



Testimony before the

U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON FINANCIAL SERVICES

Regarding

“A Biased, Broken System: Examining Proposals to Overhaul Credit Reporting to Achieve Equity”

June 29, 2021

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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 under the Fair Credit Reporting Act (FCRA) and colloquially as “credit bureaus.”

Throughout the decades, NCLC has documented the many problems and abuses of the credit reporting system. Over and over again, we have described and provided evidence of:

- the systemic errors in credit reporting, which are a result of deliberate decisions and longstanding failures of the credit bureaus, and lead to unacceptable error rates;
- the Kafka-esque automated dispute system used by the credit bureaus;
- the need to mitigate the punitive impact of a system that 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

Just last month, NCLC again provided testimony on the failures of the credit bureaus in an Oversight and Investigations Subcommittee hearing entitled “Consumer Credit Reporting: Assessing Accuracy and Compliance”³

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 bureaus 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 twenty-one practice treatises that NCLC publishes and annually supplements. This testimony was written by Chi Chi Wu, with editorial review by Carolyn Carter and assistance from Leonard Bennett, Sylvia Goldsmith, Matthew Osborne, Joanne Faulkner and other consumer attorneys.

² See, e.g., Who’s Keeping Score? Holding Credit Bureaus Accountable and Repairing a Broken System: Hearing: Before the H. Comm. on Fin. Servs., 116th Congr. (2019); 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).

All of the problems and failures with our consumer credit reporting system stem from two fundamental 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.
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.

The fact that these are private, profit-seeking companies explains why the credit bureaus are constantly expanding their products into uses, such as employment, insurance, and tenant screening, that ultimately harm Americans and contribute to the massive inequality in our nation. The fact that their customers are creditors and other users of information explains the unacceptable error rates and bias against consumers who complain about errors.

These two factors are why it's time for a new paradigm for credit reporting, a public credit registry. While public agencies are not perfect, at least they would not have profit-making as their top priority. They would be responsive to public pressure and government oversight. They could also be charged with developing credit scoring models to reduce the yawning racial and economic inequality in this country.

A public credit registry would also respond to the Supreme Court's decision just this past Friday in *TransUnion v. Ramirez*, --- S.Ct. ---, 2021 WL 2599472 (U.S. June 25, 2021), which seriously impairs the ability of consumers to seek relief for inaccuracies under the FCRA. If consumers are not able to obtain legal redress for FCRA violations, a key means of enforcement disappears, making the broken credit reporting system much, much harder to fix. A public credit registry would replace or provide an alternative to this broken system.

Enough is enough. The American consumer deserves better. It is time for a fundamental and wholesale reform of the credit bureaus, in fact such reform is long overdue.

A. Financial Reputations at Stake

Credit reports and credit scores play a crucial role in consumers' lives, and their importance has only grown in recent years. Of course, credit reports and scores can determine a consumer's ability to obtain credit and the amount they have to pay for it, which affects their ability to purchase a home – the pathway to establishing middle class wealth for most consumers. But even for renters, 90% of landlords use credit reports and scores,⁴ which means a bad score could shut out a renter out of apartments in a decent school district or even permanent housing. An

³ Consumer Credit Reporting: Assessing Accuracy and Compliance: Hearing Before the Subcomm. on Oversight and Investigations of the H. Fin. Serv. Comm., 117th Congr. (2021) (testimony of Chi Chi Wu).

⁴ Transunion SmartMove, TransUnion Independent Landlord Survey Insights, Aug. 7, 2017, <https://www.mysmartmove.com/SmartMove/blog/landlord-rental-market-survey-insights-infographic.page>.

article in the New York Times Magazine last month documented how much a bad credit score can hurt the ability of many Americans to simply find a stable roof over their heads:

Without any say in the matter, Americans are now labeled with a new layer of identity: a three-digit judgment of economic worthiness. “It’s a number that went from being nonexistent to being a gatekeeper to getting housing,” says Lisa Servon of the University of Pennsylvania, the author of “The Unbanking of America.” The \$14.4 billion credit-reporting industry in the United States — the consumer-credit subset of that market is dominated by the big three: Experian, TransUnion and Equifax — quietly assumed a new yet profound role in the American class system to the extent it influenced who could live where and who received a second chance after financial disaster.

* * * * *

All this financial surveillance of America’s poor has helped lead to the creation of a permanent credit underclass. A survey conducted in the fall of 2018 in Norcross, Ga., a city of about 17,000 outside Atlanta, concluded that nine of the city’s 14 hotels, motels and extended stays had become “primarily residential facilities.” When the respondents — 70 percent of whom were Black — were asked to name the biggest barrier to more permanent housing, one person after another cited bad credit. “They are trapped by the credit bureaus,” says Malik Watkins, an affordable-housing researcher at the Carl Vinson Institute of Government at the University of Georgia, who was an author of the survey. In Gwinnett County Public Schools, the largest school system in Georgia, 91 bus stops at hotels, motels or extended stays pick up nearly 600 students.⁵

In addition, credit reports and scores can affect whether and at what price Americans can obtain insurance and hence their ability to own a car. Nearly one-third of employers use credit reports, affecting a consumer’s ability to find a job. Even hospitals have been known to pull a credit report before offering medical services⁶ and the Department of Homeland Security had included a credit score check in its now-vacated Public Charge Rule.⁷ It’s essentially the report card for a consumer’s financial life.

Yet for such an important record, credit reports and scores suffer from profound problems and abuses. For one thing, credit reports are still too full of errors - parents and students would never accept report cards so full of mistakes and inaccuracies. Or put another way – these credit histories are our financial reputations. To quote Shakespeare, “Who steals my purse steals trash” but “he that filches from me my good name ... makes me poor indeed.”⁸

⁵ Mya Frazier, When No Landlord Will Rent to You, Where Do You Go?, N.Y. Times, May 23, 2021, <https://www.nytimes.com/2021/05/20/magazine/extended-stay-hotels.html?referringSource=articleShare>

⁶ PJ Randhawa & Erin Richey, KSDK News, Nov. 21, 2020, Why some hospitals run credit checks on patients, <https://www.ksdk.com/article/news/investigations/hospitals-want-your-credit-score-for-what/63-b360768d-a138-40f6-b572-e3fa0bc95526>.

⁷ Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 41,292, 41,503 (final rule Aug. 14, 2019). Regarding the current status of the rule, *see* USCIS, Public Charge Letter to Interagency Partner, April 12, 2021, <https://www.uscis.gov/sites/default/files/document/notices/SOPDD-Letter-to-USCIS-Interagency-Partners-on-Public-Charge.pdf>.

⁸ Shakespeare, Othello, Act III, scene 3.

Credit bureaus constantly filch the good name of American consumers with errors and inaccuracies. The often-cited 2012 Federal Trade Commission (FTC) study on credit reporting errors found that 1 in 5 consumers (or over 20%) have verified errors in their credit reports, and 1 in 20 consumers (or 5%) have errors so serious that they would be denied credit or need to pay more for it.⁹ With an estimated 208 million Americans in the credit reporting system,¹⁰ this means that 42 million consumers have errors in their credit reports, and 10 million have errors that can be life altering.

The credit reporting industry has attempted to rebut these FTC statistics by, among other things, claiming that the problems with errors have been fixed in the intervening years since 2012.¹¹ Yet just this month, we have a study from Consumer Reports authored by fellow witness Syed Ejaz in which, out of nearly 6,000 consumers, 34% found at least one error in their credit reports, 29% found errors in their personal information, and 11% found errors related to their account information.¹²

Moreover, another indication that the massive accuracy problems in credit reporting have not been resolved is the dramatic explosion of complaints last year to the Consumer Financial Protection Bureau (CFPB) about credit reporting. In 2020, the CFPB received over 319,000 complaints about credit or consumer reporting, over twice as many as in 2019 and constituting 59% of the overall complaints received by the CFPB last year.¹³ Since the CFPB started accepting complaints about credit reporting in December 2011, there have been over 700,000 such complaints.¹⁴ And in 2021, there were already over 90,000 credit reporting complaints in the first four months, constituting 59% of complaints to CFPB in the first third of the year.¹⁵

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 the 5% serious error rate reported by the FTC for other critical industries – imagine if 5% of automobiles spontaneously exploded or 5% of airplanes fell out of the sky? Yet after decades of advocacy, legal changes, regulation, and enforcement, we are still faced with a fundamentally flawed credit reporting system. As the

⁹ Federal Trade Comm'n Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003 (Dec. 2012).

¹⁰ Kenneth Brevoort, Philipp Grimm & Michelle Kambara, CFPB Office of Research, CFPB Data Point: Credit Invisibles 12 (May 2015), http://files.consumerfinance.gov/f/201505_cfpb_data-point-credit-invisibles.pdf.

¹¹ Terry Clemans, FTC/CFPB Consumer Reporting Accuracy Workshop Report, National Mortgage Professional, <https://nationalmortgageprofessional.com/news/74194/ftccfpb-consumer-reporting-accuracy-workshop-report>, Mar. 19, 2020 (NCAP “made further changes that have increased the accuracy of consumer credit reports. NCAP eliminated areas that were problematic, and created new ways to improve other long time challenges”).

¹² Syed Ejaz, Consumer Reports, A Broken System – How the Credit Reporting System Fails Consumers and What to Do About It, June 10, 2021, <https://advocacy.consumerreports.org/wp-content/uploads/2021/06/A-Broken-System-How-the-Credit-Reporting-System-Fails-Consumers-and-What-to-Do-About-It.pdf>

¹³ Consumer Financial Protection Bureau, Consumer Response Annual Report January 1 – December 31, 2020 (March 2020), at 9, https://files.consumerfinance.gov/f/documents/cfpb_2020-consumer-response-annual-report_03-2021.pdf.

¹⁴ Data generated from CFPB Consumer Complaints Database, <https://www.consumerfinance.gov/data-research/consumer-complaints/search/> (viewed May 22, 2021).

¹⁵ *Id.*

CFPB has noted, “experience indicates that [the credit bureaus] lack incentives and under-invest in accuracy.”¹⁶

B. A Half Century Battle for Fair Treatment

In 2020, we celebrated the 50th Anniversary of the Fair Credit Reporting Act. This means that the problems and abuses of credit bureaus have been the subject of attention and reform for over half a century. Despite this, the situation has only gotten worse as credit reports remain full of flaws but are used by more and more businesses to deny consumers the necessities of life. In fact, with the Supreme Court’s decision last Friday in *TransUnion v Ramirez*, --- S.Ct. ---, 2021 WL 2599472 (U.S. June 25, 2021), discussed in Section D below, we fear that the credit bureaus’ culture of impunity will worsen as the Court has made it that much more difficult for consumers to seek justice for credit reporting errors.

The following are some of the key types of errors in credit reports, including examples from legal cases, media articles, and the CFPB complaint narratives. Additional examples are available in Appendix A to my testimony from last month before the Oversight and Investigations Subcommittee.¹⁷

1. Mixed files

In 1968, Senator William Proxmire, often considered the father of the FCRA, noted: “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.”¹⁸ Fifty years later, this type of error- the mixed file - still harms too many consumers. 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.

In May 2015, the credit bureaus entered into a settlement with over 30 Attorneys General agreeing to a number of reforms, including establishing minimum standards for matching criteria and providing for escalated handling for mixed file disputes.¹⁹ Yet six years later, consumers are still facing problems from mixed files.

¹⁶ Consumer Financial Protection Bureau, Supervisory Highlights Consumer Reporting Special Edition, Winter 2017, at 21, https://files.consumerfinance.gov/f/documents/201703_cfpb_Supervisory-Highlights-Consumer-Reporting-Special-Edition.pdf.

¹⁷ Consumer Credit Reporting: Assessing Accuracy and Compliance: Hearing Before the Subcomm. on Oversight and Investigations of the H. Fin. Serv. Comm., 117th Congr. (2021) (testimony of Chi Chi Wu).

¹⁸ 114 Cong. Rec. 24,903 (1968).

¹⁹ Assurance of Voluntary Compliance/Assurance of Voluntary Discontinuance, In the Matter of Equifax Info. Serv. L.L.C., Experian Info. Sols., Inc., and TransUnion L.L.C., § IV (E)(5) and (F)(7) (May 20, 2015), <https://www.ohioattorneygeneral.gov/Files/Briefing-Room/News-Releases/Consumer-Protection/2015-05-20-CRAs-AVC.aspx>

Twin trouble

Just last month, Verge news writer Mitchell Clark wrote an extensive article about how his file at the credit bureaus has been consistently mixed with his twin sister Alita:

Sometimes they associate her name with my social security number, sometimes it's the other way around — and sometimes we both show up under the same SSN.... Over and over, Alita and I have been rejected for credit cards, despite both having good credit. I was rejected for a car loan by a bank that I've used for years — despite having enough cash to immediately pay off the loan. Neither of us has had issues with getting access to housing, but it's hard to feel sure it won't happen in the future. The problem isn't banks or lenders but the credit system itself, a vast and invisible information network with little incentive to correct even the simplest of problems.²⁰

The credit reporting errors at issue in *TransUnion v. Ramirez* are also an example of a mixed file error of an even more egregious type, when credit bureaus match consumers to records based on only their names and no other identifiers. As the majority opinion in *TransUnion v. Ramirez* recounted:

Beginning in 2002, TransUnion introduced an add-on product called OFAC Name Screen Alert. OFAC maintains a list of “specially designated nationals” who threaten America’s national security. Individuals on the OFAC list are terrorists, drug traffickers, or other serious criminals....

When this litigation arose, Name Screen worked in the following way: When a business opted into the Name Screen service, TransUnion would conduct its ordinary credit check of the consumer, and it would also use third-party software to compare the consumer’s name against the OFAC list. If the consumer’s first and last name matched the first and last name of an individual on OFAC’s list, then TransUnion would place an alert on the credit report indicating that the consumer’s name was a “potential match” to a name on the OFAC list. TransUnion did not compare any data other than first and last names. Unsurprisingly, TransUnion’s Name Screen product generated many false positives. Thousands of law-abiding Americans happen to share a first and last name with one of the terrorists, drug traffickers, or serious criminals on OFAC’s list of specially designated nationals.

Sergio Ramirez learned the hard way that he is one such individual. On February 27, 2011, Ramirez visited a Nissan dealership in Dublin, California, seeking to buy a Nissan Maxima. Ramirez was accompanied by his wife and his father-in-law. After Ramirez and his wife selected a color and negotiated a price, the dealership ran a credit check on both Ramirez and his wife. Ramirez’s credit report, produced by TransUnion, contained the following alert: “***OFAC ADVISOR ALERT - INPUT NAME MATCHES NAME ON THE OFAC DATABASE.” App. 84. A Nissan salesman told Ramirez that Nissan would not sell the car to him because his name was on a “ ‘terrorist list.’ ” Id., at 333. Ramirez’s wife had to purchase the car in her own name.

²⁰ Mitchell Clark, Credit agencies can’t tell my sister and me apart, The Verge, May 12, 2021, <https://www.theverge.com/22421193/credit-reporting-infrastructure-errors-experian-equifax-transunion>.

TransUnion LLC v. Ramirez, --- S.Ct. ---, 2021 WL 2599472, at *4 (U.S. June 25, 2021).

2. 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 commit fraud. When consumers try to fix the aftereffects of identity theft, furnishers often fail to believe them and the credit bureaus take the furnishers' side. Furnishers often require police reports, even though practitioners report that many police departments are unwilling to provide them and the FTC has stated that its Identity Theft Affidavit is sufficient to dispute accounts resulting from identity theft.²¹ In fact, some practitioners report that furnishers are insisting on a criminal prosecution before they will treat a fraud account as identity theft, which can be an almost impossible bar. Other practitioners report that credit bureaus will not treat a police report as valid if it does not contain a police officer's signature or an official police department seal, or both, even though many police departments will only provide a computer-generated report with the officer's name printed.

Not a Best Buy

Thomas Kemplage is a prominent dentist in his 50s. In the Fall of 2019, Dr. Kemplage discovered a \$1,700 charge for electronics purchases at Best Buy on his JPMorgan Chase card. He immediately reported the fraudulent charges to Chase, which instructed him to file a police report, which he did on December 6, 2019. The police actually investigated and "determined from Best Buy surveillance video that 'the purchase at Best Buy was made by someone other than me.'" Yet not only did Chase refuse to remove the charge, it reported his account as over 180 days past due and charged off, seriously harming his credit record. Dr. Kemplage disputed this reporting and requested a fraud block, as was his right under the FCRA. All three credit bureaus refused to apply a fraud block. Experian's stated reason for this denial was that "[t]he identity theft report that you provided to us does not meet the guidelines established by the federal Fair Credit Reporting Act for the following reason(s): The report does not reference identity theft" – despite the fact that both the police report as well as an FTC Identity Theft Affidavit that Dr. Kemplage submitted described the identity theft at issue.²²

Additional examples from the CFPB Complaint Database of the credit bureaus and furnishers refusing to believe identity theft victims and refusing to remove fraudulent accounts from the victims' credit report are included in Appendix A to my testimony from last month.²³

²¹ Seena Gressin, Federal Trade Commission, Most ID theft victims don't need a police report, Apr. 27, 2017, <https://www.consumer.ftc.gov/blog/2017/04/most-id-theft-victims-dont-need-police-report> "In most cases, you can use your Identity Theft Report in place of a police report to clear your account and credit records of transactions that resulted from the identity theft.").

²² Complaint, Kemplage v. Equifax Info. Serv., LLC, Cause No. 4:21-cv-00469 (Apr. 22, 2021).

²³ Consumer Credit Reporting: Assessing Accuracy and Compliance: Hearing Before the Subcomm. on Oversight and Investigations of the H. Fin. Serv. Comm., 117th Congr. (2021) (testimony of Chi Chi Wu).

3. Being declared dead

In one of the worst types of credit reporting errors, consumers are labeled as “deceased” when they are alive and breathing. Another reform required by the 2015 AG settlement was to identify ways to “preventing inaccurate reporting of Disputed Deceased Indicators.”²⁴ Six years later, consumers are still facing the terrible burden of being falsely declared dead.

Being declared dead leads to a broken heart

In January 2017, James Rennick applied for a home-equity loan in order to renovate his house. His wife of five decades, Angela, was dying of lung, kidney, bone and brain cancer and Rennick wanted to make renovations to ease her last days and to cover burial costs. But Rennick was unable to get a loan because Equifax and Experian had declared him dead. Rennick’s credit history information was mixed up with that of another man, an unrelated James Palmer. As a result, not only was he unable to accommodate his dying wife, Rennick himself “died of a broken heart” according to his daughter. Both Rennick and his wife had to be cremated “because there wasn’t enough money for the more expensive option of burial.”²⁵

4. Furnisher errors

Errors in credit reports can often be caused by furnishers. Common errors include attributing an account or debt to the wrong consumer, incorrectly recording a payment history, or failing to properly report a bankruptcy or loan modification. Debt collectors are a frequent source of errors.²⁶

*Debts of the father*²⁷

Medical bills are the most common type of debt collection item on credit reports. In some cases, they might not even be reported for the correct patient. For example, in March 2018, debt collection agency AR Resources (ARR) reported 19 medical bills of 83-year old Francisco Perez Gonzalez on the credit report of his son, Francisco J. Perez Ramones. ARR refused to correct this error despite the son disputing these debts around 30 times. These disputes noted that the son and father had different names and dates of birth, yet ARR refused to correct the information. The credit bureaus simply accepted ARR’s response despite clear evidence that the debt collector had tagged the wrong consumer. Furthermore, this collector seems to have questionable dispute investigation policies –

²⁴ Assurance of Voluntary Compliance/Assurance of Voluntary Discontinuance, In the Matter of Equifax Info. Serv. L.L.C., Experian Info. Sols., Inc., and TransUnion L.L.C., § IV(F)(2)(A) (May 20, 2015), <https://www.ohioattorneygeneral.gov/Files/Briefing-Room/News-Releases/Consumer-Protection/2015-05-20-CRAs-AVC.aspx>

²⁵ Andrew Keshner, This woman says Equifax mixed up her father’s credit report and ‘destroyed’ his life — and now she hopes to convince a jury, Marketwatch, Oct. 29, 2019, <https://www.marketwatch.com/story/this-woman-says-equifax-mixed-up-her-fathers-credit-report-and-destroyed-his-life-now-she-hopes-to-convince-a-jury-2019-10-25>. See also Malverty v. Equifax Information Services, LLC, 407 F.Supp.3d 1257 (2019).

²⁶ The CFPB found that debt collectors are responsible for 40% of disputes to the credit bureaus even though they only supply 13% of the accounts to credit reports. CFPB, Key Dimensions and Processes in the U.S. Credit Reporting System: A review of how the nation’s largest credit bureaus manage consumer data 14, 29 (2012), https://files.consumerfinance.gov/f/201212_cfpb_credit-reporting-white-paper.pdf.

²⁷ Perez Ramones v. Experian Info. Sols., LLC, 2021 WL 1839535 (S.D. Fla. May 7, 2021).

one of its investigators stated in a deposition that “she wouldn’t ‘delete an account just because the last name is different’ because that is inconsistent with ARR’s policies.”²⁸

5. CARES Act violations

The Coronavirus Aid, Relief, and Economic Security (CARES) Act provides credit reporting protections if a creditor approves a consumer for an “accommodation,” *i.e.*, a forbearance, payment deferral, loan modification, or other relief granted to a consumer affected by the COVID-19 pandemic.²⁹ If the creditor granted an accommodation and the consumer was current at the time, the CARES Act requires the account to be reported as current so long as the consumer complies with the accommodation agreement. If the consumer was already delinquent when they received the accommodation, but complies with the accommodation agreement, the creditor must report the same delinquency status during the accommodation period.³⁰ This past year, a common furnisher error was failing to properly follow the credit reporting requirements of the CARES Act.

Violation of CARES Act After Loan Transfer (Texas)

I'm currently on a forbearance plan until XX/XX/XXXX and I've been on one since XX/XX/XXXX of last year due to Covid. I filed applied for a forbearance plan with LoanCare and per the terms of the plan if my loan was current prior to entering the forbearance that's how it would be reported. Until XX/XX/XXXX XXXX was reporting my [sic] correctly to the credit bureaus then suddenly after selling my loan they reported me late and closed my account. This needs to be corrected ASAP! My loan was current before and according to the plan so why am I being reported late now when it was being reported Pay as agreed until now.

CFPB Complaint No. 4311035, filed April 20, 2021

Reforms are long overdue

The types of errors documented above have been harming and abusing consumers for over 50 years. It is well past time for major structural changes to the credit reporting industry, which should include:

- **A public credit registry.** A public credit registry would alleviate errors because it would not have incentives to engage in practices, such as overly inclusive matching criteria, that favor creditors but harm consumers. It would also be more responsive to fixing systematic errors such as the decades-old glitch that leads to living consumers being marked as deceased. At a minimum, there should be a public credit registry as an option where the consumer makes the choice of whether to use it or a private credit bureau. Thus, we would support a bill such as the draft National Credit Reporting Agency Act of 2021.

²⁸ *Id.* at *5.

²⁹ Pub. L. No. 116-136, § 4021 (Mar. 27, 2020).

³⁰ *Id.*

- **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 Social Security number (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.” Stricter matching criteria would partially address the negative fallout of the *TransUnion v. Ramirez* decision, since the abuses of TransUnion falsely tagging consumers as potential terrorists and drug dealers stemmed from poor matching practices.

C. A Broken Dispute System

One of the key tools in the FCRA to combat inaccuracies 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 a travesty of justice for decades, as documented by NCLC’s 2009 report [*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 uses 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. Workers did not examine documents, contact consumers by phone or email, or exercise any form of human discretion in resolving a dispute.

In preparation for a February 2019 credit reporting hearing before this Committee, we released a 10-year update entitled [*Automated Injustice Redux: Ten Years after a Key Report, Consumers Are Still Frustrated Trying to Fix Credit Reporting Errors*](#). This updated report documented how, despite a decade of attempts at reform, credit bureaus and furnishers continue to 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.

Both the 2009 report and the 2019 update describe 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. The credit bureaus’ practice is akin to a referee who always rules for one team. In 2017, the CFPB characterized parroting as a violation when it stated in a Supervisory Highlights report that it had cited the credit bureaus for “fail[ing] to review and consider the attached documentation and relied entirely on the furnisher to investigate the dispute.”³¹ Despite this CFPB pronouncement, the credit bureaus continue to engage in the practice.

Indeed, the credit bureaus’ failure to conduct any meaningful investigation of disputes has only gotten worse, as they have pushed, often successfully, their argument that they are not required

³¹ CFPB, Supervisory Highlights Consumer Reporting Special Edition, Winter 2017, https://files.consumerfinance.gov/f/documents/201703_cfpb_Supervisory-Highlights-Consumer-Reporting-Special-Edition.pdf, at 10-11.

to resolve “legal” disputes. Starting in 2010 with the case *Carvalho v. Equifax Info. Servs., LLC*,³² the credit bureaus as well as furnishers have aggressively pushed this theory with success, much to the detriment of consumers. The scope of what credit bureaus and furnishers claim to be a legal dispute has broadened to include issues such as forgery,³³ mixed files,³⁴ and identity theft.³⁵ The credit bureaus and furnishers are using the “legal dispute” argument to gut the investigation requirements of the FCRA, and avoid any legal responsibility for their failures. Recently, the CFPB has finally pushed back against this issue, decrying in an amicus brief the “formalistic distinction between factual and legal questions” because “[s]uch a distinction is inconsistent with the text and purpose of FCRA.”³⁶

It is way past time to fix the broken, Kafka-esqe credit reporting dispute system. Reforms must 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.
- **Sufficient resources and independent review.** Congress should clarify that the credit bureaus must devote sufficient resources and conduct independent analyses in disputes

We note these reforms were included in the Comprehensive CREDIT (Credit Reporting Enhancement, Disclosure, Innovation, and Transparency) Act of 2020, which the House of Representatives passed in January 2020 and which we strongly supported.³⁷ These reforms were also included in the Protecting Your Credit Score Act, which the House passed in June 2020 and we also supported. We would again support the Comprehensive CREDIT Act and the Protecting Your Credit Score Act in 2021.

³² 629 F.3d 876 (9th Cir. 2010).

³³ *Uppal v. Wells Fargo Bank, N*, 2020 WL 6150923 (M.D. Fla. Oct. 20, 2020)(dismissing claim where plaintiff alleged forgery of documents as a legal dispute).

³⁴ *Thompson v. Trans Union Data Sol.*, 2021 WL 1923409, at *3 (N.D. Ill. May 13, 2021)(denying dismissal; Chase argued it was a legal dispute where the consumer “states that he did not authorize the credit card and did not know anything about it.)

³⁵ *Perez Ramones v. Experian Info. Sols., LLC*, 2021 WL 1839535, at *5 (S.D. Fla. May 7, 2021)(“the Court finds unavailing the Defendant’s argument that it was not required to determine whether the Plaintiff “legally owed the debts” being reported.... the Plaintiff’s thirty disputes that the debts at issue were not his is not akin to a legal challenge.”).

³⁶ Brief of Amicus Curiae Consumer Financial Protection Bureau, *Gross v. CitiMortgage, Inc.*, 9th Circuit No. 2017160, https://files.consumerfinance.gov/f/documents/cfpb_amicus-brief_gross-v-citimortgage_2021-14.pdf. *Gross v. CitiMortgage* involved furnisher dispute investigations the rationale would apply to credit bureaus as well.

³⁷ 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.

D. The Urgent Need for Injunctive Relief Under the FCRA to Restore Consumer’s Ability to Seek Justice under the Act

This past Friday, the Supreme Court dealt an enormous blow to the ability of consumers to protect themselves and their financial reputations under the FCRA. In *TransUnion v. Ramirez*, -- S.Ct. ---, 2021 WL 2599472 (U.S. June 25, 2021), the Court held that in order to bring a legal action in federal court to enforce our rights under the Act, it’s not enough to have an error in a credit report. It’s not enough to have an outrageously egregious error, such as a false accusation that the consumer is a potential terrorist or drug dealer. It’s not even enough to show that the error was systematic and deliberate, affecting thousands of innocent consumers. None of these evils is enough, according to a majority of the Supreme Court, to establish “concrete injury” under Article III of the Constitution. As Justice Thomas wrote in his dissent:

[O]ne need only tap into common sense to know that receiving a letter identifying you as a potential drug trafficker or terrorist is harmful. All the more so when the information comes in the context of a credit report, the entire purpose of which is to demonstrate that a person can be trusted.

And if this sort of confusing and frustrating communication is insufficient to establish a real injury, one wonders what could rise to that level. If, instead of falsely identifying Ramirez as a potential drug trafficker or terrorist, TransUnion had flagged him as a “potential” child molester, would that alone still be insufficient to open the courthouse doors? What about falsely labeling a person a racist? Including a slur on the report? Or what about openly reducing a person's credit score by several points because of his race? If none of these constitutes an injury in fact, how can that possibly square with our past cases ...

TransUnion LLC v. Ramirez, --- S.Ct. ---, 2021 WL 2599472, at *23 (U.S. June 25, 2021).

Instead of concluding - as the vast majority of Americans would - that being falsely accused of being a terrorist or drug dealer is enough to cause injury in fact, the Supreme Court required that the error must be disclosed to a third party in order to have “standing” under Article III of the Constitution. In other words, a consumer who spots a blatant, offensive error in their credit report needs to wait until a creditor, employer, or landlord sees that error – needs to wait to have their reputation besmirched and ruined in the eyes of a complete stranger - before they have the ability to seek redress in federal court. They can attempt to submit a dispute under the FCRA, but if the Kafka-esque, broken dispute system described above does not fix the dispute, they could be rendered unable to do anything about it but must wait for the opprobrium of having a stranger judge them based on false information.

The Supreme Court’s decision was based on a Constitutional issue, but Congress is not powerless to act to restore the rights of consumers to seek protection under the FCRA. In fact, the majority opinion by Justice Kavanaugh provides a blueprint for fixing this terrible situation – by establishing the right of consumers to seek injunctive relief under the Act. The majority opinion states:

To support its statement that a material risk of future harm can satisfy the concrete-harm requirement, *Spokeo* cited this Court's decision in *Clapper*. But importantly, *Clapper* involved a suit for injunctive relief. As this Court has recognized, **a person exposed to a risk of future harm may pursue forward-looking, injunctive relief to prevent the harm from occurring, at least so long as the risk of harm is sufficiently imminent and substantial.**

TransUnion LLC v. Ramirez, --- S.Ct. ---, 2021 WL 2599472, at *12 (U.S. June 25, 2021) (emphasis added).

Thus, Congress can restore the ability of consumers to seek justice by allowing them to ask a court to “fix that report.” That’s all it takes. And, it’s a provision that is already in both the Comprehensive CREDIT Act and the Protecting Your Credit Score Act. By establishing the right to injunctive relief under the FCRA, Congress can legislatively reverse the terrible decision in *TransUnion v. Ramirez* and provide fairness and justice to consumers wrongfully defamed by credit bureaus.

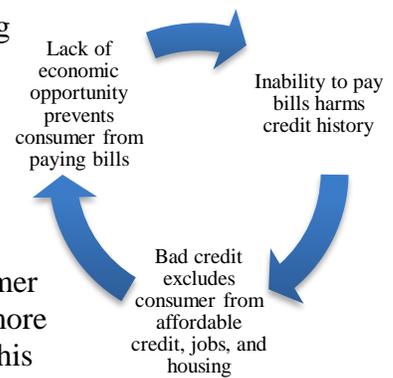
- **Injunctive relief for consumers.** Congress should restore the ability of consumers to seek a judicial remedy for credit reporting errors without needing to suffer the embarrassment and shame of a third party viewing the error. Congress can do so by giving consumers the right to seek injunctive relief under the FCRA.

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

Credit reporting and scoring penalizes consumers who have fallen on hard times through no fault of their own, such as from illness, job loss, third-party fraud, or natural disasters, treating them as irresponsible deadbeats. The most recent examples, of course, are workers who were financially burdened by the massive economic dislocation caused by the COVID-19 pandemic

Credit scores assume that delinquencies caused by, for example, a 50% reduction in income because a hospitality worker’s hours were reduced due to COVID-19 should be treated the same 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, disaster, 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 or housing, or to 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).

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.

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:

- **Protect economic victims of COVID-19.** Establish a moratorium on negative credit and consumer reporting for events that occurred during the COVID-19 pandemic period and for other significant disasters.
- **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 I 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.
- **Limit non-credit uses of credit reports and scores.** The harm from negative credit reporting would 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 rental housing and insurance is also highly problematic.³⁸
- **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). 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 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.³⁹

³⁸ 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.

³⁹ 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.

Most of these reforms were included in the Comprehensive CREDIT Act introduced in the last session of Congress, which we supported. The first item, a moratorium on negative credit reporting during the COVID-19 period, was included as Section 110401 of the HEROES Act, H.R. 6800, by the House of Representatives during the 116th Congress.

F. Racial Disparities in Credit Reporting Reinforce Inequality

The 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 Black and Latinx communities have lower credit scores as a group than whites. A list of older studies is available in our policy brief, [*Past Imperfect: How credit scores and other analytics “bake in” past discrimination and perpetuate it*](#) (2016). A more recent report found that over 50 percent of white households had a FICO credit score above 700, compared with only 20.6 percent of Black households.⁴⁰ Members of the Committee can check out statistics for their own states and counties using the Urban Institute’s Credit Health app: <https://apps.urban.org/features/credit-health-during-pandemic/>.

Communities of color have lower credit scores as a group because credit histories starkly reflect 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: the typical Black family has one-eighth (or less than 13%) of the wealth of a typical white family; Latinx families have one-fifth (20%) of the wealth of white families.⁴¹

The racial wealth gap, in turn, is due to both current discrimination and decades of intentional systematic discrimination. Housing discrimination, in particular, is responsible for much of the racial wealth gap as it deprived Black communities of the ability to accumulate wealth through homeownership.⁴² Current discrimination also has an impact on family financial situations. For example, a recent study found that a history of incarceration heavily impacts the credit scores of both the incarcerated individuals and their families,⁴³ and it’s been well-established that Black communities are disproportionately targeted by the criminal justice system.⁴⁴ Black communities also bear the bulk of financial burdens when municipalities make heavy-handed use of criminal fees and fines to obtain revenue.⁴⁵

⁴⁰ Jung Hyun Choi, et al., Urban Inst., Explaining the Black-White Homeownership Gap: A Closer Look at Disparities across Local Markets (Nov. 2019), <https://www.urban.org/research/publication/explaining-black-white-homeownership-gap-closer-look-disparities-across-local-markets>, at 8.

⁴¹ Neil Bhutta, Andrew C. Chang, Lisa J. Dettling, and Joanne W. Hsu, Federal Reserve, Disparities in Wealth by Race and Ethnicity in the 2019 Survey of Consumer Finances, FED Notes, September 28, 2020, <https://www.federalreserve.gov/econres/notes/feds-notes/disparities-in-wealth-by-race-and-ethnicity-in-the-2019-survey-of-consumer-finances-20200928.htm>.

⁴² See Richard Rothstein, *The Color of Law: A Forgotten History of How Our Government Segregated America*. Liveright Publishing Corporation, 2017 (documenting decades of intentional housing discrimination, including redlining by government agencies).

⁴³ Mónica García-Pérez, Sarah Gaither, William Darity Jr., Samuel DuBois Cook Center on Social Equity, Duke University, Baltimore Study: Credit Scores, March 2020, <https://equitablegrowth.org/working-papers/baltimore-study-credit-scores/>

⁴⁴ Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, New Press, 2010.

⁴⁵ Fines and Fees Justice Center, Racial Disparities, <https://finesandfeesjusticecenter.org/tag/racial-disparities/> (viewed June 24, 2020)(links to multiple studies discussing racial disparities in criminal fines and fees).

With far less wealth to draw on, Black consumers – and the friends and family to whom they might turn – are far less able to cushion the blow of financial calamities, such as the COVID-19 economic crisis. It’s not surprising for credit scores to reflect the racial disparities in the economic conditions of Black and white communities. As a *measurement tool*, they work well, in that they reveal the entrenched inequality that current and historical discrimination has engendered. The problem is when credit scores are used as a *decisionmaking* tool without consideration of these disparities. Using tools that “bake in” racial disparities results in perpetuating and reinforcing these same disparities, creating the vicious cycle.

The solutions necessary to stop this vicious cycle go beyond the credit reporting system. Racial equity requires measures such as restorative justice efforts in lending and homeownership programs. But some credit reporting measures that could help achieve racial justice include:

- **Limit non-credit uses of credit reports and scores.** Severely restrict the use of credit reporting information in employment and rental housing, and ban it for insurance.
- **Carefully test alternative data:** As discussed below, alternative data and scores can be a promising, but carry risks. Even the more promising forms of alternative data, such as bank account data, will still exhibit some racial disparities given the unequal economic positions of Black and white households, but may be an improvement from traditional credit scores as a “less discriminatory alternative.”
- **Develop a scoring model with fewer racial disparities.** As part of a public credit registry, the registry should have as an explicit mission to develop a credit scoring model that actively takes past and present discrimination into account and is intentionally designed to reduce racial disparities.

G. Alternative Data: Proceed with Caution

There has been a great deal of attention focused on another perplexing problem of the credit reporting system - “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.⁴⁶ The CFPB also found that Black, Latinx, and low-income consumers are more likely to have no credit history or to be unscorable.

Policymakers, advocates, and the credit industry have all promoted alternative sources of data as the solution to credit invisibility. While there is promise in some forms of alternative data, there are also significant risks. In a hearing in the Oversight and Investigations Subcommittee last month,⁴⁷ the credit bureaus aggressively advocated for policies that would help them include more alternative data in their files, claimed it would address the problems of credit reporting including racial disparities.

⁴⁶ Consumer Financial Protection Bureau, Data Point: Credit Invisibles, May 2015, http://files.consumerfinance.gov/f/201505_cfpb_data-point-credit-invisibles.pdf.

⁴⁷ Consumer Credit Reporting: Assessing Accuracy and Compliance: Hearing Before the Subcomm. on Oversight and Investigations of the H. Fin. Serv. Comm., 117th Congr. (2021).

However, feeding more data to the credit bureaus is not the solution. Feeding them more data only increases the oligopoly power of these three companies, giving them even more power over our information and our financial lives. Moreover, alternative data is not a panacea for the problems in credit reporting. There are also tens of millions of consumers with poor credit scores and histories, disproportionately Black and Latinx.⁴⁸ A bad credit history is more harmful than no credit history, and alternative data will not eliminate racial disparities in credit scores.

As with so many aspects of credit and financial services, “the devil is in the details” when it comes to alternative data. The manner in which alternative data is used is important. Using alternative data to create special scores that are separate from credit bureau-based scores is preferable, such as UltraFICO or FICO XD. In contrast, wholesale addition of the same data to traditional credit reports could damage consumers who already have a thick file and credit score. Also, it is absolutely critical that efforts to use alternative data be voluntary opt-in, with knowing consumer consent, to increase the control that consumers – not private companies – have over our own information.

The other critical issue 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.

- **Bank account transaction/cashflow data looks promising but carries risks.** Bank account transaction data appears to be the most 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 many months 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 due to COVID-19. Research by FinRegLab indicates that cash-flow data holds promise for helping borrowers who might otherwise face constraints on their ability to access credit.⁴⁹

However, bank account transaction data raises security and privacy issues, as it could be used in ways consumers do not expect or misused to ensure ability to collect, not ability to repay. 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.⁵⁰

- **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

⁴⁸ According to the Urban Institute’s Credit Health app, 22% of adults with credit files had a subprime credit score in October 2020, which would be nearly 46 million Americans. Urban Institute, Credit Health during the COVID-19 Pandemic, Feb 25, 2021, <https://apps.urban.org/features/credit-health-during-pandemic/>

⁴⁹ FinRegLab, The Use of Cash-Flow Data in Underwriting Credit: Empirical Research Findings, July 2019, https://finreglab.org/wp-content/uploads/2019/07/FRL_Research-Report_Final.pdf.

⁵⁰ For more details about our concerns regarding the use of bank account data, see NCLC et al., Comments to the CFPB in Response to the ANPR Regarding Consumer Access to Financial Records Under Section 1033 of the Dodd-Frank Act, Feb. 4, 2021, <https://www.nclc.org/issues/credit-reports.html>.

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.

For these reasons, NCLC and several dozen other consumer and utility rights groups have consistently opposed the “Credit Access and Inclusion Act.”⁵¹ 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, but carries risks.** Pilot projects using rental data have had promising results, especially those that do not report 30 or 60 day late payments. However, the COVID-19 pandemic has complicated efforts to use rental payment data, given that millions of tenants are behind in their rent obligations and at risk of eviction.
- **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, Internet, 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 their bills because of issues such as cramming and questionable surcharges.

H. The Unfinished Business of the Equifax Data Breach

It’s been over three and a half years since the Equifax data breach became public. 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 still nowhere close to being safe in the aftermath.

Notwithstanding numerous hearings in both the House and the Senate, the only measure taken by Congress was to include a provision in the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRCPA) of 2018 providing free security freezes⁵² – 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.

⁵¹ Consumer groups’ 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>.

⁵² 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 that person.⁵³

I. Medical Debt Unfairly Penalizes Consumers

As the COVID-19 pandemic has starkly shown, expenses for life-saving or medically necessary care are often unexpected, and can throw a family into an immediate financial crisis.⁵⁴ This crisis is compounded when families cannot pay for these surprise expenses and the debt is reported to credit bureaus. The impact of medical debt on credit reports is nothing short of stunning. The CFPB found that medical debt represents **58%** of all third-party debt collection entries that appear on credit reports,⁵⁵ and nearly one in five credit reports contains a medical debt item.⁵⁶ Moreover, there is strong evidence that medical debt items are not an accurate reflection of the creditworthiness of the consumer.⁵⁷

In response to this study and other evidence, both FICO and VantageScore developed scoring models that reduced the impact of medical debt. But these changes do help not mortgage

⁵³ Note that there has been a bill introduced in the Senate during this Congress to establish a credit freeze by default. S.1343 - Consumer Credit Control Act of 2021 (117 Congr.)(Sen. Reed).

⁵⁴ See, e.g., Sarah Kliff, Covid Killed His Father. Then Came \$1 Million in Medical Bills, N.Y. Times, May 21, 2021, <https://www.nytimes.com/2021/05/21/upshot/covid-bills-financial-long-haulers.html>; Sarah Kliff, A \$22,368 Bill That Dodged and Weaved to Find a Gap in America’s Health System, N.Y. Times, Marc. 10, 2021, <https://www.nytimes.com/2021/03/10/upshot/covid-bill-health-gap.html>.

⁵⁵ Consumer Fin. Prot. Bureau, Market Snapshot: Third-Party Debt Collections Tradeline Reporting, July 2019 (“More than half (58 percent) of total third-party debt collections tradelines were for medical debt alone”), https://files.consumerfinance.gov/f/documents/201907_cfpb_third-party-debt-collections_report.pdf#page=13.

⁵⁶ Consumer Fin. Prot. Bureau, Consumer Credit Reports: A Study of Medical and Non-Medical Collections (Dec. 11, 2014), https://files.consumerfinance.gov/f/201412_cfpb_reports_consumer-credit-medical-and-non-medical-collections.pdf.

⁵⁷ Consumer Fin. Prot. Bureau, Data Point: Medical Debt and Credit Scores (May 2014), https://files.consumerfinance.gov/f/201405_cfpb_report_data-point_medical-debt-credit-scores.pdf (finding that 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). See also Consumer Fin. Prot. Bureau, Consumer Credit Reports: A Study of Medical and Non-Medical Collections 7, 28 (Dec. 11, 2014), https://files.consumerfinance.gov/f/201412_cfpb_reports_consumer-credit-medical-and-non-medical-collections.pdf (consumers whose credit reports show only collection items consisting of medical bills are more reliable payers, owe less, and have more available credit).

applicants, because Fannie Mae and Freddie Mac do not use these models right now, despite working on this issue for many years⁵⁸ and even a statutory provision requiring updated scoring models.⁵⁹

A more effective solution than changing scoring models would be to prohibit the reporting of medical debt for medically necessary services and to delay the reporting of other medical debt for one year to give consumers time to resolve complex, confusing medical billing issues. Both of these solutions were included in the Comprehensive CREDIT Act that the House passed in January 2020, as well as H.R. 2547, the Comprehensive Debt Collection Improvement Act, passed by the House this year, both of which we strongly supported.

J. 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, nearly one-third of employers (31%) do so today.⁶⁰ This appears to be a decrease from the 47% of employers who checked credit reports in 2012⁶¹ but a significant increase from only 19% in 1996.⁶²

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 a financial death spiral: 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 Black and Latinx job applicants.** As discussed in Section E, study after study has documented how, as a group, Black and Latinx consumers have lower credit scores 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.
- **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

⁵⁸ Samantha Fields and Amy Scott, More people could qualify for mortgages under new rule, NPR Marketplace, Aug. 14, 2019, <https://www.marketplace.org/2019/08/14/more-people-could-qualify-for-mortgages-under-new-rule/>.

⁵⁹ Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA) of 2018, Pub. L. No. 115-174, § 310.

⁶⁰ National Association of Professional Background Screeners, How Human Resource Professionals View the Usage and Effectiveness of Background Screening Methods, 2108, at 10, <https://pubs.thepbsa.org/pub.cfm?id=9E5ED85F-C257-C289-9E8E-A7C7A8C58D00>

⁶¹ 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>.

⁶² 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).

evidence is that people with impaired credit histories are *not* more likely to be bad employees or to steal from their employers. As a Stanford professor who reviewed several relevant studies for her PhD thesis concluded “existing research provides few convincing correlations between personal financial data and employee behavior.”⁶³

- **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.

Conclusion

For 50 years, Congress, the FTC and now the CFPB, state legislatures and regulators, consumer advocates, private attorneys, and everyday Americans have battled a credit reporting industry that continues to abuse consumers with too many errors and a biased and dysfunctional dispute system. The same industry is shamelessly shilling its products for inappropriate and destructive uses such as rental housing and employment, contributing to one of the most appalling problems in this country – the massive economic and racial equality that threatens to tear this country apart.

Fifty years of abuse and dysfunction is enough.

It’s time for a new paradigm for credit reporting, one that is responsive to consumers, to the American people and to the good of our country. It’s time for a public credit registry, ideally exclusively as the only credit bureau. At a minimum, there should be a public credit registry as a public option where the consumer makes the choice of whether to use it or a private credit bureau.

Short of a public credit registry, or if it is a public option and private credit bureaus continue to exist, Congress should:

1. Reintroduce and pass a bill similar to the Comprehensive CREDIT Act, as well as a bill similar to the Protect Your Credit Score Act. Both bills were passed by the House of Representatives in the last Congress but not by the Senate. The bills included provisions such as:

- 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;

⁶³ Barbara Kiviat, The art of deciding with data: evidence from how employers translate credit reports into hiring decisions, *Socio-Economic Review*, Volume 17, Issue 2, April 2019, Pages 283–309, <https://doi.org/10.1093/ser/mwx030> (citing studies from [Weaver \(2015\)](#) finding no link between credit outcomes and productivity; [Bryan and Palmer \(2012\)](#) finding no consistent relationship between credit report data and job performance or termination and [Bernerth et al. \(2012\)](#) finding no correlation between credit scores and supervisors’ reports of bad workplace behavior).

- 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 the time that negative information can remain on a consumer report to four years (seven years for bankruptcies)
- prohibiting the inclusion of medical collections on credit reports until after one year from the bill, and the inclusion of any debts for medically necessary services;
- 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. Establish a moratorium on negative credit and consumer reporting for events that occurred during the COVID-19 pandemic period, similar to Section 110401 of the HEROES Act, H.R. 6800, passed by the House of Representatives during the 116th Congress.

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.