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**Testimony before the
U.S. HOUSE COMMITTEE ON FINANCIAL SERVICES
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND CONSUMER CREDIT**

regarding

“Examining the Uses of Consumer Credit Data”

September 13, 2012

Chi Chi Wu
Staff Attorney
National Consumer Law Center
7 Winthrop Square, 4th Fl.
Boston, MA 02110
617-542-8010
cwu@nclc.org

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Madame Chairwoman, Ranking Member Maloney, and Members of the Subcommittee, the National Consumer Law Center thanks you for inviting us to testify today regarding consumer credit data and the credit reporting system. We also wish to thank Representative Shuler for his introduction of H.R. 2086, the Medical Debt Responsibility Act, which we strongly support. We offer our testimony here on behalf of our low-income clients.¹

We are here today to talk about two very different approaches to change the credit reporting system. One approach -- that advanced by H.R. 2086 as well as its Senate version S. 2149 -- is to removed paid or settled medical debt under \$2,500 from credit reports. This approach will tremendously benefit consumers, and indeed is probably the simplest and easiest “quick fix” out there to improve the credit records of millions of Americans, enable them to access low interest rates, and spur economic growth.

The other approach -- that advanced by H.R. 6363 -- is to encourage utility companies to report payment information on a monthly or regular basis to credit reporting agencies, *i.e.*, “full file utility credit reporting.” The approach raises serious concerns for us. We fear that it will add millions of new negative reports to the credit reporting system and will actually harm many consumers, especially financially strapped consumers, by creating credit black marks. We are also concerned that it will undermine long-standing protections developed by state regulatory commissions across the country. Full file utility credit reporting could also hurt job seekers when employers use credit reports, and consumers when they buy home or auto insurance. We are not alone in our concerns, as the National Association of State Utility Consumer Advocates² and other groups³ have expressed similar fears.

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 unfair credit reporting from every part of the nation. It is from this vantage point – many years of observing the problems created by the flaws in the credit reporting system in our communities – that we supply these comments. *Fair Credit Reporting* (7th ed. 2010) is one of the eighteen practice treatises that NCLC publishes and annually supplements. This testimony was written by Chi Chi Wu, co-author of that treatise, with assistance from John Howat, NCLC Energy Analyst; Lauren Saunders, Managing Attorney of NCLC’s DC Office, and Mark Rukavina of the Access Project.

² National Association of State Utility Consumer Advocates, Resolution 2010-3: Opposing “Full Credit Reporting” of Payment Histories on Residential Gas and Electric Accounts, June 15, 2010, *available at* www.nasuca.org/archive/Full%20Credit%20Reporting%20Resolution%20FINAL%202010-3.doc, and attached as Attachment B.

³ See Attachment C, Letters to the Honorable Jim Renacci re: H.R. 6363.

Finally, we urge Congress to improve the transparency of the credit system by amending the Fair Credit Reporting Act (FCRA) to provide a free annual credit score and give consumers the right to obtain ANY score that is based on information about them from their credit or other consumer reports.

I. CONGRESS SHOULD REQUIRE THAT PAID OFF MEDICAL DEBT BE DELETED FROM A CONSUMER'S CREDIT REPORT

The National Consumer Law Center, on behalf of its low-income clients, is pleased to support the Medical Debt Responsibility Act, H.R. 2086. Millions of Americans struggle with overwhelming medical debts that they cannot afford to pay because they do not have health insurance. Even consumers with health insurance coverage can find that their credit histories are damaged due to medical bills, because of problems with unaffordable co-pays and deductibles, out-of-network charges, and disputes with insurance companies.

The collective scope and impact on medical debt on the credit histories of American consumers is enormous and cannot be overstated. According to the Commonwealth Fund, nearly 73 million working age adults (or about 40%) experienced problems with medical bills in 2010.⁴ Of those consumers, 30 million were contacted by a collection agency for unpaid medical bills,⁵ and thus were likely to have their credit reports damaged by the negative existence of a collection account on their reports.

Medical debt represents an enormous portion of debt that is collected by debt collectors. A number of studies indicate that the amount of medical debt that ends up in the hands of collection agencies - and thus is likely to be reported to credit reporting agencies - is simply stunning:

- A 2003 Federal Reserve study found that over *half* of entries (52%) on credit reports for collection items are for medical debts. More than one-third (36%) of medical collections had balances due, when reported, of \$100 or less and the majority (nearly 70%) were for less than \$250.⁶
- A later Ernst & Young study confirmed the Federal Reserve's study, finding that medical debts constituted more than *half* (52.2%) of the debt collected by debt collection agencies in 2010 – more than twice as much as credit card and other financial debt.⁷

⁴ Sara R. Collins, et al., The Commonwealth Fund, *Help on the Horizon: How the Recession Has Left Millions of Workers Without Health Insurance, and How Health Reform Will Bring Relief—Findings from The Commonwealth Fund Biennial Health Insurance Survey of 2010*, March 2011, at 6, available at http://www.commonwealthfund.org/~media/Files/Publications/Fund%20Report/2011/Mar/1486_Collins_help_on_the_horizon_2010_biennial_survey_report_FINAL_v2.pdf.

⁵ *Id.* at 10.

⁶ Robert Avery, Paul Calem, Glenn Canner, & Raphael Bostic, *An Overview of Consumer Data and Credit Reporting*, Fed. Reserve Bulletin, at 69 (Feb. 2003).

⁷ Ernst & Young, *The Impact of Third-Party Debt Collection on the National and State Economies*, Feb. 2012, at 8, available at www.acainternational.org/files.aspx?p=/images/21594/2011acaeconomicimpactreport.pdf.

- A study by Federal Reserve researchers found that that “health-care providers represented the most important group of customers [for debt collectors], accounting for more than a quarter of all revenues.”⁸

The vast scope of medical debt on credit reports is troubling, because unlike collections for credit accounts, medical bills result from services that are frequently involuntary, unplanned, and unpredictable, and for which prices quotes are rarely provided. The unique nature of medical debt raise questions on whether it is appropriate data to even include on a credit report.

Most critically, consumers may find that their medical debt has been characterized as a debt in collection for credit reporting purposes even though the medical debt has been fully paid or settled. Even after the bill has a balance of zero, its mere presence as a collection matter remains on the consumer's credit records for seven years and will likely adversely impact a consumer's credit score. According to a spokesperson for FICO, collection items that are “paid or unpaid, large or small amounts all can affect a credit score” and “a person with a FICO score of 680 will see their score drop between 45 and 65 points. Someone with a FICO score of 780 will see their score drop between 105-125 points...”⁹

Furthermore, the presence of a medical collection item may result from no fault of the consumer, but from the complex and convoluted nature of our health care payment system. The collection item may have resulted from a dispute between the insurance company and provider. It may result from a provider’s failure to properly bill the insurer, or the insurer’s failure to properly reimburse the provider. After all, the American Medical Association itself estimated that one in five claims is processed inaccurately.¹⁰ Even when errors are eventually fixed, they result in long delays in payments to providers. During these delays, bills can often be sent to a collection agency, completely out of the consumer’s control.

The complexities of health insurance and medical billing also contribute to this problem. Many people are simply confused about who has responsibility for paying the bill. They are often uncertain about the explanation of benefits form, unclear of the descriptions of the procedures they have received, and unsure of whether they should pay the healthcare provider or insurer; one study found that nearly 40 percent of Americans do not understand their medical bills.¹¹ Some of these consumers will let a medical bill go to a collection agency because of this confusion, or they believe that their insurer will pay it. According to media reports, an estimated 9.2 million Americans had a medical bill sent to a collection agency because of a billing mistake.¹²

⁸ Robert M. Hunt, Fed. Reserve Bank of Philadelphia, *Collecting Consumer Debt in America*, Bus. Rev., at 13 (2d Quarter 2007), available at www.philadelphiafed.org/files/br/2007/q2/hunt_collecting-consumer-debt.pdf.

⁹ Carla K. Johnson, *Late Medical Bills Can Lower Credit Scores For Consumers: How to Check and Fix Your Report*, Associated Press, Mar 4, 2012.

¹⁰ American Medical Association, 2010 National Health Insurer Report Card, available at www.ama-assn.org/ama/pub/news/news/2010-report-card.page.

¹¹ Press Release, *Intuit Financial Healthcare Check-Up Shows Americans Confused about Medical Statements*, Apr. 27, 2010, at http://about.intuit.com/about_intuit/press_room/press_release/articles/2010/AmericansConfusedAboutMedicalStatements.html.

¹² Tara Siegel Bernard, *Discrepancies on Medical Bills Can Leave a Credit Stain*, New York Times, May 4, 2012.

Indeed, many of the stories from consumers about how their credit reports and credit scores were damaged by paid medical debt involve such instances of confusion, mistakes, or problems with insurers. For example:

- The New York Times documented the case of Ray White from Lewisville, TX. Mr. White received a \$200 ambulance bill, which his insurer did not pay despite assurances that the company would do so. Finally, after many months and many phone calls, Mr. White paid off the \$200 bill, but by then the damage was done. Unbeknownst to Mr. White, the debt had been reported to the credit reporting agencies. Mr. White had no knowledge of this black mark lurking on his credit report until he and his wife went to refinance the \$240,000 mortgage on their home, nearly six years later. It was only then that he learned this paid \$200 bill – the result of his insurance company dropping the ball on payment - had shaved about 100 points from his credit score. With no other debts, a healthy income and otherwise pristine credit, Mr. White and his wife had to pay an extra \$4,000 to secure a lower interest rate.¹³
(This story is also an example of “parking,” a practice in which debt collectors merely report a debt to a credit reporting agency without doing more, then simply wait until the consumer applies for a mortgage or other credit. At that point, the consumer will discover the collection item and then pay the debt in an attempt – in vain – to improve his or her credit score. “Parking” creates even more problems with medical debt on credit reports, because consumers do not know about the problem until they are in the midst of a time-sensitive process of applying for a loan).
- The Associated Press reported the case of Iraq veteran Steve Barnes and his wife, Tara, who were refinancing their home through a Veteran’s Administration program when they found out that nearly \$600 in unpaid medical bills had brought down their credit scores. The bills were for treatment related to the wife's cancer, which had been turned over to a collection agency while Mr. Barnes was still talking with his insurance company about what would be covered. The \$600 in unpaid bills – caused by insurance snafus – cost them an extra \$1,700 in fees on their refinanced mortgage. Plus, even though Mr. Barnes and his wife paid the bill, the black mark will remain on their credit reports for seven years.¹⁴
- A New York City consumer who lost consciousness on a street in Atlantic City, NJ, received a bill for \$800 because a passer-by called an ambulance. The consumer had revived before the ambulance showed up, and had declined to go to the hospital. It is unclear whether the \$800 was a charge for first aid at the scene (having his blood pressure and vitals checked) or because the hospital mistakenly believed that he was brought to the emergency room. In either case, the consumer disputed the \$800 bill, but it remains on his credit report as a collection item. The consumer has been declined

¹³ *Id.*

¹⁴ Carla Johnson, *Medical Bills Can Cause Lingering Credit Pain*, Associated Press, Mar. 4, 2012. This article documents several more cases in which medical collection items harmed the credit reports of consumers and cost them thousands in fees when refinancing.

credit at least once as a result of this reporting, despite the fact that he never summoned the ambulance or went to the hospital.¹⁵

- A West Virginia consumer applied for Medicaid, but the state agency made a series of mistakes resulting in a long delay in enrolling the consumer. Finally, the state agency fixed the mistakes, and enrolled the consumer retroactive to February 2011. Meanwhile, four of the consumer's medical bills had been sent to debt collection agencies, and these collection agencies reported the debts to the credit reporting agencies. Medicaid paid the consumer's bills, but the collection items will remain on the credit report and harm the consumer's credit score for seven years – despite the fact that the failure to pay the bills was the fault of the state Medicaid agency, not the consumer.¹⁶
- An Arkansas consumer was hurt in an automobile accident and taken to the hospital. The consumer filed a lawsuit against the other driver. While the consumer was waiting for a settlement with the other driver's auto insurer, one of the medical providers turned over a medical bill for \$118 to a debt collection agency, which reported the debt to a credit reporting agency. Meanwhile, the \$118 bill was paid in full to the medical provider – actually it was paid the day before the debt collector made the report to the credit reporting agencies. The debt has shown up on the consumer's credit report as a paid collection account, dropped her credit score from 800 to 700, and prevented her from obtaining credit at the best interest rates. The debt collector refuses to delete the black mark even though the consumer paid the bill before it was reported.¹⁷
- A Florida consumer went to an emergency room to receive medical treatment. He gave the hospital his proper identification showing his correct address. The hospital data entry personnel made a mistake by inputting a wrong address into the hospital's system. The consumer never received a bill, and thus never paid it. In the meantime, the debt was sent to a collection agency. Later, the consumer applied for credit, and it was only then that he learned of the outstanding collection item from the hospital on his credit reports. The consumer called the hospital, and confirmed they had the wrong address. Despite the fact that the hospital's personnel caused the situation with the data entry error, the collection item remained on the consumer's credit report.¹⁸

All of these consumers, and millions more like them, have had their credit reports and credit scores severely damaged through no fault of their own by medical collection items. Furthermore, they currently have no recourse under the Fair Credit Reporting Act to fix this damage. First, as we have documented repeatedly, the FCRA dispute system developed by the credit reporting industry is a travesty. It is a perfunctory automated system that consists of nothing more than translating consumer disputes into a two- or three-digit code, forwarding that code and a one-page electronic form to the furnisher, and “parroting” whatever the furnisher

¹⁵ Email from Brian Bromberg, Bromberg Law Offices, May 30, 2012.

¹⁶ Email from Deborah Weston, Staff Attorney, Mountain State Justice, Inc., June 26, 2012.

¹⁷ Email from Kathy Cruz, Attorney, June 27, 2012.

¹⁸ Email from Leo Bueno, Attorney, May 14, 2010.

states in response.¹⁹ Second, the Ninth Circuit has held that a consumer has no remedy under the FCRA to remove a medical collection item from her credit report, because technically the patient owes the medical bill even though the default was caused by an insurance dispute.²⁰

The Medical Debt Responsibility Act, H.R. 2086, will help ameliorate this huge problem by amending the FCRA to exclude fully paid and settled medical debt from a consumer's credit report. It is a sensible and straightforward approach that will prevent the credit records of millions of consumers from being unfairly tarnished. Rather, credit records will show that these hard-working consumers, who successfully paid off or settled their medical bills, are more creditworthy than the current system would otherwise lead a prospective lender to believe.

The Medical Debt Responsibility Act could also boost our economy without requiring the expenditure of any federal funds. Commentators have noted that the Federal Reserve Board's efforts to stimulate the economy by keeping interest rates low are being hampered by the inability of consumers with less-than-stellar credit scores to qualify for these rates.²¹ By instantly raising the credit scores of millions of Americans, the Medical Debt Responsibility Act will enable these Americans to access this affordable credit and aid our economic recovery efforts.

II. FULL FILE UTILITY CREDIT REPORTING RAISES SERIOUS CONCERNS FOR LOW-AND-MODERATE INCOME CONSUMERS

We are extremely concerned about H.R. 6363, and the issue that it promotes – full file utility credit reporting. We fear that having more utilities report monthly data to credit reporting agencies will end up harming a significant number of low-and-moderate income consumers, including when their credit reports are used by employers or insurance companies. Full file utility credit reporting raises many questions that should be answered before there is a massive effort to expand this potentially harmful – and expensive – practice. Note that we do not oppose permitting consumers to voluntarily opt-in to full file utility credit reporting. But we are very concerned about the effects of full file utility credit reporting that is not voluntary for consumers.

A. Data from Utility Companies Indicates Significantly More Late Payments Than Asserted

Currently, the vast majority of electric and natural gas utility companies only provide information to a credit reporting agency when a seriously delinquent account has been referred to a collection agency or written off as uncollectible. This is a far lower number than those utility consumers who may pay late on their bills, but then eventually catch up. There are only a handful of utility companies that provide information to credit reporting agencies for these late payments on a monthly or other regular basis.

¹⁹ Chi Chi Wu, National Consumer Law Center, *Automated Injustice: How a Mechanized Dispute System Frustrates Consumers Seeking to Fix Errors in Their Credit Reports* (Jan. 2009), available at www.nclc.org/issues/credit_reporting/content/automated_injustice.pdf.

²⁰ *Carvalho v. Equifax Info Serv., LLC*, 629 F.3d 876 (9th Cir. 2010).

²¹ Jon Hilsenrath, *Fed Wrestles With How Best to Bridge U.S. Credit Divide*, Wall St. J., June 19, 2012.

Sporadic late payments are especially common in states that have weather extremes, hot or cold. Consumers who see their utility bill spike in the winter or summer may not be able to pay those bills in full during that season, but will over time.

A study from the Policy and Economic Research Council (PERC) claims that reporting utility reporting will help improve the credit reports of tens of millions of consumers. However, this study is based on data regarding the very few electric and natural gas utilities that do fully report to credit reporting agencies on a regular basis. Those companies may not be representative of payment patterns in different states and regions.

For example, the PERC study stated that its data revealed less than 3% of consumers earning \$50,000 or less annually have a single 60-day late utility payment during a one-year period.²² Yet data provided by utilities or utility regulators in a number of states indicates the percentage of utility consumers paying 60 days late is much higher. As shown in Attachment A – Table 1 to this testimony:

- Data from California utility Pacific Gas and Electric shows about 6% of general residential customers and nearly 13% of low-income/energy assistance customers were in arrears by 61 to 90 days in June 2012.²³ San Diego Gas and Electric Co. reported that about 11% of general residential customers and 34% of low-income/energy assistance customers were in arrears by 61 to 90 days in June 2012.²⁴
- In Massachusetts, over one-third (33.5%) of low-income/energy assistance customers of NSTAR Electric were more than 60 days late in paying their bills in June 2012.²⁵
- Columbus Gas Co. in Ohio reported that 275,000 out of its 1.3 million customers – about 21% - were in arrears by more than 60 days as of December 2011.²⁶ East Ohio Gas Co. reported that 171,700 out of its 1.1 million customers – nearly 16% - were in arrears over 60 days as of December 2011.²⁷

²² Michael Turner, et al., PERC, *The Credit Impacts on Low-Income Americans from Reporting Moderately Late Utility Payments*, August 2012 at 12 (hereinafter PERC August 2012 study).

²³ See Attachment A, Table 1 – Residential Customer Arrears. The sources for all data for Table 1 are noted in the footnotes to that table.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* See also Columbia Gas of Ohio, Annual Report of Service Disconnections for Nonpayment (Information for 12-month period ending May 31, 2012) to the Public Utilities Commission of Ohio, June 29, 2012.

²⁷ Report of Service Disconnections for Nonpayment of the East Ohio Gas Co. d/b/a Dominion East Ohio, In the Matter of the Annual Report of Service Disconnections for Nonpayment Required by Section 4933.123, Revised Code, Case No. 12-1449-GE-UNC (Public Utilities Commission of Ohio July 20, 2012).

Other reliable sources have reported similar figures:

- AARP New York reported that more than 17% of National Grid’s New York customers and 8% of Con Edison’s New York customers were over 60 days late on their electric bills in the Spring of 2010.²⁸

The PERC study also reports that its data showed less than 5% of consumers earning \$20,000 or less annually have any 30 or 60-day late utility payment during a one-year period.²⁹ Yet the independent data shows that:

- About 40% of Iowa residents receiving LIHEAP assistance were overdue in paying their bills in January 2012.³⁰
- Southern California Edison reported that about 21.1% of low-income/energy assistance customers were in arrears by 30 to 60 days in June 2012.³¹

Thus, it appears that the PERC study data differs greatly from statistics based on data from or filed with state utility commissions. Contrary to criticism regarding these concerns, this is not merely “anecdotal” evidence.³² The above statistics are based on publicly-available information from state utility commissions or the utilities themselves, and are readily replicable. In contrast, the credit reporting data upon which proponents base their study has not been made available to third parties to conduct an independent analysis or replicate the results.

B. The Ability of Consumers to Build Credit Based on Utility Payments is Highly Uncertain

The premise that reporting utility payments will build a positive, useful credit report is highly uncertain. The credit reporting industry and the prepaid card industry have been exploring for years the ability of payment data to help consumers build credit. Yet under current circumstances, few have confidence in the ability to use payment data to create a mainstream credit score useful for building credit.

The Consumer Financial Protection Bureau (CFPB) recently asked for comments on the efficacy of credit reporting features on general use reloadable prepaid cards in enabling consumers to improve or build credit. For consumers who use prepaid cards on a regular basis, utility payments are one of the most common types of payment made with those cards.³³

²⁸ AARP New York, *New York’s Utility Termination Storm: “The Quiet Blackout,”* March 2011, at 7, available at http://assets.aarp.org/www.aarp.org/_cs/elec/aarp_shutoff_reportfinal.pdf.

²⁹ PERC August 2012 study at 13.

³⁰ See Attachment A; Table 2.

³¹ See Attachment A; Table 1.

³² PERC August 2012 study at 7 (arguing that NCLC’s criticism are “without direct evidence, relying instead on anecdotes and hypotheticals”).

³³ A recent study by the Philadelphia Federal Reserve Board found that 19% of GPR cards bought on the internet had a utility transaction as did 11% of payroll cards. The numbers were even higher for telecomm transactions: 37% for internet cards and 22% for payroll cards. Stephanie M. Wilshusen, Robert M. Hunt, and James van Opstal, Federal Reserve Bank of Philadelphia; Rachel Schneider, Center for Financial Services Innovation, *Consumers’ Use of Prepaid Cards: A Transaction-Based Analysis*, at 65 (August 2012).

Nonetheless, virtually no one among the industry commenters believes that reporting these payments, today, builds credit. Though a few expressed hope that prepaid cards someday will help build a credit report, the comments were almost uniformly skeptical about current credit building ability and warned against deceptive representations. Here are a few examples:

- American Bankers Association: “[U]nless it is demonstrated that such non-credit information is predictive with regard to credit behavior, creditors are not likely to use the information in credit decisions. Consumers should not be informed that reporting GPR card information will build or improve their credit history if in fact it does not or creditors are unlikely to use the information.”
- The ClearingHouse: “We are unaware at this time of any GPR cards that can be used effectively to improve or build credit (other than, perhaps, GPR cards associated with committed lines of credit from the issuing financial institution.)”
- Wells Fargo: “Wells Fargo does not believe there are well-established standards for using GPR card information to predict creditworthiness.”
- MB Financial Bank: “As it stands, none of the leading reporting agencies use GPR Cards as a factor in determining consumer credit scores.”

C. Many “No Score” Consumer Will End Up with “D” or “F” Credit Scores

One of the main arguments supporting full file utility credit reporting is that it allows consumers with little or no information in their credit reports, for whom a credit score cannot be generated, to become “scoreable.” Thus, PERC asserts that full file utility credit reporting will help the “estimated 35 to 54 million Americans who lack access to affordable mainstream credit because they have no credit report or they do not have enough information in their credit report.”³⁴

However, it appears that with full file utility credit reporting, many of these formerly “unscorable” consumers will end up instead with a marginal or bad credit score. PERC’s study itself states: “For all those that become scoreable, about **one-third [i.e., 33%] scored in the F category, 22% scored in the D category, and 45% scored in the C or higher category**.”³⁵ Thus, over half (55%) of consumer without scores end up with a suboptimal, and probably subprime score (Ds and Fs). Furthermore, from PERC’s report, it appears that of the remaining consumers, about 35% end up with a C, and only a few percent of the formerly unscorable consumers ended up with an “A” or “B” score.³⁶

Furthermore, it is important to note that the PERC study indicates the impact of full file utility credit reporting on scores issued by VantageScore. The PERC study was not conducted using the score most commonly used by lenders – those issued by FICO. While there are similarities between the way the two scores are calculated, there may be differences that could

³⁴ Press Release, *PERC Releases New Report, “The Credit Impacts on Low-Income Americans from Reporting Moderately Late Utility Payments*, Aug. 30, 2012.

³⁵ Michael Turner, et al., PERC, *A New Pathway to Financial Inclusion: Alternative Data, Credit Building, and Responsible Lending in the Wake of the Great Recession*, June 2012, at 13 (hereinafter PERC June 2012 study) (emphasis added).

³⁶ *Id.* (see Figure 4).

translate into even worse scores based on utility payment information – it’s hard to know given the “black box” nature of credit scoring. But we should not be encouraging full file utility credit reporting based on limited and uncertain data that does not even rely on the most popularly used credit score.

D. A Bad Credit Score Can Sometimes Be More Harmful Than No Score

One of the fundamental disagreements regarding full file utility credit reporting is whether it is better to have a bad credit score rather than no credit score. Proponents assert that a bad credit score is better than no score. They characterize the idea of a low credit score being harmful as a “fallacy” and state “the low score is a powerful protection against over-extension and irresponsible lending.”³⁷

We believe that this assumption is wrong: a low score can affirmatively harm consumers. A low score can put a target on the consumer’s back for predatory lenders instead of protecting them from unaffordable credit. Consumers with subprime credit scores are beset by offers from predatory lenders, such as fee harvester credit cards, which come loaded with high fees but extend very limited actual credit to consumers. Fee-harvester card issuers rely on prescreened lists of consumers with low scores or other black marks on their credit reports to send their solicitations. A consumer with no score will not show up on such a prescreened list.

Furthermore, credit scores and reports are not solely used for lending decisions. Many employers use credit reports in hiring and other employment decisions. In such cases, it is far worse for a worker if the employer sees a credit report with negative information (such as report consisting of single utility account with repeated late payments) than one with no information.

Also, insurance companies use credit scores when determining whether to approve applications and what prices to charge consumers. This is another instance in which not having a credit history is less harmful than having a bad history, as the absence of a credit score is treated as “neutral” in many states.³⁸ Thus, full file utility credit reporting could result in some consumers being denied employment or forced to pay higher insurance rates.

E. Full File Utility Credit Reporting Conflicts With The Policy Rationale for Certain Utility Protections

Full file utility credit reporting is inconsistent with the policy objectives of certain state utility consumer protections. For example, Massachusetts provides for a “Winter Moratorium” that prohibits utilities from disconnecting service during the winter months (November 15 to March 15) when there is financial hardship. The Winter Moratorium recognizes that financially stretched Massachusetts households may have difficulty paying their bills during the expensive months for heat in a cold weather state, but will eventually catch up during the summer. Full file

³⁷ PERC August 2012 Study, at 12. Furthermore, contrary to PERC’s assumption, a credit score does not indicate whether a consumer can afford to take one new debt. Only an analysis of the consumer’s income, household expenses, and existing debts can do that. Credit reports do not include information about a consumer’s income.

³⁸ See *Safeco Ins. Co. of Am. v. Burr*, 127 S. Ct. 2201, 2206-2207, n. 4 (2007) (noting that a number of states require the use of “neutral” credit scores for thin or no file consumers).

utility credit reporting, by threatening consumers with black marks on their credit reports even when state law was designed to give them some breathing room, would operate in conflict with the policy objective of the Winter Moratorium. Many other states have protections similar to the Winter Moratorium.³⁹

Finally, full file utility credit reporting could undermine state protections requiring payment plans to be offered. Many states permit consumers to pay off past-due amounts using a payment plan. These consumers might technically be late on their payments, because they have not paid their utility bill on the due date, but they will be paying according to their agreements with the utilities. Thus, they will probably be reported using the industry code for “Paying under a partial or modified payment agreement.”⁴⁰ Reporting a consumer using this code for a payment plan will likely reduce a consumer’s credit score.⁴¹

Asserting that utility payments should be fully reported to the credit reporting agencies in the same manner as other financial transactions fails to recognize the unique nature of utility service, which is an essential product that consumers have no choice but to purchase. Full file utility credit reporting will undermine the policy objectives of long-standing consumer protection rules that have been adopted by the regulatory commissions in states across the country.

Even if the threat of a negative credit report leads a consumer to pay utility bills more regularly, the consumer may be stealing from Peter to pay Paul. Consumers with limited income will have to let other bills slip, resulting in increased negative credit reports from those billers.⁴²

F. Other Considerations

One of the thorniest issues in consumer credit reporting is the level of inaccuracy. Estimates of serious errors range from 1% (which the industry cites)⁴³ to 12% (from the FTC)⁴⁴ to 37% in online surveys.⁴⁵ Whether the number is 1% or 37%, full file utility credit reporting is unlikely to improve accuracy.

Adding hundreds of millions of new accounts to the credit reporting databases by entities not experienced in furnishing information can only increase the number of inaccuracies.

³⁹ See LIHEAP Clearinghouse, HHS Admin. For Children & Families, *Seasonal Termination Protection Regulations*, at <http://www.liheap.ncat.org/Disconnect/disconnect.htm>.

⁴⁰ This is code “AC” in the Metro 2 reporting format that is the industry standard. See Consumer Data Indus. Ass’n, Inc., *Credit Reporting Resources Guide* (2008), at 5-19.

⁴¹ Experian, *Ask Max Credit Advice—Negotiating Reduced Payments Can Hurt Credit Scores*, Oct. 28, 2009, at http://www.experian.com/ask_max/max102809a.html (visited Sep. 5, 2012)

⁴² Indeed, one of pitches to utilities by proponents of full file utility credit reporting is that it is a way for utilities to improve their bottom lines by getting consumers to move utility bills to the “top of the payment pile.” Michael Turner et al., PERC, *Credit Reporting Customer Payment Data: Impact on Customer Payment Behavior and Furnisher Costs and Benefits* 9-11 (2009), available at http://perc.net/files/bizcase_0.pdf

⁴³ Michael Turner et al., Policy and Economic Research Council, *U.S. Consumer Credit Reports: Measuring Accuracy and Dispute Impacts*, May 2011.

⁴⁴ Federal Trade Commission, *Report to Congress Under Section 319 of the Fair and Accurate Credit Transaction Act of 2003* (December 2008), at 2.

⁴⁵ Zogby Int’l, *Zogby Poll: Most Americans Fear Identity Theft*, Zogby’s American Consumer Newsletter, Apr. 2007, at 3.

Furthermore, the utility companies will incur significant expenses in order to adopt systems so they can furnish information on a regular basis in the Metro 2 reporting format, as well as recurring expenses in being a subscriber to the credit reporting agencies. These costs will be passed along to consumers in the utility rates that they pay.

There are also issues regarding a unique form of “identity theft” that affects utility records. Unfortunately, a common tactic by desperate families facing financial crises is to put utilities in the name of minor children. While this keeps the heat and the lights on, it also saddles the child with a bad credit report if the account then is charged off or sent to collections. Full file utility reporting could make the situation worse if late payments in addition to collection items are reported on these children’s credit reports.

G. H.R. 6363 Goes Far Beyond the Issue of Utility Credit Reporting

The language H.R. 6363 is not limited to utility credit reporting; instead it contains sweeping provisions that would make drastic changes to the Fair Credit Reporting Act. The bill eliminates any provisions or regulations under the FCRA that restrict furnishing of information to consumer reporting agencies. Thus, it will take away authority from the CFPB to regulate abuses in the furnishing of information. Any current or future restrictions on furnishing information such as limits on sensitive medical information, obsolete information (past seven years or 10 years for bankruptcies), or other private personal information would be nullified. It would also prevent regulation of public records vendors as furnishers under the FCRA. Thus, we oppose the “free pass” that H.R. 6363 would give to furnishers under the FCRA.

We note that H.R. 6363 is designed so it does not state explicitly that it preempts state laws or regulation that would restrict utilities from furnishing information to credit reporting agencies. However, it would be a strong statement by Congress in favor of full file utility credit reporting, and could prompt more utilities to engage in the practice.

Furthermore, the bill adds provisions to a section of the FCRA⁴⁶ that has broad preemptive effect; the FCRA nullifies state laws regarding “the subject matter” of that section.⁴⁷ It is not inconceivable that a court could rule that the provision preempts state laws even though it does not specifically so state.

If this provision were to have a preemptive effect on state laws, it would go much further than just reporting utility information. The bill prohibits ANY restrictions on a furnisher providing information such as identifying information, public records information, or tenancy information. Thus, it could preempt state laws that attempt to reform the very serious problems with background check agencies, which we have documented.⁴⁸ It would also preempt state laws

⁴⁶ 15 U.S.C. § 1681s-2.

⁴⁷ 15 U.S.C. § 1681t(b)(1)(F) (“No requirement or prohibition may be imposed under the laws of any State (1) with respect to any subject matter regulated under ... (F) section 623 [§ 1681s-2], relating to the responsibilities of persons who furnish information to consumer reporting agencies,...”)

⁴⁸ Persis Yu, National Consumer Law Center, *Broken Records: How Errors by Criminal Background Checking Companies Harm Workers and Businesses*, April 11, 2012, available at www.nclc.org/issues/broken-records.html.

in New York and California that govern reporting of criminal records,⁴⁹ and any state laws governing furnishing of eviction information.⁵⁰

III. CONSUMERS SHOULD HAVE THE BASIC RIGHT TO ANY CREDIT SCORE THAT IS ABOUT THEM AND THE RIGHT TO A FREE ANNUAL SCORE

One of the troubling aspects of our credit reporting system is the difficulty faced by consumers in obtaining a critical piece of information about themselves – their credit scores. Consumers do not have the right to a free credit score unless they are denied credit or charged a higher price for it. Furthermore, they have no right to obtain the score used by the vast majority of lenders – their FICO scores. They also do not have a right to see their scores that are used for non-credit purposes, such as insurance, tenant screening, or health care.

Consumers do have the right to obtain their credit reports. Though that is an important right, credit reports do not give consumers an easy-to-understand snapshot of their credit standing.

Until the 2003 amendments added by the Fair and Accurate Credit Transaction Act, consumers had no right to access their credit scores, not even for a price. After the FACT Act amendments, consumers have the right to purchase a credit score, but the credit reporting agencies need only sell them an “educational score,”⁵¹ even though no actual creditor might ever use that score. Consumers have no right to purchase their FICO scores, even though FICO scores represent over 90 percent of the market for scores sold for credit-related decisions, according to the CFPB.⁵² To this day, consumers cannot purchase their FICO score based on their Experian credit report.

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 improved the situation by giving consumers the right to receive their actual credit scores, the ones used by a lender, when they are denied credit or charged a higher price for it.⁵³ However, consumers should not have to apply for credit first and then get turned down in order to learn their FICO scores. The time for consumers to obtain their credit scores is BEFORE they need to apply for credit, so that they can be informed shoppers and know what kind of credit they are qualified for. Thus, we urge Congress to give consumers the right to obtain their credit scores – the ones used most frequently by lenders – without charge on an annual basis, just like with credit reports.

⁴⁹ Cal. Civ. Code § 1786.18(a)(7); N.Y. Gen. Bus. Law § 380-j (McKinney)

⁵⁰ In some states, rental housing providers often categorically reject applicants who have been sued for eviction-- even if the case is dismissed or found to be without merit. States may wish to restrict the reporting of certain eviction lawsuits to protect individuals and families from being unfairly excluded from rental housing based on unfairly-stigmatizing eviction records.

⁵¹ The FCRA permits credit reporting agencies to provide “a credit score that assists the consumer in understanding the credit scoring assessment of the credit behavior of the consumer and predictions about the future credit behavior of the consumer.” 15 U.S.C. § 1681g(f)(7)(A).

⁵² Consumer Financial Protection Bureau, The Impact of Differences Between Consumer- and Creditor-Purchased Credit Scores: Report to Congress, July 19, 2011, at 6, available at www.consumerfinance.gov/wp-content/uploads/2011/07/Report_20110719_CreditScores.pdf

⁵³ Pub. L. No. 111-203, 124 Stat. 1376, § 1100F (2010), codified at 15 U.S.C. §§ 1681m(a) (2) and 1681m(h)(5)(E).

Moreover, providing a general right to the credit score would help to enforce the existing right to a score after credit has been denied or offered at a higher price. Consumers could seek out their credit scores directly from the credit reporting agencies to compare them with the score provided by the lender.

Furthermore, we urge Congress to give consumers the right to obtain any score based on a consumer report that is about them. Currently, the FCRA only gives consumers the right to obtain scores used for granting credit.⁵⁴ Yet there are a multitude of scores based on a credit or consumer report that grade consumers for other purposes – insurance underwriting, healthcare, and tenant screening. Consumers should have the right to obtain these scores for free on an annual basis, just as they are entitled to free annual reports from specialty consumer reporting agencies.

This is a matter of basic fairness. These scores are about the consumer - they are about us. They are based on information about our behavior and our lives. They may be based on inaccurate information that we have a right to correct. To have this important information about ourselves squirreled away in secret databases that we have no right to access seems inconsistent with the American way.

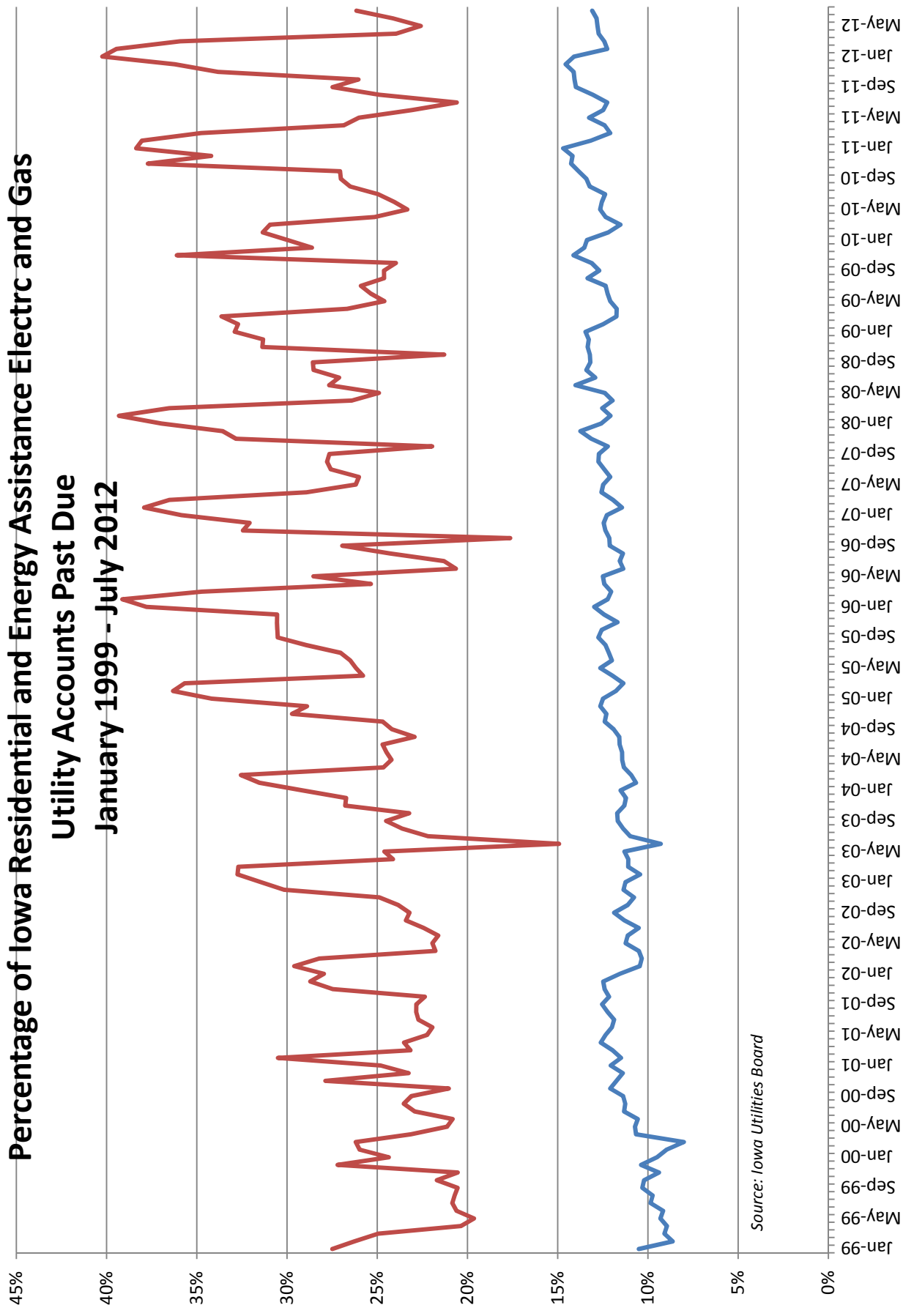
Thank you for the opportunity to testify, and I look forward to your questions.

⁵⁴ The FCRA defines credit scores as “a numerical value or a categorization derived from a statistical tool or modeling system used by a person who makes or arranges a loan to predict the likelihood of certain credit behaviors, including default...” 15 U.S.C. § 1681g(f)(2)(A).

ATTACHMENT A

Percentage of Iowa Residential and Energy Assistance Electric and Gas Utility Accounts Past Due

January 1999 - July 2012



Source: Iowa Utilities Board

— Percentage of All Residential Accounts Past Due — Percentage of EA Accounts Past Due

ATTACHMENT B

**THE NATIONAL ASSOCIATION OF
STATE UTILITY CONSUMER ADVOCATES**

RESOLUTION 2010-3

**OPPOSING “FULL CREDIT REPORTING” OF PAYMENT HISTORIES ON
RESIDENTIAL GAS AND ELECTRIC ACCOUNTS**

1 *Whereas*, the National Association of State Utility Consumer Advocates (“NASUCA”)
2 has a long-standing interest in issues and policies that affect the access of residential
3 consumers to gas and electric services, which are basic necessities of life in modern
4 society; and

5 *Whereas*, the credit reporting industry and others, through proposed legislative and
6 regulatory changes and otherwise, seeks to implement a practice known as “full credit
7 reporting,” under which gas and electric utilities would regularly advise credit reporting
8 agencies of the month-by-month payment behaviors and histories of residential gas and
9 electric consumers;¹ and

10 *Whereas*, proponents of full credit reporting also seek to preempt the authority of the
11 states to regulate the credit reporting and collection practices of gas and electric utilities;
12 and

13 *Whereas*, proponents argue as a justification for full credit reporting that it helps low-
14 income and other households establish a credit history and thus improve their access to
15 credit;² and

16 *Whereas*, although proponents further claim that full credit reporting “can direct markets
17 toward a faster alleviation of poverty in this country,” the research used to support this
18 claim focuses narrowly on the fact that a number of consumers who cannot presently be
19 “scored” could be scored with full credit reporting, and thus gain access to credit, but
20 without considering the broader realities that low-income and some other households
21 commonly face in seeking to meet their energy needs and their financial responsibilities
22 and without considering the broader realities that low credit scores pose for low-income
23 and some other households;³ and

¹The Political and Economic Research Council (PERC at www.infopolicy.org), the Center for Financial Services Innovation (CFSI at www.cfinnovation.com), and the Corporation for Enterprise Development (CFED at www.cred.org) seek support for and amendments to the Fair Credit Reporting Act (FCRA) to allow for “full credit reporting.” See CFSI News Release, “CFSI, PERC, and CFED seek your support of an Alternative Data Initiative,” July 2009 (<http://www.cfsinnovation.com/news/article/330637>); PERC, “NCLC Supports the ‘3 Ps’ of Lending: Pawn Shops, Predatory Lenders, and Pay Day Lenders” (http://perc.net/files/alt_data_dis_paper1.pdf).

²Turner, Varghese, Walker and Dusek, Political and Economic Research Council, “Credit Reporting Customer Payment Data: Impact on Customer Payment Behavior and Furnisher Costs and Benefits” (March 2009) (http://perc.net/files/bizcase_0.pdf).

1 *Whereas*, in actuality, for reasons stated in part in this resolution, full credit reporting
2 poses a new and profound threat to the well-being of both low-income consumers and a
3 wide swath of consumers who are not low income but who for reasons including illness
4 and layoff are not always able to make gas and electric payments on time; and

5 *Whereas*, credit scores are widely used by creditors and insurance companies to make
6 decisions regarding the provision and pricing of their services, by prospective employers
7 to make decisions regarding the hiring of employees, and by prospective landlords to
8 make decisions regarding the leasing of residential property; and

9 *Whereas*, the financial difficulties faced by consumers in paying gas and electric bills on
10 time have been exacerbated in recent years by deep recession and high unemployment;
11 and

12 *Whereas*, a single late payment report adversely affects a credit score by 60 to 110
13 points;⁴ and

14 *Whereas*, at the present time, the vast majority of gas and electric utilities have a practice
15 of limiting credit reporting to seriously delinquent accounts which have been terminated
16 and referred to a collection agency or written off as uncollectible;⁵ and

17 *Whereas*, the present practice of limited credit reporting appropriately reflects and
18 advances, while full credit reporting would inhibit and thwart, a host of public laws and
19 policies that the states have implemented and embraced as a part of the safety net for their
20 people, including laws and policies concerning billing, collections, security deposits,
21 termination practices and customer service activities, and including such vital protections
22 as winter moratorium on disconnection of service for low-income consumers and
23 mandatory alternative payment plans on certain accounts that are not current;

24 ***NOW THEREFORE, BE IT RESOLVED***, that NASUCA opposes full credit reporting
25 on residential gas and electric accounts and urges state and federal policy-makers to
26 prohibit the practice.

27 ***BE IT FURTHER RESOLVED***, that NASUCA supports the continuation of full state
28 legislative and regulatory jurisdictional authority over gas and electric billing, collection,
29 customer service and credit reporting activities, including but not limited to the reporting
30 of customer payment history to credit reporting agencies; and

³Turner, Lee, Schnare, Varghese, Walker, Political and Economic Research Council and
Brookings Institution Urban Markets Initiative, "Give Credit Where Credit Is Due" (2006)
(http://perc.net/files/downloads/alt_data.pdf).

⁴Simon, "FICO reveals how common credit mistakes affect scores" (November 13, 2009)
<http://www.creditcards.com/credit-card-news/fico-credit-score-points-mistakes-1270.php>

⁵Varghese and others, note 3 above, p. 12.

1 **BE IT FURTHER RESOLVED**, that NASUCA urges, should a state authorize credit
2 reporting on residential gas and electric accounts, that the authorization be limited to the
3 reporting of seriously delinquent accounts which have been terminated and referred to a
4 collection agency or written off as uncollectible; and

5 **BE IT FURTHER RESOLVED**, that NASUCA urges, should a state authorize full credit
6 reporting on residential gas and electric accounts, that the authorization, consistently with
7 the stated purpose of full credit reporting to help establish a consumer's credit history and
8 improve the consumer's access to credit, be subject a consumer "opt-in" requirement.

Submitted by:

NASUCA Gas Committee and
NASUCA Consumer Protection Committee

Approved June 15, 2010
San Francisco, CA

ATTACHMENT C

September 12, 2012

The Honorable Jim Renacci
130 Cannon House Office Building
Washington, DC 20515

Dear Congressman Renacci:

The undersigned consumer, civil rights and advocacy groups write to you to express our concerns about H.R. 6363, and the issue that it promotes – full file utility credit reporting. This practice will add millions of new negative reports to the credit reporting system and we fear that it may harm many consumers. It also may undermine long-standing protections developed by state utility commissions across the country to protect consumers when utility bills spike during weather extremes. Full file utility credit reporting could also hurt job seekers when employers use credit reports, and consumers when they buy home or auto insurance.

For these reasons, we believe there are significant concerns about the use of full file utility reporting data. We do not oppose permitting consumers to voluntarily opt-in to full file utility credit reporting. But we are very concerned about the effects of full file utility credit reporting that is not voluntary for consumers.

Proponents claim that reporting utility payments will help improve the credit reports of tens of millions of consumers. However, their statistics are based on data regarding the very few electric and natural gas utilities that do fully report on a regular basis and do not appear to be representative of payment patterns in different states and regions. For example, proponents claim that fewer than 3% of consumers earning \$50,000 or less annually have a single 60-day late utility payment during a one-year period. Yet data filed with or from utility regulators in a number of states indicates the percentages of utility consumers paying late is much higher – from 11% in California to 20% in Massachusetts to 21% in Ohio. Thus, to the extent that utility reporting creates a score for “thin file” or “no file” consumers, we fear that it will end up being a bad credit score.

Proponents assert that a low credit score is better than no score. They state “the low score is a powerful protection against over-extension and irresponsible lending.” We believe that this assumption is wrong: a low score can affirmatively harm consumers. A low score can put a target on the consumer’s back for predatory lenders such as fee-harvester credit cards, who rely on pre-screened lists of consumers with bad credit.

Furthermore, credit scores and reports are not solely used for lending decisions. Many employers use credit reports in hiring and other employment decisions. In such cases, it is far worse for a worker if the employer sees a credit report with negative information (such as report consisting of single utility account with repeated late payments) than one with no information.

Also, insurance companies use credit scores when determining whether to approve applications and what prices to charge consumers. This is another instance in which not having a credit history is less harmful than having a bad history, as the absence of a credit score is treated as “neutral” in many states.

The National Association of State Utility Consumer Advocates voted to oppose full file utility credit reporting¹ in part because it conflicts with utility consumer protections in many states. For example, the “Winter Moratoriums” in several cold weather states prohibit utilities from disconnecting service during the winter months when there is financial hardship. The Winter Moratorium recognizes that financially stretched households may have difficulty paying their bills during the expensive hearing months, but will eventually catch up during the summer. Full utility credit reporting, by threatening consumers with black marks on their credit reports even when state law was designed to give them some breathing room, would operate in conflict with the policy objective of the Winter Moratorium.

Thank you for your attention. If you have any questions about this letter, please contact John Howat (jhowat@nclc.org) or Chi Chi Wu (cwu@nclc.org) at (617) 542-8010.

John Howat and Chi Chi Wu
National Consumer Law Center
(on behalf of its low-income clients)

Birny Birnbaum
Center for Economic Justice

Ed Mierzwinski
U.S. PIRG

Pamela Banks
Consumers Union

Charles A. Acquard
National Association of State Utility Consumer Advocates

Jeffrey Chester
Center for Digital Democracy

Shanna L. Smith
National Fair Housing Alliance

Ruth Susswein
Consumer Action

Elliott Jacobson
Action, Inc.
Gloucester, MA

¹ National Association of State Utility Consumer Advocates, Resolution 2010-3: Opposing “Full Credit Reporting” of Payment Histories on Residential Gas and Electric Accounts, June 15, 2010, *available at* www.nasuca.org/archive/Full%20Credit%20Reporting%20Resolution%20FINAL%202010-3.doc.

Mark W. Toney
TURN—The Utility Reform Network
San Francisco, CA

Dave Rinebolt
Ohio Partners for Affordable Energy
Findlay, OH

September 12, 2012

The Honorable Jim Renacci
130 Cannon House Office Building
Washington, DC 20515

Dear Congressman Renacci:

The undersigned advocates are writing to raise concerns about H.R. 6363, which promotes the practice of full file utility credit reporting. We have concerns about the scope of the bill, which goes far beyond the topic of utility credit reporting. The bill eliminates any provisions or regulations under the Fair Credit Reporting Act (FCRA) that restrict furnishing information to consumer reporting agencies, such as restrictions on identifying information, public records, or tenancy information. Thus, it will take away authority from the Consumer Financial Protection Bureau (CFPB) to regulate abuses in the furnishing of information. The CFPB would be prevented from establishing regulations that prohibit the furnishing of outdated, irrelevant or sensitive personal information.

We note that the bill is designed so it does not state explicitly that it preempts state laws or regulation. However, the bill adds provisions to a section of the FCRA that has broad preemptive effect, and it is not inconceivable that a court could rule that the provision preempts state laws even though it does not specifically so state. If this provision were to have a preemptive effect on state laws, it would go much further than just reporting utility information to preempt state laws that attempt to reform background check agencies,¹ govern furnishing of criminal records, and govern reporting of eviction records.²

Thank you for your attention. If you have any questions about this letter, please contact Chi Chi Wu (cwu@nclc.org) at (617) 542-8010.

Chi Chi Wu
National Consumer Law Center
(on behalf of its low-income clients)

Maurice Emsellem
National Employment Law Project

Judy Whiting
Community Service Society
New York, New York

James Fishman
Fishman & Mallon, LLP

Jeffrey Chester
Center for Digital Democracy

¹ For a discussion of the problems with background check agencies, see Persis Yu, National Consumer Law Center, *Broken Records: How Errors by Criminal Background Checking Companies Harm Workers and Businesses*, April 11, 2012, available at www.nclc.org/issues/broken-records.html.

² In some states, rental housing providers often categorically reject applicants who have been sued for eviction—even if the case is dismissed or found to be without merit. States may wish to restrict the reporting of certain eviction lawsuits to protect individuals and families from being unfairly excluded from rental housing based on unfairly-stigmatizing eviction records.