

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

June 24, 2021

Memorandum

To: Members, Committee on Financial Services
From: FSC Majority Staff
Subject: June 29, 2021, Full Committee Hearing entitled, “A Biased, Broken System: Examining Proposals to Overhaul Credit Reporting to Achieve Equity”

The full Committee will hold a hybrid hearing entitled “A Biased, Broken System: Examining Proposals to Overhaul Credit Reporting to Achieve Equity” on Tuesday, June 29, 2021, at 10:00 a.m. ET in room 2128 Rayburn House Office Building and the virtual meeting platform Cisco Webex. There will be one panel with the following witnesses:

- **Mr. Syed Ejaz**, Financial Policy Analyst, Consumer Reports
- **Mr. Jeremie Greer**, Co-Founder and Co-Executive Director, Liberation in a Generation
- **Ms. Amy Traub**, Associate Director of Policy and Research, Demos
- **Ms. Chi Chi Wu**, Staff Attorney, National Consumer Law Center (NCLC)
- **Mr. Dan Quan**, Adjunct Scholar, Cato Institute’s Center for Monetary and Financial Alternatives

Overview

The U.S. credit reporting system is unique because it relies on consumer data for use and profit by private companies. In contrast, the consumer relies on a credit score and report for many aspects of life. Credit scores and credit reports are increasingly relied upon by creditors and employers, housing providers, insurers, and even law enforcement. Despite this, it has been nearly two decades since Congress enacted comprehensive reform of the consumer reporting system,¹ and there are numerous shortcomings with the current system. In 2017, Equifax experienced a cybersecurity breach so massive that it affected approximately 148 million consumers. In addition to releasing the personally identifiable information of approximately half of all Americans, this breach also highlighted deficiencies in the credit reporting system, including the lack of an effective dispute process for consumers who find errors in their credit reports.²

Many have experienced financial and other forms of extreme distress due to incomplete or erroneous information on their consumer credit reports. While a few targeted, if not temporary, provisions relating to consumer reporting were enacted into law in 2018 and included in the CARES Act in 2020,³ many have

¹ The Fair and Accurate Credit Transactions Act of 2003 (FACT Act, [Pub. L. No. 108-159](#)), among other things, allows consumers to request and obtain a free credit report once a year from each of the three nationwide consumer reporting agencies.

² See, e.g., National Consumer Law Center, [Automated Injustice Redux: Ten Years after a Key Report, Consumers Are Still Frustrated Trying to Fix Credit Reporting Errors](#) (Feb. 2019).

³ [Pub. L. No. 115-174](#). Section 301 of the bill eliminates fees associated with placing and removing credit freezes but in some instances preempts stronger state laws. Section 302 provides free credit monitoring for active duty servicemembers. Section 310 of the bill directs the enterprises Fannie Mae and Freddie Mac to consider scoring models from other companies in addition to its use of FICO scores. See Congressional Research Service, [Economic Growth, Regulatory Relief, and Consumer Protection Act and Selected Policy Issues](#) (June 5,

argued for comprehensive reforms to make the system more equitable and more accountable to consumers.⁴ Other jurisdictions, like California and the European Union, have taken steps to empower consumers to have more control over their data.⁵

Background

The Fair Credit Reporting Act (FCRA) provides the legal framework for the consumer credit reporting system.⁶ The Consumer Financial Protection Bureau (CFPB) and the Federal Trade Commission (FTC) share jurisdiction in implementing and enforcing FCRA.⁷ CRAs are also subject to the data protection requirements of Section 501(b) of the Gramm-Leach-Bliley Act (GLBA), which mandate appropriate safeguards to maintain the security and confidentiality of consumer records and information. The FTC has the authority to enforce Section 501(b) for CRAs.

While there are about 30 CRAs, Experian, Equifax, and TransUnion are considered the largest three nationwide CRAs because they collect a range of consumer data and compile credit reports for the majority of U.S. consumers.⁸ Other types of CRAs collect and sell consumers' data, such as employment and tenant history, and are referred to as specialty CRAs.⁹ CRAs receive information voluntarily supplied by data furnishers. For the nationwide CRAs, these furnishers are generally creditors and debt collectors. The CRAs then compile and maintain this information on a person's consumer report. A "credit score" is defined under FCRA as "a numerical value or categorization derived from a statistical tool or modeling system" used by a person who "makes or arranges" a loan to predict the likelihood of default on a payment.¹⁰ The numerical value is also sometimes referred to as a risk predictor or "risk score."

A "consumer report"¹¹ at the three nationwide CRAs generally includes five types of information: (1) identifying information or header, such as a person's name, social security number, birth date, current and previous addresses, and phone numbers; (2) trade lines that include account information, such as the type of credit obtained, the date the account was opened and closed, credit limits or loan amounts, the outstanding balances, the timeliness of payments, and whether the accounts are delinquent or in collections; (3) public record information; (4) collections that include information about third-party collection items that are reported by debt buyers or collections agencies on behalf of a creditor; and (5) inquiries that list businesses and entities that have accessed the person's consumer file for the last two years for employment purposes and for at least one year for credit and other purposes. Information not explicitly contained in a credit report includes: (1) a person's race, color, or national origin and (2) income information. Most adverse information typically remains on a report for seven years, with bankruptcies remaining on reports for ten years.¹²

2018). *See also* CARES Act, [Pub. L. No. 116-136](#). This law requires credit furnishers to report to the credit bureaus that consumers are current on their credit obligations if they have entered into a forbearance agreement, or other payment relief program, and are meeting the terms of such an agreement with their lender.

⁴ House Committee on Financial Services, [Testimony of Chi Chi Wu, Examining the Equifax Data Breach](#), 115th Cong. (Oct. 25, 2017).

⁵ *See* Congressional Research Service, [Consumer Credit Reporting, Credit Bureaus, Credit Scoring, and Related Policy Issues](#) (Oct. 15, 2020); Congressional Research Service, [California Dreamin' of Privacy Regulation: The California Consumer Privacy Act and Congress](#) (Nov. 1, 2018).

⁶ Congressional Research Service, [Consumer and Credit Reporting, Scoring, and Related Policy Issues](#) (Sept. 13, 2018).

⁷ Senate Committee on Banking, Housing, and Urban Affairs, [An Overview of the Credit Bureaus and Fair Housing Act](#), 115th Cong. (July 25, 2018).

⁸ Consumer Financial Protection Bureau, [List of Consumer Reporting Companies](#) (Jan. 2020).

⁹ *Id.*

¹⁰ Credit scores generally rank the probability that a person will become 90 days delinquent on a new loan within two years.

¹¹ Consumer reports from the nationwide CRAs are commonly referred to as "credit reports," even though "credit reports" is not a term defined under the FCRA.

¹² The statutory time periods do not apply when a report is provided in three circumstances: (1) a credit transaction involving, or which may reasonably be expected to involve, \$150,000 or more; (2) the underwriting of life insurance involving, or which may reasonably be

According to the CFPB, many consumers believe consumer reports are “hard to get and hard to understand.”¹³ Unlike a consumer’s federal right to obtain a free annual consumer report from each of the nationwide CRAs and nationwide specialty CRAs, consumers have no legal right to their credit score in most cases.¹⁴ Additionally, the CFPB has found that there is significant consumer confusion about the differences between the credit scores available to consumers and those that are sold to and used by creditors or lenders. This confusion can lead to consumers forming inaccurate perceptions of their ability to access credit and the terms under which they could access credit. Another source of consumer confusion is rooted in the fact that consumers do not have a single credit score but rather multiple credit scores from different companies that analyze different types of data using different types of algorithms. The submission of credit information to CRAs is voluntary, and not all creditors submit information to every CRA. Therefore, the information in a person’s credit report varies among CRAs. This means that not all credit scores are utilizing the same data.

Consumers often refer to their credit score as a “FICO” score. However, FICO is a credit score brand developed by the firm formally known as the Fair Isaac Corporation. FICO scores range from 300 to 850. The higher the score, the lower the risk the consumer is considered to be by creditors. While other companies have developed credit scoring models, most lenders still use FICO scores for underwriting and loan rating.¹⁵ Some argue that FICO has been able to remain a dominant player in the market because Fannie Mae and Freddie Mac currently require FICO-developed credit scoring models to evaluate which mortgage loans are eligible for purchase, despite multi-year efforts to approve alternative credit scoring models.¹⁶ VantageScore was introduced in 2006 as a competitor to FICO.¹⁷ It was developed jointly by the three nationwide CRAs but is independently managed and marketed.

Consumers and Credit Reporting Issues before and during the COVID-19 Pandemic

The CFPB began accepting consumer complaints about credit reporting in October 2012. In 2020, the CFPB handled about 542,300 complaints, with more than 58% of those complaints regarding credit and consumer reporting representing the most complaints received about any consumer product or service during that time.¹⁸ Independent analysis found that in 2020, CFPB complaints regarding credit reporting surged 50 percent and reached an all-time high of 48,558 complaints in December alone.¹⁹ The CFPB found that pandemic-related staffing challenges at credit bureaus and furnishers led to delayed investigations and processing of accommodations and responses in the early months of the pandemic.

expected to involve, \$150,000 or more; and (3) the employment of an individual at an annual salary which equals, or which may reasonably be expected to equal, \$75,000 or more. However, as a practical matter, because the FCRA prohibits CRAs from reporting inaccurate information, information is considered obsolete and typically removed from a report when the statutory time period is reached.

¹³ Consumer Financial Protection Bureau, [Consumer Voices on Credit Reports and Scores](#) (Feb. 2015).

¹⁴ The Dodd-Frank Act amended the FCRA to require “adverse action notices” (which are disclosures sent to consumers by creditors when a person has applied but been denied credit by a company to identify for the consumer the CRA that the company obtained a report from to help make this decision) and “risk-based pricing notices” (which are disclosures sent by creditors informing a consumer that their request for new credit has been granted to them but on materially less favorable terms and conditions than the creditor has provided to other consumers and to identify the CRA that the creditor obtained a report from to help make this decision) to include credit score disclosures.

¹⁵ See House Committee on Financial Services, [Testimony of Chi Chi Wu, Who’s Keeping Score? Holding Credit Bureaus Accountable and Repairing a Broken System](#), 116th Cong. (Feb. 26, 2019).

¹⁶ Ben Lane, [FHFA flip-flops, won’t blacklist VantageScore as FICO alternative for Fannie and Freddie](#), Housing Wire (Aug. 13, 2019).

¹⁷ See footnote 3. Due to the Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018’s passage into law, the Federal Housing Finance Agency, regulator of Fannie Mae and Freddie Mac, is currently seeking comment on updates or changes to how they incorporate different credit score models such as FICO or Vantage Score.

¹⁸ Consumer Financial Protection Bureau, [Consumer Response Annual Report](#) (Mar. 2021).

¹⁹ U.S. PIRG Education Fund, [Consumers in Peril: CFPB Data Shows Consumer Problems in Year of COVID-19](#) (Mar. 2021). See also Consumer Financial Protection Bureau, [Consumer Complaint Database](#) (accessed Feb. 23, 2021).

Fortunately, most bureaus and furnishers have reportedly addressed the issue.²⁰ Litigation has also been brought against the credit bureaus due to their faulty implementation of the CARES Act.²¹

Consumers continue to experience challenges with the credit reporting system, including fixing errors spotted on their credit reports, more than one year after the COVID-19 pandemic outbreak in the U.S. Recent hearings in March 2021 and May 2021 by the Subcommittee on Consumer Protection and Financial Institutions and the Subcommittee on Oversight and Investigations delved into the gaps left in consumer protection during the pandemic and the accuracy of credit reporting.²² In addition, as individuals begin to exit mortgage and federal student loan forbearance periods, consumers impacted by the COVID-19 pandemic may soon face the challenges of mounting arrearages, keeping up with ongoing payments, and preventing negative information from being added to their reports. These challenges may threaten the long-term financial health of millions of consumers and their ability to access various life opportunities in the future.

Bias in Credit Reporting Systems

Bias in the credit reporting system is a hallmark of the dual financial system created as the result of a long history of housing and credit discrimination. Beginning in the 1930s, entire communities and people of color were explicitly excluded from affordable government and other mainstream loans when the Home Owners Loan Corporation (HOLC), known today as the Federal Housing Administration (FHA), utilized rating systems and redlining maps that deemed communities of color as high credit risks.²³ These exclusionary policies were perpetuated by private industry practices, and studies show that many of these redlining practices continue today.²⁴ This explicit discrimination promoted by the federal government created segregated neighborhoods, where people of color had limited access to affordable, sustainable credit and were relegated to using fringe, non-bank lenders that regularly charged more to access credit.²⁵ These policies also helped establish a modern-day system where a consumer's zip code is more often used to determine their creditworthiness than their ability to repay a loan.²⁶

Early forms of credit reporting and evaluation emerged from practices that excluded people based on their socioeconomic status, sex, race and ethnicity, and national origin, among other characteristics. These practices included “small retail merchants [that] banded together to trade financial information about their customers” and underwrote loans based on the relationships a person had with a creditor or business.²⁷ The passage of the Fair Housing Act in 1968 and the Equal Credit Opportunity Act in 1974 were designed to address these discriminatory practices by prohibiting the evaluation of credit and housing-related transaction decisions based on a consumer's protected class characteristics, such as race, color, sex, national origin, religion, disability, familial status, and age. The emergence of credit scoring systems, which do not explicitly consider factors such as a consumer's race or national origin to calculate

²⁰ Consumer Financial Protection Bureau, [Supervisory Highlights COVID-19 Prioritized Assessments Special Edition](#), at 19 (Jan. 19, 2021).

²¹ See, e.g., [Plaintiffs Complaint for Declaratory and Punitive Relief](#) (May 20, 2020), *Sass v. Great Lakes Educational Loan Services, Inc.*, N.D. CA (No. 3:20 CV 03424).

²² House Committee on Financial Services, [Slipping Through the Cracks: Policy Options to Help America's Consumer During the Pandemic](#) (Mar. 11, 2021); House Committee on Financial Services, [Consumer Credit Reporting: Assessing Accuracy and Compliance](#) (May 26, 2021).

²³ Richard Rothstein, *The Color of Law: A Forgotten History of How Our Government Segregated America* (2017).

²⁴ Frederick Babcock, *Techniques of Residential Location Rating*, Journal of the American Institute of Real Estate Appraisers of the National Association of Real Estate Boards, at 137 (Apr. 1938). See also Aaron Glantz & Emmanuel Martinez, [For people of color, banks are shutting the door to homeownership](#), *Reveal News* (Feb. 15, 2018).

²⁵ National Fair Housing Alliance, [Fair Housing In Jeopardy: Trump Administration Undermines Critical Tools For Achieving Racial Equity](#) (2020).

²⁶ Nicole Bachaud, [Black Applicants Are Far More Likely to be Denied a Mortgage](#), *Zillow* (Aug. 3, 2020).

²⁷ Marketplace, [A brief history of the credit score](#) (Apr. 22, 2014).

a score, was expected to reduce the incidence of discrimination.²⁸ Yet, studies demonstrate that credit scoring systems used by CRAs continue to have a significant disparate impact on members of protected classes, especially for people of color and the communities where they live.²⁹

The historical exclusion of people of color from mainstream credit, which has contributed to the disproportionate use of non-bank credit,³⁰ has also hindered access to jobs, housing, and affordable credit on equal terms.³¹ Under the current system, payday or other non-bank loan payments are not furnished to the nationwide CRAs, and payment history on utilities and other services are not always consistently reported;³² the absence of this data could result in an otherwise lower credit score for some consumers with limited access to mainstream credit and financial services.³³ While emerging technologies such as artificial intelligence, including machine learning, that utilize alternate data may create more equitable credit reporting that increase access to credit to traditionally underserved communities, these technologies run the risk of algorithmic bias and making discrimination harder to find.³⁴ These factors continue the historical trend where consumers with lower scores and more debt, who are more likely to be people of color, pay more and on unequal terms to access credit, despite what their actual propensity to repay may be. In one 2017 study of the financial health of U.S. cities, the Urban Institute found that in 38 cities where the difference in median credit scores between White communities and communities of color is at least 100 points, households in communities of color could pay an additional \$100 per month and thousands of dollars more over the life of a conventional mortgage loan.³⁵

Private vs. Public Credit Reporting

Unlike other businesses, where dissatisfied and unhappy consumers can decide to stop doing business with a company, consumers have almost no control over whether furnishers provide their information to CRAs that is compiled and maintained in the CRAs' databases. Consumers' concerns about credit reporting errors, fears about stolen credit information, and identity theft have also increased consumers' purchases of credit monitoring services and other products from the nationwide CRAs, which has allowed these companies to profit, in part, from their deficient practices.

Some believe that the structure and policies of current CRAs are so deeply biased and flawed that the only way to ensure a better and more equitable system is to create a public CRA. While countries in Asia and Europe have already established public credit agencies, "these are primarily oriented toward ensuring the stability of lenders, not the benefit of consumers."³⁶ Advocacy organizations, such as Demos and the National Consumer Law Center have argued that a consumer-oriented public CRA would have more "transparency," "accountability," and that new, better-formed algorithms would create a more fair credit reporting system that would result in more accurate reports and scores and assist those left out of the current financial system in attaining sustainable access to credit.³⁷ During the 2020 campaign, President Biden supported such a proposal.³⁸

²⁸ Michelle Singletary, [How race affects your credit score](#), Washington Post (Oct. 16, 2020).

²⁹ Lisa Rice & Deidre Swesnick, [Discriminatory Effects of Credit Scoring on Communities of Color](#) (June 2012).

³⁰ FDIC, [How America Banks: Household Use of Banking and Financial Services: 2019 FDIC Survey](#) (accessed June 10, 2021).

³¹ Committee, [Who's Keeping Score? Holding Credit Bureaus Accountable and Repairing a Broken System](#), 116th Cong. (Feb. 26, 2019).

³² National Consumer Law Center, [Credit Invisibility and Alternative Data: The Devil is in the Details](#) (June 2015).

³³ Liberation in a Generation, [Expand Access to Basic Financial Products and Services](#) (accessed June 10, 2021).

³⁴ See e.g., Brookings Institution, [Reducing bias in AI-based financial services](#) (July 10, 2020).

³⁵ Urban Institute, [Credit scores perpetuate racial disparities, even in America's most prosperous cities](#) (Nov. 20, 2017).

³⁶ Demos, [Establish a Public Credit Registry](#) (Apr. 3, 2019).

³⁷ *Id.* See also Committee, [Testimony of Chi Chi Wu](#), [Who's Keeping Score? Holding Credit Bureaus Accountable and Repairing a Broken System](#), 116th Cong. (Feb.26, 2019).

³⁸ See McKenna Moore, [Biden Wants to Change How Credit Scores Work in America](#), Fortune (Dec. 18, 2020).

Appendix: Legislation

- **H.R. 4120, Comprehensive Consumer Credit Reporting Reform Act (Pressley)**, which would make an extensive series of reforms to FCRA by requiring CRAs like Equifax, TransUnion, and Experian to better ensure that the information on consumer credit reports is accurate and complete and increasing consumers' rights to report and appeal credit report disputes.³⁹ The bill would assist consumers struggling with medical debt, abusive and predatory loan products, and private student debt and creates stronger CFPB oversight of how credit scoring models are formed to prevent disparate impact. This comprehensive bill includes legislation sponsored by Representatives Adams, Beatty, Lawson, Lynch, Pressley, and Tlaib and passed the House of Representatives last year.⁴⁰
 - **Title I—Improvements to the Dispute Process.** This title would reform the dispute process, making it easier for consumers to fix errors on their credit reports, and provide consumers with expanded and meaningful disclosures from entities that routinely report negative information to the CRAs. This legislation creates a public credit reporting agency would serve as a competitor to the private CRAs and would manage credit reports and create an equitable and accurate scoring system. *This title is substantially similar to H.R. 4113, the Improving Credit Reporting Disputes for All Consumers Act, sponsored by Rep. Alma Adams (D-NC).*
 - **Title II—Free Credit Scores for Consumers.** This title would expand free access to and provide more meaningful information about consumer reports and credit scores, including reports and scores that are used for underwriting purposes and explanations of how credit scores are calculated. *This title is substantially similar to H.R. 4078, the Free Credit Scores for Consumers Act, sponsored by Rep. Joyce Beatty (D-OH).*
 - **Title III—Student Borrower Credit Improvement Act.** This title would provide relief for private student loan borrowers struggling to improve their credit scores by establishing a credit rehabilitation process for borrowers facing economic hardship. *This title is substantially similar to H.R. 4119, the Student Borrower Credit Improvement Act, sponsored by Rep. Ayanna Pressley (D-MA).*
 - **Title IV—Credit Restoration for Victims of Predatory Activities and Unfair Consumer Reporting Practices.** This title would provide credit restoration for victims of predatory mortgage lending, shorten the amount of time that most adverse credit information stays on a credit report, remove paid debt from consumer reports and apply restrictions on the appearance of medical debt on consumer reports. *This title is substantially similar to H.R. 4115, the Restoring Unfairly Impaired Credit and Protecting Consumers Act, sponsored by Rep. Rashida Tlaib (D-MI).*
 - **Title V—Clarity in Credit Score Formation.** This title would strengthen federal oversight of the credit scoring model development and direct the CFPB to study the impact of using alternative data in credit scoring models. *This title is substantially similar to H.R. 4112, the Clarity in Credit Score Formation Act, introduced by Rep. Stephen Lynch (D-MA).*
 - **Title VI—Restrictions on Credit Checks for Employment Decisions.** This title would limit the use of credit checks and credit scores for hiring and employment purposes. *This title is substantially similar to H.R. 3614 in the 116th Congress, the Restricting Use of Credit Checks for Employment Decisions Act, sponsored by Rep. Al Lawson (D-FL).*

³⁹ [H.R. 3621](#), 116th Cong. (2019), and Committee, [House Passes Pressley Bill to Reform Broken Credit Reporting System](#) (Jan. 29, 2020). The bill was supported by 85 consumer, civil rights, labor, and community organizations. See Americans for Financial Reform, [House Floor Credit Reporting Bill Support Letter](#) (Jan. 27, 2020).

⁴⁰ *Id.*

- **Title VII—Prohibition on Misleading and Unfair Consumer Reporting Practices.** This title would ban deceptive promotional marketing of consumer reporting products and services and direct the CRAs to improve access to credit reporting and scoring information for all consumers, including those with limited English proficiency or vision and hearing impairments. *This title is substantially similar to H.R. 4113, the Improving Credit Reporting Disputes for All Consumers Act, sponsored by Rep. Alma Adams (D-NC).*
- **Title VIII—Protections Against Identity Theft, Fraud, or a Related Crime.** This title would protect consumers harmed by identity theft and fraud by eliminating obstacles for consumers trying to safeguard their credit information and providing free credit monitoring and ID theft protection services. *This title is substantially similar to H.R. 4115, the Restoring Unfairly Impaired Credit and Protecting Consumers Act, sponsored by Rep. Tlaib (D-MI).*
- **Title IX—Miscellaneous.** This title would add a finding to FCRA asserting the importance of fair and accurate credit reporting due to the impact a credit score has on the consumer, void contracts made against the public interest, and direct the Consumer Bureau to issue final rules to implement amendments in the bill. *This title is substantially similar to H.R. 4115, the Restoring Unfairly Impaired Credit and Protecting Consumers Act, sponsored by Rep. Tlaib (D-MI).*
- **H.R. ____, Protecting Your Credit Score Act (Gottheimer),** which would require the three largest CRAs, Equifax, Experian, and Transunion, to establish a single online consumer portal landing page that gives consumers free and unlimited access to their consumer reports and credit scores. This bill also provides consumers with the ability to initiate disputes about report accuracy and to place or remove a security freeze. This legislation also passed the House of Representatives last year.⁴¹
- **H.R. ____, National Credit Reporting Agency Act,** which would establish the Public Credit Registry (PCR) within the CFPB, creating a public option for consumers who choose to utilize it. The PCR will help increase access to credit scores and reports, improve accuracy of consumer reports, strengthen the consumer disputes and complaints process, enhance credit scoring models after the completion of a study on the impact on consumers, and ensure the provision of credit counseling and credit rehabilitation services to consumers.

⁴¹ [H.R. 5332](#), 116th Cong. (2019), [H.Rept. 116-416](#), Rep. Gottheimer press release, [Gottheimer bill passes House to create new online portal to protect from fraud, increase transparency, strengthen Americans' financial futures](#) (June 29, 2020).