Testimony of Dr. Michael A. Turner
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Before the House Subcommittee on
Financial Institutions and Consumer Credit
Financial Services Committee
"Examining Legislative Proposals to Address Consumer Access and Mainstream Banking Issues."
27 September 2016

Good morning Chairman Neugebauer, Ranking Member Clay, and members of the Committee. My name is Michael Turner, and I am the founder and CEO of the Policy and Economic Research Council or "PERC," a non-profit research and development organization committed to promoting financial inclusion through the use of information solutions. In our 14 years, we have helped move credit information sharing to cover a majority of the world's population for the first time (50.3% of adults in 2015), have changed national policy in countries around the world, and have successfully promoted the use of alternative data to positively impact more than 1 billion persons.

I am here to testify in support of three bills: H.R.347, the Facilitating Access to Credit Act; H.R.4172, the Credit Access and Inclusion Act; and H.R.4211, the Credit Score Competition Act. Each of these bills would improve our national credit information networks and yield substantial benefits by facilitating financial inclusion for millions of Americans, especially lower income, younger and elderly Americans, immigrants, and members of minority communities. These bills play an important role in promoting financial inclusion. As I explain in my testimony, this is as easy as A,B,C—Access, Behavior, and Competition.

Access here refers to credit access. Access to credit is the tool that enables access to homeownership and small business ownership, which in turn provides access to wealth and asset building. Credit access is opportunity access.

Unfortunately, Credit Invisibility—having no credit report or having insufficient information to generate a score—keeps 53 million American Credit Invisibles from accessing affordable sources of mainstream credit.[1] This "Credit Invisibility" is sustained by the Credit Catch 22—that in order to qualify for mainstream credit you must already have credit.[2]

Trapped by the Credit Catch 22, these 53 million Credit Invisibles must turn to high cost lenders—pawn shops, payday lenders, and check cashing services to have their credit needs met. High cost credit access has negative consequences for borrowers. For example, the use of payday loans increases hardship measures by an estimated 25%--meaning that payday loan borrowers were 25% more likely to have difficulty in paying mortgage, rent and utilities bill and having medical and dental care postponed.[3] Further, lower income Americans pay an estimated $3.4 billion in excess fees annually to access payday loans—this excludes check cashing and pawn shops.[4]

As these statistics show, the status quo is harmful to Credit Invisibles. Fortunately, Congress can significantly mitigate and reduce Credit Invisibility by passing the Credit Access and Inclusion Act of 2015 (H.R. 4172). This bill would amend the FCRA to authorize furnishing to credit bureaus information relating to the payment performance of a consumer pursuant to a contract for a utility or telecommunications service. In doing so, Congress would enable tens of millions of Credit Invisibles to gain access to affordable credit.[5]

Currently, the vast majority of payments that Americans make to energy utility and media firms are not reported to the main consumer databases of the 3 national credit bureaus unless they are late payments.

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[1] Presentation by David Shellenberger of FICO. Expanding Access to Credit: Realizing the Promise of Alternative Data. 15 September, 2016. Washington, DC. National Press Club. For additional analyses on the nature and scope of Credit Invisibility in America, see CFPB, Data Point: Credit Invisibles (May 2015), *available at* http://files.consumerfinance.gov/f/201505_cfpb_data-point-credit-invisibles.pdf Using data from 2010, the CFPB found 26 million adults with no credit file, and 19 million who were unscoreable. They also found that 30% of persons living in lower income neighborhoods were Credit Invisible.

[2] For empirical evidence supporting the credit market impacts of including fully reported non-financial payment data in consumer credit reports, see Turner et al., "Giving Underserved Consumers Better Access to the Credit System: The Promise of Non-traditional Data." PERC, 2005; Turner et al., "Give Credit Where Credit is Due: Increasing Access to Affordable Mainstream Credit Using Alternative Data." Washington, DC. Brookings Institution. 2006; Turner et al., "You Score You Win: The Consequences of Giving Credit Where Credit is Due." PERC, 2008; Turner et al., "New to Credit from Alternative Data." PERC, 2009; Turner et al., "Credit Reporting Customer Payment Data." PERC, 2009; and Turner et al., "A New Pathway to Financial Inclusion." PERC, 2012; Turner, et al., "The Credit Impacts on Low Income Americans From Reporting Moderately Late Utility Payments." PERC, 2012. Turner et al., "Research Consensus Confirms Benefits of Alternative Data." PERC, 2015; Turner et al., "Predicting Financial Account Delinquencies with Utility and Telecom Payment Data." PERC, 2015.

[3] Melzer, Brian T. "The Real Cost of Credit Access: Evidence from the Payday Lending Market." *The Quarterly Journal of Economics*. Oxford Journals of Oxford University Press. (2011) Volume 126, Issue 1. Pgs. 517-555.

[4] "Profiting from Poverty: How Payday Lenders Strip Wealth from the Working Poor for Record Profits." A report by National People's Action. January, 2012.

[5] Turner et al. Give Credit Where Credit is Due; You Score You Win; New To Credit Through Alternative Data.

This means that people are being punished for their payment transgressions, but not rewarded for their good behavior. For Credit Invisibles, reporting only negative data makes a credit report a tool for financial exclusion as it acts as a black list. FICO estimates that by including this alternative utility and telecom payment data—fully-reported non-financial payment data (timely and late payments)—more than one-third of the currently Credit Invisible will be scored above 620—that is prime credit.[6]

As **Figures 1 and 2** below depict, lower income Americans receive the greatest benefit from having fully reported payment data.[7] The reasons are as follows. First, as many as one-third of lower income persons are Credit Invisible. Including fully reported payment data means positive data now makes it into their credit files. They can build, repair, or rebuild their credit history much more quickly. With the addition of positive data, credit reporting payment data now becomes a tool for inclusion, not exclusion. Second, rather than accessing high cost credit, as Credit Invisibles must, nearly 4 in 10 formerly Credit Invisibles would now qualify for some variant of prime credit.[8] This means a better life through better credit. This group will now be 25% more likely to pay bills on time, and spend on essentials including health and dental care, and prescription drugs.[9] Third, entire system becomes both fairer and more forgiving. Mainstream credit wold become a viable alternative to high cost credit for a large portion of the Credit Invisible who would gain a valuable tool to help enable access.

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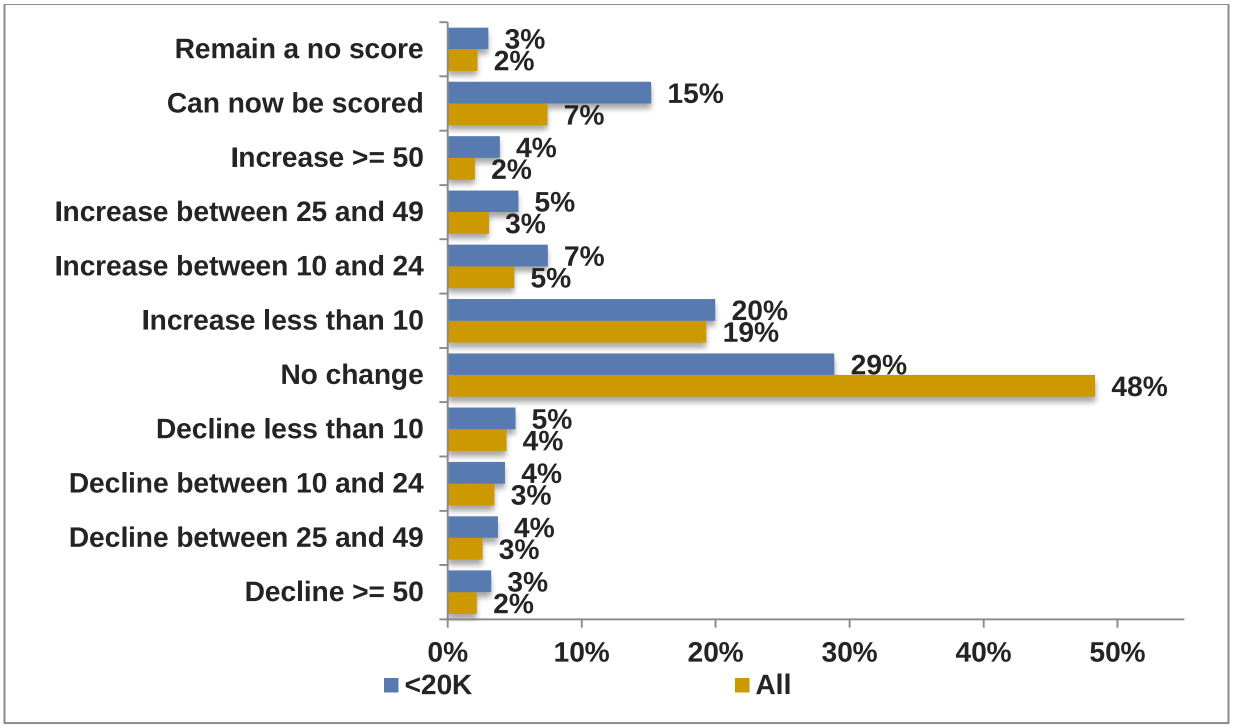
[6] Presentation by David Shellenberger of FICO. Expanding Access to Credit: Realizing the Promise of Alternative Data. 15 September, 2016. Washington, DC. National Press Club.

[7] Turner et al. Give Credit Where Credit is Due; You Score You Win; New To Credit Through Alternative Data.

[8] Presentation by David Shellenberger of FICO. Expanding Access to Credit: Realizing the Promise of Alternative Data. 15 September, 2016. Washington, DC. National Press Club.

[9] Melzer, Brian T. "The Real Cost of Credit Access: Evidence from the Payday Lending Market." *The Quarterly Journal of Economics*. Oxford Journals of Oxford University Press. (2011) Volume 126, Issue 1. Pgs. 517-555.

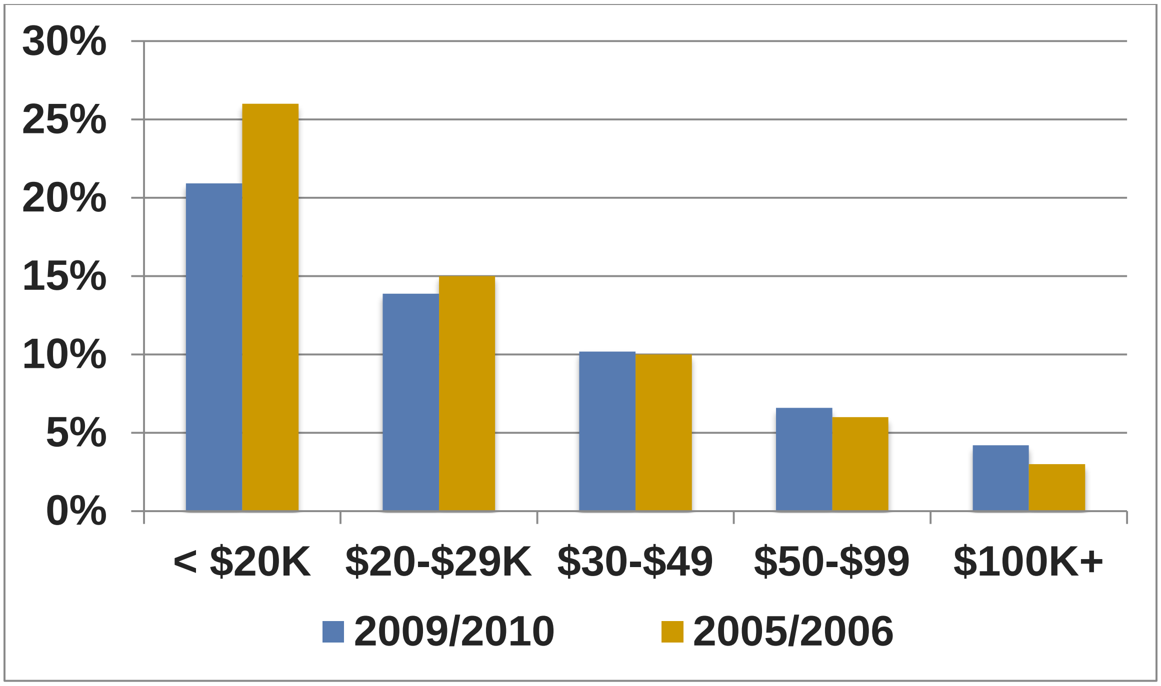
Figure 1: Credit Score Changes (Less than $20k Income vs. Entire Population)



Source: PERC "A New Pathway to Financial Inclusion" (June 2012)

Figure 2 below depicts the profound impact fully reported alternative data has on mainstream credit access. It shows that acceptance rates—persons who will be granted credit owing to the inclusion of fully reported utility and/or media payment data in their credit report--increase the most for the lowest income tier, the second most for the second lowest income tier, and so on. It also shows that this pattern has held both before and after the most recent financial crisis.

Figure 2: Change in Acceptance Rate by Household Income (3% target default rate)



Source: PERC "A New Pathway to Financial Inclusion" (June 2012)

As we see below in **Figure 3**, the largest net beneficiaries of including fully reported non-financial payment data in consumer credit reports are Credit Invisibles (no-file and thin-file). While the ratio is still an impressive 3 to 1 for tier rises (movement into a better risk tier) compared to tier falls (9% to 3%), when focusing only on the thin-file population, the ratio increases dramatically to 64 to 1 (64% of thin file persons move into a better risk tier as a direct consequence of having fully reported alternative data in their credit report, while just 1% experience a score tier decline). Even when the previously unscoreable are excluded, the ratio still improves to 4 to 1, with 25% of previously scoreable thin file applicants being accepted as a result of fully reported alternative data, while just 6% experience a score tier decline.

Figure 3: Material Impact—Movement Across Risk Tiers from Alternative Data

	Rise one or more Tiers	No Change	Fall one or more Tiers
Entire Sample			
Including Unscoreables	9%	88%	3%
Excluding Unscoreables	4%	93%	3%
Thin-file			
Including Unscoreables	64%	35%	1%
Excluding Unscoreables	25%	69%	6%

Source: PERC "A New Pathway to Financial Inclusion" (June 2012)

There is a diverse and growing coalition of organizations that support the reporting of alternative data, in the manner that H.R.4172 would do with utilities data. First, there is a research consensus achieved over the last decade through studies from groups like PERC, the Brookings Institution, the Federal Reserve Bank of Boston, FICO, and the Center for Financial Services Inclusion.[10] Second, the World Bank's Guideline for Credit Reporting includes a provision endorsing the practice.[11] Third, there are at least 27 countries that allow credit reports to include fully reported utility data. These countries—developed and developing alike, including Germany, Britain, China, Mexico, and Colombia—have benefitted from this practice for years.[12] In this instance, the US is the laggard, not the leader, as some countries have permitted alternative data in credit reporting for the past half-century. Also, in the U.S., the measure is supported by NGOs, advocacy groups, think tanks, and private sector firms including credit bureaus and lenders. HUD and PERC are currently

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[10] For a discussion of recent analysis of the credit market impacts from including fully reported non-financial payment data in the origination process, see Turner et al., "Research Consensus Confirms Benefits of Alternative Data." PERC, March 2015.

[11] *General Principles for Credit Reporting.* World Bank. September 2011. See especially Para 106. Available at http://documents.worldbank.org/curated/en/662161468147557554/pdf/701930ESW0P1180ting0pub010028011web.pdf

[12] According to the World Bank's most recent "Doing Business" database: Argentina, Armenia, Australia, Canada, China, Dominican Republic, Ecuador, Egypt, Georgia, Germany, Honduras, Korea (South), Lithuania, Mexico, New Zealand, Nicaragua, Panama, Peru, Philippines, Poland, Rwanda, Saudi Arabia, Taiwan, United Kingdom, United States of America, West Bank/Gaza, Zambia. All in that's just over 2.5 billion people. This list includes advanced, middle-income, and developing economies, as well as large and small nations. The site link is http://www.doingbusiness.org/data/exploretopics/getting-credit#close

undertaking a joint-study on rental payment data, with participation from Experian, FICO, Lexis-Nexis, TransUnion and six public housing authorities.[13]

I also note that just last week, the MacArthur Foundation awarded my friend José Quiñonez, the founder of Mission Asset Fund, their most recent "genius" for his contributions to helping people (primarily lower income immigrants) build a credit history.[14] Our organizations are partnering on the Credit Deserts Project—the development of an interactive map showing concentrations of Credit Invisibles, average credit score, the number of high cost and mainstream lenders, and how that landscape will be changed by including more and more alternative data. This project is sponsored by the Silicon Valley Community Foundation. In recent years, José and I hosted a Congressional staff briefing so that we could tell you how he's been able to grant credit to Credit Invisible immigrants—the answer is by using alternative data. It seems that this simple idea—our A for Access and Alternative Data—is not only simple, but now must be considered "genius."

Back to our ABC's. B is for behavior. Credit reports and scores are tools designed to affect an individual's credit behavior. A low score is designed to deter late payments and encourage timeliness. A high score is designed to reward good payment behavior. Accordingly, credit scores and reports not only help lenders gauge borrower credit risk and capacity, but also enable borrowers to use their credit and bill payment reputation as collateral. This means low-income/low-asset households that may otherwise have difficulty obtaining credit (if they have no collateral to offer) are able to use their repayment history to demonstrate their risk and use their repayment reputation as collateral.

Federal policy has promoted the use and disclosure of credit scores to help consumers understand their scores and to help consumers secure credit on the best possible terms. Today, pursuant to the Dodd-Frank Act, an estimated 120 million credit-score disclosures are distributed each year to consumers when they

[13] Public Housing Authorities participating in the HUD/PERC joint study include: Cook County, Seattle, Houston, Louisville, Columbus, King County.
[14] Doerer, Kristen "This Innovative Idea Can Unshackle Poor People from Payday Loans and Bad Credit Scores." PBS NewsHour, Making Sense. September 22, 2016.

apply for a mortgage, are denied credit or are offered less favorable terms. In addition, through their Score Open Access program, FICO have over 150M consumer accounts with ongoing free access to their FICO Score and credit education materials such as plain language reason codes to help guide a consumer on what actions that they can take in order to improve their score.[15] There are over 60 FIs offering this free service to their clients.[16] As the CFPB itself has noted in its 2015 report on Consumer Voices on Credit Reports and Scores, "[t]he growing number of financial services companies that provide their customers with regular access to their credit scores on monthly credit card statements or online provides an opportunity to engage consumers around their credit reports. Once consumers see their credit scores, they may be motivated to learn more about their credit histories, check their full credit reports, and take action to improve their credit reports and scores."[17]

All of these disclosures are good for general consumer education and increased transparency, but they don't actually answer the most salient question posed by consumers: "How can I improve my credit score?" In order for credit reports and scores to affect individual behavior, and incentivize good credit health, people must understand how they work.

In most cases, credit score disclosers point consumers to the credit bureaus for help on answering this question. Unfortunately, the Ninth Circuit's misinterpretation of a little known law called the Credit Repair

[15] For a discussion of FICO's Open Access program, see: http://www.fico.com/en/newsroom/fico-scores-now-provided-free-with-150-million-consumer-financial-accounts-through-fico-score-open-access-program-04-21-2016. In addition, see the Federal Reserve Bank of Philadelphia published study based upon the Barclay Card implementation. https://www.philadelphia**fed**.org/-/.../d%202015_can-credit-cards-with-**access**.pdf
[16] Op. Cit. www.fico.com
[17] CFPB. Consumer Voices on Credit Reports and Scores. February 2015. Available at: http://files.consumerfinance.gov/f/201502_cfpb_report_consumer-voices-on-credit-reports-and-scores.pdf

Organizations Act (CROA)[18] is preventing consumers from accessing the timely, personalized steps they need to improve their score from reputable credit education providers.[19]

The Credit Repair Organizations Act[20] (CROA) was enacted in 1996 in response to a specific predatory practice engaged in by "credit repair clinics" or "credit repair organizations" (CROs) that represent to consumers that they can remove accurate but derogatory information from consumers' credit reports in exchange for a substantial fee paid before any of the promised services were performed. CROA is a strict liability statute that designed to protect consumers in three ways: (1) to give consumers who are interested in obtaining credit repair services with sufficient information necessary to make an informed decision; (2) to protect consumers against paying advanced fees for services that they never receive; and (3) to give consumers the right to cancel the services within72 hours of execution. Consumers, legislators, the Federal Trade Commission and the credit bureau industry all agreed that CROs' practices harmed consumers, the credit reporting industry, and creditors. CROA was designed so that any violation of one of its technical requirements could result in significant liability before the FTC, State Attorneys General, and private plaintiffs. CROA provides for private rights of action and class actions, and allows plaintiffs to seek the full disgorgement of any product fees charged to a class of consumers, and CROA's plaintiff recovery or class action damages are not capped.

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[18] Credit Repair Organizations Act. A copy of the act can be found at https://www.ftc.gov/enforcement/statutes/credit-repair-organizations-act

[19] When the first class actions were filed under CROA against consumer reporting agencies ten years ago, courts initially interpreted CROA as applying to companies that ***retroactively*** fixed (or represented that they could fix) a consumer's past or historical credit record. *Hillis v. Equifax Consumer Servs. Inc.,* 237 F.R.D. 491, 514 (N.D. Ga. 2006) ("Congress did not intend for the definition of a credit repair organization to sweep in services that offer only prospective credit advice to consumers or provide information to consumers so that *they* can take steps to improve their credit in the future.") However, more recently some courts have interpreted CROA as encompassing forward-focused credit counseling and, arguably, credit monitoring services. *Stout v. Freescore, LLC,* 743 F.3d 680, 686 (9th Cir. 2014) (holding that CROA covers the offering of "services aimed at improving future creditworthy behavior with prospective promises of improved credit"); *Zimmerman v. Puccio,* 613 F.3d 60, 72 (1st Cir. 2011) (finding that credit counseling aimed at improving future creditworthy behavior is credit repair).

[20] Pub. L. No. 104-208, § 2451; 15 U.S.C. §§ 1679 *et seq.*

In 2014 the Ninth Circuit issued a decision in the case of *Stout v. Freescore* that effectively expands CROA to cover not only credit repair but also credit education, credit counseling and even credit monitoring. In fact, under current judicial precedents, any product that can *arguably* help a consumer improve their credit report or credit score may be subject to CROA. These are very different products from credit repair. If the Ninth Circuit decision holds, it would upend this understanding of how CROA has traditionally been interpreted and would have serious impacts for consumers. Moreover, the CFPB's May 5, 2016, proposed rule eliminating the use of class action waivers in direct to consumer contracts for financial services products further threatens the availability of existing products in the marketplace because legitimate companies will no longer be able to manage the legal risks associated with aggressive class action lawsuits and the consistent misapplication of CROA by the courts.

In order to draw important conclusions about what types of tools can help consumers normalize good credit behavior, PERC and the University of Arizona Take Charge America Center examined data on low-cost personalized credit report and score education products and how they are affected by CROA. PERC and University of Arizona researchers tested two hypotheses: (1) did completion of a personalized education session have any impact as measured by score distribution and score tier migration; and (2) did barriers under CROA deter the uptake of these services by interested people.[21] The key findings were:

(A) Consumers benefit from use of personalized credit education products: We see that those who successfully completed a personalized credit education session with one of the three nationwide consumer reporting agencies experience positive material impacts (moving to a better risk tier) at nearly twice the rate of those receiving generic educational materials only (22% vs. 13% for the VantageScore credit score, and 26% vs. 13% for the PLUS credit score).[22]

(B) A high percentage of consumers report being turned off by CROA requirements including: a

[21] Turner, Michael A., Michael Staten and Patrick Walker. "Is CROA Choking Credit Report Literacy?" Durham, NC. PERC. April, 2015.
[22] Turner, PERC, 2015. Op. Cit. Pgs. 6-7.

three-day-waiting period before services can be provided, the provision of an onerous and largely inapplicable disclosure, and the requirement that a written contract must be signed before the session can begin. Given the large unmet need for a national, user friendly credit report and credit score educational service, the low uptake given different price points including free access—with the free access that just 31% hit the registration page after exposure to disclaimers on the landing page, and just 6% complete the process after the 3-business day mandatory wait—suggests that the CROA requirements may be deterring people who need such services from taking advantage of this offering. And, even when the service was offered for free, a full 46% indicated that they would have used the credit education product if they could do so now and avoid the 3-business day or more wait.[23]

PERC has designed an independent follow on study.[24] In this study, rather than using market research data, we collaborated with 4 community development organizations (CDOs) —Operation Hope, the National Urban League, United Way Atlanta, and the Trident United Way (Charleston SC)—to recruit persons interested in receiving personalized credit report and score education. We also looked at small business owners, and provide anecdotal evidence from a sample of college students. The initial key findings were as follows:

(1) Personalized credit education materially benefits consumers: For the Credit Educator group, nearly three times as many consumers, 23%, improved and moved up score bands (such as from subprime to near prime or prime) compared to the number that moved down a score band, 8%, three months following the credit education session. For the control group, there is no systematic change in the distribution, with the same share moving up as moved down, 7%.

(2) Nearly all participants report improved understanding of credit reports and credit scores after completing personalized credit education session: 93% of those completing a personalized credit education

[23] Turner, PERC, 2015. Op. Cit. Pgs. 6-7.
[24] Michael Turner and Patrick Walker. CRA Credit Education Services: An Examination of Consumer Impacts. April 2016. Available at: http://www.perc.net/wp-content/uploads/2016/04/Prelim_CE_Report.pdf.

session with a credit bureau credit advisor reported that they have a better understanding of the actions they can take to improve their credit score.[25]

Let me make this more concrete for you by way of an example.[26] Janean lives in Ohio. She is married and has six children and two grandchildren. Like many working parents, she struggles with daily work-life balance, and is constantly juggling her schedule to take care of her family's needs. Janean also ran into credit problems as a college student, and ignored her credit issues for 20 years. Her call to action came mid-2015, when the car she had driven for 20 years died. She needed a car, and knew she needed to confront her credit issues in order to get one. She tried a free online service, but said "…it was like going to a library and checking out a book. There is lots of helpful information, but no real direction on how to apply it to my situation." Janean said she doesn't believe everything she reads. "I have to investigate and have tools relevant to my life and what's around. I needed someone who knows what's important and could assist me."

Janean had anxieties associated with this process. To help get on the path toward "a better life through better credit," Janean sought out guidance from Operation Hope. Operation Hope enrolled her in Experian's Credit Educator. Because of her fluid schedule—getting her kids to school, going to work, picking up her children, driving them to different after school activities, cooking dinner, making sure homework was done, getting her children to bed—she found it challenging to speak with a credit educator. She missed her first appointment and took over two weeks before calling to reschedule. She admitted that she was discouraged and anxious about the topic. Despite the barrier, she was determined, and today she is glad she didn't give up.

Janean said her experience with personalized credit education was a "second breath," and thanks to that experience she learned how to improve her credit score. Happily, her score increased by more than 150 points. Not was Janean able to secure auto financing for a new car, she also qualified for a home mortgage loan and is now a homeowner. Further, she was able to advance her career by qualifying for a higher paying job as a security specialist owing to her improved credit score. The virtuous cycle enabled by personalized

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[25] Turner, PERC, 2016. Op Cit. Pg. 4.
[26] Included with permission from subject. Telephone interview conducted on 23 September 2016.

credit education—speaking with someone who knew what was important gave Janean the confidence to implement steps she knew would help—and supported by Operation Hope secured outcomes Janean believes she would not have achieved on her own.

The research demonstrates that personalized credit education works, and it works better than generic materials that are available on "free" web sites.[27] We also know that the impacts are likely to be seen well beyond several months, but will last in some cases a lifetime. This is not just about data—how many people's scores were improved—it's about equipping people with the tools they need to improve their lives.

We don't live in a world where people want to schedule things 3 or 5 days in advance. Requiring them to wait for personalized credit education from a reputable source is antithetical both culturally and practically. It deters uptake and use. These requirements may seem reasonable to protect consumers from the unfair and deceptive practices of unscrupulous credit clinics that promise to remove negative, but accurate data from credit files — often for an exorbitant fee. But it is not when it is applied to useful services by organizations that have no incentive to commit the sort of fraudulent activities for which CROA was designed to combat. In these cases, it only deters the use of beneficial services.

We know there is a clear and unmet need for credit report and score education. We know that personalized credit education improves the credit standing of many people who complete the course. We know that a majority of people who complete the course are satisfied and report that they learned things that will change their behavior for the long term. We also know that the single greatest barrier is the mandatory wait.

The Coalition to Improve Credit Education (CICE) was born to support legislative reform that would enable everyone to get the tools they need to better understand and improve their credit report and scores. In under a year, this coalition—under the leadership of William "Bill" Cheeks—has enlisted the support of many prominent national organizations and over 10,000 individuals nationwide. (For a current list of organizations

[27] Turner, PERC, 2015, Op. Cit. See also Turner, PERC, 2016, Op. Cit.

supporting CICE, see Appendix 3). This coalition supports H.R. 347 (Rep. Royce), the "Facilitating Access to Credit Act of 2015, a bill designed to permit people to dialogue with nationwide credit bureaus about their credit reports and credit scores, and how to improve them.

The Ninth Circuit Court's expansion of the definition of credit repair organization to include all sorts of things one wouldn't normally think of as credit repair—like credit education and credit monitoring—combined with the CFPB's position on mandatory arbitration will have the combined effect of taking these valuable solutions off of the market or reducing their use lest suppliers risk total financial disgorgement for these lines of business as a result of a technical violation of CROA despite no evidence of consumer harm. [28]

Furthermore it is important to ask from what harm are consumers being protected by expanding the definition of CROA so broadly in the first place? CROA simply was never intended to apply to national credit bureaus.[29] As FCRA-regulated credit bureaus they are subject to a unique set of obligations that provide powerful disincentives from gaming the system by knowingly deleting accurate but derogatory data. And they are subject to intense regulatory scrutiny by the CFPB and FTC (as well as state regulators) so any potential FCRA, UDAAP or other violations are unlikely to go unnoticed very long. Indeed, CROA already exempts depository institutions that are supervised and examined by their prudential regulators. H.R.347 would simply treat the national credit bureaus the same as these other supervised entities. It also worth noting that non-profits are exempted from CROA as well.

Additionally, credit bureaus are the most logical place for consumers to turn when seeking to understand their credit report and score, and how their behavior impacts both. Congress and regulators created an entire architecture to facilitate this dialogue beginning in 1970 with the Fair Credit Reporting Act

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[28] US Court of Appeal for the Ninth Circuit. The opinion can be found here: http://cdn.ca9.uscourts.gov/datastore/opinions/2014/02/21/10-56887.pdf.

[29] S. HRG. 110–1170 "Oversight of Telemarketing Practices and the Credit Repair Organizations Act (CROA)." Hearing before the Committee on Commerce, Science, and Transportation. US Senate, 110th Congress, 1st Session. July 31, 2007. Transcript pages 12-24. In particular, see the FTC's testimony beginning on page 12, as well as an interaction between Senator Pryor and the FTC's witness beginning on page 18.

(FCRA)[30] and then reinforced with the Fair and Accurate Credit Transactions Act (FACT Act) in 2003,[31] making free annual credit reports available to all consumers, followed by the risk-based pricing disclosures required by the Dodd Frank Act 2010,[32] and the "Scores on Statements" initiative begun by the CFPB in 2014.

However, the Ninth Circuit's 2014 decision has effectively driven a wedge between consumers and credit bureaus using CROA at precisely the time consumers were sent to the bureaus to seek out more information about their credit lives. This simply makes no sense. It is also important to note that over 20 years ago when CROA was initially envisioned and written to combat deceptive and fraudulent credit repair clinic practices: [33]

- There was barely an Internet, let alone apps and mobile solutions, and FinTech;
- Likes of Equifax, TransUnion, Experian (TRW before 1996), and FICO did not have direct-to-consumer services;
- Many services, simulators, and education tools possible today were not pre-1996;
- The importance of credit report/score education may have been less appreciated (it was only in 1995 that Fannie and Freddie began recommending the use of FICO score);
- FICO score was the first to be disclosed to consumers, and not until 2001;
- There was no CFPB (with Unfair, Deceptive, Abusive Acts or Practices "UDAAP" powers)
- There was no FACT Act and the FCRA has since been revised;
- CFPB has since advocated for greater consumer access to their credit reports and scores (free scores);
- Director of the CFPB has since noted, "As public awareness grows and spreads, people also will likely want to learn more about how to improve their credit scores and build their credit profiles in ways that will make them better managers of their financial affairs and more attractive candidates for credit."; and,
- The FTC has since recommended more meaningful, interactive information for consumers by industry (interactive disclosure mechanisms, immersive online dashboard).

While I understand concerns that Congress or the government not "pick winners" in ways that may

30 The Fair Credit Reporting Act, 15 U.S.C. § 1681 ("FCRA"). 1970.
31 United States. (2003). Fair and Accurate Credit Transactions Act of 2003. Washington, D.C.: U.S. G.P.O. Available at: https://www.gpo.gov/fdsys/pkg/PLAW-108publ159/pdf/PLAW-108publ159.pdf.
32 United States. (2010). Dodd-Frank Wall Street Reform and Consumer Protection Act: Conference report (to accompany H.R. 4173). Washington: U.S. G.P.O. https://www.gpo.gov/fdsys/pkg/PLAW-111publ203/pdf/PLAW-111publ203.pdf
33 For a discussion of these points see Michael Turner, Michael Staten, Patrick Walker. Is CROA Choking Credit Report Literacy? PERC. April 2015. Available at: http://www.perc.net/publications/is-croa-choking-credit-report-literacy/.

distort markets—a point that is relevant in the discussion about credit score competition as well—the fact that the three nationwide consumer credit bureaus are entirely unique in both function and regulatory structure, and could be exempted on that basis alone is incontrovertible. Another basis is that these entities alone bear the burden of responding to inquiries directed to them by tens of millions of risk based-pricing notices required by the Dodd Frank Act. However, there are certainly other good actors out there, and we wouldn't want to support any policy that could foreclose competition and deny consumer benefits.

There is an array of options available to Congress in deciding how to craft an exemption beyond the three nationwide CRAs. This could be a product-based approach, for example, where offerings that are clearly not credit repair can be delineated and exempted from CROA. As with an automobile, there is a difference between learning how to drive (driver's education), having your car regularly serviced (tune up), washing the car and rotating the tires (maintenance), and having it towed to a collision shop after an accident (repair). There are nearly exact analogs in credit reporting including credit education, credit monitoring, and credit repair. . In fact, the courts have fashioned a clear distinction between these different services, focusing on the retrospective nature of credit repair—that it seeks to repair prior credit damage—as opposed to the prospective nature of credit education and monitoring that is designed to shape behavior on a going-forward basis.[34] That being said, any worries that exemptions or safe harbors could be difficult to design because it may be difficult to clearly and perfectly distinguish between credit repair, credit education, and consumer services involved with credit scores and reports underscore the very need for such exemptions or safe harbors.

While many light touch and "free" credit education models exist, more personalized and interactive credit education services that would be costly to carry out need direct revenues from users or others to be produced. But those services produced by a for-profit (non-bank) institution would today be most likely be

[34] The court in *Hillis* likened a credit repair organization to a person who offers to improve a golfer's score after nine holes by reviewing and making changes to the golfer's score card or by telling the golfer how he can make changes to his score card. By contrast, a person who offers to give a golfer swing tips to improve his score for the next nine holes is not offering a repair service, but rather education.

covered by CROA. In practical terms, CROA favors lighter-touch credit education products over personalized ones. The problem with this market outcome is that consumers with the least understanding of credit reports and credit score and who are the most in need of the education are likely most in need on heaver-touch, one-on-one education services, that require payment of at least a modest fee.

We understand that when Congress and the FTC earlier wrestled with the issue of a CROA exemption for the nationwide consumer reporting agencies—then in the context of credit monitoring—the FTC was sympathetic to the need for an exemption and stated that credit monitoring did no consumer harm.[35] They expressed concern with a categorical exemption for the nationwide CRAs seeing it as potentially anti-competitive, and were stymied by the product-based exemption fearing bad actors would morph into a new category to enjoy the exemption. Congress and regulators have a range of solutions they could consider, including focusing on the judicial distinction between retrospective repair and prospective education, and must not be satisfied with being stuck. The combined effect of the Ninth Circuit Court's expansion of CROA and the CFPB's position on mandatory arbitration means that several categories of services offered by the three nationwide CRAs and other good actors may cease to exist. Innovation will plummet, and those who will suffer the most are the significant category of persons who need personalized credit education to improve their life and life's chances—people like Janean.

Returning to our narrative device—the third topic I would like to discuss is "C," for competition. H.R.4211, the Credit Score Competition Act, would promote competition in the provision of credit scores by authorizing government sponsored enterprises, or GSEs, to use credit scores in purchasing residential mortgages only if the credit score model is validated and approved according to a publicly available description of the process the GSE uses to validate and approve credit scoring models.

[35] S. HRG. 110–1170. Pgs. 12-18. The FTC witness explicitly states the agency was sympathetic to the need for exempting the three nationwide consumer reporting agencies from CROA, and that products such as credit monitoring posed no consumer harm. He further expressed FTC concern with potential anti-competitive effects from a class-based exemption, and admitted that the agency could not find a way to offer a product-based exemption without risking consumer harm owing to bad actors reconfiguring their business model to achieve a CROA exemption.

PERC has explored this topic in some detail, including a comprehensive survey of lenders, GSEs, credit bureaus, and other industry stakeholders completed several years ago. These are our key findings: First, we found a marketplace characterized by a high degree of path-dependency and lock-in. Lenders reported high transactions costs associated with swapping out old solutions for new and even better performing solutions. This was not just the case for challengers competing with a dominant incumbent, but even for the dominant incumbent trying to sell customers new versions of their own solution. Second, we found evidence that residential mortgage lenders placed tremendous weight on guidelines issued by the GSEs. We did not specifically explore the question as to whether the GSE guidelines create a de facto standard that distorts the market for credit risk analytics in residential mortgage lending. We would oppose any policy that amounts to picking winners owing to the harmful effects this could have on consumers and markets by foreclosing competition. We would encourage Congress to ensure that there is a level playing field in the provision of credit scores for the residential mortgage lending market by passing the Credit Score Competition Act.

In conclusion, the three bills upon which I focused in this testimony are all designed to improve our national credit information sharing network in ways that are beneficial to our entire society and economy. While some segments may benefit more than others from these proposed changes—most immediately and dramatically would be the 53 million Credit Invisibles comprised overwhelmingly of lower-income, younger, and elderly Americans, immigrants and members of minority communities—the bills are inspired by universal themes such as fairness, inclusion, growth and development, competition. Though the issues are seemingly complex, as I alluded to earlier, the solutions are as simple as "ABC"—in this case, Acts By Congress.

Thank you for the opportunity to testify.

Dr. Michael A. Turner

Appendix A: PERC/CFSI/CFED List of US Organizations Supporting Use of Fully Reported Non-Financial Payment Data in Credit Underwriting and Inclusion of Such Data in Consumer Credit Reports

180 Degrees, Minneapolis, Minnesota
Asian Economic Development Association, Minnesota
Association for Enterprise Opportunity
The Abilities Fund, Florida
Ashoka: Innovators for the Public, Washington DC
Asset Builders of America, Inc., Wisconsin
Asset Building Policy Project (The Michigan Asset Building Coalition), Michigan
BMO Harris Bank, Illinois
Bread for the World, Washington DC
Community and Shelter Assistance Corp (CASA) of Oregon, Oregon
Capital Area Asset Builders, Washington, DC
Center for Financial Services Innovation (CFSI), Illinois
Collaborative Support/Community Enterprises, New Jersey
Colorado Community Action Association, Colorado
Community Economic Development Association of Michigan (CEDAM), Michigan
Community Financial Resources, California
Connecticut Voices for Children, Connecticut
Corporation for Enterprise Development (CFED), Washington DC
Council on Crime and Justice, Minneapolis, Minnesota
Credit Builders Alliance, Washington, DC
CRIF Lending Solutions, Atlanta, Georgia
Doorways to Dreams (D2D) Fund, Massachusetts
Dun & Bradstreet Pty Ltd.
EARN, California
ECDC, Virginia
Experian, California
Financial Services Innovation Coalition Consortium, Washington, D.C.
The Family Conservancy, Kansas
Good Work Network, Louisiana
Heartland Alliance for Human Needs & Human Rights, Illinois
Hope Communities, Inc., Colorado
IDA and Asset Building Collaborative of NC, North Carolina
Insight Center for Community Economic Development, California
Jewish Community Action, Minnesota
Kansas Action for Children, Kansas
Minnesota Credit Union Association
Michigan IDA Partnership / OLHSA, Michigan
Micro Mite, Florida
The Midas Collaborative, Massachusetts

National Association of Realtors
National Black Caucus of State Legislators
National Bureau of Commercial Information, Oman
National Coalition for Asian Pacific American Community Development
National Consumer Reporting Association
Neighborhood Partnerships, Oregon
Asset Building Program of the New America Foundation, Washington DC
NewWell Fund, Virginia
Okanogan County Community Action Council, Washington
OnTrack Financial Education & Counseling, North Carolina
Opportunity Finance Network, Pennsylvania
PKU-ACOM Financial Information Research Center, China
Policy and Economic Research Council (PERC), North Carolina
PolicyLink
Prosper, California
RAISE Kentucky, Kentucky
RAISE Texas, Texas
Rural Dynamics Inc., Montana
Sunrise Banks
SVT Group, California
TransUnion LLC, Illinois
United Way of Forsyth County, North Carolina
U.S. Bancorp
Washington Asset Building Coalition
The Women's Center, Washington DC

Appendix B: National Association of Realtor's List of Organizations Supporting Use of Fully Reported Non-Financial Payment Data in Credit Underwriting and Inclusion of Such Data in Consumer Credit Reports

H.R. 4172, the "Credit Access and Inclusion Act of 2015" (Reps. Ellison (D-MN) and Fitzpatrick (R-PA)) More than 40 million "thin file" Americans have trouble accessing affordable credit. We are pleased that H.R. 4172 will help these individuals achieve the American Dream by amending the Federal Fair Credit Reporting Act to allow providers like gas, electric and telecommunication companies to report consumers' payment histories to credit reporting agencies. As a result, low- and moderate-income individuals would be able to access affordable and responsible financial products and services to build wealth.

H.R. 4211, the "Credit Score Competition Act of 2015" (Reps. Royce (R-CA) and Sewell (D-AL)) Currently, Fannie Mae and Freddie Mac require mortgage lenders to use an older scoring model in their automated underwriting systems, and/or in their pricing and product risk overlays (such as Loan Level Price Adjustment grids), that does not reflect more recent credit performance data. In addition, the scoring model currently in use doesn't take into account factors such as whether borrowers have paid their rent on time, something that some newer scoring models do. As a result, the GSEs are relying on models based on credit performance data from 1995 to 2000 that, by most estimates, unnecessarily excludes many qualified borrowers. Furthermore, more accurate credit scores may improve pricing for some borrowers.

This legislation would help many Americans, especially minorities and potential first-time homebuyers, achieve homeownership by instructing Fannie Mae and Freddie Mac to update their requirements so that lenders might be able to use both alternative models from new providers, as well as updated models from the existing provider, provided the models are empirically derived and both demonstrably and statistically sound.

The continued reliance on an older credit score model by Fannie Mae and Freddie Mac raises the potential that the model's predictability could be diminished over time, presenting unnecessary risks the to the GSEs and to the housing market. Using newer credit score models, and models from new providers, would provide for greater predictability and create needed competition in the market, thereby reducing credit risk for Fannie Mae and Freddie Mac.

H.R. 4211 provides a solid framework for updating and expanding credit scoring models in the mortgage market to ensure they reflect the most recent payment histories and widest array of data elements available. As the bill moves forward, it is important to ensure that any transition to newer models follows the establishment of operational standards to mitigate adverse selection and prevent model arbitrage (e.g., race to the bottom).

America's Homeowner Alliance
American Escrow Association
Asian Real Estate Association of America
Habitat for Humanity International
Leading Builders of America
Mortgage Bankers Association
National Association of Hispanic Real Estate Professionals
National Association of Home Builders
National Association of Real Estate Brokers
National Association of REALTORS®
National Urban League
Real Estate Valuation Advocacy Association
RESPRO
The Realty Alliance

Appendix C: List of Organizations Supporting Coalition to Improve Credit Education (CICE)

Center for Financial Services Innovation (CFSI) CFSI's mission is to improve the financial health of Americans, especially the underserved, by shaping a robust and innovative financial services marketplace with increased access to higher quality products and practices.
U.S. Black Chambers, Inc. (USBC) USBC provides committed, visionary leadership and advocacy in the realization of economic empowerment. Through the creation of resources and initiatives, we support African American Chambers of Commerce and business organizations in their work of developing and growing Black enterprises.
National Bankers Association The National Bankers Association, formed in 1927, is a vital trade organization for minority and women-owned financial institutions.
National Hispanic Caucus of State Legislators (NHCSL) The NHCSL is the preeminent organization serving and representing the interests of Hispanic state legislators from all states, commonwealths, and territories of the United States.
National Black Caucus of State Legislators (NBCSL) The primary mission of NBCSL is to develop, conduct and promote educational, research and training programs designed to enhance the effectiveness of its members, as they consider legislation and issues of public policy which impact, either directly or indirectly upon "the general welfare" of African American constituents within their respective jurisdictions.
Single Parent Alliance and Resource Center (SPARC) SPARC works to empower and equip single parents with the necessary tools, resources and support to enable them to create a healthy home environment and nurture their children into a productive and successful adulthood.
National Baptist Convention of America International, Inc. (NBCA) NBCA seeks to positively impact and influence the spiritual, educational, social, and economic conditions of all humankind.
HomeFree-USA HomeFree-USA is a leading HUD-approved homeownership development, foreclosure intervention and financial coaching organization.
Money Matters Financial Program – Rainbow PUSH
Economic Empowerment Initiative, Inc. Since 2001, the Economic Empowerment Initiative has provided financial literacy courses to college students, high school programs, community based groups, religious organizations, and companies in an effort to create smarter consumer and producers for stronger economies. Florida Prosperity Partnership
Society for Financial Education and Professional Development The primary mission of this non-profit organization is to enhance the level of financial and economic literacy of individuals and households in the United States and promote professional development at the initial stage of career development and mid-level management.
eCredable Helping consumers create a credit report and credit rating based on bills that aren't typically reported to the national credit bureaus.
Credit Builders Alliance The mission of the Credit Builders Alliance is to help organizations move people from poverty to prosperity through credit building.
Florida Prosperity Partnership The Florida Prosperity Partnership exists to promote financial stability and economic prosperity for all Floridians.
Policy and Economic Research Council (PERC) PERC's vision is to drive financial inclusion by using innovative information solutions. Using original research, PERC develops information solutions that serve unmet needs in the market.
Concerned Black Clergy of Meropolitan Atlanta, Inc. (CBC) CBC's mission is to provide leadership, advocacy and service to the homeless, helpless and hopeless in our community.

Naledge in Action (NIA) NIA is a Georgia nonprofit talent solution company that cultivates Top Talent leaders from the inside-out.
Urban Asset Builders, Inc. Urban Asset Builders was created to help improve the financial health of high potential individuals and aspiring entrepreneurs, and empower them to build economic stability for themselves and their families; so they may contribute to the economic stability of our communities.
Credit Abuse Resistance Education
Operation HOPE Operation HOPE is a membership organization focused on empowering underserved communities.
U.S. Hispanic Chamber of Commerce (USHCC) USHCC works to foster Hispanic economic development and to create sustainable prosperity for the benefit of American society.
Delaware Financial Literacy Institute (DFLI) The DFLI is a nonprofit organization whose mission is to help individuals, especially those of low to moderate income, become equipped with the tools to get their financial lives in order so that they can become self-sufficient and enjoy financial well-being over time.