

**COUNCIL OF THE DISTRICT OF COLUMBIA  
COMMITTEE OF THE WHOLE  
COMMITTEE REPORT**

1350 Pennsylvania Avenue, NW, Washington, DC 20004

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**TO:** All Councilmembers  
**FROM:** Chairman Phil Mendelson  
Committee of the Whole  
**DATE:** September 19, 2023  
**SUBJECT:** Report on Bill 25-118

The Committee of the Whole, to which Bill 25-118, the “Public Health Emergency Credit Alert Amendment Act of 2023” was referred, reports favorably thereon with minor amendments, and recommends approval by the Council.

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**I. BACKGROUND AND NEED**

On February 2, 2023, Bill 25-118, the “Public Health Emergency Credit Alert Amendment Act of 2023” was introduced by Councilmembers Robert White, Charles Allen, Anita Bonds, Matt Frumin, Vincent Gray, Christina Henderson, Janeese Lewis George, Kenyan McDuffie, Brianne K. Nadeau, Zachary Parker, and Brooke Pinto. As introduced, the bill would require credit reporting agencies to accept a consumer statement indicating that a consumer experienced financial hardship resulting from a public health emergency. The bill would also prohibit the use of adverse information in credit reports regarding a consumer’s action or inaction that occurred during a public health emergency.

***Credit Reporting and Credit Scores***

Until the early nineteenth century, credit evaluation was an informal and personal affair. Creditors would often acquire information on a borrower’s character and financial situation by

talking to trusted sources (i.e., clergy, bankers, business associates, etc.) or requesting letters of recommendation. However, this system was easy to manipulate, leaving creditors with false information on borrowers, and geographical distance often limited the ability of creditors to obtain information on borrowers outside of their city or town.<sup>1</sup>

To address the shortcomings of the informal credit evaluation system, individuals such as Lewis Tappan and R.G. Dun established mercantile agencies specializing in collecting and disseminating borrower credit information. It wasn't long before these entities used the information they gathered on borrowers to assign numerical codes or credit ratings indicating creditworthiness. This innovation led to the creation of consumer credit bureaus such as the Chilton Company and the Retail Credit Company in the late 1890s.<sup>2</sup>

As the United States grew, new technology made it easier for people to travel and communicate, and retail consumer credit grew dramatically, credit reporting companies became more prevalent and sophisticated. By the 1910s, entities such as the Retail Credit Company boasted more than 15 branch offices and hundreds of employees. As these organizations grew, they standardized their services using forms such as the "Character Credit Report" and the "Factbilt" standard form, which laid the groundwork for statistical credit scoring in the 1950s and 60s.<sup>3</sup>

The use of statistical credit scoring, collaboration with economists and other researchers engaging in new statistical methods, and the advent of commercially available computers in the late 1960s and early 1970s ushered in the current era of credit reporting and scoring. Today, credit reporting is dominated by the "Big Three": Equifax, Experian, and TransUnion. These entities collect vast amounts of data on consumers, including personal identifying information (addresses, social security numbers, date of birth, etc.), credit information, bankruptcies, foreclosures, evictions, and sometimes employment history and status. This information is used to generate a numerical credit score. Currently, the two most commonly used credit scores are the FICO Score and the VantageScore.

Today, credit scores are used by housing providers, banks, automotive dealers, insurance companies, and other creditors to decide whether to approve leases and issue loans, credit cards, and other financial instruments. As such, having a low score (or no score) can have highly negative consequences on someone's financial well-being and mobility. While these scores are meant to predict a consumer's ability to repay debt, agencies often rely on biased and sometimes inaccurate data to generate these scores,<sup>4</sup> resulting in discrimination against low-income consumers, which disproportionately affects Black, Hispanic, and Indigenous people.<sup>5</sup>

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<sup>1</sup> Lauer, J. (2017). *Creditworthy: A history of consumer surveillance and financial identity in America*. Columbia University Press.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> See, for instance, Avery, R. B., Calem, P. S., & Canner, G. B. (2004). Credit report accuracy and access to credit. *Fed. Res. Bull.*, 90, 297; Federal Trade Commission. (2012). *Report to congress under section 319 of the fair and accurate credit transactions act of 2003*; Smith, L. D., Staten, M., Eyssell, T., Karig, M., Freeborn, B. A., & Golden, A. (2013). Accuracy of information maintained by US credit bureaus: frequency of errors and effects on consumers' credit scores. *Journal of Consumer Affairs*, 47(3), 588-601.

<sup>5</sup> See, for instance, Blattner, L., & Nelson, S. (2021). How costly is noise? Data and disparities in consumer credit. arXiv preprint arXiv:2105.07554; Henderson, L., Herring, C., Horton, H. D., & Thomas, M. (2015). Credit where

As a result of the COVID-19 pandemic, many households in the District faced significant hardships due to job loss, business closures, and decreases in income that negatively impacted their credit scores. For instance, nearly a quarter of District residents experienced housing insecurity due to the pandemic, and almost 30% reported having difficulty paying for usual household expenses.<sup>6</sup> This led households, particularly households of color, to increase their reliance on alternative financial service (AFS) loans, such as payday loans, and led to an increase in households with delinquent AFS loans.<sup>7</sup>

### ***Bill 25-118***

As introduced, Bill 25-118 would require credit reporting agencies to accept a personal statement from a consumer indicating that the consumer experienced financial hardship resulting from a public health emergency. The bill would also prohibit the use of adverse information in credit reports regarding a consumer's action or inaction that occurred during a public health emergency. Finally, the bill would empower the Attorney General to seek temporary or permanent injunctive relief and obtain damages for a violation of the law. Provisions of this bill were in the Coronavirus Support Temporary Amendment Act (D.C. Law 24-9) and have been included in subsequent, standalone emergency and temporary legislation.<sup>8</sup>

At the Committee's hearing on Bill 24-553, which is identical to Bill 25-118, Mike Carone, the Manager of Government Relations for the Consumer Data Industry Association (CDIA), testified that subsections (a) and (c) are expressly preempted by the FCRA. A closer reading of the statute leads the Committee to reject this argument.

First, Mr. Carone argues that subsection (a) of the bill is preempted by 15 U.S.C. § 1681t(b)(1)(E), which reads:

*“No requirement or prohibition may be imposed under the laws of any state— (1) with respect to any subject matter regulated under...*

*(E) section 1681c of this title, relating to information contained in consumer reports, except that this subparagraph shall not apply to any State law in effect on September 30, 1996.”*

Mr. Carone and the CDIA read this language to preempt states from enacting any laws regarding information contained in consumer reports, undoubtedly relying on the “relating to” clause to make their case. But this reading ignores the structure and syntax of the statute. The statute specifically says “section 1681c of this title...” after the phrase “with respect to any subject matter regulated under...,” which suggests that states are preempted from regulating the specific subject matter in section 1681c. If the “relating to” clause that follows is meant to be more

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credit is due?: Race, gender, and discrimination in the credit scores of business startups. *The Review of Black Political Economy*, 42(4), 459-479; Rice, L., & Swesnik, D. (2013). Discriminatory effects of credit scoring on communities of color. *Suffolk UL Rev.*, 46, 935.

<sup>6</sup> Committee analysis of Census Bureau's Household Pulse Survey data.

<sup>7</sup> Urban Institute. Credit Health during the COVID- Pandemic. Last updated March 8, 2022.

<sup>8</sup> See, for instance, D.C. Act 24-317, D.C. Law 24-110, D.C. Act 24-622, and D.C. Law 24-266.

expansive than the specific subject matter in Section 1681c, it would render the phrase “section 1681c of this title...” superfluous, violating a cardinal rule of statutory construction (“... it is a cardinal rule of statutory construction that the significance and effect shall, if possible, be accorded to every word.” *Market Co. v. Hoffman*, 101 U.S. 112 (1879)). As such, two plausible readings of the “relating to” clause exist. First, the clause could be read as purely descriptive in nature, summarizing the specific content of section 1681c. Second, the clause could be read as modifying the “subject matter” in conjunction with “regulated under... section 1681c...” With either reading, the impact is the same: the scope of preemption is limited to the specific content of section 1681c.

The Committee’s interpretation of 15 U.S.C. § 1681t(b)(1)(E) is further bolstered by an interpretive rule issued by the Bureau of Consumer Financial Protection (“Bureau”) in June 2022 that “... clarifies the preemptive scope of 15 U.S.C. 1681t(b)...”<sup>9</sup> In the interpretive rule, CFPB pushes back on CDIA’s reading of the statute, noting that the legislative history of the FCRA preemption provision confirms its narrow scope. With respect to 15 U.S.C. § 1681t(b)(1)(E), the rule concludes, “Hence, FCRA 1681t(b)(1)(E) does not preempt State laws about the subject matter regarding the content of or information on consumer reports” beyond the specific topics listed in section 1681c.<sup>10</sup>

Second, Mr. Carone argues that subsection (c) is preempted by 15 U.S. Code § 1681t(b)(3), which reads:

*“No requirement or prohibition may be imposed under the laws of any state— (3) with respect to the disclosures required to be made under subsection (c), (d), (e), or (g) of section 1681g of this title, or subsection (f) of section 1681g of this title relating to the disclosure of credit scores for credit granting purposes, except that this paragraph...”*

As with 15 U.S.C. § 1681t(b)(1)(E), Mr. Carone and the CDIA read this language as broadly preempting states from enacting any laws that deal with disclosure to consumers. However, the language cites specific subsections in section 1681g, which suggests that Congress intended this preemption to be narrowly construed. Additionally, none of the cited subsections speak to the notice envisioned in subsection (c) of Bill 25-118. For instance, 15 U.S. Code § 1681g(d) requires the Bureau to create a model summary of rights notice for victims of identity theft that financial institutions must provide if they suspect that a customer has been the victim of identity theft. Nothing in Bill 25-118 would regulate or alter this disclosure or the disclosures required by subsections (c), (e), (f), or (g) of 15 U.S. Code § 1681g.

Written statements provided by Discover Financial Services (DFS), the American Financial Services Association (AFSA), and insurance company representatives raise concerns with the bill as well, but on different grounds. First, the statements provided by DFS and AFSA argue that the notice provisions in subsection (c)(2) should be struck, as this requirement would

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<sup>9</sup> Bureau of Consumer Financial Protection, *The Fair Credit Reporting Act’s Limited Preemption of State Laws*, June 2022. ([https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/cfpb\\_fcra-preemption\\_interpretive-rule\\_2022-06.pdf](https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/cfpb_fcra-preemption_interpretive-rule_2022-06.pdf))

<sup>10</sup> *Id.*, pg. 10.

allegedly cause “confusion and unnecessary disruption.”<sup>11</sup> The Committee disagrees with this assessment. If anything, the existing law’s omission of this requirement has likely caused confusion for consumers. Consider that, under the current temporary law, if a user of a credit report denies or rejects a consumer for a loan or credit card based on information that cannot legally be considered under the law, the consumer would have no way of knowing that this is the case, and as a result, could not provide critical context or seek relief. Therefore, the Committee believes that the notice requirement under subsection (c)(2) provides an important remedy for consumers in the District.

Second, the statements provided by AFSA and the American Property Casualty Insurance Association (APCIA), the National Association of Mutual Insurance Companies (NAMIC), and the District of Columbia Insurance Federation (DCIF) argue that the prohibition against using “adverse information” in a credit report that occurred during or as a result of a public health emergency is either untenable due to the nature of credit underwriting or would result in “perpetual inaccuracies and inconsistencies in credit reports...”<sup>12</sup> The Committee does not find either of these arguments to be persuasive for two reasons. One, emergency and temporary versions of this law have been in place for over two years now and, outside of the public hearing, the Committee has not heard about the alleged difficulties of complying with this prohibition from financial service providers. Two, the witnesses provided absolutely no evidence to support the assertion that this prohibition has led or will lead to “perpetual inaccuracies” in credit reports.<sup>13</sup>

Finally, the statement from the AFSA raises concerns about the “substantial penalties” created by this bill. Under subsection (f), the Attorney General may petition the Superior Court for injunctive relief and for an award for damages, which may not exceed \$1,000 per violation. The Committee does not believe this penalty are excessive. The \$1,000 per violation penalty is consistent with civil penalties in the Consumer Protection Procedures Act<sup>14</sup> and less than the maximum penalties for violations of the District debt collection law.<sup>15</sup>

The Committee Print of Bill 25-118 makes only minor, technical edits to the bill, including amending the language of the definition of the term “credit report” in D.C. Official Code § 28-3861(2) to mirror the definition provided in the Fair Credit Reporting Act (15 U.S.C. § 1681a(d)) and referencing this definition in subsection (g), and authorizing the Attorney General to petition the Superior Court for restitution rather than damages.

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<sup>11</sup> Discover Financial Services, Statement on B24-553, the “Public Health Emergency Credit Alert Amendment Act of 2021,” Nov. 18, 2022.

<sup>12</sup> Statement of American Property Casualty Insurance Association, the National Association of Mutual Insurance Companies, and the District of Columbia Insurance Federation Re: B-24-553 – Public Health Emergency Credit Alert Amendment Act of 2021, Dec. 6, 2022, pg. 1.

<sup>13</sup> Unfortunately, credit reports already contain inaccuracies, often through no fault of the consumer. A 2012 study by the Federal Trade Commission found that around 25% of consumers identified errors on their credit reports (Federal Trade Commission, *Section 319 of the Fair and Accurate Credit Transactions Act of 2003: Fifth Interim Federal Trade Commission Report to Congress Concerning the Accuracy of Information in Credit Reports*, Dec. 2012). A more recent analysis by Consumer Reports suggests that a third of credit reports contain at least one error (Consumer Reports, *A Broken System: How the Credit Reporting System Fails Consumers and What to Do About It*, June 10, 2021).

<sup>14</sup> D.C. Official Code § 28-3905(i)(3)(A).

<sup>15</sup> D.C. Official Code § 28-3814(u)(4)(A).

### ***Conclusion***

Credit reports play a central role in facilitating access to financial opportunities. Financial institutions, insurance companies, and housing providers use credit reports to determine whether a consumer will receive loans or credit cards, the rates a consumer will pay for insurance products, or whether a consumer will be approved to rent an apartment. The COVID-19 pandemic resulted in significant job loss, business closures, and other economic hardships that impacted the ability of District residents to pay loans, credit cards, or rent on time, or at all, through no fault of their own, which may impact information in credit reports, and therefore, their credit scores. To mitigate the negative economic consequences of the pandemic, and to ensure that should another public health emergency arise, residents' credit reports will have recourse to protect their financial standing, the Committee recommends the approval of the Committee Print for Bill 25-118.

## **II. LEGISLATIVE CHRONOLOGY**

- December 2, 2021 Bill 24-553, the “Public Health Emergency Credit Alert Amendment Act of 2021” is introduced by Councilmembers Robert White, Charles Allen, Anita Bonds, Mary Cheh, Vincent Gray, Christina Henderson, Janeese Lewis George, Kenyan McDuffie, Brianne K. Nadeau, Elissa Silverman, Brooke Pinto, Trayon White and Chairman Mendelson.
- September 23, 2022 Notice of a Public Hearing on Bill 24-553 is published in the *District of Columbia Register*.
- November 18, 2022 The Committee of the Whole holds a public hearing on Bill 24-553.
- February 2, 2023 Bill 25-118, the “Public Health Emergency Credit Alert Amendment Act of 2023” was introduced by Councilmembers Robert White, Charles Allen, Anita Bonds, Matt Frumin, Vincent Gray, Christina Henderson, Janeese Lewis George, Kenyan McDuffie, Brianne K. Nadeau, Zachary Parker, and Brooke Pinto.
- February 7, 2023 Bill 25-118 is “read” at a legislative meeting; on this date the referral of the bill to the Committee of the Whole is official.
- February 10, 2023 Notice of Intent to Act on Bill 25-118 is published in the *District of Columbia Register*.
- September 19, 2023 The Committee of the Whole marks up Bill 25-118.

## **III. POSITION OF THE EXECUTIVE**

The Executive did not provide testimony on Bill 25-118.

#### IV. COMMENTS OF ADVISORY NEIGHBORHOOD COMMISSIONS

The Committee received no comments from Advisory Neighborhood Commissions regarding Bill 24-553 or Bill 25-118.

#### V. SUMMARY OF TESTIMONY

The Committee of the Whole held a public hearing on Bill 24-553, which is identical to Bill 25-118, on Friday, November 18, 2022. Copies of the written testimony are attached to this report.

*Mike Carone, Manager of Government Relations for the Consumer Data Industry Association*, testified in opposition to the bill.

*Linda Coe, a Staff Attorney with Tzedek DC*, testified in support of the bill.

*Chi Chi Wu, a Staff Attorney with the National Consumer Law Center*, testified in support of the bill.

*Ariel Levinson-Waldman, Founding President and Director-Counsel of Tzedek DC*, testified in support of the bill.

*Joseph Testa, a Consultant testifying on behalf of Discover Financial Services*, testified in support of the existing law, arguing that the Council should not add new substantive provisions.

In addition to the testimony summarized above, the Committee received the following statements in writing.

*Matthew Kownacki, Director of State Research and Policy with the American Financial Services Association*, provided a statement on behalf of the Association in opposition to the bill.

*The American Casualty Insurance Association (APCIA), the National Association of Mutual Insurance Companies (NAMIC), and the District of Columbia Insurance Federation (DCIF)* provided a statement in opposition to the bill.

*Dieynaba Sall, a District resident*, provided a statement in support of the bill.

*Anabell Martinez, Housing Program Director with the Central American Resource Center*, provided a statement on behalf of the Center in support of the bill.

*Chi Chi Wu, a Staff Attorney with the National Consumer Law Center*, provided supplemental testimony on potential alternatives to credit scores that housing providers could use to assess an applicant's ability to pay.

*Tzedek DC* provided supplemental testimony arguing that the bill is necessary and is not preempted by federal law.

## VI. IMPACT ON EXISTING LAW

Bill 25-118 would amend Chapter 38 of Title 28 of the District of Columbia Official Code to require credit reporting agencies to accept a personal statement from a consumer indicating that the consumer experienced financial hardship resulting from a public health emergency, prohibit users of credit reports from taking into consideration adverse information in a credit report that was the result of the consumer's action or inaction that occurred during a public health emergency, require credit reporting to notify residents of the right to request a personal statement, and provide for civil action where a credit reporting agency or user of a credit report violates the law. The bill would also amend the definition of "credit report" in D.C. Official Code § 28-3861(2) to more closely mirror the definition in the federal Fair Credit Reporting Act.

## VII. FISCAL IMPACT

## VIII. RACIAL EQUITY IMPACT ASSESSMENT

## IX. SECTION-BY-SECTION ANALYSIS

<u>Section 1</u>	Short title.
<u>Section 2</u>	Amends Chapter 38 of Title 28 to amend the definition of "credit report" and to require credit reporting agencies to accept a personal statement from a consumer indicating that the consumer experienced financial hardship resulting from a public health emergency.
<u>Section 3</u>	Standard fiscal impact statement provision.
<u>Section 4</u>	Standard effective date provision.

## X. COMMITTEE ACTION



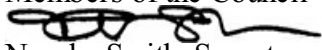
## **XI. ATTACHMENTS**

1. Bill 25-118 as introduced.
2. Selected Written Testimony.
3. Fiscal Impact Statement for Bill 25-118.
4. Legal Sufficiency Determination for Bill 25-118.
5. Racial Equity Impact Assessment for Bill 25-118.
6. Comparative Print for Bill 25-118.
7. Committee Print for Bill 25-118.

**COUNCIL OF THE DISTRICT OF COLUMBIA**  
**1350 Pennsylvania Avenue, N.W.**  
**Washington D.C. 20004**

Memorandum

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To : Members of the Council  
  
From : Nyasha Smith, Secretary to the Council  
Date : Monday, February 6, 2023  
Subject : Referral of Proposed Legislation


Notice is given that the attached proposed legislation was introduced in the Office of the Secretary on Thursday, February 02, 2023. Copies are available in Room 10, the Legislative Services Division.

TITLE: "Public Health Emergency Credit Alert Amendment Act of 2023", B25-0118

INTRODUCED BY: Councilmembers R. White, Bonds, Gray, Pinto, Lewis George, Parker, McDuffie, Allen, Nadeau, Henderson, and Frumin

The Chairman is referring this legislation to Committee of the Whole with comments from the Committee on Public Works and Operations.

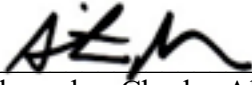
Attachment  
cc: General Counsel  
Budget Director  
Legislative Services



Councilmember Kenyan R. McDuffie



Councilmember Robert C. White, Jr.



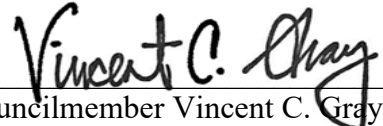
Councilmember Charles Allen



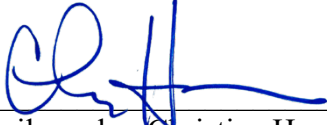
Councilmember Anita Bonds



Councilmember Brianne K. Nadeau



Councilmember Vincent C. Gray



Councilmember Christina Henderson



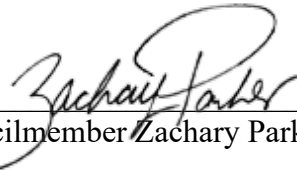
Councilmember Brooke Pinto



Councilmember Matthew Frumin



Councilmember Janeese Lewis George



Councilmember Zachary Parker

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend Chapter 38 of Title 28 of the District of Columbia Official Code to require credit reporting agencies to accept a personal statement from a consumer indicating the consumer experienced financial hardship resulting from a public health emergency; to prohibit users of credit reports from taking into consideration adverse information in a report that was the result of the consumer’s action or inaction that occurred during the public health emergency; to require credit reporting agencies to notify residents of the right to request a personal statement; and to provide for civil action for violations of this section.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Public Health Emergency Credit Alert Amendment Act of 2023”.

45           Sec. 2. Title 28 of the District of Columbia Official Code is amended as follows:

46           (a) The table of contents for Chapter 38 is amended by adding a new subchapter  
47 designation to read as follows:

48           “Subchapter IV. Public Health Emergency Credit Alert.

49           “28-3871. Public health emergency credit alert.

50           (b) A new section 28-3871 is added to read as follows:

51           “§ 28-3871. Public health emergency credit alert.

52           “(a)(1) If a consumer reports in good faith that the consumer has experienced financial  
53 hardship resulting directly or indirectly from a public health emergency declared pursuant to  
54 section 5a of the District of Columbia Public Emergency Act of 1980, effective October 17, 2002  
55 (D.C. Law 14-194; D.C. Official Code § 7-2304.01), a credit reporting agency maintaining a file  
56 on the consumer shall accept and include in that file a personal statement furnished by the  
57 consumer indicating that the consumer has been financially impacted by the public health  
58 emergency.

59           “(2) A credit reporting agency shall provide that personal statement along with  
60 any credit report provided by the agency, beginning on the date the credit reporting agency  
61 receives the personal statement, unless the consumer requests that the personal statement be  
62 removed.

63           “(b) This section shall not apply to a federal credit union, as defined by 12 U.S.C. §  
64 1752(1), a national bank, as defined by 12 U.S.C. § 25b(a)(1), or a federal savings association, as  
65 defined by 12 U.S.C. § 1462(3); except, that an exception granted by this subsection shall not  
66 apply to any entity to which the savings clause at 12 U.S.C. § 25b(b)(2) applies.

67           “(c)(1) No user of a credit report shall consider adverse information in a report that was  
68 the result of an action or inaction of a consumer that occurred during, and was directly or  
69 indirectly the result of, a public health emergency declared pursuant to section 5a of the District  
70 of Columbia Public Emergency Act of 1980, effective October 17, 2002 (D.C. Law 14-194; D.C.  
71 Official Code § 7-2304.01), if the credit report includes a personal statement pursuant to  
72 subsection (a) of this section, or if the consumer provides a written statement to the user of a  
73 credit report that indicates in good faith that the consumer has experienced financial hardship  
74 resulting directly or indirectly from the public health emergency declared pursuant to section 5a  
75 of the District of Columbia Public Emergency Act of 1980, effective October 17, 2002 (D.C.  
76 Law 14-194; D.C. Official Code § 7-2304.01), before the user of the credit report makes a  
77 determination.

78           “(2) If the consumer receives a denial or rejection by the user of a credit report  
79 due to information that occurred during the public health emergency declared pursuant to section  
80 5a of the District of Columbia Public Emergency Act of 1980, effective October 17, 2002 (D.C.  
81 Law 14-194; D.C. Official Code § 7-2304.01), the user must inform the consumer of their right  
82 to file a written statement pursuant to paragraph (1) of this subsection.

83           “(d) When a District resident requests a copy of a credit report pursuant to 15 U.S.C. §  
84 1681j, the entity providing the credit report must notify the resident of the right to request a  
85 personal statement to accompany the credit report.

86           “(e) If a credit reporting agency violates this section, the affected consumer may bring a  
87 civil action consistent with 15 U.S.C. § 1681n.

88           “(f)(1) The Attorney General may petition the Superior Court of the District of Columbia  
89 for temporary or permanent injunctive relief for, and for an award of damages for property loss

90 or harm suffered by a consumer as a consequence of, a violation of this section, or fraudulent or  
91 deceptive conduct in violation of this section that harms a District resident.

92 “(2) In an action under this section, the Attorney General may recover:

93 “(A) A civil penalty not to exceed \$1,000 for each violation; and

94 “(B) Reasonable attorney’s fees and costs of the action.

95 “(g) The following terms shall have the same meaning as defined in § 28-3861:

96 “(1) “Consumer;”

97 “(2) “Credit reporting agency.

98 “(h) “Credit report” shall have the same meaning as a “consumer report” as defined in the  
99 Fair Credit Reporting Act, 15 USC § 1681a(d).

100 “(i) This section shall not be construed in a manner inconsistent with the Fair Credit  
101 Reporting Act, (15 U.S.C. § 1681 et seq.), or any other federal law or regulation.

102 Sec. 3. Fiscal impact.

103 The Council adopts the fiscal impact statement of the Budget Director as the fiscal impact  
104 statement required by section 4a of the General Legislative Procedures Act of 1975, approved  
105 October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

106 Sec. 4. Effective date.

107 This act shall take effect following approval by the Mayor (or in the event of veto by the  
108 Mayor, action by the Council to override the veto), a 30-day period of Congressional review as  
109 provided in sections 602(c)(1) of the District of Columbia Home Rule Act, approved December  
110 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of  
111 Columbia Register.

**COUNCIL OF THE DISTRICT OF COLUMBIA  
COMMITTEE OF THE WHOLE  
NOTICE OF PUBLIC HEARING**

1350 Pennsylvania Avenue, NW, Washington, DC 20004

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**CHAIRMAN PHIL MENDELSON  
COMMITTEE OF THE WHOLE  
ANNOUNCES A PUBLIC HEARING**

**on**

**Bill 24-553, Public Health Emergency Credit Alert Amendment Act of 2021**

**on**

**Friday, November 18, 2022 at 12:00 p.m.**

**Chairman's Website ([www.ChairmanMendelson.com/live](http://www.ChairmanMendelson.com/live))**

**DC Council Website ([www.dccouncil.us](http://www.dccouncil.us))**

**Council Channel 13 (Cable Television Providers)**

**Office of Cable Television Website ([entertainment.dc.gov](http://entertainment.dc.gov))**

Council Chairman Phil Mendelson announces a public hearing before the Committee of the Whole on **Bill 24-553**, the "Public Health Emergency Credit Alert Amendment Act of 2021." The hearing will be held at **12:00 p.m. on Friday, November 18, 2022** via Zoom Video Conference Broadcast.

The purpose of Bill 24-553 is to require credit reporting agencies to accept a personal statement from a consumer indicating that the consumer experienced financial hardship as a result of the public health emergency, which would be included with any credit report furnished by the credit reporting agency. Once a consumer files a personal statement, users of the credit report could not consider information that the consumer says was a result of hardship they experienced during the public health emergency.

Those who wish to testify must register at <http://www.ChairmanMendelson.com/testify> by **5:00 p.m. on Wednesday, November 16, 2022**. **Testimony is limited to four minutes**. Witnesses who anticipate needing spoken language interpretation, or require sign language interpretation, are requested to inform the Committee office of the need as soon as possible but no later than five business days before the proceeding. We will make every effort to fulfill timely requests, although alternatives may be offered. Requests received in less than five business days may not be fulfilled. If you have additional questions, please contact Blaine Stum, Senior Policy Advisor, at (202) 724-8092.

The hearing will be conducted virtually on the Internet utilizing Zoom video conference technology. Testimony should be submitted in writing to [cow@dccouncil.us](mailto:cow@dccouncil.us) in advance of the hearing. Written testimony will be posted publicly to <http://www.chairmanmendelson.com/testimony>. If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Statements for the record should be submitted to [cow@dccouncil.us](mailto:cow@dccouncil.us) or left by voicemail by calling (202) 430-6948 (up to 3 minutes which will be transcribed). The record will close at 5:00 p.m. on Tuesday, December 6, 2022.

**COUNCIL OF THE DISTRICT OF COLUMBIA  
COMMITTEE OF THE WHOLE  
WITNESS LIST**

1350 Pennsylvania Avenue, NW, Washington, DC 20004

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**CHAIRMAN PHIL MENDELSON  
COMMITTEE OF THE WHOLE  
ANNOUNCES A PUBLIC HEARING**

on

**Bill 24-553, Public Health Emergency Credit Alert Amendment Act of 2021**

on

**Friday, November 18, 2022 at 12:00 p.m.**

**Chairman's Website ([www.ChairmanMendelson.com/live](http://www.ChairmanMendelson.com/live))**

**DC Council Website ([www.dccouncil.us](http://www.dccouncil.us))**

**Council Channel 13 (Cable Television Providers)**

**Office of Cable Television Website ([entertainment.dc.gov](http://entertainment.dc.gov))**

- |    |                        |  |
|----|------------------------|--|
| 1. | Mike Carone            | Consumer Data Industry Association           |
| 2. | Linda Coe              | Tzedek DC                                    |
| 3. | Chi Chi Wu             | Staff Attorney, National Consumer Law Center |
| 4. | Ariel Levinson-Waldman | Tzedek DC                                    |
| 5. | Joseph Testa           | Consultant, Discover Financial Services      |
| 6. | Gali Davar             | Tzedek DC                                    |





Consumer Data Industry Association  
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November 18, 2022

**B24-0553 – “Public Health Emergency Credit Alert Amendment Act of 2021” – Opposed unless amended**

Dear Chairman Mendelson, Chair Pro Tempore McDuffie and Councilmembers of the District of Columbia,

On behalf of the Consumer Data Industry Association (“CDIA”), I want to offer comments regarding B24-0553 – “Public Health Emergency Credit Alert Amendment Act of 2021”.

The Consumer Data Industry Association is the voice of the consumer reporting industry, representing consumer reporting agencies including the nationwide credit bureaus, regional and specialized credit bureaus, background check and residential screening companies, and others. Founded in 1906, CDIA promotes the responsible use of consumer data to help consumers achieve their financial goals, and to help businesses, governments and volunteer organizations avoid fraud and manage risk. Through data and analytics, CDIA members empower economic opportunity all over the world, helping ensure fair and safe transactions for consumers, facilitating competition and expanding consumers’ access to financial and other products suited to their unique needs.

This new legislation would make permanent law of the “emergency credit alerts” language that was passed and has continued to be in effect via the Council’s emergency and temporary acts going back to March of 2020. This legislation requires Consumer Reporting Agencies (CRAs) to include statements in a consumers file and inform them of their right to include a statement when requesting a credit report during a state of emergency in DC. The bill also contains a user restriction on considering negative information that occurred during a state of emergency. This permanent legislation also adds a new user requirement that was not present in the previous emergency and temporary acts, which requires a user of a credit report to inform the consumer of their right to file a written statement when rejecting or denying that consumer services.

We in the consumer reporting industry have ways to help residents manage this stress. While this bill is well-intentioned, this provision will do a disservice to the very consumers the Council is trying to protect, and these provisions are preempted by federal law.

**1. The credit reporting industry already has provisions in place to help consumers limit their financial distress in times of crisis**

The consumer reporting industry has been working with consumers and lenders to provide relief during national disasters and emergencies for decades. CDIA members have helped consumers through natural disasters, like hurricanes and wildfires. They have been with consumers through the Great Recession and through federal government shutdowns, we were with consumers through the COVID-19 public health emergency and we will be there in the future when events like these occur again.

- Lenders and creditors have programs, like forbearance programs and deferred payment plans, to help consumers through financial distress, including natural and declared disasters.
- Credit bureaus have long had codes in place to enable lenders and creditors to report consumers in financial distress (forbearance plans, deferred payment plans) or who are subject to natural or declared disasters.
- These credit bureau codes for consumers have been in place since before September 11, and have helped consumers then, now, and in hurricanes, floods, fires, tornadoes in between.

- The leading score modelers, VantageScore and FICO, treat forbearance plans and deferred payment plans neutrally.

## **2. Laws were put in place to help consumers through the financial pain of the COVID-19 pandemic.**

Congress has created a national resolution to a national crisis. In response to the COVID-19 pandemic, Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES)<sup>1</sup> Act on March 27, 2020. The CARES Act delivered an important win for consumers seeking help to protect their credit during and following the pandemic. This is a national resolution to a national crisis.

The CARES Act (Sec. 4021) amended the federal Fair Credit Reporting Act (FCRA)<sup>2</sup>, so that furnishers of information to credit reporting agencies who agree to account forbearance or agree to modified payments with respect to an obligation or account of a consumer that has been impacted by COVID-19, report such obligation or account as “current” or as the status reported prior to the accommodation during the period of accommodation unless the consumer becomes current. This applies only to accounts for which the consumer has fulfilled requirements pursuant to the forbearance or modified payment agreement. Such credit protection is available beginning January 31, 2020 and ends at the later of 120 days after enactment or 120 days after the date the national emergency declaration related to the coronavirus is terminated.

FCRA section 623(a), as amended by the CARES Act, regulates the reporting by furnishers making payment accommodations to consumers affected by COVID-19. Financial relief sought by consumers would qualify as a CARES Act payment accommodation when granted to an individual affected by COVID-19, which should be many people considering that the effects of COVID-19 are broad and wide.

Federal law requires full reporting with codes, and not suppression. The FCRA amendments under CARES requires that if a lender or creditor (called a “furnisher” under the FCRA) makes a payment accommodation with a consumer, like forbearance or deferred payments, the furnisher must report to a CRA that either the “credit obligation or account as current”, or if the credit obligation or account was delinquent before the accommodation, that furnisher must “maintain the delinquent status during the period in which the accommodation is in effect and if the consumer brings the credit obligation or account current during the [COVID-19] period report the credit obligation or account as current.”

## **3. Section 28-3871 has several well-intentioned provisions that will do a disservice to the very consumers the Council is trying to protect and that are preempted by federal law.**

*Section 28-3871 has new and untested provisions. Under this Section:*

- Consumer reporting agencies (CRAs) that maintain a file on the consumer shall include a personal statement in that file indicating that the consumer has been financially impacted by the COVID-19 emergency and shall provide that alert along with or accompanying any consumer report or credit score provided by the agency, beginning on the date of such request, unless the consumer requests that such statement be removed.
- An entity providing a credit report to a District resident must notify the resident of his or her right to request a statement to accompany the credit report.
- Substantial penalties are created for consumers and the Attorney General.

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<sup>1</sup> <https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.pdf>

<sup>2</sup> <https://www.law.cornell.edu/uscode/text/15/chapter-41/subchapter-III>

- Users of credit reports with such a personal notice shall not use or take into consideration any adverse information in a report that was the result of an action or inaction by a consumer that occurred during the public health emergency.
- A new user requirement that was not present in the previous emergency and temporary acts, which requires a user of a credit report to inform the consumer of their right to file a written statement when rejecting or denying that consumer services.

*A. Section 28-3871 will do a disservice to the very consumers the Council is trying to protect*

- Any new credit reporting guidelines would take years to fully integrate into the credit reporting ecosystem. It would take at least a minimum 2-3 years for all 15,000 lenders and creditors (“data furnishers”) to be fully operational and credit score modelers will need at least two years minimum of performance data.
- CRAs are not able to decide who has been impacted by a state of emergency, or not. A consumer’s lender or creditor is in the best position to determine a consumer’s needs following communication with that consumer. The need for lender support was reinforced in a joint statement on March 9, 2020, all five federal banking agencies and the state bank supervisor’s association issued a joint statement<sup>3</sup> to “encourage financial institutions to meet the financial needs of customers and members affected by the coronavirus.”
- For users of credit reports, it is not clear from the legislation what actions they can take to comply except to delete or suppress the information in question. In addition, the legislation does not address the safety and soundness obligations that creditors must satisfy.

*B. Section 304 is preempted by federal law*

- The language in § 28-3871(a) requires CRAs to include and provide in any consumer report (including any credit score, which are consumer reports) a “COVID-19 alert.” Congress, in enacting the FCRA, expressly reserved this subject matter to itself. Section 28-3871(a) is preempted by the FCRA under 15 U.S.C. § 1681t(b)(1)(E), which provides that state laws (including DC, per § 1681a(n)) that impose requirements or prohibitions with respect to the subject matter of FCRA section 605 (15 U.S.C. § 1681c), relating to information contained in consumer reports.
- The language in § 28-3871(c) requires CRAs to notify a consumer of the right to request a personal statement to accompany the credit report. Congress, in enacting the FCRA, expressly reserved the subject matter of disclosures to itself. Section 28-3871(c) is preempted by the FCRA under 15 U.S.C. § 1681t(b)(3), which provides that no state may impose requirements or prohibitions with respect to the disclosures required to be made to consumers under subsection (c) of FCRA section 609 (15 U.S.C. § 1681g), relating to the summary of rights to obtain and dispute information in consumer reports and information contained in consumer reports.

Federal financial regulators encourage full reporting with codes, and not suppression. On April 1, 2020, the Consumer Financial Protection Bureau (the Bureau or CFPB) issued a policy statement<sup>4</sup>. The Bureau strongly urged continued credit reporting and not credit suppression. The Bureau also reiterated its prior guidance encouraging financial institutions to work constructively with borrowers and other customers affected by COVID-19 to meet their financial needs.

<sup>3</sup> [https://www.federalreserve.gov/newsevents/pressreleases/bcreg20200309a.htm?mod=article\\_inline](https://www.federalreserve.gov/newsevents/pressreleases/bcreg20200309a.htm?mod=article_inline)

<sup>4</sup> <https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-credit-reporting-guidance-during-covid-19-pandemic/>

Fannie Mae, Freddie Mac, and the Federal Housing Administration encourage full reporting with codes, and not suppression. They are telling mortgage services to follow the law, which includes the FCRA, as amended by the CARES Act. Section 4021 of the CARES Act requires lenders and creditors who place consumers in a forbearance or deferred payment situation to report those consumers as current.

In conclusion, we believe there are already existing methods in the credit reporting system to address the important concerns with providing relief to individuals whose credit reports and scores are affected by economic distress related to states of emergency. In addition to the methods that already exist, we believe that the Federal CARES act, guidance from the CFPB and efforts taken by lenders around the country address these concerns as well. For these reasons, we have asked the Council to amend § 28-3871 and the bill so that they are consistent with the federal consumer reporting law.

Thank you for your consideration of our comments and I would be happy to answer any questions you may have.

Sincerely,

*Mike Carone*

Mike Carone

Manager of Government Relations

Consumer Data Industry Association (CDIA)



**Before the Committee of the Whole  
Council of the District of Columbia  
Public Hearing Regarding Bill 24-553:  
Public Health Emergency Credit Alert Amendment Act of 2021  
November 18, 2022**

**Testimony of Tzedek DC, Legal Aid of the District of Columbia, and Legal Counsel for the Elderly**

Chairman Mendelson, Members of the Council of the District of Columbia, and Committee staff:

Thank you for your leadership and for the opportunity to provide testimony on the proposed Public Health Emergency Credit Alert Amendment Act of 2021 (the “Bill”). Thanks as well to Councilmember Robert C. White, Jr. for sponsoring the original temporary and emergency versions of the Covid credit alert protection, and to all the members of the Council for unanimously passing the temporary version of this bill. As three legal services organizations serving DC residents facing debt and credit-related problems, Tzedek DC,<sup>1</sup> Legal Aid of the District of Columbia,<sup>2</sup> and Legal Counsel for the Elderly<sup>3</sup> submit this testimony in strong support of the Council promptly making these protections permanent.

As detailed below, (i) the financial harms from the public health emergency will last for many more years, and are an issue of racial justice; (ii) the temporary act has already proven that the protections help residents with no unreasonable burdens on consumer reporting agencies; (iii) this protection is exactly the type of state-level leadership on credit reporting issues on top of a federal floor that the lead federal regulator, the U.S. Consumer Financial Protection Bureau (“CFPB”), has encouraged, and D.C. can continue to be a leader; and (iv) the Bill’s notice provisions improve the existing temporary protections.

1. The Financial Harms from the Public Health Emergency Will Last for Many More Years, and Are An Issue of Racial Justice

The Covid pandemic exacerbated the economic vulnerability that many D.C. residents already experienced leading up to the pandemic. Residents with lower incomes were more likely to become infected with Covid due to lack of access to medical care and jobs that did not allow social distancing. This led to a drop in household incomes and a resulting increase in unpaid or late payment of bills. Each late or unpaid bill created a negative mark on that consumer’s credit report. Credit report impairment is an issue of racial justice nationally and

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<sup>1</sup> Tzedek DC’s mission is to safeguard the legal rights and financial health of DC residents with lower incomes facing the often-devastating consequences of debt collection and credit-related obstacles.

<sup>2</sup> Legal Aid of the District of Columbia was formed in 1932 to “provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs.” The largest part of Legal Aid’s work is comprised of individual representation in housing, domestic violence/family, public benefits, and consumer law. Legal Aid also works on immigration law matters and helps individuals with the collateral consequences of their involvement with the criminal justice system.

<sup>3</sup> Legal Counsel for the Elderly (“LCE”) champions the dignity and rights of the District of Columbia’s lower-income elderly, helping our city’s vulnerable seniors resolve problems concerning their basic legal needs each and every day. Each year, LCE volunteers and staff assist nearly 5,000 vulnerable seniors in DC, providing an array of intersecting and complementary services (legal, psychosocial, financial, and educational).

especially in DC, where, as Urban Institute data has shown, DC residents from our communities of color have almost four times as high a rate of debts in collection as do white DC residents.<sup>4</sup>

Credit reports are the gateway for residents to access rental housing, loans, mortgages, and, in some cases, a job. The Council recognized that consumers should not further suffer from negative credit marks that were the result of financial hardships caused by the Covid public health emergency. Accordingly, in 2020, the Council provided for DC residents to add a Covid emergency credit alert to their credit reports, and prohibited certain users of credit reports from considering adverse information that was the result of the public health emergency if the credit report includes such personal statement (the “Temporary Act”).<sup>5</sup> This temporary protection is currently slated to expire on January 29, 2023 and, even if temporarily extended, will lapse next year absent action by this Council.

However, credit reports generally include details regarding payments for seven years, and therefore DC residents will suffer from the inclusion of Covid-related financial events on their credit reports through at least 2027. The Bill would protect consumers from public health emergency credit harms -- including those that may arise from future public health emergencies -- on a permanent basis. Without renewing and making this protection ongoing, the economic consequences of the pandemic will begin to and continue to haunt those residents for years to come because of the lasting negative mark it will leave on their credit reports.

## 2. The Temporary Act Has Protected Consumers without Burden to Industry

For many years prior to the pandemic, the credit reporting agencies have had in place a system for consumers to add personal statements to their credit reports, so the Temporary Act did not present a new burden for the industry. The credit reporting agencies have been complying with the Temporary Act for over two years and continuing to allow and/or maintain the public health emergency personal statements should not be a burden to the industry. As expected, there have been no legal challenges about the DC protection since the Temporary Act was passed.

Tzedek DC, Legal Counsel for the Elderly, and Neighborhood Legal Services Program developed a website in both English and Spanish for DC residents to add their Covid personal statements to their credit reports. That website has been accessed more than 900 times to date. Tzedek DC is prepared to continue to assist the community in filing their personal statements, and to support the Council in letting the community know about the protection as it becomes permanent.

## 3. The CFPB Has Encouraged States to Protect Consumers from Credit Reporting Harms

The Director of the CFPB stated this year that: “Given the intrusive surveillance that Americans face every day, it is critical that states can protect their citizens from abuse and misuse of data.”<sup>6</sup>

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<sup>4</sup> As of June 23, 2022, 9% of White communities in the DC have debt in collections, compared with 35% of communities of color. Urban Institute: Debt in America: <https://apps.urban.org/features/debt-interactive-map/?type=overall&variable=totcoll&state=11>.

<sup>5</sup> Covid-19 credit report protections were originally enacted as part of the Coronavirus Temporary Amendment Act of 2020 (D.C. Law 23-130, effective Oct. 9, 2020 (67 D.C.R. 8022)), and were included in several successive pieces of legislation, most recently in the Public Health Emergency Credit Alert Temporary Amendment Act of 2022 (D.C. Law 24-110, effective Apr. 8, 2022 (69 D.C. R. 3713)).

<sup>6</sup> <https://www.consumerfinance.gov/about-us/newsroom/cfpb-affirms-ability-for-states-to-police-credit-reporting-markets/>.

The CFPB recently issued an interpretive rule (“CFPB Interpretive Rule”)<sup>7</sup> providing: “State laws relating to what or when items generally may be initially included on a consumer report—or what or when certain types of information may be initially included on a consumer report—would generally not be preempted by section 1681t(b)(1)(e) [of the Fair Credit Reporting Act (“FCRA”)]”. This confirms and reinforces the validity of the D.C. provision permitting a consumer to file a personal statement on their credit report indicating that they have been financially impacted by a public health emergency.

Further, the CFPB Interpretive Rule specifies that “States therefore retain substantial flexibility to pass laws involving consumer reporting to reflect emerging problems affecting their local economies and citizens.” The DC protections are a good example of an exercise of this “flexibility to pass laws involving consumer reporting to reflect emerging problems affecting” DC residents.

#### 4. The Bill’s Notice Provisions Better Protect Consumers

The Bill also builds on the Temporary Act in an important way by allowing consumers to provide a written statement explaining that they have experienced a financial hardship as a result of the public health emergency directly to the user of a credit report in lieu of filing a personal statement with the credit reporting agency. This matters for consumers applying for rental housing. Prospective landlords often pull credit reports that are not from the “big 3” credit reporting agencies where DC residents may have filed their public health emergency personal statement. The CFPB identifies ten tenant screening companies that provide such tenant screening credit reports.<sup>8</sup> The direct notice provision of the Bill will protect consumers where a credit report is pulled from one of these many specialty credit reporting agencies as long as the consumer submits a personal statement directly to the prospective landlord, and with no action by the credit reporting agencies.

The Bill is important to protecting vulnerable DC consumers from the financial harms caused by the public health emergency, and the Council should pass it.

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<sup>7</sup> The Fair Credit Reporting Act’s Limited Preemption of State Laws, § I, issued by the Bureau of Consumer Financial Protection on June 28, 2022, (12 CFR Part 1022) (emphasis added), available at <https://www.consumerfinance.gov/rules-policy/final-rules/the-fair-credit-reporting-acts-limited-preemption-of-state-laws/> (“CFPB Interpretive Rule PDF”).

<sup>8</sup> [https://files.consumerfinance.gov/f/documents/cfpb\\_consumer-reporting-companies-list\\_2022-01.pdf](https://files.consumerfinance.gov/f/documents/cfpb_consumer-reporting-companies-list_2022-01.pdf).

Testimony of Chi Chi Wu,  
National Consumer Law Center  
Before the Council of the District of Columbia, Committee of the Whole  
in support of Bill 24-553, the “Public Health Emergency Credit Alert Amendment Act of 2021.”  
November 18, 2022

Dear Chair Mendelson,

Thank you for the opportunity to submit this testimony in favor of Bill 24-553, the Public Health Emergency Credit Alert Amendment Act of 2021. My name is Chi Chi Wu, and I am a Staff Attorney at the National Consumer Law Center (NCLC).<sup>1</sup> I have worked extensively on credit reporting issues at the federal and state levels, including testifying in Congress and state legislatures, submitting regulatory comments to the Consumer Financial Protection Bureau and other administrative agencies, and providing technical assistance to policymakers. Based on this experience, I urge the Council to pass Bill 24-553.

This bill will help protect D.C. residents from the very real harm of credit damage that can result from a public health emergency. A public health emergency can result in job losses or lost wages due to illness or economic slowdown, unexpected medical or other expenses, and other financial disruptions that can last for many months. The last thing beleaguered consumers need is damage to their credit reports and scores from bills that they missed due to the aftermath of a public health-related disruption, and that were no fault of their own. We appreciate that the D.C. Council has been a leader in this area, and have recommended this type of protection to other states.

Furthermore, it is clear that the D.C. Council has the authority to adopt laws such as the Public Health Emergency Credit Alert Amendment Act. In a July 2022 interpretive rule,<sup>2</sup> the CFPB stated that states have “substantial flexibility to pass laws involving consumer reporting to reflect emerging problems affecting their local economies and citizens.” The CFPB stated that such laws, except in narrow circumstances, would not be preempted under the federal Fair Credit Reporting Act. I believe that Bill 24-553 is precisely the type of law that the CFPB was contemplating when it issued its interpretive rule that the scope of FCRA preemption is narrow and that states have the authority to adopt laws to protect their residents.

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<sup>1</sup> The National Consumer Law Center is a nonprofit organization specializing in consumer issues on behalf of low-income people. We work with thousands of legal services, government and private attorneys, as well as community groups and organizations, from all states who represent low-income and elderly individuals on consumer issues. As a result of our daily contact with these advocates, we have seen many examples of the damage wrought by abuses from credit reporting agencies from every part of the nation. It is from this vantage point that we supply this testimony. Fair Credit Reporting (10th ed. 2022) is one of the twenty-one practice treatises that NCLC publishes and annually supplements. This testimony was written by Chi Chi Wu, lead author of that treatise.

<sup>2</sup> Consumer Financial Protection Bureau, The Fair Credit Reporting Act's Limited Preemption of State Laws, 87 Fed. Reg. 41042 (July 11, 2022).



I urge you to support Bill 24-553. Thank you and I look forward to your questions.



**STATEMENT ON B24-0553, “PUBLIC HEALTH EMERGENCY CREDIT ALERT AMENDMENT ACT OF 2021”  
NOVEMBER 18, 2022**

Discover Financial Services offers banking, credit products, and innovative payment services that connect cardmembers and merchants in the District of Columbia and around the world. We provide those services through Discover Bank, which is regulated and examined by the Federal Reserve, FDIC, CFPB, and the State of Delaware.

Our testimony on B24-0553 focus on two suggestions to make the bill more balanced, focused and impactful for consumers:

1. Competitive Playing Field

Currently, this bill (like the temporary law that precedes it) provides exemptions for certain specific types of financial institutions, including federal credit unions, national banks, and federal savings associations. Notably, this exemption does not extend equitably to all financial institutions that are federally regulated, examined and insured.

For DC consumers who bank with different or multiple institutions, the upshot is that some of their preferred banking institutions may be exempt from the DC law while others are not. This different treatment of similarly functioning institutions may create consumer confusion – or at least, raise questions about how to access the protections articulated in the bill.

Discover urges that the law should put all federally regulated financial institutions on equal footing, rather than single out for different treatment certain types of institutions and their customers. We respectfully ask that the Council amend paragraph (b) on page 3 of the bill to include all federally regulated financial institutions within the exemption, thereby ensuring a consistent consumer experience and parity for the banks that serve them.

2. Proposed Notice Requirement Not in Existing Law

Our second suggestion concerns a section of the permanent bill that would be new, in that it does not exist in the temporary law. On page 3, paragraph c(2) on lines 86-90 would create a new permanent requirement for only some financial institutions (the result of the inconsistent application discussed earlier) to notify DC consumers of certain rights.

It is unclear why a new notice requirement should be added to the law at this time. B24-0553 and its predecessors aim to address consumer hardship that resulted from the COVID-19 pandemic and the ensuing public health emergency. Yet no financial institutions are obliged under the existing temporary law to provide affirmative notice to consumers of their rights under current law.

To avoid confusion and unnecessary disruption, Discover urges that B24-0553 should continue the existing law without adding new substantive provisions. We respectfully request that the Council remove paragraph c(2) on page 3 of the bill.

December 6, 2022

Councilmember Phil Mendelson  
Chairman, District of Columbia Council  
1350 Pennsylvania Avenue, NW  
Suite 504  
Washington, DC 20004

**Re: District of Columbia B24-0553**

Dear Chairman Mendelson:

I write on behalf of the American Financial Services Association (AFSA)<sup>1</sup> to express our serious concerns with B24-0553, the Public Health Emergency Credit Alert Amendment Act of 2021, which would permanently extend the District’s strict restrictions on the use of consumer reports during public health emergencies. We appreciate the opportunity to submit comments into the record as part of the Committee’s process.

We have previously voiced our concerns with these restrictions when the Council initially considered similar emergency and temporary legislation during the COVID emergency, and we believe the economic effects of the pandemic are sufficiently resolved to not justify the extraordinary step of extending those measures permanently. Importantly, B24-0553 would expand the restrictions and create even greater compliance challenges but with limited added benefit for consumers.

As drafted, the bill would permanently extend to future public health emergencies a previously temporary prohibition on users of a consumer report using or considering “any adverse information in a report that was the result of an action or inaction by a consumer” if the consumer’s file contains the COVID-19 emergency alert. Our members share your goal of providing relief to borrowers facing financial hardship and took tremendous steps to help borrowers throughout the COVID emergency. While our members are committed to continuing to work with borrowers in the future to provide assistance where possible, we believe the Council must reconsider expanding these restrictions, as drafted, beyond the COVID emergency.

Unlike the temporary bills during the COVID emergency, the permanent legislation requires the user of a consumer report to inform the consumer of their right to file a written statement for their credit file “if the consumer receives a denial or rejection by the user of a credit report due to information that occurred during the public health emergency.” The credit underwriting process assesses a prospective borrower based on a number of different factors, including their overall credit profile,

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<sup>1</sup> Founded in 1916, the American Financial Services Association (AFSA), based in Washington, D.C., is the primary trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including direct and indirect vehicle financing, traditional installment loans, mortgages, payment cards, and retail sales finance. AFSA members do not provide payday or vehicle title loans.

income, and ability to repay the loan. Credit decisions are not made solely based on the status of any single credit account, making it difficult, if not impossible, to isolate or disregard the specific effect of any piece of adverse information at the consumer report user level. Individual credit trade lines stay on a consumer's report for years, and this specific provision would create a vague obligation that is not feasible to comply with for the years following any declared public health emergency.

Moreover, developing a credit model that disregards certain adverse information in compliance with the bill's requirements would not be feasible given that control over credit reporting processes largely rests with consumer reporting agencies. While creditors do work closely with prospective borrowers to tailor the credit offered based specifically on each borrower's financial needs and individual credit profile, blanket restrictions on considering certain credit information, like these, preclude creditors from offering credit narrowly tailored to meet certain borrowers' needs. Further, to the extent that any adverse information provides an indication of the borrower's ability to repay new credit, requiring creditors to disregard such information would create safety and soundness concerns for the new loan by interfering with creditors' means of fully assessing the borrower's ability to repay the loan.

The information required to be disregarded could affect individual tradelines, delinquencies, or other information that is provided as part of a consumer report obtained by a user. Because creditors do not have the ability to remove or dissect information from a consumer report, or to identify how that information included in a consumer report may have affected an individual's credit score, this provision could limit the ability of creditors to use consumer reports overall and thus affect the availability of credit for District of Columbia consumers as the prohibition stretches on.

Further problematic is that the legislation results in a two-tiered credit market by excluding national banks and credit unions from the credit alert information restrictions but including state-chartered banks and other non-depository financial institutions. Leaving certain segments of the market subject to significant restrictions creates an uneven playing field with the rest of the market. These restrictions would limit competition in the state by raising compliance costs for certain companies and leave consumers with fewer choices and worse off as a result. Additionally, the difference could prove confusing for consumers who have relationships with multiple types of financial institutions.

We urge you to consider the effects these restrictions have on the District's credit markets and not move forward with legislation as drafted. Thank you in advance for your consideration of our comments. If you have any questions or would like to discuss this further, please do not hesitate to contact me at 202-469-3181 or [mkownacki@afsamail.org](mailto:mkownacki@afsamail.org) at your convenience.

Sincerely,



Matthew Kownacki  
Director, State Research and Policy  
American Financial Services Association  
919 Eighteenth Street, NW, Suite 300  
Washington, DC 20006-5517



December 6, 2022

Chairman Phil Mendelson  
D.C. Council Committee of the Whole  
1350 Pennsylvania Avenue  
Washington D.C. 20004

**RE: B-24-0553 – Public Health Emergency Credit Alert Amendment Act of 2021**

Chairman Mendelson,

The American Property Casualty Insurance Association (APCIA), the National Association of Mutual Insurance Companies (NAMIC), and the District of Columbia Insurance Federation (DCIF), which represent the vast majority of property casualty insurance companies writing in the District of Columbia, write today to express our opposition to proposed bill B24-0553, the Public Health Emergency Credit Alert Amendment Act of 2021.

The bill, which would make permanent the ongoing emergency and temporary acts, would restrict users of credit reports from considering adverse information resulting from either action or inaction during a declared public health emergency.

The federal Fair Credit Reporting Act first authorized insurers to consider credit information nearly 40 years ago. Credit-based insurance scoring is an objective and accurate method for assessing the likelihood and severity of an insurance loss. Insurers that consider credit information in their underwriting and pricing decisions do so because insurance scoring allows them to rate and price business with a greater degree of accuracy and certainty. Sound underwriting and rating, in turn, allows insurers to offer a wider range of products at more competitive and accurate prices, providing a direct benefit to consumers.

When insurers can properly underwrite risks, consumers benefit with lower rates, more choices and greater market stability. To that end, the undersigned trade associations support the ability of insurers to consider underwriting and rating criteria, such as credit-based insurance scores, that are accurate, objective and supported by actuarial and statistical evidence.

If enacted, B24-0553 could cause perpetual inaccuracies and inconsistencies in credit reports relied on by insurers to predict the likelihood of a future loss, leading to reduced accuracy in underwriting, which ultimately has a negative impact on consumers.

In conclusion, credit-based insurance scoring is a predictive tool for insurers - and a fair one for consumers. To protect competition and consumer choice, it is imperative that insurers be permitted to fairly price risks using accurate, nondiscriminatory, and statistically valid tools available to them.

For these reasons we respectfully oppose this legislation and request Committee of the Whole not to advance the bill.

Sincerely,

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**Before the Committee of the Whole  
Council of the District of Columbia  
Public Hearing Regarding Bill 24-553:  
Public Health Emergency Credit Alert Amendment Act of 2021  
November 18, 2022**

**Testimony of Dieynaba Sall, DC Resident**

Chairman Mendelson, Members of the Council of the District of Columbia, and Committee staff:

Thank you for holding this hearing. My name is **Dieynaba Sall**. I am a Ward 3 resident and have been a DC resident for more than 15 years. For over a decade, I worked hard as a K-12 teacher during the day and as an English instructor to adults, and was able to pay, and did pay, my financial obligations on time.

The Covid pandemic caused substantial economic hardship for me, as it did for so many other DC residents. Due to the pandemic, I lost my contract teaching job at the Foreign Service Institute. This loss of my sole source of income caused me to miss and delay some financial obligations, despite my efforts to obtain income during the pandemic.

These missed and late payments impaired my credit, and caused me great distress as I worried that my impaired credit report could make it difficult for me to obtain a new job, pay my mortgage and condominium fees, or obtain reasonably priced credit even after I became employed again. These harms were caused entirely by the pandemic.

Thanks to the DC Council's Covid-19 Emergency Credit Alert Law, and working with the legal services organization Tzedek DC, I added a personal statement on my credit report to protect me from many of the hardships that would result from having pandemic-caused negative items on my credit report.

I have been able to find work and am getting my financial situation in order after enduring the financial hardships of the public health emergency. I believe that people examining my credit reports should focus on the credit history that I have

established both before and after the public health emergency, rather than the negative items caused by the pandemic.

While I am grateful that I've had the protection from the temporary Covid Credit Alert law, I am disheartened that I and the many tens of thousands of residents whose financial stability was affected by the pandemic will lose this protection if the law is not made permanent.

I urge the DC Council to pass this Public Health Emergency Credit Alert Amendment Act. Like me, many District residents will continue to need this protection for as long as the pandemic negative items stay on our credit reports.

Thank you for considering my views and for protecting me and other residents so far with the temporary Covid Credit Alert law.

Dieynaba Sall

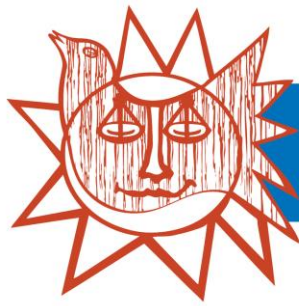
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Dieynaba Sall

**Signature:** *Dieynaba Sall*

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# CARECEN

LATINO RESOURCE AND JUSTICE CENTER

*Strengthening the Latino Community in the Washington, D.C. Area*

**Council of the District of Columbia  
Councilmember Phil Mendelson, Chairman  
Committee of the Whole  
November 17, 2022**

**Testimony provided by: Anabell Martinez, Housing Program Director of the Central American Resource Center (CARECEN)**

Thank you, Chairman Phil Mendelson, and the committee of the Whole to have this opportunity to provide a written testimony in support of Bill 24-553, Public Health Emergency Credit Alert Amendment Act of 2021. My name is Anabell Martinez, and I am the Housing Program Director of the Central American Resource Center-CARECEN.

CARECEN was founded in 1981 and fosters the comprehensive development of the Latino community by providing direct services, while promoting grassroots empowerment, civic engagement, and human rights advocacy. Our organization works to help integrate our clients to increase their success in their new community.

CARECEN serves low to moderate income Latinos in DC, home to now 77,055, or approximately 11% of the overall population. However, sixty one percent of the working population in D.C. identifies as Limited English Proficient is Spanish speaking. These workers tend to earn 25 to 40% less than English proficient workers. In addition to having low to moderate incomes, CARECEN participants are more likely to rent than own their homes.

During Covid-19, the Latino population has been of the demographics most adversely affected by Covid-19. As low-income clients they have been unable to save adequately to prepare for the crisis, and because they work primarily in the service industry almost all of them have been laid off or had their hours reduced. Every day we see how our low-income clients sacrificed the few dollars they earned in order to at least pay their necessities or a portion of their debt. An example is Mr. Ventura. He is a senior who is still working so he can continue paying his mortgage. During the COVID-19 pandemic, his income was reduced, and he was unable to pay the full amount of his mortgage. As a result, he had to sacrifice other important expenses, such as food, because was afraid that his credit would be damaged if he could not pay his mortgage.

I thank councilmember Robert C. White, Jr. and the other councilmembers who introduced this bill. This bill is important for low-income families and individuals like Mr. Ventura, who faced loss of income as a result of the COVID-19 pandemic. Adding a consumer statement on their credit record will allow our clients to avoid being penalized as a result of financial hardship that was outside of their control. Passage of Bill 24-553 will thus give many in our Latino community better access to services requiring a credit check, such as opening a bank account, renting an apartment, applying for an insurance, etc.

CARECEN

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Tel (202)328-9799 • Fax (202)328-7894 • [www.carecencdc.org](http://www.carecencdc.org)

Moving forward, CARECEN support this bill 24-553 and on behalf of our Latino community, we thank all councilmembers for this bill.

Thank you.

CARECEN

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Supplemental Testimony of Chi Chi Wu,  
National Consumer Law Center  
Before the Council of the District of Columbia, Committee of the Whole  
in support of Bill 24-553, the “Public Health Emergency Credit Alert Amendment Act of 2021.”  
December 6, 2022

Dear Chair Mendelson,

Thank you again for the opportunity to submit testimony in favor of Bill 24-553, the Public Health Emergency Credit Alert Amendment Act of 2021. During the hearing, the use of credit reports and scores in tenant screening was discussed. You asked us to follow up with ideas for alternatives to credit history information for landlords to assess applicants’ ability to pay the rent.

Note that credit reports and scores are not intended to gauge whether someone will be a good tenant. Credit scores are specifically designed to predict the likelihood that a borrower will become 90 days late on a loan<sup>1</sup> — not rent, which is a different sort of obligation. What’s more, credit reports tell a story about past ability to pay in particular instances, not current ability to pay rent, which is a high-priority bill that families pay before all others – a common refrain is that for low- and moderate-income families “the rent eats first.”<sup>2</sup>

Thus, the best measures for a landlord to assess a prospective tenant’s current ability to pay rent is with documents such as:

- Paystubs
- Tax returns
- W-2s
- Bank statements
- Investment account statements

All these documents show a tenant’s ability to pay rent, which is more determinative than the information in a credit report. Also, the Consumer Financial Protection Bureau has noted that: “The one credit reporting variable most relevant for rental housing – rent payment history – is not well-populated in the repositories of the [credit bureaus].”<sup>3</sup>

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<sup>1</sup> See Consumer Financial Protection Bureau, Data Point: Credit Invisibles, May 2015, at 7, [http://files.consumerfinance.gov/f/201505\\_cfpb\\_data-point-credit-invisibles.pdf](http://files.consumerfinance.gov/f/201505_cfpb_data-point-credit-invisibles.pdf) (most credit scoring models built to predict likelihood relative to other borrowers that consumer will become 90 or more days past due in the following two years).

<sup>2</sup> See CFPB, Tenant Background Checks Market Report, Nov. 2022, at 39, [https://files.consumerfinance.gov/f/documents/cfpb\\_tenant-background-checks-market\\_report\\_2022-11.pdf](https://files.consumerfinance.gov/f/documents/cfpb_tenant-background-checks-market_report_2022-11.pdf) (“Research further suggests that renters may be more likely to make rental payments than to repay other financial services debt. Policymakers frequently reference the notion that ‘rent eats first’”; citing HUD, “When the Rent Eats First From Incomes Large and Small, Is the Traditional Measure of Cost Burden Still Useful?,” January 2021).

<sup>3</sup> CFPB, Tenant Background Checks Market Report, at 39.

We also have a number of recommendations generally regarding tenant screening, as these reports are also problematic for renters. The CFPB has noted that “there may be a high potential that tenant screening reports overstate the risk of renting to any given applicant. When this happens, prospective tenants can lose housing opportunities, pay multiple application fees, have extended search times, and ultimately obtain less-desirable housing. Renters may also be required to pay add-on charges, extra security deposits, and higher rent based on a negative tenant screening report.”<sup>4</sup>

Note that the following is a general list of recommendations regarding tenant screening, and some of these issues may already be addressed in the law that the D.C. Council passed last session.

- Mandate an individualized assessment of rental applicants and prohibit blanket rejection policies, such as those that exclude any person with an eviction or criminal record.
- Require tenant screening criteria that are specifically designed to assess whether the applicant has the current ability to pay rent and the applicant’s suitability for tenancy. Any eviction records, criminal records, or other information that tenant screening companies are permitted to report and that landlords are permitted to use must bear directly on whether someone will be a successful tenant.
- Prohibit tenant screening companies from reporting certain types of eviction and criminal records—including those that have been sealed, expunged, or subject to similar relief—and prohibit housing providers from using those records.
- Prohibit tenant screening companies from reporting eviction records where the eviction filing did not result in a judgment against the tenant or the parties reached an agreement and prohibit housing providers from considering such records.
- Prohibit tenant screening companies from reporting rental debt, or at least from reporting rental debt that arose during the COVID-19 pandemic, and prohibit housing providers from considering such information.
- Prohibit housing providers from using—either by obtaining a traditional credit report or a tenant screening report that contains credit information—credit reports and scores in rental housing decisions.
- Require that any tenant screening algorithm or model used to produce scores or recommendations is empirically derived, demonstrably and statistically sound, and

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<sup>4</sup> *Id.* at 22.

routinely tested to ensure fairness and prevent discrimination against protected classes.

- Establish a rebuttable presumption that a housing provider violates the law if they request a tenant screening report relating to a potential tenant that includes information that they are not permitted to consider and subsequently refuses to rent or offer a lease to the potential tenant.
- Require debt collectors, before engaging in any collection activity, to obtain and review appropriate documentation of alleged rental debts, including whether the landlord is entitled to such amounts under state law and complied with the procedural requirements of such laws.
- Enable tenants to enforce their rights under existing federal and state law by establishing a right to counsel in eviction cases and including tenant screening issues within the scope of work. States or municipalities that already have a right to counsel should include or encourage enforcement of rights with respect to tenant screening within the scope of work.

I would be happy to discuss or follow up on any of these recommendations.

In the meantime, I reiterate our support for Bill 24-553 and urge you to support it as well.  
Thank you.

**Committee of the Whole  
Council of the District of Columbia  
Bill 24-553:  
Public Health Emergency Credit Alert Amendment Act of 2021**

**Supplemental Testimony of Tzedek DC**

**December 6, 2022**

Tzedek DC appreciated the opportunity to provide testimony at the November 18, 2022 hearing held by the Committee of the Whole on the Public Health Emergency Credit Alert Amendment Act of 2021. Following is supplemental information in response to questions raised at the hearing.

1. Use of Credit Report Information by Employers

Credit reports are the gateway for residents to access rental housing, loans, mortgages, insurance, and, in some cases, a job.

The question was raised as to the extent of the DC population potentially subject to credit history review by employers. Our analysis indicates that approximately one-third<sup>1</sup> of jobs in DC are potentially exempt<sup>2</sup> from the provisions of the Fair Credit in Employment Amendment Act of 2016, which otherwise prohibits employers in DC from considering an applicant's credit information.

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<sup>1</sup> This ratio is based on an analysis of 2021 data from [https://www.bls.gov/oes/current/oes\\_dc.htm#13-0000](https://www.bls.gov/oes/current/oes_dc.htm#13-0000), and is calculated as the number of employees from the DC government, federal government, financial institutions, Protective Services, Office of Chief Financial Officer, Police and Sheriff Patrol Officers, and Supervisors of Police and Detectives, in relation to census information regarding the DC workforce. <https://does.dc.gov/page/labor-statistics>.

<sup>2</sup> Exemptions include: 1. Where DC law requires an employer to obtain an employee's credit information; 2. Where an individual applies for, or is employed as, a police officer with the Metropolitan Police Department, as a special police officer or campus police officer, or in a position with a law enforcement function; 3. Where credit information has to be provided to the Office of the Chief Financial Officer of D.C.; 4. Where an employee must have a security clearance under District law, however in some instances federal law may preempt District law; 5. Where DC government employees have to provide disclosures to the Board of Ethics and Government Accountability, or to the Office of the Inspector General; 6. Where the job position would require the employee to access personal financial information, such as when employed in financial institutions; or 7. Where an employer is following a lawful court order or cooperating with a law enforcement investigation. [https://ohr.dc.gov/sites/default/files/dc/sites/ohr/page\\_content/attachments/FairCredit\\_FAQ\\_100517.pdf](https://ohr.dc.gov/sites/default/files/dc/sites/ohr/page_content/attachments/FairCredit_FAQ_100517.pdf).

Therefore, the protection provided by the Bill could make the difference for many DC residents in securing a job that would otherwise be out of reach only because of negative credit items during and as a result of a public health emergency financial hardship.

## 2. The Bill is not Preempted by the FCRA

A question was raised at the Hearing about potential preemption of the Bill by the Fair Credit Reporting Act (“FCRA”). The following analysis shows that the Council is clearly not preempted by federal law from enacting the bill. Like the existing temporary act (the “Temporary Act”),<sup>3</sup> the bill allows consumers to include a personal statement on their credit reports and would prohibit certain users of credit reports from considering adverse information that was the result of the public health emergency.

The Temporary Act was not preempted by the FCRA, and since the Temporary Act’s enactment, the Consumer Financial Protection Bureau (“CFPB”) has issued even firmer guidance that supports the conclusion that neither the Temporary Act nor the Bill would be preempted.

In June, the CFPB issued an interpretive rule (“CFPB Interpretive Rule”)<sup>4</sup> stating that “State laws that are not ‘inconsistent’ with the FCRA – *including State laws that are more protective of consumers than the FCRA* – are generally not preempted.”<sup>5</sup>

According to the CFPB Interpretive Rule, “State laws relating to what or when items generally may be initially included on a consumer report – or what or when certain types of information may be initially included on a consumer report –

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<sup>3</sup> Covid-19 credit report protections were originally enacted as part of the Coronavirus Temporary Amendment Act of 2020 (D.C. Law 23-130, effective Oct. 9, 2020 (67 D.C.R. 8022)), and were included in several successive pieces of legislation, most recently in the Public Health Emergency Credit Alert Temporary Amendment Act of 2022 (D.C. Law 24-110, effective Apr. 8, 2022 (69 D.C. R. 3713)).

<sup>4</sup> The Fair Credit Reporting Act’s Limited Preemption of State Laws, § 1, issued by the Bureau of Consumer Financial Protection on June 28, 2022, (12 CFR Part 1022) (emphasis added), available at <https://www.consumerfinance.gov/rules-policy/final-rules/the-fair-credit-reporting-acts-limited-preemption-of-state-laws/> (“CFPB Interpretive Rule PDF”).

<sup>5</sup> *Id.* at page 3 (emphasis added).

would generally not be preempted by section 1681t(b)(1)(e).”<sup>6</sup> This would cover the D.C. provision permitting a consumer to file a personal statement on their credit report indicating that they have been financially impacted by the public health emergency.

The CFPB Interpretive Rule goes on to state that “States therefore retain substantial flexibility to pass laws involving consumer reporting to reflect emerging problems affecting their local economies and citizens.”<sup>7</sup> The DC protections are clearly an exercise of this “flexibility to pass laws involving consumer reporting to reflect emerging problems affecting their local economies and citizens.”

Court decisions also support this conclusion. As the First Circuit noted earlier this year in *Consumer Data Industry Association v. Frey* (“*Frey*”), “Congress formulated a general rule against preemption in the FCRA.”<sup>8</sup> States may impose requirements unless they fall within one of the specific areas identified in the FCRA as being subject to preemption.

In explaining the areas that are not subject to preemption, the CFPB Interpretive Rule states that § 1681t(b)(1)(E) “does *not* preempt State laws about subject matter regarding the content of or information on consumer reports beyond these topics. . . . For instance, although *how long* the specific types of information listed in section 1681c may continue to appear on a consumer report is a subject matter regulated under section 1681c, what or when items generally may be *initially* included on a consumer report is not a subject matter regulated under section 1681c.”<sup>9</sup>

Nothing in § 1681c addresses the subject matter of inclusion of a public health emergency personal statement in a credit report. Instead, § 1681c prohibits including specific types of adverse information in a consumer report (*i.e.*, a credit report), establishes an exception to this prohibition allowing specific information

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<sup>6</sup> *Id.* at page 11.

<sup>7</sup> *Id.* at page 11.

<sup>8</sup> 26 F.4<sup>th</sup> 1, 6 (2022).

<sup>9</sup> CFPB Interpretive Rule, § II, a (p. 10 of the Interpretive Rule PDF).



to be included in certain circumstances, establishes a method for determining when some items of information are too outdated to be included in a credit report, requires credit reports to include information regarding bankruptcy filings, the identification of key factors in determining a credit score, and whether a consumer has voluntarily closed an account or disputes a charge, and includes technical requirements regarding credit card numbers and addresses.<sup>10</sup> Because none of these requirements address the inclusion of public health emergency related financial information, or use of that information when making credit decisions, they do not preempt the Bill.

Moreover, the Bill's carveouts for users that are national banks and federal savings associations prevent future disputes regarding the applicability of preemption provisions in laws other than the FCRA.

### 3. Impending Effects of Covid-related Hardships

A question was raised at the hearing as to whether DC residents' credit was really harmed more than usual during the Covid-19 emergency. On the surface, it appears that credit scores improved during the pandemic, given that the percentage of DC residents with a subprime credit score declined from 26.1% in February 2020 to 20.7% in August 2021.<sup>11</sup> However, the National Consumer Law Center has explained the paradox beneath the seemingly improved credit of Americans during the pandemic. Federal assistance, including pauses to student loans and mortgage payments and stimulus checks, helped many Americans' financial situations temporarily. Credit score data does not represent the millions of Americans who fell behind on rent and utilities payments during the pandemic, obligations that do not show up on a credit report until months later, when they are referred to debt collectors.<sup>12</sup> As more rent and utility debts from the Covid health emergency time period are referred to collections, it is projected that more negative items will appear on DC residents' credit reports, especially for low-income residents for whom the pandemic had a stronger negative financial impact.

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<sup>10</sup> 15 U.S.C. § 1681c.

<sup>11</sup> [https://apps.urban.org/features/credit-health-during-pandemic/?cat=subprime\\_pct\\_all&month=08%2F01%2F2020&state=DC&geog=state](https://apps.urban.org/features/credit-health-during-pandemic/?cat=subprime_pct_all&month=08%2F01%2F2020&state=DC&geog=state)

<sup>12</sup> <https://www.nclc.org/resources/issue-brief-the-credit-score-pandemic-paradox-and-credit-invisibility/>

\* \* \*

As we emphasized at the Hearing, maintaining a strong credit report is vital for residents' economic stability. Credit reports are the gateway for residents to access rental housing, loans, mortgages, insurance, and, in some cases, a job. Credit report impairment is an issue of racial justice nationally and especially in DC, where, as Urban Institute data has shown, DC residents from our communities of color have almost four times as high a rate of debts in collection as do white DC residents.<sup>13</sup>

The District Government can and should step in to protect consumers from credit report impairment arising out of a public health emergency, and we applaud the Council for enacting the Temporary Act. We urge the Council to make such protections permanent with this Bill.

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<sup>13</sup> As of February 2022, 9% of White communities in the DC have debt in collections, compared with 35% of communities of color. Urban Institute: Debt in America: <https://apps.urban.org/features/debt-interactive-map/?type=overall&variable=totcoll&state=11>.

**COMMITTEE OF THE WHOLE  
DRAFT COMPARATIVE PRINT  
BILL 25-118**

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**CHAPTER 38. CONSUMER PROTECTIONS.**

Subchapter I. General.  
§§ 28-3801 – 28-3819

Subchapter II. Consumer Security Breach Notification.  
§§ 28-3851 – 28-3853

Subchapter III. Consumer Security Freeze.  
§§ 28-3861 – 28-3864

**Subchapter IV. Public Health Emergency Credit Alert.**  
**§§ 28-3871 – 28-3871**

\* \* \*

**D.C. OFFICIAL CODE § 28–3861. DEFINITIONS.**

For the purposes of this subchapter, the term:

(1) “Consumer” means an individual who resides in the District of Columbia.

(2) “Credit report” means **any written, oral, or other communication of any** information ~~maintained~~ by a credit reporting agency bearing on a consumer’s creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, which is used or expected to be used or collected in whole or in part **for the purpose of serving as a factor in establishing the consumer’s eligibility for:**

(A) ~~Serving as a factor in establishing the consumer’s eligibility for credit~~ **Credit** or insurance to be used primarily for personal, family, or household purposes;

(B) Employment purposes; or

(C) Any other purpose authorized under the Fair Credit Reporting Act, approved October 26, 1970 (84 Stat. 1127; 15 U.S.C. § 1681b).

(3) “Credit reporting agency” means any person who, for consideration, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of maintaining consumers’ credit information for the purpose of furnishing the information to third parties.

(4) “Proper identification” means information generally considered sufficient to identify a person. Additional information concerning the consumer’s employment and personal or family history shall not be included within the term “proper identification” unless the consumer is unable to reasonably identify himself or herself with other information generally considered sufficient.

(5) “Security freeze” or “freeze” means a restriction, at the request of the consumer and subject to certain exceptions, that prohibits the credit reporting agency from releasing all or any part of a credit report or any information derived from it without the express authorization of the consumer.

1 **DRAFT COMMITTEE PRINT**  
2 **Committee of the Whole**  
3 **September 19, 2023**  
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7  
8 A BILL

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10 25-118

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12 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA  
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17 To amend Chapter 38 of Title 28 of the District of Columbia Official Code to require credit  
18 reporting agencies to accept a personal statement from a consumer indicating the  
19 consumer experienced financial hardship resulting from a public health emergency; to  
20 prohibit users of credit reports from taking into consideration adverse information in a  
21 report that was the result of the consumer’s action or inaction that occurred during the  
22 public health emergency; to require credit reporting agencies to notify residents of the  
23 right to request a personal statement; and to provide for a civil action for violations of  
24 these requirements.  
25

26 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this  
27 act may be cited as the “Public Health Emergency Credit Alert Amendment Act of 2023”.

28 Sec. 2. Chapter 38 of Title 28 of the District of Columbia Official Code is amended as  
29 follows:

30 (a) The table of contents is amended by adding a new subchapter designation to read as  
31 follows:

32 “Subchapter IV. Public Health Emergency Credit Alert.

33 “28-3871. Public health emergency credit alert.

34 (b) Section 28-3861(2) is amended to read as follows:

35 “(2) “Credit report” means any written, oral, or other communication of any  
36 information by a credit reporting agency bearing on a consumer’s creditworthiness, credit

37 standing, credit capacity, character, general reputation, personal characteristics, or mode of  
38 living, which is used or expected to be used or collected in whole or in part for the purpose of  
39 serving as a factor in establishing the consumer’s eligibility for:

40 “(A) Credit or insurance to be used primarily for person, family, or household  
41 purposes;

42 “(B) Employment purposes; or

43 “(C) Any other purpose authorized under the Fair Credit Reporting Act, approved  
44 October 26, 1970 (84. Stat. 1127; 15 U.S.C. § 1681 *et seq.*).”.

45 (c) A new subchapter IV is added to read as follows:

46 “Subchapter IV. Public Health Emergency Credit Alert.

47 “§ 28-3871. Public health emergency credit alert.

48 “(a)(1) If a consumer reports in good faith that the consumer has experienced financial  
49 hardship resulting directly or indirectly from a public health emergency declared pursuant to § 7-  
50 2304.01, a credit reporting agency maintaining a file on the consumer shall accept and include in  
51 that file a personal statement furnished by the consumer indicating that the consumer has been  
52 financially impacted by the public health emergency.

53 “(2) A credit reporting agency shall provide that personal statement, along with  
54 any credit report provided by the agency, beginning on the date the credit reporting agency  
55 receives the personal statement, unless the consumer requests that the personal statement be  
56 removed.

57 “(b) This section shall not apply to a federal credit union, as defined by 12 U.S.C. §  
58 1752(1), a national bank, as defined by 12 U.S.C. § 25b(a)(1), or a federal savings association, as

59 defined by 12 U.S.C. § 1462(3); except, that an exception granted by this subsection shall not  
60 apply to any entity to which the savings clause at 12 U.S.C. § 25b(b)(2) applies.

61 “(c)(1) No user of a credit report shall consider adverse information in a report that was  
62 the result of an action or inaction of a consumer that occurred during, and was directly or  
63 indirectly the result of, a public health emergency declared pursuant to § 7-2304.01, if:

64 (A) The credit report includes a personal statement pursuant to subsection  
65 (a) of this section; or

66 (B) The consumer provides a written statement to the user of a credit  
67 report that indicates in good faith that the consumer has experienced financial hardship resulting  
68 directly or indirectly from the public health emergency declared pursuant to § 7-2304.01, before  
69 the user of the credit report makes a determination.

70 “(2) If the consumer receives a denial or rejection by the user of a credit report  
71 due to adverse information that was the result of an action or inaction of a consumer that  
72 occurred during, and was directly or indirectly the result of, the public health emergency  
73 declared pursuant to § 7-2304.01, the user must inform the consumer of the consumer’s right to  
74 provide a written statement pursuant to paragraph (1) of this subsection. “(d) When a District  
75 resident requests a copy of a credit report pursuant to 15 U.S.C. § 1681j, the entity providing the  
76 credit report must notify the resident of the right to request that a personal statement accompany  
77 the credit report as set forth in subsection (a) of this section.

78 “(e) If a credit reporting agency willfully fails to comply with any requirement imposed  
79 under this section, the affected consumer may bring a civil action against the agency in the  
80 Superior Court for the District of Columbia to recover:.

81                   “(1) Any actual damages sustained by the consumer as a result of the failure or  
82 damages of not less than \$100 and not more than \$1,000;

83                   “(2) Such amount of punitive damages as the court may allow; and

84                   “(3) In the case of any successful action brought under this subsection, the costs  
85 of the action together with reasonable attorney’s fees as determined by the court.

86                   “(f)(1) The Attorney General may petition the Superior Court of the District of Columbia  
87 to obtain temporary or permanent injunctive relief prohibiting the use of a method, practice, or  
88 act that violates this section and requiring the violator to take affirmative action, including the  
89 restitution of money.

90                   “(2) In addition, in an action under this subsection, the Attorney General may  
91 recover:

92                                   “(A) A civil penalty not to exceed \$1,000 for each violation of this  
93 section; and

94                                   “(B) Reasonable attorney’s fees and costs of the action.

95                   “(g) The following terms shall have the same meaning as set forth in § 28-3861:

96                                   “(1) “Consumer”;

97                                   “(2) “Credit report”; and

98                                   “(3) “Credit reporting agency”.

99                   “(h) This section shall not be construed in a manner inconsistent with the Fair Credit  
100 Reporting Act, approved October 26, 1970 (84. Stat. 1127; 15 U.S.C. § 1681 *et seq.*), or any  
101 other federal law or regulation.”.

102                   Sec. 3. Fiscal impact statement.



103           The Council adopts the fiscal impact statement in the committee report as the fiscal  
104 impact statement required by section 4a of the General Legislative Procedures Act of 1975,  
105 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

106           Sec. 4. Effective date.

107           This act shall take effect following approval by the Mayor (or in the event of veto by the  
108 Mayor, action by the Council to override the veto), a 30-day period of congressional review as  
109 provided in sections 602(c)(1) of the District of Columbia Home Rule Act, approved December  
110 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of  
111 Columbia Register.