NCLC

NATIONAL CONSUMER LAW CENTER®

Advancing Fairness in the Marketplace for All

Testimony before the

U.S. HOUSE COMMITTEE ON FINANCIAL SERVICES
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND CONSUMER CREDIT

regarding

"Use of Credit Information beyond Lending: Issues and Reform Proposals"

May 12, 2010

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

Testimony of Chi Chi Wu, National Consumer Law Center
Before the Subcommittee on Financial Institutions and Consumer Credit
of the U.S. House Committee on Financial Services
regarding
"Use of Credit Information beyond Lending: Issues and Reform Proposals"
May 12, 2010

Mr. Chairman, Ranking Member Hensarling, and Members of the Subcommittee, the National Consumer Law Center thanks you for inviting us to testify today regarding the use of credit reports in areas beyond lending, such as employment and insurance. We also thank you for inviting us to speak about the need to fix a scrivener's error in the Fair Credit Reporting Act (FCRA). We offer our testimony here on behalf of our low income clients.[1]

I. CONGRESS SHOULD BAN THE USE OF CREDIT HISTORIES IN EMPLOYMENT WITH LIMITED EXCEPTIONS

We wish to thank Chairman Gutierrez for his introduction of H.R. 3149, the Equal Employment Opportunity for All Act. The use of credit reports in employment is a growing practice that is harmful and unfair to American workers. Despite many good reasons to avoid engaging in this practice, nearly half of employers (47%) do so today.[2] It is because of the harms, as well as the absurdities of this practice, that we strongly support H.R. 3149. This bill would restrict the use of credit reports in employment to only those positions for which it is truly warranted, such as those requiring a national security or FDIC mandated clearance.

We oppose the unfettered use of credit histories and support H.R. 3149, for the following reasons:

- **Credit checks in hiring create a fundamental "Catch-22" for job applicants.**
- **The use of credit in hiring discriminates against African American and Latino job applicants.**

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 inaccurate credit reporting from every part of the nation. It is from this vantage point – many years of observing the problems created by incorrect credit reporting in our communities – that we supply these comments. *Fair Credit Reporting* (6th ed. 2006) is one of the eighteen practice treatises that NCLC publishes and annually supplements. This testimony was written by Chi Chi Wu, with assistance from Nat Lippert of UNITE HERE, Richard Rubin and Leonard Bennett.
2 Statement of Elizabeth Owens Bille, Associate Counsel – Society for Human Resource Management, Presented to the Communications, Financial Services and Interstate Commerce Committee of the National Conference of State Legislatures, Dec. 11, 2009.

- **Credit history does not predict job performance.**

- **Credit reports suffer from unacceptable rates of inaccuracy, especially for a purpose as important as use in employment.**

Fundamentally, the issue at stake is whether workers are fairly judged based on their ability to perform a job or whether they're discriminated against because of their credit history. Eighteen states and the District of Columbia have recently considered legislation to restrict this practice.[3] Despite the lobbying efforts of the credit reporting industry, Oregon recently signed a bill (S.B. 1045) into law and other states are on their way to doing the same.

A. <u>Considering Credit Histories in Hiring Creates an Absurd "Catch-22" for Job Applicants</u>

The first and foremost reason to oppose the use of credit history for job applications is the sheer, profound absurdity of the practice. Using credit history, especially in an economy with such massive numbers of job losses such as the current one, creates a grotesque conundrum. Simply put, a worker who loses her job is likely fall behind on paying her bills due to lack of income. With the increasing use of credit reports, this worker now finds herself shut out of the job market because she's behind on her bills. As one law professor at the University of Illinois puts it "You can't re-establish your credit if you can't get a job, and you can't get a job if you've got bad credit."[4]

Some commentators have even said the use of credit reports to screen job applicants leads to a "financial death spiral: the worse their debts, the harder it is to get a job to pay them off."[5] This phenomenon has created concerns that the unemployed and debt-ridden could form a luckless class. It could affect future generations, as workers with impaired credit continue to struggle financially and cannot build assets to move ahead. These workers move further and further behind, while workers with good credit histories can get the best jobs, the best credit and the best insurance rates. Use of credit reporting in employment could contribute to the widening gap between haves and have-nots.

B. <u>The Use Of Credit History In Hiring Discriminates Against African American And Latino Job Applicants.</u>

There is no question that African American and Latino applicants fare worse than white applicants when credit histories are considered for job applications. For one thing,

---

3 For a useful listing of state legislation on this issue, please visit the website set up by the National Conference of State Legislatures: <http://www.ncsl.org/IssuesResearch/BankingInsuranceFinancialServices/UseofCreditInformationinEmployment2010Legis/tabid/19825/Default.aspx>

4 Jonathan D. Glater, *Another Hurdle for the Jobless: Credit Inquiries*, New York Times, Aug. 6, 2009, available at http://www.nytimes.com/2009/08/07/business/07credit.html?pagewanted=all (quoting Professor Matthew W. Finkin).

5 *Id.*

these groups are already disproportionately affected by predatory credit practices, such as the marketing of subprime mortgages and overpriced auto loans targeted at these populations.[6] As a result, these groups have suffered higher foreclosure rates.[7] African Americans and Latinos also suffer from disparities in health outcomes, and as discussed in Section III of this testimony, health care bills are another source of black marks on credit reports.

Furthermore, African Americans and Latinos have markedly higher rates of unemployment. While the unemployment rate for whites was 9% in April 2010, it was 16.5% for African Americans and 12.5% for Latinos.[8] As discussed above, the simple fact of being unemployed is likely to harm an applicant's credit history because of the loss of income with which to pay bills.

In addition, numerous studies have documented how, as a group, African Americans and Latinos have lower credit scores than whites. If credit scores are supposed to be an accurate translation of a consumer's credit report and creditworthiness, that means these groups will fare worse when credit history is considered in employment. Studies showing racial disparities in credit scoring include:

- A 2007 Federal Reserve Board report to Congress on credit scoring and racial disparities, which was mandated by the 2003 Fair and Accurate Credit Transactions Act of 2003 (FACTA), amending the Fair Credit Reporting Act (FCRA).[9] This study analyzed 300,000 credit files matched with Social Security records to provide racial and demographic information. While the Federal Reserve's ultimate conclusion was to support credit scoring, its study found significant racial disparities. In one of the two models used by the Federal Reserve, the mean score of African Americans was approximately half that of white non-Hispanics (54.0 out of 100 for white non-Hispanics versus 25.6 for African Americans) with Hispanics fairing only slightly better (38.2).[10]

- A 2007 study by the Federal Trade Commission on racial disparities in the use of credit scores for auto insurance, also mandated by the 2003 FACTA amendments.[11] The FTC study found substantial racial disparities, with African Americans and Hispanics strongly over-represented in the lowest scoring categories.[12]

---

6 *See* National Consumer Law Center, Credit Discrimination, §§ 1.1.1 and 8.4.2 (5th ed. 2009) (summarizing studies).
7 United for a Fair Economy, *Foreclosed: State of the Dream 20008* (January 2008).
8 Bureau of Labor Statistics, *Employment Situation Summary*, USDL-10-0589, May 7, 2010, *available at* http://www.bls.gov/news.release/empsit.nr0.htm.
9 Pub. L. No. 108-159, § 215 (2003).
10 Board of Governors of the Federal Reserve System, *Report to the Congress on Credit Scoring and Its Effects on the Availability and Affordability of Credit* 80-81 (Aug. 2007).
11 Pub. L. No. 108-159, § 215 (2003).
12 Federal Trade Commission, *Credit-Based Insurance Scores: Impacts on Consumers of Automobile Insurance* 3 (July 2007).

- A 2006 study from the Brookings Institution which found that counties with high minority populations are more likely to have lower average credit scores than predominately white counties.[13] In the counties with a very low typical score (scores of 560 to 619), Brookings found that about 19% of the population is Hispanic and another 28% is African American. On the other hand, the counties that have higher typical credit scores tend to be essentially all-white counties.

- A 2004 study by Federal Reserve researchers finding that fewer than 40% of consumers who lived in high-minority neighborhoods had credit scores over 701, while nearly 70% of consumers who lived in mostly white neighborhoods had scores over 701.[14]

- A 2004 study published by Harvard's Joint Center for Housing Studies finding that the median credit score for whites in 2001 was 738, but the median credit score for African Americans was 676 and for Hispanics was 670.[15]

- A 2004 study conducted by the Texas Department of Insurance on insurance scoring finding that African-American and Hispanic consumers constituted over 60% of the consumers having the worst credit scores but less than 10% of the consumers having the best scores.[16]

- A 1997 analysis by Fair Isaac itself showing that consumers living in minority neighborhoods had lower overall credit scores.[17]

- A 1996 Freddie Mac study which found that African-Americans were three times as likely to have FICO scores below 620 as whites. The same study showed that Hispanics are twice as likely as whites to have FICO scores under 620.[18]

Based on this disparity, the Equal Employment Opportunity Commission has repeatedly expressed concern that the use of credit histories in the hiring process violates Title VII of the Civil Rights Act.[19] The EEOC has recently sued one company over its use of credit checks[20] and has suggested that it may issue formal guidance on the practice.

---

13 Matt Fellowes, Brookings Inst., *Credit Scores, Reports, and Getting Ahead in America* 9-10 (May 2006).
14 Robert B. Avery, Paul S. Calem, & Glenn B. Canner, *Credit Report Accuracy and Access to Credit,* Federal Reserve Bulletin (Summer 2004).
15 Raphael W. Bostic, Paul S. Calem, & Susan M. Wachter, Joint Ctr. for Hous. Studies of Harvard Univ., *Hitting the Wall: Credit As an Impediment to Homeownership* (Feb. 2004).
16 Tex. Dep't of Ins., *Report to the 79th Legislature--Use of Credit Information by Insurers in Texas* (Dec. 30, 2004).
17 Fair, Isaac & Co., *The Effectiveness of Scoring on Low-to-Moderate Income and High-Minority Area Populations* 22, Fig. 9 (Aug. 1997).
18 *See* Freddie Mac, *Automated Underwriting: Making Mortgage Lending Simpler and Fairer for America's Families* (Sept. 1996), *available at* www.freddiemac.com/corporate/reports/moseley/mosehome.htm.
19 *See* Dianna B. Johnston, Assistant Legal Counsel, EEOC Informal Discussion Letter re Title VII: Employer Use of Credit Checks, Mar. 9, 2010, *available at* http://www.eeoc.gov/eeoc/foia/letters/2010/titlevii-employer-creditck.html. *See also* EEOC, Pre-

C. Credit History is Not a Valid Predictor of Job Performance

Credit reports were designed to predict the likelihood that a consumer will make payments on a loan, not whether he would steal or behave irresponsibly in the workplace. There is no evidence showing that people with weak credit are more likely to be bad employees or to steal from their bosses. The sole study on this issue, presented to the American Psychological Association in 2003, concluded there is no correlation between credit history and an employee's job performance.[21]

Regulators agree with this assessment. Dianna Johnston, assistant legal counsel to the Equal Employment Opportunity Commission, has stated: "Employers seem to be assuming that somebody with a poor credit history is more likely to steal, and I don't think there's any kind of evidence that supports that.[22]

Even TransUnion's representative on this issue, Eric Rosenberg, admitted at a recent legislative hearing in Oregon: "At this point we don't have any research to show any statistical correlation between what's in somebody's credit report and their job performance or their likelihood to commit fraud."[23] This is significant, as TransUnion has been the credit bureau that has led efforts against legislation restricting the use of credit reports in a number of states.

Unfortunately, proponents of using credit reports for employment use a "sloppy credit, sloppy person" hypothesis, arguing that a financial history is a good measure of an applicant's organization and responsibility. As one executive at an employment firm argued "[i]f you cannot organize your finances, how are you going to responsibly organize yourself for a company?"[24] The flaw in this hypothesis is that many people end up with a negative credit history for reasons they can't control. A consumer's financial problems reflected on a credit report may stem from, not irresponsibility, but because of a layoff, divorce, identity theft, or as discussed below, medical bills. A well-known Harvard study found that medical reasons cause about half of all bankruptcies in the U.S.[25] Many hard-working Americans live just one paycheck away from financial disaster.

Employment Inquiries and Credit Rating or Economic Status, undated, *available at* http://www.eeoc.gov/laws/practices/inquiries_credit.cfm; EEOC, *E-RACE Goals and Objectives*, at http://www.eeoc.gov/eeoc/initiatives/e-race/goals.cfm.

20 Complaint, EEOC v. Freeman, Case No.8:09-cv-02573-RWT (D. Md. Sept. 30, 2009).

21 Palmer, Jerry K. and Laura L. Koppes. *Further Investigation of Credit History as a Predictor of Employee Turnover*. Presentation to the American Psychological Society, 2003.

22 Ben Arnoldy, *The Spread of Credit Checks as a Civil Rights Issue*, Christian Science Monitor. January 18, 2007.

23 Andrew Martin, *As a Hiring Filter, Credit Checks Draw Questions*, New York Times, April 9, 2010, *available at* http://www.nytimes.com/2010/04/10/business/10credit.html.

24 Diane E. Lewis, *Qualification: Must Have a Good Credit History*, Boston Globe, September 5, 2006, at E1.

25 David U. Himmelstein, Elizabeth Warren, Deborah Thorne, & Steffie Woolhandler, *Illness and Injury as Contributors to Bankruptcy, Health Affairs--Web Exclusive*, Feb. 2, 2005, *available at* http://content.healthaffairs.org/cgi/reprint/hlthaff.w5.63v1.

D. Credit Reports Suffer from Rates of Inaccuracy that are Unacceptable for Use in Employment.

As NCLC and many other consumer advocates have testified before, the consumer reporting system suffers from high rates of inaccuracy. In addition, growing numbers of Americans have their credit reports horribly damaged from identity theft, predatory loans, or other abusive practices. Credit reports should be considered too unreliable to use as a critical (and sometimes determining) factor in whether a worker is able to obtain employment, especially in an environment where joblessness is so high and jobs are so scare. A consumer who has an error in her credit report might be able to later fix it[26] and reapply for credit, but if she loses a good job opportunity, it could doom her financially for months, harm her for years, or even affect her permanently. Very few employers will voluntarily hold up a hiring process for one or more months to allow an applicant to correct an error in a credit report.

In the hearings that led to the 2003 FACTA Amendments, Congress was presented study after study documenting errors in credit reports. For example, a study by the Consumer Federation of America and National Credit Reporting Association documented numerous serious errors and inconsistencies, such as the fact that 29% of credit files had a difference of 50 points or more between the highest and lowest scores from the three nationwide credit reporting agencies (i.e., Equifax, Experian and TransUnion).[27] Members of Congress cited studies from U.S PIRG showing errors in 70% of credit reports, of which 25% were serious enough to cause a denial of credit.[28]

This level of inaccuracy continues after the 2003 FACTA amendments. An on-line survey by Zogby Interactive found that 37% of consumers who ordered their credit report discovered an error, and 50% of those were not easily able to correct the error.[29] A subsequent 2004 study by U.S. PIRG showed no improvement, finding that 25% of credit reports studied still contained serious errors.[30] Even the Consumer Data Industry Association (CDIA) has admitted that, out of 57.4 million consumers who ordered their own credit reports in 2003, 12.5 million (or 21.8%) filed a dispute that resulted in an investigation.[31]

---

26 Even the ability of consumers to fix errors in their credit reports is questionable, given the automated and perfunctory nature of the credit bureaus' dispute resolutions systems. See Chi Chi Wu, National Consumer Law Center, *Automated Injustice: How a Mechanized Dispute System Frustrates Consumers Seeking to Fix Errors in Their Credit Reports,* January 2009.

27 *The Fair Credit Reporting Act and Issues Presented by Reauthorization of the Expiring Preemption Provisions: Hearing Before the Senate Committee on Banking, Housing, and Urban Affairs*, 108th Cong. 381 (2003)(statement of Stephen Brobeck, Executive Director, Consumer Federation of America).

28 *Id.* at 351 (statement of Senator Paul S. Sarbanes).

29 Zogby Interactive, *Most Americans Fear Identity Theft*, Zogby's American Consumer, April 2007, at 3.

30 Nat'l Ass'n of State PIRGs, *Mistakes Do Happen: A Look at Errors in Consumer Credit Reports* 11 (2004).

31 Federal Trade Commission and Federal Reserve Board, *Report to Congress on the Fair Credit Reporting Act Dispute Process* (Aug. 2006), at 12.

As a result of the FACTA debates, the FTC was required to undertake a comprehensive study of errors in credit reports. The FTC is in the midst of this study. In the pilot phase of the study, 53% (16 out of 30) of consumers found an error in their credit reports. Sixteen percent of the consumers found errors that either would have likely had a material effect on their credit score (3 out of 30), or the effect was uncertain (2 out of 30).[32] In the second phase of the study, 31% of participants (40 of 128) found errors in the credit reports, and 12% (15 of 128) found errors that would have a material effect on their credit scores.[33] Note that the FTC has admitted that both of these studies were significantly skewed toward consumers with higher scores, who are less likely to have errors in their credit reports. For example, half of those consumers with a credit score under 610 had a material error but no consumer with a credit score over 790 had a material error. The study was also skewed to consumers with higher income households (with 34% having incomes over $100,000) and college graduates (66%).

The industry has attempted to rebut these statistics by claiming that fewer than 3% of credit reports are inaccurate; however, it reached this statistic by counting only those credit reports in which the consumer: (1) was denied credit; (2) requested a copy of their credit report; (3) filed a dispute; and (4) the dispute resulted in a reversal of the original decision to deny credit.[34] Thus, the industry's statistic did not include inaccuracies in the credit reports of consumers who did not apply for or were denied credit, had not filed a dispute, or who did not seek a reversal of the original denial of credit.

Error rates of 12% to 37% are simply too high to allow use of credit reports as a screening tool. Americans should not be put at risk of being shut out of the job market by a system that is flawed enough to harm as many as 1 in 3 workers. Even if one were to use the industry's highly questionable statistic of 3%, that leaves over 6 million American workers in jeopardy of being denied employment on the basis of an inaccurate credit report. American workers deserve better.

E. Congress Should Pass H.R. 3149

TransUnion recently stated in a legislative hearing that credit reports are the "de facto economic passport for every individual in this country, whether you like it or not."[35] Workers across the board have suffered wage cuts, layoffs and foreclosures during this economic crisis, all of which have impacted their credit history. As we work to rebuild our economy, we believe that hard work and dedication, not discriminatory and

---

32 Federal Trade Commission, *Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003* (December 2006), Appendix at 15..

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

34 Federal Trade Commission, *Report to Congress Under Sections 318 and 319 of the Fair and Accurate Credit Transactions Act of 2003* (Dec. 2004), at 25, *available at* http://www.ftc.gov/reports/facta/041209factarpt.pdf (citing an Arthur Andersen study commissioned by the credit bureaus).

35 Statement of TransUnion Director of State Government Relations Eric Rosenberg before the Oregon Senate Commerce and Workforce Development Committee, February 8, 2010.

unreliable hiring tools such as credit reports, should be the economic passport for workers in the United States. Congress should act quickly to pass H.R. 3149, Equal Employment for All Act.

II. **CONGRESS MUST ACT TO CORRECT AN INJUSTICE RESULTING FROM A SCRIVENER'S ERROR IN THE FCRA.**

The FACTA amendments of 2003 may have inadvertently deprived consumers of a 30 year-old pre-existing right they had to enforce the FCRA requirement that users of credit reports disclose to consumers when an "adverse action" is taken, *i.e.*, credit or insurance is denied or provided on less favorable terms, on the basis of an unfavorable credit report. 15 U.S.C. § 1681m. Congress can easily fix this scrivener's error and should do so, as it was never part of the legislative bargain struck by FACTA.

- **The adverse action disclosure is fundamental to ensuring the effectiveness of the FCRA's accuracy protections. The ability for consumers to seek redress for an adverse action disclosure violation has been key to its enforcement for over 30 years.**

- **FACTA's legislative history clearly indicates that Congress had absolutely no intention of abolishing the consumer's right to seek redress of this important right. Current provisions of the FCRA, which exempt another subsection of section 1681m from private enforcement, make no sense and indicate that Congress did not intend to abolish consumer remedies for all of section 1681m.**

- **Even after FACTA's enactment, the credit industry did not claim to have eliminated the consumer remedy for the adverse action disclosure, with the *American Banker* only noting that FACTA "*perhaps inadvertently* eliminates the existing right of consumers and state officials to sue for any violations of the adverse-action provisions of the FCRA."**

- **Despite Congress's expressed intent in FACTA to preserve all then pre-existing rights of action in the FCRA, several dozen court decisions have held that FACTA abolished consumer remedies for adverse action disclosure violations, depriving hundreds of consumers of their rights.**

A. <u>Importance of the Adverse Action Disclosure Requirement and its Enforceability by Consumers</u>

When Congress enacted the FCRA, in addition to regulating credit reporting agencies, it imposed significant disclosure requirements on those who obtain and use consumer reports ("users"). Pub. L. No. 91-508, Title VI, 84 Stat. 1127 (1970) Section 615 of the Act, codified as 15 U.S.C. § 1681m, mandated that lenders, insurers, employers, and others using consumer reports disclose to a consumer whenever they use the consumer's report to make a decision adverse to the consumer's interests.

In the original FCRA and for over 30 years, adverse action disclosure by users of credit reports has been fundamental to the consumer protection structure Congress established in the FCRA. Adverse action disclosure is the linchpin of a three-part scheme. The user's disclosure of adverse action alerts the consumer to the presence of negative information in a credit report. After receiving this disclosure, the consumer has a statutory right to obtain a free copy of the report containing the negative information. 15 U.S.C. § 1681j. As the final element of this three-part self-help system, Congress created a formal dispute process by which the consumer could obtain correction of inaccurate information in the report that led to the adverse action. 15 U.S.C. § 1681i. The adverse action disclosure is thus the direct link to the dispute process through which consumers may seek correction of inaccuracies in their credit reports.

In 1970, Congress recognized that no one has a bigger stake in the accuracy of a credit report than the consumer whose name is on it. By establishing the right of consumers to seek private redress under sections 1681n and 1681o, Congress assigned the primary enforcement role to those with the greatest interest in accomplishing such a task – the individuals whose peace of mind and material wellbeing are directly impaired by inaccurate credit reports. In section 1681o, Congress gave consumers the right to recover actual and punitive damages against "[a]ny consumer reporting agency or *user* of information which willfully fails to comply with any requirement" of the Act. (Emphasis added.) Section 1681n in parallel fashion authorized the recovery of actual damages for any negligent violation of the Act. In the 1970 legislation, there were no exceptions to this private enforcement scheme.

Thus, since 1970, consumers have had the right to seek redress for violations of the adverse action disclosure requirement. And for over 30 years, private litigants provided the most significant enforcement of section 1681m's user disclosure requirements. A Westlaw search for reported Fair Credit Reporting Act cases in which section 1681m has been cited together with either section 1681n or 1681o yields 292 hits.

In contrast, there was been much less enforcement by federal regulators. According to the FTC, as of 2004, it brought twenty-nine enforcement actions involving the adverse action disclosure requirements.[36] A search of the FTC's website reveals only two more such since 2004.

In 1996, Congress made its first major revision to the FCRA after 25 years of experience under the original statutory regime. Congress substantially amended the FCRA in the Consumer Credit Reporting Reform Act of 1996 ("1996 Amendments"). Pub. L. No. 104-208, 110 Stat. 3009 (1996). These Amendments left the central core of section 1681m intact, and thus reaffirmed the adverse action disclosure requirement.

---

36 Federal Trade Commission, *Report to Congress Under Sections 318 and 319 of the Fair and Accurate Credit Transactions Act of 2003* (Dec. 2004), at 18-19, nn. 61-64, *available at* http://www.ftc.gov/reports/facta/041209factarpt.pdf

These amendments also left untouched sections 1681n and 1681o, confirming the primacy of private enforcement. During the 1996 amendment process, the FTC acknowledged that the FCRA "was designed to be largely self-enforcing" and expressed its position directly to Congress that any amendments maintain "the capacity of consumers to bring private actions to enforce their rights under the statute." S. Rep. 103-209, at 6 (1996).

B. <u>Congress Did Not Intend FACTA to Abolish the Consumer's Right to Seek Redress for Violation of the Adverse Action Disclosure Requirements of the FCRA</u>

The legislative history can be no clearer than Congress did not intend to abolish private enforcement of the FCRA's adverse action disclosure requirements when it enacted FACTA in 2003. At that time, credit reporting came to the legislative fore due to the imminent sunset of several provisions in the 1996 amendments that preempted state law. Competing House and Senate credit reporting bills worked their way through Congress during the fall of that year.

1. *The House Bill*

On September 10, 2003, the House passed House Bill No. 2622, entitled the "Fair and Accurate Credit Transactions Act of 2003." 149 Cong. Rec. H8167 (2003). The House Bill did not propose any amendments to the adverse action disclosure requirements under subsections (a) and (b) of section 1681m. H.R. Rep No. 108-396 (2003). The bill proposed only two amendments to section 1681m: (i) section 403 of the bill proposed a new subsection (e) to section 1681m to require debt collectors to provide information to identity theft victims under certain circumstances; and (ii) section 503 of the bill made some modifications to subsection (d) of section 1681m. The bill did not propose any limitations on the application of the FCRA's private enforcement provisions.

2. *The Senate Bill*

Senate Bill No. 1756, entitled the "National Consumer Credit Reporting System Improvement Act of 2003," proposed adding five new subsections to section 1681m. 149 Cong Rec. S13912 (2003), available at <u>http://www.gpoaccess.gov/crecord/retrieve.html</u>.:

- Section 114(a) proposed a new subsection (e) to section 1681m, requiring federal agencies to promulgate "Red Flag Guidelines and Regulations" to protect against identity theft.
- Section 154(b) proposed adding subsection (g) to prohibit the sale of debt known to be the result of identity theft.
- Section 155 proposed the addition of subsection (h) requiring debt collectors to provide information to identity theft victims.
- Section 212(b) proposed a new subsection (i), requiring users to disclose extensive credit scoring information in consumer mortgage transactions.

- Finally, section 311(a) proposed a new subsection (j), requiring users to make detailed disclosures to consumers in risk-based pricing credit transactions ("risk based-pricing notice").

The Senate Bill also explicitly addressed — and thus confirmed — the continued vitality of private enforcement of the existing subsections of section 1681m. Section 312(c) of the bill proposed to restrict private rights of action under FCRA only as to violations of proposed new subsections "(e) and (f)" of section 1681m. Subsection "(e)" referred to the newly proposed Red Flag Guidelines and Regulations; the reference to subsection "(f)" appears to be a drafting error because no such subsection existed, and the bill didn't propose one. A parallel provision limited enforcement of these same subsections (e) and (f) to federal and state regulatory agencies.

Section 312 of the Senate Bill also contained a clause prohibiting any interpretation of the bill that would limit private enforcement under sections 1681n and 1681o based on violations of any of the then existing FCRA provisions. Section 312(d) stated:

> Rule of Construction.--Nothing in this section, the amendments made by this section, or any other provision of this Act shall be construed to affect any liability under section 616 or 617 of the Fair Credit Reporting Act (15 U.S.C. 1681n, 1681o) that existed on the day before the date of enactment of this Act.

This provision expressly preserved all private enforcement rights that existed under the FCRA as of the date of the new law. The only restrictions in the Senate Bill on private enforcement under sections 1681n and 1681o appeared in section 312(c) (with respect to proposed newly added subsections of section 1681m) and in section 151(a), which added new protections for identity theft victims as part of section 1681g. Because these were new provisions of the FCRA, section 312(d) did not apply to them. Section 312(d) stated directly that regardless of any limitations on the enforcement of these newly added provisions, Congress had no intention to cut back the pre-existing private enforcement regime.

3. *The Conference Bill*

The provisions of FACTA come from the Senate Bill, as amended in the Senate and later by House and Senate conferees. On November 5, 2003, without voting on the Senate Bill, the Senate amended the House Bill by gutting it, replacing it with the provisions of the Senate Bill, and passing it. 149 Cong Rec. S13980-94 (2003).

On November 6, both houses agreed to a conference. 149 Cong Rec. H10514-15, S13994 (2003). The conferees hurriedly negotiated a conference report, which was completed on November 21. H.R. Rep No. 108-396 (2003); 149 Cong. Rec. H12198. The House immediately passed the conference bill on November 21. 149 Cong. Rep. 12247 (2003). The Senate passed the bill the following day. Id. S15570. The President signed the conference report version of House Bill No. 2622 — now FACTA — into law two weeks later on December 4, 2003. Pub. L. 108-159, 117 Stat. 1960 (2003).

If the House had simply accepted the Senate's amendments — that is, had accepted the Senate Bill — FACTA would not have clouded private enforcement of section 1681m. The House and Senate conferees, however, agreed to changes to section 1681m in the Senate Bill that resulted in the scrivener's error.

The conference version of the House Bill — that is, the bill that became FACTA itself — incorporated the risk-based pricing notice section of the Senate Bill, section 311. *See* 149 Cong. Rec. S13989 (2003). Subsection (a) of section 311 is now codified as 15 U.S.C. § 1681m(h). The conference report adopted the Senate's section 311 with two exceptions. First, the risk-based pricing subsection was re-lettered from (j) to (h) in the codified version. Second, the conference version of section 311 added two new paragraphs to the new section 1681m(h):

> (7) Compliance.--A person shall not be liable for failure to perform the duties required by this section if, at the time of the failure, the person maintained reasonable policies and procedures to comply with this section.
>
> (8) Enforcement.—
>
>> (A) No civil actions.—[Sections 1681n and 1681o] shall not apply to any failure by any person to comply with this section.
>>
>> (B) Administrative enforcement.--This section shall be enforced exclusively under [section 1681s] by the Federal agencies and officials identified in that section.
>
> (Code sections inserted.)

The conferees also adopted section 312(c) of the Senate Bill, which had been the only provision in that bill relating to private rights of action under section 1681m. This subsection of the Senate Bill had stated in part: "sections [1681n and 1681o] do not apply to any violation of … (3) subsection (e) or (f) of [1681m]." 149 Cong Rec. S13990 (2003) (code sections inserted). The conferees included this provision of the Senate version in FACTA, but eliminated the reference to section 1681m(f). FACTA § 312(e)(1).

The conferees also agreed to include section 312(d) from the Senate Bill in FACTA, which appears as section 312(f) in the conference bill. 149 Cong. Rec. S13990 (2003). This is the provision (noted above) stating that "nothing in the Act shall be construed to affect any liability under section 616 or 617 of the Fair Credit Reporting Act (15 U.S.C. 1681n, 1681o) that existed on the day before the date of enactment of this Act."

Because the Senate Bill contained no limitation on private enforcement of the existing subsections of section 1681m, any provisions in FACTA eliminating these remedies must have been introduced by the House conferees into the conference version of the bill. However, the report on the conference bill presented to the House before its November 21 vote contained no indication that the House conferees had obtained elimination of private enforcement of section 1681m as a concession from the Senate, or even that this had ever been an issue in the conference.

To the contrary, this report shows that the new paragraph (8) of subsection 1681m(h) was not intended to have that effect. Representative Michael Oxley (R-OH), one of the House conferees, provided the House this section-by-section report on the conference bill. 149 Cong. Rec. E2512-19 (2003). With specific respect to section 311, which mandated the risk-based pricing disclosures to consumers, he reported:

> The FTC and FRB are directed to jointly prescribe rules to carry out this section. *The rules are to address the form, content, time and manner of delivery of the notice; the meaning of the terms used in the section; exceptions to the notice requirement; and a model notice*. The section provides creditors with a safe harbor if they maintain reasonable policies and procedures for compliance, and *the section is only subject to administrative enforcement by the appropriate Federal agencies*.
>
> *Id.* at E2516 (emphasis added).

Representative Oxley's references to "section" are to section 311 of the conference bill, not to section 1681m of the FCRA.

4. *Deliberately Abolishing Private Enforcement of the Adverse Action Disclosure Requirement Creates Multiple Inconsistencies and Redundancies*

If Congress had intentionally abolished private enforcement of all of section 1681m by the use of the word "section" in paragraph (8) of subsection 1681m(h), it would render several other provisions of FACTA as redundant and superfluous
First, it would render Section 1681s-2(c)(3), as amended by FACTA § 312(e), to be totally superfluous. That section expressly provides that the private remedies sections do not apply to one portion of section 1681m, namely subsection 1681m(e), the provision dealing with the Red Flag Guidelines. It would make no sense for Congress to exempt section 1681m(e) from private enforcement if all of section 1681m were already exempt by virtue of §1681m(h)(8).

This redundancy indicates that the reference to "section" in § 1681m(h)(8) was intended to apply to § 1681m(h) only. Indeed, "this section," standing alone and taken even in its most technical sense in the drafting hierarchy, may sensibly refer to the "section" of which it is a part — 311 of FACTA — rather than section 1681m of the

FCRA. Using “this section” to refer to a section of FACTA is entirely consistent with the hierarchical organization of statutes described in the Congressional drafting manuals.

Furthermore, Congress repeatedly used “this section” to refer to sections of FACTA itself. *See, e.g.*, FACTA §§ 211(d)(1)(A), 211(d)(4), 213(b), 312(f), 313(b)(3), 318(b), 411(d), 412(d), 412(g), 515(d), 518(a), 518(e), 518(f). Congress also used FACTA section numbers within text to be codified in Title 15. *See, e.g.*, FACTA § 211(a) (adding a new subsection (a) to 1681j, including paragraph (1)(B), stating in part: “Subparagraph (A) shall apply with respect to a consumer reporting agency described in section 603(p) only if the request from the consumer is made using the centralized source established for such purpose in accordance with *section 211(c)* of the Fair and Accurate Credit Transactions Act of 2003”) (emphasis added); § 211(c) (amending § 1681g(c)(1)(B)(5) in similar fashion). In section 151, Congress used “this section” to refer to section 151 itself in amending section 1681g. Section 151(a) added a new subsection (e) to section 1681g. Section 151(a) of FACTA provides that new section 1681g(e)(3)(c) will state in part: “The request of a victim under paragraph (1) shall … (C) if asked by the business entity, include relevant information about any transaction alleged to be a result of identity theft to facilitate compliance *with this section* …” (Emphasis added.) “This section” refers to section 151, not section 1681g, because the information to be included in the victim request is to facilitate compliance with the new disclosures businesses are now required to provide identity theft victims under section 151, not compliance with any other part of section 1681g.

5. *Multiple Facts Demonstrate that Congress Did Not Intend to Deliberately Abolish Private Enforcement of the Adverse Action Disclosure.*

The legislative history of FACTA leaves little doubt that use of “this section” was not intended to eliminate the 30 year old pre-existing right of consumers to seek redress of the adverse action disclosure requirements. Evidence of this includes:

- Neither the House nor the Senate Bills ever proposed to limit private enforcement of any of the pre-existing subsections of section 1681m.
- FACTA included section 312(f), which expressly preserves private enforcement under the existing provisions of the FCRA. While not codified in the United States Code, this provision is still effective law as part of the Statutes at Large. Pub. L. 108-159, 117 Stat. 1960, § 312(f) (2003).
- FACTA specifically added current section 1681s-2(c)(3), which exempts "subsection (e) of section 1681m" from private enforcement. In addition, Congressional conferees deliberately amended this provision to remove subsection 1681m(f) from the list of FCRA provisions for which FACTA excluded from private enforcement. Removing subsection 1681m(f) would have been a meaningless exercise if Congress had intended FACTA to abolish private enforcement of all of the subsections of section 1681m.

- Representative Oxley's section-by-section report on FACTA before the vote in the House referred to the liability and enforcement limitation provisions of section 311 as applying only to that FACTA section, not to section 1681m as a whole.

Thus, Congress did not intend to limit private enforcement of section 1681m except with respect to two of the newly added subsections, (e) and (h). But in the hurry to prepare the conference report in the days between November 6 and November 21, "this section" was inadvertently used instead of "this subsection" in the conferees' insertions at the end of section 311(a), namely paragraph (8) of section 1681m(h). This was simply one of likely many drafting irregularities in the huge bill, hurriedly negotiated between the houses under the looming January 1, 2004 deadline for the sunset of the FCRA's state law preemption provisions, and then passed hurriedly without time for review or debate. FACTA includes 45 sections with subparts almost too innumerable to count. It contains over 26,000 words.

C. <u>After FACTA's Enactment, the Industry Did Not Claim to Have Eliminated Consumer Enforcement of the Adverse Action Disclosure Requirement.</u>

A week after FACTA was signed into law, an article appeared in *American Banker* regarding the 35-day gap that the bill had left between the expiration of preemption provisions under the 1996 amendments and the effective date of FACTA.[37] The reporter for *American Banker* noted in passing that FACTA "*perhaps inadvertently* eliminates the existing right of consumers and state officials to sue for any violations of the adverse-action provisions of the FCRA." (emphasis added).

Had Congress intended FACTA to carve private damages suits wholesale out of the user liability section of the FCRA, the banking and credit industry would have trumpeted that change in the days following the President's signature. Instead, just days after FACTA became law, a leading industry trade journal reported that private enforcement of section 1681m was only "perhaps" and only "inadvertently" eliminated. *American Banker* was reporting the simple truth that neither Congress nor the industry ever contemplated that result.

It would have been extraordinary for Congress, after over 30 years of well-established private enforcement of section 1681m, to abolish that right without the slightest indication from any member of Congress or any lobbying or fanfare from the consumer credit industry. Even four years after FACTA's passage, industry representatives declined to claim that FACTA had intentionally abolished this private enforcement remedy. In a 2007 hearing before the full committee, Chairman Barney Frank engaged in the following colloquy with Stuart Pratt, President and CEO of the Consumer Data Industry Association, and Anne Fortney of Hudson Cook, another industry representative.[38]

---

37 M. Heller, *Regulators Scurry to Close FACT Act Loophole*, American Banker (Dec. 12, 2003), at 3.
38 *Credit Reports: Consumers' Ability to Dispute and Change Inaccurate Information: Hearing Before the H. Comm. on Fin. Serv.*, 110 Congr. 50 (2007).

The CHAIRMAN. We will look into that. Let me just ask, the other question is to Ms. Fortney and Mr. Pratt, because both Ms. Wu and Mr. Bennett talked about the interpretation that we had sub silentio repeal of the private right of action. Do you agree that was something that was not done intentionally? And what would your view be to our restoring it? Mr. Pratt?

Mr. PRATT. We didn't work on that section of the FACT Act. It relates to the date of furnishers and the date of—

The CHAIRMAN. Okay. Ms. Fortney?

Ms. FORTNEY. I think the statute is clear, and that is why the vast majority—

The CHAIRMAN. That wasn't the question.

Ms. FORTNEY. Okay. I know.

The CHAIRMAN. Then why don't you answer it?

Ms. FORTNEY. The answer is, I don't know that whoever drafted that—

The CHAIRMAN. Fair point. But would you like to leave it the way it is?

Ms. FORTNEY. I am sorry?

The CHAIRMAN. Would you object if we restored the right of action that is in the bill?

Ms. FORTNEY. I don't have an opinion on that, sir.

The CHAIRMAN. Oh, okay. Then it is two to nothing, two abstentions.

D. <u>Court Decisions Abolishing Consumer Redress for Adverse Action Disclosure Violations Have Deprived Consumers of their Rights under the FCRA</u>

Unfortunately, the mistaken use of the phrase "this section" in Section 1681m(h)(8) has been interpreted by most of the 46 courts to address the issue to apply to the pre-existing adverse action requirements, creating chaos and uncertainty.[39] These

39 Perry v. First Nat. Bank, 459 F.3d 816 (7th Cir. 2006) (collecting cases); Banga v. Allstate Ins. Co., 2010 WL 1267841 (E.D. Cal. Mar. 31, 2010); Tobler v. Equifax, 2009 WL 1491046, at *3 (E.D. Mich. May 27, 2009); Meyers v. Freedom Credit Union, 2007 WL 2753172, at *5 (E.D. Pa. Sept. 21, 2007); Gelman v. State Farm Mut. Auto. Ins. Co., 2007 WL 2306578, at *9 (E.D. Pa. Aug. 9, 2007); Soroka v. JP Morgan Chase & Co., 2007 WL 895249, at *6 (S.D.N.Y. Mar. 19, 2007); Miller v. Corestar Fin. Group of Pa., Inc., 2007 WL 419194, at *2 (Feb. 5, 2007);; Murray v. HSBC Auto Fin., Inc., 2006 WL 2861954, *7 (N.D. Ill. Sept. 27, 2006); Panko v. Discover Fin. Servs., LLC, 458 F. Supp. 2d 580, 584 (N.D. Ill. 2006); Murray v. E*Trade Fin. Corp., 2006 WL 2054381, at *3 (N.D. Ill. July 19, 2006); Soroka v. Homeowners

courts that have addressed this issue have fastened on the term "section" in paragraph (8) of section 1681m(h), holding that this term unambiguously refers to section 1681m as a whole.

Only two courts have been percipient enough to analyze the legislative history and realize that use of the word "section" was an error.[40] It was the court in one of these cases that term this a "scrivener's error."[41]

As a result, there have been allegedly at least 44 users of credit reports –lenders, insurers, and other businesses - that have denied potentially hundreds of consumers their right to receive adverse action disclosures. These documented cases are perhaps only the tip of the iceberg, as we assume that attorneys representing consumers have been discouraged from bringing these cases by these unfavorable court decisions. Indeed, an informal and quick poll of attorneys who represent consumers in credit reporting cases found six respondents who had seen violations of the FCRA adverse action requirements who had declined to bring a case because of the decisions holding that FACTA had abolished the pre-existing right of action for these violations. One of these attorneys noted that he had just turned away a client who presented such a violation, in connection with seeking rental housing. Another attorney noted that he had seen lack of adverse action notices from mortgage companies, car dealers, and providers of rental housing, all of whom had accessed consumer reports. A legal services attorney noted: "I have found that employers and landlords routinely fail to provide notice or copies of the consumer reports."

Loan Corp., 2006 WL 4031347, at *7 (M.D. Fla. June 12, 2006); Shellman v. Country Wide Home Loans, Inc., 2006 WL 1544427, at *2 (N.D. Ind. June 1, 2006); Bruce v. Keybank Nat'l Ass'n, 2006 WL 1408349, at *5 (N.D. Ind. 2006); Cavin v. Home Loan Ctr., Inc., 2006 WL 1313191, at *7 (N.D. Ill. May 10, 2006); Tremble v. Town & Country Credit Corp., 2006 WL 163140, at *2 (N.D. Ill. Jan. 18, 2006); Bonner v. CorTrust Bank, N.A., 2006 WL 1980183, at **3-4 (N.D .Ind. July 12, 2006); Miller v. CoreStar Fin. Group of Pa., Inc., 2006 WL 1876584, *2 -3 (E.D.Pa. June 29, 2006); Bruce v. Wells Fargo Bank, N.A., 2006 WL 1195210, at *2 (N.D. May 2, 2006); Crowder v. PMI Mortg. Ins. Co., 2006 WL 1528608, at *4 (M.D. Ala. May 26, 2006) (rejecting argument that section 1681m(h)(8) should not be applied retroactively); Bonner v. Home123 Corp., 2006 WL 1518974, at *4 (N.D. Ind. May 25, 2006); Bruce v. Grieger's Motor Sales, Inc., 422 F. Supp. 2d 998, 991 (N.D. Ind.); Putkowski v. Irwin Home Equity Corp., 423 F.Supp.2d 1053, 1060 62 (N.D.Cal.2006); Bonner v. H & R Block Mortg. Corp., 2006 WL 760258, at *3 (N.D. Ind. Mar. 23, 2006); Phillips v. New Century Fin. 2006 WL 517653, at *2-4 (C.D. Cal., Mar. 1, 2006); Harris v. Fletcher Chrysler Prods., Inc., 2006 WL 279030, at *2 (S.D. Ind. Feb 02, 2006); White v. E-Loan, Inc., 409 F. Supp. 2d 1183, 1184-87; Killingsworth v. Household Bank (SB), N.A., 2006 WL 250704, at *3 (N.D. Ill. Jan. 31, 2006); Stavroff v. Gurley Leep Dodge, Inc., 2006 WL 196381, at **2-5 (N.D. Ind., Jan.20, 2006); Villagran v. Freeway Ford, Ltd., 2006 WL 964731 (S.D. Tex. Jan. 19, 2006); Murray v. Cross Country Bank, 399 F. Supp. 2d 843, 844 (N.D. Ill. 2005); Murray v. Household Bank, 386 F. Supp. 2d 993, 997-99 (N.D. Ill. 2005); Hernandez v. Citifinancial Servs., Inc., 2005 WL 3430858, at *6 (N.D. Ill., Dec.9, 2005); McCane v. America's Credit Jewelers, Inc., 2005 WL 3299371, at *3 (N.D. Ill. Dec. 1, 2005); Phillips v. New Century Fin. Corp., No. SA CV 05-0692, Order at 5 (C.D. Cal. Nov. 9, 2005); Pietras v. Curfin Oldsmobile, Inc., 2005 WL 2897386, at * 4 (N.D. Ill. Nov. 1, 2005).

40 Barnette v. Brook Road, Inc., 429 F. Supp. 2d 741 (E.D. Va. 2006); Kubbany v. Trans Union, LLC, 2009 WL 1844344 (N.D. Cal. June 2, 2009).

41 Barnette v. Brook Road, Inc., 429 F. Supp. 2d 741 (E.D. Va. 2006).

E. A Simple Fix

The scrivener's error that has deprived hundreds of consumers of their rights already, and has the potential to harm thousands more in the future, can be corrected with a very simple fix. The fix consists of the addition of three letters to two places in the FCRA:

Proposal: Revise 15 U.S.C. § 1681m(h)(8) to read:

(A) No civil actions.---Sections 1681n and 1681o shall not apply to any failure by any person to comply with this subsection.

(B) Administrative enforcement ---- This subsection shall be enforced exclusively under section 1681s of this title by the Federal agencies and officials identified in that section

This change reinstates a right that had existed for over 30 years from to FACTA, and has no impact on any other provision of the FCRA or FACTA.

III. **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 Relief Act of 2009, H.R. 3421. Millions of Americans struggle with overwhelming medical debts that they can not afford to pay because they do not have health insurance. Even consumers with health insurance coverage can find that their credit histories are damaged 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 understated. According to the Commonwealth Fund, accrued medical debt plagued nearly 72 million working age adults in 2007.[42] Of those consumers, 28 million were contacted by a collection agency for unpaid medical bills, and thus had the potential of have their credit reports damaged by the negative existence of a collection account on their reports. One stunning statistic from a 2003 Federal Reserve study is that over half of collection agency accounts and nearly one-fifth of lawsuits that show up as negative items on credit reports are for medical debts.[43]

Moreover, 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

42 M. M. Doty, S. R. Collins, S. D. Rustgi, and J. L. Kriss, Seeing Red: The Growing Burden of Medical Bills and Debt Faced by U.S. Families, The Commonwealth Fund, August 2008.
43 Robert Avery, Paul Calem, Glenn Canner, & Raphael Bostic, *An Overview of Consumer Data and Credit Reporting*, Fed. Reserve Bulletin, at 69 (Feb. 2003).

fully paid or settled. This may result from no fault of the consumer, but from a dispute between the insurance company and provider. It may even result from a provider's failure to properly bill the insurer. Despite the fact that the bill is paid off or otherwise settled and has a balance of zero, the presence of the medical bill as a collection matter remains on the consumer's credit records for seven years and may adversely impact a consumer's credit score.

H.R. 3421 amends the Fair Credit Reporting Act to exclude fully paid and settled medical debt from a consumer's credit report. It is a sensible and straightforward approach requiring the removal from a consumer's credit report any reference of a medical account with a balance of zero. The Medical Debt Relief Act of 2009 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.

IV. **CONGRESS SHOULD BAN THE USE OF CREDIT SCORING IN INSURANCE**

Along with many civil rights and consumer groups, the National Consumer Law Center, on behalf of its low-income consumers, opposes the use of credit-based insurance scores. The practice creates wide racial disparities and is fundamentally unfair to consumers. We have attached our 2007 report, *Credit Scoring and Insurance: Costing Consumers Billions and Perpetuating the Economic Racial Divide*, which discusses the problems with this practice in detail.

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

ATTACHMENT 1

CREDIT SCORING AND INSURANCE: COSTING CONSUMERS BILLIONS AND PERPETUATING THE ECONOMIC RACIAL DIVIDE

June 2007

Credit Scoring and Insurance: Costing Consumers Billions and Perpetuating the Economic Racial Divide

By:
Chi Chi Wu
National Consumer Law Center
Contributing Author:
Birny Birnbaum
Center for Economic Justice
(for section III and Appendix A)

Acknowledgments

The views expressed in this report are those of the authors alone and do not necessarily reflect the views of those who provided editorial review. The authors thank Jonathan Lackow for research assistance. At NCLC, thanks to Alys Cohen and Deanne Loonin for substantive and editorial advice, Mallory SoRelle for editorial support, and Svetlana Ladan for technical support.

National Consumer Law Center

Center for Economic Justice

TABLE OF CONTENTS

EXECUTIVE SUMMARY

The use of credit scores in home and auto insurance is a poorly understood phenomenon with a huge economic impact on Americans. It's also a practice that creates wide racial disparities. This report presents an overview of credit scores, which are three digit numbers designed to predict risk based on a consumer's credit record. The report also summarizes the multitude of studies showing the discriminatory impact of credit scoring. It analyzes these racial disparities in light of recent research about the enormous racial wealth divide and its historical origins.

Key findings of this report are:

- Consumers know little about the use of credit scoring and credit records in granting or pricing insurance - only 36% know that a credit history can affect insurance coverage or premiums. When they do find out, they overwhelmingly disapprove of the practice.
- Some of the factors used in insurance scoring models are questionable, such as penalizing consumers with fewer than 2 credit card accounts or those who have installment loans (such as auto loans). Credit scoring in general has been criticized on a number of bases, such as the high rate of errors in credit reports and inconsistent data between the major credit bureaus.
- Much of the insurance industry relies on credit scoring because it is allegedly predictive in forecasting which consumers will have higher loss ratios. Yet the industry has not offered a satisfactory explanation as to *why* there is a correlation between credit scores and loss ratios.
- The use of credit scoring is tied to a significant increase in profits for insurers, whose loss ratios have decreased substantially. Credit scoring may have benefited insurers (and thus cost consumers) somewhere in the neighborhood of $67 billion from 2003 to 2006.
- Study after study has documented the fact that credit scores disfavor minority consumers. Since 1994, at least 5 studies of traditional credit scores (for credit granting purposes) have shown that African Americans and Latinos have lower scores as a group. At least two studies by state insurance bureaus have found that African Americans and Latinos are overrepresented among consumers with low credit scores and under-represented among those with high credit scores. Furthermore, minority consumers are more likely to lack the credit history necessary to even generate a credit score.
- Anti-discrimination laws present limited avenues to challenge the racial disparities created by credit scoring. There are some viable theories to challenge insurance scoring in home insurance, but fewer challenges available in auto insurance.

Finally, we argue that racial disparities in credit scoring are a product of historical economic discrimination against minorities. Government policies that economically boosted whites while leaving minorities behind are responsible for the racial wealth gap. Credit scores act as both a numerical reflection of that gap as well as a force widening the gap. We echo the call of many advocates to ban the use of insurance scoring in order to stop the perpetuation of economic discrimination. If states do continue to permit their use, insurers must be required to develop scoring systems that do not have a disparate impact on minority populations.

I. INTRODUCTION

It is no secret that a huge wealth gap exists in this country, and it is divided along color lines. African Americans earn only 62 cents for every dollar earned by whites, and Latinos earn only 70 cents.[1] Even more disturbing is the divide in assets. African American families own less than seven cents for every dollar in wealth owned by white families, while Latino households own less than nine cents for every dollar of white wealth.[2] These huge disparities in income and wealth are due to a historical legacy of racism, redlining and segregation.[3] Unfortunately, the racial wealth gap is not closing.[4] Indeed, the policies and practices of both the government and the business sector have widened that gap in the last decade.

One of the practices that has reinforced and exacerbated the racial wealth gap is credit scoring. Study after study has shown credit scoring disfavors African Americans and Latinos, and that these communities have lower credit scores as a group. Credit scoring's disparate impact is alarming because this solitary number is being used in a growing number of economic transactions - not just granting of credit, but utility service, apartment rentals and even employment decisions. Credit scores are also being used to decide whether to issue home or auto insurance and at what cost, which is the focus of this report.

The difficult issue is that while credit scoring has a disparate impact, it has been shown to be predictive in the credit context. In the insurance context, companies claim that it is also predictive in forecasting which consumers will have higher loss ratios. Thus, credit scoring may be a useful tool for businesses, but one that discriminates. The issue for our society is whether we permit the use of this tool knowing that it not only hurts minorities, but also that the disparate impact of this tool reflects centuries of discrimination, exclusion, and exploitation of minority groups.

A. What is Credit Scoring?

A credit score is a number generated by a computer program based on information from a credit history as recorded by a credit bureau such as Experian, Equifax, and Transunion (the 'Big Three' credit bureaus). A credit history contains information about a consumer's credit experiences, including bill-paying histories, the number and types of accounts she has, whether she has had bills sent to debt collection agencies, her outstanding debt amounts, and the age of her accounts. A credit score supposedly helps predict how creditworthy a consumer is. That is, how likely it is that the consumer will repay a loan and make the payments when due.

---

[1] Carmen DeNavas-Walt, Bernadette D. Proctor, and Cheryl Hill Lee, *Current Population Reports, P60-229, Income, Poverty, and Health Insurance Coverage in the United States: 2004*, U.S. Census Bureau (August 2005).

[2] Rakesh Kochhar, *The Wealth of Hispanic Households: 1996 to 2002*, Pew Hispanic Center (October 2004)

[3] These disparities often lead unscrupulous sellers to target minority consumers for higher priced credit, not because of overt bias, but stemming from a perception that these consumers are more vulnerable to "sucker pricing." See Ian Ayres, *Pervasive Prejudice?: Unconventional Evidence of Race and Gender Discrimination* (2001); Jan Pillai & M. Tulloss, *Racial and Gender Discrimination at the Cash Counter*, Miss. State J. Int'l L. 507 (2003) (book review). These disparities sometimes become internalized as well, creating a self-perception by some minority borrowers that they do not qualify for affordable credit and their only option is expensive subprime credit. *See generally* David Dante Trott, *Ghettoes Revisited: Antimarkets, Consumption, and Empowerment*, 66 Brook. L. Rev. 1 (2000).

[4] According to the Pew report, since 1996 the median net worth of black families in the United States has fallen by 16.1 percent. For white families, net worth grew by more than 17 percent. Rakesh Kochhar, *The Wealth of Hispanic Households: 1996 to 2002*, Pew Hispanic Center (October 2004).

The most popular type of credit score is generated by Fair Isaac & Co and is often called a 'FICO score'. It generally ranges between 300 and 850, and is primarily used in the credit context. A higher number is considered a better score. There are many other types of credit scores in addition to FICO scores, some of which are generated using information in addition to a credit history, such as data obtained from a credit application or other sources. The insurance industry uses its own specialized scoring models, discussed in Section II.

According to Fair Isaac, its credit scoring models generally evaluate the following types of information:

- Payment history (35%)
- Amount of credit utilized (30%)
- Length of credit history (15%)
- Recent applications for credit (10%)
- Number and types of credit accounts (10%).

B. Uses of Credit Scoring

Credit scoring has become an increasingly dominant factor in our economic lives. Credit scores dictate whether a person will be able to buy (and keep) a home by obtaining a reasonable mortgage. They also determine how expensive it will be to buy a car, a critical tool for many Americans to get to work. They determine access to other kinds of credit, such as credit cards, as well.

Credit scores, however, are being used far beyond simple credit decisions. Employers use credit scores when evaluating applicants, even for jobs that do not involve handling money.[5] Many utilities use credit scores to determine whether to turn on the lights or the heat without requiring a security deposit.[6] One utility even proposed using it to set the price of electricity for its customers.[7] Landlords use credit scores to decide whether or not to rent an apartment.

Credit scores have become as important a number, if not more so, than a person's salary or grade point average. A bad credit score is a financial "Scarlet Letter" ostracizing a person from the land of reasonably priced credit, good jobs and (as discussed in this paper) insurance coverage.

[5] John Cook, *Credit Follows Us Everywhere*, Contra Costa Times, May 19, 2003, at 4.
[6] National Consumer Law Center, Access to Utility Service, § 3.7.4.7 (3rd. ed. 2004).
[7] Sudeep Reddy, *Utilities Spark Data Debate: Customer Payment Histories May Be Used To Set Rates Under New Law*, Dallas Morning News, June 30, 2005.

II. INSURANCE SCORING

Over the last decade a growing number of auto and home insurers have been using credit scores to determine whether to insure a consumer and at what price. An early survey found that 92 percent of auto insurers surveyed use credit scores.[8] As a result, a consumer with a poor credit history may be charged anywhere from 40% to several hundred percent more in premiums for automobile insurance.[9] A number of major home insurers use credit scores as well, including Allstate,[10] Nationwide Mutual[11] and Hartford Financial Services Group.[12]

A. Criticisms of Insurance Scoring

Insurance companies justify their use of credit scores by citing several studies that have found a high correlation between credit scores and loss experience. For example, a June 2003 study commissioned by the insurance industry found that individuals with the lowest insurance scores incurred 33% higher losses than average, while the highest scorers incurred 19% lower losses.[13]

The primary criticism of this justification has been simple - there is no explanation for *why* a person with a lower credit score is more likely to cause higher loss to insurers. While there may be a correlation, there does not appear to be an easily identified and logical causal link between a consumer's credit history and whether she will have an auto accident or accident with her home. Even the industry admits they don't understand the link, with a trade association spokesperson noting "it's not the most intuitive connection, the way it is for making a mortgage."[14] The reason for the correlation might be caused by a factor that is not the fault of the consumer, or a factor that we as a society would want to ban as a justification for provision of service- such as race or income.

Insurers sometimes put forth a "moral person" hypothesis to explain the link between credit scoring and loss history, *i.e.*, they argue that a person who is reckless with credit may also be reckless with driving or irresponsible about maintaining a home.[15] This ignores the fact that many people end up in a financial crisis (thus lowering their credit score) due to illness, job loss or divorce.[16]

---

8 Brian Grow and Pallavi Gogoi, *Insurance: A New Way to Squeeze the Weak*? Business Week, January 28, 2002, at 92 (citing study by Conning & Co.).
9 Pamela Yip, *One Number, Many Uses*, Dallas Morning News, April 8, 2002, at 1D; Kathy Chu, *Getting Personal: Poor Credit Can Drive Insurance Rates Higher*, Dow Jones Newswires, May 21, 2003.
10 DeHoyos v. Allstate Corp., 345 F.3d 290 (5th Cir. 2003).
11 Owens v. Nationwide Mutual Insurance Co., 2005 WL 1837959 (N.D. Tex. Aug. 2, 2005).
12 Reynolds v. Hartford Financial Services Group, 435 F.3d 1081 (9th Cir. 2006), *rev'd sub nom.*, Safeco Ins. Co. v. Burr, --- S. Ct. ---, 2007 WL 1582951 (June 4, 2007).
13 Michael J. Miller and Richard A. Smith, *The Relationship of Credit-Based Insurance Scores to Private Passenger Automobile Insurance Loss Propensity*, EPIC Actuaries (June 2003).
14 Jonathan Epstein, *Outraged by 'Credit Scoring'? Auto, Home Insurers Use a Person's Credit History to Set Rates*, Buffalo News, November 28, 2004 (quoting spokesperson for the Property Casualty Insurers Association).
15 *See, e.g.,* Insurance Information Institute, *FAQs*, at http://www.insurancescoring.info/faq.htm (last viewed June 2007) ("people who manage their money well tend to manage their most important financial asset - their home - just as well. People who handle money responsibly also tend to handle their driving responsibly").
16 *See, e.g.,* David U. Himmelstein, Elizabeth Warren, Deborah Thorne, and Steffie Woolhandler, *Illness and Injury as Contributors to Bankruptcy*, Health Affairs – Web Exclusive, February 2, 2005, *available at* http://content.healthaffairs.org/cgi/reprint/hlthaff.w5.63v1 (finding that half of all bankruptcies are caused in part by medical reasons, such as illness or injury, medical debt, or lost work due to medical reasons).

Consumer advocates believe that an alternative explanation for the correlation, if one truly exists, is simply wealth. There is a correlation between insurance scores and income (discussed below in Section IV.B). Consumers with lower incomes and lower scores simply may have fewer financial resources, and thus be more likely to file a claim rather than "eating" the loss.[17] For example, a Texas study found that while credit scores were related to loss experience, the correlation was due to a higher frequency of claims for low scorers, not a greater dollar amount per claim.[18] This suggests that to the extent there is a correlation, it is because low scoring consumers are more likely to file claims, not because they actually sustain greater losses.

Finally, there is some question as to whether this correlation between credit scores and insurance loss ratios actually exists and how robust it is. While industry studies claim there is a correlation, the underlying data behind these studies has never been provided so that the results can be independently verified.

For further resources on the problems with insurance scoring, readers should consult the Center for Economic Justice's website at www.cej-online.org/creditscoringmainpage.htm.

B. Consumer Awareness of Insurance Scoring

Most consumers are not aware that credit scores can have an impact on their ability to obtain insurance or the price they will pay for it. A telephone survey conducted by the Government Accountability Office of 1578 consumers found that only 36% of them knew that a credit history can impact their insurance coverage or premiums. More consumers (42%) actually believed the opposite, *i.e.,* that credit history does not affect insurance, and 22% of consumers responded that they did not know.[19]

Consumers also expressed their belief that the use of credit scoring in insurance is unfair. A Scripps Howard telephone poll conducted in Texas found that 68% of respondents favored a ban on the use of credit history for insurance underwriting and pricing.[20]

C. Elements of an Insurance Score

The credit scores used by insurers, or "insurance scores," are specially developed for insurance purposes and not the same as generic FICO scores for credit granting. Insurance scores are generated using a different scoring model (or computer program) than for generic credit scores. Insurance scoring programs use different factors, and give those factors a different weighting than for generic credit scores. What they do share in common with FICO-type scores is a reliance solely on credit history.

In Texas, a consumer advocacy group was able to get a glimpse into the black box of insurance scoring. Texas Watch analyzed some of the scoring models used for home and auto insurance in

---

[17] Carrie Teegardin, *Insurance Injustice? When Credit Matters*, Atlanta Journal-Constitution, December 10, 2006.
[18] Texas Department of Insurance, *Report to the 79th Legislature - Use of Credit Information by Insurers in Texas*, December 30, 2004.
[19] Government Accountability Office, *Credit Reporting Literacy: Consumers Understood the Basics but Could Benefit from Targeted Educational Efforts*, GAO-05-223, March 2005.
[20] *The Scripps Howard Texas Poll*, Spring 2003, results on file with author.

that state and found some interesting scoring criteria. Some of the examples being used in various insurance scoring systems included:[21]

- Average number of months all accounts on file have been open.

- Number of accounts opened in the last year. Consumers were penalized for opening more than 1 or 2 new accounts in a year.

- Age of oldest account in months. Consumers lost points for not having accounts that were over several years old. In addition to penalizing young consumers, it presents risks to a homeowner who pays off her 30 year mortgage, which may be her oldest account.

- Number of consumer-initiated credit inquiries in last 2 years. Insurance scores suffer after more than 2 inquiries.[22] Inquiries happen, not just when a consumer shops for credit, but if she switches cell phone service, rents an apartment, or opens a utility account (electric, heat, and even cable service). So consumers' insurance scores take big hits when they move.

- Number of credit card accounts open. Consumers with fewer than 2 credit cards are penalized.

- Number of credit card accounts where balance is 75% or greater than limit.

- Number of months since last account activity. Consumers lose points for not having any activity in the last month. So consumers are penalized, for example, if they have a credit card but don't use it.

- Number of installment loan accounts (car loans for example). Ironically, having a car loan costs points on an insurance score.

- Number of accounts in good standing *with a balance*. Not having a balance on an account can hurt a consumer. Once again, a consumer with a credit card is penalized for not using it. One would think paying off an account should be considered favorable.

- Number of open retail store or sale finance accounts. Having even one store card (e.g., Sears, Best Buy or Home Depot) will result in a lower insurance score.

- Number of open automotive related accounts. Consumers with car loans face a double whammy. They lose points for having an installment loan and having an auto-related loan.

- Number of open oil company accounts. Consumers get points for having a gas company credit card.

- Number of public records (includes bankruptcies, liens, collections, etc.).

---

[21] Texas Watch, *Sample Credit Scoring Model, Consumer Insurance Tips - Credit Scoring* (undated).

[22] For credit granting purposes, FICO scores count multiple inquiries for home and auto loans with a certain time period, such as 14 days, as a single inquiry.

- Longest delinquency on an account.

Some of these factors, such as having too few credit cards, are questionable at best.

In Georgia, an analysis by the Atlanta Journal-Constitution of insurance scoring models in that state found similar factors being used, such as:[23]

- Some models reward customers with Visa or MasterCard credit cards over those with department store cards.

- Spreading debt over three credit cards can result in a better score than consolidating the same amount of debt onto one card.

- Too many credit cards would lower the score, but so would too few.

- Various insurance companies will score the same person in a completely different way.

Furthermore, the questions raised by some of the dubious criteria used in insurance scoring are in addition to problems presented by traditional credit scores. There have been a number of criticisms of credit scoring in general, including:

- Credit reports are notorious for containing errors. In one study, 79% of consumers reviewing their own credit reports found mistakes in the reports, and 25% of them contained mistakes that were serious enough to result in the denial of credit.[24] Another study estimated that at least one in five borrowers are likely being penalized because of an inaccurate credit score due to credit reporting problems.[25]

- Credit scores are inconsistent depending on which credit bureau's data is being used. An examination of over 500,000 consumer credit files found that 29 percent of consumers have credit scores that differ by at least 50 points between credit bureaus, while 4 percent have scores that differ by at least 100 points.[26] A difference of 50 points in a credit score could mean the difference in a mortgage, for example, between 6.522% APR (for a score of 670) versus 7.332% APR (for a score of 620), which is a difference of $108 per month on a $200,000 30-year fixed mortgage.[27]

- Credit scores penalize young consumers by favoring "old" credit.

- Credit scores allow creditors to artificially manipulate their customers credit scores by, for example, not reporting credit limits. Since one of the factors in a scoring model is the

---

[23] Carrie Teegardin, *Insurance Injustice? When Credit Matters*, Atlanta Journal-Constitution, December 10, 2006.
[24] Alison Cassidy and Edmund Mierzwinski, *Mistakes Do Happen: A Look at Errors in Consumer Credit Reports*, MASSPIRG Educational Fund (June 2004).
[25] Consumer Federation of America and National Credit Reporting Association, *Credit Score Accuracy and Implications for Consumers*, December 17, 2002.
[26] *Id.*
[27] Rate quotes from the www.myfico.com website as of June 5, 2007.

ratio of credit used to credit available, failing to report a credit limit will depress a credit score by making it seem that a consumer is "maxed out."[28]

D. Examples Of Consumers Hurt By Insurance Scoring

The use of credit scoring in insurance has had a personal impact on many Americans. Here are some case studies of consumers who have seen their insurance rates skyrocket due to credit scoring:

> Jose DeHoyos, a 65-year-old Hispanic-American from Somerset, Texas, saw his rates go up 25% with the use of credit scoring. DeHoyos had been a customer of Allstate for 26 years when the giant insurer raised his rates. During those 26 years, DeHoyos had filed only one claim --for hailstorm damage to his car five years ago. To add insult to injury, DeHoyos had only minor blemishes on his credit history -- two late payments totaling $131 to a hospital and a gas station.[29]

> Kathryn Perry fell behind in paying bills when her daughter died, but got back on track six months later. The black marks on her record from that six month period, however, cost her dearly. Her auto insurer refused to renew her policy at the $435 a year she had been paying. Instead, she was offered a high risk policy costing a whopping $6,000 per year.[30]

> James White, a 60 year old assistant school superintendent, saw his rate rise by 60% for his homeowner's insurance. His problem was that too many lenders had pulled his credit report. While some of the inquiries occurred when he went shopping for a mortgage, car, and other credit, more than half of the two dozen inquiries came unsolicited from business looking to sell him something.[31]

One group that is particularly vulnerable to insurance scoring is elders, because many of them have paid off their mortgages and do not use other types of credit. They may not have insurance scores or have low scores due to only a few accounts. For example:

> Pat and Clyde Henry are a retired couple in their 60s from Akron, Ohio. They paid off their mortgage years ago, paid cash for their cars, and have no credit cards. As a result, they have no credit record and no insurance score. One would assume the Henrys are a good risk given their responsible financial behavior and lack of debt. But because they did not have a credit score, they were instead penalized. Their homeowner's insurance premiums doubled, from $286 per year to $596 per year.[32]

The Henrys were not alone in being punished for not having or using credit cards:

> Mattie Grainger, a senior citizen in South Carolina, had used the same insurance company for 34 years. This company increased her auto insurance premium by $100

---

[28] Evan Hendricks, *Credit Scores & Credit Reports: How the System Really Works, What You Can Do*, Privacy Times (2d ed. 2005), Ch. 22.
[29] Mr. DeHoyos is the lead plaintiff in the case, DeHoyos v. Allstate Corp., 345 F.3d 290 (5th Cir. 2003).
[30] Kathy Chu, *Getting Personal: Poor Credit Can Drive Insure Rates Higher*, Dow Jones Newswires, May 21, 2003.
[31] Kathy Chu, *Getting Personal: Credit May Affect Your Insurance Rates*, Dow Jones Newswires, July 7, 2004.
[32] Betty Lin-Fisher, *Couple Penalized for Having No Debt*, Beacon Journal, February 29, 2004.

> because her score was not considered top tier. Ms. Grainger's problem: she only had a few accounts and rarely used the two credit cards she owned. Her relatively debt-free life cost her points on her insurance score.[33]
>
> Donald Tonack, who himself is a former insurance underwriter, was hit with an 11% increase in his auto insurance because of his insurance score. The 65 year old Oregon man had used the same insurance company for 17 years and had a clean driving record for 40 years. Despite this, Mr. Tonack saw his insurance rates rise because he didn't have a revolving credit account (*i.e.*, a credit card account).[34]

Finally, insurance scoring penalizes consumers who have been the victim of identity theft, the fastest growing crime in this country:

> Ted Jordan, a Georgia resident, was victimized by an identity thief who took out $18,000 in student loans in Jordan's name to attend a car repair trade school in California. Jordan was forced to file a lawsuit to clean up his credit record. In the meantime, Jordan saw his homeowner's insurance rate from Allstate spike due to the black marks on his credit record.[35]

III. INSURANCE CREDIT SCORING MAY BE LINKED TO BILLIONS IN INCREASED PROFITABILITY TO INSURERS

When appearing before legislatures and regulators, insurers argue that insurance scoring allows them to more accurately price risks and is "revenue neutral." By "revenue neutral," insurers mean that insurance scoring raises the rates for some consumers and lowers the rates for others, but does not change the overall premium level. Insurers argue that insurance scoring simply enables them to better assign premiums to consumers based on the risk posed by those consumers.

In fact, insurers' use of credit scoring – the introduction of many, many rate levels based predominantly on the insurance score – may have contributed to a dramatic increase in insurance profitability. Table A shows loss ratios for private passenger auto liability insurance from 1999 through 2005. The loss ratio is the ratio of losses to premium[36] and shows what portion of the premium dollar is returned to consumers in claim payments. The table shows that loss ratios declined dramatically over the period – the same period in which insurers' use of credit scoring became more widespread and became more influential on rates charged. An explanation for the sources and calculation of the data is set forth in Appendix A of this report.

The data shown in Table A are inconsistent with insurers' claims about "revenue neutrality." If credit scoring was, in fact, revenue neutral, we would expect loss ratios to remain relatively constant over the period. The fact that loss ratios dropped dramatically indicates that premium growth far exceeded growth in losses and that insurers used credit scoring to raise rates for certain groups of

---

[33] Elaine Gaston, *Bills Would Unlink Credit, Insurance*, Myrtle Beach Sun News, February 23, 2002.
[34] Kathy Chu, *Getting Personal: Credit May Affect Your Insurance Rates*, Dow Jones Newswires, July 7, 2004; Ellyn Ferguson, *Legal Battle Brewing Over Release of Credit Score*, Chicago Sun-Times, November 7, 2003.
[35] Carrie Teegardin, *Insurance Injustice? When Credit Matters*, Atlanta Journal-Constitution, December 10, 2006.
[36] The loss ratios presented are, more precisely, incurred losses to earned premiums. See Appendix A for a description of data, data sources and calculations.

consumers without commensurate reductions for other consumers and failed to lower rates to reflect lower claim costs.

Insurers would argue that the initial years in the period cited were unprofitable and that recent loss ratios are simply a return to profitability. Table A and Appendix A refute this claim by showing that rates and premiums have been, in recent years, significantly in excess of levels commensurate with a reasonable profit.[37] Premiums were excessive by about 8%, 14%, 11% and 14% in 2003, 2004, 2005 and 2006 respectively, for a total overcharge of $67 billion during the four-year period.

When insurers pitch their company's stock to investment analysts, they tell a different story about credit scoring – they admit that credit scoring has increased insurer profitability. Consider the presentation by Ed Liddy, then CEO of Allstate, to investment analysts in 2005, in which he stated:

> Tiered pricing helps us attract higher lifetime value customers who buy more products and stay with us for a longer period of time. That's Nirvana for an insurance company. That drives growth on both the top and bottom line.
>
> This year, we've expanded from 7 basic price levels to 384 potential price levels in our auto business.
>
> Tiered pricing has several very good, very positive effects on our business. It enables us to attract really high quality customers to our book of business.
>
> Make no mistake about it, the economics of insurance are driven largely by retention levels. It is a huge advantage. And our retentions are as high as they have ever been.
>
> The key, of course, is if 23% or 20% of the American public shops, some will shop every six months in order to save a buck on a six-month auto policy. That's not exactly the kind of customer that we want. So, the key is to use our drawing mechanisms and our tiered pricing to find out of that 20% or 23%, to find those that are unhappy with their current carrier, are likely to stay with us longer, likely to buy multiple products and that's where tiered pricing and a good advertising campaign comes in.
>
> It [tiered pricing] has raised the profitability of the industry.[38]

[37] Using the reasonable profit provision as determined by the Texas Commissioner of Insurance, discussed in Appendix A. The Texas Commissioner established a profit provision for private passenger auto which can be applied generally, not just for use in Texas. It was the outcome of a contested case hearing in which several parties put forth their proposed profit provisions and the Commissioner decided and explained in detail in his rate order why the specific provision was adopted.

[38] Partial Transcript of Presentation to Edward M. Liddy, Chairman and CEO, The Allstate Corporation Twenty-First Annual Strategic Decisions Conference, Sanford C. Bernstein & Co., June 2, 2005.

Table A: Private Passenger Automobile Insurance, Loss Ratios and Excessive Premium

	1999	2000	2001	2002	2003	2004	2005	2006
Loss Ratio	65.9%	71.3%	72.7%	67.5%	62.8%	58.6%	60.1%	57.9%
% Excessive ($ billions)	3.5%	-2.7%	-4.1%	1.8%	7.8%	14.0%	10.8%	14.5%
$ Excessive ($ (billions)	4.0	(3.3)	(5.6)	2.5	11.1	19.6	15.7	20.5

As with personal auto insurance, credit scoring may have increased insurers' profitability for homeowners insurance. Although homeowners results for insurers are affected by catastrophic events, such as Hurricane Katrina, the table below shows that insurers' payouts for homeowners claims did not exceed premiums on a nationwide basis even in 2005 when insurers experienced the worst catastrophe losses – by far – of any year.

Table B: Nationwide Loss Ratios for Homeowners Insurance

Year	Ratio
1999	63.7%
2000	66.4%
2001	77.2%
2002	65.9%
2003	59.2%
2004	66.0%
2005	75.2%
2006	48.2%

In most states, loss ratios have declined to 50% or less. In 2005 – a year in which several states were affected by Hurricanes Katrina and Rita – 20 states had loss ratios below 40% and 20 more states had loss ratios below between 40% and 50%. The increased profitability of homeowners insurance for non-catastrophic coverage is evident from a review of loss ratios in a number of states not subject to the hurricane risk along the southeast coast of the country and even in some southeastern states. For example, just looking at the three most populous states in the country shows loss ratios generally under 50% by 2004. Even in 2005, the year of Hurricane Rita, the Texas loss ratio was only 57%.

Table C: Loss Ratios for Homeowners Insurance (CA, NY, TX)

	2001	2002	2003	2004	2005	2006
CA	64.2%	59.2%	74.2%	30.9%	34.1%	33.3%
NY	55.6%	47.8%	51.5%	47.7%	43.3%	42.7%
TX	115.6%	108.3%	58.5%	28.1%	57.3%	33.8%

IV. CREDIT SCORING AND DISCRIMINATION

The potentially most controversial issue in credit scoring in general, and insurance scoring in particular, is the impact on certain minority groups. Ever since credit scoring became prevalent, there have been concerns that scoring systems contain biases that disproportionately impact minorities and other disaffected groups. These concerns turned out to be justified, as study after study found that certain racial and ethnic groups tend to have lower credit scores than whites. Furthermore, minority consumers are less likely to even have the credit history necessary to generate a credit score.

The insurance industry's defense to charges of discrimination has been to cite (and commission) studies that show insurance scores are predictive. In essence, they are saying that minorities and low-income persons may have lower scores as a group, but they present more risk, so the use of scoring is reasonable and there is no discrimination.

As with their overall defense of insurance scoring, there is a disturbing "moral person" proposition in the insurers' argument with respect to the disparate impact of scoring, although it is never explicitly stated: minorities and low-income consumers are sloppy with their credit (and therefore with their driving). The counter argument is that the disparate impact in credit scoring reflects other correlations - race is correlated with wealth and wealth is correlated with risk because the more wealth one has, the more likely the consumer can "eat" insurance losses. Furthermore, as discussed in Section VI, the correlation between race and wealth is no accident, but a reflection of decades of intentional discrimination and exclusion of minorities from wealth building programs.

The following sections provide a brief overview of the statistical evidence of credit scoring's disparate impact both with respect to generic credit scores used for credit granting as well as insurance scoring specifically. It is important to note, as more fully discussed in Section V below, that a practice might be considered discriminatory because of its disparate impact on a minority group, even if the entity engaged in the practice did not have the intent to discriminate.

A. General Credit Scoring Studies

The first study on the issue of race and credit scores came from home mortgage giant Freddie Mac. This study issued in 1994 found that African Americans were three times as likely to have FICO scores below 620 (a typical threshold for a "bad" credit score) as were whites. The same study showed that Hispanics are twice as likely as whites to have FICO scores under 620.[39]

During the mid-1990s, Fair Isaac conducted its own study of the relationship between scores and race, in response to concerns over disparate impact. Fair Isaac analyzed 800,000 consumer credit files to see how they performed over a two year period. Fair Isaac also used U.S. Census data to determine if the consumers lived in "high minority areas," employing neighborhood as a proxy for race. Fair Isaac's report found that its scoring models were equally predictive for consumers living in minority neighborhoods as in white neighborhoods. However, this same analysis also clearly showed that consumers living in minority neighborhoods had lower overall credit scores. For

[39] Freddie Mac, *Automated Underwriting: Making Mortgage Lending Simpler and Fairer for America's Families*, September 1996, at 27.

example, over one quarter of consumers in minority neighborhoods scored under 620 while less than 14% of consumers in white neighborhoods scored that low.[40]

A few years later, researchers at the University of North Carolina analyzed the credit scores of 5,500 borrowers who had received community reinvestment mortgages. This analysis showed that one-third of African Americans in this pool had credit scores under 620, as compared to only 15 percent of whites. Furthermore, the study found that another one-third of African Americans had credit scores between 621 and 660 (as compared to 20% of whites), which means that two-thirds of African Americans in this pool had what is considered marginal or poor credit.[41]

In addition to having lower credit scores, minority consumers are also more likely to lack the credit history necessary to even generate a credit score, because they are less likely to have those forms of traditional credit that get reported to the credit bureaus. The University of North Carolina study discussed above found that 22% of Hispanics did not have enough of a credit history to generate a credit score, as opposed to fewer than 5% of whites.[42]

A study conducted by Federal Reserve Board researchers in 2003-2004 of over 300,000 credit history files found that fewer than 40% of consumers who lived in high minority neighborhoods had credit scores over 701, while nearly 70% of consumers who lived in mostly white neighborhoods had scores over 701. Furthermore, consumers living in minority and lower-income neighborhoods experienced errors or omissions in credit data more frequently.[43]

One of the most striking analyses of credit scoring disparities comes from a study published by the Joint Center for Housing Studies at Harvard University.[44] This study was based on a simulation of credit scores using a set of 200,000 credit files purchased by the Federal Reserve Board, matched with data from the triennial Survey of Consumer Finances. Researchers found that, for the period of 1989 to 2001, the median credit score had increased slightly for the general population. However, this increase masked a tremendous divergence in credit scores during that same period of time.

The study's researchers observed that the median credit score for whites increased significantly during the 1990s, from 727 to 738, while the median credit score for African Americans dropped from 693 to 676. The median score dropped even more for Latinos, from 695 to 670. The percentage of African Americans with credit scores under 660 (which is considered the cut off for "good credit") grew from 27% to 42% and for Latinos it grew from 29% to 49%, while among whites it rose only slightly from 17% to 19%.

---

[40] Fair, Isaac & Co., *The Effectiveness of Scoring on Low-to-Moderate Income and High-Minority Area Populations*, Aug. 1997.

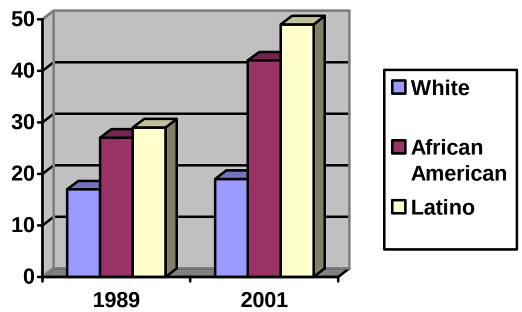
[41] Roberto G. Quercia, Michael A. Stegman, Walter R. Davis and Eric Stein, *Performance of Community Reinvestment Loans: Implications for Secondary Market Purchases*, in Low Income Homeownership: Examining the Unexamined Goal (Nicolas P. Retsinas and Eric S. Belsky, eds. 2002), at 363: Table 12-7

[42] *Id.*

[43] Robert B. Avery, Paul S. Calem, and Glenn B. Canner, *Credit Report Accuracy and Access to Credit*, Federal Reserve Bulletin, Summer 2004, at 313 (Table 2).

[44] Raphael W. Bostic, Paul S. Calem, and Susan M. Wachter, *Hitting the Wall: Credit as an Impediment to Homeownership*, Joint Center for Housing Studies of Harvard University, February 2004.

Table D: Percentage of population with credit scores under 660, by race



The most recent study showing a disparate impact in credit scoring comes from the Brookings Institution.[45] This study found that counties with relatively high proportions of racial and ethnic minorities are more likely to have lower average credit scores than predominately white counties. In the counties with a very low typical score (scores of 560 to 619), Brookings found that about 19 percent of the population is Latino and another 28 percent is black. On the other hand, the counties that have higher typical credit scores tend to be essentially all white counties. In particular, Brookings noted that in counties with average credit scores between 700 and 719, only about 5.1 percent of the population was Latino and just 1.1 percent was black. The study's author did caution that his finding was not evidence of bias, but "point[ed] to an association, which frankly is not very well understood..."

An important study on the statistical disparities in credit scoring by race is due (actually overdue) to be issued by the federal government. The Fair and Accurate Credit Transactions Act of 2003 required the Federal Reserve Board, Federal Trade Commission, and the U.S. Department of Housing and Urban Development to study the issue credit scoring and disparate impact in both the credit and insurance context, and to issue a report to Congress.[46]

In addition to racial disparities, there appears to be a growing credit scoring "gap," in which the divide between "good" and "bad" scorers seems to be growing, reflecting an increasing gulf between the credit haves and have-nots. For example, the Brookings Institution study found that counties with lower average credit scores saw a decline in those scores over a five year period of 17% on average, while counties with higher average scores saw them improve slightly.[47] This trend suggests that credit scores are "path dependent," i.e., low scoring consumers tend to see their scores decline while high scorers see them improve. The Brookings report expressed concern that this trend pointed to a "potentially ruinous fiscal cycle" for consumers with low credit scores. The Harvard Joint Center for Housing Studies study revealed similar results, finding that the median credit score for the top quintile of income increased significantly during the 1990s, from 729 to 754, while the median credit score for the bottom quintile dropped from 703 to 688.[48] Moreover, the percentage

---

[45] Matt Fellowes, *Credit Scores, Reports, and Getting Ahead in America*, Brookings Institution, May 2006.
[46] Fair and Accurate Credit Transactions Act of 2003, Pub. L. No. 108-159, § 215 (2003).
[47] Matt Fellowes, *Credit Scores, Reports, and Getting Ahead in America*, Brookings Institution, May 2006.
[48] Raphael W. Bostic, Paul S. Calem, and Susan M. Wachter, *Hitting the Wall: Credit as an Impediment to Homeownership*, Joint Center for Housing Studies of Harvard University, February 2004.

of consumers who scored under 660, and thus have marginal or worse credit, increased from 19% to 25% of the overall population.

B. Insurance Scoring Studies of Race & Scores

A number of state insurance commissions have conducted studies on the relationship between insurance scores and race, as well as gender, age, and income. While the first few studies were not conclusive, the most recent studies showed significant racial disparities similar to those found in the studies of traditional credit scoring.

The first few studies did not produce conclusive results. A study conducted by the Virginia Bureau of Insurance concluded that credit scoring would not be an effective tool for an insurer to redline out minorities, which would be disparate treatment; however, this study did not report findings on disparate impact.[49] In 2003, the Washington State Insurance Commissioner issued a study that showed a correlation between insurance scores and income. However, its findings regarding the racial impact of insurance scoring were inconclusive, primarily because of the small number of minorities sampled from Washington State's relatively homogeneous population.[50]

A Maryland study showed a correlation between race, income and insurance score, finding that in Baltimore City, the percentage of residents with high credit scores decreased as the percentage of minorities and lower-income households increased in a neighborhood. However, because the study used data prior to the passage of Maryland's statute regulating insurance scoring, the Maryland Insurance Administration declined to conclude that there was sufficient data to determine whether the use of insurance credit scores had an adverse impact on low-income or minority populations.[51]

In early 2004, the Missouri Department of Insurance released the first comprehensive study of race and insurance scoring to show definitive disparities.[52] The Missouri study found a stunning correlation between insurance scores and race, as well as income, age, marital status, and educational attainment. Using credit score data aggregated at the ZIP code level collected from the highest volume insurers in Missouri, the study found:

- Insurance scores were significantly worse for residents of high-minority ZIP codes. The average consumer in an "all minority" neighborhood had a credit score that fell into the 18.4th percentile, while the average consumer in a "no minority" neighborhood had a credit score that fell into the 57.3rd percentile – a difference of 38.9 percentile points.

- Insurance scores were significantly worse for residents of low-income ZIP codes. The average consumer in the poorest neighborhood had a credit score 12.8 percentile points lower than residents in the wealthiest communities.

---

[49] Va. Bureau of Ins., *Report on the Use of Credit Reports in Underwriting to the State Commerce and Labor Committee of the General Assembly* (Dec. 1999). For an explanation of the difference between disparate impact & disparate treatment here, see section V below.
[50] Dave Pavelchek & Bruce Brown, Office of Wash. State Ins. Comm'r, *Effect of Credit Scoring on Auto Insurance Underwriting and Pricing* (Jan. 2003).
[51] Md. Ins. Admin., *Report on the Credit Scoring Data of Insurers in Maryland* (Feb. 2004).
[52] Brent Kabler, *Insurance-Based Credit Scores: Impact on Minority and Low Income Populations in Missouri*, Missouri Department of Insurance – Statistics Section, January 2004.

- The correlation between race (high minority neighborhoods) and credit scores remained even after eliminating other variables, such as income, education, marital status, and unemployment. Residency in a minority concentration neighborhood proved to be the single most reliable predictor of credit scores.

- The gap in credit scores translated to the individual level. The average gap between the percentage of minorities with poor scores and non-minorities with poor scores was 28.9 points. The gap between lower-income and higher-income households was 29.2 percentage points.

The author and researcher of the Missouri study concluded that "the evidence appears to be credible, substantial, and compelling that credit scores have a significant disproportionate impact on minorities and on the poor."

About a year later, the Texas Department of Insurance issued a study with similar findings.[53] Instead of using geographic neighborhood as a proxy for race, the Texas study was able to determine the actual race of policyholders by using motor vehicle records for approximately 2 million consumers. The Texas study found dramatic disparities by race, finding African Americans and Hispanics were over-represented in the lower credit score categories and under-represented in the better credit score categories.

- African Americans constituted 33% of consumers with the worst scores and only 2% of the consumers with the best scores. African Americans were about 13% of the population of the policyholders sampled.

- Hispanic consumers constituted 28% of consumers with the worst scores and only 5% of consumers with the best scores. About 19% of the population of the policyholders sampled was Hispanic.

- In total, African Americans and Latinos constituted over 60% of consumers having the worst credit scores but fewer than 10% of those having the best scores. (Asian Americans had scores that were the same or slightly worse than whites.) The Texas study concluded there was a consistent pattern of differences in credit scores among racial and ethnic groups, with whites and Asian Americans faring better than African Americans and Hispanics.

- The Texas study also found disparities by income, though they were less dramatic than those for race. The average credit scores for upper income consumers were better than those for lower and moderate income populations. Additionally, the moderate income populations tended to be over-represented in the worse than average credit score categories and under-represented in the better than average credit score categories.

[53] Texas Department of Insurance, *Report to the 79th Legislature - Use of Credit Information by Insurers in Texas*, December 30, 2004.

C. A Less Discriminatory Alternative

As we have noted, the difficult issue with credit scoring is that while it has a disparate impact, it is predictive in the credit context and claimed to be predictive in an insurance context as well. Thus, our society is faced with the decision of whether to permit the employment of a useful tool knowing that it not only disproportionately hurts minorities, but also perpetuates a historical legacy of discrimination.

One possible solution to this quandary is the idea of the "less discriminatory alternative" from civil rights law, which is discussed in Section V below. In disparate impact cases, a plaintiff can argue that a practice is discriminatory even if the defendant did not intend to discriminate. The defendant can then defend the practice if it can show a business necessity for the practice. If the defendant makes this showing, the plaintiff can still prove discrimination by demonstrating there is another equally usefully tool that can be used to fulfill the same necessity but that tool has less of a discriminatory impact on minorities.

There is evidence that such tools exist. For insurance, at least one study has found that formulas using attributes other than credit score yield almost the same correlations with loss ratios as formulas that use credit scores.[54] The settlement of a major discrimination lawsuit against Allstate resulted in that company implementing a new credit scoring algorithm which supposedly results in less disparate impact to minorities.[55]

In the credit granting context, researchers have shown evidence that the credit scoring models themselves could be modified so as to reduce racial disparities, at least for credit granting purposes.[56] Ironically, such modifications would need to actively take race into account. For example, one modification proposed by researchers would require including minority status as a "control variable" during the development of a credit scoring model.[57]

Taking race into account to eliminate racial disparities is not a new concept in civil rights law. As Supreme Court Justice Harry Blackmun noted, "In order to get beyond racism, we must first take account of race. There is no other way."[58]

---

[54] Wayne D. Holdredge and Katharine Barnes, *Good News, Bad News or Both?*, Tillinghast-Towers Perrin, February 2003.
[55] DeHoyos v. Allstate Corp., 240 F.R.D. 269 (W.D. Tex. 2007).
[56] Michael LaCour-Little and Elaine Fortowsky, *Credit Scoring and the Fair Lending Issue of Disparate Impact* in Credit Scoring for Risk Managers: The Handbook for Lenders (Elizabeth Mays ed. South-Western Educational Pub. 2003); Elaine Fortowsky and Michael LaCour-Little, *Credit Scoring and Disparate Impact* (Dec. 2001), available at http://fic.wharton.upenn.edu/fic/lacourpaper.pdf.
[57] *Id.* at 20.
[58] University of California Regents v. Bakke, 438 U.S. 265, 98 S. Ct. 2733 (1978).

V. LEGAL STATUS OF INSURANCE SCORING

In this section, we review both the current legal status of insurance scoring and the challenges actually filed or potentially possible using anti-discrimination laws.

A. State Insurance Laws

Many states have passed legislation regarding the practice of insurance scoring.[59] Most of these statutes are based on a model law developed by the National Conference of Insurance Legislators (NCOIL).[60] The NCOIL model law permits insurance scoring and is viewed positively by the insurance industry.[61] It does contain some protections for consumers, such as prohibiting insurers from treating negatively the fact that a consumer has no credit cards or has medical bills sent to a collection agency. However, the enactment of the NCOIL model in many states is seen by advocates as anti-consumer, because it either permitted insurance scoring where it had not been permitted before, or at a minimum, legitimized the practice and prevented a stronger ban from being enacted.[62] State insurance regulators have attempted to rein in insurance credit scoring as well.[63]

B. Discrimination Challenges to Insurance Credit Scoring

The dramatic racial disparities in credit scoring raise the obvious question whether the practice can be challenged as discriminatory. The answer to this question is complex and depends on whether the product at issue is credit, homeowner's insurance, or auto insurance.

There are two main types of discrimination theories under civil rights law - disparate treatment and disparate impact (or the "effects" test). Disparate treatment occurs when a business or employer treats a person differently on the basis of race or another prohibited basis (gender, age, religion, etc.). Disparate impact occurs when a business's policy or practice, neutral on its face, has a disproportionate negative impact on a protected group. Under this theory, the business's motive in treating applicants differently might not be race or another prohibited basis, but the effect is to adversely impact a particular protected class.

---

[59] For a summary of some of these laws, see National Consumer Law Center, Fair Credit Reporting, Appendix H, (6th ed. 2006).

[60] National Conference of Insurance Legislators, *Model Act Regarding Use Of Credit Information In Personal Insurance*, November 22, 2002.

[61] National Ass'n of Mut. Ins. Cos., *NAMIC's State Laws and Legislative Trends State Laws Governing Insurance Scoring Practices*, undated, available at www.namic.org/reports/credithistory/credithistory.asp.

[62] *See* Testimony of Birny Birnbaum, Center for Economic Justice, Before the Colorado House Finance Committee, February 18, 2004, *available at* http://www.cej-online.org/bb%20co%20test%20040218.pdf.

[63] *See, e.g.*, Florida Office of Insurance Regulation, *Use of Credit Reports and Credit Scores by Insurers*, Informational Memorandum OIR-06-10M, May 22, 2006, available at http://www.floir.com/Memoranda/OIR-06-10M.pdf (last visited June 2007) (requires insurers to demonstrate that their use of credit reports and credit scores does not disproportionately affect persons of any race, color, religion, marital status, age, gender, income, national origin, or place of residence). However, an administrative law decision has forced the Florida regulator to propose a new rule. The Michigan Insurance Commissioner attempted to ban the use of insurance credit scores; however, that rule was struck down by a Michigan court. *Michigan Judge Shoots Down Proposed Credit-Scoring Ban*, BestWire Services, April 26, 2005.

1. Elements of a disparate impact challenge

Only certain anti-discrimination laws allow for a disparate impact challenge to be brought. In the credit area, the Equal Credit Opportunity Act (ECOA) prohibits racial discrimination in the granting of credit in general, while the Fair Housing Act (FHA) prohibits discrimination in mortgage lending. Both of these laws permit a disparate impact claim to be brought.[64] However, the ECOA probably does not cover discrimination in insurance.[65] The FHA does apply to insurance as well as credit, but only where housing is involved.[66]

In order to make out a "prima facie" or initial case for disparate impact, the plaintiff must:

- **Identify** a specific policy (e.g., use of credit scores) that has a discriminatory effect;

- **Show a disparate impact** of the policy on a group protected by anti-discrimination laws; and

- **Show causation,** i.e. a link between the policy and the disparate impact.

Making out a prima facie case of disparate impact does not necessarily mean that a practice violates the ECOA or FHA. Under the disparate impact analysis, a creditor or company can defend its policy by showing a "business necessity." Courts have articulated a number of different tests and definitions of "business necessity," including "compelling need," "manifest relationship," "legitimate, non-discriminatory rationale," and "demonstrably necessary."[67]

With respect to ECOA, the Federal Reserve Board (which interprets that law) has indicated that creditors can defend a policy that produces disparate impact by showing "a demonstrable relationship between" the challenged policy and "creditworthiness."[68] Thus, if a variable or factor in a credit scoring model causes a disparate impact, but is "demonstrably related" to creditworthiness, it may be permissible under fair lending laws. The variable or factor, however, must be related to creditworthiness and not some other reason, such as generating maximum profit.

Note that the business necessity analysis may differ for scoring models used for credit versus insurance. Credit scores are based on credit histories, and supposedly measure the consumer's likelihood of repaying a loan. There is an understandable connection to their use to measure creditworthiness, and thus a "demonstrable relationship" argument can be easily made. While there might be some correlation between insurance credit scores and loss history, there has been no definitive understandable reason provided as to why credit scores are a good measure of "insurance worthiness." However, one of the first courts to deal with the issue did hold that insurance scoring's supposed predictiveness constitutes a business necessity, as discussed below.[69]

Furthermore, there is one final step in a disparate impact analysis -- whether there is a less discriminatory alternative that can be used to meet the "business necessity." As discussed above,

[64] National Consumer Law Center, Credit Discrimination, § 4.3.1 (4th ed. 2005 and Supp.).
[65] *Id.* at § 7.3.4.1.
[66] *Id.* at § 7.3.4.2.
[67] *Id.* at § 4.3.2.5.
[68] Official Staff Commentary to Regulation B, 12 C.F.R. § 202.6(a)-2.
[69] Owens v. Nationwide Mutual Insurance Co., 2005 WL 1837959 (N.D. Tex. Aug. 2, 2005).

there are suggestions that viable alternatives to credit scoring exist in both the credit and insurance context that are less discriminatory toward minorities.

2. Is a disparate impact analysis available in insurance cases?

A disparate impact analysis is clearly available to challenge the use of credit scoring in the credit granting arena.[70] With respect to insurance, the availability of this theory is mixed, and depends on whether the product is homeowners versus automobile insurance.

Homeowners insurance is covered by one of the federal anti-discrimination laws, the Fair Housing Act.[71] As the Seventh Circuit Court of Appeals aptly noted: "no insurance, no loan; no loan, no house."[72] Thus, the racial disparities created by insurance scoring in homeowners insurance could be challenged under the Fair Housing Act. To date, the leading major legal challenge brought against insurance scoring using this theory is *DeHoyos v. Allstate Corp.*, 345 F.3d 290 (5th Cir. 2003). This case ultimately resulted in a settlement that required Allstate to implement a new credit scoring algorithm which supposedly results in less disparate impact to minorities, and to refund from $50 to $150 to policyholders who filed a claim and whose scores rose due to the new formula.[73]

The initial challenge that the plaintiffs in *DeHoyos* had to overcome was the McCarran-Ferguson Act. Enacted in 1945, McCarran-Ferguson prohibits any federal law interpretation that invalidates, impairs, or supersedes any state insurance law unless the federal law specifically relates to insurance regulation.[74] The Fifth Circuit in *DeHoyos* held that applying the Fair Housing Act and anti-discrimination laws did not 'impair' any Texas or Florida insurance law. In *DeHoyos*, however, there was no state insurance law explicitly allowing or condoning insurance scoring at that time. A potential issue is that many states (including Texas after the *DeHoyos* decision) have enacted laws allowing for or condoning credit scoring.[75] However, every federal Court of Appeal considering the issue has rejected the argument that McCarran-Ferguson preempts an insurance discrimination lawsuit based on federal civil rights laws.[76]

The next hurdle for a disparate impact challenge to the use of credit scores in homeowners insurance is to counter the supposed predictiveness of scoring. At least one federal District Court has already accepted at face value the argument that the predictiveness of credit scores presents an adequate "business necessity" to withstand a disparate impact challenge.[77] The court engaged in little analysis of whether credit scores are truly predictive and why a credit history is related to the "insurance-worthiness" of a consumer. The court also accepted the insurance company's claim that without the use of scoring, it would be at a competitive disadvantage. This latter reason seems

---

[70] For a discussion of cases that have challenged credit scoring, see National Consumer Law Center, Credit Discrimination, § 6.4.4 (4th ed. 2005 and Supp.).
[71] *Id.* at § 7.3.4.2.1.
[72] N.A.A.C.P. v. Am. Family Mut. Ins. Co., 978 F.2d 287, 297 (7th Cir. 1992).
[73] DeHoyos v. Allstate Corp., 240 F.R.D. 269 (W.D. Tex. 2007).
[74] 15 U.S.C. § 1012(b).
[75] Tex. Ins. Code art. 21.49-2U. See William Goddard, *Swimming in the Wake of DeHoyos: When Federal Courts Sail Into Disparate Impact Waters, Will State Regulation of Insurance Remain Above the Waves?* 10 Conn. Ins. L. J. 369 (2003-2004).
[76] National Consumer Law Center, Credit Discrimination, § 7.3.4.2.2 (4th ed. 2005 and Supp.).
[77] Owens v. Nationwide Mutual Insurance Co., 2005 WL 1837959 (N.D. Tex. Aug. 2, 2005). The court also held that the supposed predictiveness of insurance scores presented a "legitimate nondiscriminatory reason" to rebut a prima facie showing of disparate treatment under the McDonnell Douglas test.

questionable, because it implies that discrimination cannot be challenged if it is an industry standard, *i.e.*, if everyone discriminates, no one can be held accountable for discrimination.

Note that the plaintiff in this case appears to have failed to present evidence or an argument regarding a less discriminatory alternative. As discussed in Section IV.C above, there is evidence that less discriminatory alternatives exist, and this may be the best argument both legally and on a policy basis to argue against the form of insurance scoring now used by the industry.

As for automobile insurance, there may be few avenues to bring a disparate impact challenge to the use of credit scoring in that context. Discrimination in auto insurance is not generally covered under any federal law. Instead, one would need to look at the anti-discrimination provisions of state insurance laws. While approximately 40 states have anti-discrimination provisions in their insurance laws, many of these states do not allow for consumers to bring a private lawsuit under those laws.[78] Furthermore, there is no clear authority that these laws provide for disparate impact challenges.

One other potential source of legal challenge to insurance scoring might be state laws that prohibit discrimination by 'places of public accommodation.' However, the availability of a disparate impact challenge under these state laws is mixed at best.[79] Furthermore, it is unclear whether state statutes would consider an insurance company a 'place of public accommodation.'[80] Finally, there may be county or municipal human relations laws that might cover auto insurance and provide a disparate impact challenge.

C. Disparate Treatment

Finally, one should not rule out the possibility of a disparate treatment analysis in challenging insurance scoring.[81] Given the very well-documented and well-publicized, controversial link between credit scores and race, it would not be unthinkable to argue that insurers may be tempted to use credit scoring exactly for the reason that it would screen out minorities from their pool of insured.

There are two methods to prove disparate treatment: direct proof and circumstantial evidence. Since very few businesses these days openly admit outright discrimination, many disparate treatment cases will rely on a circumstantial evidence test developed in the employment law area called the McDonnell Douglas test.[82] The McDonnell Douglas test, as adapted in the credit (or insurance) context, requires the plaintiff to show:

- membership in a protected class;

[78] National Consumer Law Center, Credit Discrimination, § 7.3.4.4 (4th ed. 2005 and Supp.).
[79] For example, Minnesota, the District of Columbia and New York City civil rights laws permit disparate impact challenges. Paper v. Rent-A-Wreck, 463 N.W.2d 298 (Minn. Ct. App. 1991) (Minnesota); Mitchell v. DCX, Inc. 274 F.Supp.2d 33 (D.D.C. 2003) (District of Columbia); Levin v. Yeshiva University, 754 N.E.2d 1099 (N.Y. 2001)(New York City). California and Ohio public accommodations laws do not. Harris v. Capital Growth Investors XIV, 805 P.2d 873 (Cal. 1991)(California); Derungs v. Wal-Mart, 141 F.Supp.2d 884 (S.D. Ohio 2000)(Ohio).
[80] For example, under federal law, Title II of the Civil Rights Act of 1964 also prohibits discrimination by places of public accommodation; however, an insurance company does not fit into the definition of public accommodation in that statute. 42 U.S.C. § 2000a.
[81] A disparate treatment claim could be brought under the Civil Rights Acts of 1866. 42 U.S.C. §§ 1981 and 1982.
[82] This test is derived from the U.S. Supreme Court's decision in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).

- application for credit (or insurance) for which the plaintiff was qualified;
- rejection despite qualification; and
- that the defendant continued to approve credit for similarly qualified applicants.[83]

There is an obvious circularity in the McDonnell Douglas test – what if a criterion being used for qualification is itself the alleged discriminatory conduct (*e.g.*, in the context of discrimination against public assistance recipients, what if the criterion for qualification is having employment) or a pretext for discrimination (as credit scores might be). Can that factor be included in analyzing whether the plaintiff is qualified for the credit or insurance? At least one court has held that a low credit score means that the plaintiff will not be able to make out a *prima facie* case under the modified McDonnell Douglas test.[84]

Also, the modified McDonnell Douglas test only applies when a consumer is rejected for credit or insurance. If a consumer receives the credit or insurance, a reverse redlining analysis is required. In that context, the applicable test is:[85]

- Plaintiff is a member of a protected class;
- She applied for and was qualified for credit;
- Credit was given to her on grossly unfavorable terms; and
- The lender continues to provide loans to other applicants with similar qualifications but on significantly more favorable terms.

Again, a critical issue is whether the disputed criteria (*i.e.*, credit scoring) can be used as a "similar qualification" to compare minority and white applicants.

VI. REVERSE SOCIAL ENGINEERING THROUGH CREDIT SCORING

Credit scoring has become the numerical expression of the racial economic divide and wealth gap in this country. As such, it essentially serves as a proxy for certain behaviors that our society has sought to discourage these past few decades, including -

-- redlining (refusing to make loans to or insure communities of color)

-- reverse redlining (charging more to communities of color)

-- denying services to low-income communities

-- charging more to low-income communities.

[83] National Consumer Law Center, Credit Discrimination, § 4.2.3.1 (4th ed. 2005 and Supp.).
[84] Curley v. JP Morgan Chase Bank, N.A., 2007 WL 1343793 (W.D. La. May 7, 2007).
[85] National Consumer Law Center, Credit Discrimination, § 4.2.3.3 (4th ed. 2005 and Supp.).

From a social policy standpoint each of these behaviors is considered destructive and reprehensible. They are also behaviors that can be highly profitable. Thus, the ability to use credit scoring is a way for lenders, insurers, employers, and others to reap the economic benefits of racial and economic discrimination without having to admit they are discriminating and without being barred from doing so by anti-discrimination laws. As even a high-level Fair Isaacs official admitted:

> Unfortunately, income, property, education, and employment are not equally distributed by race/national origin in the United States. Since all of these factors influence a borrower's ability to meet financial obligations, it is unreasonable to expect an objective assessment of credit risk to result in equal acceptance and rejection rates across socioeconomic or race/national origin lines. By definition, low-income borrowers are economically disadvantaged, so one would not expect their score distributions to mirror those of higher-income borrowers.[86]

The effect of credit scoring is to create a spiraling down situation, in which minority and low-income consumers are denied credit and insurance, or forced to pay much more for it. The drain on income affects their ability to pay their current bills, let alone build assets to move ahead. These communities fall further and further behind while wealthy white communities get a break on their credit and insurance needs. Credit scoring widens and deepens the gap between haves and have-nots.[87]

In insurance, credit scoring runs counter to the fundamental concept of spreading the risk of loss. Credit scoring results in the insurance companies being able to shed consumers they don't want by denying them coverage or setting prices so high as to be unaffordable. What is the sense of an insurance system that permits insurance companies to cherry pick only well-to-do suburban Caucasians as consumers?

Finally, some might think it is an unfortunate fact that blacks and Latinos are less wealthy, but "that's life" and it should be no reason to change social policy. Groundbreaking research during the last several years shows, however, that the wealth gap is no accident. The wealth gap was created by policies that deliberately benefited whites while excluding African Americans and other racial minorities.[88] For example, during the early years of the Social Security program, pensions were denied for many years to domestic and agricultural workers —two of the most significant black occupations.[89] Unemployment insurance and the minimum wage did not apply to domestic workers or farm workers either.[90] Another striking example is that, of the 3,229 GI Bill-guaranteed loans for homes, businesses, and farms made in Mississippi in 1947, only two were offered to black veterans.[91]

---

[86] Fed. Reserve Bank of Boston, *Perspectives on Credit Scoring and Fair Lending: A Five-Part Article Series* (pt. 1), Communities & Banking, Spring 2000, at 2 (statement of Statement of Peter L. McCorkell, Executive Vice President & General Counsel, Fair Isaac).

[87] Indeed, some insurance companies have decided to skip the step of credit scoring and go straight to directly discriminating against low -income consumers. For example, at least one insurance company has adopted guidelines that directly base insurance rates and eligibility on the factors of education and occupation. Press Release, *GEICO Ties Insurance Rates to Education, Occupation*, Consumer Federation of America, March 20, 2006.

[88] *See* Meizhu Lui, *et al.*, *The Color of Wealth: The Story Behind the U.S. Racial Wealth Divide* (The New Press 2006).

[89] *Id.* at 92-93.

[90] *Id.*

[91] *Id.* at 97.

In short, the racial disparities of credit scoring perpetuate the racist policies of decades past. The playing field was never level, and credit scoring preserves that advantage for whites and the well off. The use of credit scoring given the historical legacy of discrimination would be akin to excluding a sports team from playing games during the first half of a season, considering all those games to be losses, calculating the team's rankings on the basis of those "losses," and then telling the team they could not participate in the playoffs because of their shoddy record.

VII. POLICY RECOMMENDATIONS

Credit scores represent a numerical reflection of the enormous racial wealth gap in this country. As such, their use in insurance - which determines whether a person will be able to own a home or afford to drive a car - perpetuates racial and economic inequality. State legislatures can and should have a role in limiting the use of insurance scores by:

- Enacting laws to ban insurance scoring.

- If insurance scoring continues to be permitted, regulators should require the development and use of scoring models that have less of a discriminatory impact on minority groups. After all, it appears that insurers have tools equally effective as credit scores to control for loss. Regulators should consider requiring insurers and scoring companies to take measures that actively reduce the effect of past racism.

APPENDIX A

Description of Excess Premium Analysis in Tables 1, 2 and 3

This analysis asks: what would premiums have been if insurers had charged rates that were reasonable in relation to actual losses incurred for private passenger automobile insurance?

Tables 1 and 2 show the analyses separately for private passenger automobile liability and physical damage coverages. Liability coverages include bodily injury and property damage liability, personal injury protection, medical payments and uninsured and underinsured motorists' coverages. Physical damage coverages include collision and comprehensive coverages. Table 3 provides a summary of Tables 1 and 2 for all private passenger automobile insurance combined.

Description of Data Sources, Data Elements and Calculations for Tables 1 and 2

Line 1 is the pure loss ratio – the ratio of incurred losses to earned premium. Earned premium is essentially the premium associated with the coverage in force during the calendar year. For example, if an insurer issued a six month policy on October 1 with a premium of $1,000, the earned premium for the year in which the policy was issued would be about $500 and also about $500 in the following year.

Incurred losses are essentially the insurer's estimate of losses it will eventually pay out for policies issued during the calendar year. Incurred losses are losses actually paid during the year plus changes in loss reserves during the year. If insurers are estimating reserves accurately, losses eventually paid for a particular year's worth of policies should equal the incurred losses initially established for that year's worth of policies. Insurers have, however, overstated loss reserves for private passenger automobile insurance frequently in years where incurred loss percentages are high with the result that the ultimate payouts have been less than the initial estimates reflected in the ratio of incurred losses to earned premiums.

The data for the loss ratios come from the "Countrywide Direct" page of the Countrywide Profitability Results by Line section of the National Association of Insurance Commissioners *Report on Profitability by State by Line* for the years 1995 through 2005. These data are compilations of reports by insurance companies on the state pages of the statutory annual statement – Column 6, Direct Losses Incurred divided by Column 2, Direct Premiums Earned.[92] Year 2006 loss ratios were calculated from countrywide earned premium and incurred loss data compiled from the state pages. The raw data for all companies and all states were provided as a dataset by the NAIC. The 2006 data are preliminary. Earned premiums and incurred losses were compiled from the data and the loss ratios calculated. The NAIC is not responsible for any calculations or compilations developed from the data it provides.

Line 2 is the amount of loss settlement expense as a percentage of earned premiums as reported in the NAIC *Profitability Reports* on the same pages as the loss ratios in Line 1. The year 2006 percentage was assumed to be the average of the 2003 through 2005 three-year period.

---

[92] The source of the data for homeowners insurance is the state page data from the statutory annual statement, as compiled by and reported in various issues of the *Property Insurance Report*.

Line 3 is the provision for fixed expenses, based on the decision by the Texas Insurance Commissioner in an industry-wide rate hearing in 1999 and 2000 – Commissioner's Order 00-0909, Private Passenger and Commercial Automobile Insurance Benchmark Hearing, Docket 454-00-0408. Fixed expenses include Other Acquisition and General Expenses – which are reporting categories on the state pages described for Lines 1 and 2 – offset for a reduction for excess expenses and for income from installment fees. The actual amounts used are 8.56% for liability coverages and 8.54% for physical damage coverages

Line 4 is the provision for variable expenses, also based on the Texas Insurance Commissioner's benchmark rate order cited in the Line 3 description. Variable expenses include commissions, taxes licenses and fees and the profit provision. The profit provision includes a reasonable return on capital offset by investment income earned by the insurer. The actual amounts used are 8.26% for liability coverages and 12.56% for physical damage coverages. The difference between the provisions for liability and physical damage coverages results from a greater profit provision for physical damage coverage because of less investment income earned for physical damage coverages than for liability coverages. The lesser investment income is a result of smaller reserves held for shorter periods of time and less capital per dollar of premium for physical damage coverage than for liability coverages – there is less money per dollar of premium to earn investment gains for physical damage coverages than for liability coverages.

Line 5 is the calculation of excessive premium as a percentage of the premium dollar. It is the sum of Lines 1, 2 and 3 divided by the number 1 less Line 4. If rates had been reasonable, this calculation would produce the value zero. The calculation specifically accounts for variable expenses as a percentage of premium with the result that variable expenses are a smaller dollar amount with a low loss ratio associated with excessive rates and premium.

Line 6 reports the direct premiums earned, and comes from the same page in the NAIC *Profitability Report* as the loss ratios in Line 1. Year 2006 loss ratios were calculated from countrywide earned premium and incurred loss data compiled from the state pages. The raw data for all companies and all states were provided as a dataset by the NAIC. The 2006 NAIC data are preliminary. Earned premiums and incurred losses were compiled from the data and the loss ratios calculated. The NAIC is not responsible for any calculations or compilations developed from the data it provides.

Line 7 is the calculation of excessive premiums in dollars, calculated by multiplying the percentage excessive in Line 5 times the earned premiums in Line 6.

Table 3 is the combination of Tables 1 and 2. Line 1 in Table 3 is the aggregate loss ratio for liability and physical damage coverages combined and is provided for information purposes. Line 1 is not used in the calculation of Lines 2 through 4 of Table 3. The data from Lines 1 and 2 come from the same sources as Lines 1 and 2 for Tables 1 and 2. Lines 3 and 4 in Table 3 are the sum of Lines 5 and 6 in Tables 1 and 2. Line 2 is calculated by dividing Line 4 by the difference between Line 3 and Line 4.

Table 1: Private Passenger Automobile Liability

	1999	2000	2001	2002	2003	2004	2005	2006
Incurred Loss / Earned Premium	67.6%	74.3%	76.6%	72.1%	66.4%	62.5%	62.3%	59.5%
Loss Settlement Expense / EP	14.4%	14.5%	14.5%	14.4%	14.0%	13.6%	14.0%	13.9%
Fixed Expense Provision	8.6%	8.6%	8.6%	8.6%	8.6%	8.6%	8.6%	8.6%
Variable Expense Provision	8.3%	8.3%	8.3%	8.3%	8.3%	8.3%	8.3%	8.3%
% Excessive	1.3%	-6.1%	-8.6%	-3.6%	3.0%	7.7%	7.5%	10.7%
Earned Premium ($ 000)	69,666,735	69,766,221	73,779,662	80,712,942	88,836,953	93,790,088	95,669,288	96,276,656
Incurred Loss / Earned Premium	896,084	(4,273,884)	(6,369,467)	(2,920,939)	2,692,029	7,238,215	7,174,675	10,298,615

Table 2: Private Passenger Automobile Physical Damage

	1999	2000	2001	2002	2003	2004	2005	2006
Incurred Loss / Earned Premium	63.4%	67.3%	67.4%	61.3%	58.0%	53.1%	57.0%	55.6%
Loss Settlement Expense / EP	9.8%	10.0%	10.2%	9.7%	9.4%	9.4%	10.6%	9.8%
Fixed Expense Provision	8.5%	8.5%	8.5%	8.5%	8.5%	8.5%	8.5%	8.5%
Variable Expense Provision	12.6%	12.6%	12.6%	12.6%	12.6%	12.6%	12.6%	12.6%
% Excessive	6.5%	1.8%	1.5%	9.0%	13.2%	18.8%	12.9%	15.4%
Earned Premium ($ 000)	48,097,634	50,820,838	54,770,914	59,566,494	63,731,080	65,919,070	66,196,538	66,366,645
Incurred Loss / Earned Premium	3,135,367	929,933	814,298	5,381,694	8,381,832	12,363,595	8,554,676	10,246,451

Table 3: Private Passenger Automobile Total

	1999	2000	2001	2002	2003	2004	2005	2006
Incurred Loss / Earned Premium	65.9%	71.3%	72.7%	67.5%	62.8%	58.6%	60.1%	57.9%
% Excessive	**3.5%**	**-2.7%**	**-4.1%**	**1.8%**	**7.8%**	**14.0%**	**10.8%**	**14.5%**
Earned Premium ($ 000)	117,764,369	120,587,059	128,550,576	140,279,436	152,568,033	159,709,158	161,865,826	162,643,301
Incurred Loss / Earned Premium	**4,031,451**	**(3,343,951)**	**(5,555,170)**	**2,460,755**	**11,073,861**	**19,601,810**	**15,729,351**	**20,545,066**

CHI CHI WU

EXPERIENCE

NATIONAL CONSUMER LAW CENTER
Boston, MA March 2001 - present
Nationally recognized expert on consumer credit issues, including Fair Credit Reporting Act, credit cards, refund anticipation loans, Truth in Lending, immigrant financial services, and medical debt.

- Co-author or contributing author of legal treatises on consumer credit issues: Fair Credit Reporting (6th ed. 2006), Credit Discrimination (3d ed. 2005), Truth in Lending (6th ed. 2007), Cost of Credit (4d ed. 2009), and Collection Actions (2008).
- Author or co-author of books and other publications for the general public, including NCLC Guide to Consumer Rights for Immigrants (2002), NCLC Guide to Consumer Rights for Domestic Violence Survivors (2006), and NCLC Guide to Consumer Bank Account Rights (Mass. ed. 2004).
- Author of policy and investigative reports on consumer credit issues, including annual reports on the refund anticipation loan industry, and investigative report on fee-harvest credit cards and abusive medical debt collection tactics.
- Conducted trainings and presentations on consumer law issues at numerous conferences, summits, and meetings.
- Testified in person, submitted written testimony, and drafted advocacy letters to Congress and the Massachusetts Legislature.
- Filed administrative comments with the Federal Reserve Board, Federal Trade Commission, federal banking regulators, and the Internal Revenue Service.
- Developed case theory, wrote briefs and motions, and conducted discovery including depositions as co-counsel in consumer class action litigation.

MASSACHUSETTS ATTORNEY GENERAL'S OFFICE, CONSUMER PROTECTION AND ANTITRUST DIVISION
Boston, MA June 1996 - March 2001
Investigated, developed and litigated cases enforcing Massachusetts Consumer Protection Act and other consumer protection laws and regulations. Specialized in health fraud, sweepstakes fraud, and immigrant consumer rights. Coordinated Attorney General's Hospital and HMO Community Benefits Initiative. Developed and implemented translation initiative to provide consumer education materials to immigrant communities.

WASSERSTEIN FELLOW-IN-RESIDENCE, OFFICE OF PUBLIC INTEREST ADVISING, HARVARD LAW SCHOOL
Cambridge, MA October-December 1998
Advised and counseled Harvard Law School students on careers in public interest law. Authored revision of Pro Bono Guide for Law Students.

STAFF COUNSEL'S OFFICE, SUPREME JUDICIAL COURT OF MASSACHUSETTS
Boston, MA November 1994 - June 1996
Drafted recommendations for transfer of cases from Massachusetts Appeals Court. Prepared bench memoranda. Coordinated selected administrative matters for monthly docket of the Massachusetts Supreme Judicial Court (SJC). Provided general legal research for SJC Justices.

HARRY H. DOW FUND FELLOW, ASIAN OUTREACH UNIT, GREATER BOSTON LEGAL SERVICES

Boston, MA July 1993 - November 1994

Represented Asian victims of domestic violence in restraining order hearings, divorce proceedings, public housing cases, and immigration cases. Conducted outreach and education to Asian community concerning domestic violence. Represented coalition of residents and community groups opposed to construction of environmentally hazardous parking garage in Chinatown.

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, OFFICE OF THE GENERAL COUNSEL, FOOD AND DRUG DIVISION

Rockville, MD August 1991 - July 1993

Represented U.S. Food and Drug Administration (FDA) in civil and criminal enforcement actions. Interpreted requirements of federal Food, Drug, and Cosmetic Act for agency officials. Served as FDA's primary legal adviser on federal environmental statutes, including National Environmental Policy Act and Clean Air Act.

EDUCATION HARVARD LAW SCHOOL, J.D. cum laude, 1991
THE JOHNS HOPKINS UNIVERSITY, B.A., 1988

AFFILIATIONS

President, Board of Directors, Asian Pacific American Agenda Coalition
President, Asian Pacific American Agenda PAC
Board of Directors, Fair Housing Center of Greater Boston

AWARDS

Community Service Award, Asian American Lawyers Association of Massachusetts (2004).

United States House of Representatives
Committee on Financial Services

"TRUTH IN TESTIMONY" DISCLOSURE FORM

Clause 2(g) of rule XI of the Rules of the House of Representatives and the Rules of the Committee on Financial Services require the disclosure of the following information. A copy of this form should be attached to your written testimony.

1. Name: Chi Chi Wu	**2. Organization or organizations you are representing:** Low-Income Clients of the National Consumer Law Center
3. Business Address and telephone number: 7 Winthrop Sq., 4th Fl Boston, MA 02110 617-542-8010	
4. Have you received any Federal grants or contracts (including any subgrants and subcontracts) since October 1, 2007, related to the subject on which you have been invited to testify? ☐ Yes ☒ No	**5. Have any of the organizations you are representing received any Federal grants or contracts (including any subgrants and subcontracts) since October 1, 2007, related to the subject on which you have been invited to testify?** ☐ Yes ☒ No
6. If you answered "yes" to either item 4 or 5, please list the source and amount of each grant or contract, and indicate whether the recipient of such grant was you or the organization(s) you are representing. You may list additional grants or contracts on additional sheets.	
7. Signature: 5/11/2010	

Please attach a copy of this form to your written testimony.