

National Consumer Law Center (on behalf of its low-income clients)
National Association of State Utility Consumer Advocates
Center for Digital Democracy
Center for Economic Justice
Consumer Action
Consumers Union
Defending Rights & Dissent
Equal Justice Society
National Housing Law Project
Privacy Rights Clearinghouse
The Greenlining Institute
U.S. PIRG
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Center for Economic Integrity (Arizona)
California Reinvestment Coalition
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TURN—The Utility Reform Network (California)
Connecticut Association for Human Services
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Jacksonville Area Legal Aid, Inc.
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Kentucky Equal Justice Center
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Consumer Assistance Council, Inc. (Massachusetts)
Massachusetts Communities Action Network
Massachusetts Low Income Energy Affordability Network
Consumers League of New Jersey
Legal Services of New Jersey
Manufactured Home Owners Association of New Jersey.
Community Service Society of New York
Empire Justice Center (New York)
Public Utility Law Project of New York
Ohio Partners for Affordable Energy
Pennsylvania Utility Law Project (on behalf of its low-income clients)
Tennessee Citizen Action
Texas Legal Services Center
Virginia Citizens Consumer Council

December 8, 2017

Re: H.R. 435, Credit Access and Inclusion Act (oppose)

Dear Representative:

The undersigned associations, consumer, civil rights and advocacy groups write to you to express opposition to H.R. 435. This legislation, if enacted, would *reduce consumers' control over their own data by preempting state and federal privacy protections, damage the credit scores of millions of*

consumers with a disproportionate impact on African Americans, and conflict with long-standing state utility regulatory consumer protections.

Privacy and preemption

During the various hearings on the Equifax data breach, members of Congress expressed significant concerns over the lack of control that consumers have over their own data with respect to the credit bureaus. These members also expressed a desire for consumers have more control over their personal and financial information. Yet the Credit Access and Inclusion Act would actually *reduce* consumers' control over their own information by preempting state and federal privacy protections for utility customers and tenants.

H.R. 435 would preempt privacy protections by amending Section 623 of the Fair Credit Reporting Act to permit utilities and landlords to furnish payment information to a credit bureau or other consumer reporting agency “notwithstanding any other provision of law.” The “other provisions of law” include state laws that require consumer consent before a utility company can share information about that consumer's payment information to a credit bureau or other consumer reporting agency. Thus, H.R. 435 would preempt state privacy protections in California,¹ New Jersey,² Wisconsin,³ and potentially other state laws.⁴ The bill would also override federal requirements that a subsidized housing provider obtain a consumer's consent before sharing rental payment information.

Harmful Impact on Credit Scores

Proponents claim that “full file” reporting of utility payments will help improve credit reports and have a negative impact on very few. But their claims are based on a very limited data set from a small number of electric and natural gas utilities that engage in this practice. Using this limited data set, 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. However, this 3% figure simply cannot be reconciled with current arrearage data reported by utility companies in states throughout the U.S. For example, Southern California Edison Company reported in January 2015 that 25.1% of its residential customers at or below 200% of the federal poverty guidelines carried an arrearage over 60 days old. 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 negative credit score. For low income consumers who already have a credit score, utility reporting may harm their existing credit histories.

This harmful impact on credit scores would disproportionately affect low-income and moderate-income African American households, who frequently struggle to pay utility bills. Data from the U.S. Energy Information Administration shows that, among households living at or below their state's median income, 17% of white-headed households reported paying less than a total home energy bill “almost

¹ Cal. Pub. Util. Code § 2891 (prohibiting telephone company from sharing customer's financial information without customer's consent).

² N.J. Stat. Ann. § 48:3-85(b)(1) (prohibiting electric or gas utility disclosure, sale or transfer of customer's proprietary information, including, but not limited to, customer's name, address, telephone number, energy usage, and electric power payment history, to a third party without the consent of the customer).

³ Wis. Stat. § 196.137 (prohibiting municipal utilities from releasing “customer information” without the customer's consent except in specific situations).

⁴ See generally, State & Local Energy Efficiency Action Network, A Regulator's Privacy Guide to Third-Party Data Access for Energy Efficiency, December 2012, p.7 (Table 2), available at https://www4.eere.energy.gov/seeaction/system/files/documents/cib_regulator_privacy_guide_0.pdf.

every month” or “some months” in 2009, while the rate was 29.6% for similarly-situated African American-headed households – a rate that was 74% higher for the latter.⁵

Proponents assert that a low credit score is better than no score. In some areas, however, no credit history is better than a bad one. For employment and insurance – where a negative credit report or low score could harm job prospects or increase rates – it is often better to have no credit history. Indeed, with insurance, the absence of a credit score is treated as a “neutral.”⁶ A low score could also put a consumer on the radar for lead generators and predatory lenders who target high-cost credit to vulnerable consumers.

Conflict with State Utility Protections for Seniors and Others

In addition to preempting utility privacy provisions, H.R. 435 undermines other state utility consumer protections. The bill would establish a dangerous precedent by encroaching on long-standing state jurisdictional authority over gas and electric utilities. States appropriately retain full ratemaking and customer service authority over franchised, monopoly companies that deliver necessary services within their boundaries.

Households retaining service and paying late under terms of state-sanctioned protections will experience harm to their credit scores under terms of this bill. The National Association of State Utility Consumer Advocates voted to oppose full file utility credit reporting⁷ in part because it conflicts with utility consumer protections in many states. Full file utility credit reporting threatens consumers with black marks on their credit reports even when state law provides for protection against disconnection of service. While H.R. 435 does preclude electric and gas utilities from reporting as late consumers who are paying according to terms of a payment plan, it would provide full discretion to the utility -- rather than referring state statute or regulation -- to determine whether a customer is meeting his or her "obligations of the payment plan." This broad utility discretion and lack of consumers' ability to dispute a utility's determination represents a gaping hole in the bill's payment plan exception. Further, the language does not provide any exception for other essential state regulatory utility consumer protections, including seasonal or temperature-based protections against disconnection, and protections for elders or consumers with a serious illness or disability.

* * *

While we have significant concerns about full-file reporting as proposed in H.R. 435, we do not oppose permitting consumers to voluntarily opt-in to utility credit reporting or efforts to include certain other types of “alternative data,” such as rental data if reported appropriately.

⁵ Based on NCLC's analysis of U.S. Department of Energy, Energy Information Administration, 2009 Residential Energy Consumption Survey, Section M, available upon request. *See also* https://www.eia.gov/survey/form/eia_457/form.pdf (relevant survey question at p. 89, Question M-1c).

⁶ *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).

⁷ 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* <http://nasuca.org/opposing-full-credit-reporting-of-payment-histories-on-residential-gas-and-electric-accounts-2010-03-2/>.

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.

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