

June 18, 2025

Re: S.1465, Credit Access and Inclusion Act (oppose)

Dear Senator:

The undersigned 70 consumer, housing, civil rights, utility rights, and advocacy groups write to you to express opposition to S.1465, the Credit Access and Inclusion Act. This legislation, if enacted, would harm consumers by:

- reducing consumers' control over their own data by preempting state and federal privacy protections;
- overriding state law protections for renters from tenant screening abuses;
- harming millions of consumers by lowering their credit scores or making it much harder to obtain rental housing, with a disproportionate impact on Black consumers; and
- conflicting with long-standing state utility regulatory consumer protections

Put simply, the Credit Access and Inclusion Act is almost exclusively a preemption bill, since the current Fair Credit Reporting Act (FCRA) does not include any restrictions against the reporting of either utility or rental payment data. The intended effect of the bill is to override state and other federal laws that protect the privacy and economic interests of consumers, especially those struggling to afford high utility bills or obtain affordable rental housing.

The Credit Access and Inclusion Act is All About Preemption

The Credit Access and Inclusion Act would reduce consumers' control over their own information by nullifying state and federal privacy protections for utility customers and tenants. The bill amends Section 623 of the Fair Credit Reporting Act to permit utilities, landlords, debt collectors, court systems, and others to supply utility or rental payment information to a credit bureau or other consumer reporting agency (such as a tenant screening company) "notwithstanding any other provision of law." This would include both state laws and other federal consumer protection laws.

Thus, S.1465 would preempt state laws that require consumer consent before a utility company can share information about that consumer's payment information to a credit bureau or other consumer reporting agency. This includes state privacy protections in California,¹ New Jersey,² Washington State,³ Wisconsin,⁴ and potentially other state laws.⁵

S.1465 would also prevent states from regulating landlords, debt collectors, court systems, and others when they report payment information (including potentially evictions based on nonpayment) about a

¹ Cal. Pub. Util. Code § 2891 (prohibiting telephone company from sharing customer's financial information without customer's consent).

² N.J. Stat. Ann. § 48:3-85(b)(1) (prohibiting electric or gas utility disclosure, sale or transfer of customer's proprietary information, including, but not limited to, customer's name, address, telephone number, energy usage, and electric power payment history, to a third party without the consent of the customer).

³ Rev. Code Wash. § 19.29A.100 (privacy protections for electric utility customers).

⁴ Wis. Stat. § 196.137 (prohibiting municipal utilities from releasing "customer information" without the customer's consent except in specific situations).

⁵ See generally, State & Local Energy Efficiency Action Network, A Regulator's Privacy Guide to Third-Party Data Access for Energy Efficiency, December 2012, p.7 (Table 2), available at https://www4.eere.energy.gov/seeaction/system/files/documents/cib_regulator_privacy_guide_0.pdf.

tenant to credit bureaus or tenant screening agencies. Thus, it could override state laws that prohibit court systems from sharing sealed or expunged eviction records based on nonpayment of rent to tenant screening companies.⁶ It could ironically even preempt state laws adopted to require landlords to offer the option of reporting positive-only rental payment information.⁷ States are traditionally the entities that regulate the landlord-tenant relationship and the consequences from nonpayment of rent. States have developed laws to seal and expunge eviction records through years of legislative debate and experimentation. These laws have proven to be more just and rational for renters while not overburdening court systems or consumer reporting agencies. The Credit Access and Inclusion Act infringes on the states' historic powers in this area.

S.1465 would also override any current protections for HUD-subsidized tenants, such as the Privacy Act which we understand has been applied to Public Housing Authorities (PHAs). While this bill is touted as enabling consumers to build a credit record with positive information, it would also allow PHAs to report negative information without these current protections.⁸

Harmful Impact on Consumers

Proponents claim that monthly reporting of utility and rental payments will help improve credit scores of millions of consumers who lack any credit history or whose records are too scant or “thin” to generate a credit score. But such reporting could also have a harmful impact on many utility customers and tenants, particularly financially struggling families and Black consumers.

Negative rental payment information on a credit report can be devastating for tenants, because as many as 90% of landlords consider credit information either independently or bundled in specialized tenant screening reports.⁹ Many landlords will not rent to a consumer with any record of a late rent payment, or will charge them a prohibitively high security deposit, risking locking families out of the housing market.¹⁰ Further, the threat of negative reporting can keep tenants from exercising their legal rights to withhold rent payments because of poor conditions in a unit, such as lack of heat.¹¹

⁶ See, e.g., Ariz. Rev. Stat. Ann. § 33-1379(C)(3)(prohibiting courts selling or releasing sealed eviction cases “as a part of a bulk or individual records transfer to a third party”); Cal. Code of Civ. Pro. § 1161.2 (prohibiting clerk from sharing access to eviction actions unless the landlord prevails at a trial within 60 days of filing the complaint); Colo. Rev. Stat. § 13-40-110.5 (eviction records are suppressed and cannot be shared except for limited uses which explicitly exclude “commercial purposes”); Me. Stat. tit. 4, § 9-C (eviction records only available at a courthouse if case dismissed, resolved in favor of tenant, or judgment over three years old) Nev. Rev. Stat. § 40.2545 (sealing eviction records if case dismissed and in other circumstances), .

⁷ Cal. Civ. Code § 1954.07 (landlord shall offer the option of having the tenant’s positive rental payment information reported to at least one credit bureau).

⁸ As an example of the type of negative information, media reports indicate there are 70,000 tenants of the New York City Housing Authority who owe back rent from the COVID-19 pandemic era, in part because they were the lowest priority category of tenants for relief programs during that era. See Tatyana Turner, NYCHA Still Reeling With Rent Debts From COVID-19, City Limits, Sept. 20, 2024, <https://citylimits.org/nycha-still-reeling-with-rent-debts-from-covid-19/>.

⁹ TransUnion SmartMove, TransUnion Independent Landlord Survey Insights (Aug. 7, 2017) (85% of landlords run an eviction report on all applicants and 90% run credit and criminal background checks on all applicants). See generally, Chi Chi Wu, et al., National Consumer Law Center, Digital Denials: How Abuse, Bias, and Lack of Transparency in Tenant Screening Harm Renters, Sept. 2023, https://www.nclc.org/wp-content/uploads/2023/09/202309_Report_Digital-Denials.pdf

¹⁰ *Id.*

¹¹ For example, in New York City, Guardian Realty used rent reporting to retaliate against tenants who withheld rent because of terrible conditions in their buildings, including broken elevators, rats running through the walls, and frequent shutoffs of heat and hot water. <https://www.curbed.com/2023/11/landlords-credit-bureau-tenants-bad-credit-score.html>

The COVID-19 pandemic illustrates the risks of potential harm from rent reporting. At various times during the pandemic, between 6 million¹² and 13 million¹³ households were behind in rent but likely were able to stay in their homes due to various eviction moratoria. These households were disproportionately renters of color; for example, in September 2020, about 1 in 4 Black and Asian renters and 1 in 5 Latino renters said they were not caught up on rent, compared to 1 in 9 white renters.¹⁴ The Urban Institute has found even starker statistics, reporting that 45% of Black renters missed or were late on at least one rent payment during a one-year period beginning in July 2020.¹⁵

As for utility payments, skyrocketing energy costs have stressed the budgets of millions of households, resulting in high levels of late payments. According to data from the Census Bureau's Household Pulse Survey, nearly 1 in 4 households (23.4%) reported missing a utility bill or being unable to pay every bill in full in the past 12 months, rising to over one-third (37.4%) for households with an income under \$50,000.¹⁶

The harmful impact of late utility payments on credit scores would disproportionately affect Black and brown households, who more frequently struggle to pay utility bills.¹⁷ According to the same Household Pulse Survey, nearly one-third (31.2%) of households of color (any income) reported missing a utility bill or being unable to pay every bill in full in the past 12 months, as compared to 23.4% of households overall.¹⁸

With full-file utility credit reporting, each of these households would have had negative credit reporting information from these late payments. Thus, to the extent that utility or rent reporting creates a score for “thin file” or “no file” consumers, we fear that it will end up being a negative credit score. For low-income consumers who already have a credit score, utility or rent reporting may harm their existing credit histories.

Proponents assert that a low credit score is better than no score. In many instances, however, no credit history is better than a bad one. For employment and insurance – where a negative credit report or low score could harm job prospects or increase rates – it is often better to have no credit history. Indeed, with insurance, the absence of a credit score is treated as a “neutral.”¹⁹ A low score could also put a consumer on the radar for lead generators and predatory lenders who target high-cost credit to vulnerable

¹² Sarah Treuhaft, et al., *Rent Debt in America: Stabilizing Renters Is Key to Equitable Recovery*, National Equity Atlas, Sept. 16, 2021, <https://nationalequityatlas.org/rent-debt-in-america>.

¹³ Joseph Llobrera, et al., Center on Budget and Policy Priorities, *New Data: Millions Struggling to Eat and Pay Rent*, Sept. 23, 2020, <https://www.cbpp.org/research/poverty-and-inequality/new-data-millions-struggling-to-eat-and-pay-rent>

¹⁴ *Id.*

¹⁵ Jung Hyun Choi, et al., Urban Institute, *Reducing the Black-White Homeownership Gap through Underwriting Innovations*, at 9, Oct. 2022, <https://www.urban.org/sites/default/files/2022-10/Reducing%20the%20Black-White%20Homeownership%20Gap%20through%20Underwriting%20Innovations.pdf>.

¹⁶ National Energy Assistance Directors Association, *Percent of Households Unable to Pay Energy Bill by Survey Data*, <https://neada.org/needtoolkit/data/>,

¹⁷ Trevor Memmott, et al., *Sociodemographic disparities in energy insecurity among low-income households before and during the COVID-19 pandemic*, Nature Energy, Fed. 2021, <https://par.nsf.gov/servlets/purl/10248735> (“Black and Hispanic households are more likely to experience energy insecurity and face utility disconnection”).

¹⁸ National Energy Assistance Directors Association, *Percent of Households Unable to Pay Energy Bill by Survey Data*, <https://neada.org/needtoolkit/data/>,

¹⁹ See *Safeco Ins. Co. of Am. v. Burr*, 127 S. Ct. 2201, 2206-2207, n. 4 (2007) (noting that a number of states require the use of “neutral” credit scores for thin or no file consumers).

consumers. And it is unclear how much utility and rental payment information actually predicts a person's future performance on credit accounts, since they are very different types of obligations.

Conflict with State Utility Protections for Seniors and Others

In addition to preempting utility privacy provisions, S.1465 undermines other state utility consumer protections. The bill would establish a dangerous precedent by encroaching on long-standing state jurisdictional authority over gas and electric utilities. States appropriately retain full ratemaking and customer service authority over franchised, monopoly companies that deliver necessary services within their boundaries.

Households retaining service and paying late under terms of state-sanctioned protections will experience harm to their credit scores under terms of this bill. The National Association of State Utility Consumer Advocates has voted to oppose full file utility credit reporting²⁰ in part because it conflicts with utility consumer protections in many states. For example, in Massachusetts, for example, utilities are prohibited from terminating service in low-income households where occupants are elderly or disabled.²¹ In addition, Massachusetts utilities cannot terminate service in households in which there is an infant under twelve months of age.²² Full file utility credit reporting threatens consumers with black marks on their credit reports even when state law provides for protection against disconnection of service.

Building a Better Mousetrap

In contrast to monthly reporting to the credit bureaus, there are better, more consumer-friendly methods to capture alternative data such as utility and rent payment data. For example, consumers can opt-in to sharing their bank account transaction data to enable lenders to view and verify consistent, positive payments of regular bills such as rent and utilities. Such programs have already been developed and are in use by Fannie Mae²³ and Freddie Mac.²⁴ Bank account transaction data could prove to be a superior form of assessing credit risk than even credit bureau reports, given it provides insight into a consumer's actual money management history, is only supplied with the consumer's active permission, and is likely to be more accurate than data furnished by third parties that may or may not report data consistently or use reporting purely coercively.

²⁰ National Association of State Utility Consumer Advocates, Resolution 2010-3: Opposing "Full Credit Reporting" of Payment Histories on Residential Gas and Electric Accounts, June 15, 2010, *available at* <http://nasuca.org/opposing-full-credit-reporting-of-payment-histories-on-residential-gas-and-electric-accounts-2010-03-2/>.

²¹ 220 Code Mass. Regs. 25.05.

²² 220 Code Mass. Regs. 25.03.

²³ Press Release, Fannie Mae Introduces New Underwriting Innovation to Help More Renters Become Homeowners, August 11, 2021, <https://www.fanniemae.com/newsroom/fannie-mae-news/fannie-mae-introduces-new-underwriting-innovation-help-more-renters-become-homeowners>

²⁴ Freddie Mac, Freddie Mac Takes Further Action to Help Renters Achieve Homeownership, June 29, 2022, <https://freddiemac.gcs-web.com/news-releases/news-release-details/freddie-mac-takes-further-action-help-renters-achieve>.

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

National Organizations

National Consumer Law Center (on behalf of its low-income clients)
20/20 Vision
Accountable.US/Accountable.NOW
Americans for Financial Reform (AFR)
Center for Digital Democracy
Center for Economic Justice
Consumer Action
Consumer Federation of America
Consumer Reports
National Association of Consumer Advocates
National Association of State Utility Consumer Advocates (NASUCA)
National Consumers League
National Fair Housing Alliance
National Housing Law Project
Public Citizen, Inc.

State and Local Organizations

Center for Economic Integrity (AZ)
William E. Morris Institute for Justice (AZ)
Arkansas Community Organizations
Community Legal Services in East Palo Alto (CA)
Center for Accessible Technology (CA)
Disability Rights California
Housing and Economic Rights Advocates (CA)
The Academy of Financial Education (CA)
TURN-The Utility Reform Network (CA)
Watsonville Law Center (CA)
Western Center on Law & Poverty (CA)
Colorado Poverty Law Project
Connecticut Legal Services, Inc.
Legal Aid DC
Jacksonville Area Legal Aid (FL)
Florida Legal Services, Inc.
Georgia Watch
Legal Action Chicago
Citizens Action Coalition of IN
Legal Key Partnership for Health and Justice (MA/RI)
Coastal Enterprises, Inc. (ME)
Maine People's Alliance
Economic Action Maryland Fund
Low-Income Energy Affordability Network (LEAN)(MA)
Public Justice Center (MD)
Michigan Poverty Law Program
Housing Justice Center (MN)

(signatories continue on the following page)

Legal Aid Center of Southern Nevada
Nevada Coalition of Legal Service Providers
Legal Services of New Jersey
New Jersey Appleseed Public Interest Law Center
New Jersey Citizen Action
New Jersey Institute for Social Justice
New Economy Project (NY)
New Yorkers for Responsible Lending
Western New York Law Center, Inc.
Legal Aid Society of Southwest Ohio
Oregon Consumer Justice
Oregon Consumer League
HELP: MLP (PA)
Philadelphia Solar Energy Association
Pennsylvania Utility Law Project, on behalf of its low-income clients
Community Legal Services of Philadelphia
George Wiley Center (RI)
South Carolina Appleseed Legal Justice Center
Texas Utility Law Project
Texas Appleseed
Legal Aid Justice Center (VA)
Vermont Legal Aid
Virginia Citizens Consumer Council
Virginia Organizing
Hopelink (WA)
Byrd Barr Place (WA)
El Centro de la Raza (WA)
Washington State Community Action Partnership