

National Consumer Law Center (on behalf of its low-income clients)
Center for Economic Justice
Consumer Action
National Housing Law Project
Privacy Rights Clearinghouse
U.S. PIRG
California Reinvestment Coalition
Connecticut Association for Human Services
Georgia Watch
Massachusetts Communities Action Network
Massachusetts Low Income Energy Affordability Network
Public Justice Center (Maryland)
Empire Justice Center (New York)
Virginia Citizens Consumer Council

July 20, 2018

Re: Section 201 of S. 488, the Credit Access and Inclusion Act

Dear Senator:

The undersigned consumer, housing, and advocacy groups write to you to express our continued concerns regarding the "Credit Access and Inclusion Act," which is now Section 201 of S. 488. We very much appreciate the significant changes in this bill since the previous version (H.R. 435). These changes address our concerns regarding preemption of state utility and telecommunication laws that protect consumers' privacy by prohibiting sharing of personal information. However, we still have serious concerns that this legislation, if enacted as is, would reduce privacy protections for residential tenants, including those who reside in HUD-subsidized housing.

Section 201 would prevent states from regulating landlords and others when they report payment information to credit bureaus or tenant screening agencies. Thus, landlords would be free to report negative information to a tenant screening agency if the tenant legally withholds a payment due to poor sanitary conditions, and states would be powerless to do anything about it. States are currently the ones that regulate the landlord-tenant relationship and the consequences from nonpayment of rent.

While we are not aware of any laws that currently contain prohibitions against reporting of nonpayment information to tenant screening agencies, there are efforts to pass tenant protections underway in many states. For example, an Illinois bill ([HB 4760](#)) would prohibit landlords and others that regularly report information to tenant screening agencies from continuing to report information if it is contained in a sealed court file. Section 201 of S. 488 would preempt this provision if enacted. Similarly, California law in the past prohibited the reporting of an eviction filing that was dismissed without a judgment. Given these state legislative initiatives, we would urge that the protection from preemption for state laws in Section 201 be extended to laws protecting tenants.

Section 201 of S. 488 would also override any current protections for HUD-subsidized tenants, such as the Privacy Act which we understand has been applied to Public Housing Authorities (PHAs). While the bill is touted as allowing positive information, it would also allow PHAs to report negative information

without these current protections.¹ If Section 201's purpose is to ensure "Positive credit reporting permitted" as its title states, we would urge that its provisions be limited to positive information. Reporting only positive information only is consistent with the intent of this bill to help "thin file" or "no file" consumers building positive credit histories.

Finally, on a technical note, we recommend that the language excluding state utility and telecom consumer protection laws from preemption be modified to explicitly include regulations and administrative orders from a state agency. While regulations and administrative orders already should be included under the scope of a 'law of any State', an explicit reference would forestall any future possible confusion.

Thank you for your attention. If you have any questions about this letter, please contact Chi Chi Wu at cwu@nclc.org or (617) 542-8010.

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¹ As an example of the type of negative information, media reports indicate there are currently 17,000 tenants of the New York City Housing Authority who owe back rent, many of whom have withheld rent due to poor and unsanitary conditions in their units. See NYCHA's out more than \$55M with nearly 17K tenants behind on rent: One in 10 tenants aren't paying rent; some are withholding their payments in protest, The Real Deal, July 15, 2018, at <https://therealdeal.com/2018/07/15/nychas-out-more-than-55m-with-nearly-17k-tenants-behind-on-rent/>.