EXAMINING THE USES OF CONSUMER CREDIT DATA

HEARING

BEFORE THE

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND CONSUMER CREDIT

OF THE

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EXAMINING THE USES OF CONSUMER CREDIT DATA

Thursday, September 13, 2012

U.S. House of Representatives,
Subcommittee on Financial Institutions
and Consumer Credit,
Committee on Financial Services,
Washington, D.C.

The subcommittee met, pursuant to notice, at 2 p.m., in room 2128, Rayburn House Office Building, Hon. Shelley Moore Capito [chairwoman of the subcommittee] presiding.

Members present: Representatives Capito, Renacci, Manzullo, Hensarling, Luetkemeyer, Huizenga, Fincher, Guinta; Maloney, Watt, McCarthy of New York, Baca, Scott, and Carney.

Also present: Representatives Green and Ellison.

Chairwoman Capito. We are right in the middle of a window of time, so I wanted to go ahead and try to start on time. I have the ranking member here with me, so we are ready to call this committee hearing to order.

As I said, we do expect some votes in the middle of this, so we will probably have to recess and come back. But I want to definitely finish this as quickly as we can, but giving the issues their due diligence that I think we need to do. So, we are going to focus on the use of consumer credit data to construct a consumer credit profile and how that profile affects folks' ability to access different financial products.

Just briefly, the Fair Credit Reporting Act (FCRA) governs the collection, assembly, and use of credit—consumer credit reports—and provides the framework for the consumer credit reporting system. This system uses a consumer's payment history,—I think we are all familiar with this, painfully or not—their level of debt, and information about their loan history to provide lenders and potential employers with the means to assess a consumer's ability to manage their financial responsibilities.

Today, we will learn about the current types of data used to construct a consumer credit profile, as well as potential issues that arise when data is improperly reported. The subcommittee will receive input from our witnesses on two legislative proposals.

The first is a bill by Representative Manzullo and Representative Shuler. They have offered a bill that requires consumer reporting agencies to remove paid or settled medical debt from credit reports within 45 days. I believe most members of this subcommittee are familiar with this legislation as we had it last year.

The second bill was introduced this week by Vice Chair Renacci and Representative Ellison. It is called the Credit Access and Inclusion Act, and it makes clear that the Federal statute permits public utility services to voluntarily report positive and negative payment data to the consumer reporting agencies. The stated goal of this legislation is to provide consumers with the ability to build a positive credit history by paying their utility bills on time.

I am interested to learn from our witnesses their thoughts on this. And I want to commend Mr. Renacci for starting this discussion. Again, I thank our witnesses for providing us with insight on these issues.

And I would like to recognize the gentlelady from New York, the ranking member of the subcommittee, Mrs. Maloney, for the purpose of making an opening statement.

Mrs. MALONEY. I thank everyone for coming, and I especially thank Chairwoman Capito for having this hearing. This is an important hearing because our credit scores have a tremendous impact on our ability to take out a mortgage, get a car loan, or get a credit card. And it also impacts the interest rates that you are charged. One late payment can mean the difference between an affordable loan at a competitive interest rate and an unaffordable loan at a much higher rate. So, this is very important to consumers and the overall economy.

This committee has been looking at credit scores and how they are computed for a long time. Today, we are not only looking at the computation, but looking at how data is used or not used to impact the score. And we are considering two bills that will direct the credit bureaus to, in the case of one bill, delete certain data, and in the case of the other, report certain data that will impact what kind of information is used to determine our credit scores.

The Medical Debt Relief Act is a bill we have looked at in the past. It has passed the House of Representatives with bipartisan support. In many cases, the consumer is not aware that they have an outstanding debt because there is an entity in the middle, the insurance company, that settles claims and payments. And there has been some testimony before this committee and others about situations where people have not even known that they were late on their payment because the insurance company was taking care of it. Yet, when they went to get a loan, it had impacted their score.

So, that is a bill that has been around for quite some time. And this committee has not looked at the issue of alternative data, although I know that is something that advocates have been working on for years.

Unlike the Medical Debt Relief Act, which is requiring the bureau to remove information, the other bill we are looking at today enhances the credit report with additional information like positive payment history of utility bills, cell phone bills, and other recurring payments.

Supporters of the bill argue that for consumers with thin credit profiles, and those who are "unscorable," reporting this information will help build credit histories and enable them to be eligible for credit cards, mortgages, and auto loans. Although that sounds like a worthy goal, not everyone agrees that allowing alternative data to be reported will have that intended effect.

So, these are important issues. And I look forward to the testimony and reviewing them in greater detail.

I do know that Mr. Green asked for some time, so if I could yield to him my remaining time. Mr. Green?

Chairwoman CAPITO. Why don't I recognize him after—I want to make a quick announcement, and then go to Mr. Renacci, and then go to Mr. Green.

It is with great regret that I announce to the subcommittee that we are losing a very valued employee who has worked for the Subcommittee on Financial Institutions and Consumer Credit and the Financial Services Committee. Michael Borden is our counsel. He not only provides great wisdom and intelligence, he is also a lot of fun to work with and a good friend to know.

Michael is returning to the private sector. And we solicited comments from some of his friends to see what I should really say about him. I could make a ruling from the Chair that the Dodgers and the Chargers are not good teams. I will not say exactly what people said on that one.

But this is likely the last time that a committee counsel will be wearing Dolce & Gabbana in the anteroom. And then, we could add all kinds of other things like his low-carb diet, designer sunglasses, driving the same car as his frenemy Brendan, et cetera.

But what the heck; I just want to wish him good luck. And thank you from the bottom of our hearts, Michael, for all you have done not just for me and the committee, but for your service to our country. So, let us have a little round of applause.

[applause].

With that, I will recognize Mr. Renacci for 1½ minutes for an opening statement.

Mr. RENACCI. Thank you, Madam Chairwoman.

Credit is the lifeblood of our economy. Access to credit is what allows entrepreneurs to create businesses, small businesses to finance expansions, and ordinary citizens to make everyday purchases on up to their first home. Increasing access to credit is why we are here today.

The person who will testify on our second panel has for years been studying the impact of alternative data on access to credit. The research shows there are an estimated 50 million credit invisibles, those who have 3 or fewer payment histories on their credit files and consequently are unscorable.

Furthermore, 50 million people could have higher credit scores if nonfinancial payment data such as utility payments were reported to credit bureaus. I believe the research is overwhelming, and this is why I joined my colleague, Representative Ellison, in introducing H.R. 6363, the Credit Access and Inclusion Act.

I want to be clear; we are not talking about reducing credit standards. I strongly support strong underwriting standards and believe poor credit standards played a significant role in the recent financial crisis. In fact, my goal is to increase sound underwriting by promoting greater access to data. The more accurate data an institution can access, the better they can access credit risk.

This legislation is a win-win. Our bill will help provide more thorough information to lenders and allow millions to climb out of the shadows and build a credit history. It is clear that negative information can and already is being reported. Our bill simply seeks to make sure the consumers who can be punished for missing payments can also be rewarded for making the same payments.

I want to thank all of our witnesses for being here today, and I look forward to working with you on this important piece of legislation. Thank you. And I yield back.

Chairwoman CAPITO. Thank you. Mr. Scott for 2 minutes for an opening statement.

Mr. SCOTT. Thank you very much, Madam Chairwoman. I want to be as brief as I can. But I just want to issue one little statement on why I am so, so supportive of these two measures, especially the Medical Debt Responsibility Act of 2011. I represent the Centers for Disease Control, and last year they did a study that I want to point out to the committee and to the panelists. And in that study, the CDC found that one out of every three Americans was part of a family that would consider their medical bills a deep financial burden. And in addition, one in five Americans struggled to pay medical bills that were related to medical debt each month. And one in 10 stated they were unable to pay these bills at all.

And now, these statistics are worsened when they are focused solely on African Americans; among African Americans, over 40 percent of them report financial burdens of medical care and nearly 28 percent cite problems with paying their medical bills in the past year.

Unlike other forms of debt, medical debt is nearly always unplanned and involuntary. No one knows what day or time it will hit, especially if it hits big. And currently, 8.1 percent of Americans are unemployed, and they are simply unable to take on burdensome medical debt that would further impede their access to credit.

That is exactly why these two bills are so important. I commend the sponsors on them, and I certainly urge quick action.

Thank you, Madam Chairwoman.

Chairwoman CAPITO. Thank you.

Mr. Hensarling for 2 minutes.

Mr. HENSARLING. Thank you, Madam Chairwoman. And thank you for holding what I believe is a very important hearing. We know that we continue to be in a very troubled economic environment, and many of our constituents continue to suffer. That is why it is so important that we ensure that credit scorers are serving our constituents. I believe they are an incredibly important tool. They have helped democratize consumer credit; made it more egalitarian. It is an empowering thing for consumers. And so, I think we ought to approach this with a fair amount of care and trepidation.

I have read some of the testimony; not all of the testimony. And certainly, there are some disturbing anecdotes, and I believe some very legitimate issues dealing with medical debt. But I still think we should be very, very careful here in what we do. And our goal should be to try to make credit reports more accurate, not less complete.

And so, I do want to thank Mr. Renacci for his legislation, which I think does take us in the direction of making credit reports more complete. I am always concerned when Congress attempts to involve itself in credit allocation policy.

We did that with the mortgage finance system where financial institutions were in effect told to ignore predictive information, be it credit reports, debt-to-income ratios, or significant downpayments in a financial crisis, and millions of our countrymen have suffered.

So, the bottom line is thinner credit files can erode risk-based pricing. Ultimately, that can make consumer credit more expensive and less available. And now is a very poor time to move in that direction.

Thank you, Madam Chairwoman.

Chairwoman CAPITO. Thank you.

Mr. Green for 2 minutes.

Mr. GREEN. Thank you, Madam Chairwoman. I thank you and the ranking member for the opportunity to be a part of the hearing. And I would like to thank Mr. Renacci and Mr. Ellison for the piece of legislation that they are presenting.

I do understand that we have a good many people who are invisibles, as has been said. Mr. Renacci called it to our attention, some 30 to 50 million people.

These are people who do not have credit files at all or they have no credit score that can be measured simply because they have what I consider credit—they pay light bills, gas bills, water bills, and phone bills—but they do not have these things scored.

And in my opinion, these people can make timely payments. They have demonstrated it, but they just do not have the credit score. So, I compliment them on what they are doing.

I would also call to the committee's attention the alternative credit scoring bill that we passed in this House that calls for a pilot program with FHA. We are looking forward to moving forward on this and having this opportunity for persons with this alternative credit to have their credit properly scored.

When it comes to money, there are some people, if I may say it this way, who do not believe in "First National;" they believe in "first mattress." And they keep their assets close to them, right under them if I may say so. Just because they do not participate in the process and the system to the same extent that we do, it does not mean that they are not creditworthy. And my hope is that we can find a way to make sure that they can complete the process, but do it in such a way that they can pay their bills and they too can have credit.

I yield back the balance of my time.

Chairwoman CAPITO. Mr. Manzullo for 1½ minutes.

Mr. MANZULLO. Thank you. Thank you for calling this hearing, Madam Chairwoman.

I have long supported this bill, the Medical Debt Responsibility Act. In the past two Congresses, we have worked with colleagues on both sides of the issue to make sure that this important issue is addressed. In fact, last Congress the House passed a similar bill, the Medical Debt Relief Act of 2010, with overwhelming bipartisan support.

A straightforward bill is good for consumers and the economy. There is no cost to the government. Medical debt affects many hardworking Americans who have been diagnosed with an illness or involved in an accident, the results can be devastating. Even small medical debts are causing large problems for consumers and are stifling our economy.

So, Madam Chairwoman, this is a great bill. I appreciate the opportunity to be here to ask questions of the witnesses.

Chairwoman CAPITO. Thank you.

Mr. Ellison?

Mr. ELLISON. Thank you, Madam Chairwoman. I will be quick because I know that we have a vote.

But I first of all want to thank Mr. Renacci. I know it seems like it is somewhat rare to get a chance to come together on a bipartisan basis to do something good for the American people. So, I am very grateful that we are able to work together. Also, Mr. Jones, Mr. Capuano, and Mr. Hinojosa who joined the bill as original cosponsors.

I just want to say very briefly that millions of people have damaged credit scores. Delinquencies remain in their files for years. In addition, there are an estimated 35 to 50 million people who are credit invisible. I think this bill can take us a long way toward solving this problem and really helping many families in our country to have an accurate credit score.

Another concern is that there are about 50 million people whose credit scores are lower than they would be or should be if all of their credit information was included. Credit invisibility affects all kinds of Americans; all Americans really in some way. But it also affects some groups disproportionately.

For example, African Americans, Latinos, young people, immigrants, and women whose credit has been in their late husband's name often are credit invisible. People who for religious or personal reasons do not borrow money with interest rates are affected. And people who live mostly in the cash economy. So, it affects a whole multitude of people in various walks of life.

The solution I think is simple. Our bill clarifies that utility and telecom firms can report their customers' on-time payments. It is not a mandate.

Also, a nonpartisan research group that works on this issue, the Policy & Economic Research Council, known as PERC, has provided impressive empirical evidence which establishes that the value of including alternative data in credit scores. And I find the data important and reliable and overwhelmingly to the benefit of customers.

Borrowers who benefit from improved access to the credit mainstream are going to be better off. And they can save money on insurance and debt and increase their wealth by accessing affordable credit. Lenders benefit by being able to better assess risk because they have more information and they can more profitably and soundly extend credit to segments previously viewed as risky.

So, let me just wrap up by saying that I am very happy to be working on this bill. I look forward to hearing from people who have various points of view. I know that not everyone thinks the bill is great as it is. I want to hear from them too. But I think that this is a very good step and a bipartisan attempt to improve the lives of millions of Americans.

Chairwoman CAPITO. Thank you.

Mr. Fincher for 1 minute.

Mr. FINCHER. Thank you, Madam Chairwoman.

Credit is a necessary part of America's financial system. A person's credit report has become as important as their resume, personal reputation or integrity. Unfortunately, our credit data may be susceptible to mistakes by creditors, credit bureaus or simply human error. Also, many hardworking Americans continue to have difficulty establishing credit histories, which is a necessary component to establishing good credit.

Too often in Congress, there are unintended consequences to the laws we create. Laws requiring personal credit reporting and credit history are too important to not get right the first time. Therefore, I looking forward to hearing from our witnesses. And I yield back. Thank you.

Chairwoman CAPITO. Thank you.

What I would like to do is give Mr. Schoshinski a chance to give his opening statement for 5 minutes. And then, we will probably adjourn at that point, and come back for questions.

So, I would like to welcome as our first witness Mr. Robert Schoshinski, the Assistant Director of the Division of Privacy and Identity Protection at the Federal Trade Commission.

Welcome. You are now recognized for 5 minutes.

STATEMENT OF ROBERT SCHOSHINSKI, ASSISTANT DIRECTOR, DIVISION OF PRIVACY AND IDENTITY PROTECTION, THE FEDERAL TRADE COMMISSION (FTC)

Mr. SCHOSHINSKI. Thank you, Chairwoman Capito, Ranking Member Maloney, and members of the subcommittee. It is my honor to present the Federal Trade Commission's testimony on the important issues of consumer reports and credit scores today.

The Fair Credit Reporting Act is the law that governs the operation of our Nation's consumer reporting system. In enacting the FCRA in 1970, Congress recognized the vital role that consumer reporting agencies play in assembling and evaluating information bearing on creditworthiness, credit standing, credit capacity, character and general reputation of individual consumers.

Today, consumer reports are used by issuers of credit, insurance companies, employers, landlords, and others to make critical eligibility decisions affecting consumers. The information contained in an individual consumer's report will affect the eligibility and cost of various consumer products and services that most of us would consider to be essential parts of the activities of modern life.

I would like to highlight three aspects of the Commission's testimony in my comments. First, as explained in the testimony, the accuracy and completeness of consumer reports is a central concern of the FCRA. In the credit context, for example, complete and accurate consumer reports enable creditors to make informed decisions benefitting both creditors and consumers.

Errors in consumer reports, however, can cause consumers to be denied credit or other benefits, or to pay a higher price for them, and can cause credit issuers to make inaccurate decisions that result in declining credit to a potentially valuable customer or issuing credit to a riskier customer than intended.

The FCRA contains numerous requirements designed to ensure that information contained in consumer reports is accurate and complete. For example, consumer reporting agencies must make reasonable efforts to assure the maximum possible accuracy of reports, and must maintain procedures through which consumers can dispute and correct inaccurate information in their files.

In addition, amendments to the FCRA in the last decade have allowed consumers to access their own consumer reports and the credit scores based on those reports. These important rights permit consumers to know what is being reported about them and to evaluate whether their files contain inaccurate or incomplete information that they should dispute.

Second, the issue of thin files or consumer files with limited or no credit histories can limit the ability of credit providers to assess the subject consumer's creditworthiness. In 2003, Congress asked the Commission to study whether common financial transactions not generally reported to the credit reporting agencies would be useful in determining the creditworthiness of consumers.

The Commission issued a report containing its findings in 2004. The report concluded that there was a sizable consumer population that was difficult to evaluate for credit purposes because they have thin files or no credit history.

The Commission found that the types of consumers with thin files included young people living on their own for the first time, people who established credit through their spouse, recent immigrants, and people who either do not use credit or who rely on alternative credit sources.

The report discussed arguments for the inclusion of alternatives to traditional data and credit files, such as rental payment information, utility payment information, and cellular phone payment information, and identified private efforts under way to collect and report these types of alternative data.

Third, I would like to address the treatment of medical debt in credit reporting and credit scoring, which continues to present unique challenges. Medical debts can be reported as derogatory items on consumers' credit reports, even after such debts have been paid, adversely affecting a consumer's credit score.

As the Commission's testimony describes, some have questioned the appropriateness and value of medical debt in assessing and predicting credit risk. In some cases, the debt may result from a billing dispute or misunderstanding between the consumer and their insurer. Additionally, some argue that medical debt is often an unexpected one-time expense, and thus may not be a good indicator of a consumer's general creditworthiness.

On the other hand, some argue that because such debts can provide accurate information about consumers' financial obligations and payment histories, they should be included in credit reports.

The Commission continues to monitor developments in the reporting of medical debt. For example, the bill discussed here today, H.R. 2086, the Medical Debt Responsibility Act of 2011 seeks to address this issue by requiring the removal of some fully paid medical debt accounts from consumer reports. The Commission has not taken a position with respect to the Act or any other Federal or State legislation on this issue, but continues to monitor developments on the issue.

The FTC is committed to using all the tools at its disposal to ensure privacy and accuracy of consumer reports as required by the FCRA, and we would like to thank the chairwoman and the committee for providing us an opportunity to appear today. I am happy to answer any questions that the committee may have.

[The prepared statement of Assistant Director Schoshinski can be found on page 76 of the appendix.]

Chairwoman CAPITO. I thank the gentleman. That was exactly 5 minutes. Very good.

The committee will now stand in recess. We have four votes, so I predict we will be back somewhere in the 3:00 hour. Sorry for the interruption.

[recess].

Chairwoman CAPITO. We will go ahead and reconvene the hearing. Again, I apologize for the delay, but we should have clear sailing hopefully for the rest of the hearing. I will start the questioning for 5 minutes.

In terms of how credit scores are developed, are they all developed by third parties like the credit bureaus? Or do financial institutions also develop their own sort of in-house scoring models?

Mr. SCHOSHINSKI. I do not know the exact answer to that question. I think it depends. And I know there is a representative from the industry on the second panel who may be able to address it.

My understanding is that credit reporting agencies develop scores, but that they are—the lenders or the others who are using the scores may ask for specific weight to be given to different factors in the credit reports. So, the scores may differ depending on who is receiving the score.

Chairwoman CAPITO. One of the questions I have, and this is just a random question, but you always hear about things staying on your credit report for 7 years. What is so magical about 7 years?

Mr. SCHOSHINSKI. Seven years is just the cutoff point that Congress elected to use. It decided that things beyond 7 years are either stale or not indicative anymore at that point. So, it is 7 years for most derogatory items. I think for bankruptcies it is 10 years. But that is just what Congress determined when they passed that section of the Act.

Chairwoman CAPITO. Having been obviously a consumer who has looked at my credit report, it really is frustrating that you cannot—you can satisfy these negative parts of your credit score and you really do not get credit for it for 5 years later or something like that. I do not know if there are options that can be built in for that.

And another thing, I think—and I will also go to the other panel on this—the communication issue in trying to talk to a credit bureau, to try to work on your credit score, is not easy. It is not consumer-friendly. Do you all address that at the FTC?

Mr. SCHOSHINSKI. We certainly do. There are provisions of the FCRA that require credit reporting agencies to do certain things when disputes are received. And they have to do a reasonable investigation. They have to do it within a certain amount of time, usually 30 days. And they have to communicate the results of their investigation, whether they are going to change the item based on what the consumer told them, or whether they are going to refuse to change it.

So, there are provisions in the Act that require the credit reporting agencies to do certain things. If they develop or put up stumbling blocks to consumers to keep them from disputing or actually having the credit reporting agency investigate the item, then that could be a violation of the Fair Credit Reporting Act. And we would investigate and take action on that.

Chairwoman CAPITO. This is another thing that has entered my own life. And as a mother—my children are in their 20s now, and trying to build their own credit history. You are encouraging them as much as you can as they go through college, to not run up a bunch of debt. You are trying to keep them clean as much as you can financially.

And then they reach the point where they are in their first job and they have no credit history because they basically have been good players—I guess that is what you are calling it. What would you recommend to the young people to be able to start building that before they reach the turndown for the option of credit as they are in their early adulthood moving on to their careers?

Mr. SCHOSHINSKI. I think the most important thing is to avoid negative information on a credit report. Now, that does not necessarily address the issue of—

Chairwoman CAPITO. Building positive information.

Mr. SCHOSHINSKI. Right.

Chairwoman CAPITO. Yes.

Mr. SCHOSHINSKI. Some have advised using credit cards and paying them off on time as a way to build credit. I cannot say whether that is an appropriate or a good way to do it. But that is one way to put one's footprint on a credit report, again, as long as the information is positive.

Chairwoman CAPITO. Right. Okay. I will yield to the ranking member for questions.

Mrs. MALONEY. In your statement, that we should work to build positive information on our credit scores. But oftentimes, there is negative information on it. And sometimes, it is incorrect. How do you go about correcting negative information on these credit scores? And do you oversee the efforts to correct it? What if you get a score and you know it is wrong? How do you approach it? Are there professionals who work with you like attorneys or, I don't know, advocates who help? Most consumers would not know where to go.

What would you do if the information was wrong? Would you call an attorney? Would you call a credit agency? What would you do? I do not think most people know what to do.

Mr. SCHOSHINSKI. That is a good question. And one of the things that the FTC has done in terms of raising consumers' awareness about their rights under the FCRA is to do a lot of outreach and a lot of consumer education. And there are a number of consumer advocate groups that do engage in that kind of assistance.

But the most important thing the consumers can do is to know what their rights are. And the way they are going to do that is first to receive their credit reports and make sure the information that is on there is accurate. And once they do, they have the right to, if there is inaccurate information, go either to the credit reporting agency or to what we call a furnisher, the entity that initially reported it to the credit reporting agency, and say, hey, this information is incorrect; it needs to be changed.

That starts the clock running. And that imposes an obligation on the furnisher or the credit reporting agency to do a reasonable investigation and either take it off or say why they are not going to take it off.

Mrs. MALONEY. Or say whether or not?

Mr. SCHOSHINSKI. Say why they are not going to take it off.

Mrs. MALONEY. Why they are not going to take it off. And they have to give you that information?

Mr. SCHOSHINSKI. Yes.

Mrs. MALONEY. Okay. In your written testimony, you state that errors in consumer reports often lead to credit issuers making inaccurate decisions that result in declining credit to a potentially valuable customer. Can you comment on the two bills that are before us today and how they will help alleviate this problem? Do you support these two bills?

Mr. SCHOSHINSKI. We have not taken a position on either of the bills. We do not either advocate the passage of, or advocate against the passage of, either of the bills.

From my reading of the bills, they would not have a direct impact on the inaccuracy issue. The medical reporting bill would limit some information that was put on credit reports, and the thin file bill would increase information that is being put on reports. So, it would affect the amount of information, either subtracting or adding. But we do not have any data to indicate whether they would increase the rate of inaccuracy or decrease the rate of inaccuracy.

Mrs. MALONEY. And in your statement, you also note that you share jurisdiction now over credit scores issues with the Consumer Financial Protection Bureau. Can you expand on how this will work with two regulators? Are you responsible for some things and they are responsible for how you delineate it? Or how does it work?

Mr. SCHOSHINSKI. Sure. In the area of enforcement, the Federal Trade Commission and the CFPB share jurisdiction. The CFPB now has primary responsibility for rulemaking and supervision and oversight of some of the larger credit reporting agencies. But in enforcement, we share authority and jurisdiction.

The way we are dealing with it is in January of this year, the two agencies entered into a memorandum of understanding to sort of set the guidelines for how we will deal with enforcement issues related to the Fair Credit Reporting Act and other issues that overlap between the two agencies. The goal of that is to avoid duplication.

We do not want two agencies doing the same work. And we want to have a consistent voice in terms of what advice we are giving, what policy statements we are making. And so the two agencies have working groups that meet on a regular basis, and share information about the investigations they are doing to make sure that we are not duplicating anything.

We would be wasting resources by having two agencies do the same thing. And in my experience, it has been working out pretty well.

Mrs. MALONEY. Do you believe that consumers are now more aware of how data affects their credit scores? And how have your enforcement actions raised awareness possibly for consumers?

Mr. SCHOSHINSKI. Yes. I think consumers are more aware of these issues, especially with the amendments over the last 10 years to the Fair Credit Reporting Act that enabled them to get free credit reports, enabled them to dispute items on the credit report with the credit reporting agencies and furnishers.

And I think both the enforcement that the FTC has done and the consumer education and outreach has raised awareness and has let consumers know that they do have these rights and can take action when there is inaccurate information.

Mrs. MALONEY. Thank you. My time has expired.

Chairwoman CAPITO. Thank you.

Mr. Renacci for 5 minutes.

Mr. RENACCI. Thank you, Madam Chairwoman.

In your testimony, you mentioned the FTC's 2004 study on the possible benefits of reporting more ultimate data. Your testimony states that there is a sizable consumer population that is difficult to evaluate for credit purposes due to a lack of credit history. Is it the conclusion of the study that the population suffers in any way negatively from the lack of unscorability?

Mr. SCHOSHINSKI. I do not know that the study reached a particular conclusion on that. But I think because there are a large number of people who cannot be scored or cannot be evaluated under the credit reporting agency, some of them are denied credit who would have been able to get credit if the additional information had been reported.

Now, there is a flip side to that. Additionally, some consumers, either through late payments or failure to pay certain bills, might be denied credit or have a worse situation if that information was reported in the credit reports.

Mr. RENACCI. I notice you said with the chairwoman that maybe one of the options was getting a credit card. But how about that person who cannot get a credit card?

Mr. SCHOSHINSKI. Yes. Some people are in a situation—it is a Catch-22 where they cannot establish the credit that they need in order to then get—establish a credit rating.

Mr. RENACCI. So, what options would they have?

Mr. SCHOSHINSKI. I do not have a particular answer to that. In the current system, I do not know what options they do have.

Mr. RENACCI. But do you think if there was attachment of their current rent payments and some of the alternative payments that they would have some opportunity for a credit history?

Mr. SCHOSHINSKI. Yes. For those who are timely and who pay those currently unreported items, it will give them an opportunity to establish credit.

Mr. RENACCI. You also mentioned in your testimony that the Commission identified barriers to reporting alternative data, specifically laws and regulations. Can you discuss some of those barriers and discuss what actions are needed for you to remove some of them?

Mr. SCHOSHINSKI. Certainly. There are some either State or local requirements about utility payments, that require either consumer consent or other preconditions before it can be reported to a credit reporting agency. So in those cases, it is difficult for utilities and others to report complete information. I do not know how to eliminate those. It could be done legislatively or otherwise.

Mr. RENACCI. There are proponents of alternative data reporting in a report focused on bringing no-file and thin-file consumers into the financial mainstream. How might alternative data reporting affect those already in the credit reporting system?

Mr. SCHOSHINSKI. I do not have data or information on that. It seems to me that generally more accurate information in the credit reporting system is good for everyone. It enables creditors and individuals seeking credit to have better information and make better decisions. So to the extent that any provision would provide more accurate information, I think the general conclusion would be to benefit consumers in the system.

Mr. RENACCI. So you do agree that more information actually could provide better credit opportunity?

Mr. SCHOSHINSKI. More accurate, consistently reported information, in our opinion, is good for the credit system.

Mr. RENACCI. I yield back.

Chairwoman CAPITO. Mr. Scott for 5 minutes.

Mr. SCOTT. Yes. Thank you, Madam Chairwoman.

I am interested in your answer to an earlier question. You said that you did not have a position on either bill. And that struck me as kind of strange. Why would not you have a position on either one of these bills? Especially when you stated in your written testimony that errors in consumer reports often lead to credit issuers making inaccurate decisions.

And these two bills that we are discussing, the Medical Debt Relief Act and the Credit Access Inclusion Act, are designed to alleviate the very problems that you addressed in your testimony. It would make our discussion and hearing more beneficial if you would state how these two bills would impact, especially given the fact that your agency, the FTC, will be largely responsible for helping us work through these.

We are moving ahead with these two bills and it is so important to get exactly what your opinions are. That would help us to maybe move to correct, or you make some suggestions or recommendations. So, it is very important that we do get your opinion on these.

Mr. SCHOSHINSKI. Yes, Representative Scott. The Commission has not taken a position on either of these bills and has not authorized me to testify—

Mr. SCOTT. I do not want—when I say position, I am not talking about whether you are for or against. What is your commentary? Are we moving in the right direction? What in these two bills are we doing right? What may we be doing wrong?

Mr. SCHOSHINSKI. Those are not questions that I can answer today. But I think the Commission will be happy to work with the members of the subcommittee on either of the bills or any other bills that address these issues to see if there are ways to address those concerns about accuracy in them.

Mr. SCOTT. Okay. Let me ask you this: What challenges do consumers face, in your opinion, in terms of if they have the opportunity to dispute information that may be contained in their credit report? What challenges do they face? And what resources does the FTC provide to assist consumers who are looking to address these errors in their credit reports?

Mr. SCHOSHINSKI. Certainly. So, the resource that the FTC provides is we have extensive consumer education materials both on our Web site and in written materials to provide consumers with the step-by-step process through which they can dispute inaccurate data on their credit reports either with the credit reporting agency or with the furnisher of the company that initially provided the information to the credit reporting agency.

The FTC also has engaged in extensive outreach and training to assist consumer advocates who help people with these kinds of issues, and train them through the law and the process through which these issues can be disputed.

Mr. SCOTT. Let us talk about these errors. Give us some examples of some of the errors that occur in consumer reports that lead to these credit insurers making inaccurate decisions.

Mr. SCHOSHINSKI. Errors could be anything in a credit report. It could be an account, a credit card that you paid off being reported as delinquent and unpaid. It could be that a credit card or another account is being reported as one that you never opened or never used. It could be that they are associating information from another consumer with your account.

An individual could be the victim of identity theft and information could be on their credit report as a result of that. So, there is a broad range of inaccuracies and errors that could be on a credit report.

Mr. SCOTT. And in your opinion should we be limiting the amount of time that settled medical debt remains on a consumer's credit report?

Mr. SCHOSHINSKI. I cannot express an opinion on that. It is a policy call.

Mr. SCOTT. All right.

Thank you, Madam Chairwoman.

Chairwoman CAPITO. Mr. Luetkemeyer for 5 minutes.

Mr. LUETKEMEYER. Thank you, Madam Chairwoman.

I am kind of curious about some statistics with regard to credit reporting; for instance, what percentage of the lenders use credit reports? Do you know offhand?

Mr. SCHOSHINSKI. I do not know. I do not have that data.

Mr. LUETKEMEYER. Do you know what percentage of businesses report to credit reporting agencies?

Mr. SCHOSHINSKI. No, I do not.

Mr. LUETKEMEYER. There is no ballpark figure out there that most of the folks who do some sort of credit payment type stuff or—there is no data?

Mr. SCHOSHINSKI. We do not keep those statistics. Although, the witness from the industry in the second panel may have information about that.

Mr. LUETKEMEYER. Okay. I will assume then probably—I was kind of curious if you knew based on the lending—the lending based on those credit reports how accurate are the lenders when they make a loan? Do you know anything, whether they are—those things are—how accurate to be able to make a loan on? Is it worthwhile, not worthwhile? Is that up to each individual lender?

Mr. SCHOSHINSKI. We do not know about the accuracy of the lender's decision. But there is currently a study the FTC is doing that the FTC was charged by Congress to do to evaluate the accuracy of data in credit reports. And that report is currently expected to be issued in December of this year.

Mr. LUETKEMEYER. Okay.

Mr. SCHOSHINSKI. So, it took a random sample and—

Mr. LUETKEMEYER. Okay. In my State, over a couple of years, we have had some devastating natural catastrophes. We had a tornado run through Joplin, Missouri. We had a devastating flood in the southeast corner of our State. And as a result, we have a lot of folks who have some—obviously some bills that were not paid, some well beyond their control. They have lost jobs as a result of all this. They have lost homes. They lost everything.

How are those things taken into consideration? Do you re-weight your report? Are those things noted in the report? How do you take those things into consideration?

Mr. SCHOSHINSKI. I think it depends on the credit reporting agency and the creditor, whether they are willing to forebear on payments based on those circumstances or not. I do not have an answer for how that works. But again, the witness from the credit reporting industry—

Mr. LUETKEMEYER. Okay. So, what you are telling me is for the folks, for instance, who had the tornado go through and they lost a job and they lost their house. And so for the 3 months so they could find some sort of subsistence living quarters and then find a new job, all those bills that they accumulated will still show up on their credit report?

Mr. SCHOSHINSKI. They could, yes.

Mr. LUETKEMEYER. And you have to look at the forbearance and understanding of your creditor to go back and say well, this is what we did and whenever I did get a job and my bills started getting paid again. Is that what you are telling me?

Mr. SCHOSHINSKI. That is correct.

Mr. LUETKEMEYER. Okay. With regard to identity theft, I think Mr. Scott mentioned it a minute ago or you mentioned it, I believe, in your discussion with him. How quickly are those things removed from somebody's credit report?

Mr. SCHOSHINSKI. They can be removed pretty quickly. If someone reports identity theft and has gone to the police and identified that someone has stolen their identity and used their information, the process can be pretty quick, within weeks or a month.

Mr. LUETKEMEYER. Do you have a red flag situation or a system by which an account is red-flagged? If you see something coming in that is so dramatically out of the norm from what that person in the past has been doing that you say man, this guy is off the reservation, what happened? Which would be an indication I would think, that there is probably a stolen identification of some kind, a credit card or a debit card or whatever?

Mr. SCHOSHINSKI. Credit card and debit card issuers do have processes to identify fraudulent, out-of-character purchases—

Mr. LUETKEMEYER. So, they would catch it more quickly than you would?

Mr. SCHOSHINSKI. Yes.

Mr. LUETKEMEYER. Yes. Okay.

That is all I have. Thank you, Madam Chairwoman. I yield back.

Chairwoman CAPITO. Thank you.

Mr. Carney for 5 minutes.

Mr. CARNEY. Thank you, Madam Chairwoman. And thank you for holding this hearing today.

I would like to go back to some of the questions that Mr. Scott asked. You have said a couple of times in response to the questions that these are policy questions and you do not have a position from the Commission. But I am wondering—I expect that your role here today is to talk a little bit about the implications of the work that you do for these changes that might occur, right, if Congress decides to pass this legislation.

So, with respect to medical debts, is there anything within those changes that would cause you concern with respect to your responsibility? Why don't we start with—tell me the breakdown between your responsibility and the CFPB's, just so that I am clear on that, if you could do it briefly?

Mr. SCHOSHINSKI. Certainly. The Federal Trade Commission and the CFPB share authority and jurisdiction for enforcement of the Fair Credit Reporting Act. Under—

Mr. CARNEY. Where are those lines? What is your responsibility and what is their responsibility?

Mr. SCHOSHINSKI. The responsibility is basically governed by coordination between the two agencies to make sure we are not working on the same thing. So, we have—

Mr. CARNEY. So, you do the same things; you just work on different cases?

Mr. SCHOSHINSKI. There is some authority that the CFPB has that the Federal Trade Commission does not have. For instance, they have taken most of the rulemaking authority under the FCRA. So, they are responsible for that portion of the FCRA program.

Additionally, they do supervision for some of the larger credit reporting agencies. That means they have the ability to go in and look at what they are doing, at the procedures to make sure they are in compliance. We do not have that authority and we have never had that authority.

Mr. CARNEY. So, what is the major focus of your—the accuracy of the information or—

Mr. SCHOSHINSKI. Accuracy and enforcement of the provisions of the FCRA such as dispute resolution.

Mr. CARNEY. Okay.

Mr. SCHOSHINSKI. Such as providing data for impermissible purposes. If a credit agency is providing data for impermissible purposes, we would take action on that. So, primarily what we do is review complaints and other reports of violations of the Fair Credit Reporting Act, and take action where we find—investigate and take action where we find—

Mr. CARNEY. So, is there anything in these two pieces of legislation with respect to medical debts or thin files that raises any flags or concerns for you with respect to the charge that you have?

Mr. SCHOSHINSKI. I do not think that they would change enforcement in any significant way. It is just that there would be—

Mr. CARNEY. Be more.

Mr. SCHOSHINSKI. I am sorry?

Mr. CARNEY. There would be more to look at right?

Mr. SCHOSHINSKI. That is correct. There would be additional provisions to make sure that credit reporting agencies and furnishers are complying with. But other than that, I do not think it would change.

Mr. CARNEY. So, with respect to your enforcement authorities, there is no real—you do not have any concerns other than the additional work that you would have to do to look at this—these pieces as well.

Mr. SCHOSHINSKI. No. And that is not necessarily a concern.

Mr. CARNEY. Okay.

Okay. Thank you. I yield back.

Chairwoman CAPITO. The gentleman yields back. I believe Mr. Manzullo has no questions. So, Mr. Green?

Mr. GREEN. Thank you, Madam Chairwoman.

And thank you for appearing today, sir. I am not sure whether my questions will fall within the purview of your appearance today, but I am interested in some things that you may know. What is the current status of requirements with reference to utility bills? Are they—are credit agencies—or well maybe is the debtor required in any way to report any of these?

Mr. SCHOSHINSKI. Currently, under the Fair Credit Reporting Act, there is no limitation on this kind of data and whether it can be reported. So, there is nothing in the Fair Credit Reporting Act that keeps credit reporting agencies from reporting utilities and other data.

The question is whether they find it useful and whether they actually do it. And that is a question for—I think for the witnesses from industry to say what the current practice is. But the law does not prevent them from reporting it currently.

Mr. GREEN. Are you finding that you have these items being reported from time to time, occasionally, quite often? And if so, are they reported on the negative side or the positive side?

Mr. SCHOSHINSKI. The information that we have is that they are reported sometimes. Sometimes it is only the negative. Sometimes it is both. But we do not have data on what the prevalence of that is, whether it is—

Mr. GREEN. Sometimes only the negative.

Mr. SCHOSHINSKI. Sometimes only the negative.

Mr. GREEN. And are there times when only the positive is reported?

Mr. SCHOSHINSKI. I am not aware of that circumstance, but a witness from the industry may—

Mr. GREEN. I understand. So, you are aware that the negative may be reported absent the positive. But you are not aware of whether the positive is reported absent the negative?

Mr. SCHOSHINSKI. Yes. In some circumstances, such debts are only reported when they go to collection or delinquency. That is the only data that gets reported. So by definition, in those situations, there is no positive information to be reported, only the negative delinquency going—or the fact that the debt was passed onto collection.

Mr. GREEN. Do you have a means by which consumers can complain to your agency?

Mr. SCHOSHINSKI. We do, both at our Web site and we have a toll-free number where consumers can make complaints about consumer protection issues and specifically Fair Credit Reporting Act concerns that they might have.

Mr. GREEN. Do you receive complaints about the negative being reported absent the positive?

Mr. SCHOSHINSKI. I cannot say whether we have received specific complaints about that practice. We do receive a lot of complaints about credit reporting. But I do not have a breakdown for the kinds of specific issues that are involved.

Mr. GREEN. Let us move to one other area quickly. Do you find that you have—or have you reviewed any studies that indicate persons who are not scored in the traditional credit market are creditworthy and can make payments on typical household items and the typical things that we purchase, any studies?

Mr. SCHOSHINSKI. I do not have any data on that but I imagine it is the case that there are people who do not have credit histories or credit ratings who have positive payment histories and ability to pay. So, I do not have a study, but I imagine that it is the case.

Mr. GREEN. Do you find that your complaints are concentrated in a given area, the complaints about credit scoring?

Mr. SCHOSHINSKI. I do not. I do not have a breakdown by area. We do have breakdowns by who the entity that is being complained about is, whether it is a credit reporting agency, whether it is a furnisher, whether it is a user of the data.

Mr. GREEN. What is the report on the credit reporting agencies? Do you tend to have more complaints or fewer complaints as it relates to the agencies?

Mr. SCHOSHINSKI. The latest here that we have the full reporting for is 2011. And for that, we have received approximately 30,000 complaints about credit reporting. And of those, 18,818 were about credit reporting agencies; 11,759 were about furnishers, so those would be the entities that was the debtor that provided the information to the credit agency; and 1,542 were about users, so those who were using the data to make determinations about whether to provide credit or other—

Mr. GREEN. Thank you. My time has expired.

Thank you, Madam Chairwoman.

Chairwoman CAPITO. Thank you.

Mr. Huizenga, did you have a question?

Mr. HUIZENGA. Thank you, Madam Chairwoman. I appreciate that.

I am curious as well, and we have had a number of discussions about credit scores and the use of them, what they are used for. What do you believe are some alternative credit data that could predict sort of a borrower's creditworthiness?

And then specifically, how do we deal with young people or with people who are emerging out of bruised credit situations? How do we deal with them?

Mr. SCHOSHINSKI. The Fair Credit Reporting Act allows a broad range of information. So, there may be whole areas of payment information and other information out there that is not currently being used or is not widely being used by credit reporting agencies that could provide the means that consumers who are either new to the credit system or coming out of adverse situations could establish that.

I do not know the particular types of data and I do not know how useful creditors will find them. But obviously, there is a lot of data out there that creditors and credit reporting agencies can use.

Mr. HUIZENGA. And I will yield back. Thank you.

Chairwoman CAPITO. I think that—oh. Mr. Ellison just came in. Excuse me, I am sorry. Go ahead, 5 minutes.

Mr. ELLISON. Thank you, Madam Chairwoman.

And thank you, sir, for your testimony. I just have a few questions. I have tried to listen to what some of the critics of our bill have had to say, and taken them seriously.

One complaint is that if people who are sort of credit invisible now become credit visible by having their utility bills reported on time, then they might start receiving a bunch of mail marketing materials that they really do not want. Is credit information used for marketing purposes?

Mr. SCHOSHINSKI. Credit reporting information is not supposed to be used for marketing purposes; that is an impermissible purpose. The only exception is for firm offers of credit.

So if a credit card company or some other entity is going to say, based on your credit reporting, your credit report, I am willing to offer you this credit, they can make a firm offer of credit for either a credit card or another type of credit. But other than that, they cannot be used for marketing purposes. And consumers have the right to opt out of even those firm offer-of-credit offers.

Mr. ELLISON. Okay. So, let me ask you this about the Equal Credit Reporting Opportunity Act, particularly Section 1002.6. I hate when people do that to me, but do you know what I am talking about?

Mr. SCHOSHINSKI. That is not a statute that is within our enforcement authority.

Mr. ELLISON. Okay. So, do the best you can. Does the consumer have the right to have all of their financial information included in a loan application?

Mr. SCHOSHINSKI. I do not have an answer to that question.

Mr. ELLISON. Okay. We will skip to the next one. And finally, is the National Consumer Telecom & Utility Exchange complying with the Fair Credit Reporting Act, to your knowledge?

Mr. SCHOSHINSKI. I have no reason to believe they are not.

Mr. ELLISON. Okay. So when late-paying customers try to open new accounts, are you aware as to whether or not the National Consumer Telecom & Utility Exchange tells them that their history of late payments results in them paying higher deposits or rates? Do you know anything about that?

Mr. SCHOSHINSKI. I do not have any information about that.

Mr. ELLISON. Okay. Equifax is a company that owns this Telecom & Utility Exchange reporting. Do you have any background on that?

Mr. SCHOSHINSKI. I do not.

Mr. ELLISON. Okay. Fair enough. And let me just wrap up by asking you to talk a little bit about how many people do not yet have a credit score or have a thin file. How does that reality for them affect their lives? Can you just expand on that a little bit?

Mr. SCHOSHINSKI. Just generally speaking, if you do not have a credit history, if you do not have access to credit, there are a lot of things that you are not going to be able to do. You are unlikely to be able to buy a house unless you pay cash or to buy a car. You may have difficulty getting certain jobs. There may be other situations, other purchases and services that you might not be able to get because of that.

Mr. ELLISON. So, bringing people into some sort of credit visibility, generally speaking, will enhance their ability to access credit.

Mr. SCHOSHINSKI. Generally speaking, with the obvious sort of warning that some people who will come into credit visibility will have not very good credit scores based on that, and so, it is not necessarily the case that they are going to improve based on that. But people who do pay on time, have a history of payment, may find their situation improved.

Mr. ELLISON. But even people who may not benefit because their credit history—not paying utility bills say—has been problematic. They will still have an opportunity to improve their credit.

Mr. SCHOSHINSKI. Absolutely.

Mr. ELLISON. And they will at least know where they stand.

Mr. SCHOSHINSKI. Absolutely.

Mr. ELLISON. Yes. And I believe you mentioned that employment—usually when we think of credit scores, we think of borrowing money to buy stuff. But some employers have looked at people's credit scores. Is that right?

Mr. SCHOSHINSKI. Absolutely, yes.

Mr. ELLISON. Yes. So, it would be important for that purpose as well.

Thank you. I yield back.

Chairwoman CAPITO. Thank you. I believe that concludes the first panel. I want to thank Mr. Schoshinski for his patience and his testimony.

We will have the second panel assemble. And we will start as quickly as possible.

Thank you.

Mr. SCHOSHINSKI. Thank you.

Chairwoman CAPITO. Our first witness is Mr. Rodney Anderson, executive director, Supreme Lending, in Dallas, Texas.

Mr. Anderson, you are recognized for 5 minutes.

STATEMENT OF RODNEY ANDERSON, EXECUTIVE DIRECTOR, SUPREME LENDING, DALLAS, TEXAS

Mr. ANDERSON. Thank you, Chairwoman Capito, Ranking Member Maloney, and members of the subcommittee. Thank you for the opportunity to testify on examining the uses of consumer credit data. My name is Rodney Anderson, and I am the executive director of Supreme Lending, based in Texas, as well as the author of "Credit 911."

As a mortgage originator for more than 28 years, I have had the opportunity to discern economic trends, consumer credit, and credit capacity. I have witnessed many changes in my industry and in the market over the years. But there has been nothing more disturbing to me than creditworthy consumers trying to gain access to necessary credit in this economy and being denied.

It takes 2 years to establish a good credit history, and one payment reported in error, or one late payment that a consumer may or may not have known about, to destroy such credit. Even after a consumer pays for such reported debt in collection, regardless of whether or not it was actually owed by the consumer, the consumer's credit report is tainted for 7 years.

Unfortunately, errors on credit reports are rampant. According to research by the Commonwealth Fund in 2010, an estimated 9.2 million people age 19 to 24 were contacted by a collection agency because of a billing mistake. Another recent study conducted by the Columbus Dispatch showed an error rate of about 30 percent.

If an item is in dispute, a consumer may not be able to obtain a mortgage until the dispute is resolved. Although debts in dispute are expected to take 30 days, I see debts in dispute for 5 to 7 years. Where do I see the most errors? In the area of medical debt.

The New York Times recently ran a featured story about a 9-year-old son of one of my clients who was involved in an accident. The boy was taken to the hospital in a $200 ambulance trip, which insurance said they would pay.

Several months and several phone calls later, when the bill remained unpaid, my client finally decided it was easier to pay the $200 himself rather than risk the negative mark on his credit report. But by then, it was too late. The bill had been turned over to a collection agency without my client's knowledge.

It was only when my client and his wife went to refinance their $240,000 mortgage on their home in Lewisville, Texas, nearly 6 years after the accident, that he learned that the paid bill had shaved about 100 points from his credit score. Even with no other debts, a healthy income, and otherwise pristine credit, the couple had to pay an extra $4,000 to secure a market interest rate.

There are many more stories like this which not only impact creditworthy consumers, but also the economy. Markets work well when decisions are made on accurate information. Markets do not work well when the information is incorrect, not known, or is otherwise compromised like it was during the housing bust.

When information is inaccurate, markets make decisions on less than perfect information. With regard to medical debt, this can mean seriously reducing the consumer's credit score and impeding economic activity and consumer borrowing capacity.

This is why I support a bill which was approved last Congress overwhelmingly in the House, and has been introduced again in this Congress by Representative Manzullo and of this subcommittee and others to require consumer credit reporting agencies to permanently remove paid or settled medical debt not to exceed

$2,500 from a consumer's credit report within 45 days of being paid or settled.

This legislation is supported by a diverse group of housing, lending, and consumer groups. Similar legislation has been introduced in the Senate. I strongly believe the passage of the Medical Debt Responsibility Act will reignite our housing market and creditworthy borrowers will finally have the access to credit they have earned.

Finally, I would like to add that alternative forms of data can be very helpful, especially to those people who have suffered financial damage in the past, or who have no access to credit. This is why I support Representatives Renacci and Ellison's bill to permit utility and telecom companies to report on-time payments instead of only delinquent payments to the three major credit bureaus. This may help those consumers who suffer from thin credit files.

I believe that there is one sure place this committee can be helpful in the housing market recovery, and that is by improving the quality of information being used to allocate credit to consumers. Thank you for the opportunity to testify. And I am more than happy to answer any questions.

[The prepared statement of Mr. Anderson can be found on page 45 of the appendix.]

Chairwoman CAPITO. Thank you, Mr. Anderson.

Our next witness is Mr. Stuart K. Pratt, president and chief executive officer, the Consumer Data Industry Association. Welcome.

STATEMENT OF STUART K. PRATT, PRESIDENT AND CHIEF EXECUTIVE OFFICER, THE CONSUMER DATA INDUSTRY ASSOCIATION (CDIA)

Mr. PRATT. Madam Chairwoman, Ranking Member Maloney, and members of the subcommittee, thank you for this opportunity to appear before you today. In my oral remarks, I will just touch on some of the key points we make in a more fulsome way in our written testimony.

First, the accuracy of our members' data systems is world class. In May of 2011, the Policy & Economic Research Council (PERC) completed and released a CDIA-commissioned study of the quality of data found in the databases of nationwide consumer credit reporting agencies. PERC used two measures of what might be a material error in a consumer's credit report, and in the first instance they measured the point change, how often my score changed dramatically from before and after the reinvestigation. And in this case, they found that 0.93 percent of the time, a consumer had a material error in their file.

Dr. Turner, however, recognized that in a risk-based pricing context, even a single point change in a credit score could also result in a change in the price that a consumer received in the marketplace. So, they looked at how often a consumer moved in between one pricing tier and another pricing tier and considered that as a possible material error measure in credit reports.

And in this case, they found that 0.51 percent of all credit reports contained in error that would give rise to that type of pricing tier change, moving from a higher-priced product to a lower-priced product. In our mind, the study puts to bed the debate that has been going on for some time about the accuracy of what data is in credit reports and how it is used and how scores estimate risk relative to that data.

Consumers are also extremely satisfied with the reinvestigation process. The staff and the systems used by our members to handle consumer requests for reinvestigations of data reported to them are first class, and this is not merely our opinion.

We also asked PERC to study how often consumers were satisfied with the reinvestigation process in the context of the accuracy study they conducted. And in this case, fully 95 percent of consumers indicate that they were satisfied with the results of the reinvestigation process.

There is a vibrant market of alternative data funded by the private sector and creating opportunities for consumers across all walks of life. In 2004, the FTC's FACT Act report on common reported transactions stated the following: "The concern prompting this request is that many Americans may be missing out on the benefits associated with the consumer reporting system, even though they may have a demonstrable history of financial responsibility."

Our members did not wait for the FTC report to start the expansion of data that could empower consumers, improve transparency, and create better risk management decisions. Members of the CDIA are building new databases, acquiring data assets, and deploying new analytical technologies that solve problems now.

Consider just a quick list of some of those various data types: assets that we own such as homes, autos, and investments; utility and telecommunication services payments; rental payments; remittance transactions; payments regarding traditional non-traditional loans; demand deposit account loans; short-term loans; prepaid card data; and demand deposit account activity including direct bill pay transactions, income data, and models that estimate income.

With this positive context in mind, it is important for this subcommittee to know that in the context of our voluntary system of data furnishing, some data sources remain on the sidelines because of concerns about regulatory as well as statutory burdens, restrictions, and liability risks associated with reporting information to consumer reporting agencies.

And let me close by making one of our most important points, which is we must preserve the integrity of the credit reporting system as we know it today. The committee asked us to comment on the Medical Debt Responsibility Act of 2011.

The bill imposes a duty on consumer reporting agencies to delete medical debts that are less than or equal to $2,500 within 45 days of the date that we have been notified. Consistent with testimony we have offered in the past, we oppose this bill for a number of reasons.

First, the bill proposes the deletion of accurate predictive data. We do not have the banking industry's full perspective here at the table and what it means for their lending decisions. We would of course encourage the committee, subsequent to this hearing, to reach out in a more fulsome way to the lending community as a whole to get their input on all of this.

And of course score developers—however, it is important to note that score developers have consistently found that presence of any type of debt reported to third-party debt collectors is extremely predictive.

There have been some assumptions that the medical debt getting to the credit file gets there quickly, maybe too quickly. We of course cannot speak for the medical industry, or the insurance industry that covers all of the medical coverages that are out there. But our own members who are debt collectors have reported to us that in 85 percent of the cases, the account they receive from the health care service provider included contact information they could use to successfully contact the consumer.

They also report that their medical providers only provide the data to them only after a full 3 to 4 months has elapsed. And then they maintain the data on their system for another 45 days before they reported to the bureau.

So, we are talking about something in the range of 5 months before the data gets to the credit bureau file. And that is the length of time that the attempts are being made to collect the debt.

Let me just close by saying that our members will never shy away from a thoughtful, probative discussion of the quality of data. But we do believe the bill is technically flawed as well as substantively flawed. We oppose it in its current form. We are happy to have that dialogue.

And we also look forward to the success of our members in the marketplace as they continue to roll out alternative data that will empower consumers and allow more consumers to compete in a market that is more fair, more transparent, and more available to them. Thank you.

[The prepared statement of Mr. Pratt can be found on page 58 of the appendix.]

Chairwoman CAPITO. Our next witness is Ms. Mary Spector, associate professor of law, Southern Methodist University Dedman School of Law. Welcome. Thank you.

STATEMENT OF MARY SPECTOR, ASSOCIATE PROFESSOR OF LAW, SOUTHERN METHODIST UNIVERSITY DEDMAN SCHOOL OF LAW

Ms. SPECTOR. Thank you. It is really an honor to be here to talk with you today about the ways in which we might change the consumer reporting, ways in which we might change it to benefit consumers.

The primary method that the Fair Credit Reporting Act uses to protect consumers' private, sensitive financial information is to limit or exclude certain information. And that is why certain information like bankruptcy filings that are more than 10 years old, arrest records that are more than 7 years old, and those kinds of things are excluded from reporting.

The limitation on reporting of certain information is a method that States use as well. Some States limit the reporting of certain public record information like an eviction filing without the subsequent resolution, or the reporting of payment histories with respect to public utilities. That approach of limiting information is what the Medical Debt Responsibility Act does, and one which I believe is an important addition to the efforts to change consumer reporting in ways that benefit consumers.

Some estimate that outstanding medical debt accounts for about 50 percent of the negative information appearing on consumer reports. One researcher says that about 30 to 40 percent of medical bills contained errors. And when you plug those numbers into a system in which persons other than the consumer is ultimately responsible for payment, you have a system that creates confusion, frustration, and is very time-consuming.

That was the case with the couple that I mentioned in my written statement, Steve and Tara Barnes. There was a disagreement with the insurance company about who was responsible to pay, and the providers had turned the bills over to a collection agency. Once the bills were paid, though, the couple still suffered as a result of those paid bills appearing on their credit report. They estimate they paid about $1,700 more than they would have had the paid medical bills not have been there.

The Medical Debt Responsibility Act would help them. It would have taken those paid bills off of their credit report that were issued more than 45 days after a payment.

Benefits that the Barnes might obtain by the Medical Debt Responsibility Act may be overshadowed in some way by a flood of information, so-called alternative data contemplated in H.R. 6363. It is described to provide positive information. But the bill is not limited to positive information. It includes everything, and would enable the reporting of all payment information, including whether or not the consumer qualifies for a payment assistance program.

Moreover, the bill does not do anything to protect against transfer of billing errors from utilities, much less reduce errors on existing reports or improve the current system's dispute resolution, which has been called a mess that cries out for redress.

Reporting of alternative data does have the potential for thickening a thin file, for creating a history for a consumer who does not have one. But when it comes to employment, no credit history is better than a poor credit history. Employers using credit reports almost overwhelmingly use them as a negative factor to disqualify a candidate for a job. Only about 14 percent of employers use them for a positive factor.

In addition, two States and the District of Columbia prevent full reporting of utility information. My own State, Texas, prevents the reporting of delinquent accounts during the period that they are in dispute until or unless they are resolved against the consumer.

For some consumers, though, alternative information might enhance their creditworthiness. We already have existing measures through the Equal Credit Opportunity Act, for example, that provide for voluntary opt-in provisions for creditors to look at alternative data.

As a result, I think that the addition of alternative data to the reporting system should be considered only as a portion of a larger package to reform the system. I would like to close by identifying just a few areas for further study, if I may.

One would be restricting or prohibiting the reporting of certain kinds of public information like paid tax liens or public records of filings until after there has been a full disposition.

We might limit the weight given in credit scoring to certain kinds of public records, certain suits and certain types of courts, or for less than a certain amount of money. Limiting name-only reports which capture information that has nothing to do with the consumer whose report is actually sought. Or heightening duties of reinvestigation to require consumer reporting agencies and furnishers to provide meaningful substantiation in disputed cases.

Finally, I hope the subcommittee will consider ways to enhance consumer protection, to provide information that would supplement consumer reports with information that may be technically accurate but still incomplete or misleading, as in the case of public records resulting from unfair collection litigation practices.

Thank you for considering these issues and for allowing me to speak today.

[The prepared statement of Professor Spector can be found on page 94 of the appendix.]

Chairwoman CAPITO. I appreciate it. Thank you.

Our next witness is Dr. Michael A. Turner, president and chief executive officer, Policy & Economic Research Council. Welcome.

STATEMENT OF MICHAEL A. TURNER, PH.D., PRESIDENT AND CHIEF EXECUTIVE OFFICER, POLICY & ECONOMIC RESEARCH COUNCIL (PERC)

Mr. TURNER. Thank you, Madam Chairwoman, for inviting me. And I would like to also start by thanking Congressmen Renacci and Ellison for showing the type of bipartisan leadership that Americans so desperately want and need, especially on an issue that pertains to tens of millions of Americans every day in terms of their ability to build a credit history or rebuild and repair their credit history given the macro economy. This is of crucial importance.

Lenders today overwhelmingly use sophisticated value-added services to assess credit risk, creditworthiness, and credit capacity. These services are generally the use of credit reports and credit scores. It is automated underwriting.

The default assumption—for better or worse—of most lenders if there is insufficient information to score a person is that they are high-risk and they are automatically rejected. Consequently, 54 million Americans remain frozen outside of the mainstream financial system, and they have real credit needs. And those real credit needs are being met by pawn shops, payday lenders, check cashing services, and other predatory lenders.

There is a solution to this credit Catch-22, and it is a Catch-22. In an automated underwriting system, it is like when you apply for your first job and they look at your resume and they tell you your resume looks terrific, but they would like someone with more experience. Lenders lend credit to people who already have credit experience. How do I get that credit experience?

We fully support H.R. 6363 as an elegant solution. It is a means whereby the onus is not put on the consumer. It is not opt-in. It is not burdening the consumer. Their good payment history is coming in and populating their credit report, and thickening it trade line by trade line, enabling lenders to have a more comprehensive view of their credit risk and to make a more informed decision.

We are the only organization at this table which has looked at this empirically and not theoretically, which has looked at this in terms of the actual outcome on people's lives; which has looked at it in the actual outcomes in credit markets. And we see that when—in a report we issued in 2006 with the Brookings Institution, we saw that adding a single utility payment data increases credit access for all Americans by 10 percent. It increases access for Latinos and African Americans by 22 percent; for younger Americans below 25 and for elderly Americans by 14 percent; and for the lowest income tier, those earning $20,000 or less, by 21 percent.

When we put this report out, we had an overwhelmingly favorable response, and we had some skeptics. We pay attention to what skeptics say. And the initial response was, this is easy credit. This is big credit trying to con people into more credit than they can afford.

So, we looked at this over a 3-year period, people who were new to credit from alternative data. First we proved the data was predictive. Then, we proved that the data is being used by lenders when available. And what we saw was people who had a utility trade were able to access credit at 4 times the rate of thin file people without a utility trade.

And after two—or actually after just 1 year, they were performing the same as the general population in terms of every meaningful metric: overextension; credit availability; age of credit; and depth of credit. And by the second and third years, they were outperforming the general population. So, there is no empirical basis to support any assertions that this is overextension.

The target moved again. And it was that the data is stale now. We had the Great Recession. We had the global financial crisis. The data from 2005 and 2006 does not matter. So, we have data from 2009, 2010, the peak of the recession with high unemployment, people's savings burned through.

If this did not matter, we should see it. And we have in places like Detroit and Chicago and Milwaukee that have been economically ravaged. And the results were remarkably consistent. The biggest lift goes to the people who need help the most.

We also see, interestingly, that over time people's credit scores go up. African-American scores with utility data go up by 60 points on average over 3 years; 55 points for Latinos. This is important because again, if this were about overextension, if the macro economy mattered, then we would see more delinquencies, more bankruptcies. But we do not. So, again, this has been evaluated empirically.

Finally, the notion came that moderately late utility payment data will affect, disproportionately harm. And we have heard the quote even today that a single late payment will tear down my credit score by 60 to 110 points.

We have just released a report showing that the frequency of a low-income person having a single 30, a single 60, or even unlimited 30s and 60s is minimal. And in fact what we see is that people's scores improve dramatically from having this reported and their access to credit does as well.

The harm or potential harm from moderate late payment is greatly overstated simply because utilities do not report that. Even for utilities that are reporting fully today, unfortunately it is only on less than 6 million Americans. The vast majority report over 60 days late and not 30 days. There is flexibility in the system and we would encourage finding a common ground. We support not having the account information of those who are on energy assistance programs reported.

We think there is a workaround and we do not want to deny the benefits—the ratio is 27 low-income people gain access to credit for every one person whose score goes down. That is a huge ratio. And I urge this committee to consider the facts and not the conjecture. Thank you.

[The prepared statement of Dr. Turner can be found on page 101 of the appendix.]

Chairwoman CAPITO. Thank you, Dr. Turner.

And our final witness is Ms. Chi Chi Wu, staff attorney, National Consumer Law Center. Welcome.

STATEMENT OF CHI CHI WU, STAFF ATTORNEY, THE NATIONAL CONSUMER LAW CENTER (NCLC)

Ms. WU. Madam Chairwoman, Ranking Member Maloney, and members of the subcommittee, thank you very much for inviting me here today. I am testifying on behalf of our low-income clients who would be greatly impacted by both of the issues and the bills being discussed here today.

The first bill, H.R. 2086, would remove paid or settled medical debt under $2,500 from credit reports. This approach will tremendously benefit consumers, and it is probably the simplest and easiest quick fix out there to improve the credit records of millions of Americans, enabling them to qualify for low interest rates and spur economic growth.

The second bill, H.R. 6363, encourages utility companies to report payment information to credit bureaus on a monthly or regular basis. We have serious concerns about this practice. We fear that it will add millions of negative marks to credit reports from low-income and financially strapped consumers. We are not opposed to consumers voluntarily providing this information. We are concerned about it being mandatorily reported.

Proponents claim that utility payments will help tens of millions of consumers. However, the data is based on the very few electric and gas utilities that do report on a regular basis. The vast majority of utilities only provide information to a credit bureau when there is a seriously delinquent account that has been referred to collections or written off as uncollectable. That is a far lower number than those consumers who may pay late on their bill occasionally but then eventually catch up.

The data cited by proponents is only based on this handful of utilities and might not be representative. For example, proponents claim that reporting utility payments will not harm consumers because fewer than 5 percent earning less than $50,000 or less have a 60-day late utility payment. Yet, the data we have from utility regulators shows much higher percentages than 5 percent.

Columbus Gas in Ohio reported that about 21 percent of their customers were 60 days late in December 2011. That figure was 16 percent for East Ohio Gas. San Diego Gas reported that 11 percent of general residential customers and 34 percent of energy assistance customers were 60 days late in June of 2012. And 17 percent of National Grid's New York customers were over 60 days late in the spring of 2010.

I urge the Members here today to go back to your own utility regulators and ask them, how many consumers in your State are 60 days or more late on their gas or electric bills?

So, to the extent that utility reporting creates new scores for the credit invisible, we are concerned that these consumers will end up with a bad credit score. In fact, in the June 2012 study, proponents say that for all those who become scorable, about one third scored in the "F" category, and 22 percent scored in the "D" category; so over half of formerly unscorable consumers ended up with a "D" or an "F." That hardly qualifies them for low-rate mortgages or prime credit cards. I do not know about you, but I do not want a "D" or an "F."

Proponents responded that a low score is better than no score. We disagree. A bad score can harm consumers by making them a target of fee harvester credit card, those credit cards with high fees and limited real credit.

And do not forget, credit reports are not just used for lending anymore. A lot of employers use credit reports, not scores apparently, reports in hiring. And that is a situation where it is far better for a worker if the employer sees no report than one with negative information.

Insurers also use credit scores. And that is another situation where not having a credit history is less harmful than having a bad history because the absence of a score is treated as a neutral in many States.

Utility credit reporting can also conflict with consumer protections like the winter moratorium in many States that prohibit utilities from disconnecting services from certain consumers during the winter months. Utility credit reporting would give these consumers black marks on their credit reports when the moratorium was designed to give them some breathing room.

We have concerns also about the scope of H.R. 6363 because it actually goes far beyond utility credit reporting. It eliminates any regulation under the Fair Credit Reporting Act restricting furnishing of information to the credit bureaus, such as limits on identifying information, public records or tenancy information. It would prevent the Consumer Financial Protection Bureau from establishing regulations that would prohibit the furnishing of outdated, irrelevant or sensitive personal information.

Finally, turning to medical debt, this is an issue with enormous implications for current credit reports. Medical debt makes up over half of the items on credit reports for debt collection. Furthermore, as we have heard, it is for services that are often involuntary, unplanned, and unpredictable. Plus, a lot of these medical collection items are the fault of our convoluted health care payment system.

A collection item could result either from a dispute between the insurer and the provider or a mistake in billing. The American Medical Association estimated that one in five claims is processed inaccurately. When mistakes occur, delays happen, and bills can be sent to a collection agency in the meantime.

Now, even worse, when the insurer or the consumer finally pays off the bill, the collection item still remains on the consumer's credit report and still drops the score. FICO has said anywhere from 45 up to 125 points. Now, tell me how does the fact that a consumer got caught between an insurer and a hospital in a billing dispute make him or her a bad credit risk?

I thank you for the opportunity to testify and look forward to your questions.

[The prepared statement of Ms. Wu can be found on page 110 of the appendix.]

Chairwoman CAPITO. Thank you very much, all of you. And I will commence with the questions because we are on another time constraint here.

Let me just—point of clarification between Mr. Anderson and Mr. Pratt. Mr. Anderson, you testify that there are 9 million inaccuracies on credit reports for folks between 19 and 26, is that correct?

Mr. ANDERSON. For people between 19 and 64. It was according to The Commonwealth Fund, Madam Chairwoman, in 2010.

Chairwoman CAPITO. Okay. But Mr. Pratt, your figures do not sync with that. Did I hear that right?

Mr. PRATT. I think it is two different sets of data. One is a subset of the other. One discussion we are having here today is the accuracy of the medical debt billing process which gives rise to the collection agency activity, which gives rise to the reporting.

And the other is just the macro question; are credit reports accurate? Do they operate as an effective risk management tool in the marketplace? And I think that is what Dr. Turner's study has laid to rest, is the question of whether or not the overall credit reporting system was accurate. At a macro level, 3 data elements being uploaded every month, 200 million plus consumers out there. The numbers look great.

I would say this about The Commonwealth Fund as well. The Commonwealth Fund also said 30 million consumers have received contact from a debt collector. And they said 9.7 million of them then were wrongfully contacted.

Of course, that means the other 20.3 million consumers were correctly corrected. And I think that is one of the challenges we have is understanding what part of the medical debt billing process is accurate versus not accurate. And then what part of that is making its way into the credit bureau record?

Chairwoman CAPITO. Okay. So, let us just say that we are having errors here and misunderstandings. Ms. Wu talked about that as well. And the debate between the hospital and the insurer where really the patient is kind of caught in the middle and not really trying to get it figured out for the patient.

Is there any way that this could—what would be the best way to sort of preempt those issues rather than have them already placed on your report where we have already discussed it is difficult to get resolution? Has anybody thought about that, like a moratorium or anything like that? And I am not sure if it is contained in the bills that we have before us. I am just throwing that out to anybody who might have a thought on that.

Ms. WU. There are actually a number of States that restrict or put a limit on how long a hospital has to wait before they can refer a bill to a debt collection agency or send them to a consumer reporting agency. California has such a law. I think Illinois might have such a law. And we have advocated for some sort of breathing room like that.

If you think about it, medical debt is something you have no control over. Mr. Anderson's client's son was hit by a bicycle. That is not like going and opening up a credit card account. The idea that it is somehow predictive of how creditworthy you are, I think really needs to be examined thoroughly.

By the way, one option consumers unfortunately do not have under the Fair Credit Reporting Act is to get the paid collection item off their credit report using the dispute system because there is a bad 9th Circuit case—it is called Carvalho—where in the exact same situation, the consumer was caught between the hospital and the insurer. And she tried to use the Fair Credit Reporting Act to get it off and the 9th Circuit said no, it stays on.

Mr. ANDERSON. Yes. And the dispute process—if I may, the dispute process is so convoluted. When somebody goes to dispute that, it is supposed to be removed in 30 days. But more consumers are turning to the creditors themselves rather than the credit bureaus because they find the credit bureaus are inaccurate.

They are not helpful and they are—when they find out about these items most of the time they are in lenders offices and it is way too late. A lot of these are already paid medical collections that should have never been on their credit report in the first place.

I have an example of a borrower just the other day or just a week ago, who wanted to buy a $240,000 house, put 20 percent down, has pristine, excellent credit, and a $10 medical collection showed up on his credit report. It has dropped one of his scores 110 points and another one 128 points. That is the scope of the problem.

And lastly on this, Aetna was recently interviewed on CNBC, and they were asked how many medical claims they pay a year. And they said, 440 million claims. And they asked them, how many of them have errors? And they said, 3 percent. So, if you take that down, that is over a million claims a day at 3 percent.

That is a staggering number on just Aetna alone. And the AMA says 20 percent of them have errors. So, the scope of the problem with medical is overwhelming for consumers. And that is why we have this problem today.

Chairwoman CAPITO. Okay. I am going to yield to Mrs. Maloney.

But I would make a statement too, and I do not know that anybody has talked about this. But there has to be an uncalculable statistic here for people who just simply say, I cannot deal with the credit bureau, I cannot deal with trying to make the adjustments. I cannot deal with paying the bill.

So, I don't think they are even in these statistics. And I don't know what that would be. But I am sure it is pretty sizable but people just feel like they have—their alternatives are so slim that they just kind of throw up their hands and just keep trying to move forward.

Mrs. Maloney?

Mrs. MALONEY. Following up on the chairwoman's statement, to show there is a little bipartisan support up here, I would like to follow up on her statement and ask the panelists, starting with Chi Chi Wu and anyone else who wants to comment, what challenges do consumers face in terms of disputing information contained in a credit report?

What can they do? What resources does the FTC give them? How do they address errors in their credit reports, assuming it comes back incorrect like Mr. Anderson said? And if Ms. Wu would comment, and then Mr. Anderson and then Ms. Spector, and then anyone else.

Ms. WU. Thank you, Congresswoman Maloney. We have repeatedly documented the problems consumers face in disputing errors on their credit report. We were here before the full committee in 2007. We issued a report in 2009 entitled, "Automated Injustice" which talks about how difficult it is for consumers to get errors taken off their credit reports, corrected.

The credit bureau systems are just entirely perfunctory and automated—people spend hours putting together disputes, sending them, and then the credit bureaus turn them into a two-digit code, do not forward the documentation to the original supplier, the furnisher of the information. Just send that two-digit code with maybe a line of text. And then whatever the furnisher comes back with, they accept. And if the furnisher says verified, even if they are a debt collector with a really bad record, the bureaus take their word for it. It is very hard for consumers to get their errors fixed.

And in speaking of the study that showed—supposedly only 1 percent of credit reports have errors, they did not count any errors where people did not file a dispute. And some people simply just do not have the literacy or educational backgrounds to file the dispute by themselves.

We do hope that with the Consumer Financial Protection Bureau up and running and taking complaints—and they are going to start taking complaints in that field, we do hope that the situation improves for consumers. We have great hopes for the CFPB.

Mr. ANDERSON. Congresswoman Maloney, one of the things is within Fannie Mae and Freddie Mac, for example, in the housing market, the GSEs have come out with an underwriting policy which states that a consumer cannot have one dispute on their credit report. That dispute has to be pulled out of the report, otherwise they do not get a home loan.

And so what basically happens during that period of time, if a person goes under contract on a house to close in 30 days, they cannot even knowingly dispute that process because the GSEs, Fannie Mae and Freddie Mac, state that you cannot get a home loan.

Also, FHA during their underwriting standards state that if the dispute was in an item in the last 2 years, then you are not eligible. But if the dispute is over 2 years old and is paid, then they do not have to count it. So, there are a lot of variables here. And that is why we see the problems in the housing market and the trouble with the dispute process.

And lastly, all these items, you should see it. Item in dispute, item in dispute, item in dispute, and they are all always on medical parts. And those disputes—even though they are more than 30 days old; they are from 2006—are still on that report where the Fair Credit Reporting Act states that item should be out of dispute. Then why is it still on their credit report, I would ask Mr. Pratt, 6 years later?

Mrs. MALONEY. And why is it 6 years? I would question if somebody has a medical problem that happened because of the insurance company, as many of you pointed out, they do not even know about it. Then why keep that on your credit score for 7 years?

Can you address that, Ms. Spector? Do you know why?

Ms. SPECTOR. I can address that particular question because I agree that the paid medical debt should come off the report.

Mrs. MALONEY. Let me ask you to respond to some of the concerns that have been expressed by the credit bureaus about a potential slippery slope. And they say that if you remove settled medical debt from a credit report, you risk sliding down a slope whereby other data could be the next to go. And then the data is not there to make the determination. Can you respond to that concern that has been put out there, Ms. Spector, Ms. Wu, Mr. Pratt, anybody?

Ms. SPECTOR. I would be happy to try. I think that there are some things that should come off the report. You talked about errors, and that errors are a problem. But there is also information, accurate information like a paid medical debt that can be misleading or it does not give a complete picture of the consumer's path.

That is why the paid—when we know about what happens with the insurance system and how that payment system works, we begin to get a better picture. And so, removing that kind of even accurate information can be very helpful to consumers.

There are other kinds of information that may be accurate technically, but incomplete, like the filing of the lawsuit that has not been fully resolved or an unpaid tax lien that may be uncollectable because of the passage of time, but still appears on someone's credit report. So, I think that there are good reasons to further limit—I am not going to say which ones now should be limited. I think it deserves further study.

Mrs. MALONEY. My time has expired.

Chairwoman CAPITO. Mr. Renacci for 5 minutes.

Mr. RENACCI. Thank you, Madam Chairwoman.

Mr. Turner, I want to thank you for your testimony and all the hard work you have done in this area. Some of the testimony today seems to imply that there is currently little negative impact on the consumers who miss payments. Do you agree with this assertion?

Mr. TURNER. The status quo, just to be clear, most utility companies that report—we studied this. We surveyed the Edison Electric Institute and the American Gas Association members. And the two most common reporting periods were 60 and 90 days. So, your delinquencies are getting reported to credit bureaus today.

Your serious derogatories, and I could be wrong but I do not believe anybody at this table would suggest that serious derogatories that suggest that are correct should be excluded. And really what is happening is if your—life happens to you. The macro economy turns south. You have sudden unexpected medical expenses and you cannot make ends meet. You are getting those stains in your credit report.

Now, your circumstances change. You get a job, maybe even a better job. You are making ends meet. You are paying your bills. That is what is not getting in there. There is no countervailing data that is going in to help you.

So, again, we have proven this. This debate has moved beyond the theoretical. We do not see any evidence that low-income Americans are being disproportionately harmed or harmed at all. We disagree on the definition of harm.

We think the harm is when you are discriminated against, you are not able to get credit, not because of anything you have done but because the information is not there. And so we think that this bill, H.R. 6363, represents a massive step in the right direction in terms of helping those people who have scratches in credit, who have been harmed by this macro economy and those who are credit invisible.

Mr. RENACCI. Don't many utilities already report late payments?

Mr. TURNER. Indeed. In fact, first, most utilities, the vast majority of utility companies that report, report only negative payment information.

And again, they begin reporting primarily at 60 and 90 days. Some report later because of the very policies that Ms. Wu represented. There is a moratorium during hot weather months in some southern States and during cold weather months in some northern States.

Our sample, our analysis, if this were an issue, if those companies that fully reported were going to harm people on these plans or were going to harm people during this moratorium, we would have found it, because our States look at cold weather States like Michigan, like Illinois, and like Ohio, and we do not see it. So, indeed that data, negative data is already getting reported.

Mr. RENACCI. Thank you.

Ms. Wu, I want to thank you also for testifying today. I want to start by saying I hope we can find some common ground on many of the concerns you raised on this testimony. On several issues before this committee, the competing interests were so far apart it is really hard to find common ground. But I do not believe that is the case in this instance.

I believe we are all trying to help the same group of people. So, my soul purpose in sponsoring this legislation is to help those currently unable to access credit climb out of the shadows. I am willing to listen to any and every idea on how to accomplish these goals.

You mentioned the drastic changes this bill would have to the FCRA. I want to assure you that it is not like there really is a straightforward clarification that timely payments can be reported. And after reading your testimony, we have checked the language with legislative counsel who drafted the bill and they do not believe it makes the sweeping changes you allege. Do you believe that we can work together on language that will ensure we do not change any of the existing protections under FCRA?

Ms. WU. Thank you, Congressman Renacci. Yes, I certainly would want to work with you and your staff on the language of the bill. One of the things that concerned us about the bill was the language itself and how it went beyond utility reporting to talk about things like public records, identifying information, real property leases, and performance on subscription agreements. These are all things that have nothing to do with utility service. And so certainly when we saw the language there, we were a bit concerned, and we certainly want to work with your staff on that.

The irony is that currently nothing in the FCRA prohibits the furnishing of utility information. But what the bill says is that there shall be nothing to prohibit furnishing of this other information, some of which could be sensitive.

Mr. RENACCI. One last question, Mr. Turner, is there any evidence that some low-income Americans could be harmed by fully reporting utility payment data to credit bureaus, especially as a result of moderately late payments being reported that are currently excluded?

Mr. TURNER. No, sir. Again, we did studies on this, both pre- and post-financial crisis and recession. And the largest net beneficiaries in both instances are the low-income Americans. Ms. Wu mentioned the report card schematic that was in our most recent report, and talked about the distribution for old data.

Let me compare that to the traditional data that is in a file. Both come in at 33 percent for an "F," both. If you have one traditional trade line or one alternative trade line, 33 percent are for an "F." "Ds" 22 percent alternative data, traditional trade 31 percent. "As," "Bs," and "Cs," which are all prime variants by the way, 45 percent for alternative data, 37 percent for traditional data.

The reason why with one trade line people have low scores is because it is one trade line, not because it is alternative data. We do not want a situation where there is one trade line. We want a situation where there are many trade lines.

Alternative date moves people up from the "Fs" and the "Ds" into the "As," "Bs," and "Cs." There is nothing empirical to substantiate any of the assertions Ms. Wu presented today. In fact, everything suggests just the opposite.

Chairwoman CAPITO. The gentleman's time has expired.

Mr. RENACCI. Thank you, Mr. Turner.

Chairwoman CAPITO. Mr. Scott?

Mr. SCOTT. Thank you, Madam Chairwoman.

Mr. Pratt, I want you and Mr. Anderson to help me with something here. I am having difficulty understanding why, Mr. Pratt, you would be opposed. Why are the credit bureaus opposed to the requirement to remove within 45 days these medical bills up to $2,500 that have been paid, that have been settled? I do not understand why you are—what the problem is here. Maybe you and Mr. Anderson can help me sort through that.

Mr. PRATT. From our perspective, there are two parts to that, Congressman, so thanks for the question. The first part of that is a credit history on the broad scale, if we begin to go down this road of saying let us delete data when paid then candidly consumers would change their behavior on a large-scale basis and decide to only bring bills current when they know they have to apply for the next loan with Mr. Anderson. And then, they have a high credit score. And then, they can revert back to not paying bills.

In the broad picture, a credit history is a history of bills paid. It is a history of debts owed. It is a history of missed payments, but also on-time payments. But you lose history if you begin to eliminate something at the point of payment or eliminate something at the point that the account has been brought current again. That is why it is a credit history, not just the immediate snapshot of who you are right now. So, that is one concern.

The other concern is there is no science yet that tells us why we should delete an accurate paid medical debt that has been reported to the credit bureau file. There is no science that shows that it is not predictive. In fact, the score developers that have testified on this subject in different panels at different times have said that the presence of debt collection trade lines is predictive.

So, if nothing else, we should hit the pause button and have a thorough and empirical discussion. I applaud Professor Spector who has said several times the study we should have is, dot, dot, dot. We have no study. We have no empiricism. This is a ready, fire, aim kind of approach saying just intuitively this must be okay.

Mr. SCOTT. Mr. Anderson, how do you respond to that?

Mr. ANDERSON. I would say that this is a scalpel approach that could help Americans today where we need help. We do not need time for more studies. Basically what happens is there is no slippery slope. There is no—there is a big difference because medical debt is unique. And where it is unique is if you go take out a mortgage, an auto loan, or a student loan, you get a monthly bill. It is very descriptive of how much you owe and when the due date is.

There are no monthly payments on medical bills. You do not get a monthly statement. When the consumer finds out about it is when it goes to the collection agency. Before that, it is not a bill. This is a bill. The insurance is supposed to cover it. So, there is no slippery slope when it comes to this.

Mr. SCOTT. And with the fact, Mr. Pratt, that this bill clearly keeps this narrowly focused on medical bills at the $2,500 level. Doesn't that address your concerns? There is no slippery slope if we have that criterion in the bill.

Mr. PRATT. The precedent we have to address first is whether or not the data is predictive. And if that data is predictive, it should stay in the credit report as part of the underwriting decision. And that is the science we do not have today, but which I believe is readily available and easily obtainable. But it is not the science we have today.

We should not be making an intuitive decision about what should or should not be deleted, whether it is this particular item that may be more unpopular than others because it is associated with debt collectors, or whether it is the 30-, 60- or 90-day missed payment on a traditional credit card. We must have the science first in order to make the logical decision. We do not have it yet.

Mr. ANDERSON. And Congressman, it is my understanding—and there was a detailed study done by the Federal Reserve in 2003 where they said that medical debt was atypical and was not predictive of the way you pay your bills. And also, they stated that 85 percent of medical debts were under $500. We are not talking about big debts.

Mr. PRATT. They made no conclusion about—they drew no conclusion about the predictive nature of the medical debt, although they did do a data quality study and they did point out that they highlighted that medical debts were one of the areas where perhaps more study was necessary. But they made no conclusions as described by Mr. Anderson.

Mr. SCOTT. Thank you.

Ms. Wu—I see my time is about to expire—okay.

Mr. RENACCI [presiding]. Thank you, Mr. Scott.

I recognize Mr. Manzullo for 5 minutes.

Mr. MANZULLO. Thank you.

You do not have to do the studies. When I practiced law, I probably put 1,000 people through bankruptcy. And I can tell you, people do not plan to have their kids hit by cars and end up with medical bills.

And people like my wife, who was hospitalized because of cancer 6 years ago, do not plan to have a letter sent to her while she is still in the hospital threatening to turn her over to the credit reporting agency unless she paid the bill in advance. There is nothing predictive about the fact that people have accidents or people get sick and they have to go to a hospital or doctor and the medical bills get put on there.

The other problem is this: There are people who have professions where they sit down with people who have had major hospitalizations such as my wife and go through the medical bills finding all the errors. I have a degree in law, an undergraduate degree. My wife is a microbiologist, and she has an advanced degree in that. We could not figure out her bills. It was absolutely outrageous.

And then, one of the credit reporting agencies a few months ago arbitrarily started charging $19 a month that showed up on our Visa bill. We have no idea where that thing came from. And so, the consumers in this country are fighting an unknown enemy.

I had a situation where we went to a store and the guy said, would you like to take out a credit card? Fine; it was a major store. And 10 minutes later, he said it was rejected. So, I went back and I talked to the manager. He said, we cannot tell you why it was rejected. I said, I will sue you under the Federal Credit Reporting Act. Guess what happened? They had turned in the wrong Social Security Number.

So, it is time after time after time after time again things turn up on the credit report that people have no idea are on there. And I just think saying that in your statement on Page 13 it is wrong to conclude that because some debts are not chosen that the debt is not relevant and predictive, that is correct. It is not predictive.

The other part of the report talks about elective surgeries. Elective surgeries are not considered medical debt either by the American Society of Plastic Surgeons or by the IRS. And so, that is not even part of this.

If someone wants to have liposuction and does not pay for it, that does not go in as a medical debt itself.

Mr. PRATT. Under the FCRA, it does though, by definition amended in 2003, yes, sir.

Mr. MANZULLO. It does not go on there?

Mr. PRATT. It does. It doesn't matter what the IRS does, but under the FCRA, "medical information furnishers" was a term established in 2003, and it does. So, those are another subpart of all the types of debts reported that could potentially end up on a credit report.

Mr. MANZULLO. But in any case, you have a valid point. If somebody gets elective surgery and they do not pay the bill, that should go onto the report.

Where you do have a valid point is on Page 15 talking about—and I can see your big picture here and that is the cost of the administration. It makes sense, but I think that in the drafting of the language and perhaps the regulations whenever somebody pays off a bill that is less than $2,500 there would have to be a form that would be sent into the credit reporting agency to have that removed anyway.

So that form should state something on there that makes it very definitive that it is indeed the medical bill and that the credit reporting agencies could rely on that. That would allay your fears on Page 15 about that. And I thank you for bringing that up because that is something always to take into consideration.

But I just—as somebody who has been involved in filing bankruptcies—I have friends back home with $160,000 worth of medical bills. That was it. And they filed bankruptcy because they had no idea what to do. That is not predictive. His son had cancer.

Mr. PRATT. The only question I have, and it is for others who may not be sitting at this table, what I was trying to say earlier in the testimony is that if there is a lawful and accurate outstanding debt, a banker probably wants to know that because it is part of the total debts that consumer owes, regardless of how difficult the underlying circumstances were that arose.

And so a banker may very purely say it is still a safety and soundness question. What other debts does the consumer have? Not whether or not the debt was a result of buying a big screen TV or the debt was the result of a medical procedure. That is the challenge we have. And one of the voices we do not have full and completely here at the table is the lending industry to help us understand—

Mr. MANZULLO. I do not think that is necessary—okay. My time has expired. Thank you.

Mr. RENACCI. Thank you, Mr. Manzullo.

Mr. Carney for 5 minutes.

Mr. CARNEY. Mr. Chairman, Mr. Ellison has asked if he could go next, and I would like to defer to him and then pick up after that if that is okay with you?

Mr. RENACCI. Mr. Ellison?

Mr. ELLISON. Thank you, Mr. Chairman, and thank you, Mr. Carney.

Dr. Turner and Ms. Wu, we are all here together because we care about making sure that low-income people have a chance too. The question is, how do we do it? Does adding more data to the file help or does it hurt? That is the big question.

So, Dr. Turner, you have brought forth a lot of empirical evidence that I find persuasive. But then, Ms. Wu came forth and showed, I think, three different utilities that show that late payments were more frequent than your data might suggest.

I want to give you both a chance to square these numbers and maybe explain them a little bit. Who wants to go first?

Ms. WU. Thank you, Congressman Ellison. I certainly appreciate the sentiment behind the bill and the sentiment that we want to improve access to credit for low-income consumers, affordably priced, responsible credit of course. I think there are ways of doing so.

One of the things I would like to emphasize both in my testimony and my—written and oral testimony is that we do not oppose voluntary opt-in methods for supplying utility data.

If a consumer knows they have been paying on time and wants to show a lender, look, I am a good risk because I know I have been paying on time, we certainly are not opposed to that. We would support that.

What we are concerned about is the one third of energy assistance consumers in States like Massachusetts and Ohio, probably all over the country who have trouble with their utilities because utilities are uneven.

You are from Minnesota. You know in the cold weather months, those bills go sky high—$300, $400 a month. People have trouble paying that for a few months, but then they catch up. And we are concerned that those spikes of late payments are what is going to hurt low-income consumers if we have regular monthly utility reporting. And that is why we are concerned, and we want more data.

We would like to see more data based on FICO. The studies that have been done so far have been based on VantageScore. FICO and VantageScore are two different systems. And FICO is the score that the CFPB itself says 90 percent of lenders use. So, let us see the data from FICO.

The data we have is not from us. It is from utility regulators. It is public. You can go to the Web site of the entire utility commission—

Mr. ELLISON. Ms. Wu?

Ms. WU. Yes?

Mr. ELLISON. Let us let Dr. Turner get in.

Mr. TURNER. Let me respond. First of all, I will address the question that was actually asked, as opposed to what was answered.

The reason why there is variance is that there is a sleight of hand here in the representations. First of all, we look at low-income households, not energy assistance recipients.

There is high school logic for the SAT. Joe wears a hat. All baseball players wear hats. Is Joe a baseball player necessarily? Energy assistance people are a subset of low-income people. Not all low-income people are energy assistance.

The other bit is the actual—the statistics she is citing are 61 days and up. They are above 60; they are not 60 and below. Thirty and below is 2 percent in ours; 60 and below is 2.2 percent. There are a lot more. We have 13.8 percent at 90 and above, right? So, actually our numbers are very consistent with the statistics. So, there is that.

Second of all, the study we released with the Brookings Institution in fact looks at four FICO models. It is not VantageScore. We looked at 10 commercial grade scorecards from two bureaus, from SAS, from a major lender and from FICO. So, let me put that myth to rest once and for all.

Let me give you an opportunity to ask other questions.

Mr. ELLISON. I want to be quick because I actually have to run, unfortunately. So many things scheduled at the same time. But I do want to ask about the National Consumer Telecom & Utilities Exchange (NCTUE). Are you all familiar with that? Are you familiar with that, Ms. Wu?

Ms. WU. I have a passing familiarity.

Mr. TURNER. I am very familiar with it.

Mr. ELLISON. Okay. It gets late utility and telecom information on 80 percent of consumers. Does the—my staff loves acronyms; I apologize. Does NCLC have concerns about NCTUE's practices?

Ms. WU. I have a passing familiarity with the database that you are talking about. It is a database that utilities do report to. From what I understand, it is not in the mainstream credit bureau reports that you might get—especially for a job or for insurance. It is a specialty database.

Mr. ELLISON. I am over? Okay. Can he finish his answer? Okay.

Mr. TURNER. The NCTUE is a comprehensive database of fully reported utility and telco payment data. It is used in combination with credit reports when people apply for utility and telco services. And in a competitive deregulated environment, it is actually used in the eligibility determination.

The questions that we have raised for this floor and others is in fact if it is used for eligibility determination, it should be an FCRA-regulated database. There are proclamations that it is such, but I know from firsthand accounts from discussions with contributors to that, that they are told that it is not an FCRA-regulated database.

And when a decision is made about pricing or requiring a security deposit or the amount of the deposit and eligibility to the plan, if there is inaccurate data in there that results in what is known as an adverse action, the consumer is not notified. So, we have expressed ongoing concerns about that.

Now, having said that, if that information can get reported we would actually really like that to be in a consumer's credit profile to help build credit access.

Mr. RENACCI. Thank you, Mr. Ellison.

Mr. Carney for 5 minutes.

Mr. CARNEY. Thank you, Mr. Chairman. I am not really comfortable unless I am going last anyway, since it is where I usually am.

I would like to go back to this last conversation about your differences of opinion on the data and what they say in terms of how it would affect low-income consumers. Obviously, the objective of the bill, as Mr. Ellison stated, is to increase access to credit for these folks. And clearly, Dr. Turner, you and Ms. Wu disagree with this.

I think Ms. Wu's point is that providing access to utility payment information is going to create problems—more problems for people than it will be a positive thing. Is that an accurate description of your view?

Ms. WU. Yes. We are concerned that reporting utility data on a monthly or regular basis will create more records of late payments, especially—

Mr. CARNEY. Okay.

Ms. WU. —for low-income consumers.

Mr. CARNEY. So, it would have the opposite effect of the intention of the bill.

And Dr. Turner, you have a—your view is different than that. Could you restate it again and mention the information or your study that you have done? I did not follow the last part where you compared your 30-day, 60-day, to what Ms. Wu was saying. It sounded like the same thing, in which case it would be a net wash.

Mr. TURNER. Let me clarify. Again—

Mr. CARNEY. It could be that I just do not understand the data. And maybe, you will have to give us the study so we can look at it and—

Mr. TURNER. Sure. All of our studies are freely available online at perc.net.

Mr. CARNEY. Perfect.

Mr. TURNER. And we would be happy to come in at any point and discuss this in more detail with you or your staff. The reality is we have a very large sample of over 5 million individuals who have fully reported utility trade lines for 1 year or more. And this is compared to an analytic sample of over 8 million. So, we are talking big numbers here.

Mr. CARNEY. Right.

Mr. TURNER. And we are talking about actual experiences, not hypothetical: what may happen; what could happen; what has happened. This is retrospective analysis. And again, the largest net beneficiaries are low-income Americans, members of minority communities, younger and elderly Americans. The ratios—

Mr. CARNEY. So in some ways, it is counterintuitive. But the study is what the study is, right?

Mr. TURNER. The numbers are what the numbers are.

Mr. CARNEY. Right. Okay.

Mr. TURNER. The ratio for those of the lowest income tier who increase credit access versus those who decrease is 27–1. That is in the lowest income tier.

Mr. CARNEY. Okay.

Mr. TURNER. So, I—again, this is empirical—

Mr. CARNEY. Thank you. Yes, I have to move on because my time is running out.

On the medical debts thing, I have a similar experience to Mr. Manzullo on medical debts, which I will not get into. So I agree with the notion that this is a nonpredictive and—does everybody support that piece of legislation other than Mr. Pratt? Everybody does.

Mr. Pratt, again, hone in on the reason that you do not for me, please?

Mr. PRATT. I think it starts with a broader question, which is when we look at the section of the Fair Credit Reporting Act it says data will stay on the file for a period of time—Professor Spector referenced it, Section 605.

Any time somebody is going to ask a new question and say most data that is adverse to me is going to stay on the file for 7 years. And then Congress periodically will ask a question, and this is good. And Congress will say maybe this piece of data should be treated differently.

So, in this case, that is what we have. We have this piece of data; a paid medical account reported by a third party debt collector should be dropped off the credit report 45 days from the data of payment and notification to the bureau.

Our first question is, is there science around that to show that that is a good result for a product, a—if you go to the preamble, if you go to the findings of Congress when the FCRA was enacted, it spoke to this central premise of having enough data to make sure that safe and sound lending decisions could be made.

So, my first question is not this absolutely must be wrong, we can resist this forever; there is no way to get to a better answer. My answer is—my point is we better have some good science around this before we start unpacking—

Mr. CARNEY. So, you would like to take a look at the issue first?

Mr. PRATT. I think the issue has to be explored.

Mr. CARNEY. Fair enough. Okay.

Mr. Anderson, you are jumping out of your chair.

Mr. ANDERSON. I am jumping out of my chair. Out of this, I did a personal study of 5,100 people; 2,200 of them had at least one medical collection. Mind you, my average conventional FICO score is 763. My average FHA FICO scores is 706.

What is more important about my study is that it mirrors the Federal Reserve study that 11.5 percent of medical collections were paid and 88.5 percent were not paid. If we had an 88.5 percent default rate in the housing market, what would we have?

Mr. CARNEY. I think it is a function of our health care payments system more than anything else.

Mr. ANDERSON. Yes. And so basically, creditworthy borrowers are not going to hurt their credit because of a small item of $100 or $200.

Mr. CARNEY. My time is up. But I want to thank everybody for being candid and for disagreeing with one another. This has been a very lively and interesting panel. Thanks very much.

Mr. RENACCI. Thank you, Mr. Carney. And I also want to thank all of the witnesses for your insight, and your testimony. It was very informative.

The Chair notes that some Members may have additional questions for this panel, which they may wish to submit in writing. Without objection, the hearing record will remain open for 30 days for Members to submit written questions to these witnesses and to place their responses in the record.

This hearing is now adjourned. Thank you.

[Whereupon, at 5:00 p.m., the hearing was adjourned.]

A P P E N D I X

September 13, 2012

Statement of Representative Lynn Westmoreland
Hearing Entitled: "Examining the Uses of Consumer Credit Data"
September 13, 2012

During the recent hearing, "Examining the Uses of Consumer Credit Data," I was concerned by comments made alleging what can only be characterized as Fair Credit Reporting Act (FCRA) violations by National Consumer Telecom & Utilities Exchange (NCTUE) and Equifax.

After reaching out to Equifax, I have learned that, contrary to assertions made at the hearing, NCTUE is organized as a consumer reporting agency that fully complies with the all of the FCRAs requirements. NCTUE also requires its members to comply with the FCRA as data furnishers and as users of consumer reports, including requiring members to provide consumers with adverse action notifications as appropriate under the FCRA. Equifax is not a member of NCTUE, but does manage and house the database on behalf of the NCTUE in accordance with all FCRA and other applicable laws.

I have also been informed that the NCTUE limits the use of its database to those uses fulfilling the needs of its customers and that would be permissible uses under FCRA, such as setting deposit amounts and activation charges. NCTUE specifically prohibits accessing the database for non-FCRA purposes, such as direct marketing of products that are not firm offers of credit or insurance.

As a Member of Congress it is important that witnesses are held to honest statements; therefore, I wanted to provide clarity that NCTUE makes utility payment information available to other utilities in full compliance with the FCRA and does so in a way that has a positive effect on the availability of credit to consumers with little or no credit history.

I understand NCTUE, Equifax and the entire industry are committed to ensuring consumers have quick and easy access to accurate information about their utility and telecommunications payments, both positive and negative, so those with limited credit history may build a credit profile.

Prepared Statement of Rodney Anderson, Supreme Lending of Dallas, TX

Committee on Financial Services

Subcommittee on Financial Institutions

"Examining the Uses of Consumer Credit Data"

September 13, 2012

Chairwoman Capito, Ranking Member Maloney and Members of the Subcommittee. Thank you for the opportunity to testify on "Examining the Uses of Consumer Credit Data." My name is Rodney Anderson. I am an author, consumer advocate, and commentator. I am also one of the nation's top originators of FHA/VA loans and serve as the Executive Director of Supreme Lending, located in Plano, Texas.

As a mortgage originator for more than 28 years, I have had the opportunity to discern economic trends, consumer credit, and credit capacity as well as the impact real-life issues, such as spending habits, marriage, divorce, bankruptcy, health care costs and foreclosure. That knowledge helped me devise strategies and formulas for lasting financial health as outlined in my book, *Credit 911: Secrets and Strategies for Saving Your Financial Life.*

I appreciate the opportunity to testify regarding issues I feel strongly about and have had the opportunity to experience first-hand in my line of business. My testimony will cover my experience in issues relating to the types of data used to build a consumer's credit history; the relationship between a consumer's credit history and their ability to obtain financial products; and the unfortunate negative impact of incorrect/incomplete data on consumer credit reports.

It is through my experience that I am here today to talk about these issues and a bill, which I strongly believe in and have advocated for, H.R. 2086, the Medical Debt Responsibility Act.

<u>Medical Debt Responsibility Act</u>

I have been fortunate to have been able to sustain my business during the ups and downs of these economic times. I have witnessed many changes in my industry and the market over the years, but there has been nothing more disturbing to me than creditworthy consumers trying to gain access to necessary credit in this economy and being denied.

Several years ago, the 9-year-old son of one of my clients was involved in an accident on his bicycle. He was taken to the hospital by ambulance where he received medical treatment, and thankfully had no life threatening injuries. My client was told by the insurance company that the $200 trip in the ambulance was going to be covered by his insurance policy. Several months and phone calls later, when the bill remained unpaid, my client finally decided it was easier to pay the $200 himself, but, by then, it was too late. The bill had been turned over to a collection agency.

The debt had been reported to the credit agencies, but it was only when my client and his wife went to refinance the $240,000 mortgage on their home in Lewisville, TX, nearly six years after the accident, that he learned the bill had shaved about 100 points from his credit score. Even with no other debts, a healthy income and otherwise pristine credit, the couple had to pay an extra $4,000 to secure a market interest rate. He did not ignore the debt, but was simply unaware of it. This story was covered recently in the New York Times, and is certainly not unique. There are plenty of stories just like it.[1]

Even people with good insurance coverage know how hard it can be to figure out how much they owe after a visit to the doctor or, even worse, the emergency room, which can generate multiple bills from multiple providers. As patients become responsible for a growing share of costs — not just co-payments, but also deductibles and coinsurance — bill paying is becoming ever more complex. Who among us has never been confused by the statement, "This is not a bill?"

On top of that, more medical providers are using collection agencies and turning to them more quickly than they have in the past. For these reasons, I have been advocating for the passage of the Medical Debt Responsibility Act, which was introduced this Congress by Rep. Manzullo of this Subcommittee and Rep. Shuler and Rep. Hall. The Medical Debt Responsibility Act would require consumer credit reporting agencies to permanently remove paid or settled medical debt not to exceed $2500 from a consumer's credit report within 45 days of being paid or settled by the consumer. I believe strongly in this common sense, bipartisan legislation which goes a long way in helping the economy and consumers.

Similar legislation passed the House of Representatives last Congress with overwhelming support from both Republicans and Democrats by a margin of 336-82, including the support of 13 Committee chairs. Legislation has also been introduced in the Senate this Congress, S 2149.

[1] Siegel Bernard, T. (2012, May 4). Discrepancies on Medical Bills Can Leave a Credit Stain. website: http://www.nytimes.com/2012/05/05/your-money/medical-debts-can-leave-stains-on-credit-scores.html?pagewanted=1&_r=1&pagewanted=print.

Medical Debt Reporting and Its Impact on Credit Scores and Economic Activity

This year, a New York City hospital made international news for improperly billing a patient nearly $45 million for an outpatient service that amounted to only $300. The error was the fault of the billing company, which incorrectly listed the invoice number in the "amount due" field.

While this incident is extraordinary, errors in medical billing are not uncommon, and the consequences are cause for serious concern. Over 20 percent of all medical claims every year are processed inaccurately. When those inaccuracies are sent to collection and reported to the credit bureaus, these mistakes become huge problems for the individual consumer. The problem is compounded by the way in which credit agencies treat medical debt. Because health care providers rarely report medical bills paid on time, most consumers are penalized when medical bills, either appropriately or due to inaccuracies, are assigned to collections, which can lead to plummeting credit scores.

Even though medical debt is not a reliable indicator of credit risk, small medical bills are often the difference between being creditworthy and not creditworthy for millions of Americans. Unpaid medical debt sent to collections - whether for $100 or $10,000 - can shave up to 100 points from an average credit score, even if the collection is made in error.

In other circumstances, the billing may be correct, but the insurance claim submissions and the supporting documentation are incomplete – and, therefore, denied. Resubmitting claims takes time and runs the clock on bills that may ultimately be sent to collections. Unlike mortgage or credit card payments, medical payment history is incomplete and error prone since timely payments are not reported but accounts that have been sent to collections are.

The Medical Debt Responsibility Act would ensure that minor medical bills no longer play a major role in credit score calculations. Consumers with a zero balance would have the collection removed from their credit report in a timely basis instead of suffering the consequences of a bureaucratic mistake for seven years. If this straightforward legislation became law, millions of Americans would have the good credit standing necessary to qualify for mortgages, credit cards, and other types of loans.

The Medical Debt Responsibility Act also has the support of a diverse group including housing, consumer and mortgage lending groups as illustrated by a letter they sent to Congress in support of passage of the bill which is included as part of this statement.

Addressing this issue could markedly increase the ability of many consumers to refinance or purchase a home in this historically low-rate interest environment. There is strong anecdotal evidence to show hidden medical debt has cost homeowners. For instance, in December 2010, the Wall Street Journal cited a consumer who received two erroneous $11 doctor bills, dropping their credit score by 77 points, making the cost of refinancing prohibitive.

The theory of perfect competition and the assumption of perfect information is a longstanding central component of microeconomic theory. Market efficiency and competitive equilibrium are dependent on the *assumption* of perfect information. However, markets do not work well and are inefficient when the information is incorrect, not known, or is otherwise compromised (*i.e.* housing bust, mortgage defaults, subprime MBS, etc).

Indeed, when information is inaccurate, markets make decisions on less than perfect information. With regard to medical debt – this can mean <u>significantly</u> and <u>affirmatively</u> reducing a consumer's credit score and subsequently, artificially impeding economic activity and consumer borrowing capacity.

<u>Medical Debt Reporting is Different; the Information is Biased, and Incomplete</u>

Medical debt is unique in that it is NOT typically reported to the credit bureaus by health care providers. According to Experian, health care providers account for only 7/100th of one percent of their data.[2] Most of the time, medical bills are reported to the credit bureaus only after they have been assigned to collections.[3] This means, the credit bureau is receiving incomplete and biased information, because it does not receive data reflecting positive payment history – only the negative.

This is very different from a mortgage or a credit card, where payment history is reported to the bureaus on a monthly basis – positive and negative. Since this is not the case with medical debt, a consumer checking his/her monthly credit report cannot even see if a medical debt is outstanding, unless and until it goes to collections.

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[2] C.Prater, 15 Tips For Paying High Medical Bills, Negotiate Before Using Credit Cards To Finance Medical Expenses, CreditCards.com.
[3] Id.

Mistakes and Errors in Medical Claims Processing

The unfortunate fact is that the consumer is the only party who pays for the errors, mistakes and confusion of the process. Those making the errors or causing the confusion - whether health insurers, collection agencies or providers - bear NO responsibility.

One study found nearly 40 percent of Americans currently do not understand their medical bills or explanation of benefits statements well enough to know what services they are paying for, why they owe such amount, and if the amount is accurate.[4] Another study found that 14 million Americans had a medical bill sent to collection because of a billing mistake.[5]

In addition, since doctors do not have internal controls on billings, nor do they specialize in collections, such bills are sent to a collection agency more quickly than a voluntarily initiated credit bill:

- In 2010, 30 million American adults under the age of 65 were contacted by collection agencies for unpaid medical bills.[6]

- More than one-half (52 percent) of collection accounts reported to the credit bureaus are associated with medical bills, according to a study published in the Federal Reserve Bulletin.[7]

Given the breadth of consumers impacted by this issue and the current system that punishes consumers regardless of the underlying facts (e.g., mistakes, errors, or otherwise), Congress could dramatically increase economic activity and growth by amending the Fair Credit Reporting Act to require the removal of medical collection accounts that are paid in full or settled. I strongly believe that passage of the Medical Debt Responsibility Act will accelerate growth in the economy and creditworthy borrowers will finally have the access to credit that they have earned.

[4]http://about.intuit.com/about_intuit/press_room/press_release/articles/2010/AmericansConfusedAboutMedicalStatements.html.
[5] Commonwealth Fund, 2007 Biennial survey dataset.
[6] Commonwealth Fund Biennial Health Insurance Survey 2010.
[7] Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681 et seq.
§ 605. Requirements relating to information contained in consumer reports.

Types of Data/Establishing Credit

A consumer's credit history is their financial DNA. Establishing good credit is essential for just about every financial decision a consumer makes – from purchasing a home to applying for employment. It is an integral part of our everyday life and business. Credit is a valuable commodity and a necessary financial tool.

Based on my experience in the housing and mortgage industry, in order to have access to a home loan, a consumer must have at least three pieces of credit, and one of the pieces must have been in existence for at least 24 months. At this point, a consumer has sufficient credit history to produce a credit score and credit report. The data included in such credit scores and reports can include data relating to credit cards, mortgage loans, student loans, and auto loans - basically unsecured and secured debt.

Although the credit reporting agencies style of reporting may vary, the class of information reported is similar. For example, all credit reporting agencies include identifying information about consumers such as their social security number, date of birth, address and employment information. Such factors are not used in credit scoring, but are used in identifying consumers. Additionally the credit report will include data on credit accounts such as the date the account was opened, the account balance, payment history and the credit limit. This is the area where I believe positive payment history including utilities and other services should be reported such as articulated in H.R. 6363, the Credit Access and Inclusion Act.

The credit report will also include credit inquiries made over a two year period both voluntary (made by the consumer) and involuntary (pre-approved offers of credit). The credit reporting agencies will report information that is of public record such as judgments by the state or local government, bankruptcies, liens and items in collection. This is the area where medical collections can wreak havoc on an individual's credit score and profile.

It takes two years to establish good credit history and one late payment that a consumer may or may not have known about OR was reported in error to destroy such credit. Even after a consumer pays for such reported debt in collection, regardless of whether or not it was actually owed by the consumer, the consumer's credit report is tainted for seven years.

Establishing good credit is essential for credit to be affordable. For example, if a consumer would like to purchase a $300,000 home by putting 20 percent down on a 30 year fixed rate mortgage, a FICO score of 740 or above is required to qualify for the lowest rates and fees. Every 20 points that a consumer's FICO score drops, there is a risk-based-pricing add on fee assessed by Fannie Mae and Freddie Mac. A person with a 725 FICO score will have a risk-based-pricing add on fee of a half point, which on a $240,000 home is $1200. A person with 705 credit score would have a risk-based-pricing add on fee of 1 point, totaling $2400. A person with a 685 FICO score would have risk-based-pricing fee of 1.75 point, totaling $4200.

Good credit is also critical in other aspects of business including in employment hiring. Employers in government contracting or financial areas often require credit checks of their potential employees and now, more and more employers in other industries are beginning to assess the financial means and creditworthiness of potential employees prior to their offer of employment.

A survey of a random sample of Society for Human Resource Management members found that 60 percent used credit background checks for job candidates. When asked what type of negative financial information would be most likely to affect a decision to NOT extend a job offer, only 1 percent of respondents cited medical debt. The problem – the consumer reporting agencies categorize medical debt in collection as a collection account without any other identifying factors. As such, potential employers see a collections account and often do not know what it relates to or the details relating to such collection (e.g. medical collection reported in error) and a potential employee misses out on an employment opportunity. A consumer's credit can be the difference between getting a job and not getting a job. It takes a few years to build up good credit history and it can be wiped out by one missed payment, unknown debt or reporting error.

Billing Errors

An example of such errors can be illustrated through examining health insurance claims. Health insurance claims are frequently denied because of billing errors, such as duplicate claims or missing information on the claim.[8]

[8] Private Health Insurance: Data on Application and Coverage Denials, US Government Accountability Office, March 2011.

A June 2011 American Medical Association survey found that one out of five medical claims is processed inaccurately by health insurers (19.3 percent or over 30 million claims processing errors annually). This is an increase from 17 percent, or almost 27 million, from the prior year.[9]

In 2010, an estimated 9.2 million people aged 19 to 64 were contacted by a collection agency because of a billing mistake, according to research by the Commonwealth Fund. There have been a number of other independent studies conducted regarding errors on consumer credit reports. One study includes the Columbus Dispatch investigation of which research shows an error rate of around 30 percent.[10] A U.S PIRG study found errors in 25 percent of credit reports. An FTC study of a pilot program found errors in 53 percent of credit reports.[11] Regardless of how or who conducts the study, this fact remains – errors on credit reports are rampant. I see it in my business on a daily basis. I cannot tell you the number of times I am about to go to a closing table with my clients and they learn of a billing error which significantly decreases their credit worthiness and substantially increases their cost to a home loan. A consumer's options are also limited in this situation.

More often than not, a consumer will be willing to pay the debt, even if reported in error, just to remove it from their credit report. However, it takes a good two years before a consumer will see the positive impact such payment will have on their credit report. The other option is to dispute the error under the Fair Credit Reporting Act. Pursuant to the dispute process, both the credit reporting agency and the furnisher of information are responsible for correcting inaccurate information to a consumer's credit report. Unfortunately, the process by which this occurs is not that simple. First, a consumer is to tell the credit reporting agency in writing regarding the error. The credit reporting agency should investigate the item in question "usually" within 30 days unless they consider the dispute frivolous which is subjective. The agency must also send the furnisher of information the relevant data the consumer sent.

According to the Federal Trade Commission, after the "information provider receives notice of a dispute from the credit reporting company, it must investigate, review the relevant information, and report the results back to the credit reporting company. If the information provider finds the disputed information is

[9] Mills, R. J. (2011, June 20). New AMA Health Insurer Report Card Finds Increasing Inaccuracy in Claims Payment. website: http://www.ama-assn.org/ama/pub/news/news/ama-health-insurer-report-card.page#.
[10] Riepenhoff, J., & Wagner, M. (2012, May 6). Dispatch investigation | credit scars. website: http://www.dispatch.com/content/stories/local/2012/05/06/credit-scars.html.
[11] White, M. C. (2012, May 8). Why are credit report errors so hard to fix? website: http://moneyland.time.com/2012/05/08/why-are-credit-report-errors-so-hard-to-fix/.

inaccurate, it must notify all three nationwide credit reporting companies so they can correct the information in your file."[12] This is where things do not quite go as consumers anticipate.

When an item is in dispute, a consumer is often unable to obtain access to credit at least in the mortgage capacity until the dispute is resolved. I have often seen a debt in dispute [although expected to be 30 days pursuant to law] for five to seven years. In the past, there were concerns with some "gaming the system" when applying for credit. A debt could be in dispute, such debt would be removed from a consumer's credit report and a consumer's credit score would therefore be reflected without such debt.

Fannie Mae, Freddie Mac and the Federal Housing Administration closed the dispute loophole. In fact, consumers may not have access to a home loan if in fact they have a debt in dispute. This means a consumer may lose their lock rate and not be able to close on time. Because of this, and the lack of recourse, timeliness and efficiency in our dispute system, I believe the dispute process is very broken and should be fixed. What seems like a very small problem can have long term effects on a consumer's ability to obtain credit.

Differences in Data Reported

Tens of thousands of credit grantors including retailers, credit card issuers, banks, finance companies, credit unions, etc. send updates to each of the credit reporting agencies, usually once a month. These updates include information about how their customers use and pay their accounts. [13]

However, there are several differences among the types of data reported, how it is reported and its impact on a consumer's credit worthiness. Some companies do not report to all three credit bureaus and only select one with whom they have a relationship in which they furnish information.

As a mortgage lender, I have to take the middle credit score out of the three credit bureaus - Experian, Equifax and TransUnion. If a consumer has one good credit score listed by one of the three bureaus and two bad, the consumer suffers the consequences. This is general practice among mortgage lenders.
The data reported is calculated differently based on each of the bureaus own algorithms. A debt in collection can vary by a number of points. For example, if a person had a paid medical collection, it could fluctuate on a consumer's credit report among the bureaus anywhere from 20-40 points.

[12] (2011, October). How to dispute credit report errors. website: http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre21.shtm.
[13] About credit reports. website: http://www.myfico.com/crediteducation/creditreports.aspx.

Alternative Forms of Data/The Credit Accuracy and Inclusion Act

Alternative forms of data can be very helpful especially to those people who have suffered financial damage in the past or who have had no access to credit. Many people who choose not to use credit, even though they can gain access to credit will fall into an inactive status which will negatively impact their credit score and create "thin files" for consumers. I believe there is a benefit in including additional sources of data in credit files such as utility, rental, and cellular phone payment information.

Utilities and telecommunications are used on a daily basis which will guarantee reporting of positive items each and every month which will provide for consumers to build credit for doing the right thing and paying their monthly bills on time. Young adults want to build a good credit history but who may not want to incur credit card debt should not be penalized for trying to be responsible adults and abstaining from accessing credit until it is absolutely necessary. This is why I support Rep. Renacci and Rep. Ellison's bill to permit utility and telecom companies -- like cell phone providers – to report on-time payments instead of only delinquent payments to the three major credit bureaus.

People who do not have credit scores or have "thin" credit reports face significant economic hardship as creditors usually only extend credit to those who already have it. When a consumer does not have a credit history, they are considered risky to lend to and their access to credit is either denied or cost-prohibitive. The Credit Accuracy and Inclusion Act helps to rectify this situation to eliminate an inequity in the credit system by adding utility and telecom data to consumer credit reports so a consumer's creditworthiness will be accurately reflected.

Conclusion

It is an injustice that small medical bills—incomplete and often inaccurate due to an error-prone billing system—can prevent an otherwise creditworthy consumer from qualifying for a mortgage or refinancing their home. The Medical Debt Responsibility Act provides a quick, simple and cost-free solution to a problem that has a long-term negative impact on consumer credit scores, and thus the housing market and economy.

I believe if there is one sure place the government can be helpful in the housing market recovery, it is in improving the quality of information being used to allocate credit to consumers. Thank you for the opportunity to testify on this important issue.

April 16, 2012

The Honorable Tim Johnson
Chairman
Committee on Banking, Housing
and Urban Affairs
United States Senate
Washington, DC 20510

The Honorable Richard Shelby
Ranking Member
Committee on Banking, Housing
and Urban Affairs
United States Senate
Washington, DC 20510

The Honorable Spencer Bachus
Chairman
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

The Honorable Barney Frank
Ranking Member
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

The undersigned organizations strongly support H.R. 2086 and S. 2149, the Medical Debt Responsibility Act, introduced in the U.S. House of Representatives and the U.S. Senate. The bills require credit agencies to remove FULLY paid or settled medical debt from credit reports within 45 days.

Annually, approximately 73 million Americans experience medical billing problems or have accrued medical debt. Medical debt is unique in that it is not typically reported to the credit bureaus by healthcare providers, but instead by collection agencies. Typically, medical bills are reported to the credit bureaus only after they have been assigned to collections. It is frequently the case that medical bills are sent to collection due to uncertainty over who should pay. The medical billing system is fraught with errors and confusion, further compounding the situation for consumers.

Indeed, when information is inaccurate, markets make decisions on less than perfect information. With regard to medical debt, this can mean significantly reducing a consumer's credit score and subsequently impeding economic activity and consumer borrowing capacity. According to the Fair Isaac Corp., any unpaid debt sent to collections, whether for $100 or $10,000, can shave up to 100 points off a person's credit score[i] – even if this collection is a mistake, made in error, or is in dispute. This can have a dramatic impact on an individual's ability to obtain a mortgage, a car loan, or any other form of credit, thereby limiting economic activity.

Many consumers in states throughout America are adversely impacted by this issue. The current system punishes consumers regardless of the underlying facts (e.g., mistakes, errors, or otherwise). Congress can create equity in the current system and dramatically increase economic activity and growth by amending the Fair Credit Reporting Act to require the removal of medical collection accounts that are paid in full or settled.

The Medical Debt Responsibility Act will prevent the credit records of millions of consumers from being unfairly tarnished. Credit records will show that these hard working consumers, who successfully paid off or settled their medical bills, are more creditworthy than their credit report would otherwise indicate to a prospective lender.

We urge Congress to pass this common sense legislation. H.R. 2086 and S. 2149 will help responsible consumers and at the same time reignite the economy.

Sincerely,

Americans for Financial Reform

American Financial Services Association

American Medical Association

The Asset Building Program, New America Foundation

California Association of Mortgage Professionals

Consumer Federation of America

Consumers Union

Corporation for Enterprise Development

Demos

Leading Builders of America

Mortgage Bankers Association

NAACP

National Association of Home Builders

National Association of Independent Housing Professionals

National Association of Mortgage Brokers

National Consumer Law Center

The National Consumer Reinvestment Coalition

National Credit Reporting Association

U.S. PIRG

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[i] Jessica Silver-Greenberg, How to Fight a Bogus Bill: Many Medical Bills Contain Errors That Could End Up Wrecking Your Credit Score. Here's What You Need to Know, Wall Street Journal, February 19, 2011.

CONSUMER DATA INDUSTRY ASSOCIATION
Empowering Economic Opportunity

STATEMENT OF

STUART K. PRATT

CONSUMER DATA INDUSTRY ASSOCIATION

WASHINGTON, D.C.

BEFORE THE

Committee on Financial Services

Subcommittee on Financial Institutions and Consumer Credit

House of Representatives

ON

"Examining the Uses of Consumer Credit Data"

September 13, 2012

Chairman Capito, Ranking Member Maloney and members of the Subcommittee, thank you for this opportunity to appear before you. For the record my name is Stuart Pratt, president and CEO of the Consumer Data Industry Association (CDIA).

CDIA is an international trade association of more than 180 corporate members. Its mission is to enable consumers, media, legislators and regulators to understand the benefits of the responsible use of consumer data which creates opportunities for consumers and the economy. CDIA members provide businesses with the data and analytical tools necessary to manage risk. They help ensure fair and safe transactions for consumers, facilitate competition and expand consumers' access to a market which is innovative and focused on their needs. Their products are used in more than nine billion transactions each year.

We commend you for holding this hearing, and welcome the opportunity to share our views.

My comments will focus on the following points:

- An overview of the types of data used to build a consumer's credit history.
- The importance of establishing a history of good credit for consumers.
- The quality of data in our members' databases and dispute resolution procedures.
- The vibrant market of data sources available for risk decisions.
- The importance of preserving the integrity of the credit reporting system.

An overview of the types of data used to build a consumer's credit history.

The term "credit report" is not defined by the Fair Credit Reporting Act (15 U.S.C. §1681 *et. seq.*) The FCRA defines the term "consumer report" and the traditional credit reports produced by nationwide consumer reporting agencies meets this definition. Credit reports include:

- Identifying Information – Name (first, last, middle), current and previous addresses, social security number, date of birth.
- Credit History – History of managing various loans issued by retailers, banks, finance companies, mortgage companies and other types of lenders.
- Public Records – Judgments, bankruptcies, tax liens.
- Accounts Placed with a Collection Agency – these accounts are reported by third-party debt collectors who attempt to collect delinquent debts owed to a service provider or lender.
- Inquiries – A record of all who have a permissible purpose under law and have access to a consumer's report.

Note that credit reports do not contain information on an individual's medical condition, race, color, religion, or national origin. It is important to note that our US credit reporting systems are full-file and thus they include both positive and negative payment history on a consumer. Full-file credit reporting is inherently fairer for consumers because it ensures that there is a clear record of not just missed payments but all on-time payments.

The importance of establishing a history of good credit.

A consumer's credit history starts with the very first relationship a consumer has with a lender. It may be when a parent adds a son or daughter as an authorized signatory on a credit card or when a young adult makes an application for his or her very first loan. Ensuring that consumers understand how lenders consider their management of credit is critical and certain fundamental principles remain:

- Pay your bills on time.
- Don't run up your credit cards to their limits.

Never before in the history of our country has there been a greater degree of transparency when it comes to the information available to enable consumers to understand consumer credit reports and their rights under the FCRA. In particular CDIA applauds its members for their market solutions which make available to consumers unlimited access to credit reports, credit scores, as well as providing additional information about the credit, reporting industries. These market solutions push alerts to consumer's smart phones when data has changed on their report and also warn consumers when there's a risk of identity theft.

Under the Fair Credit Reporting Act consumers also have a right to an annual free credit file disclosure from each of the nationwide consumer credit reporting agencies: Equifax, Experian and TransUnion. We estimate that more than 15 million consumers view at least one of the reports each year and an average of more than 30 million disclosures are issued annually. Since December of 2004 hundreds of millions of disclosure have been issued to consumers.

For some years consumer advocates have been measuring the knowledge consumers have regarding their credit reports and how credit scores used by lenders analyze data. In particular VantageScore and the Consumer Federation of America have partnered on a project to reach consumers and measure their knowledge. The trends identified through this effort are very encouraging. Consider the following excerpts drawn from the CFA News Release issued on May 14, 2012:

"A large majority of consumers now know many of the most important facts about credit scores, for example:

- *Mortgage lenders and credit card issuers use credit scores (94% and 90% correct respectively).*
- *Many other service providers also use these scores -- landlords, home insurers, and cell phone companies (73%, 71%, and 66% correct respectively).*
- *Missed payments, personal bankruptcy, and high credit card balances influence scores (94%, 90%, and 89% correct respectively).*
- *The three main credit bureaus -- Experian, Equifax, and TransUnion -- collect the information on which credit scores are frequently based (75% correct).*
- *Consumers have more than one generic score (78% correct).*
- *Making all loan payments on time, keeping credit card balances under 25% of credit limits, and not opening several credit card accounts at the same time help raise a low score or maintain a high one (97%, 85%, and 83% correct respectively).*
- *It is very important for consumers to check the accuracy of their credit reports at the three main credit bureaus (82% correct).*

Somewhat surprising was the fact that most consumers understand new, and fairly complicated, consumer protections regarding credit score disclosures. When asked when lenders who use generic credit scores are required to inform borrowers of these scores, large majorities correctly identified three key conditions -- after a consumer applies for a mortgage (80% correct), whenever a consumer is turned down for a loan (79% correct), and on all consumer loans when a consumer does not receive the best terms including the lowest interest rate available (70% correct).

"Increases in consumer knowledge probably reflect in part the increased public attention given to credit scores because of the new protections," noted CFA's Brobeck. "The improvements may also be related to increased efforts of financial educators, including our creditscorequiz.org, to inform consumers about credit reports and scores," he added."

It is good news that consumers' knowledge of credit reports and how scores analyze credit report data is improving. However it is critical that consumers remain vigilant and do not fall prey to fraudulent credit repair schemes. Fraudulent credit repair agencies have a business model built around the premise of seeking to have accurate, predictive data deleted from a consumer's credit report. The quote from an October 13, 2011 FTC press release regarding a public investigation of a credit repair operator is illustrative of the problem and challenge our members face:

> *"The FTC alleges that the defendants made false statements to credit bureaus disputing the accuracy of negative information in consumers' credit reports. In letters to credit bureaus, which RMCN did not show to consumers, the firm typically disputed all negative information in credit reports, regardless of the information's accuracy. RMCN continued to send these deceptive dispute letters to credit bureaus, even after receiving detailed billing histories verifying the accuracy of the information, or signed contracts from creditors proving the validity of the accounts.*
>
> ***The complaint alleges that RMCN misrepresented to consumers that federal law allows the company to dispute accurate credit report information****, and that credit bureaus must remove information from credit reports unless they can prove it is accurate. In the company's words, credit bureaus must "prove it or remove it." RMCN charged a retainer fee of up to $2,000 before providing any service, and falsely told consumers that Texas law allows credit repair organizations that are registered and bonded to charge an advance fee."*

CDIA applauds the actions of the Federal Trade Commission and state attorneys general to protect consumers through their enforcement of the Credit Repair Organizations Act. These enforcement efforts must continue. But the CFA survey of consumers speaks clearly to the need to also continue to educate consumers. Consider the following finding:

"Over half (51%) [of consumers] incorrectly believe that credit repair companies are "always" or "usually" helpful in correcting credit report errors and improving scores. Experts agree that credit repair companies often overpromise, charge high prices, and perform services that consumers could do themselves."

Ultimately credit reports are an advocate for all of us as consumers. Credit reports contain an accounting of the good choices and hard work of Americans. They speak for consumers when they are applying for loans and the lenders simply don't know who they are or how they've paid their bills in the past. These reports replace bias and assumptions with a foundation of facts that tell our story and ensure that we are treated fairly.

The quality of data in our members' databases and dispute resolution procedures.

In May of 2011 the PERC completed and released a CDIA-commissioned study of the quality of data found in the databases of nationwide consumer credit reporting agencies. Since Dr. Turner, the president and CEO of PERC, is sitting at the witness table today I will defer to him to provide a more fulsome report on his organization's findings.

But what's important about this work is that it was truly an arms-length, let-the-chips-fall-where-they-may project which was the only condition under which Dr. Turner would agree to conduct the study. Our members had no reservations about this requirement.

PERC used two measures of what might be a material error in a consumer's credit report. First they used VantageScore to measure the point change between credit reports before and after a dispute and reinvestigation process. In this instance they found that only 0.93% of all credit reports examined had one or more disputes which resulted in a credit score increase of 25 points. However, Dr. Turner recognized that in a risk-based-pricing context even a single point change could make a difference for a consumer who is on the edge of qualifying for a better rate. Because of this, the PERC team also measured material errors by considering how often a consumer moved from a higher priced pricing tier to a lower one. Only one half of one percent (0.51%) of all credit reports examined by participants had credit scores that move to a higher credit risk tier (lower price). This study puts to rest the debate about the accuracy of our members' data. We have attached with our testimony the Key Findings put together by PERC as well as a link to the full study are in Appendix I of this testimony.

As a further statement of our members' confidence in their systems and the quality of their data, they also chose to voluntarily cooperate with the Federal Trade Commission study of the accuracy of credit reports. They provided the agency with free-of-charge data extracts as dictated by the agency's researchers in the Bureau of Economics and we expect to see the results of the FTC's findings later this fall.

CDIA applauds its members for facing the hard questions about data quality. The results of our members' decisions are impressive and expected.

As for the question of dispute resolution procedures, consumers' rights are very clear under the FCRA. Below is an explanation of those rights prepared by the Federal Trade Commission:

You have the right to know what is in your file. You may request and obtain all the information about you in the files of a consumer reporting agency (your "file disclosure"). You will be required to provide proper identification, which may include your Social Security number. In many cases, the disclosure will be free. You are entitled to a free file disclosure if:

- *a person has taken adverse action against you because of information in your credit report;*
- *you are the victim of identity theft and place a fraud alert in your file;*
- *your file contains inaccurate information as a result of fraud;*
- *you are on public assistance;*
- *you are unemployed but expect to apply for employment within 60 days.*

In addition, [since] September 2005 all consumers [have been] entitled to one free disclosure every 12 months upon request from each nationwide credit bureau and from nationwide specialty consumer reporting agencies. See www.ftc.gov/credit for additional information.

You have the right to dispute incomplete or inaccurate information. If you identify information in your file that is incomplete or inaccurate, and report it to the consumer reporting agency, the agency must investigate unless your dispute is frivolous. See www.ftc.gov/credit for an explanation of dispute procedures.

Consumer reporting agencies must correct or delete inaccurate, incomplete, or unverifiable information. Inaccurate, incomplete or unverifiable information must be removed or corrected, usually within 30 days. However, a consumer reporting agency may continue to report information it has verified as accurate.

The staff and systems used by our members to handle consumer requests for reinvestigations of data reported to them are first-class and this is not merely an opinion.

The PERC data quality study discussed above measured consumer satisfaction with the reinvestigation process and fully 95% of consumers were satisfied with the results.

Further indication of our members' success in meeting consumers' needs can be found in a 2008 report to congress regarding complaints submitted to the Federal Trade Commission. Note in the excerpt below that consumers appeared to be complaining to the FTC concurrent with the submission of a dispute directly to a consumer credit reporting agency. More than 90% of the disputes were resolved when submitted directly to the CRA, a percentage that is very consistent with the findings of PERC

The data indicate that a significant number of disputes were resolved in the consumer's favor (i.e., the disputed information was either removed from the file or modified as requested). The data further indicate, however, that in most cases, the favorable resolutions took place as part of the normal dispute process, and not as a result of the referral program. *Specifically, the CRAs' reports show that over 90 percent of disputes that were resolved "as requested by the consumer" were resolved before the CRA processed the referral from the Commission.*[1]

It is also important to note that in 2003 consumers were given the right to dispute information furnished to a consumer reporting agency directly with the furnisher of the data (e.g., lender, etc.). A March 2012 FTC report on a survey of consumers indicated that 46% chose to dispute an item of information directly with the data furnisher rather than with a consumer credit reporting agency. It is our view that consumers will continue to grow in their understanding of this right and will more often dispute with the data furnisher.

[1] See page 5 of the FTC Report to Congress Submitted on December 29, 2003: http://www.ftc.gov/os/2008/12/P044807fcracmpt.pdf

There is a vibrant market of alternative data sources available today.

In 2004 the FTC's FACT Act report on "Common Unreported Transactions" stated the following:

The concern prompting this request is that many Americans may be missing out on the benefits associated with the consumer reporting system even though they may have a demonstrable history of financial responsibility.

Our members didn't wait for this FTC report to start work on the expansion of data that could empower consumers, improve transparency and create better risk management decisions. Members of the CDIA are building new data bases, acquiring data assets and deploying new analytical technologies that solve problems now. Consider the following limited set of examples of data that may or can contribute to risk decisions now and in the future:

- Asset data such as home ownership, auto or investments.
- Utility and telecommunication services payments
- Rental payments
- Remittance transactions
- Payments regarding non-traditional loans, demand deposit account loans and short-term-loan
- Pre-paid card data
- Demand deposit account activity including direct bill-pay transactions

- Income data and models for income estimation

Competition is driving the heavy private-sector investment in a better future for our country and CDIA is proud of its members' ambitious efforts to meet the needs of consumers, to give them credit for their careful management of other types of payments and ensure that the market place is accessible to all consumers. With this positive context in mind, it is important for this Subcommittee to know that in the context of our voluntary system of data furnishing some data sources remain on the sidelines because of concerns about the regulatory as well as statutory burdens, restrictions and liability risks associated with reporting information to a consumer reporting agency.

In closing this discussion, the Subcommittee asked CDIA to comment on H.R. 6363, The Credit Access and Inclusion Act. Since this bill has only been available in final form for a few days CDIA cannot comment on it until we have had an opportunity to discuss it with all sectors of our membership. We thank the committee for asking for our views, however.

The importance of preserving the integrity of the credit reporting system.

The Committee has also asked us to comment on H.R. 2086, The Medical Debt Responsibility Act of 2011. The bill imposes a duty on consumer reporting agencies to delete medical debts which are less than or equal to $2,500 within 45 days of the date that such debts have been paid or settled. Consistent with testimony we have offered in other congresses, we oppose this bill for a number of reasons which we discuss below.

Finding number one in Section 2 of the bill states that "medical debt is unique, and Americans do not choose when accidents happen or when illness strikes."

An accurate accounting of debts owed and debts paid is always a combination of debts a consumer chooses to incur and some which are the result of events that may well be beyond his or her control, but which are nonetheless events that have an effect on that consumer's ability to pay in the future. Lenders and score developers can and do make differing decisions about how such data should be considered, but it is wrong to conclude that because some debts are not "chosen" that the debt is not relevant and predictive. Further, the finding ignores at least one population of consumers who are making choices for elective procedures and surgeries. For example, according to the American Society of Aesthetic Plastic Surgery 2.4 million consumers underwent botox injections in 2010. The ASPS also estimated that 750,000 men underwent surgical and nonsurgical procedures in this same year. Examples of elective surgeries and procedures include liposuction, cosmetic eyelid surgery, facelifts, forehead lifts, lip augmentation, nose surgery, tummy tucks, dermabrasion, laser hair removal, laser skin resurfacing, chemical peels, and tooth whiteners. There is nothing wrong with any of these procedures and consumers enjoy the results. But for the consumer who is interested in looking better, these choices are no different than making a purchase in a retail store and the debts should not be deleted. Finally the finding assumes that there is no population of consumers who have the ability to pay but simply choose not to do so. This may not be the largest population, but to allow them to ignore a debt and then only pay it in order to have it deleted rewards the wrong value and is a poor policy outcome.

Finding number three states that "[a]ccording to credit evaluators, medical debt collections are more likely to be in dispute, inconsistently reported, and of questionable value in predicting future payment performance because it is atypical and nonpredictive [sic]." The challenge for this hearing in responding to this assertion is that we do not have a credit score developer who can respond to the assertions in finding number two and we also do not have a lender who owns or services loans or secondary market investors who depend on primary market lending decisions to comment on what data is important to them for a lending decision. We would urge the committee to consult with both communities to learn more about how such data is predictive.

The precedent of allowing for the deletion of a delinquent account when paid poses a great risk to the credit reporting system. A credit history ceases to be a full and complete history if the door is opened to exceptions for the deletion of valid debts that are delinquent but then paid. The Great Recession drove home a lesson time and time again and that is that sloppy underwriting practices which ignored predictive data contributed to the extent of the crisis we faced then and the recovery on which we are now focused. The principle of delete-when-paid allows a consumer to not pay bills until such time as it is important for him or her to apply for a loan. Broadly applied a delete-when-paid principle would lead to the white washing of credit histories and seriously impair the primary market's ability to underwrite risk. This result likely also leads to a loss of confidence by secondary market investors in the safety and soundness of the debts underlying securities. Since we do not have as a part of this record empirical evidence of the consequences of deleting paid medical debts that are equal to or below $2,500, were congress to enact this amendment into law, it would be doing so based on a hypothesis and not evidence. Since risk-management concerns have not been accounted for and we urge the committee to consult with other industry sectors such as financial services, insurance, and telecommunications. Their views are vital to this inquiry.

There are also serious technical drafting issues with this bill as written. The bill states that its purpose is "to exclude from consumer credit reports medical debt that had been characterized as delinquent, charged off, or debt in collection for credit reporting purposes and has been fully paid or settled." This means that nationwide consumer credit reporting agencies would have to "know" when a portion of a credit card balance is associated with medical debt and to know when this portion of the outstanding balance is paid. Further we would have to know when a third-party debt collector is reporting a medically related debt, even when it is ignoring its duties under FCRA Section 623(a)(9) where it must identify itself as a medical information furnisher. A lender, who provides a range of loan products for different markets, could provide a specialized program of financing for an orthodontist. Nothing in the lender's name or actions would suggest that the debt being reported is associated with a medical procedure but the nationwide consumer credit reporting agency is nonetheless required to comply with this new duty. In reality it is not possible to comply with the duty as proposed and further, since this bill amends Section 605 of the FCRA, it creates a duty that is tied to private rights of action, including significant class action risks.

In closing, CDIA's members will never shy away from a thoughtful, probative discussion of the quality of data that is being reported to it, but this bill is technically flawed, it sets a precedent that challenges the historical nature of data and it is based on allegations, not on empirical evidence. Equally important, this discussion cannot happen without the lending community's views as well as those of other users of consumer reports which are underwriting risks. It is for these reasons we cannot support this bill, though we are very grateful to the Subcommittee for seeking our testimony.

Thank you for this opportunity to testify. I am happy to answer any questions.

Appendix I

Key Findings

This report reviews the accuracy of data in consumer credit reports from the three major nationwide consumer reporting agencies (CRAs).
It also measures the credit market impact upon consumers with modifications to their credit reports.

Key findings from this research include:

Impact of Modifications on Credit Scores:

Of all credit reports examined:
0.93 percent had one or more disputes that resulted in a credit score increase of 25 points or greater;
1.16 percent had one or more disputes that resulted in a credit score increase of 20 points or greater; and
1.78 percent had one or more disputes that resulted in a credit score increase of 10 points or greater.

Material Impact of Credit Report Modifications:

As noted above, less than one percent (0.93 percent) of all credit reports examined by participants prompted a dispute that resulted in a credit score adjustment and an increase of a credit score of 25 points or greater. More significantly, onehalf of one percent (0.51 percent) of all credit reports examined by participants had credit scores that moved to a higher "credit risk tier" as a result of a modification. This metric is the best gauge of the materiality of credit report modifications, and suggests that consequential inaccuracies are rare. Credit report modifications that result in material impacts are exclusively modifications of tradelines, that is, of credit, collection and public record account data.

Disputants Satisfied with Process:

95 percent of disputing participants were satisfied with the outcomes of their disputes, suggesting widespread satisfaction among participants with the FCRA dispute resolution process.

Tradeline Dispute Rate:

Of the 81,238 credit, collections, and public record tradelines examined, 435, or less than 1 percent (0.54 percent), contained information that was disputed.
It should be mentioned that 19.2 percent of the credit reports examined by consumers were set aside as containing one or more pieces of header or tradeline data that a consumer believed could be inaccurate. Of note, 37% of these potential disputes only related to header, or "above the line," information that could have no bearing on a credit score (e.g., the spelling of a former street address or maiden name).

Source: http://perc.net/files/DQreport.pdf

PREPARED STATEMENT OF

THE FEDERAL TRADE COMMISSION

"EXAMINING THE USES OF CONSUMER CREDIT DATA"

Before the

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND CONSUMER CREDIT

COMMITTEE ON FINANCIAL SERVICES

UNITED STATES HOUSE

Washington, D.C.

September 13, 2012

I. Introduction

Chairman Capito and members of the Subcommittee, my name is Robert Schoshinski, and I am an Assistant Director for the Division of Privacy and Identity Protection at the Federal Trade Commission ("Commission" or "FTC").[1] I appreciate the opportunity to appear before you today to discuss consumer reports and credit scores.

Today, data compiled and maintained by consumer reporting agencies ("CRAs") is used to make critical decisions about the availability and cost of various consumer products and services, including credit, insurance, employment, and housing. Consumer reports are often used to evaluate the risk of future nonpayment, default, or other adverse events. For example, complete and accurate consumer reports enable creditors to make informed decisions, benefitting both creditors and consumers.

Errors in consumer reports, however, can cause consumers to be denied credit or other benefits or pay a higher price for them, and may lead credit issuers to make inaccurate decisions that result in declining credit to a potentially valuable customer or issuing credit to a riskier customer than intended. The Fair Credit Reporting Act[2] ("FCRA") was enacted in 1970 to balance businesses' "dependen[ce] upon fair and accurate credit reporting" and the "need to insure that CRAs exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer's right to privacy."[3] The FCRA (1) prevents the misuse of sensitive consumer

[1] While the views expressed in this statement represent the views of the Commission, my oral presentation and responses to questions are my own and do not necessarily reflect the views of the Commission or any individual Commissioner.

[2] 15 U.S.C. §§ 1681-1681x.

[3] *Id.* at § 1681(a).

information by limiting recipients to those who have a legitimate need for it; (2) improves the accuracy and integrity of consumer reports; and (3) promotes the efficiency of the nation's banking and consumer credit systems. Since the FCRA's passage, Congress has amended the statute to address developments in the consumer reporting system and the marketplace, and to increase consumers' rights and protections with respect to the collection and use of their data.

The Commission has played a key role in the implementation, enforcement, and interpretation of the FCRA since its enactment,[4] and has appreciated Congress' ongoing efforts to protect consumers while ensuring that creditors and others have access to information that they truly need. In the last decade, the Commission has brought over thirty actions to enforce the FCRA against CRAs, users of consumer reports, and furnishers of information to consumer reporting agencies. As the consumer reporting system evolves and new technologies and business practices emerge, vigorous enforcement of the FCRA continues to be a top priority for the Commission, as does consumer and business education concerning applicable rights and responsibilities under the statute.

This testimony first provides background on the FCRA and its treatment of consumer reports and credit scores. It then discusses the Commission's recent work to enforce the FCRA and educate consumers and businesses about their respective rights and responsibilities under the statute. Finally, it discusses the unique concerns created by "thin files," a term used to describe

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[4] As enacted, the FCRA established the Commission as the primary federal enforcement agency, with wide jurisdiction over entities involved in the consumer reporting system; the primary exceptions to the Commission's jurisdiction are federally regulated financial institutions. *See* 15 U.S.C. § 1681s(a)-(b). Pursuant to the Consumer Financial Protection Act of 2010 ("CFPA"), Title X of Pub. L. 111-203, 124 Stat. 1955 (July 21, 2010) (The Dodd-Frank Wall Street Reform and Consumer Protection Act), the Commission will share its FCRA enforcement role with the Consumer Financial Protection Bureau ("CFPB") in many respects.

consumer files with limited or no credit histories, and medical debt as they relate to credit reporting and credit scoring.

II. The Fair Credit Reporting Act, Consumer Reports, and Credit Scores

Congress passed the FCRA to curb reported abuses by some in the credit reporting industry, which had assumed a "vital role in assembling and evaluating consumer credit and other information on consumers."[5] The statute imposes a number of obligations on CRAs that assemble and evaluate consumer information into consumer reports for use by issuers of credit, insurance companies, employers, landlords, and others in making eligibility decisions affecting consumers. For example, to protect the privacy of sensitive consumer report information, CRAs must take reasonable measures to ensure that they provide such information only to those who have a statutorily-specified "permissible purpose" to receive it.[6] The FCRA also contains numerous requirements to ensure the accuracy of consumer reports, including requirements that CRAs (1) make reasonable efforts to ensure the "maximum possible accuracy" of consumer reports,[7] and (2) maintain procedures through which consumers can dispute and correct inaccurate information in their consumer reports.[8]

In addition, the FCRA imposes obligations on those who furnish information about consumers to CRAs ("furnishers") and on users of consumer reports, such as entities extending

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[5] 15 U.S.C. § 1681(a)(3).

[6] *Id.* at § 1681b(a), (c). Permissible purposes under the FCRA include, but are not limited to, the use of a consumer report in connection with a determination of eligibility for credit, insurance, or a license; in connection with the review of an existing account; and for certain employment purposes.

[7] *Id.* at § 1681e(b).

[8] *Id.* at § 1681i(a)-(d).

credit. For example, if a user of a consumer report takes an adverse action against a consumer based on information in a consumer report – such as a denial of credit or employment – the user must provide an adverse action notice to the consumer, which explains how the consumer can dispute any inaccurate information in the report.[9] Finally, the FCRA provides many other important rights for consumers, such as the right to: obtain copies of their files from CRAs, in many instances at no charge;[10] purchase a credit score;[11] and opt-out of pre-screened offers of credit and insurance based on information in their consumer report.[12]

A. Consumer Reports and Credit Scores

The FCRA defines a consumer report as any "communication of any information by a CRA bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used" for certain eligibility purposes, including credit, insurance, employment, and housing.[13] Information in a consumer report typically includes the subject consumer's credit history and payment patterns, demographic and identifying information, and public record information, such as arrests, convictions, judgments, and bankruptcies. Consumer reports can also include the

[9] *Id.* at § 1681m(a). The adverse action notice also must include a statement that the CRA that supplied the consumer report did not make the decision to take the adverse action and cannot give the consumer any specific reasons for the decision. *Id.* at § 1681m(a)(2)(B).

[10] *Id.* at §§ 1681g(a); 1681j(a)-(e).

[11] *Id.* at § 1681g(f).

[12] *Id.* at § 1681b(e).

[13] *Id.* at § 1681a(d)(1).

consumer's employment history, driving record, and consumer data from social networking sites.[14]

A numerical or other evaluation of data by a CRA, such as a credit score or other predictive score that bears on a consumer's credit worthiness, falls within the FCRA's definition of a consumer report when it is used or expected to be used for eligibility purposes. There are many different types of credit scores in use today, including scores that measure general credit worthiness, scores that are specific to certain types of credit (such as automobile loans or mortgages), and credit-based scores used to measure risk for automobile and homeowners insurance. Typically, a credit score is a number generated by a statistical model that is based on information in a consumer's file at a CRA and is used to predict the risk that the consumer will engage in adverse behaviors, such as default or delinquency. There are various forms of credit scoring models, however. Creditors do not necessarily all rely upon the same score, or even the same factors or weighing of those factors, to make their credit decisions, and a single creditor may use different models for different products. Additionally, because a credit score is based on information about a consumer that is in the consumer's particular file at a particular moment, the same model may generate a different score when used by different CRAs at different times. The score will change as the underlying file data is updated.

[14] Letter from Maneesha Mithal, Assoc. Dir., Div. of Privacy and Identity Prot., FTC, to Renee Jackson, Counsel for Social Intelligence Corp. (May 9, 2011) (closing letter to CRA that included public information gathered from social networking sites in consumer reports), *available at* http://www.ftc.gov/os/closings/110509socialintelligenceletter.pdf.

B. Increased Transparency and Consumer Access to Consumer Reports and Credit Scores

Amendments to the FCRA, especially within the last ten years, have increased the transparency of and consumers' access to their credit scores as well as the consumer reports upon which they are based. For example, the Fair and Accurate Credit Transactions Act of 2003 ("FACT Act")[15] amended the FCRA to give consumers the right to obtain free annual file disclosures[16] and purchase a credit score from a CRA,[17] and to require that certain mortgage lenders provide a credit score without charge to home loan applicants.[18] Pursuant to the FACT Act amendments addressing risk-based pricing,[19] the Commission and the Board of Governors of the Federal Reserve System promulgated regulations allowing creditors, as an alternative to providing risk-based pricing notices, to provide a free credit score, along with information about that score, to all consumers.[20] In 2010, the Consumer Financial Protection Act ("CFPA")[21]

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[15] Pub. L. No. 108-159, 117 Stat. 1952 (Dec. 4, 2003). For further discussion of the Commission's implementation of the FACT Act, *see* Prepared Statement of the FTC, *Keeping Score on Credit Scores: An Overview of Credit Scores, Credit Reports and Their Impact on Consumers: Hearing Before the Subcomm. on Financial Institutions and Consumer Credit of the H. Comm. on Financial Services*, 111th Cong. (March 24, 2010), *available at* http://www.ftc.gov/os/2010/03/P065404facta.pdf.

[16] 15 U.S.C. § 1681j(a)(1).

[17] *Id.* at § 1681g(f).

[18] *Id.* at § 1681g(g).

[19] *Id.* at § 1681m(h). Risk-based pricing refers to the practice of offering credit to a particular consumer on terms that reflect the risk of nonpayment by that consumer. Creditors that engage in risk-based pricing generally offer more favorable terms to consumers with good credit histories than they offer to consumers with poor credit histories.

[20] Final Rule: Fair Credit Reporting Risk-Based Pricing Regulations, 75 Fed. Reg. 2724 (Jan. 15, 2010), *available at* http://edocket.access.gpo.gov/2010/pdf/E9-30678.pdf. Pursuant to these regulations, creditors generally must provide consumers with a "risk-based pricing" notice

further amended the FCRA to require that creditors, when providing an adverse action[22] or risk-based pricing notice,[23] include in the notice any credit score used in the decision.

The FACT Act also amended the FCRA to enhance the accuracy and completeness of information contained in consumer reports. For example, pursuant to the FACT Act, the Commission, along with the federal banking regulatory agencies,[24] promulgated the "Furnisher Rule," which was designed to ensure the accuracy of information that furnishers provide about consumers to CRAs for inclusion in consumer reports.[25] The Furnisher Rule requires furnishers to establish reasonable policies and procedures for implementing specific guidelines designed to ensure the accuracy and integrity of information furnished to CRAs.[26] The Furnisher Rule also

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when, based on the consumer's credit report, the creditor provides credit to the consumer on less-favorable terms than it provides to other consumers. Rather than conducting the analysis necessary to determine which consumer should receive a risk-based pricing notice, however, many creditors may choose to provide free credit score disclosures to all consumers, further improving the availability of credit score information to consumers. The Commission notes that authority over these regulations transferred in large part to the CFPB in July 2011.

[21] Title X of Pub. L. No. 111-203, 124 Stat. 1955 (July 21, 2010).

[22] 15 U.S.C. § 1681m(a).

[23] *Id.* at § 1681m(h).

[24] As used here, this term refers to the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of Thrift Supervision, and National Credit Union Administration.

[25] Final Rule: Procedures to Enhance the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies Under Section 312 of the Fair and Accurate Credit Transactions Act, 74 Fed. Reg. 31484 (July 1, 2009), *available at* http://www.ftc.gov/os/2009/07/R611017factafrn.pdf. As with the Risk-Based Pricing Regulations, *supra* note 20, the CFPA transferred much of the authority over the Furnisher Rule to the CFPB.

[26] *E.g., id.* at 31527. For example, the Furnisher Rule's guidelines state that when furnishers report an outstanding balance on a credit account, they should also report the consumer's credit limit. This is because the failure to include a credit limit can cause credit

requires furnishers, in most cases, to investigate disputes that consumers submit directly to them regarding the accuracy of information that the furnishers reported to a CRA. In addition, the FACT Act amended the FCRA to allow identity theft victims to address inaccuracies in their consumer reports that resulted from the theft.[27] Finally, as mentioned above, the FACT Act greatly increased consumers' access to their files maintained by CRAs, permitting them to evaluate whether the files contain inaccurate or incomplete information that they should dispute. Ensuring the accuracy and completeness of the underlying consumer files upon which credit scores are based should increase the accuracy and predictive value of credit scores, benefitting both consumers seeking credit and insurance as well as the users of the credit scores.

II. FTC's Activities To Implement the FCRA

As mentioned above, the Commission has played a key role in the implementation, enforcement, and interpretation of the FCRA for over 40 years. The Commission now shares many of these responsibilities with the CFPB, and the agencies have been working together to avoid duplication and leverage their respective resources to address specific concerns. Vigorous enforcement of the FCRA to maintain accuracy and fairness in the consumer reporting system and to protect consumer privacy remains a top priority for the Commission, as does effective and timely consumer and business education concerning the rights and obligations created by the statute.

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evaluators, such as credit scoring systems, to inaccurately estimate how much available credit a consumer is using, which is typically an important factor in assessing credit worthiness.

[27] *See, e.g.*, 15 U.S.C. § 1681c-2 (allowing identity theft victims to permanently block the reporting of information in their file that resulted from the theft).

A. Enforcement

The Commission continues to aggressively enforce the FCRA. Given the sensitivity of consumer report information, improper use of such information is of special concern. For example, the Commission recently sued and obtained a consent order against Spokeo, Inc. ("Spokeo"), a data broker, based on allegations that the company operated as a CRA when it marketed and sold detailed profiles of consumers to companies in the human resources, recruiting, and employment background screening industries.[28] The Commission charged that Spokeo collected personal information about consumers from hundreds of online and offline data sources, including social networks, and assembled it to create detailed personal profiles of consumers. These profiles included personal information such as name, address, age range, and email address, and may have included hobbies, ethnicity, religion, participation on social networking sites, and photos. The Commission alleged that these profiles were consumer reports and that Spokeo violated the FCRA by failing to take reasonable steps to ensure that the reports it sold would be used only for permissible purposes under the statute; failing to ensure the reports were accurate; and failing to inform users of the reports of their obligations under the FCRA. The FTC's consent order imposed an $800,000 civil penalty against the company and enjoins Spokeo from violating the FCRA in the future.

In addition, last year, the Commission sued and obtained a consent order against a CRA that used its consumer report information to create and sell marketing lists, which is not a

[28] *United States v. Spokeo, Inc.*, No. CV 12-05001 (C.D. Cal. filed June 7, 2012) (consent decree), *available at* http://www.ftc.gov/opa/2012/06/spokeo.shtm.

permissible purpose under the statute.[29] In its complaint against Teletrack, Inc. ("Teletrack"), a CRA providing consumer reports to businesses that mainly serve financially-distressed consumers, the Commission alleged that the company created a marketing database of information that it gathered through its credit reporting business and then sold the information in this database to marketers. For example, Teletrack sold lists of consumers who previously sought payday loans to third parties that wanted to use this information to target potential customers with marketing for similar products. The Commission's complaint alleged that these marketing lists were consumer reports and that Teletrack violated the FCRA by selling these consumer reports without a permissible purpose under the statute. The Commission's consent order required Teletrack to pay civil penalties of $1.8 million and prohibits the company from violating the FCRA in the future.

Further, given the critical need for accuracy in consumer reports, the Commission continues to enforce the FCRA's provisions requiring CRAs to follow reasonable procedures to ensure maximum possible accuracy of information included in reports and to conduct reasonable investigations of consumer disputes. The Commission recently took action against HireRight Solutions, Inc. ("HireRight Solutions"), a CRA providing employment background screening services.[30] In its capacity as a CRA, HireRight Solutions provides background reports that contain information about prospective and current employees to help thousands of employers

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[29] *United States v. Teletrack, Inc.*, No. 1:11- CV-2060 (N.D. Ga. filed June 24, 2011) (stipulated final judgment and order), *available at* http://www.ftc.gov/opa/2011/06/teletrack.shtm.

[30] *United States v. HireRight Solutions, Inc.*, No. 1:11-cv-01313 (D.D.C. filed Aug. 8, 2012) (stipulated final judgment and order), *available at* http://www.ftc.gov/os/caselist/1023130/index.shtm.

make hiring decisions. The Commission's complaint alleged that, in many cases, HireRight Solutions failed to follow reasonable procedures to prevent patently inaccurate consumer report information from being provided to employers, such as criminal records pertaining to someone other than the subject of the report, and failed to take reasonable steps to ensure that the information in the consumer reports it provided was current and reflected updates, such as the expungement of criminal records. The Commission alleged that these failures led to consumers being denied employment or other employment-related benefits. Further, the Commission alleged that HireRight Solutions failed to conduct reasonable investigations of disputed items in a consumers' files. The Commission's consent order imposed a $2.6 million civil penalty against HireRight Solutions and prohibited future violations of the FCRA.

Finally, the Commission continues to work to ensure that CRAs maintain the security and confidentiality of the sensitive consumer information with which they are entrusted. Last year, for example, the Commission settled enforcement actions against three CRAs for failure to take reasonable information security steps to protect consumers' data.[31] The Commission alleged the companies' failures allowed hackers to access more than 1,800 consumer reports without authorization. The orders settling the charges require the companies to strengthen their data security procedures and submit to assessments of those procedures for 20 years.

B. Consumer and Business Education

The Commission continues to educate consumers and businesses about consumer reports, credit scores, and their rights and obligations under the FCRA. The Commission recently added

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[31] *In re SettlementOne Credit Corp.,* Docket No. C-4330 (Aug. 17, 2011) (decision and order); *In re ACRAnet, Inc.,* Docket No. C-4331 (Aug. 17, 2011) (decision and order); and *In re Fajilan and Assoc.,* Docket No. C-4332 (Aug. 17, 2011) (decision and order), *available at* http://www.ftc.gov/opa/2011/08/creditreporters.shtm.

a new video[32] and a simplified consumer alert[33] concerning employment background screening to its robust library of consumer education materials concerning consumer reports and credit.[34] The Commission's publication, *Need Credit or Insurance? Your Credit Score Helps Determine What You'll Pay*,[35] explains how credit scoring works and how it is used by lenders and insurance companies. Another publication explains how consumers can obtain their free annual consumer report from each of the nationwide consumer reporting agencies and use the FCRA's dispute procedures to ensure that information in their consumer reports is accurate.[36] Finally, through the Commission's Legal Services Collaboration,[37] the agency is disseminating consumer education materials to some of our nation's most vulnerable consumers.

Business education is also an important priority for the FTC. The Commission seeks to educate businesses by developing and distributing free guidance and has created several business publications relating to compliance with the FCRA, including: *Consumer Reports: What*

[32] http://www.ftc.gov/multimedia/video/jobs.shtm.

[33] *What to Know When You Look for a Job, available at* http://www.ftc.gov/bcp/edu/pubs/consumer/alerts/alt080.shtm.

[34] *See generally* http://www.ftc.gov/bcp/menus/consumer/credit/reports.shtm.

[35] *Available at* http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre24.shtm.

[36] *FTC Facts for Consumers: How to Dispute Credit Report Errors, available at* http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre21.shtm.

[37] Through this program, the FTC is working with legal services providers to distribute consumer education materials and gather complaints about pernicious practices affecting at-risk and indigent communities.

Insurers Need to Know;[38] *Credit Reports: What Information Providers Need to Know*;[39] *Using Consumer Reports: What Employers Need to Know*;[40] and *Disposing of Consumer Report Information? New Rule Tells How*.[41] These publications, as well as other business education materials, are available through the FTC's Business Center website, which averages one million unique visitors each month.[42] The Commission also hosts a Business Center blog,[43] which has featured FCRA topics; presently, approximately 3,500 attorneys and business executives subscribe to email blog updates.

Another way the Commission seeks to educate businesses is by issuing public closing and warning letters. For example, the Commission recently sent warning letters to the marketers of six mobile apps that provide background screening services.[44] These letters noted that some of the apps included criminal record histories, which bear on an individual's character and general reputation and are precisely the type of information that is typically used in employment and tenant screening. The Commission warned the apps marketers that they must comply with

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[38] *Available at* http://business.ftc.gov/documents/bus07-consumer-reports-what-insurers-need-know.

[39] *Available at* http://business.ftc.gov/documents/bus33-credit-reports-what-information-providers-need-know.

[40] *Available at* http://business.ftc.gov/documents/bus08-using-consumer-reports-what-employers-need-know.

[41] *Available at* http://business.ftc.gov/documents/alt152-disposing-consumer-report-information-new-rule-tells-how.

[42] *See generally* http://business.ftc.gov.

[43] *See generally* http://business.ftc.gov/blog.

[44] Press Release, FTC, *FTC Warns Marketers that Mobile Apps May Violate Fair Credit Reporting Act* (Feb. 7, 2012), *available at* http://www.ftc.gov/opa/2012/02/mobileapps.shtm.

the FCRA if they have reason to believe the background reports they provide are being used for employment screening, housing, credit, or other similar purposes. The Commission urged the companies to review their apps and their policies and procedures to ensure compliance with the statute if it applies.

III. Special Concerns: "Thin Files" and Reporting of Medical Debt

Two issues relating to our nation's consumer reporting system continue to be of special concern, especially with the increased reliance on credit scoring systems to make eligibility determinations. The first relates to problems faced by consumers with limited or no credit history, often described as having "thin files." The second is the impact of medical debt on consumer reports and credit scoring models.

A. "Thin Files"

"Thin files," or consumer files with limited or no credit histories, limit the ability of credit providers to assess these consumers' credit worthiness. In 2003, Congress asked the Commission to study whether common financial transactions not generally reported to CRAs would be useful in determining the credit worthiness of consumers.[45]

In 2004, the Commission issued a report concluding that there is a sizable consumer population that is difficult to evaluate for credit purposes because they have thin files or no credit history.[46] The report discussed the breadth of the problem and described the types of groups that have little or no credit histories, such as recent immigrants, young people living on

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[45] FACT Act, Pub. L. No. 108-159, § 318(a)(2)(D), 117 Stat. 1952, 1998.

[46] FTC, *Report to Congress Under Sections 318 and 319 of the Fair and Accurate Credit Transactions Act of 2003*, at 78 (Dec. 2004), *available at* http://www.ftc.gov/reports/facta/041209factarpt.pdf.

their own for the first time, people who established credit through a spouse, and people who either do not use credit or who rely on alternative credit sources, like payday loans, that may not report to CRAs. In addition, the report noted that minorities are over-represented among consumers with limited or no credit histories.

As described in the Commission's report, credit issuers and others advocate for the inclusion of additional sources of data in credit files.[47] Such data could include rental payment information, utility payment information, and cellular phone payment information.[48] The Commission's report identified barriers to reporting this alternative data, including high costs, the diffuse nature of reporting rental payments, and differences in state laws and regulations governing utilities.[49] The report also identified private efforts underway to collect and report such data. The Commission remains interested in the various products in the marketplace that currently use such alternative data[50] to provide consumers with greater access to credit opportunities.

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[47] *Id.* at 82-84.

[48] *See, e.g.,* Policy & Economic Research Council, *A New Pathway to Financial Inclusion: Alternative Data, Credit Building, and Responsible Lending in the Wake of the Great Recession* 7 (June 2012), *available at* http://perc.net/files/WEB%20file%20ADI5%20layout(1).pdf.

[49] FTC, *supra* note 46, at 84-85.

[50] *See, e.g.*, Press Release, CoreLogic, *FICO and CoreLogic Announce Availability of More Predictive Mortgage Credit Score Designed to Enable Growth in Mortgage Lending Market* (July 10, 2012), *available at* http://www.corelogic.com/about-us/news//fico-and-corelogic-innovative-predictive-score.aspx (announcing score that evaluates traditional credit data as well as landlord/tenant and other alternative data).

B. Medical Debt

The treatment of medical debt for credit reporting and credit scoring purposes also presents unique challenges. Although medical service providers may not report debts directly to CRAs, third-party debt collectors will often report medical collection accounts. As with all debts reported to a CRA, medical debts that are reported result in negative items on consumers' credit reports even after such debts have been paid. Such items can adversely affect a consumer's credit score.

Some have questioned the appropriateness and value of medical debt in assessing and predicting credit risk because of the unique nature of such debt. For example, in some cases, the debt may arise because of a billing dispute or misunderstanding between the consumer and their insurer. Also, some argue that medical debt is atypical and unexpected, and thus may not be a good indicator of a consumer's general credit worthiness. On the other hand, others argue that such debts typically reflect accurate financial obligations of consumers. Some states have attempted to address issues raised by the reporting of medical debt to CRAs by requiring that certain patients be allowed several months to work out payment arrangements for such debt before the accounts may be reported to a CRA.[51] At the federal level, proposed legislation would require the removal of some fully paid medical debt accounts from consumer reports.[52]

The Commission is keenly aware of the issues presented by the reporting of medical debt to CRAs and how such reporting can impact consumers and their credit scores. Although the

[51] *See, e.g.,* Cal. Health & Safety Code § 127425(d).

[52] *See, e.g.*, H.R. 2086, 112th Cong. (2011).

Commission has not taken a position with respect to any federal or state legislation on this issue, it continues to monitor developments in this area.

IV. Conclusion

Thank you for the opportunity to provide the Commission's views on the topic of consumer reports and credit scores. We look forward to continuing to work with Congress and this Subcommittee on these important issues.

Testimony
of
Mary Spector
Associate Professor of Law
SMU Dedman School of Law[1]
on
Examining the Uses of Consumer Credit Data
before
Subcommittee on Financial Institutions and Consumer Credit
Committee on Financial Services
United States House of Representatives
Washington, D.C.
September 13, 2012

Chairwoman Capito, Ranking Member Maloney, my name is Mary Spector. I am an associate professor at SMU Dedman School of Law where I teach consumer law and direct a consumer advocacy clinic. Thank you for the opportunity to appear before you today to discuss ways in which changes in consumer reporting might improve consumers' access to credit, eligibility for jobs and access to affordable housing and insurance.

Since 1970, The Fair Credit Reporting Act ("FCRA")[2] and its amendments have balanced the market's need for accurate information against consumers' interests in protecting sensitive personal and financial information.[3] The primary method used to protect consumers is to limit or exclude the reporting of certain information. That is the general approach taken by the FCRA, which defines its requirements for reporting information largely by what is excluded. For

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[1] My appearance before the Subcommittee is not in any representative capacity. I am not representing any organization or organizations in connection with my testimony. I provide my institutional affiliation for identification purposes only. The opinions contained in my testimony are my own and are not intended to reflect those of the University.

[2] 15 U.S.C. §§ 1681- 1681u.

[3] *See* 15 U.S.C. § 1681.

example, credit reports may not contain bankruptcy filings that pre-date the report by more than 10 years,[4] or civil suits, judgments and arrest records that pre-date a consumer report by more than seven years or until the applicable limitations period has expired.[5] The Act also limits the reporting time for paid tax liens,[6] accounts placed for collection and other adverse information, which may continue to appear on a credit report for seven years after payment.[7] It is also the approach states take in preventing reporting of certain public record information regarding eviction litigation[8] and payment histories with respect to public utilities.[9] And, it is the approach taken in H.R. 2086 by the Medical Debt Responsibility Act, which I believe is an important first step in changing methods of consumer reporting in ways that benefit consumers' access to housing, employment, credit and insurance.

Some estimate that outstanding medical debt accounts for as much as 50% of the negative information appearing on credit reports.[10] A researcher at the University of Minnesota

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[4] 15 U.S.C. § 1681c(a)(1).

[5] 15 U.S.C. § 1681c(a)(2).

[6] 15 U.S.C. § 1681c(a)(3).

[7] 15 U.S.C. § 1681c(a)(4).

[8] *See, e.g.,* Cal. Civ. Code § 1785.13.

[9] E.g., N.J. Stat. Ann. § 48:3-85 (West); 52 Pa. Code § 54.8, D.C. Mun. Regs. tit. 15, § 3107. *See also* 2011 NY A.B. 4830 (NS), 2011 New York Assembly Bill No. 4830, New York Two Hundred Thirty-Fourth Legislative Session.

[10] *See* Mark Rukavina, *The Financial Burdens of Health Care*, 20 COMMUNITIES & BANKING 9,11 (2009)

estimates the error rate in medical billing is between 30% to 40%.[11] When those numbers are plugged into a payment system in which entities other than the consumer may be responsible for payment, it should be no surprise that resolution of accounts can be confusing, time-consuming and frustrating. Even after the bills are paid, the presence of a paid medical debt on a credit report can have a devastating effect on a consumer's access to future credit and employment.

That was the case of Steve and Tara Barnes, whose medical bills for Tara's treatment had been turned over to a collection agency while Steve was still talking to the insurance company about who was responsible for what.[12] Even after Steve paid the bills -- amounting to about $600 -- their presence on the Barnes' credit report cost the couple when they refinanced their home. They estimate they paid $1700 more up front than they would have had to pay had the accounts not appeared on the credit report[13] Passage of the Medical Debt Responsibility Act would help Steve and Tara Barnes and consumers like them by requiring the removal of medical accounts paid more than 45 days prior to the consumer report.

However, any benefits the Barnes might enjoy from the Medical Debt Responsibility Act could be overshadowed by the widespread addition of so-called alternative data contemplated in H.R. 6363. Described as a method to report "positive credit information," careful examination

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[11] *See* Jessica Silver-Greenberg, *How to Fight a Bogus Bill: Many Medical Bills Contain Errors That Could End Up Wrecking Your Credit Score. Here's What You Need to Know*, WSJ Online (Feb. 28, 2011).

[12] Carla K. Johnson, *Medical bills can wreck credit, even when paid off*, USA Today (Mar. 5, 2012), *available at* *http://www.usatoday.com/news/health/story/health/story/2012-03-05/Medical-bills-can-wreck-credit-even-when-paid-off/53367464/1*.

[13] *See* Gerri Detweiler, *Could A Medical Collection Account Keep You From Getting A Mortgage?*, Credit.com (Aug. 2, 2011).

of the proposal reveals much more:

- The bill is not limited to so-called positive information and would enable the reporting of all payment information, including whether the consumer qualifies for payment assistance program.
- The proposed bill does nothing to deter the transfer of billing errors, reduce errors on existing reports, or improve the system of dispute resolution, which a recent investigation by the *Columbus Dispatch* describes as a "mess that cries for redress."[14]

Widespread reporting of so-called alternative data has the potential for thickening a thin file or creating credit histories for consumers without existing files. However, in considering H.R. 6363, the following should also be taken into account:

- The thickening of a file with negative information or the creation of negative credit history where none previously existed can have a significant negative impact on a consumer, particularly with respect to employment matters. When it comes to employment and insurance, no credit history is better than a poor credit history.[15] Of the nearly 50% of employers who currently use credit reports in

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[14] *The Inside Story: Our digging finds mess that cries for redress,* COLUMBUS DISPATCH (May 5, 2012), *available at* http://www.dispatch.com/content/stories/insight/2012/05/06/1-our-digging-finds-mess-that-cries-for-redress.html. In May 2012, the Columbus Dispatch published a multi-part series based on its year-long investigation into nearly 30,000 complaints made to the Federal Trade Commission and offices of attorneys general in 24 states. *See* Jill Riepenhoff and Mike Wagener *Dispatch Investigation: Credit Scars*, COLUMBUS DISPATCH (May 6, 2012).

[15] *See* Karen K. Harris, *Full Utility Reporting: Panacea or Scourge for Low-Income Consumers?* THE SHRIVER BRIEF (July 18, 2012).

hiring decisions, the vast majority use them as a negative factor; only 14% use the credit report as a positive factor.[16]

- Two states and the District of Columbia currently prevent the reporting of all such information. The issue is under study in a third state, while others, like my own home state – Texas – prevent the reporting of disputed accounts unless and until the matter is resolved against the consumer.[17]
- For some consumers, creditors' access to alternative information may enhance their creditworthiness. In such cases, existing voluntary opt-in opportunities to provide alternative data should be explored and, if appropriate, encouraged.[18]

Limits on reporting paid medical debt will almost certainly improve consumers' access to affordable credit, housing, insurance and jobs. While the addition of alternative data to the reporting system may provide some benefits to consumers, it should be considered only as part of a larger package of reforms designed to reduce errors, increase accuracy and improve the

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[16] Society for Human Resource Management, *Background Checking: Conducting Credit Background Checks* 2, 4-10 (July 19, 2012)., *available at* http://www.shrm.org/Research/SurveyFindings/Articles/Pages/CreditBackgroundChecks.aspx.

[17] *See* Tex. Util. Code. § 17.152; Tex. Adm. Code § 25.481(c). Texas also prohibits collectors, including most creditors, from reporting account information to third parties as being undisputed when the consumer has given the creditor written notice of a dispute. Tex. Fin. Code § 392.301(a(4).

[18] Under the Equal Credit Opportunity Act and Regulations B, creditors must consider information upon the consumer's request if the consumer believes the credit report or score is not providing an accurate picture (i.e., favorable enough) of credit. 15 U.S.C. § § 1691 - 1691f; 12 C.F.R. § 202.6(b)(6)(ii).

procedures for resolving consumer disputes.[19] There are a number of alternatives available for improving the current system of credit reporting to provide fair and accurate information while protecting consumers' privacy. They include:

- Restricting or prohibiting the reporting of certain public records, such as civil filings until after final disposition,[20] or unpaid tax liens.[21]
- Limiting the amount of weight given to suits or judgments for amounts less than $5,000 or $10,000 in certain types of cases or from certain types of courts.
- Limiting the use of "name only" reports, which capture information that has nothing to do with the consumer whose report is actually sought, causing significant and potentially long-lasting harm.[22]
- Heightening the duty of re-investigation to require CRAs and data furnishers to provide meaningful substantiation in disputed cases.[23]
- Providing consumers with greater rights with respect to the reporting of court

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[19] *See* Karen K. Harris and Susan Ritacca, *Alternative Credit Data: To Report or Not to Report, That is the Question*, 44 CLEARINGHOUSE REV. 391, 399 (2010).

[20] *See, e.g.,* Cal. Civ. Code § 1785.13.

[21] *See* Danshera Cords, *Lien on Me: Virtual Debtors Prisons, the Practical Effect of Tax Liens and Proposals for Reform,* 49 U. LOUISVILLE L. REV. 341 (2011) (proposing FCRA be changed to remove unpaid tax liens from consumer reports seven years after they become unenforceable).

[22] *See* Mike Wagner, *Dispatch Investigation: Credit Scars: Car-buyer flagged as terrorist*, COLUMBUS DISPATCH (May 7, 2012)

[23] *See* Karen K. Harris and Susan Ritacca, *Alternative Credit Data: To Report or Not to Report, That Is the Question*, 44 CLEARINGHOUSE REV. 391, 399 (2010) (advocating change in burden of proof from consumers to data furnishers).

records and other information that may be technically accurate but incomplete or misleading, as in the case of public records resulting from unfair collection or litigation practices.[24]

Thank you for the opportunity to share my views with the Subcommittee.

[24] *See* Mary Spector, *Where the FDCPA Meets the FCRA: The Impact of Unfair Debt Collection Practices on the Credit Reports,*(Work in Progress) and Presentation Delivered at Symposium Credit Scoring and Credit Reporting, Suffolk University Law School (June 7, 2012). *See also* Mary Spector, *Debts, Defaults and Details: Exploring the Impact of Debt Collection Litigation on Consumers and Courts*, 6 Va. L. & Bus. Rev. 257 (2011) (finding evidence of unfair collection practices used in litigation to collect consumer debt); Peter A. Holland, *The One Hundred Billion Dollar Problem in Small Claims Court: Robo-Signing and Lack of Proof in Debt Buyer Cases*, 6 J. BUS. & TECH. L. 259 (2011) (discussing courts' treatment of robo-signed affidavits and advocating use of strict proof standards). *See also* Sykes v. Mel Harris & Assoc, L.L.C , No. 09-Civ.848, (S.D.N.Y. Sept. 4, 2012) (granting motion to certify class of more than 100,000 consumers against whom default judgments allegedly were entered fraudulently).

Prepared Written Comments of Dr. Michael Turner President & CEO Policy & Economic Research Council (PERC)

Dr. Michael Turner
President & CEO
Policy & Economic Research Council (PERC)

Testifying Before the House Subcommittee on Financial Institutions and Consumer Credit on "Examining the Uses of Consumer Credit Data."

13 September 2012
2:00 pm
2128 Rayburn House Office Building

Imagine not having a credit card...being unable to rent a car, buy things online, or fill your gas tank late at night.

In the U.S., an estimated 54 million adults are financially excluded. No credit cards, home or auto loans, or money to start a small business.

Most are financially excluded not owing to a bad credit history—but because *they have no credit history.* Mainstream lenders use sophisticated tools like credit reports and scores to assess a borrower's risk. Without enough credit history...a credit score cannot be generated, and the borrower is rejected.

Applying for credit is like applying for a first job, and being told "...we'd like to hire you, but we want someone with more experience." Lenders mostly grant credit to those who already have it. This is the "Credit Catch 22."

Lacking recourse, those who are denied because they don't have a credit history—call them the "Credit Invisibles"—must turn to high cost lenders—pawn shops, pay day, and predatory lenders—to meet their credit needs.

Why is having a credit history so important? People need credit in order to build assets. The two primary means by which wealth is created are owning a home or a small business.

For most of us, this requires convincing someone—usually a bank—to lend you money. Lacking a credit history, the Credit Invisibles remain financially excluded, often trapped in poverty by a heavy debt service burden. The APR on a payday loan can exceed 700%.

There is a solution. Lenders must be able to see the Credit Invisibles. That is, their credit files must be built using non-financial payment information.

Most of the financially excluded—even 85% of the lowest income earners in the US—pay many "credit-like" bills on time most of the time. These include things like gas, water, electric, cable TV, and telephone bills.
Right now, most utilities only report to a credit bureau when a customer defaults. People are punished for bad credit behavior, but not rewarded for their good behavior.

This is known as "negative only reporting," and it is akin to a black list. Negative only reporting is hardest on those with the lowest income, and those who have experienced life setbacks—such as a job loss, divorce, or medical expenses.

Negative items stay on credit reports for 7 to 10 years. Without positive information to offset the credit stains, it is harder to improve your credit score and qualify for affordable credit.

A recent study by PERC and the Brookings Institution found that when energy utility and telephone data—so-called "alternative data"—are fully reported—that is, when firms report timely and late payment data alike—those who are "Credit Invisible" shrink from 54 million to around 5 million.

Evidence of the broad benefits of fully reporting alternative data abounds. In the same PERC and Brookings study, fully reporting alternative data increases credit access by 22% for Hispanics and Blacks, and by 14% for young and elderly Americans.

One global lender estimated that 40% of the financially excluded in the U.S.—nearly 22 million adults—can qualify for credit if their utility or telephone payment data were fully reported.

This is not hypothetical. Those with little credit experience, but who luckily had alternative data in their credit report, were able to access mainstream credit at 4 times the rate of a comparable group—the unlucky majority—without such data.

This is not extending easy credit to unqualified borrowers who cannot afford it. In fact, another PERC study of 12.1 million Americans found that those who were "new to credit through alternative data" were more credit responsible than the general population after just one year, and outperformed the general population for the 3 years examined.
Some skeptics have asserted that including fully reported payment data in consumer credit reports could disproportionately harm lower income persons. Given the recent financial crisis and the Great Recession, this is a reasonable concern.

PERC just completed an analysis on this topic and found this concern to be entirely baseless. In fact, of those in households earning below $50,000 annually, less than 5 percent have a moderately late utility payment (60 days or less) in any amount, and fewer than 1 percent—0.79 percent for the lowest income tier—experience a reduced credit standing. Further, it is estimated that for each lower income person experiencing a reduced credit standing, 27 will gain access to mainstream credit.

Though PERC's efforts began in the U.S., the greatest interest and action around this issue is happening abroad—especially in developing countries where up to 90% are financially excluded.

In part because of PERC's research, over 700 million Chinese citizens are building a credit history with fully reported alternative data. Credit bureaus in Latin America, Africa, and Asia are collecting alternative data on millions more.

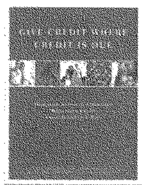
The use of alternative data is not limited to emerging markets. People in Europe benefit from alternative data, and those living in Australia and New Zealand soon will owing in some measure to PERC efforts.

PERC—and the more than 60 organizations like the Ashoka Foundation, C.F.S.I., and Opportunity Nation are working together to help their constituents build a positive credit history.

We see a future where there are no more Credit Invisibles, where the Credit Catch 22 doesn't keep people trapped in poverty, but rather people get the credit they deserve—and need—in order to build assets and improve their life's chances. This is the promise of alternative data.

The following are key findings from empirical analyses PERC has conducted on alternative data.

Give Credit Where Credit is Due: Increasing Access to Affordable Mainstream Credit Using Alternative. 2006.



Examined a sample of approximately 8 million TransUnion credit files in 2005 that contained alternative or nonfinancial utility and telecommunications payment information. Two sets of credit scores were captured, one set that included the alternative data and one set that excluded this data. Direct score impacts from the inclusion of alternative data could then be assessed. Credit scoring models included in the analysis include the VantageScore model, the TransRisk New Account model, the TransRisk Bankruptcy model, a Bankruptcy model from a bank, and a mortgage screening model from a bank. An additional 4 million credit files were used as a control, as they contained no alternative data. The study captured actual payment and credit outcomes over the following year (2005 to 2006) for the 8 million files with alternative data. This enabled an examination of how the alternative data impacted model performance. Socio-demographic information from Acxiom Corporation was appended to enable segmentation analysis by socio-demographic characteristics, such as age, income, and ethnicity.

"Minorities, lower-income consumers, and the young and the old are more likely to be thin-file borrowers, thus they are more likely to benefit from including alternative data in credit reports."

Key findings include:

- **Most individuals in thin-file/unscoreable population are not at high risk in terms of lending.** The risk profile of this segment—after energy utility and telecommunications data sets are included in their credit files—is similar to that of the general population (as measured by credit scores).
- **Including energy utility data in all consumer credit reports increases the acceptance rate by 10 percent, given a 3 percent default rate.**
- **Minorities and the poor benefit more than expected from alternative data**
  - Hispanics saw a 22 percent increase and Blacks saw a 21 percent increase in the credit acceptance rate.

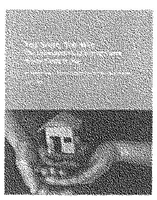
- Acceptance increased 14 percent for those aged 25 or younger and 14 percent for those aged 66 older;
- Those whose household earned $20,000 or less annually saw a 21 percent increase in credit acceptance and those with household earnings between $20,000 and $29,999 saw a 15 percent rise.

- **More comprehensive data can improve scoring models and underwriting.** Increases in credit acceptance resulted from improved model performance and bringing previously unscoreable consumers in to the system, that is better underwriting and more inclusive underwriting, and not looser credit.

"The results from our study *Give Credit Where Credit is Due* and the analysis suggests increasing the full reporting of utility and telecom payments to consumer reporting agencies will improve financial access for those who only have a limited payment history in their credit files."

Located Here:
http://perc.net/files/downloads/alt_data.pdf

You Score, You Win: The Consequences of Giving Credit Where Credit is Due. 2008.



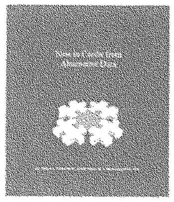
In this follow-up to groundbreaking report on alternative data (Give Credit Where credit is Due) PERC examines the long-term effects of using non-traditional data in credit files using quantitative analysis. This analysis used the same data in Give Credit Where Credit is Due, but looked at longer term impacts on consumers from having alternative data in their credit files. This included consumers with a new account opened for less than a year after having only alternative data, consumers with accounts opened 1 to 3 years after having only alternative data, and consumer with accounts and alternative data older than 3 years in the credit files.

Key findings include:

- **No Score declines over time.** No evidence in our data of deteriorations of credit score over time for those with nonfinancial payment data in their credit files and little or no traditional payment data.
- **No rise in overextensions.** No evidence in our data that those who open new accounts after having only non-financial accounts become overextended and witness declines in credit scores.
- **All evidence suggests that reporting payment data serves both as a consumer protection and a system wide protection.**

Located here: http://perc.net/files/downloads/web_layout-you-score.pdf

New to Credit from Alternative Data 2009



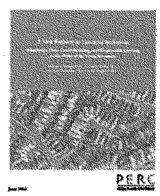
This study summarized and highlighted results from *Give Credit Where Credit is Due* and *You Score You Win* with focus on the credit impacts on those who were new to credit from alternative data. It utilized the data in those studies.

Key findings include:

- **Credit scores rise across income and racial/ethnic groups over time after consumers are new to credit from alternative data.**

Located here: http://perc.net/files/New_to_Credit_from_Alternative_Data_0.pdf

A New Pathway to Financial Inclusion: Alternative Data, Credit Building, and Responsible Lending in the Wake of the Great Recession 2012



This study compares results with data from 2005/2006 and 2009/2010 credit reports to assess the consumer credit impact of including fully reported alternative data in credit reports. The data was selected to capture the period during which unemployment and late payments spiked. Despite the Great Recession, the preponderance of evidence establishing the value proposition of alternative data is overwhelming and in- controvertible.

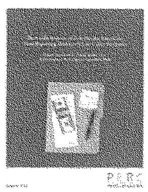
Key findings include:

- **Massive material impacts for the financially excluded:** Including in this group those who become scoreable when alternative data is added, assuming that not having a score is viewed as very high risk, then 64 percent experience a score tier rise and 1 percent experience a score tier fall.
- **Score impacts are stable over time:** Comparing the 2005 (pre-Great Recession) results with the 2009 (post-Great Recession), those whose scores improved with the inclusion of alternative payment data increased by 4 percent, those whose scores were unchanged increased by 10 percent and those whose scores lowered declined by 19 percent.
- **Credit underserved primary beneficiaries of alternative data:** The largest net beneficiaries in terms of improved credit access are lower income Americans, members of minority communities, and younger and elderly Americans. For example those earning less than $20k annually saw a 21 percent increase in acceptance rates, African-Americans saw a 14 percent increase, those age 18-25 saw a 15 percent increase and those above 66 years of age saw an 11 percent increase.

- **Those with past serious delinquencies benefit from alternative data:** Consumers with a public record including a bankruptcy and/ or very late payments (90+ days late) among the traditional accounts reported to CRAs, witnessed more score increases than decreases (55 percent versus 30 percent) when alternative data were included in their credit files.

Located here: http://perc.net/files/WEB%20file%20ADI5%20layout(1).pdf

The Credit Impacts on Low-Income Americans from Reporting Moderately Late Utility Payments (2012)



"The Credit Impacts on Low-Income Americans from Reporting Moderately Late Utility Payments," is a follow-up to the June 2012 report, "A New Pathway to Financial Access." The new report addressess concerns some had about the impacts of reporting moderately late utility payments for low-income Americans.

Key Findings:

- Including fully reported utility payments in consumer credit reports results in dramatic improvements in credit access for lower-income Americans;
- Including fully reported utility payments in consumer credit reports makes lending fairer, more inclusive, and more responsible;
- It can be misleading to examine only credit score impacts without examining the impact on a person's credit standing (e.g. a 1-point change could have an impact while a 100 point change may not);
- Given current industry practices, the number of lower-income people who would either experience a dramatic score reduction, or a reduced credit standing, is miniscule (less than 0.8%).

Located here: http://perc.net/files/ADI_ML_Impacts.pdf

To address the issue of credit report accuracy, the following results are from PERC 's 2011 study, "U.S. Consumer Credit Reports: Measuring Accuracy and Dispute Impacts."

This report can be found here: http://perc.net/files/DQreport.pdf

This assessed the accuracy and quality of data collected and maintained by the three major nationwide Consumer Reporting Agencies (CRAs): Equifax, Experian, and TransUnion. It is the first major national study of credit report accuracy to engage a large sample of consumers in a study that interfaces all three CRAs and ultimately the data furnishers. The report enabled consumers to review their credit reports and credit scores from one or more of the three CRAs, to identify potential inaccuracies, and to file disputes as necessary through the consumer dispute resolution process governed by the FCRA, and to report on their satisfaction with the outcome.

Key findings from this research include:

Impact of Modifications on Credit Scores: Of all credit reports examined:

- 0.93 percent had one or more disputes that resulted in a credit score increase of 25 points or greater;
- 1.16 percent had one or more disputes that resulted in a credit score increase of 20 points or greater; and
- 1.78 percent had one or more disputes that resulted in a credit score increase of 10 points or greater.

Material Impact of Credit Report Modifications:
As noted above, less than one percent (0.93 percent)of all credit reports examined by participants prompted a dispute that resulted in a credit score adjustment and an increase of a credit score of 25 points or greater. More significantly, one half of one percent (0.51 percent) of all credit reports examined by participants had credit scores that moved to a higher "credit risk tier" as a result of a modification. This metric is the best gauge of the materiality of credit report modifications, and suggests that consequential inaccuracies are rare. Credit report modifications that result in material impacts are exclusively modifications of tradelines, that is, of credit, collection and public record account data.

Disputants Satisfied with Outcomes:
95 percent of disputing participants were satisfied with the outcomes of their disputes.

Tradeline Dispute Rate: Of the 81,238 credit, collections, and public record tradelines examined, 435, or less than 1 percent (0.54 percent), contained information that was disputed.

It should also be mentioned that 19.2 percent of the credit reports examined by consumers were set aside as containing one or more pieces of header or tradeline data that a consumer believed could be inaccurate. Of note, 37% of these potential disputes only related to header, or "above the line," information that could have no bearing on a credit score (e.g., the spelling of a former street address or maiden name).

Finally, we laud Representatives Renacci and Ellison for their leadership and commitment to helping all Americans get the credit they deserve, and urge members of this subcommittee and full committee to wholeheartedly support this timely, effective, and desperately needed solution.

NCLC

NATIONAL CONSUMER LAW CENTER®

Advancing Fairness in the Marketplace for All

Testimony before the

U.S. HOUSE COMMITTEE ON FINANCIAL SERVICES
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND CONSUMER CREDIT

regarding

"Examining the Uses of Consumer Credit Data"

September 13, 2012

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Testimony of Chi Chi Wu, National Consumer Law Center
Before the Subcommittee on Financial Institutions and Consumer Credit
of the U.S. House Committee on Financial Services
regarding
"Examining the Uses of Consumer Credit Data"
September 13, 2012

Madame Chairwoman, Ranking Member Maloney, and Members of the Subcommittee, the National Consumer Law Center thanks you for inviting us to testify today regarding consumer credit data and the credit reporting system. We also wish to thank Representative Shuler for his introduction of H.R. 2086, the Medical Debt Responsibility Act, which we strongly support. We offer our testimony here on behalf of our low-income clients.[1]

We are here today to talk about two very different approaches to change the credit reporting system. One approach -- that advanced by H.R. 2086 as well as its Senate version S. 2149 -- is to removed paid or settled medical debt under $2,500 from credit reports. This approach will tremendously benefit consumers, and indeed is probably the simplest and easiest "quick fix" out there to improve the credit records of millions of Americans, enable them to access low interest rates, and spur economic growth.

The other approach -- that advanced by H.R. 6363 -- is to encourage utility companies to report payment information on a monthly or regular basis to credit reporting agencies, *i.e.*, "full file utility credit reporting." The approach raises serious concerns for us. We fear that it will add millions of new negative reports to the credit reporting system and will actually harm many consumers, especially financially strapped consumers, by creating credit black marks. We are also concerned that it will undermine long-standing protections developed by state regulatory commissions across the country. Full file utility credit reporting could also hurt job seekers when employers use credit reports, and consumers when they buy home or auto insurance. We are not alone in our concerns, as the National Association of State Utility Consumer Advocates[2] and other groups[3] have expressed similar fears.

[1] The National Consumer Law Center is a nonprofit organization specializing in consumer issues on behalf of low-income people. We work with thousands of legal services, government and private attorneys, as well as community groups and organizations, from all states who represent low-income and elderly individuals on consumer issues. As a result of our daily contact with these advocates, we have seen many examples of the damage wrought by unfair credit reporting from every part of the nation. It is from this vantage point – many years of observing the problems created by the flaws in the credit reporting system in our communities – that we supply these comments. *Fair Credit Reporting* (7th ed. 2010) is one of the eighteen practice treatises that NCLC publishes and annually supplements. This testimony was written by Chi Chi Wu, co-author of that treatise, with assistance from John Howat, NCLC Energy Analyst; Lauren Saunders, Managing Attorney of NCLC's DC Office, and Mark Rukavina of the Access Project.

[2] National Association of State Utility Consumer Advocates, Resolution 2010-3: Opposing "Full Credit Reporting" of Payment Histories on Residential Gas and Electric Accounts, June 15, 2010, *available at* www.nasuca.org/archive/Full%20Credit%20Reporting%20Resolutiong%20FINAL%202010-3.doc, and attached as Attachment B.

[3] See Attachment C, Letters to the Honorable Jim Renacci re: H.R. 6363.

Finally, we urge Congress to improve the transparency of the credit system by amending the Fair Credit Reporting Act (FCRA) to provide a free annual credit score and give consumers the right to obtain ANY score that is based on information about them from their credit or other consumer reports.

I. CONGRESS SHOULD REQUIRE THAT PAID OFF MEDICAL DEBT BE DELETED FROM A CONSUMER'S CREDIT REPORT

The National Consumer Law Center, on behalf of its low-income clients, is pleased to support the Medical Debt Responsibility Act, H.R. 2086. Millions of Americans struggle with overwhelming medical debts that they cannot afford to pay because they do not have health insurance. Even consumers with health insurance coverage can find that their credit histories are damaged due to medical bills, because of problems with unaffordable co-pays and deductibles, out-of-network charges, and disputes with insurance companies.

The collective scope and impact on medical debt on the credit histories of American consumers is enormous and cannot be overstated. According to the Commonwealth Fund, nearly 73 million working age adults (or about 40%) experienced problems with medical bills in 2010.[4] Of those consumers, 30 million were contacted by a collection agency for unpaid medical bills,[5] and thus were likely to have their credit reports damaged by the negative existence of a collection account on their reports.

Medical debt represents an enormous portion of debt that is collected by debt collectors. A number of studies indicate that the amount of medical debt that ends up in the hands of collection agencies - and thus is likely to be reported to credit reporting agencies - is simply stunning:

- A 2003 Federal Reserve study found that over ***half*** of entries (52%) on credit reports for collection items are for medical debts. More than one-third (36%) of medical collections had balances due, when reported, of $100 or less and the majority (nearly 70%) were for less than $250.[6]

- A later Ernst & Young study confirmed the Federal Reserve's study, finding that medical debts constituted more than ***half*** (52.2%) of the debt collected by debt collection agencies in 2010 – more than twice as much as credit card and other financial debt.[7]

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[4] Sara R. Collins, et al., The Commonwealth Fund, *Help on the Horizon: How the Recession Has Left Millions of Workers Without Health Insurance, and How Health Reform Will Bring Relief—Findings from The Commonwealth Fund Biennial Health Insurance Survey of 2010*, March 2011, at 6, *available at* http://www.commonwealthfund.org/~/media/Files/Publications/Fund%20Report/2011/Mar/1486_Collins_help_on_the_horizon_2010_biennial_survey_report_FINAL_v2.pdf.

[5] *Id.* at 10.

[6] Robert Avery, Paul Calem, Glenn Canner, & Raphael Bostic, *An Overview of Consumer Data and Credit Reporting*, Fed. Reserve Bulletin, at 69 (Feb. 2003).

[7] Ernst & Young, *The Impact of Third-Party Debt Collection on the National and State Economies*, Feb. 2012, at 8, *available at* www.acainternational.org/files.aspx?p=/images/21594/2011acaeconomicimpactreport.pdf.

- A study by Federal Reserve researchers found that that "health-care providers represented the most important group of customers [for debt collectors], accounting for more than a quarter of all revenues."[8]

The vast scope of medical debt on credit reports is troubling, because unlike collections for credit accounts, medical bills result from services that are frequently involuntary, unplanned, and unpredictable, and for which prices quotes are rarely provided. The unique nature of medical debt raise questions on whether it is appropriate data to even include on a credit report.

Most critically, consumers may find that their medical debt has been characterized as a debt in collection for credit reporting purposes even though the medical debt has been fully paid or settled. Even after the bill has a balance of zero, its mere presence as a collection matter remains on the consumer's credit records for seven years and will likely adversely impact a consumer's credit score. According to a spokesperson for FICO, collection items that are "paid or unpaid, large or small amounts all can affect a credit score" and "a person with a FICO score of 680 will see their score drop between 45 and 65 points. Someone with a FICO score of 780 will see their score drop between 105-125 points,..."[9]

Furthermore, the presence of a medical collection item may result from no fault of the consumer, but from the complex and convoluted nature of our health care payment system. The collection item may have resulted from a dispute between the insurance company and provider. It may result from a provider's failure to properly bill the insurer, or the insurer's failure to properly reimburse the provider. After all, the American Medical Association itself estimated that one in five claims is processed inaccurately.[10] Even when errors are eventually fixed, they result in long delays in payments to providers. During these delays, bills can often be sent to a collection agency, completely out of the consumer's control.

The complexities of health insurance and medical billing also contribute to this problem. Many people are simply confused about who has responsibility for paying the bill. They are often uncertain about the explanation of benefits form, unclear of the descriptions of the procedures they have received, and unsure of whether they should pay the healthcare provider or insurer; one study found that nearly 40 percent of Americans do not understand their medical bills.[11] Some of these consumers will let a medical bill go to a collection agency because of this confusion, or they believe that their insurer will pay it. According to media reports, an estimated 9.2 million Americans had a medical bill sent to a collection agency because of a billing mistake.[12]

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[8] Robert M. Hunt, Fed. Reserve Bank of Philadelphia, Collecting Consumer Debt in America, Bus. Rev., at 13 (2d Quarter 2007), *available at* www.philadelphiafed.org/files/br/2007/q2/hunt_collecting-consumer-debt.pdf.
[9] Carla K. Johnson, *Late Medical Bills Can Lower Credit Scores For Consumers: How to Check and Fix Your Report*, Associated Press, Mar 4, 2012.
[10] American Medical Association, 2010 National Health Insurer Report Card, *available at* www.ama-assn.org/ama/pub/news/news/2010-report-card.page.
[11] Press Release, *Intuit Financial Healthcare Check-Up Shows Americans Confused about Medical Statements*, Apr. 27, 2010, at http://about.intuit.com/about_intuit/press_room/press_release/articles/2010/AmericansConfusedAboutMedicalStatements.html.
[12] Tara Siegel Bernard, *Discrepancies on Medical Bills Can Leave a Credit Stain*, New York Times, May 4, 2012.

Indeed, many of the stories from consumers about how their credit reports and credit scores were damaged by paid medical debt involve such instances of confusion, mistakes, or problems with insurers. For example:

- The New York Times documented the case of Ray White from Lewisville, TX. Mr. White received a $200 ambulance bill, which his insurer did not pay despite assurances that the company would do so. Finally, after many months and many phone calls, Mr. White paid off the $200 bill, but by then the damage was done. Unbeknownst to Mr. White, the debt had been reported to the credit reporting agencies. Mr. White had no knowledge of this black mark lurking on his credit report until he and his wife went to refinance the $240,000 mortgage on their home, nearly six years later. It was only then that he learned this paid $200 bill – the result of his insurance company dropping the ball on payment - had shaved about 100 points from his credit score. With no other debts, a healthy income and otherwise pristine credit, Mr. White and his wife had to pay an extra $4,000 to secure a lower interest rate.[13]
(This story is also an example of "parking," a practice in which debt collectors merely report a debt to a credit reporting agency without doing more, then simply wait until the consumer applies for a mortgage or other credit. At that point, the consumer will discover the collection item and then pay the debt in an attempt – in vain – to improve his or her credit score. "Parking" creates even more problems with medical debt on credit reports, because consumers do not know about the problem until they are in the midst of a time-sensitive process of applying for a loan).

- The Associated Press reported the case of Iraq veteran Steve Barnes and his wife, Tara, who were refinancing their home through a Veteran's Administration program when they found out that nearly $600 in unpaid medical bills had brought down their credit scores. The bills were for treatment related to the wife's cancer, which had been turned over to a collection agency while Mr. Barnes was still talking with his insurance company about what would be covered. The $600 in unpaid bills – caused by insurance snafus – cost them an extra $1,700 in fees on their refinanced mortgage. Plus, even though Mr. Barnes and his wife paid the bill, the black mark will remain on their credit reports for seven years.[14]

- A New York City consumer who lost consciousness on a street in Atlantic City, NJ, received a bill for $800 because a passer-by called an ambulance. The consumer had revived before the ambulance showed up, and had declined to go to the hospital. It is unclear whether the $800 was a charge for first aid at the scene (having his blood pressure and vitals checked) or because the hospital mistakenly believed that he was brought to the emergency room. In either case, the consumer disputed the $800 bill, but it remains on his credit report as a collection item. The consumer has been declined

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[13] *Id.*
[14] Carla Johnson, *Medical Bills Can Cause Lingering Credit Pain*, Associated Press, Mar. 4, 2012. This article documents several more cases in which medical collection items harmed the credit reports of consumers and cost them thousands in fees when refinancing.

credit at least once as a result of this reporting, despite the fact that he never summoned the ambulance or went to the hospital.[15]

- A West Virginia consumer applied for Medicaid, but the state agency made a series of mistakes resulting in a long delay in enrolling the consumer. Finally, the state agency fixed the mistakes, and enrolled the consumer retroactive to February 2011. Meanwhile, four of the consumer's medical bills had been sent to debt collection agencies, and these collection agencies reported the debts to the credit reporting agencies. Medicaid paid the consumer's bills, but the collection items will remain on the credit report and harm the consumer's credit score for seven years – despite the fact that the failure to pay the bills was the fault of the state Medicaid agency, not the consumer.[16]

- An Arkansas consumer was hurt in an automobile accident and taken to the hospital. The consumer filed a lawsuit against the other driver. While the consumer was waiting for a settlement with the other driver's auto insurer, one of the medical providers turned over a medical bill for $118 to a debt collection agency, which reported the debt to a credit reporting agency. Meanwhile, the $118 bill was paid in full to the medical provider – actually it was paid the day before the debt collector made the report to the credit reporting agencies. The debt has shown up the consumer's credit report as a paid collection account, dropped her credit score from 800 to 700, and prevented her from obtaining credit at the best interest rates. The debt collector refuses to delete the black mark even though the consumer paid the bill before it was reported.[17]

- A Florida consumer went to an emergency room to receive medical treatment. He gave the hospital his proper identification showing his correct address. The hospital data entry personnel made a mistake by inputting a wrong address into the hospital's system. The consumer never received a bill, and thus never paid it. In the meantime, the debt was sent to a collection agency. Later, the consumer applied for credit, and it was only then that he learned of the outstanding collection item from the hospital on his credit reports. The consumer called the hospital, and confirmed they had the wrong address. Despite the fact that the hospital's personnel caused the situation with the data entry error, the collection item remained on the consumer's credit report.[18]

All of these consumers, and millions more like them, have had their credit reports and credit scores severely damaged through no fault of their own by medical collection items. Furthermore, they currently have no recourse under the Fair Credit Reporting Act to fix this damage. First, as we have documented repeatedly, the FCRA dispute system developed by the credit reporting industry is a travesty. It is a perfunctory automated system that consists of nothing more than translating consumer disputes into a two- or three-digit code, forwarding that code and a one-page electronic form to the furnisher, and "parroting" whatever the furnisher

[15] Email from Brian Bromberg, Bromberg Law Offices, May 30, 2012.
[16] Email from Deborah Weston, Staff Attorney, Mountain State Justice, Inc., June 26, 2012.
[17] Email from Kathy Cruz, Attorney, June 27, 2012.
[18] Email from Leo Bueno, Attorney, May 14, 2010.

states in response.[19] Second, the Ninth Circuit has held that a consumer has no remedy under the FCRA to remove a medical collection item from her credit report, because technically the patient owes the medical bill even though the default was caused by an insurance dispute.[20]

The Medical Debt Responsibility Act, H.R. 2086, will help ameliorate this huge problem by amending the FCRA to exclude fully paid and settled medical debt from a consumer's credit report. It is a sensible and straightforward approach that will prevent the credit records of millions of consumers from being unfairly tarnished. Rather, credit records will show that these hard-working consumers, who successfully paid off or settled their medical bills, are more creditworthy than the current system would otherwise lead a prospective lender to believe.

The Medical Debt Responsibility Act could also boost our economy without requiring the expenditure of any federal funds. Commentators have noted that the Federal Reserve Board's efforts to stimulate the economy by keeping interest rates low are being hampered by the inability of consumers with less-than-stellar credit scores to qualify for these rates.[21] By instantly raising the credit scores of millions of Americans, the Medical Debt Responsibility Act will enable these Americans to access this affordable credit and aid our economic recovery efforts.

II. FULL FILE UTILITY CREDIT REPORTING RAISES SERIOUS CONCERNS FOR LOW-AND-MODERATE INCOME CONSUMERS

We are extremely concerned about H.R. 6363 , and the issue that it promotes – full file utility credit reporting. We fear that having more utilities report monthly data to credit reporting agencies will end up harming a significant number of low-and-moderate income consumers, including when their credit reports are used by employers or insurance companies. Full file utility credit reporting raises many questions that should be answered before there is a massive effort to expand this potentially harmful – and expensive – practice. Note that we do not oppose permitting consumers to voluntarily opt-in to full file utility credit reporting. But we are very concerned about the effects of full file utility credit reporting that is not voluntary for consumers.

A. Data from Utility Companies Indicates Significantly More Late Payments Than Asserted

Currently, the vast majority of electric and natural gas utility companies only provide information to a credit reporting agency when a seriously delinquent account has been referred to a collection agency or written off as uncollectible. This is a far lower number than those utility consumers who may pay late on their bills, but then eventually catch up. There are only a handful of utility companies that provide information to credit reporting agencies for these late payments on a monthly or other regular basis.

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[19] Chi Chi Wu, National Consumer Law Center, *Automated Injustice: How a Mechanized Dispute System Frustrates Consumers Seeking to Fix Errors in Their Credit Reports* (Jan. 2009), *available at* www.nclc.org/issues/credit_reporting/content/automated_injustice.pdf.
[20] Carvalho v. Equifax Info Serv., LLC, 629 F.3d 876 (9th Cir. 2010).
[21] Jon Hilsenrath, *Fed Wrestles With How Best to Bridge U.S. Credit Divide*, Wall St. J., June 19, 2012.

Sporadic late payments are especially common in states that have weather extremes, hot or cold. Consumers who see their utility bill spike in the winter or summer may not be able to pay those bills in full during that season, but will over time.

A study from the Policy and Economic Research Council (PERC) claims that reporting utility reporting will help improve the credit reports of tens of millions of consumers. However, this study is based on data regarding the very few electric and natural gas utilities that do fully report to credit reporting agencies on a regular basis. Those companies may not be representative of payment patterns in different states and regions.

For example, the PERC study stated that its data revealed less than 3% of consumers earning $50,000 or less annually have a single 60-day late utility payment during a one-year period.[22] Yet data provided by utilities or utility regulators in a number of states indicates the percentage of utility consumers paying 60 days late is much higher. As shown in Attachment A – Table 1 to this testimony:

- Data from California utility Pacific Gas and Electric shows about 6% of general residential customers and nearly 13% of low-income/energy assistance customers were in arrears by 61 to 90 days in June 2012.[23] San Diego Gas and Electric Co. reported that about 11% of general residential customers and 34% of low-income/energy assistance customers were in arrears by 61 to 90 days in June 2012.[24]

- In Massachusetts, over one-third (33.5%) of low-income/energy assistance customers of NSTAR Electric were more than 60 days late in paying their bills in June 2012.[25]

- Columbus Gas Co. in Ohio reported that 275,000 out of its 1.3 million customers – about 21% - were in arrears by more than 60 days as of December 2011.[26] East Ohio Gas Co. reported that 171,700 out of its 1.1 million customers – nearly 16% - were in arrears over 60 days as of December 2011.[27]

[22] Michael Turner, et al., PERC, T*he Credit Impacts on Low-Income Americans from Reporting Moderately Late Utility Payments*, August 2012 at 12 (hereinafter PERC August 2012 study).
[23] See Attachment A, Table 1 – Residential Customer Arrears. The sources for all data for Table 1 are noted in the footnotes to that table.
[24] *Id.*
[25] *Id.*
[26] *Id. See also* Columbia Gas of Ohio, Annual Report of Service Disconnections for Nonpayment (Information for 12-month period ending May 31, 2012) to the Public Utilities Commission of Ohio, June 29, 2012.
[27] Report of Service Disconnections for Nonpayment of the East Ohio Gas Co. d/b/a Dominion East Ohio, In the Matter of the Annual Report of Service Disconnections for Nonpayment Required by Section 4933.123, Revised Code, Case No. 12-1449-GE-UNC (Public Utilities Commission of Ohio July 20, 2012).

Other reliable sources have reported similar figures:

- AARP New York reported that more than 17% of National Grid's New York customers and 8% of Con Edison's New York customers were over 60 days late on their electric bills in the Spring of 2010.[28]

The PERC study also reports that its data showed less than 5% of consumers earning $20,000 or less annually have any 30 or 60-day late utility payment during a one-year period.[29] Yet the independent data shows that:

- About 40% of Iowa residents receiving LIHEAP assistance were overdue in paying their bills in January 2012.[30]

- Southern California Edison reported that about 21.1%% of low-income/energy assistance customers were in arrears by 30 to 60 days in June 2012.[31]

Thus, it appears that the PERC study data differs greatly from statistics based on data from or filed with state utility commissions. Contrary to criticism regarding these concerns, this is not merely "anecdotal" evidence.[32] The above statistics are based on publicly-available information from state utility commissions or the utilities themselves, and are readily replicable. In contrast, the credit reporting data upon which proponents base their study has not been made available to third parties to conduct an independent analysis or replicate the results.

B. The Ability of Consumers to Build Credit Based on Utility Payments is Highly Uncertain

The premise that reporting utility payments will build a positive, useful credit report is highly uncertain. The credit reporting industry and the prepaid card industry have been exploring for years the ability of payment data to help consumers build credit. Yet under current circumstances, few have confidence in the ability to use payment data to create a mainstream credit score useful for building credit.

The Consumer Financial Protection Bureau (CFPB) recently asked for comments on the efficacy of credit reporting features on general use reloadable prepaid cards in enabling consumers to improve or build credit. For consumers who use prepaid cards on a regular basis, utility payments are one of the most common types of payment made with those cards.[33]

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[28] AARP New York, *New York's Utility Termination Storm: "The Quiet Blackout,"* March 2011, at 7, available at http://assets.aarp.org/www.aarp.org_/cs/elec/aarp_shutoff_reportfinal.pdf.
[29] PERC August 2012 study at 13.
[30] *See* Attachment A; Table 2.
[31] *See* Attachment A; Table 1.
[32] PERC August 2012 study at 7 (arguing that NCLC's criticism are "without direct evidence, relying instead on anecdotes and hypotheticals").
[33] A recent study by the Philadelphia Federal Reserve Board found that 19% of GPR cards bought on the internet had a utility transaction as did 11% of payroll cards. The numbers were even higher for telecomm transactions: 37% for internet cards and 22% for payroll cards. Stephanie M. Wilshusen, Robert M. Hunt, and James van Opstal, Federal Reserve Bank of Philadelphia; Rachel Schneider, Center for Financial Services Innovation, *Consumers' Use of Prepaid Cards: A Transaction-Based Analysis*, at 65 (August 2012).

Nonetheless, virtually no one among the industry commenters believes that reporting these payments, today, builds credit. Though a few expressed hope that prepaid cards someday will help build a credit report, the comments were almost uniformly skeptical about current credit building ability and warned against deceptive representations. Here are a few examples:

- American Bankers Association: "[U]nless it is demonstrated that such non-credit information is predictive with regard to credit behavior, creditors are not likely to use the information in credit decisions. Consumers should not be informed that reporting GPR card information will build or improve their credit history if in fact it does not or creditors are unlikely to use the information."
- The ClearingHouse: "We are unaware at this time of any GPR cards that can be used effectively to improve or build credit (other than, perhaps, GPR cards associated with committed lines of credit from the issuing financial institution.)"
- Wells Fargo: "Wells Fargo does not believe there are well-established standards for using GPR card information to predict creditworthiness."
- MB Financial Bank: "As it stands, none of the leading reporting agencies use GPR Cards as a factor in determining consumer credit scores."

C. <u>Many "No Score" Consumer Will End Up with "D" or "F" Credit Scores</u>

One of the main arguments supporting full file utility credit reporting is that it allows consumers with little or no information in their credit reports, for whom a credit score cannot be generated, to become "scoreable." Thus, PERC asserts that full file utility credit reporting will help the "estimated 35 to 54 million Americans who lack access to affordable mainstream credit because they have no credit report or they do not have enough information in their credit report."[34]

However, it appears that with full file utility credit reporting, many of these formerly "unscoreable" consumers will end up instead with a marginal or bad credit score. PERC's study itself states: "For all those that become scoreable, about **one-third [i.e., 33%] scored in the F** category, **22% scored in the D** category, and **45% scored in the C or higher** category".[35] Thus, over half (55%) of consumer without scores end up with a suboptimal, and probably subprime score (Ds and Fs). Furthermore, from PERC's report, it appears that of the remaining consumers, about 35% end up with a C, and only a few percent of the formerly unscoreable consumers ended up with an "A" or "B" score.[36]

Furthermore, it is important to note that the PERC study indicates the impact of full file utility credit reporting on scores issued by VantageScore. The PERC study was not conducted using the score most commonly used by lenders – those issued by FICO. While there are similarities between the way the two scores are calculated, there may be differences that could

[34] Press Release, *PERC Releases New Report, "The Credit Impacts on Low-Income Americans from Reporting Moderately Late Utility Payments*, Aug. 30, 2012.
[35] Michael Turner, et al., PERC, *A New Pathway to Financial Inclusion: Alternative Data, Credit Building, and Responsible Lending in the Wake of the Great Recession*, June 2012, at 13 (hereinafter PERC June 2012 study) (emphasis added).
[36] Id. (see Figure 4).

translate into even worse scores based on utility payment information – it's hard to know given the "black box" nature of credit scoring. But we should not be encouraging full file utility credit reporting based on limited and uncertain data that does not even rely on the most popularly used credit score.

D. A Bad Credit Score Can Sometimes Be More Harmful Than No Score

One of the fundamental disagreements regarding full file utility credit reporting is whether it is better to have a bad credit score rather than no credit score. Proponents assert that a bad credit score is better than no score. They characterize the idea of a low credit score being harmful as a "fallacy" and state "the low score is a powerful protection against over-extension and irresponsible lending."[37]

We believe that this assumption is wrong: a low score can affirmatively harm consumers. A low score can put a target on the consumer's back for predatory lenders instead of protecting them from unaffordable credit. Consumers with subprime credit scores are beset by offers from predatory lenders, such as fee harvester credit cards, which come loaded with high fees but extend very limited actual credit to consumers. Fee-harvester card issuers rely on prescreened lists of consumers with low scores or other black marks on their credit reports to send their solicitations. A consumer with no score will not show up on such a prescreened list.

Furthermore, credit scores and reports are not solely used for lending decisions. Many employers use credit reports in hiring and other employment decisions. In such cases, it is far worse for a worker if the employer sees a credit report with negative information (such as report consisting of single utility account with repeated late payments) than one with no information.

Also, insurance companies use credit scores when determining whether to approve applications and what prices to charge consumers. This is another instance in which not having a credit history is less harmful than having a bad history, as the absence of a credit score is treated as "neutral" in many states.[38] Thus, full file utility credit reporting could result in some consumers being denied employment or forced to pay higher insurance rates.

E. Full File Utility Credit Reporting Conflicts With The Policy Rationale for Certain Utility Protections

Full file utility credit reporting is inconsistent with the policy objectives of certain state utility consumer protections. For example, Massachusetts provides for a "Winter Moratorium" that prohibits utilities from disconnecting service during the winter months (November 15 to March 15) when there is financial hardship. The Winter Moratorium recognizes that financially stretched Massachusetts households may have difficulty paying their bills during the expensive months for heat in a cold weather state, but will eventually catch up during the summer. Full file

[37] PERC August 2012 Study, at 12. Furthermore, contrary to PERC's assumption, a credit score does not indicate whether a consumer can afford to take one new debt. Only an analysis of the consumer's income, household expenses, and existing debts can do that. Credit reports do not include information about a consumer's income.
[38] *See* Safeco Ins. Co. of Am. v. Burr, 127 S. Ct. 2201, 2206-2207, n. 4 (2007) (noting that a number of states require the use of "neutral" credit scores for thin or no file consumers).

utility credit reporting, by threatening consumers with black marks on their credit reports even when state law was designed to give them some breathing room, would operate in conflict with the policy objective of the Winter Moratorium. Many other states have protections similar to the Winter Moratorium.[39]

Finally, full file utility credit reporting could undermine state protections requiring payment plans to be offered. Many states permit consumers to pay off past-due amounts using a payment plan. These consumers might technically be late on their payments, because they have not paid their utility bill on the due date, but they will be paying according to their agreements with the utilities. Thus, they will probably be reported using the industry code for "Paying under a partial or modified payment agreement."[40] Reporting a consumer using this code for a payment plan will likely reduce a consumer's credit score.[41]

Asserting that utility payments should be fully reported to the credit reporting agencies in the same manner as other financial transactions fails to recognize the unique nature of utility service, which is an essential product that consumers have no choice but to purchase. Full file utility credit reporting will undermine the policy objectives of long-standing consumer protection rules that have been adopted by the regulatory commissions in states across the country.

Even if the threat of a negative credit report leads a consumer to pay utility bills more regularly, the consumer may be stealing from Peter to pay Paul. Consumers with limited income will have to let other bills slip, resulting in increased negative credit reports from those billers.[42]

F. Other Considerations

One of the thorniest issues in consumer credit reporting is the level of inaccuracy. Estimates of serious errors range from 1% (which the industry cites)[43] to 12% (from the FTC)[44] to 37% in online surveys.[45] Whether the number is 1% or 37%, full file utility credit reporting is unlikely to improve accuracy.

Adding hundreds of millions of new accounts to the credit reporting databases by entities not experienced in furnishing information can only increase the number of inaccuracies.

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[39] *See* LIHEAP Clearinghouse, HHS Admin. For Children & Families, *Seasonal Termination Protection Regulations*, at http://www.liheap.ncat.org/Disconnect/disconnect.htm.
[40] This is code "AC" in the Metro 2 reporting format that is the industry standard. *See* Consumer Data Indus. Ass'n, Inc., Credit Reporting Resources Guide (2008), at 5-19.
[41] Experian, Ask Max Credit Advice—Negotiating Reduced Payments Can Hurt Credit Scores, Oct. 28, 2009, at http://www.experian.com/ask_max/max102809a.html (visited Sep. 5, 2012)
[42] Indeed, one of pitches to utilities by proponents of full file utility credit reporting is that it is a way for utilities to improve their bottom lines by getting consumers to move utility bills to the "top of the payment pile." Michael Turner et al., PERC, *Credit Reporting Customer Payment Data: Impact on Customer Payment Behavior and Furnisher Costs and Benefits* 9-11 (2009), *available at* http://perc.net/files/bizcase_0.pdf
[43] Michael Turner et al., Policy and Economic Research Council, *U.S. Consumer Credit Reports: Measuring Accuracy and Dispute Impacts*, May 2011.
[44] Federal Trade Commission, *Report to Congress Under Section 319 of the Fair and Accurate Credit Transaction Act of 2003* (December 2008), at 2.
[45] Zogby Int'l, Zogby Poll: *Most Americans Fear Identity Theft*, Zogby's American Consumer Newsletter, Apr. 2007, at 3.

Furthermore, the utility companies will incur significant expenses in order to adopt systems so they can furnish information on a regular basis in the Metro 2 reporting format, as well as recurring expenses in being a subscriber to the credit reporting agencies. These costs will be passed along to consumers in the utility rates that they pay.

There are also issues regarding a unique form of "identity theft" that affects utility records. Unfortunately, a common tactic by desperate families facing financial crises is to put utilities in the name of minor children. While this keeps the heat and the lights on, it also saddles the child with a bad credit report if the account then is charged off or sent to collections. Full file utility reporting could make the situation worse if late payments in addition to collection items are reported on these children's credit reports.

G. H.R. 6363 Goes Far Beyond the Issue of Utility Credit Reporting

The language H.R. 6363 is not limited to utility credit reporting; instead it contains sweeping provisions that would make drastic changes to the Fair Credit Reporting Act. The bill eliminates any provisions or regulations under the FCRA that restrict furnishing of information to consumer reporting agencies. Thus, it will take away authority from the CFPB to regulate abuses in the furnishing of information. Any current or future restrictions on furnishing information such as limits on sensitive medical information, obsolete information (past seven years or 10 years for bankruptcies), or other private personal information would be nullified. It would also prevent regulation of public records vendors as furnishers under the FCRA. Thus, we oppose the "free pass" that H.R. 6363 would give to furnishers under the FCRA.

We note that H.R. 6363 is designed so it does not state explicitly that it preempts state laws or regulation that would restrict utilities from furnishing information to credit reporting agencies. However, it would be a strong statement by Congress in favor of full file utility credit reporting, and could prompt more utilities to engage in the practice.

Furthermore, the bill adds provisions to a section of the FCRA[46] that has broad preemptive effect; the FCRA nullifies state laws regarding "the subject matter" of that section.[47] It is not inconceivable that a court could rule that the provision preempts state laws even though it does not specifically so state.

If this provision were to have a preemptive effect on state laws, it would go much further than just reporting utility information. The bill prohibits ANY restrictions on a furnisher providing information such as identifying information, public records information, or tenancy information. Thus, it could preempt state laws that attempt to reform the very serious problems with background check agencies, which we have documented.[48] It would also preempt state laws

[46] 15 U.S.C. § 1681s-2.
[47] 15 U.S.C. § 1681t(b)(1)(F)("No requirement or prohibition may be imposed under the laws of any State (1) with respect to any subject matter regulated under ... (F) section 623 [§ 1681s-2], relating to the responsibilities of persons who furnish information to consumer reporting agencies,...")
[48] Persis Yu, National Consumer Law Center, *Broken Records: How Errors by Criminal Background Checking Companies Harm Workers and Businesses*, April 11, 2012, *available at* www.nclc.org/issues/broken-records.html.

in New York and California that govern reporting of criminal records,[49] and any state laws governing furnishing of eviction information.[50]

III. CONSUMERS SHOULD HAVE THE BASIC RIGHT TO ANY CREDIT SCORE THAT IS ABOUT THEM AND THE RIGHT TO A FREE ANNUAL SCORE

One of the troubling aspects of our credit reporting system is the difficulty faced by consumers in obtaining a critical piece of information about themselves – their credit scores. Consumers do not have the right to a free credit score unless they are denied credit or charged a higher price for it. Furthermore, they have no right to obtain the score used by the vast majority of lenders – their FICO scores. They also do not have a right to see their scores that are used for non-credit purposes, such as insurance, tenant screening, or health care.

Consumers do have the right to obtain their credit reports. Though that is an important right, credit reports do not give consumers an easy-to-understand snapshot of their credit standing.

Until the 2003 amendments added by the Fair and Accurate Credit Transaction Act, consumers had no right to access their credit scores, not even for a price. After the FACT Act amendments, consumers have the right to purchase a credit score, but the credit reporting agencies need only sell them an "educational score,"[51] even though no actual creditor might ever use that score. Consumers have no right to purchase their FICO scores, even though FICO scores represent over 90 percent of the market for scores sold for credit-related decisions, according to the CFPB.[52] To this day, consumers cannot purchase their FICO score based on their Experian credit report.

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 improved the situation by giving consumers the right to receive their actual credit scores, the ones used by a lender, when they are denied credit or charged a higher price for it.[53] However, consumers should not have to apply for credit first and then get turned down in order to learn their FICO scores. The time for consumers to obtain their credit scores is BEFORE they need to apply for credit, so that they can be informed shoppers and know what kind of credit they are qualified for. Thus, we urge Congress to give consumers the right to obtain their credit scores – the ones used most frequently by lenders – without charge on an annual basis, just like with credit reports.

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[49] Cal. Civ. Code § 1786.18(a)(7); N.Y. Gen. Bus. Law § 380-j (McKinney)
[50] In some states, rental housing providers often categorically reject applicants who have been sued for eviction-- even if the case is dismissed or found to be without merit. States may wish to restrict the reporting of certain eviction lawsuits to protect individuals and families from being unfairly excluded from rental housing based on unfairly-stigmatizing eviction records.
[51] The FCRA permits credit reporting agencies to provide "a credit score that assists the consumer in understanding the credit scoring assessment of the credit behavior of the consumer and predictions about the future credit behavior of the consumer." 15 U.S.C. § 1681g(f)(7)(A).
[52] Consumer Financial Protection Bureau, The Impact of Differences Between Consumer- and Creditor-Purchased Credit Scores: Report to Congress, July 19, 2011, at 6, available at www.consumerfinance.gov/wp-content/uploads/2011/07/Report_20110719_CreditScores.pdf
[53] Pub. L. No. 111-203, 124 Stat. 1376, § 1100F (2010), codified at 15 U.S.C. §§ 1681m(a) (2) and 1681m(h)(5)(E).

Moreover, providing a general right to the credit score would help to enforce the existing right to a score after credit has been denied or offered at a higher price. Consumers could seek out their credit scores directly from the credit reporting agencies to compare them with the score provided by the lender.

Furthermore, we urge Congress to give consumers the right to obtain any score based on a consumer report that is about them. Currently, the FCRA only gives consumers the right to obtain scores used for granting credit.[54] Yet there are a multitude of scores based on a credit or consumer report that grade consumers for other purposes – insurance underwriting, healthcare, and tenant screening. Consumers should have the right to obtain these scores for free on an annual basis, just as they are entitled to free annual reports from specialty consumer reporting agencies.

This is a matter of basic fairness. These scores are about the consumer - they are about us. They are based on information about our behavior and our lives. They may be based on inaccurate information that we have a right to correct. To have this important information about ourselves squirreled away in secret databases that we have no right to access seems inconsistent with the American way.

Thank you for the opportunity to testify, and I look forward to your questions.

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[54] The FCRA defines credit scores as "a numerical value or a categorization derived from a statistical tool or modeling system used by a person who makes or arranges a loan to predict the likelihood of certain credit behaviors, including default…" 15 U.S.C. § 1681g(f)(2)(A).

ATTACHMENT A

State/Utility/Date	Residential Customer Arrears									
	General Residential Customers					Low-income/Energy Assistance Customers				
	Total #	30 - 60 days late		60+ days late		Total #	30 - 60 days late		60+ days late	
		#	%	#	%		#	%	#	%
Iowa[1]										
All Investor-owned Gas and Electric Utilities (July 2012)	1,824,122	238,696	13.1%	n/a	n/a	100,731	26,340	26.1%	n/a	n/a
California[2]										
Pacific Gas and Electric (June 2012)	3,780,953	304,591	8.1%	221,016	5.8%	1,527,683	178,742	11.7%	192,925	12.6%
Southern California Edison (July 2012)	2,839,510	218,967	7.7%	83,670	2.9%	1,428,737	301,050	21.1%	188,881	13.2%
San Diego Gas and Electric (June 2012)	959,965	100,934	10.5%	100,759	10.5%	297,965	96,649	32.4%	101,563	34.1%
Ohio[3]										
Columbia Gas Company (December 2011)	1,293,349	n/a	n/a	275,309	21.3%	n/a	n/a	n/a	n/a	n/a
East Ohio Gas Company (December 2011)	1,106,832	n/a	n/a	171,700	15.5%	n/a	n/a	n/a	n/a	n/a
Ohio Power Company (December 2011)	1,274,053	n/a	n/a	104,672	8.2%	n/a	n/a	n/a	n/a	n/a
Massachusetts[4]										
Massachusetts Electric Company (April 2012)	1,105,150	n/a	n/a	148,512	13.4%	140,968	n/a	n/a	49,146	34.9%
Columbia Gas of Massachusetts (June 2012)	263,288	n/a	n/a	51,660	19.6%	30,426	n/a	n/a	16,402	53.9%
NSTAR Electric Company (June 2012)	986,719	n/a	n/a	176,862	17.9%	84,452	n/a	n/a	28,319	33.5%

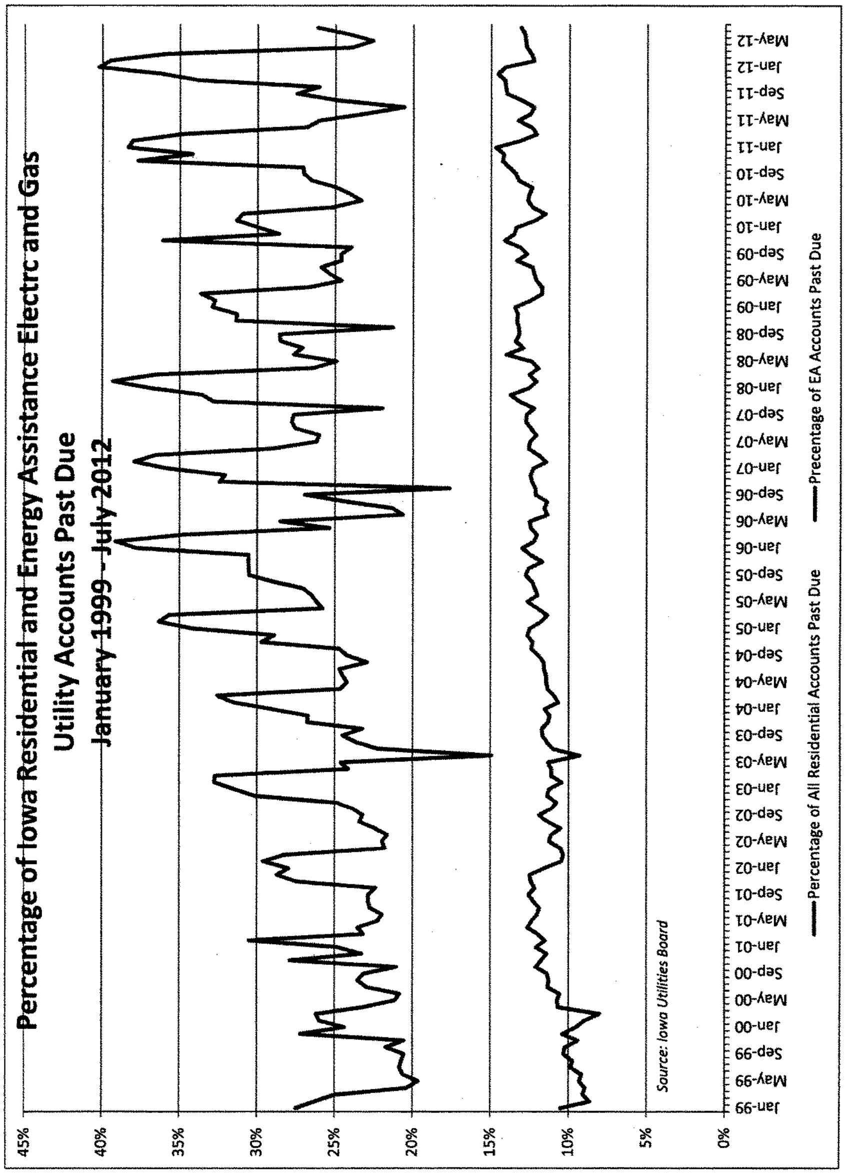
NOTES

[1] Source: Iowa Utilities Board from Monthly electric and gas utility reports. Available at http://www.state.ia.us/government/com/util/consumer_information/residential_data.htm
Iowa utilities do not report vintage of customer arrears. While all past due accounts are listed here as 30 - 60 days late, some accounts may be more seriously past due.

[2] Source: California Public Utilities Commission, electric and natural gas utility compliance filings.
Proceeding No. R1002005. Available at http://docs.cpuc.ca.gov/EFileSearchForm.aspx (enter Proceeding #).

[3] Source: Public Utilities Commission of Ohio, electric and natural gas utility compliance filings.
Case # 12-1449-GE-UNC. Available at http://dis.puc.state.oh.us/CaseRecord.aspx?CaseNo=12-1449&x=0&y=0.
Annual reports include information on all residential customers and accounts in arrears by more than 60 days.
Arrears of less than 60 days and disaggregated low-income customer information is not included.

[4] Source: Massachusetts Department of Public Utilities, Andrea Saia


Percentage of Iowa Residential and Energy Assistance Electrc and Gas
Utility Accounts Past Due
January 1999 - July 2012
45%
40%
35%
30%
25%
20%
15%
10%
5%
0%
Jan-99
May-99
Sep-99
Jan-00
May-00
Sep-00
Jan-01
May-01
Sep-01
Jan-02
May-02
Sep-02
Jan-03
May-03
Sep-03
Jan-04
May-04
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May-05
Sep-05
Jan-06
May-06
Sep-06
Jan-07
May-07
Sep-07
Jan-08
May-08
Sep-08
Jan-09
May-09
Sep-09
Jan-10
May-10
Sep-10
Jan-11
May-11
Sep-11
Jan-12
May-12
Source: Iowa Utilities Board
Percentage of All Residential Accounts Past Due
Precentage of EA Accounts Past Due

ATTACHMENT B

THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES

RESOLUTION 2010-3

OPPOSING "FULL CREDIT REPORTING" OF PAYMENT HISTORIES ON RESIDENTIAL GAS AND ELECTRIC ACCOUNTS

Whereas, the National Association of State Utility Consumer Advocates ("NASUCA") has a long-standing interest in issues and policies that affect the access of residential consumers to gas and electric services, which are basic necessities of life in modern society; and

Whereas, the credit reporting industry and others, through proposed legislative and regulatory changes and otherwise, seeks to implement a practice known as "full credit reporting," under which gas and electric utilities would regularly advise credit reporting agencies of the month-by-month payment behaviors and histories of residential gas and electric consumers;[1] and

Whereas, proponents of full credit reporting also seek to preempt the authority of the states to regulate the credit reporting and collection practices of gas and electric utilities; and

Whereas, proponents argue as a justification for full credit reporting that it helps low-income and other households establish a credit history and thus improve their access to credit;[2] and

Whereas, although proponents further claim that full credit reporting "can direct markets toward a faster alleviation of poverty in this country," the research used to support this claim focuses narrowly on the fact that a number of consumers who cannot presently be "scored" could be scored with full credit reporting, and thus gain access to credit, but without considering the broader realities that low-income and some other households commonly face in seeking to meet their energy needs and their financial responsibilities and without considering the broader realities that low credit scores pose for low-income and some other households;[3] and

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[1]The Political and Economic Research Council (PERC at www.infopolicy.org), the Center for Financial Services Innovation (CFSI at www.cfinnovation.com), and the Corporation for Enterprise Development (CFED at www.cred.org) seek support for and amendments to the Fair Credit Reporting Act (FCRA) to allow for "full credit reporting." See CFSI News Release, "CFSI, PERC, and CFED seek your support of an Alternative Data Initiative," July 2009 (http://www.cfsinnovation.com/news/article/330637); PERC, "NCLC Supports the '3 Ps' of Lending: Pawn Shops, Predatory Lenders, and Pay Day Lenders" (http://perc.net/files/alt_data_dis_paper1.pdf).

[2]Turner, Varghese, Walker and Dusek, Political and Economic Research Council, "Credit Reporting Customer Payment Data: Impact on Customer Payment Behavior and Furnisher Costs and Benefits" (March 2009) (http://perc.net/files/bizcase_0.pdf).

Whereas, in actuality, for reasons stated in part in this resolution, full credit reporting poses a new and profound threat to the well-being of both low-income consumers and a wide swath of consumers who are not low income but who for reasons including illness and layoff are not always able to make gas and electric payments on time; and

Whereas, credit scores are widely used by creditors and insurance companies to make decisions regarding the provision and pricing of their services, by prospective employers to make decisions regarding the hiring of employees, and by prospective landlords to make decisions regarding the leasing of residential property; and

Whereas, the financial difficulties faced by consumers in paying gas and electric bills on time have been exacerbated in recent years by deep recession and high unemployment; and

Whereas, a single late payment report adversely affects a credit score by 60 to 110 points;[4] and

Whereas, at the present time, the vast majority of gas and electric utilities have a practice of limiting credit reporting to seriously delinquent accounts which have been terminated and referred to a collection agency or written off as uncollectible;[5] and

Whereas, the present practice of limited credit reporting appropriately reflects and advances, while full credit reporting would inhibit and thwart, a host of public laws and policies that the states have implemented and embraced as a part of the safety net for their people, including laws and policies concerning billing, collections, security deposits, termination practices and customer service activities, and including such vital protections as winter moratorium on disconnection of service for low-income consumers and mandatory alternative payment plans on certain accounts that are not current;

NOW THEREFORE, BE IT RESOLVED, that NASUCA opposes full credit reporting on residential gas and electric accounts and urges state and federal policy-makers to prohibit the practice.

BE IT FURTHER RESOLVED, that NASUCA supports the continuation of full state legislative and regulatory jurisdictional authority over gas and electric billing, collection, customer service and credit reporting activities, including but not limited to the reporting of customer payment history to credit reporting agencies; and

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[3]Turner, Lee, Schnare, Varghese, Walker, Political and Economic Research Council and Brookings Institution Urban Markets Initiative, "Give Credit Where Credit Is Due" (2006) (http://perc.net/files/downloads/alt_data.pdf).

[4]Simon, "FICO reveals how common credit mistakes affect scores" (November 13, 2009) http://www.creditcards.com/credit-card-news/fico-credit-score-points-mistakes-1270.php

[5]Varghese and others, note 3 above, p. 12.

BE IT FURTHER RESOLVED, that NASUCA urges, should a state authorize credit reporting on residential gas and electric accounts, that the authorization be limited to the reporting of seriously delinquent accounts which have been terminated and referred to a collection agency or written off as uncollectible; and

BE IT FURTHER RESOLVED, that NASUCA urges, should a state authorize full credit reporting on residential gas and electric accounts, that the authorization, consistently with the stated purpose of full credit reporting to help establish a consumer's credit history and improve the consumer's access to credit, be subject a consumer "opt-in" requirement.

Submitted by:

NASUCA Gas Committee and
NASUCA Consumer Protection Committee

Approved June 15, 2010
San Francisco, CA

ATTACHMENT C

September 12, 2012

The Honorable Jim Renacci
130 Cannon House Office Building
Washington, DC 20515

Dear Congressman Renacci:

The undersigned consumer, civil rights and advocacy groups write to you to express our concerns about H.R. 6363, and the issue that it promotes – full file utility credit reporting. This practice will add millions of new negative reports to the credit reporting system and we fear that it may harm many consumers. It also may undermine long-standing protections developed by state utility commissions across the country to protect consumers when utility bills spike during weather extremes. Full file utility credit reporting could also hurt job seekers when employers use credit reports, and consumers when they buy home or auto insurance.

For these reasons, we believe there are significant concerns about the use of full file utility reporting data. We do not oppose permitting consumers to voluntarily opt-in to full file utility credit reporting. But we are very concerned about the effects of full file utility credit reporting that is not voluntary for consumers.

Proponents claim that reporting utility payments will help improve the credit reports of tens of millions of consumers. However, their statistics are based on data regarding the very few electric and natural gas utilities that do fully report on a regular basis and do not appear to be representative of payment patterns in different states and regions. For example, proponents claim that fewer than 3% of consumers earning $50,000 or less annually have a single 60-day late utility payment during a one-year period. Yet data filed with or from utility regulators in a number of states indicates the percentages of utility consumers paying late is much higher – from 11% in California to 20% in Massachusetts to 21% in Ohio. Thus, to the extent that utility reporting creates a score for "thin file" or "no file" consumers, we fear that it will end up being a bad credit score.

Proponents assert that a low credit score is better than no score. They state "the low score is a powerful protection against over-extension and irresponsible lending." We believe that this assumption is wrong: a low score can affirmatively harm consumers. A low score can put a target on the consumer's back for predatory lenders such as fee-harvester credit cards, who rely on pre-screened lists of consumers with bad credit.

Furthermore, credit scores and reports are not solely used for lending decisions. Many employers use credit reports in hiring and other employment decisions. In such cases, it is far worse for a worker if the employer sees a credit report with negative information (such as report consisting of single utility account with repeated late payments) than one with no information.

Also, insurance companies use credit scores when determining whether to approve applications and what prices to charge consumers. This is another instance in which not having a credit history is less harmful than having a bad history, as the absence of a credit score is treated as "neutral" in many states.

The National Association of State Utility Consumer Advocates voted to oppose full file utility credit reporting[1] in part because it conflicts with utility consumer protections in many states. For example, the "Winter Moratoriums" in several cold weather states prohibit utilities from disconnecting service during the winter months when there is financial hardship. The Winter Moratorium recognizes that financially stretched households may have difficulty paying their bills during the expensive hearing months, but will eventually catch up during the summer. Full utility credit reporting, by threatening consumers with black marks on their credit reports even when state law was designed to give them some breathing room, would operate in conflict with the policy objective of the Winter Moratorium.

Thank you for your attention. If you have any questions about this letter, please contact John Howat (jhowat@nclc.org) or Chi Chi Wu (cwu@nclc.org) at (617) 542-8010.

John Howat and Chi Chi Wu
National Consumer Law Center
(on behalf of it low-income clients)

Birny Birnbaum
Center for Economic Justice

Ed Mierzwinski
U.S. PIRG

Pamela Banks
Consumers Union

Charles A. Acquard
National Association of State Utility Consumer Advocates

Jeffrey Chester
Center for Digital Democracy

Shanna L. Smith
National Fair Housing Alliance

Ruth Susswein
Consumer Action

Elliott Jacobson
Action, Inc.
Gloucester, MA

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[1] National Association of State Utility Consumer Advocates, Resolution 2010-3: Opposing "Full Credit Reporting" of Payment Histories on Residential Gas and Electric Accounts, June 15, 2010, *available at* www.nasuca.org/archive/Full%20Credit%20Reporting%20Resolutiong%20FINAL%202010-3.doc.

Mark W. Toney
TURN—The Utility Reform Network
San Francisco, CA

Dave Rinebolt
Ohio Partners for Affordable Energy
Findlay, OH

September 12, 2012

The Honorable Jim Renacci
130 Cannon House Office Building
Washington, DC 20515

Dear Congressman Renacci:

The undersigned advocates are writing to raise concerns about H.R. 6363, which promotes the practice of full file utility credit reporting. We have concerns about the scope of the bill, which goes far beyond the topic of utility credit reporting. The bill eliminates any provisions or regulations under the Fair Credit Reporting Act (FCRA) that restrict furnishing information to consumer reporting agencies, such as restrictions on identifying information, public records, or tenancy information. Thus, it will take away authority from the Consumer Financial Protection Bureau (CFPB) to regulate abuses in the furnishing of information. The CFPB would be prevented from establishing regulations that prohibit the furnishing of outdated, irrelevant or sensitive personal information.

We note that the bill is designed so it does not state explicitly that it preempts state laws or regulation. However, the bill adds provisions to a section of the FCRA that has broad preemptive effect, and it is not inconceivable that a court could rule that the provision preempts state laws even though it does not specifically so state. If this provision were to have a preemptive effect on state laws, it would go much further than just reporting utility information to preempt state laws that attempt to reform background check agencies,[1] govern furnishing of criminal records, and govern reporting of eviction records.[2]

Thank you for your attention. If you have any questions about this letter, please contact Chi Chi Wu (cwu@nclc.org) at (617) 542-8010.

Chi Chi Wu
National Consumer Law Center
(on behalf of it low-income clients)

Maurice Emsellem
National Employment Law Project

Judy Whiting
Community Service Society
New York, New York

James Fishman
Fishman & Mallon, LLP

Jeffrey Chester
Center for Digital Democracy

[1] For a discussion of the problems with background check agencies, see Persis Yu, National Consumer Law Center, *Broken Records: How Errors by Criminal Background Checking Companies Harm Workers and Businesses*, April 11, 2012, *available at* www.nclc.org/issues/broken-records.html.

[2] In some states, rental housing providers often categorically reject applicants who have been sued for eviction--even if the case is dismissed or found to be without merit. States may wish to restrict the reporting of certain eviction lawsuits to protect individuals and families from being unfairly excluded from rental housing based on unfairly-stigmatizing eviction records.

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Division of Privacy and Identity Protection

October 19, 2012

The Honorable Keith Ellison
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Jim Renacci
U.S. House of Representatives
Washington, D.C. 20515

Re: Responses to Questions for the Record for the hearing held September 13, 2012 before the Committee on Financial Services entitled "Examining the Uses of Consumer Credit Data"

Dear Representatives Ellison and Renacci:

Thank you for the opportunity to appear before the Subcommittee on Financial Institutions and Consumer Credit on September 13, 2012, and to respond to the questions for the record set forth in your correspondence of October 2, 2012.

My responses to your questions are set forth below. I would also like to take this opportunity to correct a misstatement I made during my testimony on September 13, 2012. In response to your question, Representative Ellison, I stated that I believed employers use consumer credit scores. In fact, to the best of my knowledge, while employers sometimes obtain consumer reports concerning job applicants, they do not use credit scores. It is my understanding that consumer reporting agencies will not sell credit scores to be used for employment purposes. When I answered the question, I mistakenly thought it referred to consumer reports rather than credit scores. I apologize for the confusion.

Responses to Questions for the Record

Question 1: No score better than a low score

During the hearing, Ms. Wu from the National Consumer Law Center (NCLC) asserted that no credit score was better than a low score. Can you respond to this assertion? From your experience, do consumers with a low credit score enjoy greater access to credit and employment than do consumers without credit scores? Do consumers with low credit scores pay less for insurance than consumers with no credit scores? Do consumers with low credit scores have greater or less access to employment than people with no credit scores?

A: Although I do not have data on this point, it is my understanding that there may be circumstances under which no credit score or no credit history may be preferable to a low credit score or negative credit history. For example, it is my understanding that some states permit or require that insurance companies treat consumers with "thin" or no credit histories as having "neutral" credit histories. This may result in a consumer with no credit score paying less for home or automobile insurance than a consumer with a low score. Also, although credit scores are not provided to employers, it is my understanding that some employers use credit reports as a negative factor in hiring decisions, i.e., only to "screen out" applicants. Under these circumstances, no credit history would likely be preferable than the presence of negative information in a job applicant's credit report.

Question 2: Requiring financial institutions and others to analyze alternative data when provided by a consumer

NCLC suggests that consumers ask to have all of their credit information included in any request for credit or other purposes where credit would be considered in determining access and/or price. Mr. Ellison asked you if there was such a law that required financial institutions and/or others such as insurance or employers to consider alternative credit history. Some assert that the Equal Credit Opportunity Act (Section 1002.6/formerly Section 202.6 (b)(5)(6)) provides this right. Is there such a requirement? If so, how is it enforced?

A: Although nothing prohibits a creditor from taking into account alternative credit histories when determining creditworthiness, Regulation B, the implementing regulation of the Equal Credit Opportunity Act ("ECOA"), does not require a creditor to do so. To the extent that a creditor considers credit history in evaluating an applicant's application, Regulation B provides that the creditor shall consider: (i) the credit history, when available, of accounts designated as accounts that the applicant and the applicant's spouse are permitted to use or for which both are contractually liable; (ii) on the applicant's request, any information the applicant may present that tends to indicate the credit history being considered by the creditor does not accurately reflect the applicant's creditworthiness; and (iii) on the applicant's request, the credit history, when available, of any account reported in the name of the applicant's spouse or former spouse that the applicant can demonstrate accurately reflects the applicant's creditworthiness. 12 C.F.R § 1002.6(B)(6).

As the Official Commentary further explains, a creditor may restrict the types of credit history and references that it will consider as long as the restrictions are applied to all applicants without regard to race, gender, or any other prohibited basis. 12 C.F.R. Pt. 1002, Supp. I, Comment 6(b)(6)-1. However, an applicant may request that a creditor consider credit information not reported through a credit bureau <u>only if</u> that information relates to the <u>same types of credit references and history</u> the creditor would consider if reported through the credit bureau. *Id.* Therefore, if a creditor does not consider alternative credit histories, it does not violate the ECOA by failing to do so unless the applicant makes a request, and the alternative history pertains to the same type of information reported through a credit bureau that the creditor normally relies upon when evaluating applications for credit. The Consumer Financial Protection Bureau ("CFPB") now has the authority to issue regulations and interpretations of the ECOA for all covered entities.

The Honorable Keith Ellison
The Honorable Jim Renacci
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The ECOA is enforced in either administrative or federal court proceedings by the Federal Trade Commission ("Commission"), the CFPB, the bank and credit union regulators, the Department of Justice, and certain other agencies with respect to entities within each agency's jurisdiction. In addition, the CFPB has supervisory authority with respect to ECOA compliance over depository institutions and credit unions with total assets of more than $10 billion and their affiliates, and with respect to certain nonbanks, including certain large consumer reporting agencies, mortgage lenders and servicers, and payday lenders. The bank and credit union regulators have supervisory authority with respect to smaller institutions within each agency's jurisdiction. Although the Commission does not have supervisory authority to examine non-bank creditors for ECOA compliance, the agency may investigate for suspected wrongdoings and bring enforcement actions where appropriate.

Question 3: National Consumer and Telecom Utility Exchange

During the second panel, NCLC asserted that late utility payments were not being reported to credit reporting agencies. It is our understanding that 80% of consumers' utility and telecom payment histories are reported to the National Consumer Telecom & Utilities Exchange (NCTUE). Could you confirm if NCTUE is receiving late utility payment information for 80% of U.S. consumers? You stated that you believe NCTUE is complying with the Fair Credit Reporting Act. Can you clarify how consumers learn that their late payments were reported and what the effect was on their rates or services they receive? How do consumers with late payments reported to NCTUE receive adverse action notices?

A: I do not know what percentage of consumers' utility and telecommunications payment histories are reported to NCTUE. The Fair Credit Reporting Act ("FCRA") allows a consumer to request a copy of his or her file from NCTUE to learn whether his or her payment history has been reported. The FCRA does not require a company that reports information about a consumer to a consumer reporting agency such as NCTUE to inform the consumer that it is doing so.

As a general matter, consumer reports are used to make decisions about the availability and cost of various consumer products and services, including credit, insurance, employment, and housing. The presence of negative payment information in a consumer report provided by NCTUE presumably affects the rates and services the user of the report will offer to the consumer that is the subject of the report, but the extent of the impact of this information is determined by the user of the report. If the user of a consumer report from NCTUE or any other consumer reporting agency denies the consumer services based on information contained in the report, it must provide the consumer with an adverse action notice. 15 U.S.C. § 1681m(a). This notice must contain the name, address, and telephone number of the consumer reporting agency from whom the creditor obtained the report and entitles the consumer to a free copy of his or her credit report. If a credit score was used in order to make the adverse decision, the adverse action notice must also include that credit score.

The Honorable Keith Ellison
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Consumers that apply for credit but, based in whole or in part on information contained in their consumer reports, are offered less favorable material terms are entitled to a risk-based pricing notice and a free copy of their credit report. 15 U.S.C. § 1681m(h). It is my understanding that, in the case of telecommunications and other utility services, which extend credit to consumers since consumers do not pay until after they use the service, consumer reports are most often used to determine whether a consumer will be required to pay a deposit. Consumers that, based in whole or in part on their consumer reports, are required to pay a deposit should receive a risk-based pricing notice. The risk-based pricing notice contains a statement informing the consumer that he or she may be receiving less favorable terms than other consumers, general information about consumer reports, and information about how to obtain his or her consumer report and dispute any inaccurate information. If a credit score was used to make the decision, the risk-based pricing notice must include that credit score.

I should note that I did not mean for my testimony to imply that I believe NCTUE is, in fact, complying with the FCRA. I meant only to state that I have no reason to believe it is not in compliance with the statute.

Question 4: Marketing

The NCLC asserted that previously invisible consumers would receive predatory credit offers once they received a credit score. Is there evidence that would substantiate that claim? Is there any restriction of using credit information for marketing purposes? Do you have any evidence that those without credit scores, but who have real credit needs, are not acting to secure credit already through high cost channels such as pay day lenders and pawn shops. If, as we suspect, they are having their credit needs met by high cost lenders like check cashing service providers, how would this group be harmed—in the context of the credit market—by having a low score?

A: The FCRA provides that consumer reports may only be sold and used for permissible purposes. Marketing is not a permissible purpose under the FCRA. However, the FCRA permits consumer reporting agencies to sell "prescreened" lists for purposes of making a "firm offer of insurance or credit." 15 U.S.C. § 1681b(c)(1)(B). A prescreened list is a type of consumer report and is based on information in consumer files. Prescreened lists are typically compiled in one of two ways: (1) a creditor or insurer establishes criteria, like a credit score range, and asks a consumer reporting company for a list of people in the company's database who meet the criteria; or (2) a creditor or insurer provides a list of potential customers to a consumer reporting company and asks the company to identify people on the list who meet certain criteria. The criteria used to compile a prescreened list will depend on the type of product a creditor or insurer seeks to offer and to whom. Under the FCRA, consumers may elect to be excluded from prescreened lists by calling 1-888-5-OPT-OUT (1-888-567-8688) or visiting www.optoutprescreen.com.

As I understand NCLC's concerns, prescreening may provide an example of a circumstance under which no credit score may be preferable to a low credit score. Consumers with thin or

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no credit histories are not likely to be targeted with prescreened offers because consumer reporting agencies are unable to ascertain whether they meet the criteria established by the creditor or insurer. Consumers with low credit scores, however, may be included in prescreened lists sold to creditors or insurers offering subprime products, engaging in predatory practices, or otherwise seeking consumers with poor credit histories.[1]

As noted in the Commission's 2004 report,[2] traditional creditors are reluctant to extend credit to consumers with little or no credit history because they find it difficult to predict performance. Although I do not have any data on the point, it appears that at least some consumers with no or thin credit histories that are in need of credit will seek it from high cost channels, such as payday lenders, because traditional credit products are not available to them. I do not know, however, what the practical effect would be, in the credit context, if such "no credit score" consumers became "low credit score" consumers. This may depend on the type of lender from whom the consumer seeks credit.

Question 5: Scope of the bill

NCLC asserted that the language we drafted to provide affirmative permission for reporting on time payment would gut the Fair Credit Reporting Act (FCRA). It was our intention in drafting the bill that it not make changes to the FCRA beyond allowing on-time payments to be reported in order to build or rebuild credit scores. From your reading of the bill, does it meet our narrow goal? We appreciate your technical advice.

A: Nothing in the FCRA or its current rules limits the furnishing of accurate on-time payment information. Although the bill aims to encourage the reporting of this information to help consumers build their credit histories, it may have other effects as well.

First, the bill apparently would eliminate the authority of the CFPB to promulgate rules under the FCRA that would restrict the furnishing of information to consumer reporting agencies. As the bill applies broadly to all types of transaction and experience information (not just lease, subscription, and utility information described in paragraph (f)(1)(D) of the bill's new FCRA

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[1] *See, e.g., United States v. Direct Lending Source, Inc.*, No. CV 3:12-cv-02441 (S.D. Cal. filed Oct. 11, 2012) (stipulated final judgment and order), *available at* http://www.ftc.gov/opa/2012/10/equifaxdirect.shtm. The Commission's complaint alleged that the defendants purchased prescreened lists of consumers that were late on their mortgages and resold the lists to marketers of products aimed at financially distressed consumers, including loan modification and debt relief services.

[2] FTC, *Report to Congress Under Sections 318 and 319 of the Fair and Accurate Credit Transactions Act of 2003*, at 78 (Dec. 2004), *available at* http://www.ftc.gov/reports/facta/041209factarpt.pdf.

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subsection) as well as to all public record information, and includes negative information, the scope of this impact could be significant. In addition, although the bill expressly addresses only the furnishing of information, given that the purpose of the bill is to allow the furnished information to be included in consumer reports, it might affect restrictions the FCRA places on reporting. Specifically, limits on the reporting of information, such as provisions restricting the reporting of obsolete information (15 U.S.C. § 1681c(a)), might be viewed as inconsistent with the new express statutory protection for furnishing the information, and thus implicitly repealed. For the same reason, the bill might also preclude any future FCRA rule from limiting the reporting of information covered by the bill. Further, the bill might result in preemption of state statutes that limit the furnishing or reporting of the types of information described in the bill. Such state laws may be viewed as inconsistent with the proposed new subsection, which would be preempted under 15 U.S.C. § 1681t(a), or as imposing prohibitions related to a subject matter regulated under 15 U.S.C. § 1681s-2 (the location of the bill's proposed new subsection), which would be preempted under 15 U.S.C. § 1681t(b)(F).

We would be happy to discuss these issues in detail with staff.

Thank you again for the opportunity to testify and for your questions. I would be happy to answer any additional questions you or staff may have.

Sincerely,

Robert Schoshinski
Assistant Director
Division of Privacy and Identity Protection

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PERC
RESULTS AND SOLUTIONS

October 16, 2012

The Honorable Keith Ellison
1027 Longworth House Office Building
United States House of Representatives
Washington, DC 20515

The Honorable Jim Renacci
130 Cannon House Office Building
United States House of Representatives
Washington, D.C. 20515

Dear Representative Ellison and Representative Renacci:

Thank you for the privilege of testifying before the House Subcommittee on Financial Institutions and Consumer Credit on the topic of "Examining the Uses of Consumer Credit Data." This is indeed a critically important topic and I am heartened by your interest in this subject.

In response to the testimony delivered by the panelists on September 13, 2012 you have asked me to respond to a series of questions. Below, please find a reproduction of those questions followed in each case with my response. While I hope that my responses sufficiently address each of your questions, I am available to further discuss or respond to any additional issues you may have.

Many thanks for this opportunity.

Kind regards,

Michael A. Turner, Ph.D.
President and CEO

Question 1: Impact on lower risk pools
At the hearing, you mentioned that late payments do not automatically result in a bad credit scores. In fact, you mentioned that reporting alternative data results in fewer consumers with poor credit scores. Could you explain what happens to credit scores when accounts with late utility payments are added? Specifically, you asserted that the number of consumers in the lower risk pools would decrease if alternative data were to be included. Could you expand on that statement?

This is an important set of questions, one that we've addressed empirically over the years along a variety of dimensions. First, in the context of credit markets, having a credit score—even a very low one—is superior to having no score. Those who lack a score are overwhelmingly automatically rejected when applying for credit. For the estimated 34 to 54 million Americans who are unscoreable (either owing to having no credit file, or having insufficient information in their credit report to generate a score), adding a single utility (energy or telecoms) account to their credit report improves their credit status as they are no longer among the ranks of the Credit Invisibles. Indeed, among the unscoreable, just 5% remain unscoreable after including an energy utility tradeline.

Second, among the unscoreable population, adding a utility tradeline to a credit report results in approximately 45% of this group receiving some form of a prime score, generally just a standard prime score. Very few move from unscoreable to super prime, as would be expected. Another 22% received a score between 600 and 699, generally classified as near prime or non-prime. The rest, 33%, received scores under 600, typically called subprime or deep subprime. Importantly, despite recent negativity around subprime loans owing to the recent mortgage meltdown, subprime and non-prime credit is a large and significant category of mainstream credit for many Americans, who would otherwise have to rely upon higher cost credit on much worse terms such as pay day loans, check cashing services, pawnshops, and other predatory instruments. We would argue that moving from Credit Invisible into a mainstream subprime or near-prime loan represents an improved credit status. Payment information on the subprime loan will be reported to credit bureaus, and help build an improved credit status over time, enabling the borrower to migrate upward and receive better terms.

It is also important to put the above numbers in context. Most of those that become scoreable from alternative data in our study do so with just one utility account being reported. Looking at credit scores based on just one traditional (financial) tradeline we find that 37% are in a prime tier or above, 31% are in near prime, and 33% are in subprime. So, the alternative data-only scores are higher than the ones based on only one traditional tradeline. It is important to point out that the "alternative data only" scores are not lower than average because they are utility payments. Rather, both sets of scores—thin-file alternative data only and thin-file financial data only—tend to be lower than average due to the files having little information (being thin-file). In this context, then, it appears that building a credit history by starting with alternative data rather than a traditional financial data is just as good if not better for the individuals examined.

Third, and importantly, we are advocating the inclusion of fully reported utility account payment information in consumer credit reports—not negative only reporting that is largely the case today. By having a fully reported account, a person is better able to repair or rebuild their credit standing than would be the case with only negative data in their credit report. For those who experience life hardship, such as a job loss, divorce, or unexpected medical expenses, and are unable to make ends meet for some period of time, having the "lift" from the positive payment information will help offset the credit stains from having missed payments on other obligations. That is to say, a full file reporting system is always more forgiving than a negative only system. It is for this reason that country after country around the world are transitioning from negative only credit reporting systems to full file ones—and are including utility payment data in credit reports. This includes countries like Australia, Brazil, China, Colombia, the Dominican Republic, Germany, India, Kenya, New Zealand, the Netherlands, South Africa, and a host of others—many of which have worked with PERC as part of this transition process.

Fourth, the NCLC has repeatedly asserted that the inclusion of fully reported utility tradelines in consumer credit reports will disproportionately harm lower income Americans. The specific mechanism pointed to by the NCLC for inflicting this supposed harm is the reporting of moderately late payment information—such as 30 days late and 60 days late. It is argued by NCLC that many utilities do not report payment information until it is very late, and that a full file reporting practice would pick up moderately late payment information and harm credit scores of low income Americans. In a recent survey of those firms that fully report to one or more nationwide credit bureaus, PERC found that 75% begin reporting at 60 or 90 days late, and just 25% report delinquencies between 30 and 59 days late. The evidence does not support the notion that utilities will flood credit bureaus with moderately late payment data.

Further, very few low income Americans have just one 30-day or 60-day late payment recorded in their credit file. While most pay their bills on time all of the time, fewer than 3 percent of those earning $50,000 per year or less had only a single 30-day or 60-day late utility payment, and fewer than 5% had any quantity of 30-day and/or 60-day late payments during the one-year observation period of PERC's most recent study (2010-2011). These figures are likely low because most consumers pay their bills on time *and* most of the utilities did not report utility payments that were 30 to 59 days late (some did not even report 60-89 day late paymentss). Additionally, approximately 14% of the population had delinquencies above 90-days late. Much of this information is already being reported to credit bureaus, and is certainly included in Equifax's National Consumer and Telecommunications Utility Exchange (NCTUE) database affecting eligibility determination for consumer utility services.

As for impacts, of those with a single 30-day late payment, just over one-tenth of one-percent (0.12%) of those earning $50,000 or less per annum experienced a 60-point or more score reduction. For the same income group with a single 60-day late utility payment, approximately three-tenths of one-percent (0.3%) witnessed a 60-point or more score decline. Most tellingly, less than one-percent of those earning $50,000 or less per annum experienced a downward credit score tier migration—meaning, moving from a lower risk tier to a higher risk tier that would negatively affect either the accept/reject decision and/or the terms of credit extended (for example, migrating from the non-prime score tier downward to the sub-prime score tier)—as a consequence of the inclusion of a any number of 30-day or 60-day late utility payments. This is a far cry from the dire outcomes that the NCLC has been asserting.

Interestingly, nearly quarter of those with a single 30-day late payment on the alternative experience a score increase when the alternative data is added. The reason for this is that the presence of an additional tradeline and the additional history on the credit file adds more value to the score than does the delinquency subtract from the score. This is the fundamental premise of the entire ongoing initiative to have utility data fully reported. Namely, that for many persons their scores are low not because of their behavior, but because their files are thin. As more and more utility data populates their credit reports, many consumers will experience a rise in score and upward score-tier migration (to improved credit standing) just from having more information in their credit reports. This is truly given credit where credit is due!

Question 2. Harm to low-income consumers.
The National Consumer Law Center asserts that late utility payers will automatically receive lower credit scores which will harm them. Can you expand on the evidence you presented that shows credit score changes for late paying low-income utility consumers? Would fully reporting utility data countermand existing state public policy efforts to protect low income persons, such as the moratorium on termination of service during cold and hot weather months?

For the 14% of those earning $50,000 or less per year who were 90 days or more late in paying their utility bills, fully reporting their payment data does not harm them. Some among this population may elect not to pay during cold weather or hot weather months owing to a moratorium on disconnection during this period. For those who fall behind and setup or negotiate a payment plan, then should they pay as agreed they will be helped by the inclusion of the positive payment data. It is worth noting that the objective of the moratorium on disconnection during certain periods of extreme temperatures is not to excuse persons who are able from making payments, but rather to prevent impoverished persons from physically suffering. And for those receiving energy assistance, they can be entirely excluded from credit reporting, a solution that would remove any alleged tension between state policy objectives and credit reporting. But if they are paying as agreed with the energy assistance, the reporting of the data likely benefits them.

We do not think informing lenders that a potential borrower had fallen 90 days or more behind on utility bill is a harm to the borrower any more than is informing lenders that someone has maxed out their credit cards or fallen behind on their automobile loan (for these obligations, however, consumers are rewarded for on-time payments). In the wake of the most recent financial crisis—with a renewed emphasis on responsible lending—it is a little shocking to think someone would not want such a severe delinquency to have any impact on a person's access to credit.

However, it is possible that some persons are late in making payments owing to requirements that they provide a disconnection notice in order to qualify for energy assistance grants. PERC has always disagreed with the provision of a disconnection notice as a criterion for energy assistance eligibility, and that instead such programs should specifically link eligibility to proof of income. This has the twin virtues of being both fairer, and not forcing someone to either harm their credit standing or engage in brinksmanship with a utility service provider that could result in service termination and impose unnecessary reconnection fees on already cash-strapped persons.

In conclusion, as demonstrated by years of empirical evidence, the claim that low income Americans are disproportionately harmed by including fully reported utility payment data in consumer credit reports is entirely baseless. Very few who earn $50,000 or less per annum actually have moderately late payments, while a minority pay 90-days or later (much of which is already included in credit reports and certainly in NCTUE reports) and the majority—over 80%--pay their bills on time all the time without getting any benefit. The big lift from including fully reported utility payment information in credit reports is experienced by the Credit Invisibles, 40% of whom receive some variant of a prime credit score with the inclusion of this data. Evidence also shows that most utility companies that fully report attempt to do so in consumer friendly ways, including providing a 60-day grace period for payments and not reporting uncollected balances below a certain dollar threshold.

Among the lowest income households examined (annual incomes under $20,000) 20% more had score increase than decreases with full-file alternative data reporting (36% had an increase and 16% had a decrease). Among all households, 17% more had score increases than decreases (29% had an increase and 12% had a decrease). Low-income households, then, benefit from full-file reporting of alternative data and do so relatively more than higher income households.

Question 3: Opt-in system
NCLC asserts a better approach would be to let consumers choose to have their payment information reported. What are your thoughts on an "opt-in" system for reporting utility payment data to credit bureaus?

The futility of this approach is demonstrated both in theory and in practice. In theory, a person acting rationally and in their own self-interest, would only elect to have those accounts reported to a credit bureau that he/she knew, ex ante, that they would be regularly paying in full. They would opt-out from having derogatory information included that could lower their credit score and harm their credit standing. Under such conditions, only positive data would enter into the credit reporting system, which would degrade the predictive value of the data as all persons would look the same. Given pure data homogeneity, lenders would be unable to differentiate goods from bads (low risk persons from high risk persons) and would be forced to rely on other data or other means of credit underwriting, including rationing.

Empirically, the infeasibility of opt-in utility payment reporting is supported by decades of evidence from around the world. If the default trigger is set to opt-in, very few persons will do so, while if it is set to opt-out, very few will exercise this option too. Looking at organ donor rates in countries that are highly alike, but differ only on whether persons must opt-in or opt-out to become an organ donor, one can learn a valuable lesson. For instance, in Sweden one must opt-out to be an organ donor, and in Norway one must opt-in. In Sweden over 90% of all citizens are organ donors, while in Norway just over 10% are. The consequence in the context of U.S. credit markets is that under an opt-in regime too few of the thin-file, no-file population will take advantage of this opportunity. The market produced several firms, most notably Payment Reporting Builds Credit (PRBC), that were well-funded and with large consumer advertising budgets, but that never had traction with consumers. In PRBC's first decade, just over 100,000 persons had enrolled, and few sustained the relationship very long. Of those, many were not low income or credit invisible.

Further evidence of the fatal deficiencies of opt-in utility payment reporting can be found from the world of credit repair organizations (CROAs), that routinely charge consumers a fee for attempting to remove accurate derogatory information from credit reports. The home page of Lexington Law Firm boasts of the millions of derogatories removed on behalf of their clients. This is only put forward to suggest that given the choice, rational consumers will elect to remove (or not report) derogatory information, and only include positive payment data.

Question 4: Research

NCLC asserts that the raw data in your study has not been made available to them. We know that consumer data is highly private and must be safeguarded. We are aware that you offered to collaborate with any researcher suggested by NCLC. This was an extraordinarily positive and collaborative approach on your part. What was the result of the offer that you made to NCLC to collaborate on research?

Two years ago, in response to NCLC allegations that our joint research with the Brookings Institution was no longer relevant owing to possible impacts from the macro-economy, we reached out to the NCLC to better understand their specific concerns. This was not the first time that PERC had attempted to communicate with the NCLC to discuss their concerns and to ascertain whether it would be possible to identify a common or middle ground. Previous attempts centered around issues such as the requirement in some areas that a consumer provide a disconnection notice to qualify for LIHEAP energy assistance funds, and the notion that credit access for the thin-file/no-file population would result in over-extension. Previous communications efforts were largely unsuccessful and were about as productive as a Sunday morning talk show.

Despite previous failed attempts, and because PERC is fully committed to this solution, PERC once again approached the NCLC to see what it would take for them to "trust" our or anybody's research on this topic. The NCLC had told us that they didn't trust our findings, Brookings' findings, the Federal Reserve Boards' findings, the Federal Reserve

Bank of Boston's findings, or findings from the Center for Financial Services Innovation (CFSI) or the Corporation for Enterprise Development (CFED). In short, they would only "trust" the findings if they could insert a hand-picked researcher into the process. PERC agreed to this, and NCLC offered Mr. Birny Birnbaum of the Center for Economic Justice (CEJ).

This selection proved to be especially problematic. First, as Mr. Birnbaum is anathema to the credit bureaus that would have to provide the data for the analysis. He has made a career from attacking them in the courts and in state legislatures across the country. In fact, it is improbable that the NCLC could have selected a more unpalatable person to the nationwide credit bureaus for participation in this research project. Consequently, PERC spent months in discussions with the legal departments at two nationwide credit bureaus and finally was able to secure permission for Mr. Birnbaum to participate in the research project with full access to the source data.

Thereafter, Mr. Birnbaum continuously demanded special treatment, and at one point sent a detailed contract specifying a whole range of potential research outcomes and how they would be handled in both the report and in all communications related to the findings. In addition, Mr. Birnbaum sought a disproportionate share of the funds allocated by Annie E. Casey Foundation (approximately 80%), and wanted permission to raise additional funds separately to finance his own research beyond the scope of the original agreement. After many attempts to satisfy Mr. Birnbaum's demands—with both PERC and CFED agreeing to do the bulk of the work while Mr. Birnbaum would receive the majority of the support—PERC and CFED found the situation untenable and withdrew our offer to collaborate with Mr. Birnbaum. Interestingly, throughout this entire painstaking process, NCLC remained singularly unhelpful when approached to assist with certain issues, and was unwilling to contribute even a penny against the considerable total project costs.

Despite good faith efforts by PERC to collaborate with the NCLC and their proxy on recent research, obviously no good will was generated for PERC. Recently, the NCLC has launched a sustained whisper campaign on Capitol Hill against PERC and their research telling policymakers not to "trust" the findings, referring to PERC as an "industry shill" and a "consultancy fronting for industry." This, despite the fact that funding for the research came from two foundations (Ashoka and Annie E. Casey), and that industry is divided over this issue, and that PERC has never taken any funds from the utility industries. These unilateral and unprofessional actions by the NCLC have rendered future attempts at collaboration highly unlikely.

Question 5: State law
To the best of your knowledge, do any states currently have prohibitions on fully reporting utility payment data to credit bureaus? If so, why do these prohibitions exist? Were these prohibitions adopted to prevent reporting on time payment or are they due to broader concerns such as privacy? How would you respond to concerns that H.R. 6363 supersedes state law?

In 2005, after the Federal Trade Commission submitted its report to Congress on alternative data as per a mandate in the FACT Act, PERC surveyed state public utility commissions with the assistance of the National Association of Regulated Utility Commissions (NARUC). The survey resulted in having identified four states with partial prohibitions on the onward transfer of customer data to third parties. Without exception, these prohibitions were not oriented toward credit reporting, but rather were state add-ons to existing federal privacy laws (e.g. California added additional restrictions to Section 222 of the Telecommunications Act of 1996 restricting all onward transfers of customer proprietary network information or "CPNI" to third parties). These were largely designed to promote privacy and prevent unwanted marketing.

The four states with the prohibitions are California (on telecoms CPNI), New Jersey (energy utilities), Ohio (only for publicly owned energy utilities), Texas (bill pending at time, did not pass). We have been informed, but have not verified, that the NCLC supported one state and the District of Columbia with efforts to ban the use of energy utility data in consumer credit reporting. We can confirm that when PERC and CFED helped convince a major energy utility firm in New Jersey to fully report customer payment data to nationwide credit bureaus, the NCLC intervened and threatened a law suit, citing the state law foreclosing this data exchange despite the fact that it was never intended to be applied to this context.

We strongly disagree that this is a states' rights issue. Congress long ago determined that there exists a national credit market in the US and that regulating it as such was in the best interests of individuals and the economy as a whole. It is for this reason that every significant piece of legislation governing this data exchange—including the FCRA, the FACT Act, and the Equal Credit Opportunity Act—is oriented around a national market and supersedes state law. Imagine how unfair it would be for citizens of one state to have different laws on what can and cannot be included in a credit report. This is not practical, sustainable, or beneficial for borrowers, lenders, regulators, or the country as a whole. To the extent that H.B. 6363 is consistent with more than 40 years of statutory and regulatory precedent, we do not believe this forecloses extant state authority but rather clarifies extant federal authority.

Cc: Chairman Spencer Bachus
Ranking Member Barney Frank,
Chairman Shelley Moore Capito
Ranking Member Carolyn Maloney

NCLC®
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October 12, 2012

The Honorable Keith Ellison
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The Honorable Jim Renacci
130 Cannon House Office Building
Washington, DC 20515

Dear Congressman Ellison and Congressman Renacci:

This letter responds to your October 2, 2012 letter regarding questions that you did not have adequate time to explore in the hearing on September 13, 2012 before the House Committee on Financial Services entitled "Examining the Uses of Consumer Credit Data." Thank for this opportunity for us to provide additional information regarding our opposition to full file utility credit reporting.

Question 1: No score better than a low score
During the hearing, you asserted that no credit score was better than a low score. What empirical evidence can you provide that substantiates this assertion? Please provide research regarding cost and access of credit and insurance as well as access to employment.

As we noted in our September 13, 2012 written testimony, a low credit score can be worse than no score in some instances. For example, a low score can make a consumer the target of offers from predatory lenders, such as fee harvester credit cards, which come loaded with high fees but extend very limited actual credit to consumers. Fee-harvester card issuers, such as First Premier Bank, rely on prescreened lists of consumers with low scores or other black marks on their credit reports to send their solicitations.[1] A consumer with no score will not show up on such a prescreened list. Examples of companies offering prescreened or other lists focusing on consumers with low credit scores is provided in Appendix A to this letter.

1 *See* Jeremy Simon What Exactly is a 'Pre-Screened' Credit Card Offer?, Fox Business News, August 3, 2010, ("First Premier has a certain set of subprime requirements, mailing to the folks who would otherwise not qualify for credit.")

Furthermore, as your question notes, credit scores and reports are not solely used for lending decisions. Employers use credit reports in hiring and other employment decisions; the Society for Human Resource Management reports more than half of employers (60%) do so today.[2] In such cases, it is far worse for a worker if the employer sees a credit report with negative information (such as report consisting of single utility account with repeated late payments) than one with no information.

Insurance companies use credit scores when determining whether to approve applications and what prices to charge consumers. This is another instance in which not having a credit history is less harmful than having a bad history. As the Supreme Court noted in *Safeco Insurance Co. of America v. Burr*,[3] the absence of a credit score is treated as "neutral" in many states. Thus, a low score is worse than no score for insurance purposes, because a "no file" consumer will get a "neutral" rating not a bad one.

Question 2: Impact on lower risk pools

At the hearing, you asserted that low-income people pay utility bills late. Please provide us with evidence that shows the impact of late utility payments on credit scores.

In our September 13, 2012, written testimony, NCLC provided recent data from state utility regulatory commissions clearly demonstrating that low income electric and natural gas utility customers receiving bill payment assistance are far more likely than "general residential" customers to make late payments. The arrearage rates reflected in the publicly-available data provided by NCLC identify much higher arrearage rates than those referenced in the recent PERC study. This data is reproduced in Appendix B to this letter.

The importance of this disparity cannot be overstated. It is widely acknowledged, including within the credit reporting industry, that reported payments deemed to be 30 or more days late have a detrimental impact on credit scores. For example, FICO itself reports that a single 30-day delinquency will damage a credit score of 680 by 60 to 80 points, and a score of 780 is reduced by 90 to 110 points after a single late payment.[4] Thus, increased reporting of late

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2 Society for Human Resource Management, Background Checking: Conducting Credit Background Checks, Jan. 22, 2010, at http://www.shrm.org/Research/SurveyFindings/Articles/Pages/BackgroundChecking.aspx.

3 127 S. Ct. 2201, 2206-2207, n. 4 (2007) (noting that a number of states require the use of "neutral" credit scores for thin or no file consumers).

4 FICO, "Credit missteps – how their effect on FICO scores vary," undated, at http://www.myfico.com/crediteducation/questions/credit_problem_comparison.aspx.

payments from full utility credit reporting logically translates into increased negative impacts on credit scores.[5]

Question 3: Research

In your written testimony, you assert that the raw data in PERC's study has not been made available to you. We know that consumer data is highly private and must be safeguarded. We are aware that PERC made an extraordinary offer to collaborate with any researcher suggested by NCLC. What was the result of the offer that PERC made to NCLC to collaborate on research?

In response to the offer to collaborate with a researcher, NCLC recommended that PERC contact Birny Birnbaum, a former Texas state insurance official and well-regarded researcher with experience in credit reporting issues. NCLC was not a party to negotiations that ensued between Mr. Birnbaum and PERC. However, we understand that parties did not reach an understanding that resulted in significant collaboration.

Note that Mr. Birnbaum and his organization are one of the signatories to the letter sent in opposition to H.R. 6363. An updated letter is attached as Appendix C.

Question 4: Marketing

You stated that "a low score can put a target on the consumer's back for predatory lenders instead of protecting them from unaffordable credit." Please provide us with evidence that the reporting of alternative data leads to an increase in predatory lending/marketing?

As discussed in our response to question 1, a low score can make a consumer the target of offers from predatory lenders, such as fee harvester credit cards or subprime auto lenders. Appendix A includes examples of companies offering prescreened or other lists focusing on consumers with low credit scores. A consumer with no score will not show up on such a list because he or she will not have a file at a credit reporting agency to be included on such a list.

Question 5: State law

To the best of your knowledge, do any states currently have prohibitions on fully reporting utility payment data to credit bureaus? If so, why do these prohibitions exist? Were these prohibitions adopted to prevent reporting on time payment or are they due to broader concerns such as privacy? Please be specific and provide information on the four states you mentioned that prohibit reporting of utility payments. Also, if any of the prohibitions are more recent within the past 5 years—did the NCLC play any role in having the prohibitions implemented?

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5 While FICO's website discusses the impact of late payments generally, NCLC does not have access to the proprietary algorithms that may or may not differentiate between derogatory reports from furnishers in different industries.

NCLC is aware that there is at least one state with a prohibition on fully reporting utility payment data to credit bureaus; however, NCLC did not assert in our September 13 oral or written testimony that there are specifically four such states. NCLC was not involved with the drafting of the state legislation in question and we do not want to speculate on the legislative intent of these provisions.

Thank you for your attention. If you have any questions about this letter, please contact Chi Chi Wu (cwu@nclc.org) or John Howat (jhowat@nclc.org) at (617) 542-8010.

Chi Chi Wu
National Consumer Law Center

APPENDIX A

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- Canada Leads
- Cell Phone Leads
- CEO Leads
- Chiropractor Leads
- Church Leads
- College Leads
- Construction Leads
- Credit Repair Leads
- Dentist Leads
- Doctor/Physician Leads
- Financial Planner Leads
- Hospital Leads
- Hotel Leads
- Insurance Leads
- Investor Leads
- IT Professional Leads
- Lawyer Leads
- Life Insurance Leads
- Loan Modification Leads
- Loan Officer Leads
- Manufacturers Leads
- Media Contacts Leads
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Bad Credit Leads

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Have we got the ultimate quality in bad credit contacts for you!

Sales Leads Plus is the best option for hot marketing leads at the best prices.

The market for sellers of bad credit products and services is one of the hottest selling trends today. Between the state of the lending industry, the recessed economy and the sad state of the job market, you are definitely in the right business for excellent continual sales volume and ROI. For **bad credit leads**, this is the right place. Sales Leads Plus makes it our business to know all market segments in every industry inside and out. This habit of ours allows us to provide sales teams everywhere with the best leads available.

We are passionate about our data collection here at Sales Leads Plus. Our team of savvy marketing and sales consultants work closely with our IT wizards in producing the best **bad credit leads** you'll find anywhere. You are assured of fresh accurately filtered leads as we collect, sort and compile our leads lists completely in house. This also allows us to offer you the best pricing found anywhere on top quality sales leads at the best prices in the industry.

The top choice for bad credit prospects today is Sales Leads Plus.

Consumers and small business owners alike are hungry for a solution to their downward trodden credit score and report. We are over run with **bad credit leads** requesting help and information on every product and service conceivable for this buying group. You won't have to worry about running out of fresh leads to people demanding what you have to offer them. Sales Leads Plus can keep you in connection with this starving buying segment constantly.

Permission based marketing is a highly recommendable approach to this desperate target audience. It is wise to remember that their ego and social status is at stake in this situation. This means that if you are a savvy marketer or sales person, you will only direct your efforts at fresh bad credit contacts. Marketing to people in this situation is a piece of cake, as long as your message is respectful and sympathetic as well as delivered at the moment of impulse to fix the issue now.

Timing is everything with bad credit prospects. Hot fresh leads from Sales Leads Plus.

Rest assured that you won't be found guilty of spamming any person contacted on our bad credit contacts lists. All of our leads for this market are generated through user requests for assistance through online opt-in forms. This is your direct line to a ready to purchase permission based buying group of massive proportions. We do not resell already spent bad credit prospects, or any other type of marketing leads for that matter. Nor do we allow our leads to be resold. This is a quality leads providing service for savvy marketers and sales teams who demand price and quality to put them on top.

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How is your data compiled?

Am I renting or buying the data?

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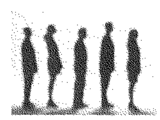
•Net Worth Lists
•Baby Boomers
•Ethnic and Surname Lists
•Millionaires
Specialty Business Lists
•Cottage Industry / Home-Based
•Business Executives
•Small Businesses
•Women Owned Businesses
•Minority Owned Businesses
Responsive Investors / Financial Lists
Newborns & Babies Lists
Beacon & FICO Score Lists
Automobile Owners Mailing Lists
Students Mailing List
SIC Code Lists
Medical Mailing Lists
AMA Mailing List / Doctors by Specialty
Nurses Mailing Lists by Specialty

Credit Score Mailing Lists
Beacon Score Mailing Lists
FICO Score Mailing Lists

Good Credit Lists & Bad Credit Mailing Lists



Absolute Lists Modeled Credit Score Mailing List:

Is a statistically derived scoring system created to identify FICO-like industry credit scores using historical patterns of credit usage and payment behavior. The index is built on powerful predictors, such as mortgage information, retail card debt, revolving credit card debt and other loan and financial information. This file is aggregated and then applied at the zip+4 geographic level so it can be used for any offers that do not require permissible purpose or a firm offer of credit. The scores closely resemble FICO scores ranging from 450-850. This list works well for a wide range of offers including banking and financial offers, debt consolidation and refinancing, bank card and retail card offers, mortgage offers, direct-to-consumer insurance offers, automotive offers, highly promotional offers and low-end offers.

Beacon Score Mailing List:

Mailing lists can be derived from actual Beacon Score ranges and selections if a firm offer of credit is being offered in your mailing or telemarketing script. To ensure compliance from the credit bureau there are disclosures and Terms & Conditions which must be present on the mail piece or in the body of the telemarketing script. All mail pieces and scripts must be submitted for approval and restrictions do apply.

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Internet Marketing
Data Hygiene
Leads and Lists A-Z
Ailment Mailing Lists
Auto Trigger Leads
Auto Triggers
Bankruptcy Lists
Business Lists
Credit Bureau Leads
Credit Card Turndowns
Credit Debt Leads
Credit Repair Leads
Credit Score Auto
Debt Settlement Lists
Diabetic Leads
Diabetic Lists
Direct Mail Leads
Easy Dialer
Easy Dialer Training
Email Broadcasts
Email Lists
Expiring Loans Leases
Fannie Mae Leads
FHA Mortgage Leads
Final Expense Lists
HARP Refi Leads
HARP Refinance Leads
Health Insurance Leads
Investor Leads

Credit Repair Leads

Focus your **credit repair leads** using a database from **Brokers Data** containing known prospects with lower summarized credit scores, high utilization of bankcards and/or having bankcard turndowns. We can also use filters to determine if there are any credit delinquencies present.

Close more deals using our **credit repair lists.** We can target recent bankruptcy discharges, low credit score range, homeowners and more using either self reported credit leads or Modeled subprime and challenged credit prospects that can be used for non firm offers of credit.

Why use high cost leads when using our internet leads, modeled data and other targeted datasets can attract the clients you want using a lower cost, more targeted and accurate data set.

If you do decide to use an internet generated lead, a phone append is advisable and will increase the integrity of the phone numbers substantially.

We are always on the cutting edge of lead generation and the bevy of lead types that may be available at the time of your inquiry.

All leads are *not* created equal and we will help you make sense of it all and we will steer you away from the data and leads we know from client feedback does not perform as advertised.

Trial and error can get very expensive.

Brokers Data will have a solution that will work for you so do not hesitate to give us a call and one of our consultants will be happy to put a credit repair leads list together for you.

Our delivery turnaround is usually same day but no longer than 24 hours and data is updated daily, weekly or monthly. We have low minimums so you can test a file, handsome discounts on volume orders and most filters are available at no additional charge.

We can even target your list by the geographical area you want to market to so staying local is not a problem.

Contact Brokers Data

Complete the form below to receive information about any of our products or services. A representative from **Brokers Data** will be assigned to follow up with you within the next 30 minutes, M-F 9am-6pm EST.

Please call us at **(800) 884-7507** during normal business hours for prompt service. Your information is kept completely confidential

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First Name*
Last Name*
E-mail Address*
Business Phone*
Best Time To Contact:* —Select—

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- 24/7

APPENDIX B

State/Utility/Date	Residential Customer Arrears									
	General Residential Customers					Low-income/Energy Assistance Customers				
	Total #	30 - 60 days late		60+ days late		Total #	30 - 60 days late		60+ days late	
		#	%	#	%		#	%	#	%
Iowa[1]										
All Investor-owned Gas and Electric Utilities (July 2012)	1,824,122	238,696	13.1%	n/a	n/a	100,731	26,340	26.1%	n/a	n/a
California[2]										
Pacific Gas and Electric (June 2012)	3,780,953	304,591	8.1%	221,016	5.8%	1,527,683	178,742	11.7%	192,925	12.6%
Southern California Edison (July 2012)	2,839,510	218,967	7.7%	83,670	2.9%	1,428,737	301,050	21.1%	188,881	13.2%
San Diego Gas and Electric (June 2012)	959,965	100,934	10.5%	100,759	10.5%	297,965	96,649	32.4%	101,563	34.1%
Ohio[3]										
Columbia Gas Company (December 2011)	1,293,349	n/a	n/a	275,309	21.3%	n/a	n/a	n/a	n/a	n/a
East Ohio Gas Company (December 2011)	1,106,832	n/a	n/a	171,700	15.5%	n/a	n/a	n/a	n/a	n/a
Ohio Power Company (December 2011)	1,274,053	n/a	n/a	104,672	8.2%	n/a	n/a	n/a	n/a	n/a
Massachusetts[4]										
Massachusetts Electric Company (April 2012)	1,105,150	n/a	n/a	148,512	13.4%	140,968	n/a	n/a	49,146	34.9%
Columbia Gas of Massachusetts (June 2012)	263,288	n/a	n/a	51,660	19.6%	30,426	n/a	n/a	16,402	53.9%
NSTAR Electric Company (June 2012)	986,719	n/a	n/a	176,862	17.9%	84,452	n/a	n/a	28,319	33.5%

NOTES

[1] Source: Iowa Utilities Board from Monthly electric and gas utility reports. Available at http://www.state.ia.us/government/com/util/consumer_information/residential_data.htm
Iowa utilities do not report vintage of customer arrears. While all past due accounts are listed here as 30 - 60 days late, some accounts may be more seriously past due.

[2] Source: California Public Utilities Commission, electric and natural gas utility compliance filings.
Proceeding No. R1002005. Available at http://docs.cpuc.ca.gov/EFileSearchForm.aspx (enter Proceeding #).

[3] Source: Public Utilities Commission of Ohio, electric and natural gas utility compliance filings.
Case # 12-1449-GE-UNC. Available at http://dis.puc.state.oh.us/CaseRecord.aspx?CaseNo=12-1449&x=0&y=0.
Annual reports include information on all residential customers and accounts in arrears by more than 60 days.
Arrears of less than 60 days and disaggregated low-income customer information is not included.

[4] Source: Massachusetts Department of Public Utilities, Andrea Saia

APPENDIX C

October 12, 2012

The Honorable Jim Renacci
130 Cannon House Office Building
Washington, DC 20515

Dear Congressman Renacci:

The undersigned consumer, civil rights and advocacy groups write to you to express our concerns about H.R. 6363, and the issue that it promotes – full file utility credit reporting. This practice will add millions of new negative reports to the credit reporting system and we fear that it may harm many consumers. It also may undermine long-standing protections developed by state utility commissions across the country to protect consumers when utility bills spike during weather extremes. Full file utility credit reporting could also hurt job seekers when employers use credit reports, and consumers when they buy home or auto insurance.

For these reasons, we believe there are significant concerns about the use of full file utility reporting data. We do not oppose permitting consumers to voluntarily opt-in to full file utility credit reporting. But we are very concerned about the effects of full file utility credit reporting that is not voluntary for consumers.

Proponents claim that reporting utility payments will help improve the credit reports of tens of millions of consumers. However, their statistics are based on data regarding the very few electric and natural gas utilities that do fully report on a regular basis and do not appear to be representative of payment patterns in different states and regions. For example, proponents claim that fewer than 3% of consumers earning $50,000 or less annually have a single 60-day late utility payment during a one-year period. Yet data filed with or from utility regulators in a number of states indicates the percentages of utility consumers paying late is much higher – from 11% in California to 20% in Massachusetts to 21% in Ohio. Thus, to the extent that utility reporting creates a score for "thin file" or "no file" consumers, we fear that it will end up being a bad credit score.

Proponents assert that a low credit score is better than no score. They state "the low score is a powerful protection against over-extension and irresponsible lending." We believe that this assumption is wrong: a low score can affirmatively harm consumers. A low score can put a target on the consumer's back for predatory lenders such as fee-harvester credit cards, who rely on pre-screened lists of consumers with bad credit.

Furthermore, credit scores and reports are not solely used for lending decisions. Many employers use credit reports in hiring and other employment decisions. In such cases, it is far worse for a worker if the employer sees a credit report with negative information (such as report consisting of single utility account with repeated late payments) than one with no information.

Also, insurance companies use credit scores when determining whether to approve applications and what prices to charge consumers. This is another instance in which not having a credit history is less harmful than having a bad history, as the absence of a credit score is treated as "neutral" in many states.

The National Association of State Utility Consumer Advocates voted to oppose full file utility credit reporting[1] in part because it conflicts with utility consumer protections in many states. For example, the "Winter Moratoriums" in several cold weather states prohibit utilities from disconnecting service during the winter months when there is financial hardship. The Winter Moratorium recognizes that financially stretched households may have difficulty paying their bills during the expensive hearing months, but will eventually catch up during the summer. Full utility credit reporting, by threatening consumers with black marks on their credit reports even when state law was designed to give them some breathing room, would operate in conflict with the policy objective of the Winter Moratorium.

Thank you for your attention. If you have any questions about this letter, please contact John Howat (jhowat@nclc.org) or Chi Chi Wu (cwu@nclc.org) at (617) 542-8010.

John Howat and Chi Chi Wu
National Consumer Law Center
(on behalf of it low-income clients)

Birny Birnbaum
Center for Economic Justice

Ed Mierzwinski
U.S. PIRG

Pamela Banks
Consumers Union

Charles A. Acquard
National Association of State Utility Consumer Advocates

Jeffrey Chester
Center for Digital Democracy

Shanna L. Smith
National Fair Housing Alliance

Ruth Susswein
Consumer Action

Elliott Jacobson
Action, Inc.
Gloucester, MA

[1] National Association of State Utility Consumer Advocates, Resolution 2010-3: Opposing "Full Credit Reporting" of Payment Histories on Residential Gas and Electric Accounts, June 15, 2010, *available at* www.nasuca.org/archive/Full%20Credit%20Reporting%20Resolutiong%20FINAL%202010-3.doc.

Mark W. Toney
TURN—The Utility Reform Network
San Francisco, CA

Dave Rinebolt
Ohio Partners for Affordable Energy
Findlay, OH

Lana Ross
Iowa Community Action Association
Des Moines, IA

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STATEMENT OF THE

NATIONAL ASSOCIATION OF REALTORS®

SUBMITTED FOR THE RECORD TO THE

UNITED STATES HOUSE OF REPRESENTATIVES COMMITTEE ON FINANCIAL SERVICES SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND CONSUMER CREDIT

HEARING TITLED

EXAMINING THE USES OF CONSUMER CREDIT DATA

SEPTEMBER 13, 2012

INTRODUCTION

On behalf of the 1.1 million members of the NATIONAL ASSOCIATION OF REALTORS® (NAR), who are involved in residential and commercial real estate as brokers, sales people, property managers, appraisers, counselors, and others engaged in all aspects of the real estate industry, thank you for holding this hearing to examine the uses of consumer credit data.

NAR has a long history of involvement in issues concerning the use and disclosure of consumer credit data. Past concerns have focused on consumer credit bureau reporting practices, the calculation and use of credit scores for lending purposes, the introduction of insurance scoring and its impact on access to and the cost of property casualty insurance, and the ability of consumers to access and challenge information contained in the reporting bureaus' files of an individuals credit history.

Most recently, in November 2010, the Board of Directors of the National Association of REALTORS® approved policy that advocates for lenders, FHA, the GSEs, and Federal Regulators to reassess their credit policies to ensure more qualified, creditworthy borrowers have access to the credit they need in order to secure a mortgage. At the time, our members believed that the housing and mortgage markets had over-corrected, and this was one of the major issues holding back the housing recovery - excessively tight credit policy.

Unfortunately, in the two years since NAR adopted this policy, the credit pendulum has moved very little from the overcorrected position of stringent credit policy toward the middle, or a more moderate position. Therefore, to help the committee better understand the issues that REALTORS®, and their clients, face on an on-going basis; NAR will share the findings and recommendations from our members that shaped the organization's credit policy and their concerns with current methods of reporting and assessing credit worthiness.

RECENT CONSUMER CREDIT ACCESS AND DATA CONCERNS

What started as a problem with subprime, predatory loans became a systemic problem affecting all segments of the mortgage and housing markets. This problem had many facets. Lenders made subprime loans to prime borrowers. They also made loans to borrowers who were believed to be prime borrowers without verifying their income or carefully assessing the value of the property. Home values rose far faster than incomes. Mortgage-backed securities received triple A credit ratings based on overly optimistic projections of the performance of their underlying collateral (for example, Alt-A, subprime, and even prime loans). The Nation experienced a serious recession with high unemployment that resulted in less demand for homes and lower home values. Investors were no longer willing to invest in private label securities—mortgage backed securities without a federal guarantee. As a result, many homeowners are unable to afford their mortgages, and are unable to refinance or sell them. A short sale or a foreclosure too often is the only option.

Lenders responded to these problems by refusing to make loans unless they could sell them to Fannie Mae or Freddie Mac (the government sponsored enterprises, or GSEs) or have them insured by FHA. Combined, the GSEs and FHA currently account for more than 90 percent of the mortgage market. For the last several years, lenders have made hardly any non-GSE/non-FHA loans because there is no private label secondary mortgage market and these purely private loans must be held in the lenders' own portfolios. Also in response to these problems, the GSEs and FHA took steps to strengthen their underwriting.

In contrast to the middle years of the previous decade when a very large proportion of potential borrowers were able to qualify for loans with loan-to-value ratios even higher than 100 percent, now it can be very difficult to qualify for 80%+ LTVs without excellent credit. The credit and lending communities and federal regulators should reassess the entire credit structure and look for ways to increase the availability of credit to qualified borrowers who are good credit risks. The inadvertent response to "risk layering" has been "safety layering" where so many safeguards are being imposed that there is little risk to making new loans. NAR believes these "pristine" loans are the result of excessively tight underwriting, not sound business practices. A move toward the middle of the credit pendulum, including more appropriate practices for assessing creditworthiness, will not only help individual, well-qualified potential borrowers, but also the entire housing market which currently suffers from an excess supply of housing and unduly tight underwriting criteria.

In order to facilitate movement away from the overcorrected credit arena, NAR has identified the following concerns, and offered some specific consumer data reporting/scoring recommendations as a starting point for adjusting the current unduly restrictive credit policies.

RECOMMENDATIONS

Impact of Lowering Available Lines of Credit and Increasing Utilization Rates on FICO Scores

A Fair Isaac Corporation's study covering the period of April to October 2009 shows that during that period, 14 percent of consumers experienced a reduction in their lines of credit. While 1/3 of these had their credit lines reduced because of a "risk trigger," the remaining 2/3 had no credit event that caused the reduction. Obviously, throughout this economic crisis, a very large number of consumers have been affected by reductions in their lines of credit.

When a credit card issuer reduces a consumer's line of credit or a mortgage lender reduces a consumer's home equity line of credit (HELOC), there may be an effect on the consumer's credit score. In determining a credit score, specifically the consumers Fair Isaac Corporation (FICO) score, 30 percent is based on "amounts owed," including whether a person is using a high percentage of the available line of credit. FICO research shows that consumers with a high debt load and a high utilization rate pose a greater credit risk.

NAR urges the credit scoring industry to amend its formulas to avoid harming consumers whose utilization rates increase because their available lines of credit are unilaterally reduced without a risk trigger related to the particular consumer. For example, credit scoring models could ignore the utilization rate for such consumers or compute the score as if the available lines of credit had not been reduced. Although the Fair Isaac study shows that the scores of most of those affected stayed within 20 points of the prior score, in today's tight underwriting environment, even one point can mean the difference between qualifying for a loan or not, or qualifying for an FHA down payment of 3.5 percent or 10 percent. With respect to consumers where the lower available lines of credit results in problems with their ability to handle their finances due to an emergency, late payments will very soon result in a lower score so lenders will in most cases be able to take that into account.

Need to Change Reporting and Treatment of Loan Modifications/Payment Plans

Lenders sometimes agree to approve a loan modification or a payment plan for a borrower. The benefit to lenders is they may avoid a foreclosure and minimize their loss, and the benefit to borrowers is they may be able to keep their home. While the borrower's credit is damaged, sometimes they can rebuild it by meeting their new payment obligations. This is only possible, however, if a lender reports the loan modification as the same loan with changes. Some lenders report loan modifications with a Code ("AC") that indicates "partial payment—not paid as originally agreed." In November 2009, the credit reporting agencies (the CRAs, Equifax, Experian, and TransUnion) started to allow a new code ("CN") that means "loan modified under a Federal government plan." Credit scoring companies need to ensure that their formulas recognize this code, and lenders need to utilize it when a loan modification is granted. Furthermore, NAR urges the credit scoring industry to study the credit risk performance of consumers whose loans are modified under a Federal government plan and modify the credit scoring formulas accordingly.

Fair Isaac Corporation has advised NAR that its research shows that borrowers not paying as originally agreed are more likely to become seriously delinquent in the near future. NAR questions the assumption that borrowers who agree to a loan modification or a payment plan for credit obligations they can no longer afford but who then demonstrate their ability to handle the modified payments are higher credit risks, especially given the now longer history, experience and ongoing modification of these types of loan modification programs. NAR has urged FICO to study the credit risk performance of these consumers and modify the FICO formula accordingly.

NAR urges the credit and lending communities and federal regulators to adopt reasonable, uniform reporting of loan modifications so if borrowers make on-time payments for a reasonable period their payments are reported as "paid as agreed." This recognizes that both parties agreed to the loan modification, that it has, in effect, replaced the prior loan, and that the consumer is working to restore good credit. Continuing to report payments indefinitely as "not paid as originally agreed" makes it difficult, if not impossible, for the borrower to begin to reestablish good credit until the loan is fully repaid. Refinancing will be practically impossible. The borrower may never be able to move to another home because the borrower's credit will never be good enough to qualify for another mortgage. The current variations in reporting means consumers are treated inconsistently and, accordingly, the system is viewed as being unfair. All of these effects are against the interest of every party involved and the housing market itself.

Establish Standards to Address Strategic Defaults

Press reports indicate that a significant number of borrowers who owe more on their mortgages than their homes are now worth, but who can afford to pay their mortgages, are nevertheless opting to default, sometimes after first buying another home. This action is usually referred to as a strategic default.

NAR believes that borrowers who have the financial ability to meet their mortgage obligations should do so. It is appropriate for a borrower whose default is not due to extenuating circumstances to be required to take more time to repair their credit history and qualify for new credit.

However, NAR urges the lending industry (including the FHA, the GSEs, and lenders) to adopt or retain, as appropriate, underwriting policies that take into consideration extenuating circumstances of the borrower. For example, it should be possible for a borrower to qualify for a new mortgage more easily and faster if extenuating circumstances, as determined pursuant to underwriting policies of the lender, occurred that led to the borrower's loan default.

Need for Research on the Impact of Credit Policies on Underserved Groups

NAR also believes that the industry must assess if there is a need for additional research on the impact of current credit policies on underserved groups. Not all groups have the same "culture" with respect to the use of credit. Some have thin files because they are not aware of their credit options, choose not to use credit to avoid potential misuse, are young and do not have a long credit history, or only have payment history related to cell phone and utility bills and rent. Others live in extended families where the household has a very high joint capacity to handle its financial needs and obligations, but find it difficult to qualify for a loan.

NAR continues to urge lenders to rely on non-traditional credit histories in underwriting loans for potential borrowers with thin credit files to determine if they are good credit risks. In addition, NAR urges credit score providers and the lending industry to amend their policies to avoid denying credit to borrowers who are good credit risks, but don't otherwise fit a traditional model.

Ensure Consumers Access to their Credit Scores

Section 1100F of the Dodd-Frank Act gives consumers the right to a free copy of their credit scores if a creditor takes an adverse action based on information contained in a consumer credit report. Previously, consumers only had the right to a free copy of their credit report in the case of an adverse action—and annually, if they requested a copy—but not the credit score in either case.

NAR, whenever an opportunity to amend the Fair Credit Reporting Act arises, has and will continue to support legislation to give all consumers the right to receive a free copy of their credit score from each national credit reporting agencies at the same time they receive a free copy of their credit report provided on request. Giving all consumers a right to receive a free copy of their credit score will avoid confusion and increase transparency with respect to consumer credit. Many consumers think they already have this right. Others are misled by sites that promise a free credit score but entice consumers into agreeing to monthly charges. Avoiding the need to distinguish between two classes of consumers—those that qualify for a free report and those that do not—will also make administration of the statutory free disclosure requirements easier for the credit reporting agencies.

CONCLUSION

REALTORS® understand well the impact that credit reports and the use of the data contained therein have on American households. They also believe that one of the biggest issues impacting the housing economy is the lack of available credit for potential homebuyers. If the housing finance industry, both private and government-backed, can move away from its overcorrected position of stringent underwriting requirements and move toward a middle ground, more moderate underwriting posture, a housing robust recovery will occur. And when housing recovers, so does the American economy.

NAR thanks you for this opportunity to share our thoughts on consumer credit data and its impact on the housing recovery. As always, the National Association of REALTORS® is at the call of Congress, and our industry partners, to help continue the housing and national economic recovery.