.

⁴⁶ 31 C.F.R. § 1020.210(a)(2)(v);(b)(2)(v).

Because of the CDD obligation and the ongoing problem of payment fraud, sometimes the appropriate response by an institution who suspects its customer is engaging in fraudulent or other illicit activity is to freeze a transaction or close an account that is being used to receive fraudulent funds before the funds are gone and more consumers can be defrauded. But sometimes banks get it wrong, especially when automated tools are used.

According to the Bank Policy Institute, “a sample of the largest banks reviewed approximately 16 million alerts, filed over 640,000 SARs, and received feedback from law enforcement on a median of 4% of those SARs. Ultimately, this means that 90-95% of the individuals that banks report on were likely innocent.”⁴⁷ As these numbers demonstrate, even activity that leads to the filing of a SAR may ultimately not warrant an account freeze or closure.

The impact of sudden account closures in response to potential fraud on innocent consumers cannot be overstated. Often, the most vulnerable people have been denied access to their money, rendering them unable to eat or pay rent. Some impact on innocent individuals may be impossible to avoid, as banks may need to act quickly on imperfect information. But that is why it is imperative to have procedures in place to enable people to dispute account freezes and closures and get their money back as soon as possible.

For example, after Chime embarked on a marketing campaign to convince people to open Chime accounts to receive their stimulus payments, its inadequate identity verification led to a wave of fraud. Chime then froze numerous accounts. But instead of enabling people to quickly prove their identities, some people were left without their money for months on end.⁴⁸

Similarly, Bank of America froze 350,000 unemployment debit cards in California after extensive fraud reports. But the freezes caught many legitimately unemployed workers, and the bank failed to respond in a timely fashion to their complaints.⁴⁹ Months later, after a lawsuit was filed, a judge prohibited the bank from freezing accounts for California unemployment benefits based solely on an automated fraud filter and required it to do a better job of responding when jobless people say their benefits were stolen.⁵⁰ The CFPB also brought an enforcement action against Bank of

⁴⁷ Bank Policy Institute, The Truth About Suspicious Activity Reports, (Sept. 22, 2020) <https://bpi.com/the-truth-about-suspicious-activity-reports/> (citing, Bank Pol’y Inst., Getting to Effectiveness—Report on U.S. Financial Institution Resources Devoted to BSA/AML & Sanctions Compliance, (Oct. 29, 2018) https://bpi.com/wp-content/uploads/2018/10/BPI_AML_Sanctions_Study_vF.pdf.)

⁴⁸ Kessler, Carson, A Banking App Has Been Suddenly Closing Accounts, Sometimes Not Returning Customers’ Money, ProPublica (July 6, 2021), <https://www.propublica.org/article/chime>;

⁴⁹ Bank Of America Freezes EDD Accounts Of Nearly 350,000 Unemployed Californians For Suspected Fraud, KCAL News, (Oct. 29, 2020), available at <https://www.cbsnews.com/losangeles/news/bank-of-americafreezes-edd-accounts-of-nearly-350000-unemployed-californians-for-suspected-fraud/>.

⁵⁰ McGreevy, Patrick, Bank of America must provide more proof of fraud before freezing EDD accounts, court orders, Los Angeles Times (Jun. 1, 2021), <https://www.latimes.com/california/story/2021-06-01/bankof-america-ordered-to-unfreeze-unemployment-benefit-cards-in-california>.

America,⁵¹ and also against U.S. Bank,⁵² for similar conduct in indiscriminately freezing accounts and leaving them frozen for long periods of time. This conduct harmed the most vulnerable consumers – those who had lost their jobs and were relying on unemployment benefits.

Sudden account closures are also common among several communities that we feature in these comments. For instance, immigrants without status and immigrants from specific countries, such as Iran, have reported having their bank accounts closed suddenly after being asked to provide proof of legal residency in the country.⁵³

If people cannot access the money they need based on red flags triggered by automated fraud tracking systems, then they need a timely solution, not another obstacle. Yet that is what occurs; consumers face obstacles upon obstacles. When a consumer complains about an account closure or freeze, the complaint is often not followed by a reasonable investigation by the financial institution that includes a discussion with the consumer or that provides any clear timeline to unfreeze their money. And when the consumers facing these issues have other vulnerabilities discussed later in these comments—such as immigration status or involvement with our justice system—it can have an effect on the ways that entire families and communities interact with our system.

As discussed in the previous section, crude BSA/AML compliance policies can shut consumers out of our banking system. However, with respect to account freezes and closures, the Electronic Funds Transfer Act (“EFTA”) may provide an opportunity for consumers to protect against overly aggressive BSA policies. For example, the EFTA has clear error resolution timelines and procedures, and those should be used when consumers cannot access their funds. If a consumer is unable to make an electronic withdrawal or transfer because of an account closure or freeze based on suspected fraud, that action should be viewed as an error – an incorrect transfer of zero instead of the requested amount – triggering the error resolution rights, duties, timelines, and investigation procedures of the EFTA.

FinCEN and bank regulators should also provide guidance to financial institutions about what information they may and should provide to accountholders regarding freezes and account closures while still complying with the BSA. For example, they could clarify in an FAQ that, while

⁵¹ CFPB, “Federal Regulators Fine Bank of America \$225 Million Over Botched Disbursement of State Unemployment Benefits at Height of Pandemic,” (Press Release) (July 14, 2022), available at <https://www.consumerfinance.gov/about-us/newsroom/federal-regulators-fine-bank-of-america-225-million-overbotched-disbursement-of-state-unemployment-benefits-at-height-of-pandemic/>.

⁵² Consumer Fin. Prot. Bureau, CFPB Orders U.S. Bank to Pay \$21 Million for Illegal Conduct During COVID-19 Pandemic, (Press Release) (Dec. 19, 2023), [https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-us-bankto-pay-21-million-for-illegal-conduct-during-covid-19-pandemic/#:~:text=The%20CFPB%20and%20OCC%20together,411%2DCFPB%20\(2372\)](https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-us-bankto-pay-21-million-for-illegal-conduct-during-covid-19-pandemic/#:~:text=The%20CFPB%20and%20OCC%20together,411%2DCFPB%20(2372).).

⁵³ See, e.g., *Nia v. Bank of America, N.A.*, 603 F.Supp.3d 894, (S.D. Cal. May 18, 2022) (Denying motion to dismiss); Youseff Chouhoud, *Banking While Muslim*, Inst. for Soc. Pol’y and Understanding, 4 (Mar. 14, 2023), <https://www.ispu.org/banking-while-muslim/> (last visited Feb 20, 2024) (finding that one third of Muslims reporting challenges with the banking system had their accounts closed or suspended); Rob Wile, *He’s Been Studying in the U.S. Legally for 7 Years. Bank of America Froze His Account Anyway*, Miami Herald, (Aug. 31, 2018), <https://www.miamiherald.com/news/business/article217095125.html>.

financial institutions are not allowed to disclose that a SAR was filed, they are allowed to disclose that an account was frozen or closed due to suspicious activity and/or describe the specific activities that raised concerns, giving the consumer an opportunity to respond.

As shown by the CFPB's recent enforcement actions and in light of risks of unfair, deceptive, or abusive practices when consumers' funds are held indefinitely, the CFPB and bank regulators should also provide guidance to financial institutions about the importance of having clear procedures to enable consumers to quickly regain access to their funds when they are frozen due to concerns of suspicious activity, and provide guidance as to the timeliness of returning an account holder's funds after account closure.

III. Specific Vulnerable Populations Experience Financial Exclusion

The above sections all apply to the populations we highlight below. However, given the Treasury Department's stated emphasis on the needs of underserved populations, we want to highlight the ways that these barriers, in addition to other socioeconomic factors and unique challenges, influence the ways in which these specific underserved populations experience financial exclusion.

A. Barriers Experienced by Immigrants and Consumers with Limited English Proficiency

The United States has more immigrants than any other country in the world, with roughly fourteen percent of the U.S. population having been born in another country, totaling 47 million people.⁵⁴ The foreign-born experience in the United States varies widely depending on the circumstances that led to their migration— whether they have permanent, temporary, or no status to remain in the country and/or whether they are proficient in English. Despite their diversity, immigrants from all walks of life often face similar obstacles to fully participating in our financial system. In addition to barriers stemming from poverty, immigrants are likely to face barriers in obtaining the documents necessary to open bank accounts; must often build a credit record from scratch; frequently have difficulty receiving their annual file disclosures from the nationwide consumer reporting agencies; and face language barriers when interacting with our financial system.

⁵⁴ Jeffrey Passel & Jens Manuel Krogstad, What we know about unauthorized immigrants living in the U.S., Pew Research Ctr. (Nov. 16, 2023), <https://www.pewresearch.org/short-reads/2023/11/16/what-we-know-about-unauthorized-immigrants-living-in-the-us/>.

1. Immigration Status as a Barrier to Banking Services

Of the foreign born population in the U.S., 10.5 million people are considered “unauthorized,” which the Department of Homeland Security defines as “all foreign-born non-citizens who are not legal residents.”⁵⁵ Not all of these individuals are subject to a heightened risk of immediate removal— many have been awarded temporary protection from removal through programs such as Deferred Action for Childhood Arrivals (DACA), Temporary Protected Status (TPS), or pending asylum cases.⁵⁶ Those individuals that are unauthorized without asylum cases pending or any temporary relief from removal are often among our society’s most vulnerable. In addition to facing a near constant fear of removal, these individuals often experience exploitation and wage theft from their employers⁵⁷ and are more likely to live in poverty.⁵⁸

First, immigrants experience barriers in obtaining banking services because of a lack of identification number. When an individual first moves to the United States, they are unlikely to already have a U.S. government-issued identification number, such as a social security number or an individual tax identification number (ITIN), which is a prerequisite to opening a bank or credit account in the United States.⁵⁹ Given current backlogs in our immigration system, it can take weeks for an immigrant or asylum seeker eligible for a SSN to get their social security cards from the Social Security Administration. However, it can take even longer for consumers ineligible for an SSN to receive an ITIN from the Internal Revenue Service, which requires that a W-7 form for a new ITIN be submitted along with a completed U.S. federal income tax return.⁶⁰ The IRS also has strict identification requirements to qualify for an ITIN, and requires that applicants either mail their original identification documents (or certified copies of documents from the issuing agency) along with their application, or apply for an ITIN in person using an IRS-

⁵⁵ *Id.* See also, Bryan Baker, Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2015–January 2018, Dep’t. of Homeland Sec., (Jan. 2021), https://www.dhs.gov/sites/default/files/publications/immigration-statistics/Pop_Estimate/UnauthImmigrant/unauthorized_immigrant_population_estimates_2015_-_2018.pdf.

⁵⁶ *Id.*

⁵⁷ Michael Felsen & M. Patricia Smith, Wage Theft is a Real National Emergency, National Employment Law Project, <https://www.nelp.org/commentary/wage-theft-real-national-emergency/> (last visited Feb 14, 2024).

⁵⁸ See, e.g., Double Disadvantage: A Profile of Undocumented Women in the United States, Gender Equity Policy Institute 7, (June 2023), <https://thegepi.org/wp-content/uploads/2023/06/GEPI-Double-Disadvantage.pdf>; Jeanne Batalova & Michael Fix, Understanding Poverty Declines Among Immigrants and Their Children in The United States, Migration Policy Institute, (May 2023), https://www.migrationpolicy.org/sites/default/files/publications/mpi-poverty-declines-immigrants-2023_final.pdf; (“Immigrants represented 14 percent of the U.S. population in 2021, but they were 24 percent of those experiencing poverty that year”); Migration Policy Institute, A Profile of Low-Income Immigrants in the United States, (Nov. 2022), https://www.migrationpolicy.org/sites/default/files/publications/mpi_low-income-immigrants-factsheet_final.pdf.

⁵⁹ 31 C.F.R. § 1020.220(a)(2)(i)(A)(1)-(4).

⁶⁰ Internal Revenue Service, How do I apply for an ITIN?, <https://www.irs.gov/individuals/how-do-i-apply-for-an-itin> (last visited Feb. 14, 2024)

authorized Certifying Acceptance Agent (CAA).⁶¹ These delays often result in new arrivals and immigrants without status lacking one of the most fundamental prerequisites to opening bank accounts and building credit in our country.

Second, immigrants without status experience barriers to opening bank accounts and building credit, even if they can obtain an ITIN from the IRS, because the system attributes higher risks to noncitizens. In the banking context, immigrants without status are often treated as “non-U.S. persons,” which the federal financial regulators list as a “risk factor” associated with money laundering and terrorism financing in the Federal Financial Institutions Examination Council (FFIEC) BSA/AML examination manual.⁶² This manual also specifically instructs institutions to consider the forms of identification and the account holder’s home country as “risk factors” when determining the risk profile for a “nonresident alien” account.⁶³ However, this manual does not provide any guidance on the relative risk profiles of nonresidents currently residing in the U.S. without status and with no intent to leave, making no distinction between these individuals and those persons not residing within the U.S. This policy rewards overly aggressive bank policies that exclude immigrants without status, without addressing any corresponding compliance risks associated with discrimination, and may be partly to blame for some of the unnecessary account closures and freezes described above.

Finally, immigrants without status experience barriers to opening a bank account because of problems associated with obtaining a government-issued photo ID. Only sixteen states allow undocumented persons to obtain drivers licenses.⁶⁴ These limitations have led to some municipalities offering their own IDs, yet, as discussed above, many financial institutions will only accept municipal IDs as a secondary form of identification in opening a deposit account.⁶⁵

2. Immigration Status as a Barrier to Building and Obtaining Credit

Generally, immigrants have no credit history when first arriving to the United States, regardless of an individual’s immigration status. As a result, all the difficulties associated with building credit without an existing credit file are particularly salient for new arrivals.⁶⁶ It can also be difficult, if not impossible, to build credit without a Social Security number or an ITIN, which, as previously

⁶¹ *Id.*

⁶² Fed. Fin. Inst. Examination Council, BSA/AML Examination Manual, Risks Associated with Money Laundering and Terrorist Financing, Nonresident Aliens and Foreign Individuals, https://bsaaml.ffiec.gov/docs/manual/09_RisksAssociatedWithMoneyLaunderingAndTerroristFinancing/19.pdf (last visited Feb. 14, 2024).

⁶³ *Id.* at 2.

⁶⁴ United We Dream, Can I Get a Driver’s License if I Am Undocumented?, <https://unitedwedream.org/how-to-obtain-a-drivers-license-if-youre-undocumented/> (last visited Feb. 14, 2024).

⁶⁵ Michael Corkery & Jessica Silver-Greenberg, Banks Reject New York City IDs, Leaving ‘Unbanked’ on Sidelines, N.Y. Times, (Dec. 23, 2015), <https://www.nytimes.com/2015/12/24/business/dealbook/banks-reject-new-york-city-ids-leaving-unbanked-on-sidelines.html?login=smartlock&auth=login-smartlock>

⁶⁶ Consumer Fin. Prot. Bureau, CFPB Data Point: Becoming Credit Visible, 4, (Jun. 2017), https://files.consumerfinance.gov/f/documents/BecomingCreditVisible_Data_Point_Final.pdf

mentioned, can take some time for an immigrant or asylum seeker to obtain. While this barrier to participating in our system can be overcome through credit-builder loans and secured credit cards, it is important for immigrants to have this information reported accurately for those products to be successful in assisting them with building their credit files.

However, immigrants frequently experience challenges with checking their credit reports to verify that they are building a credit history. Consumers with ITINs are unable to request their credit reports through the centralized source that the FCRA requires the nationwide credit bureaus to maintain, despite the fact that an ITIN has the same number of digits as a SSN.⁶⁷ ITIN holders wishing to check their credit reports must go through the lengthy process of requesting their reports via mail with each credit bureau separately.⁶⁸ Each credit bureau may have their own identification requirements to verify consumer identity.

In our experience, many ITIN holders receive vague notices in response to their requests for a credit report. The response letter will say the consumer either does not have a credit file with the credit bureau or they submitted insufficient identification. These are two very different things and a consumer's response hinges on which of these is true— whether they have no file or whether they just cannot access it because they don't have sufficient ID.

We have seen consumers receive this notice even when the consumers use a secured credit card or other credit-building financial product, indicating that they should have a credit file. We also frequently hear of mixed files between family members with ITINs, suggesting that name and address plays an outsized role in matching data to consumer identifying information within the credit bureaus' matching systems. We suspect that both these issues are due to dysfunctional internal systems within the credit bureaus, and an inability for the systems to read ITINs in the same way as SSNs.

Finally, unauthorized immigrants frequently experience exclusion from traditional credit products on account of their immigration status. While the Equal Credit Opportunity Act ("ECOA") prohibits discrimination on the basis of national origin, the regulation implementing the ECOA allows consideration of immigration status so long as it is used to ascertain the creditor's rights and remedies regarding repayment.⁶⁹ Thus, it may be used to determine whether someone is more or less likely to repay an obligation. However, as discussed above, immigrants are not a monolith— even those that fall within the category of "unauthorized" may have some temporary immigration relief that substantially reduces their imminent risk of removal. Yet, in our experience, this nuance is often missing in credit underwriting for consumers with varying immigration

⁶⁷ Annual Credit Report.com, Frequently asked questions, available at <https://www.annualcreditreport.com/generalQuestions.action>, (last visited Feb. 14, 2024) ("We believe your Social Security Number is the most secure number to use, so our site accepts only that number. However, since the ITIN has a similar format, you can use your ITIN if you submit your request to one of the three nationwide consumer credit reporting companies by mail.")

⁶⁸ *Id.*

⁶⁹ 12 C.F.R. § 1002.6(b)(7).

circumstances, often leading to blanket denials for consumers that demonstrate an ability and willingness to repay.⁷⁰

This exclusion often leads to added vulnerability within our financial system, as immigrants without status are often at a heightened risk for predatory financial products because they are often categorically excluded, or perceive themselves to be excluded, from our mainstream financial system. Some of the most common predatory products directly marketed to these populations stem from, and feed on, this exclusion. These products include high-cost ITIN mortgages and small dollar loans,⁷¹ payday loans, and immigration bonds.⁷² These products are a direct result of an opaque market with unclear guidelines for how to serve newcomers.

3. Language Barriers Exacerbate Exclusion

Immigrants who manage to overcome the structural barriers identified above must still navigate a system that is ill-equipped to serve their most basic language needs. Many financial providers do not have a system to obtain, or maintain, information about their consumers' language preference, which makes it difficult for consumers to access any language services their provider might offer.

This inconsistency and lack of transparency forces consumers to rely on others, such as children and other family members or friends, to translate highly technical documents involving personal and sensitive information.⁷³ This game of telephone often leads to greater confusion and misunderstanding among LEP consumers, to say nothing of breached privacy, which can have dire consequences for families when they encounter financial hardship. It can take up to thirty years for an individual to achieve native-level proficiency in a foreign language, and financial disclosures often require a very high degree of language proficiency, even for native English speakers.⁷⁴ Yet, our system essentially requires that an adult achieve complete native English proficiency before they can navigate the financial system without the assistance of an English-speaking family member. This standard is unrealistic and unfair.

⁷⁰ This lack of nuance has been most recently documented in lawsuits against lenders that had blanket policies against lending to DACA recipients. See, e.g., Nicole Acevedo, Latino Civil Rights Group Sues Banks, Credit Unions for Denying Loans to Eligible DACA Recipients, NBC News, (Jan. 5, 2024), <https://www.nbcnews.com/news/latino/latino-group-maldef-sues-banks-credit-unions-denying-loans-eligible-da-rcna132103>.

⁷¹ A Lender Sued Thousands of Lower-Income Latinos During the Pandemic, Now It Wants to Be a National Bank, ProPublica, (Jan. 8, 2021), <https://www.propublica.org/article/a-lender-sued-thousands-of-lower-income-latinos-during-the-pandemic-now-it-wants-to-be-a-national-bank>.

⁷² Stephen Gandel, Bail Bond Firm Duped Immigrants Into Wearing "Shackles" and Paying to Have Them Removed, Feds Say, CBS News, (Feb. 22, 2021), <https://www.cbsnews.com/news/libre-by-nexus-sued-immigrant-tracking-bracelets-consumer-financial-protectionbureau/>.

⁷³ Kleimann Communication Group, Language Access for Limited English Proficiency Borrowers: Final Report 14 (April 2017), <https://www.fhfa.gov/PolicyProgramsResearch/Policy/Documents/Borrower-Language-AccessFinalReport-June-2017.pdf>.

⁷⁴ Why It's So Hard to Learn Another Language After Childhood, Time, (May 2, 2018), <https://time.com/5261446/language-critical-period-age/>

Consumers with LEP are also at a heightened risk for predatory behavior because of these language barriers. For example, foreclosure rescue scammers tend to target LEP consumers precisely because mortgage servicers do not regularly attempt to communicate with consumers in their preferred language.⁷⁵ This practice is not unique to borrowers facing foreclosure. Debt relief and credit repair scams are allowed to flourish in this environment, as credit reporting agencies⁷⁶ and debt collectors⁷⁷ themselves do not have a uniform practice of offering language services. For example, phantom debt collection scams, telemarketing scams that harass consumers into paying debts they do not owe, also frequently target LEP consumers.⁷⁸ Indeed, according to an FTC Fraud Survey, Hispanic consumers were 2.5 times more likely to be a victim of a debt-related scam than non-Hispanic white counterparts, with several of these scams taking advantage of LEP consumers by advertising to them in Spanish.⁷⁹ In addition to these scams, LEP consumers are vulnerable to misleading and deceptive practices stemming from incomplete or inaccurate information in non-English loan materials.⁸⁰

⁷⁵ See, e.g., “HUD files charge alleging California foreclosure rescue companies scammed Hispanic homeowners,” HUD archives, HUD No. 16-002 (Jan. 12, 2016), <https://archives.hud.gov/news/2016/pr16-002.cfm>

⁷⁶ Of the three major credit bureaus, only Equifax allows consumers to request their credit reports in Spanish. Eric J. Ellman, Letter to Chi Chi Wu from the Consumer Data Industry Association (CDIA), Consumer Data Industry Association (Oct. 29, 2020), https://www.nclc.org/wp-content/uploads/2022/08/Consumer_Groups_Letter_to_CRAs_LEP_Consumers_Response-1.pdf, (explaining the credit bureaus’ refusal to offer translated consumer reports); Equifax, Can I Get My Free Equifax Credit Report in Spanish? (Sept. 2021), <https://www.equifax.com/personal/educhttps://www.consumerfinance.gov/about-us/newsroom/cfpb-and-doj-sue-developer-and-lender-colony-ridge-for-bait-and-switch-land-sales-and-predatory-financing/ation/credit/report/free-equifax-credit-report-spanish/> (last visited Feb. 14, 2024).

⁷⁷ New York Department of Consumer and Worker Protection, Lost in Translation, Findings from Examination of Language Access by Debt Collectors, 16 (Sept. 2019), https://www1.nyc.gov/assets/dca/downloads/pdf/partners/LEPDebtCollection_Report.pdf, (finding that consumers often had difficulty accessing language services, even when debt collectors claimed to offer services in their preferred language)

⁷⁸ See e.g., Dep’t. Of Justice, Three Peruvian Men Sentenced To Significant Terms Of Incarceration For Overseeing Call Centers That Threatened And Defrauded Spanish-Speaking U.S. Consumers, (Sept. 3, 2020), <https://www.justice.gov/opa/pr/three-peruvian-men-sentenced-significant-terms-incarceration-overseeing-call-centers>; FTC v. Centro Natural Corp., No. 14:23879 (S.D. Fla. June 26, 2015) (securing a preliminary injunction against a group of telemarketers that targeted thousands of Spanish speaking consumers and harassed them into settling “phantom” debts that the consumers did not owe by impersonating government officials).

⁷⁹ Federal Trade Commission, Combating Fraud in African American & Latino Communities, The FTC’s Comprehensive Strategic Plan, 12 (Jun. 15, 2016), <https://www.ftc.gov/system/files/documents/reports/combating-fraud-african-american-latino-communities-ftcs-comprehensive-strategic-plan-federal-trade/160615fraudreport.pdf>

⁸⁰ See, e.g., Consumer Financial Protection Bureau, CFPB and Justice Department Sue Developer and Lender Colony Ridge for Bait-and-Switch Land Sales and Predatory Financing, (Press Release), (Dec. 20, 2023), available at <https://www.consumerfinance.gov/about-us/newsroom/cfpb-and-doj-sue-developer-and-lender-colony-ridge-for-bait-and-switch-land-sales-and-predatory-financing/>.

4. Recommendations to Increase Financial Inclusion of Immigrants and Consumers with Limited English Proficiency

The Treasury Department, in collaboration with other federal agencies, should take action to ensure the financial inclusion of immigrants and consumers with limited English proficiency. Treasury should work with the relevant agencies to:

- Ensure that overly broad and discriminatory bank policies do not bar access to bank accounts and affordable credit by:
 - Reviewing bank customer identification protocols, investigate the reasons behind denials at the deposit account opening stage, and make their findings public whenever possible.
 - Investigating the reasons that deposit accounts are closed or frozen and develop a strategy to minimize the number of account closures for innocent consumers.
 - Clarifying that an account closure or freeze that prevents an electronic fund transfer constitutes an error under the EFTA entitling consumers to invoke error resolution requirements.
 - Promulgating guidance clarifying the extent to which municipal IDs may meet the minimum identification requirements set out under the implementing regulations under the BSA and provide guidelines or standards for local governments to follow when developing their municipal ID programs.
 - Clarifying the distinction between unauthorized immigrants living in the United States and non-U.S. persons living abroad in the FFIEC BSA/AML examination manual and warn regulated entities that BSA/AML compliance is not a justification for unlawful discrimination.

- Ensure that ITIN holders are not unnecessarily excluded from our credit markets by:
 - Investigating the Big Three credit bureaus' matching policies for consumers without SSNs and making the findings public whenever possible.
 - Encouraging the Big Three credit bureaus to modernize their systems for fielding requests for file disclosures from ITIN holders, including adapting the centralized source to accept ITINs in the same field as SSNs.
 - Requiring the Big Three credit bureaus to more accurately respond to requests for a credit report by stating definitively if the consumer has no credit file or if the consumer has not provided sufficient information to prove their identity.

- Ensure that financial institutions are required to provide language assistance to consumers with limited English proficiency.

B. Barriers Experienced by Survivors of Domestic Violence

Survivors of domestic violence experience unique barriers to participating in our financial system. In addition to experiencing various types of physical, psychological, and emotional abuse, survivors of domestic violence are negatively impacted by the economic abuse they experience at the hands of their abuser. Economic abuse can include acts that deprive a survivor of access to their own financial assets and accounts; acts that prevent a survivor from being able to meet existing financial obligations (like paying bills or going to work or school); and/or acts that cause a survivor to incur debt. These acts cause damaged credit and debt obligations that often prevent a survivor from being able to obtain much needed credit or access to banking services.

1. Survivors Incur Significant Debt to Become Safe

Safety comes at a cost. Abusers intentionally isolate survivors, reducing their social network of friends, family, and social systems and access to resources. As a result, a survivor must often choose between returning to an abusive partner for money or incurring debt to access safety. A study on the economic well-being of survivors revealed 74% of survivors reported having to use a credit card to pay for things their family needed because they did not have enough money.⁸¹ The same economic well-being study found that 74% of survivors had to borrow money from a payday lender or car title lender to pay for things their family needed.

Not only do survivors incur significant debt in order to leave a harmful relationship, but they also experience economic harm such as job loss, reduced access to transportation and childcare, medical debt, and relocation costs. One study found the “price of protection” for low-income women seeking an order of protection was a loss of up to \$1,018 in the year after the petitioning.⁸²

All these costs and the necessity to obtain credit to cover these costs will ultimately lead to information that appears on a survivor’s credit/consumer report and therefore impact the survivor’s creditworthiness and, consequently, their ability to participate in the financial system.

2. Survivors Experience Severe Forms of Financial Harm While in an Abusive Relationship

Not only is there a financial cost for survivors leaving an abusive relationship, but survivors often already experience extreme financial hardship while in an abusive relationship because of economic abuse.

⁸¹ Center for Survivor Agency and Justice, "*Domestic Violence and Economic Well-being Study*," available at <https://csaj.org/resource/domestic-violence-and-economic-well-being-study/> (last visited Feb. 16, 2024).

⁸² Center for Survivor Agency and Justice, "*Accounting for Survivors Economic Security Atlas: Mapping the Terrain*," available at <https://csaj.org/wp-content/uploads/2021/10/Accounting-for-Survivors-Economic-Security-Atlas-Mapping-the-Terrain-.pdf>. (last visited Feb. 16, 2024).

Economic abuse is a tactic often employed by abusers to prevent survivors from leaving an abusive relationship. In fact, 99% of survivors of domestic violence experience economic abuse, and financial concerns are the most cited reasons why a survivor cannot leave an abusive relationship.⁸³

Economic abuse has lifelong, lasting effects on survivors. The gravity of its impacts has received federal recognition warranting codification of the term economic abuse in the Violence Against Women Act Reauthorization of 2022. Economic abuse, in the context of domestic violence, dating violence, and abuse in later life, means behavior that is coercive, deceptive, or unreasonably controls or restrains a person's ability to acquire, use, or maintain economic resources to which they are entitled, including using coercion, fraud, or manipulation to:

- Restrict a person's access to money, assets, credit, or financial information;
- Unfairly use a person's personal economic resources, including money, assets, and credit, for one's own advantage; or
- Exert undue influence over a person's financial and economic behavior or decisions, including forcing default on joint or other financial obligations, exploiting powers of attorney, guardianship, or conservatorship, or failing or neglecting to act in the best interests of a person to whom one has a fiduciary duty.⁸⁴

This pervasive and sweeping form of abuse and dominance presents itself in many ways, including preventing a survivor from accessing bank accounts and financial resources, spending down previously held assets, and employment sabotage, all of which create economic dependence on the abusive partner.

Economic abuse occurs in an environment of coercive control, which is a dense net of behaviors a person puts into place to control another. Coercive control can include isolating the survivor from friends and family, establishing rules for the survivor's behavior, and limiting the survivor's access to transportation, education, and employment. These behaviors do not stand alone – they exist within an environment of intimidation, a history of past violence, and the threat of future violence or other harm if the survivor does not comply. Economic abuse is not limited to a discrete incident; rather, economic abuse consists of a series of acts that compound and result in an “economic ripple effect” that creates economic barriers to safety across a survivor's lifetime.⁸⁵

When a survivor has been subjected to economic abuse, it is far more likely that they will have damaged credit, reduced income, and potential negative rental history. As a result, survivors of economic abuse are highly likely to experience credit, housing, and employment denials or obtain less favorable credit, housing, and employment options.

⁸³ National Coalition Against Domestic Violence, “*Quick Guide: Economic and Financial Abuse*,” (April 12, 2017), available at <https://ncadv.org/blog/posts/quick-guide-economic-and-financial-abuse>.

⁸⁴ 34 U.S.C.A. § 12291(a)(13).

⁸⁵ Sara J. Shoener & Erika A. Sussman, “*Economic Ripple Effect of IPV: Building Partnerships for Systemic Change*,” Domestic Violence Report, <https://csaj.org/wp-content/uploads/2021/10/Economic-Ripple-Effect-of-IPV-Building-Partnerships-for-Systemic-Change.pdf>

3. Coerced debt Is a Form of Economic Abuse That Directly Impacts a Survivor's Access to Credit

Economic abuse shows up in another particularly damaging form, through the use of coerced debt. Coerced debt is defined as “all non-consensual, credit-related transactions that occur in a relationship where one person uses coercive control to dominate the other person.”⁸⁶ According to a 2019 study, 52% of survivors reported incurring debt from abuse.⁸⁷

An abusive partner creates debt by taking out loans, using credit cards, or putting household bills in their partners' name. Coerced debt encompasses both fraudulent debt, incurred in the name of a survivor without their knowledge or permission, and debt that was obtained by a survivor through the abuser's use of force, threat, and intimidation. According to a 2020 study from the National Domestic Violence Hotline, 43% of female callers took on debt as a result of a coercive transaction.⁸⁸

Because of coerced debt, survivors experience low credit scores, collections actions, and lingering negative or derogatory accounts on credit reports. In a recent study, 81% of survivors reported having “trouble with credit rating” and 76% of survivors reported financial hardship due to abusive partners.⁸⁹ The unique dynamics of economic abuse and coerced debt factor into the ability of a survivor to actively participate in the U.S. financial system.

4. Immigrant Survivors of Domestic Violence Experience Additional Challenges to Their Safety and Financial Wellbeing

An abusive partner may use immigration status as an extra weapon of power and control, threatening to call immigration officials, withdrawing applications for lawful permanent residence, and destroying or denying access to the victim's passport, resident card, or identification, thereby amplifying the environment of coercive control and fear.

Additionally, many immigrant survivors are unfamiliar with the U.S. credit and banking system and do not have a credit history. Furthermore, many immigrant survivors may not want to interact with the U.S. credit and banking system because of negative social and historical experiences with financial institutions. These two dynamics – lack of financial literacy and mistrust of financial institutions – create added vulnerability for immigrant survivors and a window of opportunity for

⁸⁶ Center for Survivor Agency And Justice, *Understanding Coerced Debt*, https://csaj.org/wp-content/uploads/2022/10/CSAJ-CCD_Part-2_Understanding-Coerced-Debt.pdf

⁸⁷ Center for Survivor Agency and Justice, *Domestic Violence and Economic Well-being Study*, <https://csaj.org/resource/domestic-violence-and-economic-well-being-study/>. (last visited Feb. 16, 2024).

⁸⁸ Adams AE, Littwin AK, Javorka M, *The Frequency, Nature, and Effects of Coerced Debt Among a National Sample of Women Seeking Help for Intimate Partner Violence*, *Violence Against Women*. 2020 Sep;26(11):1324-1342. doi: 10.1177/1077801219841445. Epub 2019 Apr 22. PMID: 31007144. <https://pubmed.ncbi.nlm.nih.gov/31007144/>.

⁸⁹ Center for Survivor Agency and Justice, *Accounting for Survivors Economic Security Atlas: Mapping-the Terrain*, available at <https://csaj.org/wp-content/uploads/2021/10/Accounting-for-Survivors-Economic-Security-Atlas-Mapping-the-Terrain-.pdf> (last visited Feb. 16, 2024).

an abusive partner to take advantage and exploit the survivor's access to credit and resources. An abusive partner can use an immigrant survivor's "fresh" credit profile, devoid of any negative credit history, and utilize it according to the abuser's own desires and purposes.

As a result, immigrant survivors not only face the risk of coerced debt because their abusive partner may be in control of their important documents, but they also face combating lies and misinformation related to credit. An abusive partner will prey on an immigrant survivor's mistrust of financial institutions and inexperience with credit and banking systems to maximize their own financial gain. These immigrant survivors will never obtain the fresh start to building credit and financial health; instead, they will be thrust into the U.S. credit system with problems and challenges needing to be remedied.

5. Survivors Face Systemic Barriers When Trying to Address Damaged Credit

Although efforts have been made to bolster legal protections for survivors of domestic violence and to minimize the harm caused by abusive partners, survivors face a multitude of barriers when trying to access legal remedies.

The intimate nature of domestic violence means that abusive partners often have access to a survivor's personal identifying information (PII), such as a Social Security number, date of birth, employer, income data, and address history, all of which allow an abuser to obtain credit without the survivor's knowledge or consent. The National Domestic Violence Hotline, a non-profit serving the needs of domestic violence victims, shared that 22% of female callers reported their partners created debt in their name via a fraudulent transaction.

When an abusive partner obtains credit in the survivor's name, the abuser can create a fraudulent credit profile with an address, phone number, email, employment history, or income data that do not actually belong to the survivor. Furthermore, the abuser can set up PINs, passwords, security questions, and responses to the fraudulent account that ensure complete and sole control and access to the account. Though a survivor may have various legal remedies available in this context, they often cannot access the fraudulent account as they are unable to provide correct security information.

Without access to the account, a survivor is unable to stop the abusive partner from continuing to accrue debt in their name and is unable to close the account completely. One advocate recalls the hours she spent on the phone with a survivor trying to dispute a fraudulent credit card account with Citibank. The survivor did not know the password to the account her abuser created to access the account online, and she did not know the PIN her abuser created in order to speak to a representative on the phone. The survivor could not take any action on the account quickly but instead had to send a dispute letter to the billing error address, which she could not have done without the help of a lawyer. This same survivor only learned of the Citibank account, as well as various other fraudulent credit accounts totaling \$60,000, when in the middle of a divorce proceeding. It took the survivor over three years, and the help of a lawyer, to finally remove all the information on her credit report linked to her abusive spouse and the fraudulent accounts.

Even when a survivor may want to avail themselves of their rights under the FCRA, various obstacles arise. A survivor may be unable to obtain a credit report in the first instance. Many survivors have not been able to answer the security questions in order to access a credit report online and must instead request a report in writing. If the survivor does not have access to identifying documents or a current residence, they will be unable to obtain the report by mail. This is also true for immigrant survivors with ITINs who must make a special request by mail. When needing to dispute and resolve debts in order to access housing, every day delayed is another day of housing insecurity and increased risk of violence.

Further obstacles exist when completing identity theft reports. Survivors are asked to identify the perpetrator of the fraudulent debt leaving them to grapple with complex choices: exposing a person they care about to criminal prosecution, risking retaliation or violence, and/or taking steps to dispute the fraudulent debt. Consumer reporting agencies and creditors often refuse to accept identity theft reports (such as the FTC identity theft report) when survivors seek relief under the FCRA and force survivors to obtain police reports. Often, law enforcement officers fail to make a police report or question the credulity of a survivor reporting identity theft from a spouse. One advocate was forced to file a complaint to the Chief of Police when the police officers failed to take an identity theft report from a survivor and instead accused her of benefiting from the theft of her husband. The police officer even endangered her safety by calling her abusive spouse and letting him know she was at the police station.

Survivors encounter further roadblocks if they have limited English proficiency or if they are recent immigrants. A snapshot of advocacy services found that only 34% of domestic violence programs across the country provided bilingual advocacy to survivors, while only 14% provided third-party translation and or interpretations services.⁹⁰ As a result of these limitations, LEP survivors must often navigate systems on their own. LEP survivors report having to rely on children or family members when attempting to file a police report or call a bank or credit card company. Historically, credit reports have only been available in English and specialty reports like tenant screening reports, checking account reports, and employment background screening reports are even more difficult to obtain much less have any language offerings other than English. Technology barriers can also compound language access barriers for survivors with limited internet access and limited or no computer or mobile devices. Survivors may be unable to report errors and fraud on web-based platforms available only in English.

An additional problem faced by many immigrant survivors attempting to correct credit inaccuracies or otherwise address coerced debt is that it can take significant time to secure a driver's license, Social Security number or ITIN, bank account, or U/T-Visa,⁹¹ which may be required to access legal remedies. Vulnerability to economic abuse paired with system delays can create an environment where institutions inadvertently collude with an abusive partner

⁹⁰ National Network to End Domestic Violence, 17th Annual Domestic Violence Counts Report – NNEDV, (March 2023) <https://nnedv.org/resources-library/17th-annual-domestic-violence-counts-report/>.

⁹¹ Center for Survivor Agency And Justice, Understanding Coerced Debt, https://csaj.org/wp-content/uploads/2022/10/CSAJ-CCD_Part-2_Understanding-Coerced-Debt.pdf

allowing coerced debt to linger on consumer reports with dire economic consequences for immigrant survivors.

One advocate shared a story about a past survivor (“Ms. X”), who was a recent immigrant to the United States. Her husband, who was physically, financially, and emotionally abusive, controlled every aspect of the family’s financial life. For many years, Ms. X was the only person in the household working, and her income would automatically be deposited into a joint bank account she was not allowed to access. After the couple had been married for some years, they bought a home. Ms. X was not on the mortgage loan and had no access to information about the account as her husband would not allow her to access the mail. Ms. X’s husband opened at least four credit accounts under her name with her knowledge. When she asked why he was opening the accounts in her name, he simply told her that he would take care of it and it would not impact her. Because Ms. X did not understand the U.S. financial system or credit reporting, she did not know that the accounts would, in fact, impact her. Additionally, Ms. X’s husband opened ten credit accounts under her name without her knowledge or permission. At one point, she was sued on one of these defaulted credit accounts and happened to answer the door to receive summons. Since Ms. X does not read, write, or speak English, she did not understand what the document was for but saw her name on it. When she brought it to her husband’s attention, he filled out an answer to the suit admitting to owing the money, told Ms. X to sign it, take it to the courthouse, and that would take care of it. He did not explain what the document was for or why it had her name on it, but as with everything else, Ms. X complied with any request her husband made because she feared for her safety. It was not until Ms. X learned that her husband had sexually assaulted her daughter from a previous marriage that Ms. X sought legal help.

With the help of a lawyer, Ms. X obtained her credit reports from Experian, TransUnion, and Equifax. It took some time to obtain the reports because she could not answer the security questions (as she had no knowledge about the fraudulent accounts). Once she did receive her credit reports in the mail, she did not understand any of the information as it was all in English. With her lawyer’s translation, she was able to discover all of the fraudulent accounts and the extensive and pervasive economic abuse that her abusive husband had perpetrated over many years. It took four lawsuits and five years for Ms. X to undo all the monetary harm her husband had caused. Yet Ms. X would never have been able to navigate this process on her own. Abusers take advantage of people like Ms. X who are unable to understand English and lack understanding of the US financial system to perpetuate financial abuse.

6. Specific Challenges of Survivors of Domestic Violence Related to Account Opening

In addition to credit barriers described above, survivors of domestic violence often encounter additional difficulties with opening a new account – whether it is a credit account or a bank account. Survivors may not have sufficient documentation to prove identity or residential address. A survivor may have fled from their previous residence in a rush, without the various forms of identification required to open their own bank accounts. On some occasions, abusive partners may also retain the survivor’s identification as a method to continue to exert control over

the survivor. Additionally, some survivors separating from an abusive partner may need to live in transitional housing, such as a domestic violence shelter, and thus lack a permanent address.

7. Specific Challenges of Survivors of Domestic Violence Related to Accessing or Closing Existing Accounts

When a survivor of domestic violence shares an account with their abuser (a joint account), they face two types of challenges.

First, the survivor may have problems accessing the account if the abuser has changed log-in /PIN/password information, deprived the survivor of an access device, withheld information about the accounts, or withheld the survivor's identifying documents. Often, an abuser will intentionally deprive the survivor of access to the survivor's own funds in a bank account to prevent the survivor from being able to relocate or flee. Survivors often experience problems when trying to assume a mortgage loan after a divorce has awarded the property to the survivor; an abuser often is either unwilling to sign any loan documents or is unable to be located. Mortgage services have historically required an abuser to sign any loan modifications in these circumstances. Abusers will often hide information about joint accounts opened without a survivor's knowledge, as described in more detail above.

Second, the survivor may have problems with account closures when the abuser is listed as a joint account holder or authorized user. A survivor may choose to close a joint bank account to prevent an abuser from withdrawing funds the survivor may have received from their paycheck or savings, or because the survivor does not want the abuser to know of their geographic location, or where/what purchases are being made. Yet often a survivor is unable to close the joint bank account without the consent of the joint account holder – even if the survivor has obtained a protective order or divorce decree.

Another common example of challenges survivors experience when trying to close joint accounts occurs with auto loans. Often survivors are coerced or forced into obtaining an auto loan for a vehicle they did not want to purchase and had no access to. After fleeing from an abusive partner, a survivor wishes to be removed from an auto loan as they no longer have possession or access to a vehicle, yet lenders will rarely assist survivors in these scenarios, even when the survivor has obtained a protective order or divorce decree awarding the property and debt to the abuser.

8. Recommendations to Increase Financial Inclusion of Domestic Violence Survivors

In addition to the many recommendations previously mentioned, we suggest specific actions to enable domestic violence survivors to fully participate in our financial system.

To address the negative impact that economic abuse, and more specifically coerced debt, has on a survivor's credit, Treasury can encourage the CFPB to consider rulemaking under the FCRA to provide relief for domestic violence survivors similar to the relief provided by the Debt

Bondage Repair Act. One way the CFPB can undertake this task is by using its authority under the FCRA to define identity theft⁹² and identity theft report⁹³ under the act to include coerced debt.

Additionally, Treasury and financial regulators should encourage financial institutions to develop policies to assist survivors of domestic violence at account opening. For example, Treasury, alongside financial regulators, could:

- Issue guidance clarifying that financial institutions may accept non-traditional forms of identification.
- Issue guidance clarifying and encouraging banks and lenders to permit applicants to provide non-traditional addresses, such as addresses of temporary group residences, domestic violence shelters, and homeless shelters.⁹⁴

Treasury and financial regulators should also encourage financial institutions to develop policies addressing the specific safety concerns raised by domestic violence survivors regarding account closures – especially when one joint account holder seeks to be removed from an account or close an account without the consent of the joint accountholder because of fear of stalking, violence, or further abuse.

Treasury and financial regulators should encourage financial institutions to consider providing training to staff and personnel on how to assist domestic violence survivors in a manner similar to the training provided to staff in assisting elder customers who may be subject to financial abuse and exploitation.

C. Barriers Experienced by Justice-Involved Individuals

Justice-involved people are often locked out of the mainstream consumer financial marketplace for various interconnected reasons. Being locked out of the mainstream can, in turn, prolong

⁹² See 15 U.S.C. § 1681a(q)(3). “The term “identity theft” means a fraud committed using the identifying information of another person, subject to such further definition as the Bureau may prescribe, by regulation.”

⁹³ See 15 U.S.C. § 1681a(q)(4). “The term “identity theft report” has the meaning given that term by rule of the Bureau, and means, at a minimum, a report—

(A) that alleges an identity theft;

(B) 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; and

(C) 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.”

⁹⁴ Institutions could consider providing a six-month grace period in obtaining address verification if a domestic violence survivor has provided a letter from a domestic violence shelter or transitional living center confirming that the survivor has resided there or adopting a policy accepting the address of the shelter.

justice involvement – for example, if a person recently released from prison cannot get credit to buy or lease a car, they may not be able to meet their release requirements – with ripple effects on families and communities.⁹⁵

We first provide background on justice-involved people, including who is disproportionately likely to be justice involved and some of the reasons why. We then discuss three consequences and challenges of justice involvement relevant to financial inclusion: limited access to affordable banking products, limited access to affordable consumer credit, and the offset of tax refunds to collect federal criminal court debt. Finally, we provide recommendations to increase financial inclusion of justice-involved people.

1. Background on Justice-Involved People

The population of justice-involved people in the United States is vast. As of March 2023, nearly 2 million people were incarcerated in this country, including over one million in state prisons, over 500,000 in local jails, and over 200,000 in federal prisons and jails.⁹⁶ And one in three adults—about 77 million people—has a criminal record.⁹⁷ Nearly half of children in the United States have at least one parent with a record.⁹⁸

Black, Latino, and Native people are massively overrepresented in the criminal legal system. For instance, Black Americans are twice as likely to be arrested as white Americans,⁹⁹ and are more likely to be stopped by the police, detained, charged with more serious crimes, and sentenced more harshly than white American.¹⁰⁰ As the U.S. Department of Housing and Urban

⁹⁵ See, e.g., Consumer Fin. Prot. Bureau, Justice-Involved Individuals and the Consumer Financial Marketplace 35–36 (Jan. 2022), https://files.consumerfinance.gov/f/documents/cfpb_jic_report_2022-01.pdf [hereinafter CFPB, Justice-Involved Individuals Report] (explaining how lack of access to affordable credit can perpetuate justice involvement and prevent people from participating in the consumer financial marketplace).

⁹⁶ Wendy Sawyer & Peter Wagner, Prison Pol’y Initiative, Mass Incarceration: The Whole Pie 2023 (2023), <https://www.prisonpolicy.org/reports/pie2023.html> (the remaining fraction are held in juvenile correctional facilities, immigration detention facilities, and Indian country jails, military prisons, civil commitment centers, state psychiatric hospitals, and prisons in the U.S. territories).

⁹⁷ CFPB, Justice-Involved Individuals Report, at 4 (citing National Conference of State Legislatures, Criminal Records and Reentry (May 5, 2020), ncsl.org/research/civiland-criminal-justice/criminal-records-and-reentry.aspx).

⁹⁸ Beth Avery, Nat’l Employment Law Proj., Fact Sheet: Research Supports Fair Chance Policies (Jan. 16, 2024), <https://www.nelp.org/publication/research-supports-fair-chance-policies/> [hereinafter NELP, Fact Sheet].

⁹⁹ Kaveh Waddell, *How Tenant Screening Reports Make It Hard for People to Bounce Back from Tough Times*, Consumer Reports (Mar. 11, 2021), <https://www.consumerreports.org/electronics/algorithmic-bias/tenant-screening-reports-make-it-hard-to-bounce-back-from-tough-times-a2331058426/>; Beth Avery et al., Nat’l Employment Law Proj. Fair Chance Licensing Reform: Opening Pathways for People with Records to Join Licensed Professions 18 (2018), <https://www.nelp.org/publication/fair-chance-licensing-reform-opening-pathways-for-people-with-records-to-join-licensed-professions/>.

¹⁰⁰ Elizabeth Hinton et al., Vera Inst. of Just., An Unjust Burden: The Disparate Treatment of Black Americans in the Criminal Justice System 1, 7–10 (2018), <https://www.vera.org/downloads/publications/for-the-record-unjust-burden-racial-disparities.pdf>.

Development has stated, these racial and ethnic disparities are “well established and persistent,” and “cannot be simply attributed to certain groups committing more crimes and are better explained by biases” in the criminal legal system.”¹⁰¹

People with disabilities and members of the LGBTQ+ community are also disproportionately represented in the criminal legal system. According to the U.S. Commission on Civil Rights, “[i]ncarcerated people are twice as likely to have an intellectual disability, four to six times more likely to have a cognitive disability, twice as likely to have a mobility disorder, three to four times more likely to be blind or have a vision impairment, and two to three times more likely to have a hearing impairment than the general population.”¹⁰² The incarceration rate of LGBTQ+ individuals is more than three times that of the U.S. adult population.¹⁰³

Poverty is both a predictor and result of justice involvement.¹⁰⁴ The median income among people *entering* prison is 41 percent less than the national average,¹⁰⁵ and people have virtually no ability to earn meaningful wages while they are incarcerated.¹⁰⁶ People *leaving* incarceration are even worse off financially, including because they often lose out on careers-long earning

¹⁰¹ Memorandum from Principal Deputy Assistant Sec’y for Fair Hous. and Equal Opportunity, U.S. Dep’t of Housing and Urban Dev., to Office of Fair Hous. & Equal Opportunity, Fair Hous. Assistance Program Agencies, Fair Hous. Initiatives Program Grantees, at 3 (June 10, 2022), available at <https://www.hud.gov/sites/dfiles/FHEO/documents/Implementation%20of%20OGC%20Guidance%20on%20Application%20of%20FHA%20Standards%20to%20the%20Use%20of%20Criminal%20Records%20-%20June%2010%202022.pdf>; see also U.S. Equal Emp. Opportunity Comm’n, Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions under Title VII of the Civil Rights Act; NELP, Fact Sheet.

¹⁰² U.S. Comm’n on Civ. Rts., *Collateral Consequences: The Crossroads of Punishment, Redemption, and the Effects on Communities* 21 (2019), <https://www.usccr.gov/files/pubs/2019/06-13-Collateral-Consequences.pdf>.

¹⁰³ *Id.* at 21; see also *id.* at 22 (“Although 4.1 percent of American adults identify as LGBT, 9.3 percent of male prisoners and 42.1 percent of female prisoners identified as LGBT or reported having same-sex encounters before incarceration. . . . Twenty-one percent of transgender women and 10 percent of transgender men report that they have spent time in jail or prison.”).

¹⁰⁴ See, e.g., Tara O’Neill Hayes & Margaret Barnhorst, Am. Action Forum, *Incarceration and Poverty in the United States*, <https://www.americanactionforum.org/research/incarceration-and-poverty-in-the-united-states/#ixzz8RjexiLfH> (“While it is difficult to ascertain whether poverty makes someone more likely to commit a crime, data show it does make a person more susceptible to being arrested and more likely to be charged with a harsher crime and to receive a longer sentence. Adults in poverty are three times more likely to be arrested than those who aren’t, and people earning less than 150 percent of the federal poverty level are 15 times more likely to be charged with a felony—which, by definition, carries a longer sentence—than people earning above that threshold.”); Eli Day, *The Race Gap in US Prisons Is Glaring, and Poverty is Making It Worse*, Mother Jones (Feb. 2, 2018); NELP, Fact Sheet (discussing how the carceral system worsens poverty).

¹⁰⁵ Bernadette Rabuy & Daniel Kopf, Prison Pol’y Initiative, *Prisons of Poverty: Uncovering the Pre-Incarceration Incomes of the Imprisoned* (2015), <https://www.prisonpolicy.org/reports/income.html> (“We found that, in 2014 dollars, incarcerated people had a median annual income of \$19,185 prior to their incarceration, which is 41% less than nonincarcerated people of similar ages.”).

¹⁰⁶ Wendy Sawyer, *How Much Do Incarcerated People Earn in Each State?*, Prison Pol’y Initiative (Apr. 10, 2017), <https://www.prisonpolicy.org/blog/2017/04/10/wages/>. (showing average hourly wages of 14¢ to 63¢ for typical prison jobs).

potential while they are incarcerated.¹⁰⁷ People with any kind of criminal record also often struggle to find gainful employment and housing because of bias and policies against justice-involved individuals and issues stemming from inaccurate or misleading background checks.¹⁰⁸ Barriers to housing and employment often result in high rates of homelessness among the formerly incarcerated.¹⁰⁹

Justice-involved individuals also frequently accrue court debt in the form of fines, fees, and restitution that are imposed in the criminal legal system, often without any assessment of their ability to pay.¹¹⁰ Because justice-involved people and their families are disproportionately poor, many are not able to afford repayment and their debts become past due,¹¹¹ perpetuating cycles of extraction and poverty and prolonging justice involvement.

2. Consumer Challenges and Consequences of Justice Involvement

As the CFPB described in a recent report, consumers face a series of challenges and systemic consequences because of their justice involvement.¹¹² We discuss some of those challenges here, including justice-involved people’s limited access to affordable banking products and limited access to affordable consumer credit. We also address how the seizure of the Child Tax Credit and Earned Income Tax Credits to collect federal criminal court debt deprives justice-involved people and their loved ones of critical support.

a. *Limited Access to Affordable Banking Products*

Upon leaving custody, people often have money left in their inmate trust account—whether from accumulated earnings, support from family or, in the case of a short-term jail stay, a return of whatever cash they had in their possession when arrested. Released people often receive their money in the form of a prepaid debit card, known as a “release card.”¹¹³ Fees associated with

¹⁰⁷ See, e.g., Terry-Ann Craigie et al., Brennan Ctr. for Just., *Conviction, Imprisonment, and Lost Earnings: How Involvement with the Criminal Justice System Deepens Inequality* 6 (2020), <https://www.brennancenter.org/our-work/research-reports/conviction-imprisonment-and-lost-earnings-how-involvement-criminal?ref=honeysuckle.com> (finding that “[o]n average, formerly imprisoned people earn nearly half a million dollars less over their careers than they might have otherwise,” that “[t]hese losses are borne disproportionately by people already living in poverty,” and that “they help perpetuate it”).

¹⁰⁸ NELP, Fact Sheet.

¹⁰⁹ Lucius Couloute, Prison Pol’y Initiative, *Nowhere to Go: Homelessness among formerly incarcerated people* (2018), <https://www.prisonpolicy.org/reports/housing.html>.

¹¹⁰ CFPB, *Justice Involved Individuals Report*, at 37–38.

¹¹¹ *Id.* at 39; *see also* Report from the President’s Council of Economic Advisors on Fines, Fees, and Bail (2015),

https://obamawhitehouse.archives.gov/sites/default/files/page/files/1215_cea_fine_fee_bail_issue_brief.pdf

¹¹² CFPB, *Justice-Involved Individuals Report*, at 27.

¹¹³ Stephen Raheer, Prison Pol’y Initiative, *Insufficient Funds: How Prison and Jail “Release Cards” Perpetuate the Cycle of Poverty* (2022), <https://www.prisonpolicy.org/blog/2022/05/03/releasecards/>; *see also* Worth Rises, *The Prison Industry: How It Started. How It Works. How It Harms* 59, 62–63, <https://static1.squarespace.com/static/58e127cb1b10e31ed45b20f4/t/621682209bb0457a2d6d5cfa/16456>

release cards are often outrageous and higher than fees on cards offered to the general market,¹¹⁴ with the card provider charging people for things like having an account, using the account, not using the account, and seeking customer service.¹¹⁵ Although the CFPB has taken enforcement against one release-card provider for charging illegal fees,¹¹⁶ release cards still are often the only option that correctional facilities offer to disburse these funds.¹¹⁷

In addition to forced reliance on prepaid cards, justice-involved people may struggle to access checking and savings accounts due to various account opening requirements.¹¹⁸ First, banks typically require photo identification to open a bank account, as discussed above in Section II.A. A person may have had their driver's license suspended because of outstanding criminal justice debt that they cannot afford to pay¹¹⁹ or had their ID expire or get lost while incarcerated, meaning they cannot satisfy this requirement.

Second, people must demonstrate proof of address both to renew a license and to open a bank account, as discussed above in Section II.A.¹²⁰ Justice-involved people may struggle to meet this requirement if they are currently incarcerated, living in a halfway house or other temporary group residence, or are unhoused.

Third, banks may deny justice-involved people accounts based on credit checks.¹²¹ For example, banks generally request reports on potential customers from companies such as Early Warning Systems and ChexSystems that include information on accounts closed by banks because of unpaid fees or suspected fraud.¹²² People leaving incarceration may face these issues, including

[42294912/The+Prison+Industry+How+It+Started+How+It+Works+and+How+It+Harms+December+2020.pdf](#).

¹¹⁴ Consumer Financial Protection Bureau, Justice-Involved Individuals and the Consumer Financial Marketplace 28 (Jan. 2022), https://files.consumerfinance.gov/f/documents/cfpb_jic_report_2022-01.pdf.

¹¹⁵ Stephen Rahe, Insufficient Funds: How Prison and Jail “Release Cards” Perpetuate the Cycle of Poverty, Prison Policy Initiative (May 3, 2022), <https://www.prisonpolicy.org/blog/2022/05/03/releasecards>.

¹¹⁶ 4 Press Release, Consumer Fin. Prot. Bureau, CFPB Penalizes JPay for Siphoning Taxpayer-Funded Benefits Intended to Help People Re-enter Society After Incarceration (Oct. 19, 2021), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-penalizes-jpay-for-siphoning-taxpayer-funded-benefitsintended-to-help-people-re-enter-society-afterincarceration/#:~:text=The%20order%20also%20requires%20the,said%20CFPB%20Director%20Rohit%20Chopra>.

¹¹⁷ CFPB, Justice-Involved Individuals Report, at 27–28.

¹¹⁸ *Id.* at 27, 29.

¹¹⁹ Currently, half of all U.S. states still suspend, revoke or refuse to renew driver's licenses for unpaid traffic, toll, misdemeanor and felony fines and fees. Fines & Fees Justice Center, Free to Drive: National Campaign to End Debt-Based License Restrictions, <https://finesandfeesjusticecenter.org/campaigns/national-drivers-license-suspension-campaign-free-to-drive/> (last visited Feb. 14, 2024).

¹²⁰ *Id.* at 29.

¹²¹ *Id.*

¹²² *Id.*

because managing accounts while in prison or jail can be very difficult. People also report having been victims of identity theft or “identity sharing” gone wrong while incarcerated.¹²³

Fourth, some accounts come with conditions to maintain an account – opening deposits, minimum balances, or monthly fees. Justice-involved individuals, including those who recently left incarceration, likely have limited financial resources as described above, and will struggle to meet these requirements.¹²⁴

*b. Limited Access to Affordable Consumer Credit*¹²⁵

Justice-involved people often struggle to access mainstream consumer credit. Justice-involved people are more likely than people without justice involvement to have “poor” or “very poor” credit scores.¹²⁶ Additionally, incarceration can negatively impact people’s ability to access credit “independent of any effects on their credit scores.”¹²⁷ One study estimated, after controlling for credit score, that incarceration leads to a substantial decline in the likelihood of having a mortgage or an auto loan.¹²⁸ Unsurprisingly then, justice-involved individuals are more likely to turn to alternative financial services that carry higher fees and interest, such as payday loans, check cashing services, pawn shops, money order services, and title loans.¹²⁹

Various factors contribute to low credit scores and lack of access to affordable credit. For example, the difficulties of managing and paying pre-existing consumer debt while incarcerated, lack of credit histories (or “stale” credit reports), and the challenges of monitoring credit reports due to significant communications restrictions while incarcerated (e.g., lack of access to the internet and inability to call 1-800 numbers) can hurt a justice-involved person’s credit score.¹³⁰ Additionally, identity theft, to which incarcerated people are vulnerable, can tank credit scores as

¹²³ Annie Harper et al., “Let Me Be Bill-free”: Consumer Debt in the Shadow of Incarceration, 63 *Sociological Perspectives* 992 (2020); CFPB, Justice-Involved Individuals Report, at 26.

¹²⁴ CFPB, Justice-Involved Individuals Report, at 29.

¹²⁵ Although it is beyond the scope of our work, we also note that, as set out in the CFPB Justice-Involved Individuals Report, justice-involved individuals face challenges to accessing business capital and are more likely to be denied loans. *Id.* at 33–34.

¹²⁶ Spencer Watson, First Step Alliance, Economic Wellbeing of U.S. Adults with Experiences with Incarceration and Unpaid Legal Costs, <https://www.firststepalliance.org/post/first-step-alliance-report-economic-health-of-justice-involved-individuals> (last visited Feb. 14, 2024).

¹²⁷ *Id.* at 34

¹²⁸ *Id.* (citing Abhay Aneja and Carlos Avenancio-Leon, No Credit for Time Served? Incarceration and Credit-Driven Crime Cycles, at 12 (Working Paper, July 2020), static1.squarespace.com/static/59dc0ec564b05fea9d3dfee3/t/5f11d977797b7f4875d36537/1595005305683/IncarcerationAccessToCredit_v07102020.pdf).

¹²⁹ Spencer Watson, First Step Alliance, Economic Wellbeing of U.S. Adults with Experiences with Incarceration and Unpaid Legal Costs (last visited Feb. 14, 2024), <https://www.firststepalliance.org/post/first-step-alliance-report-economic-health-of-justice-involved-individuals>.

¹³⁰ *Id.* at 25.

well.¹³¹ And imprisonment – even a short period in jail – typically leads to a gap in a person’s employment history and income that could “pose problems when a lender examines an application’s creditworthiness and ability to repay the loan.”¹³²

Given that the criminal legal system disproportionately penalizes people of color, it is also important to acknowledge that deep and serious racial disparities exist in credit scores, discussed in Section I.B.

Even when justice-involved people do manage to obtain credit, such as in the form of a credit card, that may not be the end of the story. Some lenders conduct criminal background checks on applicants and on existing customers.¹³³ These background checks may result in the decrease in availability of or increase in cost of consumer credit for people with criminal records.¹³⁴ They may also result in the closure of existing customers’ credit cards – without explanation from the lender or information about what entity conducted the background check.¹³⁵ As the CFPB has flagged, given the racial disparities in arrests and convictions, such practices may raise fair lending concerns.¹³⁶ These practices may also violate the adverse action notice requirements of the FCRA and ECOA.

c. Offset of the Earned Income Tax Credit and the Child Tax Credit to Collect Criminal Court Debt

As discussed above, most justice-involved people accrue court debt in the form of various fines, fees, and restitution that are typically imposed in the criminal legal system without assessment of their ability to pay.¹³⁷ Because justice-involved people are disproportionately poor, many are not able to afford repayment and their debts become past due.¹³⁸ To collect past-due federal criminal

¹³¹ *Id.* at 26. The CFPB Justice-Involved Individuals Report includes the following complaint of identity theft, which was discovered after over a decade of imprisonment: “I had a friend help me with my credit profile so I can begin to build my credit so I can obtain housing after being locked up for so long. She went to pull my credit reports and noticed there was a collections account ... due to nonpayment. According to my credit profile, the card was opened in [date] and placed in collections in [two years later]. I was arrested [eight years before the date the card was opened] and was not released until [seven years after the card was opened] so there is no way I was able to open a credit card in my name especially because in prison we did not have access to the internet.”

CFPB, Justice-involved Individuals, at 26.

¹³² CFPB, Justice-involved Individuals, at 35.

¹³³ *Id.*; see also Ron Lieber & Tara Siegel Bernard, *Why Banks Are Suddenly Closing Down Customer Accounts*, NY Times (Nov. 5, 2023), <https://www.nytimes.com/2023/11/05/business/banks-accounts-close-suddenly.html>.

¹³⁴ CFPB, Justice-involved Individuals, at 35.

¹³⁵ *Id.* (one formerly incarcerated person submitted a complaint to the CFPB explaining that an issuer closed their credit card upon learning of their criminal history). Sometimes the account closure is the result of an *erroneous* background check, where someone else’s criminal record is attributed to the card holder. See, e.g., Complaint, *Carr v. Regulatory Datacorp, Inc.*, No. 2:22-cv-02139 (E.D. Pa. Oct. 14, 2022).

¹³⁶ CFPB, Justice-involved Individuals, at 35.

¹³⁷ *Id.* at 37–38.

¹³⁸ *Id.* at 39; see also Report from the President’s Council of Economic Advisors on Fines, Fees, and Bail (2015),

court debt and monetary sanctions,¹³⁹ the Treasury Department uses the Treasury Offset Program (TOP) to reduce or eliminate payments made through refundable Child Tax Credits (CTC) and Earned Income Tax Credits (EITC).

These tax credits are intended to support families and low-income workers and lift children out of poverty. As NCLC discussed in a February 2023 letter to Treasury, many justice-involved people have minor children and likely rely on the EITC and CTC to meet their basic needs.¹⁴⁰ Seizure of these tax credits serves to compound the devastating adverse impact of incarceration and justice involvement experienced by children, and likely disproportionately harms children of color.¹⁴¹

Additionally, the seizure of the EITC and the CTC hinders successful reentry. Debt impedes the successful reentry of formerly incarcerated people,¹⁴² but financial assistance programs, including public benefits, lower recidivism and help justice-involved parents meet their families' needs.¹⁴³ The EITC, in particular, may support successful reentry of justice-involved parents by both helping them to provide for their children and supporting participation in the formal labor market. The EITC is intended to increase employment in the formal labor market by increasing incentives for such work.¹⁴⁴ Seizure of the EITC undermines this incentive. Justice-involved individuals already face significant barriers to employment, including their criminal records.¹⁴⁵ Undermining the incentive to work by seizing the EITC may exacerbate existing pressures to drop out of the formal labor market – greatly jeopardizing reentry.

https://obamawhitehouse.archives.gov/sites/default/files/page/files/1215_cea_fine_fee_bail_issue_brief.pdf

¹³⁹ 31 U.S.C. § 3701(b)(1); see also U.S. Gov. Accountability Office, *Federal Criminal Restitution: Most Debt Is Outstanding and Oversight of Collections Could Be Improved* p. 28 (Feb. 2018), <https://www.gao.gov/assets/gao18-203.pdf>.

¹⁴⁰ Letter from Nat'l Consumer Law Ctr. Janet Yellen, Secretary of the Treasury (Feb. 7, 2023), <https://www.nclc.org/wp-content/uploads/2023/02/2023-02-02-Letter-to-Treasury-EITC-CTC-and-Justice-Involved-Individuals.pdf>.

¹⁴¹ *Id.*

¹⁴² Annie Harper et al., *Debt, Incarceration, and Re-entry: A Scoping Review*, *Am. J. Crim. Just.* 46, 250–78 (2021), <https://doi.org/10.1007/s12103-020-09559-9>.

¹⁴³ Darrel Thompson & Ashley Burnside, Ctr. for Law and Social Pol'y, *No more double punishments: Lifting the ban on SNAP and TANF for people with prior felony drug convictions* (2022), <https://www.clasp.org/publications/report/brief/no-more-double-punishments/>.

¹⁴⁴ See, e.g., Nat'l Bureau of Economic Research, *The Earned Income Tax Credit Raises Employment* (2006), <https://www.nber.org/digest/aug06/earned-income-tax-credit-raises-employment>.

¹⁴⁵ See, e.g., Kira Nikolaidis, *Collateral Consequences of Conviction: Barriers to Employment*, *Berkeley J. of Crim. L.* (Aug. 2022), <https://www.bjcl.org/blog/collateral-consequences-of-conviction-barriers-toemployment/>; Leah Wang & Wanda Bertram, *New data on formerly incarcerated people's employment reveal labor market injustices*, *Prison Pol'y Initiative* (Feb. 8, 2022), <https://www.prisonpolicy.org/blog/2022/02/08/employment/>; Nat'l Consumer Law Ctr. & Collateral Consequences Resource Ctr., *The High Cost of a Fresh Start: A State-by-State Analysis of Court Debt as a Bar to Record Clearing* 2–3 (2022), <https://www.nclc.org/wp-content/uploads/2022/08/Report-High-Cost-of-Fresh-Start.pdf>.

3. Recommendations to Increase Financial Inclusion of Justice-Involved Individuals

The Treasury Department, in collaboration with other federal agencies and state correctional institutions, should take action to ensure the financial inclusion of justice-involved individuals by:

- Ensuring that overly broad, discriminatory criminal records policies do not bar access to bank accounts and affordable credit. To do so, Treasury should collaborate with the CFPB and other relevant agencies:
 - To investigate both bank account and credit account closures based on criminal records and make their findings public whenever possible.
 - The agencies should determine whether and how criminal background check reports and/or algorithms are used to (1) assess and manage credit risk, (2) assess and manage risk of fraud, (3) decide whether to give a prospective client an account, and (4) determine whether to close an existing client's account.
 - Bring enforcement actions for failure to provide adverse action notices and for discrimination under any applicable law, such as the FCRA and ECOA.
 - Issue guidance clarifying that financial institutions may not maintain blanket policies and practices that bar people with any kind of criminal record from having an account. There must be reliable evidence that the specific policy or practice actually assists in preventing fraud and complying with other legal obligations.
- Collaborating with relevant partner agencies to issue guidance clarifying that financial institutions may accept non-traditional forms of identification, such as prison IDs.
- Encouraging and supporting correctional facilities in helping people obtain official picture identification prior to leaving incarceration.
- Issuing guidance clarifying and encouraging banks and lenders to permit applicants to provide non-traditional addresses, such as addresses of temporary group residences, homeless shelters and correctional facilities.¹⁴⁶
- Protecting the Earned Income Tax Credit (EITC) and Child Tax Credit (CTC) from offset by:
 - Including recommendations to protect the EITC and CTC from offset in the Administration's FY 2025 request to Congress (the Greenbook);
 - Directing the IRS to make maximum use of its existing authority to waive offsets;
 - Update IRS systems to make it easier to identify tax credits that should be protected in refunds; and

¹⁴⁶ As discussed at Treasury's Re-Entry Financial Resilience Discussion: Addressing Barriers in Financial Services for Justice-Impacted Communities on January 12, 2024, some credit unions, such as Stepping Stones Federal Credit Union already serve incarcerated people. Brock Fritz, 'Everything we do is to better the community,' Credit Union National Association (Jan. 10, 2024), <https://news.cuna.org/articles/123443-everything-we-do-is-to-better-the-community>.

- Providing data to allow policymakers and the public to better understand the scope of EITC and CTC offset and how it is used to collect federal criminal court debt.
- Creating a webpage compiling resources from relevant federal agencies that are useful to justice-involved people.
- Working with relevant federal agencies, including the Bureau of Prisons, state agencies, and state correctional institutions, to help ensure that currently incarcerated people can access consumer-facing materials that explain rights and remedies, file complaints with federal agencies, and more easily manage their finances.

In addition to these recommendations, we urge Treasury to consider financial inclusion in the broader context of financial wellbeing. Although access to the mainstream financial marketplace is essential, access alone will not achieve financial stability and success for justice-involved people and their families. A bank account is much less meaningful, for example, if a person is unable to secure a job due to an employer's broad policy against hiring people with a criminal record or if tax credits that a person relies on to provide for their children are seized to collect criminal justice debt.

IV. Conclusion

We recognize that developing a national strategy to address financial inclusion is an arduous undertaking, especially when one considers the unique challenges that many underserved groups across our country face when engaging with our financial system. However, we urge the Department to keep these underserved populations top-of-mind when developing these strategies, as inclusion can only be measured by how well our systems accommodate our society's most vulnerable members. We appreciate the Department's willingness to undertake this effort and are happy to answer any questions.

If you have questions, please contact Nicole Cabañez at ncabanez@nclc.org or Carla Sanchez-Adams at csanchezadams@nclc.org.

Respectfully submitted,

National Consumer Law Center, on behalf of its low-income clients