

March 8, 2021

Department of Financial Protection and Innovation, Legal Division
Attn: Sandra Sandoval, Legal Assistant
CC: Charles Carriere, Senior Counsel for the Commissioner
300 S. Spring Street, Suite 15513
Los Angeles, CA 90013

RE: PRO 01-21

Dear Honorable Department of Financial Protection and Innovation Commissioners,

I am writing on behalf of FreeFrom to state our recommendations for regulations the Department of Financial Protection and Innovation (the Department) must urgently adopt to ensure that survivors of intimate partner violence can access safe and affordable financial products and services and are protected from economic abuse and financial exploitation by harm-doers.

The nexus between intimate partner violence and financial security

Approximately 40% of women in California experience some form of intimate partner violence (IPV),¹ making the state's prevalence higher than that at the national level.² How has this problem been able to persist, and even thrive, for so long in California? Simply put, the financial devastation of abuse is trapping survivors in dangerous situations. In fact, financial insecurity is the #1 obstacle to safety for survivors.³ The stark reality is that experiencing IPV is incredibly expensive. According to the CDC, IPV costs female survivors in the U.S. a staggering \$104,000 in medical bills and lost productivity.⁴ This figure is undoubtedly an underestimate since it does not account for damaged property; relocation costs; family court legal fees; the costs of new clothes, toys, and furniture for the family; and other typical expenses.⁵

Making matters worse, in 99% of IPV cases survivors experience economic abuse, which occurs when a harm-doer exerts control over a survivor's finances, rendering the survivor economically dependent on the harm-doer. Economic abuse tactics include putting a survivor on a strict allowance and / or

¹ According to the California Women's Health Survey, approximately 40% of California women experience physical intimate partner violence in their lifetimes. See California Partnership to End Domestic Violence. The Facts: Domestic Violence in California. Available from: https://www.cpedv.org/sites/main/files/file-attachments/ca_dv_fact_sheet_2_2015.pdf.pdf. While IPV is not solely a cis-women's issue, data about the prevalence of IPV among other gender identities does not exist yet.

² 1 in 4 cis-women and nearly 1 in 2 trans folks experience IPV in the U.S. King, W. M., Restar, A., & Operario, D. (2019). Exploring multiple forms of intimate partner violence in a gender and racially/ethnically diverse sample of transgender adults. *Journal of Interpersonal Violence*, 1-22. <https://doi.org/10.1177/0886260519876024>

³ Allstate Foundation. (2018). 2018 National poll on domestic violence and financial abuse, p. 29. <https://allstatefoundation.org/wp-content/uploads/2020/04/2018-research-deck-v1.pdf>

⁴ Peterson, Cora, Kearns, Megan C., McIntosh, Wendy LiKamWa, McCollister, Kathryn E., Gordon, Amy, Florence, Curtis (2018). Lifetime Economic Burden of Intimate Partner Violence Among U.S. Adults. *American Journal of Preventive Medicine*. DOI: <https://doi.org/10.1016/j.amepre.2018.04.049>

⁵ Data on the costs associated with the experience of IPV for other genders does not exist yet. However, FreeFrom will launch a report in 2021 to fill this data gap and demonstrate how the costs of IPV differ by demographic group.

demanding receipts for all purchases made, monitoring and depleting survivors' online bank accounts, incurring debts in a survivor's name without their knowledge or consent through credit cards or loans (known as "coerced and fraudulent debt"), and requiring survivors to hand over their paychecks. The additional costs created by economic abuse are significant:⁶

- **\$1,280:** Harm-doers steal an average of \$1,280 from survivors each month
- **\$15,936:** Harm-doers incur an average of \$15,936 in coerced and fraudulent debt in a survivor's name each year
- **\$23,076:** Survivors lose out on an average of \$23,076 in income each year
- **<\$250:** On average, survivors have less than \$250 in savings
- **4x:** Survivors are 4x more likely to have experienced material hardship (food and / or housing insecurity) in the past year, compared to the average American adult

Financial insecurity is trapping Californians in danger. Survivors need access to safe and affordable financial products and services so they can begin building the assets and financial security that are necessary for long-term safety.

Survivors need access to affordable bank accounts

As outlined above, experiencing IPV is incredibly expensive for survivors and often leaves them with six figures in costs, no assets, no cash, no income, tens of thousands of dollars in coerced and fraudulent debt, damaged credit, and no support system.

As a result of the financial devastation of IPV, traditional financial products such as checking and savings accounts are out of reach for many survivors. Minimum opening deposits, overdraft fees, and other associated account fees make opening and maintaining bank accounts too expensive. Without access to these accounts, survivors are forced to try and save money in dangerous ways, like hiding cash around the house and hoping the harm-doer does not find it. Survivors need access to affordable bank accounts so they can start saving the money they need to reach long-term safety.

Survivors need access to safe and protected bank accounts

Most harm-doers have unfettered access to all the information they need to access survivors' online bank accounts (e.g., log-ins and passwords) as well as survivors' personal documents and information like birth certificates and social security numbers. This makes it easy for a harm-doer to control, monitor, and deplete a survivor's assets:

⁶ Kirkley Doyle, Amy Durrence & Sonya Passi. (2020). *Survivors Know Best: How to Disrupt Intimate Partner Violence during COVID-19 and Beyond*. FreeFrom. Available from: <https://www.freefrom.org/s/Survivors-Know-Best-Report.pdf>

“After I got away from the person causing domestic violence, he had my routing number and all my stuff and he would check my balance...he called and said, ‘oh I see that you have no money in the bank’. I said, ‘How do you even know that?’ He said, ‘I have your account information.’” – Jean⁷

Unfortunately, Jean’s experience is not unique:

- **52%:** Only 52% of survivors have a safe bank account protected from a harm-doer
- **30%** report that a harm-doer has taken money from their account without permission
- **23%** report that a harm-doer controlled their access to their bank account
- **13%** report that a harm-doer has prevented them from having their own bank account
- **10%** report that a harm-doer receives bank alerts when they (the survivor) spend money⁸
- **3x:** BIPOC survivors are 3x more likely than white survivors to report they do not have a bank account that is protected from their harm-doer⁹

The current financial system is clearly insufficient to protect survivors from fraud and other forms of economic abuse. Heightened privacy and fraud protections for survivors’ accounts can ensure that their money and assets are kept safe from economic abuse and exploitation and support them in more quickly and easily building the financial security they need to stay safe.

Recommended regulations ensuring survivors have access to safe and affordable banks accounts

Adopt regulations to require state-chartered banks and other covered persons offering checking and saving accounts to implement the following;

- Require management and any person affiliated with or employed by covered persons under this section that interact with a customer on behalf of the entity to complete a yearly training on how to prevent, detect, and respond to economic abuse.
- Require covered persons under this section to report documented and suspected cases of economic abuse to the Department.
 - Reported information regarding documented and suspected cases of economic abuse to the Department must include;
 - The transaction type
 - The transaction amount
 - The name of the financial institution or covered person
 - The date of the transaction

⁷ Jean’s name was changed their safety. Jean worked closely with FreeFrom as we developed our Survivor Safety Banking Guidelines. Available from: <https://www.freefrom.org/s/Survivor-Safety-Banking-Guidelines.pdf>

⁸ FreeFrom. (2021). Preliminary findings from a forthcoming report on our second round of the Safety Fund conducted in December 2020.

⁹ Amy Durrence, Kirkley Doyle, & Sonya Passi. (2021). Trust Survivors: Building an Effective and Inclusive Cash Assistance Program. FreeFrom. Available from: <https://bit.ly/TrustSurvivors>

- The location where the transaction took place
 - The type of documentation used to show evidence that the transaction was a result of economic abuse, or the basis for reasonable suspicion that the transaction was a result of economic abuse
- Require covered persons under this section to accept the following documentation as evidence of economic abuse;
 - A copy of a protective order lawfully issued pursuant to Section 6340 of the Family Code, Section 136.2 of the Penal Code, or Section 213.5 or 15657.03 of the Welfare and Institutions Code.
 - A police report indicating the individual was a victim of domestic violence or elder abuse.
 - A Federal Trade Commission Identity Theft Affidavit.
 - Documentation from a qualified third party, which includes a domestic violence counselor or direct service provider, an attorney, a licensed medical professional, a certified public accountant, or a counselor.
 - A covered person shall not require a court order or a police report to prove that the debt or transaction is the result of economic abuse.
- Require covered persons under this section to offer low-cost checking and savings accounts for survivors
- Permit covered persons under this section to freeze transactions that are documented and / or reasonably suspected to be the result of economic abuse. Include immunity for covered persons from regulatory enforcement actions or private causes of action relating to these freezes if the training requirement has been completed.
- Require covered persons under this section to implement enhanced fraud protections and policies that keep survivors' contact information confidential and secure.
- Require covered persons under this section to designate internal team(s) to handle survivor accounts.
- Permit all covered persons under this section to allow survivors to open accounts with ID and address alternatives.

Adopt regulations that specify economic abuse training requirements for state-chartered banks and all other covered persons offering checking and savings accounts to include but not limited to;

- Instruction on how to identify suspected economic abuse, including red flags and specific guidance on proper responses once a covered person under this section reasonably suspected a transaction was incurred as a result of economic abuse.
- Instruction and specific guidance on proper responses once a consumer shows documentation of transactions was incurred as a result of economic abuse.
- Instruction on how to report and respond to economic abuse.

- Discussion regarding the heightened need to protect the privacy of customers who have experienced or are experiencing economic abuse.
- Authorize the Department to offer training.
- Authorize the Department to work with stakeholders, community organizations, and impacted persons to contribute to the training design.

Adopt regulations to enforce training and reporting requirements for non-compliant state-chartered banks and all other covered persons offering checking and savings accounts;

- Authorize the Department to fine or sanction non-compliant covered persons under this section.
- Authorize the Department to allow for any consumers who suffer damage as a result of the failure of a covered person to comply with this section to bring a civil action to cover or obtain any of the following:
 - Actual damages. The total award of damages shall not be less than the total amount of transaction or debt.
 - Punitive damages.
 - Attorney’s fees and costs.
 - Any other relief that the court deems proper.

Survivors need protection and relief from coerced and fraudulent debt

Most survivors experiencing economic abuse must contend with coerced or fraudulent debt (i.e., debt incurred by a harm-doer in the survivor’s name without their knowledge or consent). In fact 52% of survivors experience coerced and fraudulent debt,¹⁰—averaging **\$15,936 each year**.¹¹ This leaves survivors solely responsible for managing and paying down tens of thousands of dollars in debt they did not incur and grappling with damaged credit, which is experienced by at least 46% of survivors.¹² Damaged credit has its own significant and long-lasting consequences for survivors by creating additional obstacles to affordable credit options, housing, employment, and insurance.

Current state and federal policies do not account for survivors’ unique circumstances and needs, instead focusing protections only on fraud incurred by strangers. For instance, most credit card companies and credit reporting agencies require that a consumer present a police report to establish fraud. However, 80% of survivors are afraid to call the police,¹³ and 58% of survivors indicate that they either do not have or would feel unsafe getting a police report.¹⁴ In order to build the financial security necessary for long-term

¹⁰ Adams, A. E., Littwin, A. K., & Javorka, M. (2019). The Frequency, Nature, and Effects of Coerced Debt Among a National Sample of Women Seeking Help for Intimate Partner Violence. *Violence Against Women*, 26(11), 1324-1342. DOI: <https://doi.org/10.1177/1077801219841445>

¹¹ FreeFrom

¹² Adams et. al

¹³ National Domestic Violence Hotline, *Who Will Help Me? Domestic Violence Survivors Speak Out About Law Enforcement Responses*. Washington, D.C. (2015). <http://www.thehotline.org/wp-content/uploads/sites/3/2015/09/NDVH-2015-Law-Enforcement-SurveyReport.pdf>

¹⁴ Amy Durrence, Kirkley Doyle, & Sonya Passi. (2021). *Trust Survivors: Building an Effective and Inclusive Cash Assistance Program*. FreeFrom. Available from: <https://bit.ly/TrustSurvivors>

safety, survivors need support for and relief from coerced and fraudulent debt and the credit damage it causes that is tailored to meet their unique circumstances and needs.

Recommended regulations to support survivors’ financial security through enhanced and specially tailored consumer protections against coerced and fraudulent debt

Adopt regulations to include the following licensure requirements for covered debt collection agencies and all other covered persons conducting debt collection practices;

- Require management and any person affiliated with or employed by covered debt collection agencies and all other entities conducting debt collection practices that interact with a debtor on behalf of the entity to complete a yearly training on how to prevent, detect, and respond to coerced and fraudulent debt.
- Require such persons to report documented and suspected cases of coerced and fraudulent debt, to the Department.
 - Reported information regarding documented and suspected incidents of coerced and fraudulent debt to The Department must include;
 - The debt amount.
 - The name of the original creditor or loan originator.
 - The name of all other collection agencies that have attempted to collect the debt.
 - The type of underlying debt.
 - The debt origination date.
 - The city and state of origination.
 - The date of the loan or credit application.
 - The name of the reporting collection agency.
 - The type of documentation used to show evidence that the debt is coerced or fraudulent, or the basis for reasonable suspicion that the debt is coerced or fraudulent.
- Require covered persons under this section to accept the following documentation as evidence a debt was incurred as a result of economic abuse;
 - A copy of a protective order lawfully issued pursuant to Section 6340 of the Family Code, Section 136.2 of the Penal Code, or Section 213.5 or 15657.03 of the Welfare and Institutions Code.
 - A police report indicating the individual was a victim of domestic violence or elder abuse.
 - A Federal Trade Commission Identity Theft Affidavit.

- Documentation from a qualified third party, which includes a domestic violence counselor or direct service provider, an attorney, a licensed medical professional, a certified public accountant, or a counselor.
 - A covered person shall not require a court order or a police report to prove that the debt or transaction is the result of economic abuse.
- Require covered persons under this section to cease debt collection practices on debt incurred as a result of economic abuse.

Adopt regulations that specify economic abuse training requirements for covered debt collection agencies and all other covered persons conducting debt collection practices;

- Instruction on how to identify suspected coerced and fraudulent debt, including red flags and specific guidance on proper responses once a licensee or covered person reasonably suspects coerced or fraudulent debt is occurring or has occurred.
- Instruction and specific guidance on proper responses once a debtor shows documentation of a debt was incurred as a result of economic abuse.
- Instruction on how to report and respond to coerced and fraudulent debt.
- Discussion regarding the heightened need to protect the privacy of debtors who have experienced or are experiencing coerced and fraudulent debt.
- Authorize the Department to offer training.
- Authorize the Department to work with stakeholders, community organizations, and impacted persons to contribute to the training design.

Adopt regulations to enforce training and reporting requirements for non-compliant covered debt collection agencies and all other covered persons conducting debt collection practices;

- Authorize the Department to fine or sanction non-compliant covered persons under this section.
- Authorize the Department to allow for any debtors who suffer damage as a result of the failure of a covered person under this section to comply with this section to bring a civil action to cover or obtain any of the following:
 - Actual damages. The total award of damages shall not be less than the total amount of transaction or debt.
 - Punitive damages.
 - Attorney's fees and costs.
 - Any other relief that the court deems proper.

Survivors need tailored consumer support from the Department

While we have provided examples of two specific obstacles to financial security facing survivors in California, there are innumerable unique challenges that arise for those experiencing IPV as they attempt

to build wealth and assets. In order to best support Californians experiencing IPV, the Department must take steps to center survivors and their experiences in all of the consumer protections it develops.

Recommended regulations to ensure the Department provides survivors with tailored consumer support

Adopt regulations requiring appropriate training;

- Require Department Commissioners and staff to complete a yearly training on the intersection of intimate partner violence and financial insecurity as well as how to prevent, detect, and respond to economic abuse, including coerced and fraudulent debt.

Adopt regulations that specify economic abuse training requirements for the Department;

- Instruction on how to identify suspected economic abuse, including coerced and fraudulent debt, including red flags and specific guidance on proper responses once a Commissioner or staff member suspects economic abuse, including coerced or fraudulent debt, is occurring or has occurred.
- Instruction and specific guidance on proper responses once a consumer discloses that they have experienced economic abuse, including by submitting any documentation.
- Instruction on how to internally report and respond to economic abuse, including coerced and fraudulent debt.
- Discussion regarding the heightened need to protect the privacy of debtors who have experienced or are experiencing economic abuse.
- Authorize the Department to offer training.
- Authorize the Department to work with stakeholders, community organizations, and impacted persons to contribute to the training design.

Adopt regulations to include the following definitions in Fin. Code, § 90005;

- “Coerced debt” means a debt incurred in the name of an individual through duress, menace, undue influence, coercion, or through threats of violence.
- “Fraudulent debt” means a debt that was incurred in the name of the individual without their knowledge.
- “Economic abuse” means behavior in the context of an intimate partner violence situation 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;
- Exploit powers of attorney, guardianship, or conservatorship; or
- Failing or neglecting to act in the best interest of a person to whom one has a fiduciary duty.

Adopt regulations to streamline customer complaints and reports regarding economic abuse made to the Department;

- Establish a consumer complaint system for consumers to report cases when a covered person has not accepted documented cases of debt or financial transactions was a result of economic abuse.

Adopt regulations to allow for the Department to use data from reported and suspected cases of economic abuse and customer complaints to;

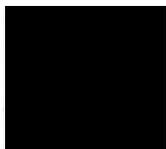
- Develop regulations.
- Inform internal processes, procedures, and programs.
- Develop reports and publicly available information to notify the public on the extent and severity of economic abuse including coerced and fraudulent debt in California. No personally identifiable information shall be disclosed.
- Sanction non-compliant covered persons.

The Department has an opportunity and duty to play a crucial role in ensuring that survivors living in California have access to safe and affordable financial products while implementing the necessary regulations to prevent economic abuse and fraud committed by harm-doers.

If you have any questions or would like to discuss FreeFrom’s public comments further, contact Sabrina Hamm (she/her), Policy and Advocacy Specialist at sabrina.hamm@freefrom.org.

Thank you for your consideration.

Sincerely,



Sabrina Hamm
Policy and Advocacy Specialist
FreeFrom

Helpful Resources and Materials

- [Survivors Know Best: How to Disrupt Intimate Partner Violence During COVID-19 and Beyond](#)
- [Trust Survivors: How to Build an Effective and Inclusive Cash Assistance Program](#)
- [FreeFrom's Survivor Safety Banking Guidelines](#)
- [California Little Hoover Commission 2021 Report – Beyond Crisis: A Long-Term Approach to Reduce, Prevent, and Recover from Intimate Partner Violence](#)