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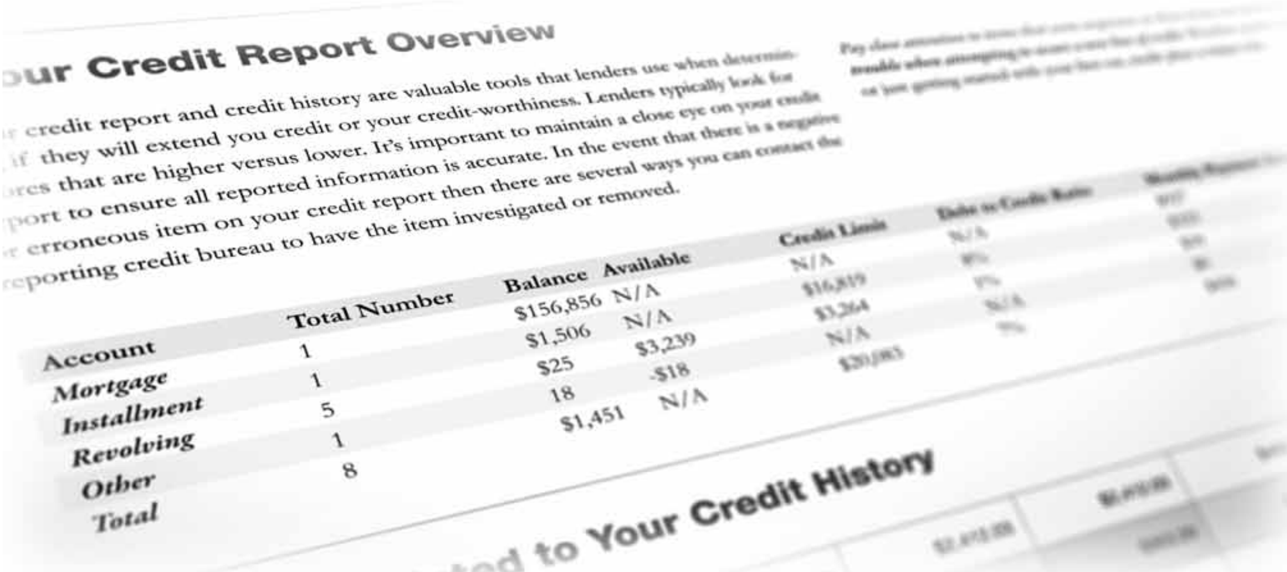

Alternative Credit Data

To Report or Not to Report, That Is the Question

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A 2006 research paper, "Give Credit Where Credit Is Due: Increasing Access to Affordable Mainstream Credit Using Alternative Data," discussed the benefits of including alternative data in credit reports.[1] As defined in the paper, alternative data include payments for energy utilities (gas, electric, heating oil, water) and telecommunications.[2] The paper was based on the first-ever large-scale study to examine the effects of alternative data on credit access. The authors of the study, conducted by the Policy and Economic Research Council, argued that including both on-time and delinquent payments, or full reporting of alternative data to credit-reporting agencies, would decrease the number of no-file or thin-file consumers.[3] As a result, more individuals would gain access to mainstream credit, and the number of consumers who can be scored would increase.[4] The study created a deep divide among advocates and organizations that work on behalf of low-income people as to the impact such reporting would have. Here we explain that this divide is unlikely to be resolved until more data on the effects of alternative data reporting are available.

There are essentially two arguments with respect to reporting alternative data. Proponents suggest that reporting alternative data will allow those currently without credit scores to begin to build scores through alternative data and become able to access the mainstream credit system. Opponents assert that the credit system has consistently disenfranchised and denied low-income families access to the financial mainstream and that including alternative data into the current system will not remedy these existing structural deficiencies. The fundamental question, then, is which will benefit low-income people first and most: increasing the amount of data reported into the current credit system, or overhauling the current credit system in order to make it more transparent and accessible for those left out of the credit mainstream?

[1] Michael A. Turner et al., [Policy] and Economic Research Council & Brookings Institution Urban Markets Initiative, Give Credit Where Credit Is Due: Increasing Access to Affordable Mainstream Credit Using Alternative Data (2006), http://bit.ly/df8Ua5.

[2] *Id.* at 9.

[3] *Id.* at 12.

[4] *Id.* at 36.

Asset Building and the Role of Credit

Over the past two decades there has been a historic shift in the way poverty is defined and addressed. In the 1980s the term "asset poor" began to replace "income poor" to describe acutely the relative ways that poverty exists throughout the country.[5] Asset poverty rejects the stagnant and outdated federal income poverty threshold, which focuses on a household's current income level and instead measures a family's total wealth and its ability to survive for three months should all outside sources of income disappear.[6]

More than one out of every five U.S. households and approximately one in four woman-headed households are asset poor.[7] Asset inequality is even more pronounced when race is taken into account. Thirty-seven percent of nonwhite households are asset poor in the United States.[8] In order to ensure that families have adequate financial reserves to weather a financial crisis, build economic stability, and shield a household from poverty more asset-building opportunities are needed.

Establishing a credit score is one form of asset building. For good or ill, credit is a fundamental part of our country's economic DNA. A good credit score enables an individual to secure a loan for a home, school, or small business, in addition to accessing funds and capital.

Approximately thirty-five million to fifty-four million Americans have either no credit score or a thin-file credit score, meaning that they have fewer than three sources of payment information on their credit history.[9] Without a credit score, consumers are often excluded from the financial mainstream and relegated to finding other ways of accessing credit (such as borrowing from family or friends, or paying usuriously high interest rates to secure loans from unregulated payday lenders).[10] Low-income consumers, in particular, are less likely to have the sources of traditional credit that are reported to credit-reporting agencies.[11] This gives them low or no scores. If access to credit is a fundamental way that families move into the financial mainstream, and low-income individuals are less likely to have these sources of credit, then changes to the credit industry are necessary.

The Current Credit-Reporting Industry

To navigate our current credit system, understanding its terms and players is important. The credit system is a mechanism for extending a service of loaning money with the expectation of repayment.[12] In other words, an individual's previous credit history is utilized to assess risk and to determine whether to provide the service of lending and what to charge for the service if extended.[13]

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[5]Robert Haveman & Edward Wolff, *The Concept and Measurement of Asset Poverty: Levels, Trends and Composition for the U.S., 1983–2001*, 2 Journal of Economic Inequality 145–69 (2005); see also Robert Haverman & Edward N. Wolff, Institute for Research on Poverty, Who Are the Asset Poor: Levels, Trends, and Composition, 1983–1998 (April 2001), http://bit.ly/aS1DW0.

[6]Asena Caner & Edward N. Wolff, Levy Economics Institute of Bard College, Asset Poverty in the United States: Its Persistence in an Expansionary Economy 29 (2004), http://bit.ly/levy_instit.

[7]CFED [(Corporation for Enterprise Development)], Asset Poverty by Gender, 2009–2010 Assets and Opportunity Scorecard (2009), http://bit.ly/cfed_scorecard_gender.

[8]CFED, Asset Poverty by Race, 2009–2010 Assets and Opportunity Scorecard (2009), http://bit.ly/cfed_scorecard_race.

[9]Turner et al., *supra* note 1, at 2, 8.

[10]Michael A. Turner et al., Policy and Economic Research Council, New to Credit from Alternative Data 7 (March 2009), http://bit.ly/perc_newtocredit.

[11]Chi Chi Wu & Birny Birnbaum, National Consumer Law Center & Center for Economic Justice, Credit Scoring and Insurance: Costing Consumers Billions and Perpetuating the Economic Racial Divide 13 (June 2007), http://bit.ly/nclc_credit_scoring.

[12]Turner et al., *supra* note 10, at 7.

[13]John Howat, National Consumer Law Center, Full Utility Credit Reporting: Risks to Low Income Consumers 1 (Dec. 2009), http://bit.ly/full_utility.

The terms "credit report" and "credit score" often are misunderstood and used interchangeably. A credit report lists basic personal information about a consumer and includes detailed information about the number and type of accounts owned by the consumer, the status of each account, including bill payment history and the amount owed on such accounts, how long the consumer has held each account, any outstanding debts and unpaid bills sent to collection agencies and public records including court judgments and foreclosures.[14] A credit score, by contrast, is a number generated by a computer program based on information from a person's credit history, which is then compiled into a report.[15] This number, designed and calculated by FICO (Fair Issac Company), ranks consumers on a 300–850 point scale and is used by lenders in determining credit risk.[16] Scores fluctuate based on the positive and negative ratings of items listed in a credit report, assigned by the company's computer program algorithms. According to FICO, a good score is 680 and above.[17]

The information necessary for producing credit scores and reports is obtained through data furnishers, such as credit card companies, mortgage lenders, and automobile lenders. Data furnishers supply their customers' payment history information to credit-reporting agencies, which organize and file credit reports. Typically the information about payments that are thirty to ninety days late is sold by the data furnisher to a collection agency in an attempt to recoup payment. This information is then reported to credit-reporting agencies and reflects negatively on a credit report and is factored into the overall credit score rating. Equifax, Experian, and TransUnion, the three major credit-reporting agencies, use these credit reports to create credit scores.[18]

Under federal law, consumers are entitled to receive a free credit report yearly from each of these credit-reporting agencies.[19] However, knowing exactly how an individual credit score is calculated remains a challenge because credit-reporting agencies consider their scoring criteria and methodology proprietary information.

Although Equifax, Experian, and TransUnion all review and rank the same information, each determines its own score for an individual. Factors considered include the number of open active lines of credit, the total amount of credit available, the total current outstanding balance, the highest credit balances or the maximum amount of credit used on each credit card, the total monthly payments and minimum payments, whether there is a mix of credit between mortgages, overdraft, credit cards and loans, the number of times an individual has been late in paying, and whether there any court judgments or felonies on their record.[20] How each of these companies ranks and weighs each factor is considered proprietary information and not publicly disclosed. As a consequence,

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[14]Wu & Birnbaum, *supra* note 11, at 2; Howat, *supra* note 13, at 2.

[15]Wu & Birnbaum, *supra* note 11, at 2.

[16]MyFICO, Credit Basics: Demystifying Credit Scoring and Credit Reports (n.d.), http://bit.ly/ch2juO.

[17]MyFICO, What Is a Good FICO Score? (updated Oct. 15, 2010), http://bit.ly/9Emexh.

[18]Credit reports can also be used by prospective employers, insurance companies, mortgage banks, car rental companies, student loan organizations and landlords (David Kover, Assisting Beneficiaries in Creating a Financial Planning Toolbox (presentation, Access Living in Chicago, June 15, 2010) (on file with Karen K. Harris)).

[19]15 U.S.C. § 1681j(a). Also, the Credit Card Act of 2009 required the Federal Trade Commission to issue new rules to prevent deceptive marketing of "free credit reports" (15 U.S.C. § 1601). Specifically these rules require that certain advertisements for "free credit reports" have prominent disclosures designed to prevent consumers from confusing these "free" offers with the federally mandated free annual credit reports available through the "centralized source," which is AnnualCreditReport.com. The rules also restrict practices that might confuse or mislead consumers as they try to get their federally mandated free annual credit reports. These rules became effective April 2, 2010 (75 Fed. Reg. 9726 (March 3, 2010) (codified at 16 C.F.R. pt. 610)).

[20]Kover, *supra* note 18.

consumers often do not know what information is reported or how it is evaluated. Thus the most important information for their financial future, their credit scores, remains a mystery.

Credit card companies, mortgage lenders, and car loan underwriters are the traditional furnishers of credit data. However, this is not the only type of credit information that may be reported. Perhaps as important are utility payments. Although seriously delinquent utility bills are routinely reported, the reporting of on-time payments is less common.[21] We discuss next the types of data that can be reported and the extent of such reporting.

Full and Alternative Data Reporting

Full reporting means that individuals are given positive credit for timely payments as well as the negative credit that they traditionally receive for missed or delinquent payments.[22] The current debate focuses on the impact of full reporting of alternative data of utility and telecommunication payments. Specifically the question is, Should such additional credit information also be included in credit reports and scores?

The Policy and Economic Research Council argues that including full reporting of alternative data is the answer to America's credit "catch-22," that one must have credit to get credit.[23] As mentioned previously, most utility and telecommunication companies already report late payments to collection agencies, yet they are far less likely to report timely payments.[24] The council examined eight million TransUnion credit reports, with and without utility and telecommunications data, and analyzed this information under different scoring mechanisms. According to the council, full reporting of utility or telecommunications data does not change a consumer's existing credit score positively or negatively.[25] Instead the primary effect of such reporting is an increase in the percentage of consumers who can be scored.[26]

The Policy and Economic Research Council admits that due to its study's sample size the study is not predictive of the results of adopting a full alternative data reporting system.[27] Nevertheless, the council argues that such a system would have a number of benefits. First, full reporting would reward Americans for making timely payments and, by giving people credit for on-time payments, as opposed to penalizing them only for late payments, would change payment behavior.[28] Second, increased information would enable more people to be scored, thereby increasing access to the financial mainstream and reducing reliance on high-cost credit such as payday loans, pawn shops, and predatory lenders.[29] As borrowers' options for and costs of credit expand, borrowers will be able to build assets and create wealth.[30]

[21]Howat, *supra* note 13, at 2; Turner et al., *supra* note 1, at 12. Utility reporting is inconsistent due, among other reasons, to state utility regulations. Most states' utility assistance programs prevent utility companies from disconnecting service to vulnerable populations for lack of payment (e.g., LIHEAP (Low-Income Home Energy Assistance Program)). In many states, to be eligible for such assistance an individual must submit proof of financial hardship and of late payment (Howat, *supra* note 13, at 7).

[22]Turner et al., *supra* note 1, at 12.

[23]Turner et al., *supra* note 10, at 6.

[24]Turner et al., *supra* note 1, at 12.

[25]*Id.* at 17.

[26]*Id.* at 21.

[27]*Id.* at 15.

[28]Policy and Economic Research Council, Report Summary: Fully Reporting Nonfinancial Payment Data: Impact on Customer Payment Behavior and Furnisher Costs and Benefits (2009), http://bit.ly/a5KboH.

[29]Policy and Economic Research Council, NCLC supports the "3Ps" of Lending: Pawn Shops, Predatory Lenders, and Pay Day Lenders (2009), http://bit.ly/9reMNx.

[30]Turner et al., *supra* note 1, at 7

By contrast, the National Consumer Law Center argues that, instead of simply adding more data to an already broken credit-reporting system, the system itself must be reformed. Specifically the center argues that the current credit-reporting system has significant problems such as access barriers for low-income consumers, systemic biases, and a lack of mechanisms for ensuring accurate information and that these issues must be addressed first.[31] Numerous studies conclude that the credit scoring system contains biases that overwhelmingly and disproportionately have an impact on minority groups.[32] The center also points out the difficulties that consumers experience when trying to dispute errors in their credit reports.[33] And the center notes that prospective employers have begun using credit reports as part of employee background checks.[34] Yet credit reports were not designed to be used for hiring purposes, nor do they predict job performance.[35] This continued practice could, according to the center and others, result in a "luckless" class, where only workers with good credit get the best jobs, best access to credit, and best insurance rates, thereby further widening the gap between the haves and have-nots.[36]

The National Consumer Law Center's major concern with full reporting of alternative data, however, is that it will jeopardize low-income consumers' access to federal aid programs and state protections against utility shutoffs.[37] Millions of utility accounts across the country are in arrears by thirty days or more, but most accounts are not reported to credit agencies unless they are seriously delinquent and referred to collection agencies.[38] Most states provide utility assistance for their residents, but in order to be eligible for such programs a household generally must be in arrears anywhere from thirty to ninety days.[39] Since families know that they can receive utility assistance, they elect not to pay their utility bills and use the money to pay for prescription medicine, food, or other necessities they would not be able to afford.[40] Full credit reporting would mean that such late utility payments would be reported. Families would be forced either to forgo utility assistance in order to protect their credit score or to obtain assistance and ruin their credit.[41]

In sum, advocates on both sides of this debate seem to agree that the current credit system is seriously flawed. They agree that a significant number of individuals have either no credit score or too thin a credit file to be "scorable," yet, they are divided on how to correct this problem. The Policy and Economic Re-

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[31]Wu & Birnbaum, *supra* note 11.

[32]*Id.* at 4, 5, 12. One such bias is that automobile and home insurance companies claim a strong correlation between a low credit score and high risk, even though no logical causal relationship exists between a low credit score and whether an individual will have an automobile or home accident.

[33]Chi Chi Wu et al., National Consumer Law Center, Automated Injustice: How a Mechanized Dispute System Frustrates Consumers Seeking to Fix Errors in their Credit Reports (Jan. 2009), http://bit.ly/aFW28E.

[34]*Use of Credit Information Beyond Lending—Issues and Reform Proposals: Hearing Before the Subcomm. on Fin. Inst. & Consumer Credit of the H. Comm. on Fin. Servs.,* 111th Cong. (2010) (statement of Chi Chi Wu, National Consumer Law Center), http://bit.ly/9ZSU8D.

[35]Wu et al., *supra* note 33, at 3.

[36]*Id.*

[37]If alternative data reporting is implemented, the possible inconsistencies state by state of reported data in pricing, use, and availability would create problems (Howat, *supra* note 13, at 7, 8).

[38]*Id.* at 2, 3.

[39]*Id.* at 3.

[40]*Id.* at 2.

[41]National Consumer Law Center, Using Nontraditional Credit Information: Boon or Bane? (June 2009), http://bit.ly/nclc_creditbane. The number of people seeking energy assistance across the country has increased. In Colorado utility assistance applications tripled in 2008, and in Alabama and Missouri police were needed to control overwhelming crowds of people seeking utility aid. Thus the impact of utility data reporting could be great (Howat, *supra* note 13, at 7).

search Council believes that an estimated fifty million people who would otherwise have credit scores are being shut out from the credit mainstream because alternative data are not being reported.[42] The National Consumer Law Center, however, believes that including alternative data in credit reports would only expand the current reporting system's negative impact on low-income families. In other words, proponents of alternative data reporting focus on bringing no-file and thin-file consumers into the financial mainstream, whereas opponents focus on those already in the credit-reporting system and the negative impact it will have on them.[43] Thus the question becomes, Is there a way to use full reporting of alternative data to increase low-cost and affordable credit opportunities while ensuring that consumers are not penalized? Although the answer has not been ascertained, such reporting is increasing.

Full and Alternative Data Credit Bureaus and Products

Smaller credit-reporting agencies such the National Credit Reporting Association, the National Consumer Telecom and Utilities Exchange, and Payment Reporting Builds Credit (PRBC) are examples of full credit-reporting bureaus.[44] The National Credit Reporting Association is a credit-reporting agency for mortgage data furnishers and has been advocating the incorporation of alternative payment history into credit reports and its inclusion in a credit score from as many furnishers as possible—landlords, creditors in furniture, appliances, home and auto repair, and hardware stores.[45] The National Consumer Telecom and Utilities Exchange, a subsidiary of Equifax, is a database of forty-eight million telecommunications and utility customer files which companies can access.[46] The exchange is updating consumer payment history to include information on whether consumers paid their telecommunications or utility bill in cash.[47] PRBC, another subsidiary of Equifax, allows individual consumers to report rental payments and other recurring bill payments through a bank directly to PRBC.[48]

A number of credit-reporting bureaus have also developed new scoring products and mechanisms which include alternative data. For instance, FICO has developed an expansion score which takes into account an individual's broader financial history. Designed for use by thin-file consumers, the expansion score is based on deposit account records, payday loan repayments, purchase payment plan performance, and other nontraditional credit data.[49] A few large lenders are cur-

[42]Turner et al., *supra* note 1, at 6.

[43]*Id.*

[44]Like the "Big 3" credit-reporting agencies, the smaller credit-reporting agencies have consistent problems with inaccuracy, transparency, and accountability. E.g., the National Consumer Telecom and Utilities Exchange has been accused of lack of transparency in disclosing how member data are evaluated, what its rejection process is, or how and from whom consumers can request copies of their reports (*What Borrowers Need to Know About Credit Scoring Models and Credit Scores: Hearing Before the Subcomm. on Fin. Inst. & Consumer Credit of the H. Comm. on Fin. Servs.*, 111th Cong. 4 (2010) (statement of Evan Hendricks, Editor/Publisher, *Privacy Times*), http://bit.ly/hearing_hendricks.

[45]Terry Clemans, Executive Director, National Credit Reporting Association, Perspective of the National Credit Reporting Association Incorporated, Shriver Center Webinar, Credit Scoring and the Unscored: Alternative Data Reporting (May 27, 2010) (Power Point presentation), http://bit.ly/shriver_webinar.

[46]E-mail from Alan Moore, Executive Director, National Consumer Telecom and Utilities Exchange, to Susan Ritacca, Sargent Shriver Center National Center on Poverty Law (May 25, 2010) (on file with Karen K. Harris).

[47]*Id.* Cash payments can signify that a consumer does not have a checking or savings account and therefore might have low or no credit (e.g., a consumer may lack an account due to unstable income, previous problems in overdrawing an account, or mistrust of financial institutions).

[48]Information can be reported to Payment Reporting Builds Credit (PRBC) in three ways: electronically through a bill-payment service associated with a bank; manually on the PRBC website, provided the information has a paper trail that can be subject to third-party verification; and by bill collectors or service providers reporting the data to PRBC through a credit bureau. Consumers who take part will be able, when applying for a loan, to ask mortgage lenders, automobile lenders, and insurance companies to take bill payment scores into consideration. Furnishers such as landlords may also choose to report the data to PRBC (LendingTree, New Credit Scores (Dec. 31, 2007), http://bit.ly/lt_score).

[49]*Id.*

rently testing the FICO expansion score, and it is expected to become a standard tool that lenders use to review loan applicants who lack a standard credit history.[50]

Restructuring the Credit-Reporting Industry

Whether one is trying to implement full alternative data reporting, or simply trying to improve the current system, legislative changes will be necessary.

First, states vary widely on their low-income home energy assistance program (LIHEAP) regulations. One example is the period that must expire from when a bill is rendered to a customer to when it is considered past due. In Alabama, for instance, this time frame is ten days.[51] In Alaska it is forty days.[52] Most LIHEAP programs require consumers to receive a shutoff notice before they are eligible for assistance.[53] If full data reporting were allowed, consumers would suffer from a negative report in order to be eligible for LIHEAP to keep their homes heated.

Second, utility companies' ability to report varies widely from state to state. Some states, such as Illinois, do not have any laws preventing a utility company from reporting to a credit bureau. Thus both Peoples Gas and Nicor Gas Company in Illinois report both on-time and late-payment data to credit-reporting agencies.[54] California, New Jersey, Ohio, and Texas, however, preclude utility companies from transferring customer payment data to third parties.[55] Then there are also states without any laws making it unclear whether such reporting is permissible.[56] Therefore state regulatory commissions may be unwilling to grant permission to report without clearer directions from state lawmakers.[57]

The Policy and Economic Research Council, CFED (Corporation for Enterprise Development), and the Center for Financial Services Industry, among others, have suggested that the federal Fair Credit Reporting Act be amended to permit energy utility and telecommunications firms to choose voluntarily to report positive and negative payment data to national credit bureaus for inclusion in the Act's regulated databases.[58] The Act was designed to ensure accuracy and confidentiality in credit reports and give consumers the right to dispute erroneous or derogatory information contained in a report.[59] Amendments to the Act made in 1996 addressed consumer privacy protections and improving accuracy and fairness of reports and included language to bolster the enforcement of regulatory agencies.[60]

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[50]*Id.*

[51]Ala. Pub. Serv. Comm'n Gen. Rule 12.

[52]Alaska Admin. Code tit. 3, § 52.45 (1987).

[53]National Consumer Law Center, *supra* note 41.

[54]According to the Community and Economic Development Association, which provides energy assistance programs for low-income families, the impact of full reporting needs to be more widely studied before legislation is introduced to change utility laws (Jennifer Smith, Helping People Change Lives, Shriver Center Webinar on Credit Scoring and the Unscored: Alternative Data Reporting (May 27, 2010), http://bit.ly/shriver_webinar (PowerPoint presentation slide 7)).

[55]CFED, PERC: Alternative Data Reporting: Frequently Asked Questions 2010 (on file with Karen K. Harris)

[56]*Id.*

[57]*Id.*

[58]Fair Credit Reporting Act, 15 U.S.C. §§ 1681 *et seq.*; PERC et al., Alternative Data Initiative (n.d.), http://perc.net/content; CFED & PERC, Market Innovation to Improve Credit Access: Enact Legislation to Encourage Utility Payment Reporting to Credit Bureaus (n.d.), http://bit.ly/cfed_mkt_innova.

[59]Money Management International, Consumer Credit Protection Laws You Need to Know (2010), http://bit.ly/mmi_impt_laws.

[60]15 U.S.C. §§ 1681 *et seq.* (as amended by the Consumer Credit Reporting Reform Act of 1996, Pub. L. No. 104-208 (Omnibus Consolidated Appropriations Act for Fiscal Year 1997, tit. II, subtit. D, ch. 1)); Press Release, Federal Trade Commission, Privacy, Accuracy and Fairness of Sensitive Personal Information Enhanced for Consumers Under Amended Credit Reporting Statute (Sept. 29, 1997), http://bit.ly/ftc_card_rpt.

Unfortunately consumer groups generally agree that these protections were an exchange for federal preemption of various state protections.[61]

The Policy and Economic Research Council and others are suggesting that the Fair Credit Reporting Act be amended to say that no state may impose either affirmative reporting requirements or prohibitions on utility companies regarding consumer utility account information. The only information about a consumer's utility account that would be allowed to be reported under this amendment would be information that relates to payment for services or other terms regarding the provision of the services. This would contain information regarding any deposits, discounts, or other conditions for interrupting or terminating service. The Policy and Economic Research Council and its supporters on this issue suggest that "public utility services" would mean any services provided to the public through pipe, wire, or other connected facilities, or radio, electronic, or similar transmission if the charges for service, delayed payment, and any discount for prompt payment are filed with or regulated by a government unit. Thus utility companies would be free to decide whether to report or not to report at their discretion.

However, this proposal still does not bring conformity and clarity to alternative and full data reporting. It merely permits utility companies to use their discretion on whether to implement such reporting. Yet is granting such discretionary power to utility companies on the important issue of credit reporting and, by extension, scoring in the best interest of low-income families? Instead public policy on access to credit should be defined by the legislature. Until there is more consensus on the effect that alternative and full data reporting will have on low-income families, making such a determination does not seem prudent.

In the event that public policy demands immediate action to provide the estimated fifty million thin-file and no-file consumers with access to the credit mainstream, at a minimum any utility reporting that is permitted must address LIHEAP recipients. An exemption from reporting should be made for late utility payments due to a consumer's participation in a LIHEAP program. This caveat must be included to avoid punishing families that need utility assistance.

As an alternative to or, better still, in combination with access to the credit mainstream, changes in reporting practices by the current credit system should be reformed in general. In particular, they should be made more transparent, accurate, fair, and unbiased. Disclosure of scoring methodology will give individuals the information that they need in order to make sound financial choices. Common inaccuracies (such as mixed files, identity theft and erroneous furnishing by creditors and debt collectors), which plague the current credit-reporting industry, must be resolved.[62] Credit-reporting agencies should be required to conduct their own accuracy studies, and the requirement that the Fair Trade Commission conduct accuracy studies should be more heavily enforced.[63] Dispute resolution mechanisms need to be improved. For example, the burden of proof as to the accuracy of information should be changed from

[61]The Fair Credit Reporting Act as originally enacted provided minimum federal protections, which states could exceed. The 1996 amendments subsequently preempted states from enacting stronger laws in seven areas (i.e., prescreening of consumer reports; time frames for handling accuracy disputes; duties of persons who take adverse actions (notices and disclosures); duties of persons who use consumer reports in connection with credit or insurance transactions not initiated by a consumer; information contained in consumer reports; duties of furnishers of information to consumer reporting agencies; and sharing information among affiliates). Amendments in 2003 made these preemptions permanent and added new preemptions (i.e., an obligation on businesses which grant credit or provide goods or services to identify thieves and give information to victims; consumer right to opt out of solicitations based on affiliate shared information; risk-based pricing notices; annual free credit reports (with grandfathering of existing laws); and credit-score disclosure by credit-reporting agencies and by mortgage lenders when the score is for credit-granting purposes) (15 U.S.C. §§ 1681 *et seq.* (as amended by the Fair and Accurate Credit Transaction Act of 2003, Pub. L. No. 108-159; ConsumersUnion.org, 2003 Changes to the Fair Credit Reporting Act: Important Steps Forward at a High Cost (n.d.), http://bit.ly/cu_credit).

[62]Hendricks, *supra* note 44.

[63]*Id.*; 108 U.S.C. § (2003).

consumers to data furnishers. Perhaps most important, biases that lead to the expansion of the racial wealth gap must be removed.

Low credit scores often reflect the wealth gap in America, and this wealth gap is divided along racial lines.[64] For example, auto and home insurance companies claim that there is a strong correlation between a low credit score and being high-risk.[65] Under the current credit-reporting system there is a high correlation between race and credit scoring.[66] However, there is no logical causal relationship between a low credit score and whether an individual will have an auto or home accident.[67] Assessing one's risk of an accident by one's income not only continues to exclude low-income consumers but also exacerbates the racial wealth gap. One method for correcting the inherent biases in the system would be for regulators to require the development and use of scoring models that have less discriminatory impact on minority groups.

Conclusion

There is no uniform way credit is reported; neither is there a transparent way credit is scored across the country. What is certain, however, is the impact a credit score has in our society and how credit opens doors for some, and closes doors for others.

The efforts to increase the use of alternative and full reporting (e.g., the FICO expansion score) are based on the theory that such reporting will provide millions of Americans access to the mainstream credit industry. Such access, it is assumed, will benefit them since credit scores have become a vital part of one's financial future and can affect whether individuals can obtain mainstream, nonpredatory loans or pass employer background checks. Yet this approach does not go to the inherent problems with current credit industry practices. Reporting alternative data will not result in a transparent credit-scoring system. In fact, proponents of alternative credit reporting do not say how such data should be weighted when calculating scores. Similarly proponents have not dealt with systemic biases. Thus, although more people may receive access to credit under this system, such scores may continue to be low. In any event, legislative changes in state laws prohibiting disclosure of payment information would be needed to implement full alternative data reporting. In particular, changes would be necessary on the federal level and entail standardizing state laws regarding LIHEAP and other public benefit programs. Such reforms would need to be closely tailored to ensure that they are coordinated and result in a system that does not require low-income consumers to choose between improving their credit scores and forgoing needed assistance. Until more research and practical experience is available, determining whether such reporting will benefit or harm low-income families is difficult. Whether or not one is for or against full and alternative data reporting, clearly millions of individuals outside the financial credit mainstream need access to such credit. How this will be done is still up for debate.

[64]Wu & Birnbaum, *supra* note 11, at 2.

[65]*Id.* at 4.

[66]*Id.* at 14.

[67]*Id.* at 5.

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