

Testimony of Chi Chi Wu,  
National Consumer Law Center  
Before the Joint Committee on Housing  
in support of H.1429/S.894: An Act Regulating the Use of Credit Reporting in Housing  
January 11, 2022

Dear Chair Arciero, Chair Keenan, and Honorable Members of the Joint Committee,

The National Consumer Law Center (NCLC)<sup>1</sup> thanks you for holding this hearing on the Fair Chance in Housing Act -- the FCHA for short. Also thanks to Senator Lesser and Representative Malia for introducing these bills. NCLC offers this testimony in support of H.1429 and S.894 on behalf of our low-income clients. We also submit the attached letter from 34 organizations in support of these bills.

Even before the COVID-19 pandemic, Massachusetts' renters were facing a crisis from the lack of safe and affordable housing for low and moderate-income (LMI) families. One of the most significant barriers for obtaining housing is the use of credit reports and credit scores. By some estimates, 90% of landlords use credit reports and scores.<sup>2</sup>

An article in the May 23, 2021 New York Times Magazine documented how much a bad credit score can hurt the ability of Americans to simply find a stable roof over their heads. This article described how many LMI families are unable to obtain decent housing and forced to rent expensive extended stay motel rooms that are inadequate as permanent housing (for example, they lack kitchens). One of the primary reasons cited for this terrible phenomenon is poor credit:

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

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<sup>1</sup> The National Consumer Law Center is a nonprofit organization specializing in consumer issues on behalf of low-income people. We work with thousands of legal services, government and private attorneys, as well as community groups and organizations, from all states who represent low-income and elderly individuals on consumer issues. As a result of our daily contact with these advocates, we have seen many examples of the damage wrought by abuses from credit reporting agencies from every part of the nation. It is from this vantage point that we supply these comments. Fair Credit Reporting (9th ed. 2017) is one of the twenty-one practice treatises that NCLC publishes and annually supplements. This testimony was written by Chi Chi Wu, lead author of that treatise, and Michael Best.

<sup>2</sup> Transunion SmartMove, TransUnion Independent Landlord Survey Insights, Aug. 7, 2017, <https://www.mysmartmove.com/SmartMove/blog/landlord-rental-market-survey-insights-infographic.page>.

— 70 percent of whom were Black — were asked to name the biggest barrier to more permanent housing, one person after another cited bad credit.<sup>3</sup>

Massachusetts renters are likewise affected by this phenomenon. One example is from a June 2021 email from a Barnstable resident describing how her mother was shut out of housing by a negative credit report:

My mother who is 71, a Gold-Star Wife and employed as a Psychotherapist on Cape Cod will soon be homeless. She is a vital part of the Cape Cod community working with a vulnerable population.

I am writing because we need help in navigating a request for reconsideration from a denial for senior housing at Everleigh Cape Cod on May 19, 2021. She was denied solely based on her credit score in the 650 range. She had claimed Bankruptcy, which was discharged over three years ago. In large part this credit score is due to an errors [sic] on her credit report that shows a student loan delinquency. This is inaccurate. We have filed a formal complaint with the Massachusetts Attorney General: student loans division. Who stated when we spoke with them prior to filing “this happens all the time.” We have also been in the process of working with the credit reporting agencies to fix the errors. We did explain this to Everleigh.

My mother can afford these apartments, deserves a decent place to live and was given a straight denial based solely on the credit report from Resident Verify.<sup>4</sup>

Lack of credit history is also a significant challenge for newcomer populations, such as immigrants and refugees, who already face a daunting enough challenge from the high cost of rent and limited housing supply in the Commonwealth.

As one Good Samaritan helping an Iranian refugee in Massachusetts recounted:

One of the big barriers to finding housing (besides the crazy, astronomical cost!) is many of the corporate owned apartments require a high annual salary and good credit. Refugees, of course, have no credit. And an example of how hard it is, i've been helping to look for a studio for an Iranian woman who has been hosted for the past 18 months because it was too hard to find housing during the pandemic when she first arrived. Her host inquired recently re a few studio apartments and she was turned down because for a \$1200 month studio (the max she can pay) they require an annual salary of \$42K plus good credit.<sup>5</sup>

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<sup>3</sup> 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>

<sup>4</sup> Email from Barnstable Resident to Bill Keating, June 2, 2021, on file with author.

<sup>5</sup> Facebook post of Leesteffy Jenkins, Aug. 31, 2021, <https://www.facebook.com/leesteffy.jenkins/posts/10224870422201237>.

The FCHA will ensure that negative credit reporting or a low credit score alone will not bar Massachusetts families from obtaining decent rental housing. It would prevent housing providers from considering a potential tenant's credit report or score in making a rental housing decision unless a federal or state requirement mandates otherwise. This bill is necessary for a number of reasons.

## 1. Credit Reports Don't Predict Current Ability to Pay

Credit reports and scores are not intended to gauge whether someone will be a good tenant. Credit scores are designed to predict the likelihood that a borrower will become 90 days late on a loan<sup>6</sup> —not rent, which is a different sort of obligation. What's more, credit reports tell a story about past ability to pay in particular instances, not current ability to pay rent, which is a high-priority bill that families pay before all others – a common refrain is that for LMI families “the rent eats first.”<sup>7</sup> A prospective tenant could show their current ability to pay with paystubs, tax returns, W-2s, and bank statements.

The economic havoc wreaked by the pandemic illustrates the disconnect between credit history and ability to pay rent. In December 2020, 19% of adult Bay Staters, or nearly 1 million people, had a debt in collections.<sup>8</sup> In Massachusetts' communities of color, the percentage was 35%. In Hampden County it was 46%.

The economy has recovered for many, but not all. And, while the financial impact of the pandemic may have been temporary for some Bay Staters, the credit reporting impact of missed bills can be long-term -- as long as seven years under federal law. No one in the Commonwealth should be denied housing simply because their credit report shows the financial hardship they suffered during the pandemic.

Credit scores and reports are an especially illogical factor for tenants in the subsidized housing context, where the government pays the bulk of the rent and the housing is intended for low-income renters, who may have struggled financially. Yet some of the most egregious examples we've witnessed are housing providers that reject housing choice voucher holders based on low credit scores or impaired credit, even though the voucher means the government is guaranteeing most of the rent payment.

## 2. Credit Reports Are Riddled with Errors

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<sup>6</sup> CFPB, Data Point: Credit Invisibles 7, May 2015, [http://files.consumerfinance.gov/f/201505\\_cfpb\\_data-point-credit-invisibles.pdf](http://files.consumerfinance.gov/f/201505_cfpb_data-point-credit-invisibles.pdf) (most credit scoring models built to predict likelihood relative to other borrowers that consumer will become 90 or more days past due in the following two years).

<sup>7</sup> Matthew Desmond, The Rent Eats First, Even During a Pandemic, N.Y. Times, Aug. 29, 2020, [www.nytimes.com/2020/08/29/opinion/sunday/coronavirus-evictions-superspreader.html](http://www.nytimes.com/2020/08/29/opinion/sunday/coronavirus-evictions-superspreader.html).

<sup>8</sup> Massachusetts data from Urban Institute, Debt in America: An Interactive Map, March 2021, [https://apps.urban.org/features/debt-interactive-map/?type=overall&variable=pct\\_debt\\_collections&state=25](https://apps.urban.org/features/debt-interactive-map/?type=overall&variable=pct_debt_collections&state=25).

Credit reports are riddled with errors, which makes them an unreliable tool for housing providers. As found in the landmark 2012 Federal Trade Commission study, 20% of consumers had verified errors in their reports, with 5% having an error so serious that it would cause them to be denied credit or pay more for credit.<sup>9</sup> The Consumer Financial Protection Bureau (CFPB) recently reported that from January 2020 to September 2021, the CFPB received more than 700,000 credit complaints about Equifax, Experian, or TransUnion. Credit reporting complaints comprised more than 50% of all complaints received by the CFPB in 2020 and more than 60% in 2021. Consumers submit more complaints about inaccurate information than about any other problem.<sup>10</sup>

### 3. The Use of Credit Reports and Scores Perpetuates Racial and Economic Inequality

The economic consequences of the nation’s long history of racial discrimination—including in housing (redlining), employment, and debt collection—are the foundation of the data in credit reports. As a result, credit scores are often lower in communities of color—in Boston, 91 points lower in non-white areas than in white areas. Nationally, an Urban Institute report found that over 50% of white households had FICO scores above 700, compared with only 20.6% of Black households.<sup>11</sup> There have been numerous older studies with similar results.<sup>12</sup>

These racial disparities are likely due to the racial wealth gap and the effects of historical and present day discrimination.<sup>13</sup> Using credit data in rental housing decisions perpetuates these racial inequities, amplifying and entrenching them as applicants are denied housing because their forebears were denied housing and employment explicitly based on race.

The use of credit reports and scores also perpetuates economic inequality, as there are also disparities in credit scores by income. A 2012 CFPB report found that the median FICO score in LMI areas was in the 34<sup>th</sup> percentile while the median FICO score in non-LMI areas was 52<sup>th</sup> percentile, similar to the disparities by race.<sup>14</sup> A 2007 study by the Federal Reserve found that the mean score of a low-income Census tract was 32.5 out of 100, and that it was 57.9 for a high-income Census tract, a difference of 25.4 points.<sup>15</sup>

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<sup>9</sup> CFPB, Analysis of Differences Between Consumer- and Creditor-Purchased Credit Scores, at 18, Sept. 2012, [https://files.consumerfinance.gov/f/201209\\_Analysis\\_Differences\\_Consumer\\_Credit.pdf](https://files.consumerfinance.gov/f/201209_Analysis_Differences_Consumer_Credit.pdf).

<sup>10</sup> CFPB, Annual report of credit and consumer reporting complaints, January 2022, [https://files.consumerfinance.gov/f/documents/cfpb\\_fcra-611-e\\_report\\_2022-01.pdf](https://files.consumerfinance.gov/f/documents/cfpb_fcra-611-e_report_2022-01.pdf).

<sup>11</sup> Jung Hyun Choi, et al., Urban Institute, Explaining the Black-White Homeownership Gap: A Closer Look at Disparities across Local Markets, Nov. 2019, [www.urban.org/research/publication/explaining-black-white-homeownership-gap-closer-look-disparities-across-local-markets](http://www.urban.org/research/publication/explaining-black-white-homeownership-gap-closer-look-disparities-across-local-markets).

<sup>12</sup> Chi Chi Wu, NCLC, Past Imperfect: How Credit Scores and Other Analytics “Bake In” and Perpetuate Past Discrimination (May 2016), [www.nclc.org/images/pdf/credit\\_discrimination/Past\\_Imperfect050616.pdf](http://www.nclc.org/images/pdf/credit_discrimination/Past_Imperfect050616.pdf).

<sup>13</sup> *Id.* Current discriminatory practices also lead to income gaps between different races. *Id.*

<sup>14</sup> CFPB, Analysis of Differences Between Consumer- and Creditor-Purchased Credit Scores, at 18, Sept. 2012, [https://files.consumerfinance.gov/f/201209\\_Analysis\\_Differences\\_Consumer\\_Credit.pdf](https://files.consumerfinance.gov/f/201209_Analysis_Differences_Consumer_Credit.pdf).

<sup>15</sup> FRB, Report to Congress on Credit Scoring and Its Effects on the Availability and Affordability of Credit 80-81 (Aug. 2007), [www.federalreserve.gov/boarddocs/rptcongress/creditscore/creditscore.pdf](http://www.federalreserve.gov/boarddocs/rptcongress/creditscore/creditscore.pdf).

## Conclusion

Eliminating the use of credit reports and scores in rental housing decisions will reduce barriers to housing for the LMI renters and renters of color. In a time when the lack of affordable housing has reached a crisis and renters have been most impacted economically by pandemic, we need H.1429/S.894 to ensure that at least one unfair and illogical barrier to decent housing is eliminated.