Congress of the United States
Washington, DC 20515

March 29, 2018

Hon. Mel Watt, Director
Federal Housing Finance Agency
Constitution Center
400 7th Street, SW
Washington, DC 20219

Dear Director Watt:

Thank you for soliciting public input on the potential impact of updating the Enterprise credit score requirement from Classic FICO to another score or scores. Whether or not you should update your use of Classic FICO to FICO 9 we leave to others better positioned to delve into the nuances of these models.

We write to express our serious reservations about the potential here to expand the data monopoly enjoyed by the three credit reporting agencies (CRAs). Simply put: ownership matters. The crux of our concern lies in the fact that the CRAs already possess a troubling monopoly over consumer credit data. They control what data gets collected and how. They control the accuracy of the data used to create credit reports upon which so much of a household's financial life depends. They control who does and does not get access to this data and at what price. In this age of technology and big data, the opportunities for manipulating and monetizing this information are seemingly endless. Despite the central role the CRAs play in facilitating access to credit, the current system has evolved with little regard for the consumer's right to ownership and control over his/her own data. Considering their central position in the consumer credit space, the CRAs' focus should be on safeguarding the data they hold and in ensuring its accuracy. The government should not be facilitating their creation of products to monetize their unique position and establish vertical monopolies in the wide variety of areas in which consumers require access to credit, including the most substantial of these, the ability to buy one's own home.

VantageScore, the credit score model created jointly by the three CRAs, appears to have very little to do with expanding competition in the world of credit scoring models. If competition and consumer choice were the real motivators presumably we would have three different credit scoring models one from each of the three CRAs – all competing with each other. And yet the opposite is happening. Just last year, the Consumer Financial Protection Bureau (CFPB or Bureau) took action against Equifax, TransUnion, and their subsidiaries for deceiving consumers about the usefulness and actual cost of credit scores generated through VantageScore which the CRAs falsely represented were the same scores lenders typically use to make credit decisions. In reality, "the scores sold by TransUnion and Equifax were not typically used by lenders to make those decisions".[1] The CFPB further found that, "the companies also lured consumers into costly recurring payments for credit-related products with false promises".[2] The CRAs' push to legitimize their own scoring model with FHFA's stamp of approval could, unfortunately for consumers, lead to more brazen attempts to misrepresent the value of VantageScore.

The CRAs' success in squeezing out competition may already be manifesting itself in the housing space. A New York Times investigation recently uncovered how Equifax Mortgage Solutions, which supplies lenders with merged credit reports, has successfully prevented other independent firms from doing business with Freddie Mac.[3] According to the press report, Freddie Mac allows Equifax to decide whether other firms can access Freddie Mac's automated underwriting system. Not only has Equifax chosen not to add the functionality that would allow competitors to participate, Freddie Mac has decided not to do anything to dismantle this monopoly because having access to a broad network of credit-report providers "has not been cited as a priority for those customers who use our quality control tools like Loan Quality Advisor".[4] It is hardly surprising that lenders who rely on the CRAs for access to consumer credit data, and may even pass on any additional costs to consumers, would not consider a broad network of providers to be *their* priority. The same investigation uncovered higher costs imposed by Equifax for its credit reporting services, even for housing counselors assisting troubled borrowers. These issues of monopolization at different levels of the mortgage supply chain and the ramifications for homebuyers and the housing market overall should be a concern for the Enterprises.

In those areas where the CRAs already enjoy monopoly status we have not seen superior service or regard for consumers. In 2013, the Federal Trade Commission (FTC) conducted a congressionally mandated study on credit report accuracy. The FTC found that one in four consumers identified errors on their credit reports that might affect their credit scores. A whopping twenty five percent error rate which translates to millions of Americans potentially paying more for credit than they should. The Director of the FTC's Bureau of Economics said at the time, "these are eye popping numbers for American consumers. The results of this first-of-its-kind study make it clear that consumers should check their credit reports regularly. If they don't, they are potentially putting their pocketbooks at risk."[5] More recently, the CFPB, through its supervisory work and consumer complaint database, has found that "consumers continue to complain about the credit reporting industry in high numbers."[6] The Bureau has handled approximately 185,700 credit reporting complaints as of February 1, 2017. The Bureau found that the top consumer complaints in this area are failure to make corrections once a consumer disputes an item on their report, failure

[1] https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-transunion-and-equifax-pay-deceiving-consumers-marketing-credit-scores-and-credit-products/
[2] *Id.*
[3] "Equifax's Grip on Mortgage Data Squeezes Smaller Rivals," Gretchen Morgenson, New York Times, October 13, 2017.
[4] *Id.*
[5] FTC Press Release: In FTC Study, Five Percent of Consumers Had Errors on Their Credit Reports That Could Result in Less Favorable Terms for Loans. February 11, 2013.

[6] CFPB Supervisory Highlights Consumer Reporting Special Edition, March 2017

to correct references to unpaid debts after those debts have been paid, and finding information that is not theirs being included in their report and negatively affecting their credit scores.[7]

These are not merely paperwork issues. People whose credit reports are inaccurate or whose identities have been stolen have spent years of their lives fighting the CRAs to correct their records so they may get their lives back on track.[8] These cases often end up in court. Perhaps by design. In 2013, in the case of Miller v. Equifax a jury in Federal District Court in Portland, Oregon, found in Julie Miller's favor after she spent two years trying to get Equifax to fix errors it had inserted into her credit report. In that case, "Equifax's own representative testified it is Equifax's policy to investigate and correct files only after a lawsuit is filed."[9] The potential ramifications of such policies for consumers are profound and must be considered before expanding the reach of the CRAs further into the housing market.

The power of the CRAs as the gatekeepers of consumer data is further illustrated by the utter lack of consequences to Equifax in the wake of its unprecedented data breach last year which impacted close to 150 million Americans. Two months after announcing the breach, Equifax's interim CEO noted that the company had not lost any contracts. Or, as put more pointedly by the Mortgage Bankers Association, "We don't really have a choice to opt out of the credit report system." [10] In fact, on the very day that Equifax publicly announced the breach, it was pushing legislation in Congress to further deregulate the industry and make it harder for consumers to get relief in the courts.[11]

To select VantageScore as the Enterprises' future credit score provider, or even as just one of its future credit score providers, will be to open the door to monopolization disguised for now as competition. We hope you will consider the issues raised here before going down that path.

Thank you for your consideration of this response.

Sincerely,

Michael E. Capuano
MEMBER OF CONGRESS

Josh Gottheimer
MEMBER OF CONGRESS

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[7] *Id.*

[8] See for example, 60 Minutes: "40 Million Mistakes – Is Your Credit Report Accurate." See also, "Held Captive by Flawed Credit Reports," Gretchen Morgenson, New York Times, June 21, 2014; "Credit agencies lag on errors, fraud; Consumers struggle to untangle reports." Beth Healy, Boston Globe, December 28, 2006; "Florida woman wins multimillion dollar jury verdict against Equifax." Richard Burnett, Orlando Sentinel, December 4, 2007.

[9] Miller v. Equifax Information Services, LLC, U.S. District Court of the District of Oregon Case 3:11-CV-01231-BR.

[10] "As Equifax Amassed Ever More Data, Safety Was a Sales Pitch," Stacy Cowley and Tara Siegal Bernard, New York Times, September 23, 2017.

[11] House Financial Services Committee, Financial Institutions Subcommittee Hearing entitled "Legislative Proposals for a More Efficient Federal Financial Regulatory Regime," September 7, 2017.