

COMMENTS
to the
Consumer Financial Protection Bureau
regarding
Consumer Financial Products and Services Offered to Servicemembers
Docket No. CFPB-2011-0016
76 Fed. Reg. 54998 (Sept. 6, 2011)
by the
National Consumer Law Center
September 20, 2011

Thank you for the opportunity to comment on consumer financial products and services offered to servicemembers. The National Consumer Law Center is filing these comments on behalf of its low-income clients.

The short time frame and the unclear scope of the request for comments have prevented us from providing a full list of products and services that impact servicemembers. We make here only a few comments regarding products, services, and practices that have the potential to harm military families. We understand this request for comments to be focused on programs that help servicemembers, and we hope that the CFPB will issue another request for comments when it is ready to seek more detailed information on the abuses that the CFPB should address to protect servicemembers.

The National Consumer Law Center, Inc. (NCLC) is a non profit Massachusetts corporation, founded in 1969, specializing in low income consumer issues, with an emphasis on consumer credit.¹ NCLC's groundbreaking report, *In Harm's Way, At Home: Consumer Scams and the Direct Targeting of America's Military and Veterans* (May 2003), available at <http://www.nclc.org/special-projects/military-personnel.html>, highlighted many of the predatory financial products targeted at servicemembers at that time. Some - but by no means all - of these abuses were ultimately reined in by the Talent-Nelson Act.

We urge the CFPB to pay particular attention to the following consumer financial services that affect military families:

Manufactured housing. CFED has submitted a comment letter regarding manufactured housing and its potential and pitfalls for servicemembers. We concur with the portion of CFED's comment letter that addresses manufactured housing. In particular, we urge the CFPB to protect servicemembers living in manufactured home communities.

¹ On a daily basis, NCLC provides legal and technical consulting and assistance on consumer law issues to legal services, government, and private attorneys representing low income consumers across the country. NCLC publishes a series of eighteen practice treatises and annual supplements on consumer credit laws, including *Collection Actions* (2d ed. 2011), which includes a chapter on the Servicemembers Civil Relief Act, and *The Cost of Credit: Regulation, Preemption, and Industry Abuses* (4th ed. 2009 and Supp.), which includes an analysis of the Talent-Nelson Military Lending Act of 2006, 10 U.S.C. § 987. These comments were written by Carolyn Carter.

Confiscatory rent increases and the threat of community closure often mean that a home in a manufactured home community has little value as an asset and is not even a stable source of housing. Market failures regarding the financing and resale of manufactured homes also reduce the potential of a manufactured home to become an asset for the servicemember.

Reporting of utility payment histories to credit reporting agencies. There have been suggestions that the CFPB should promote reporting of utility payment histories to credit reporting agencies, on the theory that this would help servicemembers and other low-income consumers. We urge the CFPB not to do so. Reporting of utility payment histories would cause great harm to struggling consumers, whether civilians or servicemembers. Increased reporting of utility payment histories would worsen the eat-or-heat dilemma that low-income families face, as it would heighten the negative consequences of deferring payment of utility bills. It would undermine the flexibility that low-income families need when they are juggling their monthly budgets. We have attached a detailed report, *Full Utility Credit Reporting: Risks to Low-Income Consumers* (Dec. 2009), that analyzes these concerns.

Predatory small-dollar loans to servicemembers: The regulations adopted under the Talent-Nelson Military Lending Act (MLA) focus primarily on payday loans, auto title pawn lending, and refund anticipation loans, and they only apply to closed-end credit. This relatively narrow focus leaves loopholes for predatory lenders. We urge the CFPB to investigate the prevalence of predatory high-rate credit to servicemembers and to work with the Defense Department to tighten the regulations to prevent evasions. In particular, we agree with the comments by the Consumer Federation of America and the Center for Responsible Lending that overdraft fees, bank payday loans, and nonbank payday and installment loans exploit loopholes in the MLA and pose a serious risk to servicemembers. Abusive credit card practices also impact servicemembers.

Military pension and pay loans: Another type of high-rate credit marketed to servicemembers and veterans involves advancing funds in return for an assignment of the borrower's military pay or pension. Federal law prohibits assignment of these benefits, but some lenders have structured their loan products in an attempt to evade this restriction. We urge the CFPB to investigate these lenders and tighten the protections against this type of high-cost lending.

Proprietary schools. Veterans are increasingly at risk of being victims of predatory lending and deceptive practices by proprietary schools. Some schools are attempting to use veteran education funding to evade federal rules that require the school to obtain at least 10% of its revenues from sources other than Department of Education federal student aid. G.I. Bill and other federal funds can be counted in the 10% category. Thus, schools are desperately trying to recruit veterans with deceptive claims and loans that the veterans cannot afford to repay.

Veterans are also particularly likely to be victimized by predatory lending by online schools. These schools often induce students into incurring large, unsustainable debt

loads for substandard programs with a high degree of failure. Schools push not only federal loans, but also high-rate private loans. Well documented problems such as minimal to nonexistent counseling, tutoring or job placement support are problematic for all students but especially for veterans who may do less well in an unstructured, independent study setting after leaving the structured, hierarchical military. In addition, schools specifically market their programs to current service members who often need flexible courses due to frequent deployments and other mobility issues.

Servicemembers and auto financing: While servicemembers, with regular income and employment stability, should be viewed as candidates for favorable car sales and financing options, all too often they are instead targeted for bad car and financing deals. As was discussed in greater detail at the FTC's Road Ahead roundtable in San Antonio (<http://www.ftc.gov/bcp/workshops/motorvehicles/>), young servicemembers can face a range of bad practices that place them in more expensive loans, dangerous and unreliable vehicles, and back-end products such as service contracts that may not have any value if the servicemember is transferred overseas. We urge the CFPB to give a high priority to identifying and reining in these abuses.

Thank you for considering these views.

NATIONAL
CONSUMER LAW
CENTER[®]



Boston Office:
7 Winthrop Square, 4th Fl.
Boston, MA 02110-1245
Phone: 617-542-8010
Fax: 617-542-8028

Washington Office:
1001 Connecticut Ave., NW, Ste. 510
Washington, DC 20036-5528
consumerlaw@nclc.org
www.ConsumerLaw.org

Full Utility Credit Reporting: Risks to Low Income Consumers

December 2009

Full Utility Credit Reporting: Risks to Low Income Consumers

*John Howat
National Consumer Law Center*

A research consultant has recently produced several reports promoting utility company reporting of all customer payment behaviors and transactions to the major consumer reporting agencies (CRAs).¹ Proponents of full utility reporting contend that it is required to help “thin file” and “no file” consumers to build credit history and gain access to bank loans and other sources of credit. However, proponents are also motivated by seeing consumers – even those who struggle to meet monthly financial obligations – move utility bills to the top of monthly “to pay” piles in order to mitigate utility risk. In making a “business case” for full utility credit reporting, a recent publication of the Political and Economic Research Council promotes full credit reporting as the answer to the question, “How can consumers be encouraged to put their utility and telecommunication bills at the top of the payment pile?”²

The National Consumer Law Center is concerned that such reporting will result in harm to low-income and elderly consumers while undermining the policy objectives of state utility consumer protections. Further, problems with consistency of reported data arise as a result of the wide variability in state utility credit and collection rules and energy prices, as well as in the availability of energy efficiency and payment assistance programming. For these reasons we are opposed to full utility credit reporting -- particularly by franchised, monopoly electric and natural gas utility distribution companies – unless it is agreed to by customers on an “opt-in” basis.

Traditional Uses of Credit Scores

Credit scores have traditionally been used by prospective creditors and insurance companies to assess risk, determine whether to provide a service, or determine a charge (e.g., annual percentage interest rate) for a service.³ They have provided mortgage and automobile lenders, consumer credit and insurance companies with a fast, automated means of making decisions regarding provision and pricing of services. Consumers’ credit scores, which are generated by the “Big Three” credit reporting agencies (CRAs) based on credit report information supplied by creditors and others, are generated using formulas that are protected as trade secrets. However, it is known that credit scores are based generally on the following factors in order of weighted importance:⁴

¹ See, e.g., ¹ Turner, et al., “Credit Reporting Customer Payment Data: Impact on Customer Payment Behavior and Furnisher Costs and Benefits,” Political and Economic Research Council, March 2009; PERC, et al., “Policy Brief: The Promise of Non-financial Data: How Using Energy Utility and Telecoms Payment Data can Help Millions Build Assets:” and Turner, et al., *You Score You Win: The Consequences of Giving Credit Where Credit is Due*,” Political and Economic Research Council, July 2008.

² Turner, et al., “Credit Reporting Customer Payment Data: Impact on Customer Payment Behavior and Furnisher Costs and Benefits,” Political and Economic Research Council, March 2009.

³ Complete discussion and analysis of credit reporting and credit scoring may be found in Wu, et al, Fair Credit Reporting, Sixth Edition, National Consumer Law Center, 2006; and Hendricks, Credit Scores and Credit Reports: How the System Works, What You Can Do, Privacy Times, Inc., 2007.

⁴ Hendricks, pp. 19 – 23.

- Payment History (35%)
- Amount Owed – Extent of Indebtedness (30%)
- Length of Credit History (15%)
- New Lines of Credit (10%)
- Types of Credit (10%)

As reflected in the weights associated with the factors above, a consumer’s payment history is the most critical factor in calculating a credit score. The extent to which a consumer pays his or her bills on time factors heavily into payment history and generation of a credit score.

Nontraditional Uses of Credit Scores

In recent years, a number of “alternative” credit reports and credit scores have been created. While the stated purpose of some alternative credit reports is to help low-income and other underserved consumers who do not have traditional credit histories, many are clearly intended to limit risk of prospective creditors. Alternative credit reports and scores use information such as utility and rent payments. Examples of nontraditional credit reporting include Payment Reporting Builds Credit (PRBC), a credit reporting agency that compiles credit histories using rent, utility, insurance, and even daycare monthly payments.⁵ Another example is the National Consumer Telecom and Utilities Exchange, managed by the credit reporting giant, Equifax.⁶

Utility Credit Reporting – Current Practice

There is no national source of information delineating details of how each utility company reports consumer payment behaviors. However, NCLC’s research indicates that currently, many unregulated cell phone and cable companies report all customer payments – both timely and late – to one or more of the CRAs. Some regulated, landline telephone companies also engage in full credit reporting. **However, the vast majority of electric and natural gas utility companies only report when a seriously delinquent account has been referred to a collection agency or written off as uncollectible**—a tiny percentage of the accounts that are late.⁷ To NCLC’s knowledge, the *only* regulated electric and gas utility companies currently engaging in full credit reporting are Detroit Edison Company and Nicor Gas Company.

Full Reporting by Electric and Gas Utilities – Harm to Low Income Households

Modifying current electric and gas utility practice by reporting all delinquent accounts would over time have an adverse impact on low income consumers’ credit scores or force those households to go without other necessary goods and services. Nationally, millions of residential

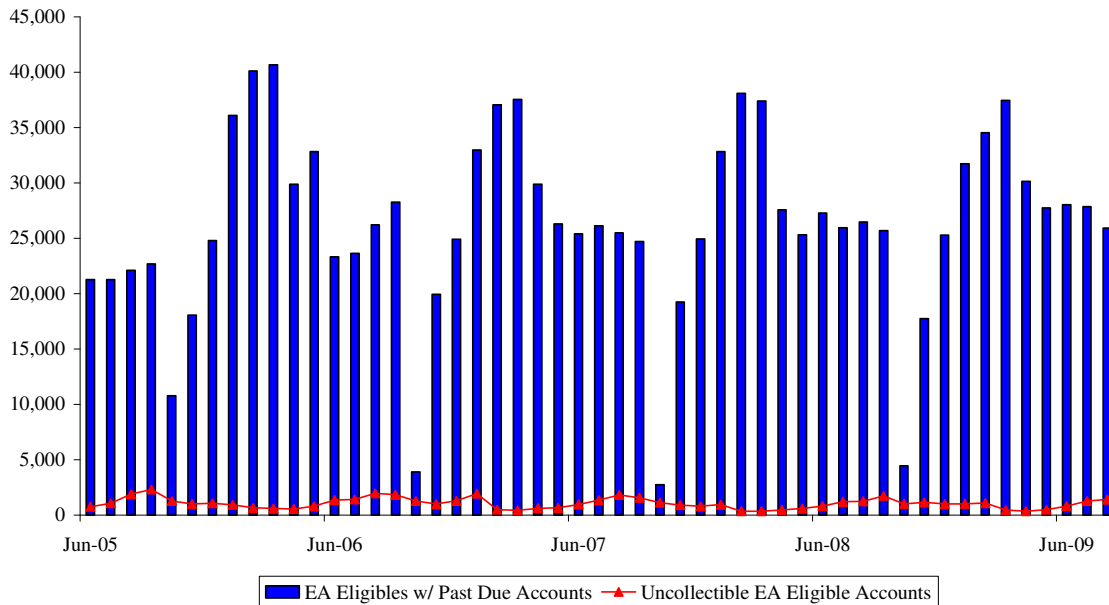
⁵ www.prbc.com

⁶ <http://www.nctue.com/>

⁷ To gain knowledge of current electric and gas utility credit reporting practices, NCLC consulted utility customer service executives, regulators, and state consumer advocates in a broad sampling of states, including California, Iowa, Maine, Massachusetts, New Hampshire, New York, and Ohio. In each case, NCLC was provided with consistent information regarding current electric and gas utility reporting practice.

utility accounts are in arrears by 30 days or more,⁸ but are not written off or referred to a collection agency. The following graph illustrates this dynamic using arrearage and account write-off data of Iowa electric and gas customers that receive energy assistance through the Low Income Home Energy Assistance Program (LIHEAP).

**Iowa Electric and Natural Gas Utilities:
Energy Assistance Accounts Past Due and
Energy Assistance Accounts Written off as Uncollectible**



Source: Iowa Utilities Board

It can be seen from this graph that in Iowa, illustrative of experience nationally, only a tiny fraction of past due accounts are written off as uncollectible. Thus, under full utility credit reporting, thousands – in most months, tens of thousands -- of low-income utility customers in Iowa would on a monthly basis receive negative credit reports that would have an adverse impact on their credit scores.

Similarly, in Massachusetts, while 32% of all natural gas customers receiving a low-income rate discount carried arrears of 60 days or more, less than 1 percent of all low-income discount rate customers had their accounts written off. In other words, the ratio of seriously delinquent accounts to write-offs was greater than 30 to 1. There would thus be a 30-fold increase in adverse credit reports under a full reporting regimen. Massachusetts data are reflected in the table below.

⁸ A limited, “snapshot” survey by the National Association of Regulatory Utility Commissioners Consumer Affairs Committee identified 39 million overdue residential electric and natural gas utility accounts in May 2008. Sloan, et al., “Credit Reporting Customer Payment Data: Impact on Customer Payment Behavior and Furnisher Costs and Benefits,” November 2008.

MA June 2009 - Electric and Gas Utility Arrears over 60 days and accounts written off as uncollectible

		Electric	Gas
General Residential	<i>Arrears 60+</i>	16%	17%
	<i>Written off</i>	0.4%	0.6%
Low Income Discount	<i>Arrears 60+</i>	25%	32%
	<i>Written off</i>	0.5%	0.7%

Notes: One-month snapshot, not cumulative; Some general residential customers are eligible to receive the discount, but are unenrolled; MA tracks arrears at least 60 days old, but financial reporting to credit bureaus is 30+; Greater proportion of late payers would thus be reported than those reflected here.

Source: MA DPU

Nationally, the 2008 National Energy Assistance Survey indicated that **47% of LIHEAP participants skipped or did not pay a full home energy bill in 2008.**⁹ For most of these households, full utility credit reporting would result in one or more adverse reports to CRAs. The many low-income households that cannot be served by the limited federal LIHEAP funding likely experience even more pronounced difficulty making payments.

New adverse information resulting from full utility credit reporting would have a devastating impact on consumer credit scores, which in turn serves to attract a range of fee harvesters and predatory lenders. A rare glimpse into credit scoring recently provided by Fair Isaac Corporation reveals that for a consumer with a FICO score of 680, a single 30 day late payment results in the assessment of 60 to 80 “damage points.” For a consumer with a “prime” credit score of 780, a single 30 day late payment results in 90 to 110 damage points.¹⁰ New late payment reports under full utility credit reporting would lower credit scores.

For millions of utility customers whose incomes are insufficient to pay for all necessities, full credit reporting will mean cutting back on non-utility necessities or risking devastation to their credit scores. Many low-income households that participate in LIHEAP reported reducing expenditures on non-utility essentials in 2008, including the following:¹¹

- 32% went without food for at least one day,
- 42% went without medical or dental care, and
- 38% did not fill a prescription or took less than the full dose of a prescribed medicine.

The “stick” of full utility reporting to the credit bureaus and the attempt to push utility bills to the “top of the payment pile” will likely exacerbate this dynamic in low-income

⁹ APPRISE, National Energy Assistance Directors’ Association, “2008 National Energy Assistance Survey,” p. iii, April 2009.

¹⁰ Simon, “FICO reveals how common credit mistakes affect scores,” CreditCards.com, November 2009.

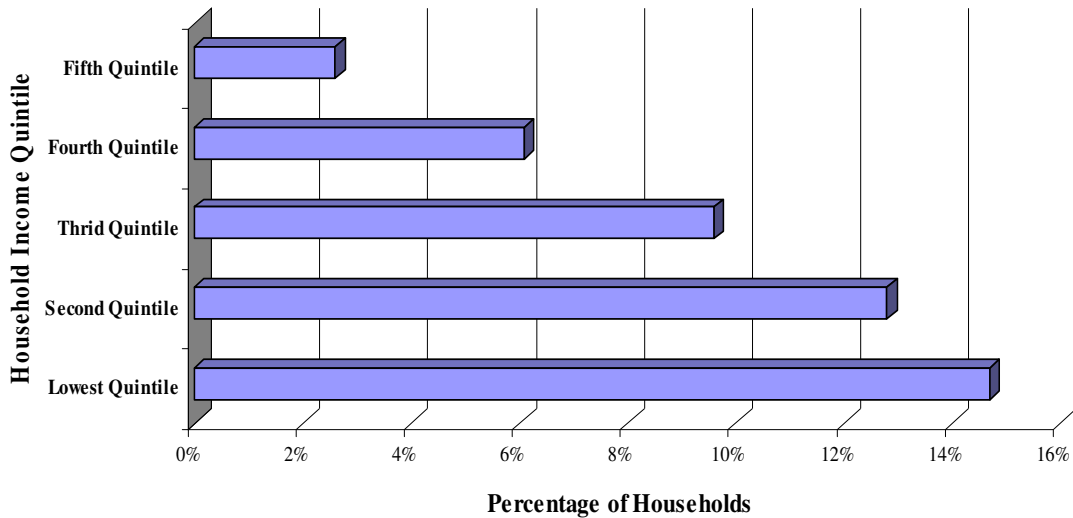
¹¹ APPRISE, National Energy Assistance Directors’ Association, p. iii.

households. In the case of elders, sacrificing prescribed medicines or compromising indoor temperatures to reduce utility expenditures bring particularly serious threats to health, safety and general well-being.

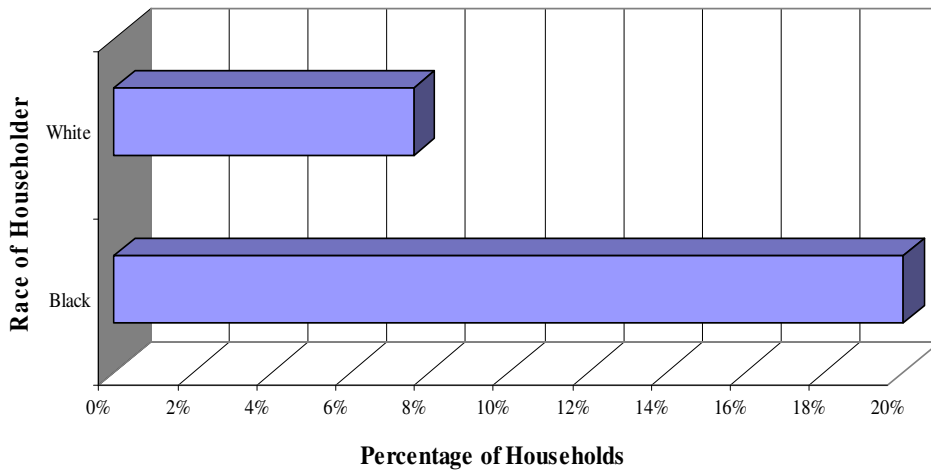
Not surprisingly, low-income consumers are far more likely than their higher-income counterparts to be late in paying a home energy bill. The push toward full utility reporting seems to be based on the assumption that if low-income households would simply manage their finances more effectively they would be current on their monthly bills and good credit history would follow. Unfortunately, the reality in many low-income households is that income and expenses simply do not match up, and late payment of some bills is nearly impossible to avoid. In addition, utility payment troubles over the past several years have worsened in light of increased home energy prices and price volatility, deteriorating economic conditions and personal income, and increases in the prices of and expenditures for health care and other, competing necessities.

As a result of these income and expense realities, full utility credit reporting will cause disproportionate harm in low-income households. Similarly, home energy bill payment troubles are more pronounced in certain households grouped according to circumstances that are related to income, such as race, household structure, disability status, and health insurance coverage. Therefore, full utility reporting will adversely and disproportionately affect these households as well. The following series of graphs were produced using data from the 1998 Survey of Income and Program Participation. It should be noted that these are the most recent SIPP data on utility payment. The percentages of late payers reflected in these charts are far lower than those that apply today. However, the graphs clearly illustrate the extent to which utility payment troubles are concentrated among specific income and demographic groups.

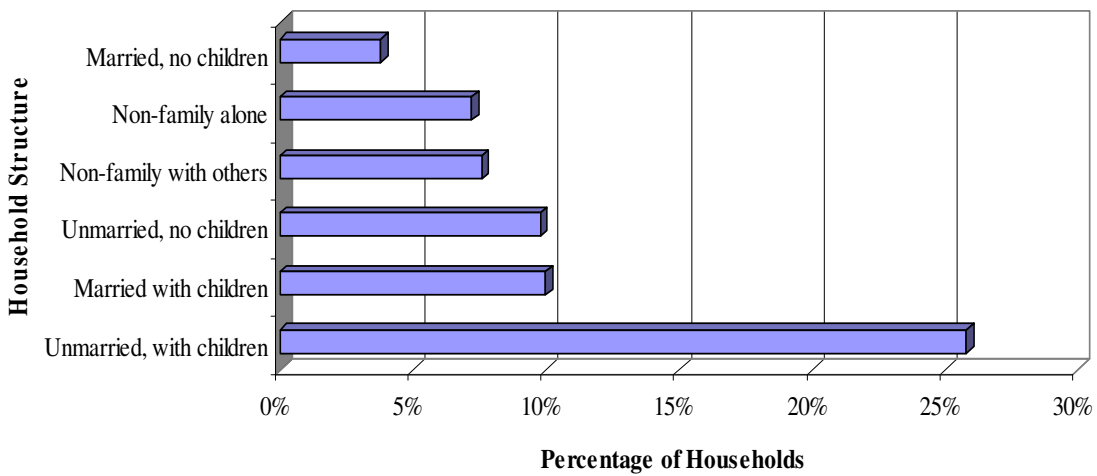
Percentage of U.S. Households that Did Not Pay Full Utility Bill in 1998



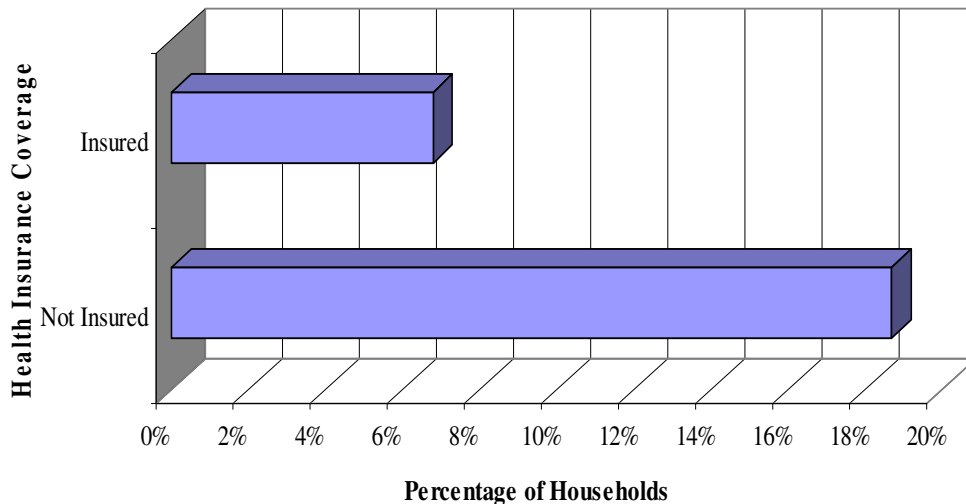
Percentage of U.S. Households that Did Not Pay Full Oil, Gas or Electric Bill in 1998



Percentage of U.S. Households that Did Not Pay Full Oil, Gas or Electric Bill in 1998



Percentage of U.S. Households that Did Not Pay Full Oil, Gas or Electric Bill in 1998



Unfortunately, recent moderation in home energy prices has not equated to reduced payment difficulties or in lower demand for energy assistance. In fact, demand for energy assistance is surging across the U.S. As the FY 2010 LIHEAP programs open, state LIHEAP program administrators have reported that applications are at record levels, with many people seeking assistance for the first time. For example, Colorado's LIHEAP has already seen a 40 percent increase in applications over last year. The Energy Assistance Office in Terre Haute, Indiana, reported its applications have tripled from two years ago and doubled from last year. In Alabama and Missouri police were called to help with crowd control as hundreds lined up to receive help paying their energy bills.¹² Increased demand for limited energy assistance resources signals increased payment difficulties in low-income households. Full utility credit reporting will place additional pressure on struggling households, and as indicated above, wreak havoc on the credit scores of those struggling households who may be late in making payments even once or twice per year.

Utility Credit Reporting and State Regulatory Consumer Protections

Recognizing that electric and natural gas utility services are necessities of life, and that in most cases they are delivered by franchised, monopoly companies, states have adopted regulatory consumer protection frameworks that limit or prohibit disconnection of service to elderly, seriously ill or disabled customers who are experiencing financial hardship. Others limit or prohibit disconnection of service seasonally during harsh weather months. Still others prohibit disconnection of service when outdoor temperatures or heat indexes are forecast to exceed specific thresholds.¹³

In Massachusetts, for example, utilities are prohibited from disconnecting service in low-income households where occupants are elderly or disabled. In addition Massachusetts utilities cannot disconnect service in households where there is an infant under 12 months of age. Further, Massachusetts utilities are prohibited from terminating service between November 15 and April 15 in households where there is financial hardship. Many other states have adopted some combination of similar protections.

While these protections are not intended to absolve customers from paying utility bills over the long run, they are intended to protect vulnerable customers from loss of vital service during times of financial hardship. They send consumers and utility companies the message that electric and natural gas service is distinct from other goods and services, and that access should be protected in order to avert threats to health and safety. Full utility credit reporting, by threatening consumers with the adverse credit score ramifications of delaying payment even during an emergency, would operate in conflict with the policy objectives these protections. Suggesting that utility payment behaviors should be fully reported to the CRAs in the same manner as other financial transactions fails to recognize both the unique nature of utility service and the policy objectives of long-standing consumer protection rules that have been adopted by the regulatory commissions in states across the country.

¹² LIHEAP Clearinghouse, December 2009.

¹³ A complete catalog of state utility regulatory consumer protections and customer service rules may be found in Appendix A. of Access to Utility Service, National Consumer Law Center, 2008.

Implementation Concerns – Accuracy, Transparency, Fairness and Consistency

Credit reporting generally has long been subject to criticisms regarding inaccuracy of reports, the lack of transparency of proprietary “black box” credit score calculation formulas, and the discriminatory treatment of ethnic minority groups.¹⁴ However, the prospect of full utility credit reporting brings a host of additional concerns. Problems with consistency of reported data arise as a result of the wide variability in state utility credit and collection rules, pricing of residential electric and natural gas service, and in the availability of energy efficiency and payment assistance programming. These state-specific rules, pricing conditions, and programs are critical determinants of the extent to which low-income customers are able to make electric and natural gas utility payments in a timely manner. Low-income customers in states with relatively harsh customer service rules, where prices and expenditures for home energy services are high, and where payment assistance through LIHEAP and non-federal discount rate programs is limited, face greater difficulties keeping up with timely payments than do customers in states with more favorable circumstances.

Customer Service Rules – Bill Payment Timeframes and Deferred Payment Agreements

Utility customer service rules and regulations, promulgated by state regulatory commissions, include provisions regarding bill payment timeframes and establishment of deferred payment agreements. These provisions vary widely across states, and have a tremendous bearing on the extent to which low-income utility customers make timely payments.

State provisions vary on the period of time that must expire from when a bill is rendered to when it is considered past due. In Alabama, for example, a bill is due 10 days after it is rendered.¹⁵ However, in Alaska a bill is not considered past due for 40 days.¹⁶ In Georgia, electric utility customers have 45 days to pay before a bill is considered late.¹⁷ These varying timeframes create problems in generating and interpreting utility credit reports. In reporting payment of consumer debt, there is a standard, 30-day delinquency guideline. With utility reporting, will the 30-day reporting guideline apply irrespective of whether a state has ruled that a customer has more or less time to make a timely bill payment? If not, will utilities only report after the state-allowed timeframe has expired? In the former case, credit reporting will in most cases be inconsistent with state regulations. In the latter case, there will be disparity in the amount of time consumers in different states will have to pay before an adverse report is rendered. The latter case therefore creates a scenario where there will be a discriminatory credit scoring impact on consumers residing in states with short utility bill payment timeframes.

In addition to bill payment timeframes, most states have adopted requirements that utility companies offer residential customers a payment plan, or deferred payment agreement, as an

¹⁴ For a complete discussion regarding accuracy of credit reports, see Wu, *Fair Credit Reporting*, Chapter 4; for transparency issues see Chapter 14.5. For analysis of disparate impact of credit scoring, see, e.g., Kabler, “Insurance-Based Credit Scores: Impact on Minority and Low Income Populations in Missouri,” Missouri Department of Insurance, January 2004.

¹⁵ Alabama PSC Gen. R. 12.

¹⁶ Alaska Admin. Code tit. 3, § 52.45.

¹⁷ Ga. Comp. R. & Regs. r. 515-3-2.0, -3-2.02, -3-3.02(B), -7-6.02.

alternative to disconnection of service. The terms of these agreements vary considerably between states and even between utility companies operating within a particular state. The structure of these agreements has a bearing on whether past balances will be successfully paid off and on the extent to which limited-income customers will be able to pay current charges in full. Thus, disparity in utility deferred payment agreement requirements presents an additional utility credit reporting consistency problem.

An initial question is the extent to which customers who have retained service and are successfully paying off a previous balance under terms of a deferred payment agreement would be considered “late” for credit reporting purposes. Even if successful payment of arrears under a deferred payment agreement does not result in the generation of adverse credit reporting, consistent interpretation of reports from utilities operating under varying payment agreement guidelines is problematic. Review of the deferred payment agreement provisions adopted in Rhode Island and Iowa, respectively, is instructive. In both states, companies are required to offer customers in arrears initial payment agreements with terms of at least 12 months. Down payments are not required on initial agreements in either state. Despite these parallels, there are significant disparities between the states’ deferred payment agreement provisions. In Rhode Island, if a customer enrolled in a payment plan is late or misses a payment for any reason, they are assigned new payment plan terms with increasingly onerous down payment requirements.¹⁸ In Iowa, the term of an initial payment agreement must be “reasonable” and take into account a household’s specific income and expense circumstances. If after showing a good faith effort to adhere to the terms of an initial agreement a customer is late or misses a payment, the utility company is required to offer the customer a second reasonable payment agreement of equal or greater term than the initial agreement.¹⁹ The Iowa approach builds in the potential for longer repayment terms if household circumstances warrant and allows for non-punitive renegotiation. Thus, from a utility credit reporting perspective, Iowa electric and natural gas customers are at a relative advantage to similarly-situated customers in Rhode Island. Full credit reporting, however, is likely to undermine Iowa’s policy decision, by reporting these customers as delinquent.

Home Energy Expenditures

The level of average home energy expenditures in a particular state or region is driven by residential energy prices and weather conditions. Unlike consumer spending on discretionary items, expenditure levels for basic home energy and utility service are based primarily on factors beyond a consumer’s control. Full utility credit reporting will not account for disparities in necessary home expenditure levels, but will instead tend to penalize customers from high-priced/harsh weather states and regions to a greater extent than those living where prices are low and weather conditions are more moderate. The following tables reflect regional differences in residential electricity and natural gas prices, and in average monthly cooling and heating degree days.

¹⁸ R.I. Code R. 90 060 002, Part V.

¹⁹ IA Admin. Code 199-19.4(10).

Census Division	2009 Average Residential Electricity Price (cents/kWh)	2009 Average Residential Natural Gas Price (\$/1000 Cubic Feet)
East North Central	10.9	11.02
East South Central	9.5	13.69
Middle Atlantic	15.1	15.18
Mountain	10.1	10.54
New England	17.5	16.77
Pacific Contiguous	12.4	10.23
South Atlantic	11.3	15.6
West North Central	9.1	10.58
West South Central	11.3	12.07

Census Division	30-year Normal Cooling Degree Days/Mo	30-year Normal Heating Degree Days/Mo
East North Central	730	6497
East South Central	1566	3604
Middle Atlantic	666	5911
Mountain	1307	5209
New England	443	6611
Pacific Contiguous	756	3228
South Atlantic	1983	2853
West North Central	948	6750
West South Central	2479	2287

Source: US Energy Information Administration, Short-term Energy Outlook, December 2009.

Based on the pricing and weather condition disparities reflected in these tables, it is not surprising that the 2009 – 2010 natural gas winter home heating expenditures in the Northeastern Census Region are projected by the U.S. Energy Information Administration to be more than double those in the Western Census Region.²⁰ Similarly, there are tremendous home cooling expenditure disparities between states and regions during summer months. For example, average electricity expenditures in the hot weather, high-priced state of Texas are nearly double those of the lower-priced and moderate climate state of Washington. Under full utility credit reporting, customers residing in states with high prices and harsh climates will continue to be forced to spend more for basic service, will be more likely to be late or miss a utility payment, and will thus be penalized through issuance of credit score damage points by the CRAs.

This disparate treatment will be exacerbated by year-to-year differences. If the Upper Midwest experiences an unusually harsh winter, while New England has a mild winter, low-income customers in the former region will likely fall behind on their utility bills to a greater

²⁰ U.S. Department of Energy/Energy Information Administration, “Short-term Energy Outlook,” December 2009. EIA has forecast Northeast Census Region natural gas home heating expenditures during the winter of 2009 – 2010 to average \$1,123. Average West Census Region expenditures are forecast to be \$497.

extent. Credit scores that reflect weather patterns rather than creditworthiness are unfair to consumers.

Availability of Low Income Energy Assistance

Another important factor in determining the extent to which low-income consumers are able to remain current on their monthly electric and natural gas utility bills is the availability of bill payment assistance and energy efficiency programming. Just as there are disparities in state regulatory consumer protections, customer service rules, and home energy expenditure levels, there is also wide variability in the availability of resources to assist low-income households stay current on their utility bills. Full utility credit reporting will not fairly and consistently reflect these energy program disparities.

The table on the following page shows state LIHEAP allocation totals for FY 2009 and state supplements to LIHEAP from 2007 (the most recently reported data). To estimate the low-income energy assistance resources available on a per capita basis I divided funding totals by state populations below 125% of the federal poverty level. Review of these data reveals that energy assistance that contributes to affordability of utility bills in low-income households varies significantly state-to-state. Given the increased likelihood that low-income utility customers who do not have access to meaningful energy assistance will be late or miss utility payments, full utility credit reporting will unfairly penalize low-income consumers living in states where there is limited funding of utility payment assistance and energy efficiency programs.

2009 LIHEAP and 2007 Non-Federal Low-Income Energy Program Expenditures by State

State	FY 2009 LIHEAP Allocation	2007 State Supplements to LIHEAP for low-income energy programs	Persons (x 1,000) Below 125% Poverty	LIHEAP \$ Per Person Below 125% Poverty	Non-federal \$ Per Person Below 125% Poverty
AK	\$21,432,958	\$12,373,328	77	\$278	\$161
AL	\$63,831,510	\$4,247,397	873	\$73	\$5
AR	\$39,710,892	\$5,431,356	593	\$67	\$9
AZ	\$28,726,260	\$23,973,951	1,463	\$20	\$16
CA	\$246,390,527	\$940,212,820	7,196	\$34	\$131
CO	\$71,351,514	\$31,969,650	748	\$95	\$43
CT	\$125,886,559	\$24,472,439	395	\$319	\$62
DC	\$16,248,702	\$14,094,100	127	\$128	\$111
DE	\$18,748,265	\$4,464,800	131	\$143	\$34
FL	\$101,674,587	\$8,988,545	3,366	\$30	\$3
GA	\$80,409,964	\$37,966,864	1,867	\$43	\$20
HI	\$5,182,356		179	\$29	\$0
IA	\$76,929,443	\$17,757,105	408	\$189	\$44
ID	\$28,555,821	\$5,444,128	277	\$103	\$20
IL	\$265,679,324	\$82,894,786	2,055	\$129	\$40
IN	\$116,479,239	\$36,713,341	1,150	\$101	\$32
KS	\$49,495,553	\$333,333	510	\$97	\$1
KY	\$75,055,015	\$11,329,196	938	\$80	\$12
LA	\$61,501,777	\$8,363,121	1,055	\$58	\$8
MA	\$213,414,372	\$100,922,662	934	\$228	\$108
MD	\$109,164,402	\$59,836,840	682	\$160	\$88
ME	\$76,292,701	\$25,080,832	208	\$367	\$121
MI	\$248,106,417	\$170,108,062	1,690	\$147	\$101
MN	\$163,982,395	\$36,910,007	668	\$245	\$55
MO	\$114,902,312	\$9,922,798	1,023	\$112	\$10
MS	\$42,540,837	\$1,261,512	774	\$55	\$2
MT	\$29,048,774	\$7,857,101	177	\$164	\$44
NC	\$130,171,566	\$17,974,295	1,764	\$74	\$10
ND	\$30,412,599		98	\$310	\$0
NE	\$44,069,564	\$333,333	262	\$168	\$1
NH	\$47,736,727	\$30,874,612	124	\$385	\$249
NJ	\$185,773,240	\$240,526,626	1,074	\$173	\$224
NM	\$25,265,599	\$27,185,029	509	\$50	\$53
NV	\$14,599,076	\$12,776,021	388	\$38	\$33
NY	\$537,649,066	\$189,899,512	3,585	\$150	\$53
OH	\$245,750,378	\$352,345,668	2,035	\$121	\$173
OK	\$48,092,270	\$10,978,941	662	\$73	\$17
OR	\$50,649,524	\$35,748,220	605	\$84	\$59
PA	\$308,394,335	\$372,465,363	1,763	\$175	\$211
RI	\$38,543,560	\$9,587,203	166	\$232	\$58
SC	\$51,046,655	\$3,355,000	852	\$60	\$4
SD	\$25,535,815	\$1,422,720	132	\$193	\$11
TN	\$80,511,543	\$5,000,000	1,339	\$60	\$4
TX	\$169,195,961	\$54,172,187	5,380	\$31	\$10
UT	\$35,254,984	\$2,300,000	297	\$119	\$8
VA	\$127,668,416	\$20,995,732	1,093	\$117	\$19
VT	\$36,155,603	\$16,456,232	75	\$482	\$219
WA	\$81,201,334	\$50,215,881	840	\$97	\$60
WI	\$147,607,702	\$75,696,192	757	\$195	\$100
WV	\$45,018,758	\$3,000,000	369	\$122	\$8
WY	\$14,081,452	\$3,000,000	71	\$198	\$42
Totals	\$5,011,128,203	\$3,219,246,389	53,804	\$93	\$60

Sources: U.S. Census Bureau - Current Population Survey, Annual Social and Economic Supplement

LIHEAP Clearinghouse (Non-federal Supplements to LIHEAP include state appropriations, public benefit funds, fuel funds, utility payment assistance, and utility low-income energy efficiency)

Summary and Conclusions

- Full utility credit reporting is being aggressively promoted as a way of pushing utility bills to the top of consumers' "to-pay" piles.
- Currently, the vast majority of electric and natural gas utilities report only on seriously delinquent accounts that have been referred to a collection agency or written off as uncollectible.
- Millions of electric and natural gas utility accounts that are in arrears but have not been written off are currently not reported, but would be under full utility credit reporting.
- A single late payment damages a credit score by 60 to 110 points. Low credit scores signal fee harvesters and predatory lenders to market consumers.
- Low-income consumers are far more likely than their higher-income counterparts to be late in paying a home energy bill.
- Full utility credit reporting would exert additional financial pressure on low-income households, and increase the likelihood that expenditures for necessities such as food or medical care will be reduced to avoid serious credit scoring consequences. These pressures bring particularly serious threats to the health, safety, and wellbeing of elders.
- Full utility credit reporting would undermine the policy objectives of state regulatory consumer protections intended to shield vulnerable consumers, particularly elderly and disabled consumers, from loss of necessary electric and natural gas utility service.
- There is tremendous disparity between states in the stringency of customer service rules, the level of home energy prices, and the availability of low-income energy assistance programs.
- Full utility credit reporting will not adequately reflect these disparities, and will unfairly penalize consumers living in states where such conditions are not favorable.

Based on the foregoing and absent availability of a consumer "opt-in" mechanism, we oppose full utility credit reporting and urge that the practice be prohibited by state and federal policy-makers.