Consumers Union

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Mr. Gene Erbin
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770 L St., Suite 800
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Re: Opposition of Consumers Union to Fannie Mae's conceptual proposal to require utilities to report payment history to credit bureaus

Dear Gene,

I regret to inform you that Consumers Union is strongly opposed to Fannie Mae's conceptual proposal to require California utilities to report consumer utility payment history to consumer credit reporting agencies. We are sympathetic to the goal of providing an efficient means to consider the utility payment histories of those consumers who wish to have this information examined, but we oppose reporting of all consumers' utility payment histories because this approach is highly likely to have unacceptably harmful consequences for many low and moderate income consumers. We remain willing to explore with you other means of achieving the goal of streamlining access to the utility payment information of those consumers who are in the home finance marketplace *if those consumers affirmatively request that this information be considered.*

The Problems

Here are some of the types of harm we foresee for low and moderate income consumers from mandatory reporting of consumers' utility payment histories. Some of these problems arise from the unique nature of utility payments, others from problems in the way credit reporting information is permitted to be used under existing federal law. Each type of problem is described in more detail in the sections following this list.

1. Under the practice of "universal default," a report of a late utility payment could trigger an increase in credit card interest rates from single digits to 34%.

2. Non-pay information about phone bills may be misleading due to consumer disputes about the accuracy of phone bills.

3. Additional utility reporting may spur more use by utilities of credit reports or credit scores as a barrier to access to utility services without a costly deposit.

4. A missed utility payment could have adverse economic consequences for seven years if reported to a credit reporting agency, yet protections against utility shutoff may mislead consumers into believing that there are no, or fewer, adverse consequences to late or partial payment of a utility bill than of other kinds of bills.

5. Consumers can't qualify for certain utility payment assistance programs until they face a risk of shutoff, and other energy assistance payments take long enough to arrive that any payment the aid subsidizes will be late. Credit reporting of utility payments will penalize consumers who must use this assistance.

6. Information in credit reporting files identifying consumers who are unable to pay their utility bills could be used by potential creditors to target the most financially vulnerable consumers for a range of high-cost credit products, such as payday loans or the highest-cost subprime home loans.

7. Credit scoring models that treat utility lines as a credit account could have other unexpected consequences, such as harming consumers who move frequently, thus changing the identity of their utility company frequently.

1. Universal default clauses may be triggered, harming consumers. The uses of "universal default," also called "penalty interest" clauses by credit card companies means that a late payment on any account, potentially including a reported late utility payment, triggers a very significant increase in the credit card interest rate. These clauses can change a credit card interest rate from 5% to 27% or even 34%, even when the consumer has not been late on any payments on that credit card. Unfortunately, federal regulatory interpretations suggest that a state law prohibiting this practice might not be enforceable against nationally chartered banks, which hold more than 95% of the credit card market. Thus, it would be impossible the California Legislature to ameliorate this highly adverse consequence in a state bill that required the reporting of utility payment information to credit reporting agencies.

2. Phone bill disputes may prompt payment patterns that could be misread by scoring models. Consumers have disputes about their phone bills due to billing for unauthorized services, sometimes called "cramming," and billing for services that were switched to another carrier without the consumer's authorization, called "slamming." The California Public Utility Commission has brought a number of enforcement actions on these issues. See, *e.g.*, *Calif. Probes Pac Bell DSL Cramming,* SilconValleyInternet, February 8, 2002, http://siliconvalley.internet.com/news/article.php/971571; *CPUC Opens Probe Of Qwest Communications For Alleged Slamming, Cramming*, http://www.cpuc.ca.gov/published/rulings/3698.htm. In the Qwest case, the CPUC alleged that more than 40,000 consumers complained in just a five month period, and that the "highest percentages of complaints registered against Qwest came from Spanish-speaking and Asian language speaking residential consumers." These consumers would face added burdens if they experience a ding on their credit reports because they declined to pay for phone services that they had not ordered.

3. Increased utility use of the credit reporting system may change utility behavior in ways that are likely to harm lower income consumers. Consumer advocates from across the nation who are concerned with the ability of low income consumers to access utility services without paying a prohibitive deposit report that utilities are more likely to acquire and use credit scores in making decisions about whether to require a deposit (to the extent permitted by state law) when the utility also reports to a consumer credit reporting agency. Thus, one consumer advocate told Consumers Union:

> In speaking with utility credit managers, I get the clear sense that (i) utilities don't get access to credit scores unless they share their customers' credit data with the scoring/rating agencies; and (ii) there seems to be a two-way street where the simple act of a utility reporting customer payment data to the scoring agencies leads to greater use of credit scores by the utilities, in part because they now have access to the credit scores. The increasing use of credit scoring by utilities poses real threats to low- and moderate income utility consumers.

This single issue might be addressed by statutory rules clearly prohibiting the use by utilities of credit scores and credit reporting data to determine requirements for a utility deposit or to direct collection activities. However, many of the other problems with this proposal cannot be resolved by state law.

4. Reporting would be inconsistent with longstanding consumer expectations. Because utility information has not been widely reported to, or thought of, as a source of credit information in California, a set of consumer expectations about the consequences of late payment of utility bills may have arisen that are very different from the actual consequences of a late payment combined with reporting to a credit bureau. It is highly likely that low income consumers who have not yet established credit could unwittingly harm their credit records for a long period into the future by engaging in conduct dictated by household economic necessity, such as making a partial payment of a utility bill, or waiting to pay a utility bill until receiving a notice of impending shut off. Because negative information stays in credit files for seven years, this could mean that even a temporary period of income interruption could result in the consumer facing, for the next seven years, a much higher price for credit, including credit cards, auto loans and even future home loans.

Further, legal restrictions on utility shutoffs might mislead consumers into failure to understand that a late pay will harm their credit scores. Statutory protections against disconnect in certain situations, such as medical necessity, as well as the use of public subsidy programs, might mislead a consumer into believing that a late pay, a non-pay, or participation in a public subsidy program has no long-term adverse fiscal consequence on the consumer’s credit record. A negative mark on a credit record would be a very significant adverse consequence. One consumer advocate described this issue to Consumers Union in part:

> The tricky part about reporting utility disconnects, for example, is that state law or rules may give the customer the right to avoid disconnection due to weather emergencies, medical emergency, low income, etc. and that may not be reflected with a notice that out of 12 months, the customer received 6 disconnection notices and was disconnected once in April, reconnected in May, and is late in payment. Are the payments subject to payment

arrangement even though late? Again, utility regulations contemplate that a "good" customer can pay late or avoid disconnection. All of these reasons would suggest that utility payment data is not the same as, say, credit card payment data in terms of its ability to give a "true" picture.

5. Some energy assistance aid is available only to consumers who have unpaid utility bills. One federal funded energy assistance program, the Energy Crisis Intervention Program (ECIP), is available only to consumers who face a crisis, such as a shutoff notice due to an unpaid utility bill. According to statistics compiled by the Department of Energy, 17,201 California consumers used this program in 2004. Another form of energy assistance, HEAP, takes four to six weeks for the payment to be made, according to the California Department of Community Services and Development. Frequently Asked Questions, HEAP, http://www.csd.ca.gov/faqheap.html. If a consumer seeks this assistance due to difficulties paying a utility bill, that payment will probably be late by the time the assistance is received. If the status of these accounts is reported to credit reporting agencies, the consumer will face a practical economic penalty to access energy assistance funds.

6. Reporting to credit reporting agencies those consumers with difficulty paying utility bills could create a rich new source for the targeting of financially vulnerable consumers for high cost, predatory credit products. Although having no credit record can deprive a consumer of beneficial rates, having affirmatively bad credit exposes the consumer to even greater risks, including the risk of being target for offers for very high-cost credit products. Because the use of credit files to prescreen for credit offers is governed by federal law, this risk could not be ameliorated by a state bill.

7. Credit scoring models that treat utility lines as a credit account could have other unexpected consequences, which may include harming consumers who move frequently. While Fannie Mae may intend to build credit scoring models which consider utility payments in a sophisticated way, other creditors might choose not to update their existing credit scoring models and instead might simply treat utility trade lines as if they were credit accounts. This could lead to some surprising and, for some, harmful results. For example, a credit score can be depressed by turnover in the trade lines, suggesting that the consumer has not had a long relationship with the creditor. Applying this same rule to a consumer who moves from place to place within the state for work reasons would depress that consumer’s credit score, as each relationship with a different utility would show as a short-term account.

Suggested Alternative Approach

Consumers Union is willing to work with Fannie Mae to meet its goal *without* non-consensual reporting of utility information to credit reporting agencies. Consumers Union would like to explore with Fannie Mae an alternative approach that would not have these negative consequences for those consumers who are not in the home buying market. We are willing to work with Fannie Mae to craft a measure that we could support, such as a measure that would require California utilities to provide to a consumer, on request and without a fee, a payment history going back designated period of time in a statutory format likely to be useful to Fannie Mae-approved home lenders and other lenders.

At our meeting in August 2004, we raised concerns about the potential unintended, but negative implications of Fannie Mae's proposal for those consumers who are not in the home buying and home financing market. No empirical data has been provided about the number of homebuyers who might benefit from reporting of utility payment information, as opposed to the number of non-homebuying consumers who could find that placing this information in their credit files reduces their credit scores, exposing them to higher interest rates for credit cards, car loans, and to marketing for high-cost credit products. An expert in the credit reporting system from the National Consumer Law Center said this to Consumers Union about the potential impacts of utility reporting to credit reporting agencies:

> For low income consumers, their credit files are likely to be thin for various reasons, beyond the fact that utility payments are not reflected in the files of credit reporting agencies. More importantly, I think such information will be used adversely against consumers, just as we see other credit information being used against them to charge higher interest rates, higher fees and deposits. While some (and I suspect very few) may benefit from the reporting of utility information, I think most will not.

When we met in August, Consumers Union offered to consider any data that Fannie Mae could develop with its staff or consultants that might allow a more nuanced proposal designed to achieve benefits for home buying consumers *without* harming the credit status of those lower income consumers who experience difficulty paying their utility bills. We have not yet seen any such material from Fannie Mae. We remain willing to consider it if your client develops it. However, we believe it will be much more fruitful to explore some type of a streamlined payment history process which must be released by a utility to a home lender *in response to an affirmative request from the consumer*. This information could be formatted in a way that would make it is usable by Fannie Mae-approved lenders and other home lenders. Another approach would be an opt-in approach, so that only those consumers who ask that this information be considered would have it added to their credit reporting files. We are ready to engage in that process with you.

As the new legislative session begins, I wanted to let you know of our "oppose" position, and of our willingness to work with your client to develop a different approach to access to utility payment information for those consumers who desire that this information be considered in connection with their home loan applications.

Very truly yours,

Gail Hillebrand