NCLC
NATIONAL CONSUMER LAW CENTER®
Advancing Fairness in the Marketplace for All

Testimony before the

U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON FINANCIAL SERVICES

Regarding

"Who's Keeping Score? Holding Credit Bureaus Accountable and Repairing a Broken System"

February 26, 2019

Chi Chi Wu

Staff Attorney

National Consumer Law Center

7 Winthrop Square, 4th Fl.

Boston, MA 02110

617-542-8010

cwu@nclc.org

Testimony of Chi Chi Wu, National Consumer Law Center
Before the U.S. House of Representatives Committee on Financial Services
regarding
"Who's Keeping Score? Holding Credit Bureaus Accountable and Repairing a Broken System"
February 26, 2019

Introduction and Summary

Chairwoman Waters, Ranking Member McHenry, and Members of the Committee, thank you for inviting me to testify today regarding consumer credit reporting and the need for reform. I offer my testimony here on behalf of the low-income clients of the National Consumer Law Center.[1] NCLC has long advocated for stronger laws and regulation to ensure accuracy and fairness in the U.S. credit reporting system and to reform the Big Three credit bureaus (Equifax, Experian and TransUnion), known as the nationwide consumer reporting agencies ("CRAs") under the Fair Credit Reporting Act (FCRA).

NCLC has testified many times before Congress, including before this Committee, on the need for reform of the credit reporting system to address issues such as:

- unacceptable error rates and the myriad types of systemic inaccuracies in credit reports;
- the travesty of the automated dispute system used by the credit bureaus;
- the absurdity that credit reports and scores treats consumers who have fallen on hard times as irresponsible deadbeats;
- systemic racial disparities in credit scoring;
- the unfair impact of medical debt on credit reports; and
- the problems with use of credit reports for employment purposes.[2]

These are all topics we once again discuss, because none of them have been adequately addressed despite decades of efforts by federal and state regulators, state legislatures, and consumer advocates. Moreover, we added a new problem to address in 2017, the deficiencies in data security that led to the massive Equifax data breach, which also has not yet been adequately addressed.

---

[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 abuses from credit reporting agencies from every part of the nation. It is from this vantage point that we supply these comments. *Fair Credit Reporting* (9th ed. 2017) is one of the eighteen practice treatises that NCLC publishes and annually supplements. This testimony was written by Chi Chi Wu.

[2] *See, e.g.,* An Overview of the Credit Reporting System: Hearing Before the Subcomm. on Fin. Inst. and Consumer Credit of the H. Comm. on Fin. Servs., 113th Congr. (2014) (testimony of Chi Chi Wu); Use of Credit Information beyond Lending: Issues and Reform Proposals: Hearing Before the Subcomm. on Fin. Inst. and Consumer Credit of the H. Comm. on Fin. Servs., 113th Congr. (2010) (testimony of Chi Chi Wu).

A. Too Big, Yet Failing

Credit reports and credit scores play a crucial role in consumers' lives. They determine a consumer's ability to obtain credit and the amount they have to pay for it; whether they can buy a house or rent an apartment; and whether and at what price they can obtain insurance. Credit reports and credit scores can even affect a consumer's ability to find a job. It is no exaggeration to say that a credit report can make or break a consumer's financial life.

Yet unacceptable levels of inaccuracies in credit reports persist, affecting tens of millions of Americans. These errors can cost a consumer thousands of dollars in higher-priced credit, or worse yet, result in the denial of a job, insurance coverage, an apartment rental, the ability to open a small business, or to buy a house.

As we know, the definitive Federal Trade Commission (FTC) study on credit reporting errors found that 1 in 5 consumers have verified errors in their credit reports, and 1 in 20 consumers have errors so serious that they would be denied credit or need to pay more for it.[3] With an estimated 208 million Americans in the credit reporting system,[4] this means that 42 million consumers have errors in their credit reports, and 10 million have errors that can be life altering. Another indication of the massive accuracy problems is the fact that credit reporting and other consumer reporting problems are often the top category of complaints to the Consumer Financial Protection Bureau (CFPB), amounting to over 380,000 since July 2011.[5] Three-quarters of those complaints (or about 285,000) involve Equifax, Experian, or TransUnion.[6]

This level of errors and inaccuracy is unacceptable for an industry so important to the financial lives of Americans. We would not be satisfied with this failure rate for other critical industries – imagine if 5% of automobiles spontaneously exploded or 5% of airplanes fell out of the sky? Yet after 50 years of advocacy, legal changes, regulation, and enforcement, we are still faced with a fundamentally flawed credit reporting system. And it's not just the financial impact – these credit histories are our financial reputations. To paraphrase Shakespeare "Who steals my purse steals trash" but "he that filches from me my good name ... makes me poor indeed."[7]

To understand why the credit reporting system is so dysfunctional, we must always keep in mind two critical facts: (1) credit bureaus are entirely private companies that are publicly traded, which means their highest duty is to shareholder profit, not the public good or the American consumer; and (2) the paying clients of credit bureaus are not consumers, but the creditors and debt collectors who furnish or use the information contained in the credit bureaus' databases.

---

[3] Federal Trade Comm'n Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003 (Dec. 2012).

[4] Consumer Financial Protection Bureau, Consumer Response Annual Report January 1 – December 31, 2017 (March 2018), at 13, http://bit.ly/2TiROLR.

[5] *Id.* at 8; Consumer Financial Protection Bureau, Complaint snapshot: Mortgage (January 2019), at 16-17, https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/cfpb_complaint-snapshot-mortage_2019-01_liwsYNV.pdf (106,301 complaints from January 2018 to October 2018).

[6] Consumer Financial Protection Bureau, Consumer Response Annual Report January 1 – December 31, 2017 (March 2018), at 15, http://bit.ly/2TiROLR.

[7] Shakespeare, Othello.

The Equifax data breach in mid-2017 made many policymakers and Americans realize how consumers are the commodity of the credit bureaus, not the customers. Unlike most industries, we cannot vote with our feet when the credit bureaus fail to respond to our complaints and problems. Indeed, two years after the Equifax data breach, every single American consumer who wants credit still needs to deal with Equifax.

B. A Half Century Battle for Fair Treatment

Consumer advocates, members of Congress, state and federal regulators and private consumer attorneys have all been battling the credit bureaus for fair treatment for over 50 years. In 1968, Senator William Proxmire, often considered the father of the FCRA, explained the need to regulate the credit reporting industry as follows:

> The increasing volume of complaints makes it clear that some regulations are vitally necessary to insure that higher standards are observed with respect to the information in the files of commercial credit bureaus. I cite what I consider to be the three most important criteria for judging the quality of these standards. They are first, confidentiality; second, accuracy; and third, currency of information.
>
> * * * *
>
> There are many varieties of inaccurate information, but I shall mention only two. One is the case of mistaken identity, where two individuals with the same names are confused, and the deserving individual is denied credit because of something done by the other person.[8]

Fifty years later, the inaccurate information cited by Senator Proxmire as a key problem affecting credit reports still harms too many consumers. We've had 50 years of legislative activity including the FCRA, 50 years of consumer advocacy, and decades of enforcement by federal regulators and state Attorneys General – yet the struggle for consumer justice in credit reporting is far from being achieved. Some of the systemic inaccuracies that pervade the credit reporting system include:

- **Mixed files.** This is the very error cited by Senator Proxmire in 1968, in which information belonging to one consumer is improperly reported in another consumer's credit report. Mixed files are caused by insufficient and overly loose matching criteria, in particularly the practice of matching data based on only 7 out of 9 digits of a Social Security number.
- **Furnisher errors.** Errors in credit reports are often caused by the creditors and debt collectors that provide data to the credit bureaus, known as "furnishers." Common errors include attributing an account or debt to the wrong consumer, incorrectly recording a payment history, or "re-aging" a stale debt past the seven years permitted by the FCRA.
- **Identity theft.** Credit bureaus and furnishers both bear a share of the blame for the fallout from identity theft. The credit bureaus' loose matching procedures contribute to the problem of identity theft, and their data breaches give thieves the tools needed to

[8] 114 Cong. Rec. 24,903 (1968).

commit fraud. When consumers try to fix the aftereffects of identity theft, furnishers sometimes fail to believe them and the credit bureaus take the furnishers' side.

- **Ignoring judgments and legal settlements.** The credit bureaus will retain negative information even after court judgments or legal settlements declare that a consumer doesn't owe a debt.
- **Being declared dead.** In one of the worst types of credit reporting errors, consumers are labeled as "deceased" when consumers are alive and breathing.

One of the key tools developed by Senator Proxmire and the FCRA to combat inaccuracies in credit reports is the consumer's right to dispute errors and the credit bureaus' obligation to conduct a reasonable investigation. Yet the FCRA-mandated dispute system has been transformed into a mockery, as documented by NCLC's 2009 report issued *Automated Injustice: How a Mechanized Dispute System Frustrates Consumers Seeking to Fix Errors in their Credit Reports*. The report documented how the credit bureaus' entire role in dispute "investigation" was to convey disputes to furnishers through the highly automated e-OSCAR system. This system primarily using shorthand two- or three-digit codes, with, in a minority of instances, up to just a line or two of text. The credit bureaus used the same four or five codes over 80% of the time and failed to send supporting documentation submitted by consumers to furnishers, in clear violation of the FCRA. Workers did not examine documents, contact consumers by phone or email, or exercise any form of human discretion in resolving a dispute.

In addition, our 2009 *Automated Injustice* report documented how credit bureaus are universally biased in favor of furnishers and against consumers in disputes. In a practice known as "parroting," credit bureaus blindly adopt the response of the furnisher without performing any independent review.

In preparation for this hearing, we have released a 10-year update to *Automated Justice*, which is attached to this testimony. Our report *Automated Injustice Redux: Ten Years after a Key Report, Consumers Are Still Frustrated Trying to Fix Credit Reporting Errors* documents how in the intervening decade, there has been some reform, but much more needs to be done. It describes how the CFPB began exercising supervision authority over the credit bureaus and started the difficult task of compelling them to reform their procedures and practices, while a coalition of over 30 state Attorneys General reached a breakthrough settlement with the credit bureaus in 2015, requiring an array of changes.

Despite these very laudable achievements, the credit bureaus and the furnishers that supply them with information still have serious problems in ensuring the accuracy of credit reports, and the dispute process remains ineffective and biased. *Automated Justice Redux* contains story after story from lawsuits and the CFPB Complaint Database to illustrate the frustrations and harms caused to consumers from these problems.

It is well past time for major structural changes to the credit reporting industry. Consumers have waited 50 years for meaningful, real reform. These reforms should include:

- **Right of appeal.** Congress should establish a right for consumers to appeal when they disagree about the results of a dispute. The appeal could either be to an independent unit in the credit bureau or to a regulator, such as the CFPB or FTC. If the unit is housed within a credit bureau, the unit must have direct and unfettered authority to make independent decisions and not be subject to any restrictions or incentives to process disputes quickly or in favor of furnishers.

- **Stricter matching criteria.** Congress should require the credit bureaus to use stricter matching criteria, including matching information based on all nine digits of the consumer's SSN or eight digits plus full name and address. At a minimum, the CFPB should be required to engage in a rulemaking to impose stricter requirements and generally establishing minimum procedures to ensure "maximum possible accuracy."
- **Sufficient resources and independent review.** Congress should clarify that the credit bureaus must devote sufficient resources and conduct independent analyses in disputes
- **Injunctive relief for consumers**. Congress should give consumers the right to seek injunctive relief compelling credit bureaus to fix a credit report.
- **Provide a public alternative.** Congress should establish a publicly owned alternative for credit reporting. While public agencies are far from perfect, at least they would be responsive to public pressure and government oversight. If commercial credit bureaus are not responsive to a consumer's dispute, the consumer would have the option of having a lender or other user rely on the publicly owned credit bureau. We note that Demos will be coming out with a report proposing a public credit reporting system in the near future.

We note that all but one of the above reforms were included in Chairwoman Waters's bill from the last Congress, the Comprehensive Credit Reporting Reform Act (CCRRA) of 2017, which we strongly supported.[9] We would support similar reforms in an updated CCRRA of 2019, which is currently in draft.

Finally, we note that while CFPB supervision has resulted in meaningful progress toward getting the credit bureaus to improve accuracy and their dispute systems, we are concerned that the Consumer Bureau's efforts may be dialed back because of the change in leadership of the CFPB. We urge Congress to use its oversight role to make sure there is no backsliding of the CFPB's efforts on this issue.

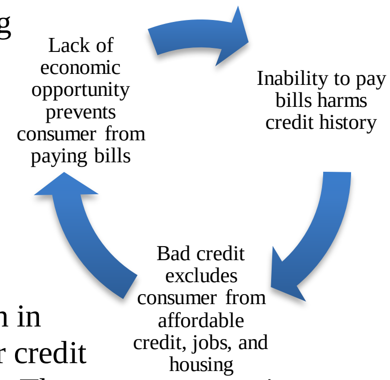
C. The Vicious Cycle Effect of Using the Past to Shape the Future

One of the fundamental flaws of the use of credit scores and credit reports is that it is overly blunt, lumping together negative events caused by very different circumstances. Credit reporting and scoring penalizes consumers who have fallen on hard times through no fault of their own, such as from illness, job loss, victims of fraud, or victims of natural disasters, treating them as irresponsible deadbeats. The most recent example is federal workers and employees of federal contractors affected by the recent government shutdown. Consumers may end up with impaired credit histories due to the financial trauma caused by extraordinary life events such as illness or natural disasters.

[9] *See* Letter supporting HR 3755, The Comprehensive Consumer Credit Reporting Reform Act of 2017, https://nclc.org/images/pdf/credit_reports/letter-ccra-waters-2017.pdf.

Indeed, a survey by Prudential Financial of federal employees, contractors, or their spouses found that 27% of them missed a mortgage or rent payment during the shutdown, 13% missed a student loan payment, and nearly half fell behind on bills in general.[10] Credit scores will assume that these delinquencies caused by losing a month's income due to political dysfunction should be treated the same, and have the same predictive value, as a default due to poor financial management by the consumer. Yet these are two fundamentally different circumstances, and likely two very different consumers.

More problematically, consumers who have had the bad luck of being affected by illness, natural disasters, fraud, or other extraordinary life events could have their economic lives significantly impaired for seven years (or ten years, in the case of bankruptcies). The credit reporting damage from the life event may shut them out of affordable credit markets, and could cause them to be denied jobs, apartment rentals, or pay hundreds of dollars more in auto insurance premiums. The cumulative impact of these financial calamities could strand a consumer economically for years after the event itself, which in turn makes it more difficult for them to pay their bills and repair their credit standing. This creates a vicious cycle in a consumer's economic life. These issues are discussed in depth in our report, *Solving the Credit Conundrum: Helping Consumers' Credit Records Impaired by the Foreclosure Crisis and Great Recession* (2013).



This vicious cycle effect of using the past to judge the future is also responsible for the stunning racial disparities in credit scores. Study after study has found that African American and Latinx communities have lower credit scores as a group than whites - a list of studies is available in our policy brief, *Past Imperfect: How credit scores and other analytics "bake in" past discrimination and perpetuate it* (2016). Communities of color have lower credit scores as a group, not because they are somehow less responsible, but because credit histories are reflective of the racial economic divide and wealth gap in this country.

Communities of color have less income than white Americans, but it is the disparity in assets that is most stunning: African American families own less than seven cents for every dollar in wealth owned by white families, while Latinx households own less than eight cents for every dollar of white wealth.[11] With fewer assets to draw on, people of color – and the friends and family to whom they might turn – are far less able to cushion the blow of financial calamities. This lack of a cushion damages their credit histories, which in turn impedes their access to employment, housing (both rental and homeownership), insurance, and of course, affordable credit. The historic and current discrimination that is reflected in credit histories makes it more difficult for communities of color to move ahead.

---

[10] Lananh Nguyen, How the Last Shutdown Affected Federal Workers' Household Finances, Bloomberg News, Feb. 12, 2019, www.bloomberg.com/news/articles/2019-02-12/workers-missed-bills-burned-savings-during-government-shutdown.

[11] Amy Traub, et al., Demos and Institute for Assets & Social Policy, Brandeis University, The Racial Wealth Gap: Why Policy Matters, Mar. 10, 2015, at 1, www.demos.org/sites/default/files/publications/RacialWealthGap_1.pdf.

We need a better way to judge consumers. We need a system that can distinguish between consumers who are truly irresponsible and those who simply fell on hard times. We need a system that can take into account extraordinary life events. And, we need a system that does not further widen the economic chasm between whites and communities of color.

Part of the solution is to require the credit bureaus be more precise and distinguish between consumers who have an extraordinary life event versus those who are truly irresponsible. Some proposals to do so would be:

- **Relief for federal workers/contractors and natural disaster victims.** The credit bureaus should be prohibited from reporting adverse information caused when the consumer is affected by economic dislocation on a mass scale, such as the recent government shutdown or a federal or state declared natural disaster. Congress must take action on this issue, as the credit bureaus have ignored or rejected requests by consumer and advocacy groups to voluntarily provide credit reporting relief to federal workers, federal contractors, and natural disaster victims.[12]

- **Help victims of abusive lending practices.** Consumers are unfairly penalized when they have been the victim of abusive practices, such as predatory mortgages or student loans resulting from for-profit school fraud. Adverse information related to these abuses should be removed from credit reports.

- **Limit reporting of medical debt.** Medical debt is one of the most unfair forms of negative information in credit reports, as discussed in Section F below, and the reforms discussed in that section would alleviate some of the harm for consumers who have experienced financial distress from illness and high healthcare bills.

The harm from negative credit reporting would also be reduced by prohibiting non-credit uses of credit information. As discussed in Section G, there is no good evidence for the use of credit reports in employment, and its use in insurance is also highly problematic.[13]

- **Limit non-credit uses of credit reports and scores.** Severely restrict the use of credit reporting information in employment and ban it for insurance.

Another part of the solution is to reduce the time limits that negative information can be reported. This would lessen the amount of time that adverse information can harm consumers. There is nothing special about the current seven-year time limit for negative information under

[12] *See* Letter urging credit bureaus to provide credit reporting relief to federal workers affected by the shutdown, Jan. 18, 2019; Letter urging credit bureaus to provide credit reporting relief to employees of federal contractors and small businesses affected by the shutdown, Jan. 25, 2019; Letter urging credit bureaus to provide credit reporting relief to consumers affected by natural disasters, Jan. 18, 2019. All letters available at https://www.nclc.org/issues/credit-reports.html => Credit Report Letters.

[13] For a discussion of why the use of credit scores in insurance is unfair, *see* Stephen Brobeck, et al., Consumer Federation of America, The Use of Credit Scores by Auto Insurers: Adverse Impacts on Low- and Moderate-Income Drivers (Dec. 2013), https://consumerfed.org/pdfs/useofcreditscoresbyautoinsurers_dec2013_cfa.pdf.

the FCRA. It is certainly not universal. For example, the time limit for negative information in Sweden – a country that is as economically vibrant and prosperous as the United States if not more so – is three years.[14]

- **Shorter time limits for negative information.** The FCRA should be amended to shorten the time periods for negative information to four years (seven years for bankruptcies).

All but the first of these reforms were included in the CCRRA introduced in the last session of Congress, which we supported. The first item, relief for federal workers and contractors, is the subject of the Chairwoman Waters's draft Protecting Innocent Consumers Affected by a Shutdown Act, which we also support.

D. Addressing credit invisibility: the devil is in the details

Another perplexing phenomenon of the credit reporting system is "credit invisibility." According to the CFPB, 26 million Americans (or about 1 in 10) do not have a credit history, and another 18 million are unscorable because their histories are too scant ("thin") or old.[15] The CFPB also found that African American, Latinx, and low-income consumers are more likely to have no credit history or to be unscorable.

Policymakers, advocates, and industry members have all proposed solutions to credit invisibility, including promoting the use of alternative sources of data. In turn, we have urged a cautious and thoughtful approach in developing solutions. As with so many aspects of credit and financial services, "the devil is in the details."

One of the most critical points in discussing alternative data is that the type of data matters. Some data shows promise, other data is a mixed bag, and some data is harmful enough that it should not be used.

- **Gas and electric utility data would likely be harmful**. Most gas and electric companies currently only report accounts on traditional credit reports when they are very seriously delinquent. "Full file" monthly reporting of gas and electric bill payment data has the potential to give millions of low-income consumers bad or worse credit scores by adding payments that are only 30 or 60 days late. Reporting of late payments could also undermine state consumer protections, such as prohibitions against wintertime shut offs for vulnerable consumers, including the elderly.

[14] Marieke Bos and Leonard Nakamura, Federal Reserve Bank of Philadelphia, Working Paper No. 12-19/R, Should Defaults Be Forgotten? Evidence from Quasi-Experimental Variation in Removal of Negative Consumer Credit Information, Apr. 2013, at 1, www.philadelphiafed.org/research-and-data/publications/working-papers/2012/wp12-29R.pdf.
[15] Consumer Financial Protection Bureau, Data Point: Credit Invisibles, May 2015, http://files.consumerfinance.gov/f/201505_cfpb_data-point-credit-invisibles.pdf.

For these reasons, NCLC and several dozen other consumer, utility rights, and other advocacy groups have consistently opposed the "Credit Access and Inclusion Act."[16] We also oppose that bill because it would preempt state consumer protection laws protecting the privacy of utility customers and hinder states from regulating tenant screening agencies.

- **Rental data could be promising with protections.** Traditionally, rental data is only reported when a tenant is so delinquent that the account is sent to a debt collector. Efforts to add positive data appear to be promising, especially those efforts that do not report late payments prior to the debt being sent to collections. Also, tenants who invoke their rights under state or local laws to withhold rent due to poor conditions should not be penalized.

- **Subprime credit information would hurt consumers**. Payday loans and other forms of subprime credit are often not reported on traditional credit reports. Adding these types of credit could damage the credit records of these borrowers. High-cost credit is often designed to lead to a cycle of debt, and even merely using a subprime form of credit can negatively affect a credit score.

- **Telecommunications data – the jury's still out**. Unlike regulated electric and gas service, telecomm (cell phone and cable) industries have fewer consumer protections that could be undermined by monthly reporting. Outstanding questions include the level of accuracy of the data and the impact on consumers who dispute over issues such as cramming and questionable surcharges. Consumers may also not be aware that their cell phone and cable payment histories are being supplied to traditional or alternative reporting agencies.

- **Bank account transaction/cashflow data looks promising but carries risks**. Bank account transaction data appears to be a promising form of alternative data. First, it incorporates an analysis of ability to repay, since it includes both income and expense information. Second, it may avoid the need to rely on long historical timeframes and thus not consider negative marks from economic hardships from several years ago. Also, it might be able to show when there has been a healthy sustained recovery from an extraordinary life event such as a job loss or illness.

  However, bank account transaction data does raise security and privacy issue, as it could be used in ways consumers do not expect or misused to ensure ability to collect, not ability to repay. Lenders could focus on the timing of when income comes in and can be grabbed, not whether consumers have sufficient residual income to afford a payment. Bank accounts include sensitive information such as debit card purchases showing where the consumer shops. Use of this data must be monitored for appropriate use. It should only be used when the consumer has knowingly and actively consented to its use, and it must be protected from access by collectors and others who would use it against consumers

[16] Consumer opposition letter to H.R. 435, Credit Access and Inclusion Act, Dec. 8, 2017, https://nclc.org/images/pdf/legislation/letter-oppose-hr435-hfsc.pdf.

The manner in which alternative data is used is important. For example, using alternative data to create special scores for otherwise unscorable consumers is preferable to the wholesale addition of the same data to traditional credit reports, where it might damage consumers who already have a thick file and credit score. Also, voluntary opt-in efforts for alternative data do not raise the same concerns about wholesale addition.

A number of alternative scoring products have recently been unveiled that hold promise but must also be monitored. UltraFICO is a voluntary opt-in product that will rely on bank account transaction information from Finicity, a data aggregator working in partnership with Experian.[17] UltraFICO will only be used to enhance consumer's credit scores to see whether a denied application can be approved or a lower rate can be offered. ExperianBoost considers utility payments, but does so by reviewing bank account transactions that do not get included in traditional credit reports and is also voluntary opt-in.[18] FICO XD similarly is a second chance score using mostly telecom data from that National Consumer Telecom and Utilities Exchange, which is not included in traditional credit reports.[19]

Another issue with new promising products might be to get lenders to accept them. As discussed in Section F, lenders have not even adopted FICO 9 or VantageScore models that simply lessen the impact of medical debt. There may need to be efforts to encourage lenders to consider alternative data when it is more predictive or beneficial to consumers than traditional credit reporting.

E. The Unfinished Business of the Equifax Data Breach

It's been 17 months since the Equifax data breach became public, and nearly two years since it happened. It was arguably the worst data breach in American history, not only because it affected 148 million Americans or one in two American adults, but it also involved some of the most critical personal information we have – SSNs (which are the golden keys for identity thieves) dates of birth, and in some cases drivers' license numbers. And despite much outrage and extensive media coverage, American consumers are nowhere close to being made whole or made safe in the aftermath.

Notwithstanding numerous hearings in both the House and the Senate, the only measure taken by the last Congress was to include a provision in the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA) of 2018 providing free security freezes[20] – something that state legislatures were already well on their way to doing. And the federal security freeze came at the high cost of preempting those state laws, some of which were more protective of consumers in that they applied freezes to employment and tenant screening use of credit reports.

[17] https://www.fico.com/ultrafico/.
[18] https://www.experian.com/blogs/ask-experian/introducing-experian-boost/ (Dec. 18, 2018).
[19] https://www.fico.com/en/products/fico-score-xd.
[20] Pub. L. No. 115-174,§ 301(a), codified at 15 U.S.C. § 1681c-1(i).

Congress must do better. It should:

- **Give the CFPB clear supervision authority** under the Gramm Leach-Bliley Act and the FCRA over data security at the credit bureaus. The CFPB should be given this authority so that it has a clear mandate to supervise the credit bureaus regarding this area.
- **Impose significant and hefty penalties** when the negligence of the credit bureaus leads to data breaches.
- **Freeze credit reports by default** to prevent identity theft and give consumers more control over their credit reports. The switch for access to our credit reports should automatically be set to "off." We as American consumers should get to decide when to turn it "on." And in the process of turning the switch on, credit bureaus and other CRAs should be required to verify the identity of the consumer to make sure it is really them.[21]

Finally, we note that one of the root causes of the Equifax data breach was the company's failure to adequately invest in its technology and computer systems. To quote from a report from the House Oversight Committee from the last Congress:

> Equifax's aggressive growth strategy and accumulation of data resulted in a complex IT environment. Equifax ran a number of its most critical IT applications on custom built legacy systems. Both the complexity and antiquated nature of Equifax's IT systems made IT security especially challenging. Equifax recognized the inherent security risks of operating legacy IT systems because Equifax had begun a legacy infrastructure modernization effort. This effort, however, came too late to prevent the breach.[22]
>
> * * * *
>
> Legacy technology is both a security issue and a hindrance to innovation, and legacy systems are tough to secure because they are often extremely difficult to patch, monitor, or upgrade. Equifax ran a number of its business critical systems on legacy infrastructure, including the ACIS system compromised by attackers during the 2017 data breach.[23]

These paragraphs are absolutely key to explaining both the Equifax data breach and the problems with accuracy described above. A modern technology company needs to adequately invest in systems for both data security and to keep the data accurate and complete. Yet Equifax failed to do so. Indeed, the House Oversight report documents that the ACIS system that was breached by hackers was built in ***the late 1970s*** to implement compliance with the FCRA.[24]

The negligence that caused the security breach is the same negligence that fails to establish adequate quality control systems for accuracy. And it is absolutely critical to realize Equifax is not alone, it was just the unlucky CRA that got caught first – Experian and TransUnion suffer from the same deficiencies. In fact, Experian had its own large-scale data breach first in 2015,

[21] Note that there was a bill introduced in the Senate during the last Congress that included a credit freeze by default. S.2362 - Control Your Personal Credit Information Act of 2018 (115 Congr.)(Sen. Reed).
[22] H. Comm. on Oversight and Gov't Reform, 115th Congr., The Equifax Data Breach: Majority Staff Report, December 2018, at 4.
[23] *Id.* at 71.
[24] *Id.* at 72

although it was small by Equifax standards, affecting "only" 15 million consumers.[25] The credit bureaus share many of other antiquated platforms, such as the 25-year old e-OSCAR system built to handle disputes.

For data technology companies to have antiquated legacy systems for its IT infrastructure would be laughable if it weren't so tragic. It shows a shockingly negligent attitude of cutting corners and underinvesting in compliance systems – the same cutting corners evident in their dispute processing. For decades, the credit bureaus have abused consumers, enabled by lack of oversight and the dysfunctional market forces. All three credit bureaus must be required to do much better to keep our data both safe and accurate.

F. Medical Debt Unfairly Penalizes Consumers

The impact of medical debt on credit reports is nothing short of stunning. Medical bills result from services that are frequently involuntary, unplanned, and unpredictable, and for which prices quotes are rarely provided. Yet as the CFPB found, medical debt represents ***half*** of all debt collection entries that appear on credit reports, and nearly one in five credit reports contains a medical debt item.[26]

Moreover, there is strong evidence that medical debt items are not an accurate reflection of the creditworthiness of the consumer. The CFPB found that medical debt unfairly penalizes a consumer's credit score by 10 points, and for a medical debt collection item that is subsequently paid, by up to 22 points (*i.e.* the consumer's credit score should actually 10 points or 22 points higher).[27] It concluded that "[c]redit scoring models which differentiate medical collections from other collections are likely to more accurately reflect the actual creditworthiness of consumers."[28]

In response to this study and other evidence, FICO modified its latest scoring model, FICO 9, so that it does not consider paid collection items (both medical and non-medical) and gives less weight to unpaid medical debts.[29] VantageScore made similar changes. Currently, these changes do help not mortgage applicants, because Fannie Mae and Freddie Mac do not use these models

---

[25] *Id.* at 18.
[26] Consumer Fin. Prot. Bureau, Consumer Credit Reports: A Study of Medical and Non-Medical Collections 5 (Dec. 11, 2014), www.consumerfinance.gov (finding that 52.1% of debt collection tradelines on credit reports were for medical debt).
[27] Consumer Fin. Prot. Bureau, Data Point: Medical Debt and Credit Scores (May 2014), www.consumerfinance.gov. *See also* Consumer Fin. Prot. Bureau, Consumer Credit Reports: A Study of Medical and Non-Medical Collections 7, 28 (Dec. 11, 2014), www.consumerfinance.gov (consumers whose credit reports show only collection items consisting of medical bills are more reliable payers, owe less, and have more available credit).
[28] *Id*.at 51–52.
[29] FICO, Understanding FICO Scores 8, www.myfico.com.

right now, but there is a rulemaking underway that may change this.[30] However, most other lenders, such as credit card issuers and auto lenders, also do not use these updated models.[31]

A more effective solution than changing scoring models would be to require the credit bureaus to remove any paid or settled medical debt. Thus, we have previously supported the Medical Debt Relief Act and the medical debt provisions of the CCRRA, both of which would require removal of paid or settled medical debt. They would also prohibit credit bureaus from including any medical debt on a credit report until 180 days after the bill (extended to 1 year in the current draft of the CCRRA), giving consumers time to resolve complex, confusing medical billing issues.

G. Use of Credit Reports in Employment Is Unreasonable and Discriminatory

The use of credit reports in employment is a practice that is harmful and unfair to American workers. Despite many good reasons to avoid engaging in this practice, about half of employers (47%) do so today,[32] a dramatic increase from only 19% in 1996.[33] One survey reported that 1 in 10 respondents who were unemployed had been informed that they would not be hired for a job because of the information in their credit reports.[34]

The use of credit reports in employment should be severely restricted for the following reasons.

- **Credit checks create a fundamental "Catch-22" for job applicants.** A simple reason to oppose the use of credit history for job applications is the sheer absurdity of the practice. Simply put, workers who lose their jobs are likely fall behind on paying their bills due to lack of income. If credit reports are used against them, these workers now find themselves shut out of the job market because they're behind on their bills. This leads to financial spiraling effect: the worse the impact of unemployment on their debts, the harder it is to get a job to pay them off.
- **The use of credit checks in hiring discriminates against African American and Latinx job applicants.** As discussed above, study after study has documented how, as a group, African Americans and Latinx consumers have lower credit scores as a group than whites. Since credit scores are a translation of the information in credit reports, that means these groups fare worse when their credit reports are considered in employment.

---

[30] Federal Housing Finance Agency, Validation and Approval of Credit Score Models, 83 Fed. Reg. 65575 (Dec. 21, 2018) (proposed rule to implement Section 310 of EGRRCPA requiring Fannie Mae and Freddie Mac to consider new scoring models).
[31] Patricia Hasson, New credit score models won't work if lenders ignore them, American Banker - BankThink, June 28 2017 ("So far, lenders are continuing to rely on older credit models that are less predictive and penalize consumers for positive behaviors like paying off collection accounts").
[32] Society for Human Resource Management, Background Checking—The Use of Credit Background Checks in Hiring Decisions, July 19, 2012, at https://www.shrm.org/hr-today/trends-and-forecasting/research-and-surveys/pages/creditbackgroundchecks.aspx.
[33] Matt Fellowes, *Credit Scores, Reports, and Getting Ahead in America*, Brookings Institution, May 2006 at n.3 (citing 1996 data from the Society for Human Resource Management).
[34] Amy Traub, Discredited: Employment Credit Checks Keep Qualified Workers Out of a Job, 2012, www.demos.org/discredited-how-employment-credit-checks-keep-qualified-workers-out-job.

- **Credit history does not predict job performance.** Credit reports were designed to predict the likelihood that consumers will miss a payment on a loan, not whether they will steal or behave irresponsibly in the workplace. The overwhelming weight of evidence is that people with impaired credit histories are ***not*** more likely to be bad employees or to steal from their employers. The earliest study on this issue concluded there is no correlation between credit history and an employee's job performance,[35] while a more recent study from 2011 also failed to find a link between low credit scores and theft or deviant behavior at work.[36]
- **As discussed in Section A, credit reports suffer from unacceptable rates of inaccuracy, especially for a purpose as important as use in employment.**

Fundamentally, the issue at stake is whether workers are fairly judged based on their ability to perform a job or whether they're discriminated against because of their credit history. Congress should ban the use of credit reports for employment purposes, with only very limited exceptions for a few specific job positions.

H. Conclusion

American consumers deserve a credit reporting system that is accurate, fair, and just. Helping consumers obtain such a system also helps the American economy. To achieve these goals, Congress should:

1. Pass an updated version of the Comprehensive Consumer Credit Reporting Act (such as the draft currently being discussed) that includes:

- providing consumers with a right of appeal for credit reporting disputes;
- requiring stricter matching criteria or a CFPB rulemaking that imposes such criteria and establishes minimum procedures to ensure maximum possible accuracy;
- clarifying that the credit bureaus must devote sufficient resources and conduct independent analyses in disputes;
- providing consumers with a right to seek injunctive relief compelling credit bureaus to fix a credit report;
- shortening time limits for negative information to four years (seven years for bankruptcies);
- requiring the credit bureaus to remove any paid or settled medical debt and prohibiting them from including medical collections on credit reports until after one year from the bill;

[35] Jerry K. Palmer and Laura L. Koppes, *Further Investigation of Credit History as a Predictor of Employee Turnover*. Presentation to the American Psychological Society, 2003. *See also* Press Release, Society for Industrial and Organizational Psychology, Credit History Not a Good Predictor of Job Performance or Turnover, January 16, 2004, http://www.newswise.com/articles/credit-history-not-a-good-predictor-of-job-performance-or-turnover (summarizing study by Drs. Palmer and Koppes).
[36] Jeremy B. Bernerth et al, *An Empirical Investigation of Dispositional Antecedents and Performance-Related Outcomes of Credit Scores*, Journal of Applied Psychology, Oct. 24, 2011.

- requiring the removal of adverse information resulting from predatory mortgages or private student loans resulting from for-profit school fraud; and
- severely restricting the use of credit reports in employment and banning the use of credit reporting information in insurance.

2. Congress should provide credit reporting relief for federal workers, federal contractors and small businesses affected by government shutdowns (such as the draft "Protecting Innocent Consumers Affected by a Shutdown Act" being discussed), as well as natural disaster victims.

3. With respect to data security for the credit bureaus, Congress should:

- give the CFPB clear supervision authority over data security at the credit bureaus;
- impose significant and hefty penalties when the negligence of credit bureaus leads to data breaches; and
- freeze credit reports by default to prevent identity theft and give consumers more control over their credit reports.

4. Congress should establish a publicly owned alternative for credit reporting.