Discriminatory Effects of Credit Scoring on Communities of Color

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I. INTRODUCTION

Our current credit-scoring systems have a disparate impact on people and communities of color. These systems are rooted in our long history of housing discrimination and the dual credit market that resulted from it. Moreover, many credit-scoring mechanisms include factors that do not just assess the risk characteristics of the borrower; they also reflect the riskiness of the environment in which a consumer is utilizing credit, as well as the riskiness of the types of products a consumer uses.

Until only a few decades ago, communities and people of color were explicitly excluded from access to low-cost government and other mainstream loans. In the 1930s, the Home Owners Loan Corporation (HOLC) used blatant discriminatory rating systems and "residential security maps" to deem communities of color to be high risk.[1] The Federal Housing Authority (FHA) and Veterans Administration (VA) continued this discrimination into the 1950s.[2] Banks, real estate agents, appraisers, and others also perpetuated redlining and segregation in the housing markets. The passage of the federal Fair Housing Act of 1968 improved conditions, but federal regulatory agencies refused to acknowledge their enforcement responsibilities under the Act until the mid 1970s. It was not until civil-rights groups sued the agencies that the federal government began to collect information on the mortgage-lending practices of the institutions it regulated, and to establish and implement fair-lending examination procedures.

Because of this history of racial discrimination, segregated neighborhoods formed and people of color had limited access to affordable, sustainable credit. Instead of accessing mainstream credit available to white borrowers and white neighborhoods, people of color were relegated to using fringe lenders and paying much more than they would have had to otherwise. While segregation

1. *See* DOUGLAS S. MASSEY & NANCY A. DENTON, AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS 52 (1993).

2. *See* William J. Collins & Robert A. Margo, *Race and Home Ownership, 1900 to 1990*, at 19-20 (Nat'l Bureau of Econ. Research, Working Paper No. 7277, 1999), *available at* http://www.nber.org/papers/w7277.pdf (explaining use of Residential Security Maps in issuing loans).

and housing discrimination have abated somewhat, we still live in an extraordinarily segregated society.[3] Access to credit is even now often based on *where* we live rather than our individual ability to repay that credit. As this Article will explore, people of color were steered to subprime loans even when they qualified for prime loans, contributing to the fact that the foreclosure crisis has hit communities of color worse than the rest of the country.[4]

Credit-scoring systems in use today continue to rely upon the dual credit market that discriminates against people of color. For example, these systems penalize borrowers for using the type of credit disproportionately used by borrowers of color. Even fair-lending defense attorneys who represent major banks readily admit that credit scoring has a differential impact on people of color. In a recent article, attorneys at K&L Gates asserted "even the most basic lending standards, such as credit scores and [loan-to-value] requirements, 'impact' racial and ethnic groups differently."[5] While some in the financial industry have recently discussed the existence of the disparate-impact theory under the Fair Housing Act and other long-established laws, all eleven circuit courts that have considered the matter recognized disparate impact as a legally acceptable means by which parties can assert claims under the Act.[6]

As we all look for solutions to the foreclosure crisis, lenders, regulatory agencies, and policymakers promote tighter underwriting standards as a solution to improving the quality of loan performance and strengthening the economy. What they mean in part, however, is requiring higher credit scores for the best and most affordable products. This, of course, places the focus of improving loan performance on borrowers. But many studies and analyses have demonstrated that inappropriate loan products and their components were

3. Craig Gurian, *New Maps Show Segregation Alive and Well*, REMAPPING DEBATE (Apr. 20, 2011), http://www.remappingdebate.org/map-data-tool/new-maps-show-segregation-alive-and-well (explaining segregation's continuing presence in America). For example, according to 2010 census numbers, 65% of individuals in large metropolitan areas still live in areas of high segregation between whites and African-Americans. *See id.*

4. *See infra* Part II.B.

5. Paul Hancock et al., *Supreme Court vs. HUD: The Race to Decide "Impact or Intent"*, K&L GATES (Nov. 17, 2011), http://www.klgates.com/emsupreme-court-vs-hudem--the-race-to-decide-impact-or-intent-11-17-2011.

6. *See* Press Release, Consumer Fin. Prot. Bureau, *Consumer Financial Protection Bureau To Pursue Discriminatory Lenders*, (Apr. 18, 2012), http://www.consumerfinance.gov/pressreleases/consumer-financial-protection-bureau-to-pursue-discriminatory-lenders (announcing Bureau targeting unlawful lending practices including disparate impact). In addition, since the Fair Housing Act was amended in 1988, the United States Department of Housing and Urban Development and United States Department of Justice have acted in administrative proceedings and other contexts with the full understanding that disparate-impact claims are cognizable under the Act. *See id*. Further, the Consumer Financial Protection Bureau (CFPB) recently announced that it would utilize all tools, including disparate-impact theory, to pursue lenders who discriminate against consumers in violation of the Equal Credit Opportunity Act (ECOA). *See id.* The CFPB specifically stated that it would use disparate-impact theory when bringing actions under the ECOA. *See id.* The Federal Reserve also recognizes disparate impact as a way to prove ECOA claims. *See id.*

key factors driving the subprime crisis.[7] Factors including product type, presence of a yield-spread premium, distribution channel, inflated appraisals, and prepayment penalties helped significantly to predict whether a loan would fail. Even major credit repositories and credit-scoring companies, including VantageScore and FICO, admit that credit scores declined in predictive value leading up to and during the foreclosure crisis.[8] So why are some looking to increased reliance on credit scoring as a way of originating well-performing mortgages and solving the crisis?

The use of credit scoring and its disparate impact go far beyond the lending sector, affecting access to many other financial products and services. Employers use credit and other scoring mechanisms to evaluate job applicants, insurers use them to determine auto, life, and homeowners insurance, and landlords use them to screen tenants. Credit-scoring modelers and companies are finding even more creative ways to broaden the use of these systems. A recent proposal in Texas would use credit scores to determine utility rates.[9] Credit scores are even being used to determine which patients are more likely to take their medication as prescribed.[10]

Consumers, civil-rights groups, and policymakers are greatly concerned by the expanded use of scoring mechanisms. For example, insurance companies use credit-based insurance scores to determine pricing. Yet, studies by the Missouri and Texas Departments of Insurance have found that insurance scoring discriminates against low-income people of color because of the racial and economic disparities inherent in scoring mechanisms.[11] The Missouri study concluded that a consumer's race was the single most predictive factor determining his or her insurance score and, consequently, his or her insurance premium.[12]

The relationship between insurance credit scores and race is so strong that

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7. *See* James H. Carr & Katie Davidoff, *Legislative and Regulatory Responses to the Foreclosure Crisis*, 17 J. Affordable Housing & Community Dev. L. 283, 284 (2008); *What Caused the Financial Crisis? Quotes by Bankers and Other Experts*, CENTER FOR RESPONSIBLE LENDING 1, http://www.responsiblelending.org/mortgage-lending/tools-resources/Quotes-What-Caused-Crisis.pdf (last visited Nov. 24, 2013).

8. *See infra* Part II.

9. *See* Jim Stillman, *Your Credit Score Determines the Availability of Credit . . . and the Cost,* YAHOO! VOICES (June 20, 2007), http://voices.yahoo.com/your-credit-score-determines-availablility-creditand-392590.html.

10. *See* Tara Parker-Pope, *Keeping Score on How You Take Your Medicine,* N.Y. TIMES WELL BLOG (June 20, 2011, 5:23 PM), http://well.blogs.nytimes.com/2011/06/20/keeping-score-on-how-you-take-your-medicine. Insurers and medical-care facilities use the FICO Medication Adherence Score to identify patients who need follow-up services to ensure they take their medication. *See id.*

11. *See* BRENT KABLER, ST. OF MO. DEP'T OF INS., INSURANCE-BASED CREDIT SCORES: IMPACT ON MINORITY AND LOW-INCOME POPULATIONS IN MISSOURI 39 (2004), http://insurance.mo.gov/reports/credscore.pdf (outlining Missouri's findings); TEXAS DEP'T OF INS., REPORT TO THE 79TH LEGISLATURE: USE OF CREDIT INFORMATION BY INSURERS IN TEXAS 14 (2004), http://www.tdi.texas.gov/reports/documents/creditrpt04.pdf (outlining Texas's findings).

12. *See* KABLER, *supra* note 11, at 39.

even though the Federal Trade Commission (FTC) used data selected by the industry in a 2007 FTC report, it found that credit scoring discriminates against low-income people of color, and that insurance scoring was a proxy for race.[13] The FTC report also confirms that, despite growing reliance on credit-based insurance scores, scant evidence exists to prove there is a causal relationship between a consumer's score and auto-insurance losses.[14] Without the need to demonstrate such a connection, insurers could theoretically use any arbitrary consumer characteristic, such as hair color or zodiac sign, that demonstrates a correlation to a specific outcome, to price insurance products.

This Article focuses primarily on the use of credit scores by lenders, not other industries. It provides an abbreviated overview of other critical issues facing consumers in regard to credit scoring and reporting. These issues are significant and help to demonstrate the urgent need to reform this system. For example, credit-scoring systems are based on information obtained from consumer credit reports, even though credit reports are often rife with errors that are difficult to correct. Credit-scoring systems are also a mystery to consumers because credit-scoring companies maintain that their systems are proprietary and cannot be revealed. These issues are covered in great detail by recent reports by Demos[15] and the Consumer Financial Protection Bureau (CFPB),[16] and a survey by the Consumer Federation of America and VantageScore.[17]

Fixing our current credit-scoring system is not only a moral imperative consistent with our national policies and beliefs about fairness and justice; it is also a legal obligation as outlined by the Fair Housing Act and the Equal Credit Opportunity Act. We hope this Article will assist with the dialogue at this conference as well as our national dialogue on how to move forward and out of our financial and foreclosure crises.

This Article begins with a discussion of the historical discrimination that led to our dual credit market, including subprime lending and the foreclosure crisis.[18] Next, this Article contains a detailed analysis of why credit scoring has

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13. *See* FED. TRADE COMM'N, CREDIT-BASED INSURANCE SCORES: IMPACTS ON CONSUMERS OF AUTOMOBILE INSURANCE 61-73 (2007), http://www.ftc.gov/os/2007/07/P044804FACTA_Report_Credit-Based_Insurance_Scores.pdf.

14. *See id.* at 3.

15. *See generally* SHAWN FREMSTAD & AMY TRAUB, DĒMOS, DISCREDITING AMERICA: THE URGENT NEED TO REFORM THE NATION'S CREDIT REPORTING INDUSTRY (2011), http://www.demos.org/sites/default/files/publications/Discrediting_America_Demos.pdf.

16. *See generally* CONSUMER FIN. PROT. BUREAU, THE IMPACT OF DIFFERENCES BETWEEN CONSUMER- AND CREDITOR-PURCHASED CREDIT SCORES: REPORT TO CONGRESS (2011), http://files.consumerfinance.gov/f/2011/07/Report_20110719_CreditScores.pdf.

17. *See generally* Press Release, Consumer Fed'n of Am., *New National Survey Reveals What Consumers Know and Don't Know About Changing Credit Score Marketplace* (Feb. 28, 2011), http://www.consumerfed.org/pdfs/Credit-Scores-Vantage-PR-2-28-11.pdf.

18. *See infra* Part II.

a discriminatory impact.[19] Then it discusses the legal obligations that the federal government and the financial industry have to promote fair housing.[20] Finally, it offers recommendations for how to fix our broken approach to credit scoring.[21]

II. THE NATION'S DUAL CREDIT MARKET ROOTED IN DISCRIMINATION

Credit-scoring systems penalize borrowers who have anything other than mainstream, prime loans. As described below, the financial industry excludes people and communities from mainstream, affordable credit based on race and national origin.[22] In the past, the federal government and private industry explicitly promoted this behavior with discriminatory rating systems. Such practices continue today by banks, including SunTrust and Wells Fargo.[23] The blanketing of subprime loans in communities of color and continued patterns of segregation and the dual credit market foster discriminatory behaviors. Because many of the factors that make up credit-scoring systems rely on this dual credit market and its inherent discrimination, credit scoring contributes to the self-perpetuating cycle of restricted access to credit that has a dramatic disparate impact on communities of color.[24]

A. Overt Historical Discrimination

In the not-so-distant past, government and private industry explicitly used race and national origin in assessing borrower risk. For example, the HOLC, a federal agency established in 1933 in response to the foreclosure crisis associated with the Great Depression, institutionalized "redlining."[25] The HOLC utilized a discriminatory risk-rating system whereby prospective borrowers were favored if their neighborhood was deemed "new, homogeneous, and in demand in good times and bad."[26] Properties would be

19. *See infra* Part III.

20. *See infra* Part IV.

21. *See infra* Part V.

22. *See infra* Part II.B-C.

23. *See* Sara Forden & Laura Marcinek, *SunTrust Settles U.S. Discrimination Suit for $21 Million*, BUSINESSWEEK, May 31, 2012, http://www.businessweek.com/news/2012-05-31/suntrust-settles-u-dot-s-dot-discrimination-suit-for-21-million; Ylan Q. Mui, *Wells Fargo, Justice Department Settle Discrimination Case for $175 Million*, WASH. POST, July 12, 2012, http://articles.washingtonpost.com/2012-07-12/business/35489831_1_mike-heid-black-borrowers-wells-fargo.

24. *See generally* ASS'N OF CMTY. ORGS. FOR REFORM NOW, THE IMPENDING RATE SHOCK: A STUDY OF HOME MORTGAGES IN 130 AMERICAN CITIES (2006), https://www.alta.org/indynews/2006/Rate_Shock_Report.pdf (borrowers and communities of color targeted for subprime loans); Robert B. Avery et al., *The 2006 HMDA Data*, 2007 FED. RES. BULL. A73, *available at* http://www.federalreserve.gov/pubs/bulletin/2007/pdf/hmda06final.pdf.

25. *See generally* James Greer, *Race and Mortgage Redlining in the United States* (2012), *available at* http://wpsa.research.pdx.edu/meet/2012/greer.pdf.

26. *See* Douglas S. Massey, *Origins of Economic Disparities: The Historical Role of Housing Segregation*, *in* SEGREGATION: THE RISING COSTS FOR AMERICA 39, 69 (James H. Carr & Nandinee K. Kutty

ranked low, and thus judged high-risk, if they were "within such a low price or rent range as to attract an undesirable element," which often meant they were located near an African-American neighborhood.[27] The so-called "residential security maps" used to make these classifications labeled the lowest ranking neighborhoods "fourth grade," and shaded them in red.[28] According to housing scholars William J. Collins and Robert A. Margo, "the agency's revisions were unprecedented. . . . [P]rivate financial institutions incorporated the new rating system in their own appraisals, thereby beginning the widespread institutionalization of the practice known as 'red-lining.'"[29] As discriminatory policies and practices continued to persist within the real-estate sector, private banks began to adopt the underwriting guidelines established by the federal government in the HOLC program.

Subsequently, the HOLC risk-rating system informed the FHA and VA loan programs in the 1940s and 1950s. The FHA made it possible to purchase a house with just a 10% down payment, as opposed to the customary 33% required before its establishment.[30] Loan terms were also extended for up to 30 years.[31] The VA program provided similar benefits, all while following the FHA in rating properties in large part on the basis of the "stability" and harmoniousness of neighborhoods.[32]

As a result, the new benefits of a reduced down payment and better loan terms reached only some Americans. According to the FHA's policy: "If a neighborhood is to remain stable, it is necessary that properties shall continue to be occupied by the same racial and social classes. Changes in social or racial occupancy contribute to neighborhood instability and the decline of value levels."[33] To implement this policy, the FHA even went so far as to *recommend* the use of restrictive covenants to ensure neighborhood stability and racial homogeneity.[34]

The appraisal industry broadly adopted the notion that race had a direct impact on property values, and appraisers were trained to evaluate properties using race as a factor. McMichael's Appraising Manual, for example, provided the following preferences of race and nationality ranked by impact on real-estate values:

eds., 2008).

27. *See id.* at 70.

28. *Id.*

29. Collins & Margo, *supra* note 2, at 20.

30. *See* Massey, *supra* note 26, at 71.

31. *See id.* at 71-72.

32. *See id.*

33. Frederick M. Babcock et al., *Techniques of Residential Location Rating*, 6 J. AM. INST. REAL EST. APPRAISERS 133, 137 (1938).

34. *See* Massey, *supra* note 26, at 71-72.

1. English, Germans, Scotch
2. North Italians
3. Bohemians or Czechs
4. Poles
5. Lithuanians
6. Greeks
7. Russians, Jews (lower class)
8. South Italians
9. Negroes
10. Mexicans[35]

Such lists remained in appraisal manuals long after Congress passed the Fair Housing Act in 1968.

The insurance industry employed similar policies, as homeowners insurance companies adopted policies that resulted in either the outright denial of insurance in communities of color or only the availability of policies that provided inadequate protection at excessive costs to consumers.[36]

The federal banking regulatory agencies tacitly approved such discriminatory practices even after passage of the Fair Housing Act. It was not until 1976, when a coalition of civil-rights groups sued them for failing to enforce the Act, that the federal banking regulatory agencies acknowledged that they had any enforcement responsibilities.[37] The settlement required the agencies to collect information on the mortgage-lending practices of the institutions they regulated, and to establish and implement fair-lending examination procedures.[38]

It is important to understand the historical context of discrimination and redlining practices in any discussion on credit scoring. Because borrowers of color could not access credit in the mainstream market, a dual credit market developed—a market that was separate and unequal—a market where white borrowers had ready access to more regulated, lower cost, affordable and

35. STANLEY L. MCMICHAEL, MCMICHAEL'S APPRAISING MANUAL: A REAL ESTATE APPRAISING HANDBOOK FOR USE IN FIELD WORK AND ADVANCED STUDY COURSES (4th ed. 1951).

36. *See generally Homeowners' Insurance Discrimination: Hearing Before the S. Comm. on Banking, Hous., & Urban Affairs*, 103d Cong. 29-61 (1994) (statement of William R. Tisdale, President, National Fair Housing Alliance); John R. Wilke, *Study Finds Redlining Is Widespread in Sales of Home-Insurance Policies*, WALL ST. J., Sept. 12, 1995, at A6.

37. *See* Nat'l Urban League v. Office of Comptroller of Currency, 78 F.R.D. 543, 545-47 (D.D.C. 1978) (discussing civil-rights organization's standing for discrimination suits).

38. *See* Stipulation of Dismissal at 6, Nat'l Urban League v. Office of Comptroller of Currency, No. 76-0718 (D.D.C. Mar. 23, 1977), *available at* http://www.clearinghouse.net/chDocs/public/FH-DC-0002-0006.pdf; *see also* Andrew Nash, *The Origins of Fair Lending Litigation* (Wash. Univ. Sch. of Law, Working Paper No. 1309365), *available at* http://ssrn.com/abstract=1309365.

sustainable credit products while borrowers of color were relegated to unregulated, higher cost and more unsustainable sources of credit. These fringe markets were, and in some cases still are, the primary credit source for communities of color.

B. Subprime Lending and Its Long-Term Discriminatory Effects

In many cases, the banking and insurance industries simply replaced their explicit discriminatory standards with policies and practices that were nondiscriminatory on their face, but maintained a disparate impact. In other cases, however, companies maintained overtly racially discriminatory policies. Banks and insurance companies continued to discriminate in the marketplace by setting minimum loan values, employing tiered interest-rate policies, refusing to make loans in some neighborhoods, and offering only market-value homeowner's insurance in some neighborhoods.[39]

Many lenders, recognizing that borrowers of color represented a growing market, developed initiatives to heavily target this market segment. Indeed, subprime lenders and some subsidiaries of prime lenders took advantage of communities that mainstream lenders shunned. In a representative case, the St. Louis Equal Housing and Community Reinvestment Alliance alleged that a large local bank did not make a single loan to an African-American borrower between 2003 and 2008.[40] Moreover, all of the bank's branches were located in areas with less than 2% African-American population.[41] According to nationwide Home Mortgage Disclosure Act (HMDA) data, African Americans and Latinos were much more likely to receive a subprime loan than their white counterparts.[42] In 2005 and 2006, roughly 54% of African Americans and 47% of Latinos received subprime loans compared to approximately 17% of whites.[43] A study conducted by the National Community Reinvestment Coalition found that there are fewer commercial bank branches in communities of color.[44]

Instead of targeting this market with safe, lower cost, affordable and sustainable loans, borrowers of color were targeted for unsustainable, higher cost, subprime mortgages. Subprime lenders have long boasted and prided themselves on being the primary providers of credit to African-American,

39. *See* Wilke, *supra* note 36.

40. *See* Rebecca S. Rivas, *Housing Alliance Calls Out Midwest BankCentre for Not Loaning to Blacks*, ST. LOUIS AM., Oct. 15, 2009, http://www.stlamerican.com/business/local_business/article_72511294-6dd5-5728-8388-63f4f1147a42.html.

41. *See id.*

42. *See* Avery et al., *supra* note 24, at 96.

43. *See id.*

44. *See* NAT'L CMTY. REINVESTMENT COAL., ARE BANKS ON THE MAP? AN ANALYSIS OF BANK BRANCH LOCATION IN WORKING CLASS AND MINORITY NEIGHBORHOODS 3 (2007), http://www.community-wealth.org/sites/clone.community-wealth.org/files/downloads/paper-westrick.pdf.

Latino, and other underserved groups. Countrywide Financial Corporation, at one time the nation's largest lender and a major originator of subprime loans, boasted that it was the number-one lender to borrowers of color.[45] The Department of Justice (DOJ) recently settled an unprecedented $335 million lawsuit with Countrywide because of its discriminatory practices, which included steering African-American and Latino borrowers who qualified for prime loans into subprime mortgages.[46] Some of the nation's other top subprime lenders have either settled major discrimination lawsuits or are currently defending against such allegations. These lenders include Long Beach, Ameriquest, Delta Funding, Household Finance, Associates, Citi, and Wells Fargo.[47]

While banks and others continued to defend the use of credit scores as the great equalizer, many borrowers with high credit scores received subprime mortgages even when they qualified for prime credit. Instead, many would-be prime consumers were steered into subprime and Alt-A mortgages because of the higher short-term profits lenders could garner.[48] For example, an analysis conducted by First American Loan Performance found that 41% of subprime loans made in 2004 went to borrowers who actually would have qualified for a prime-rate loan.[49] Another study revealed that in 2005, 55% of subprime borrowers would have qualified for a prime loan.[50] It also found that in 2006 that number had jumped to as high as 61%.[51] Federal Reserve Governor Edward Gramlich noted that half of subprime borrowers had credit scores of 620 or higher.[52]

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45. *See* Gretchen Morgenson, *Inside the Countrywide Lending Spree*, N.Y. TIMES, Aug. 26, 2007, http://www.nytimes.com/2007/08/26/business/yourmoney/26country.html; *see also Countrywide Nation's No. 1 Lender in Emerging Markets*, 65 MORTGAGE BANKING 10 (2004), http://www.thefreelibrary.com/Countrywide+nation's+No.+1+lender+in+emerging+markets.-a0126388421.

46. *See generally* U.S. Attorney's Office Cent. Dist. of Cal., *Justice Department Reaches $335 Million Settlement To Resolve Allegations of Lending Discrimination by Countrywide Financial Corporation*, U.S. DEP'T OF JUST., http://www.justice.gov/usao/cac/countrywide.html (last visited Nov. 26, 2013) (explaining settlement agreement).

47. *See generally* NAT'L CONSUMER L. CENTER, https://www.nclc.org/unreported-decisions.html (last visited Nov. 24, 2013) (collecting unreported decisions in litigation against various lenders).

48. *See* Rajdeep Sengupta, *Alt-A: The Forgotten Segment of the Mortgage Market*, 2010 FED. RES. BANK OF ST. LOUIS REV. 55, 56, *available at* http://research.stlouisfed.org/publications/review/10/01/Sengupta.pdf. "Typically, Alt-A mortgages are underwritten to borrowers of good credit quality—that is, those who would otherwise qualify for a prime loan in terms of their credit history. However, Alt-A borrowers do not satisfy the underwriting rules for prime loans because they are unwilling or unable to provide full documentation on their mortgage application." *Id.*

49. *See* Ezra Klein, *Digging into Finance's Pay Dirt: The Risky Business of Payday Loans and More*, WASH. POST, July 25, 2010, http://www.washingtonpost.com/wp-dyn/content/article/2010/07/24/AR2010072400153.html (reporting on subprime borrowing statistics).

50. *See id.* (noting subsequent crash of housing market and financial system).

51. *See id.*; *see also* Rick Brooks & Ruth Simon, *Subprime Debacle Traps Even Very Credit-Worthy*, WALL. ST. J., Dec. 3, 2007, http:online.wsj.com/article/SB119662974358911035.html.

52. *See* Sue Kirchhoff & Sandra Block, *Subprime Loan Market Grows Despite Troubles*, USA TODAY, Dec. 14, 2004, http://usatoday30.usatoday.com/money/perfi/housing/2004-12-07-subprime-day-2-usat_x.htm

The recently settled lawsuit filed by the City of Baltimore against Wells Fargo provides a glaring example of how lenders purposefully targeted African Americans and Latinos for higher priced mortgages in outrageously discriminatory ways.[53] Two affidavits filed by former Wells Fargo employees[54] revealed that Wells Fargo:

- Specifically targeted African-American communities for subprime loans, but did not do so in white communities;[55]
- Targeted African-American churches for the purpose of selling subprime loans. Employees of color were tapped to make presentations to the churches. A white employee was told she could only attend the presentations at African-American churches if she "carried someone's bag;"[56]
- Used derogatory language to refer to African-American consumers. African Americans were referred to as "mud people" and "niggers."[57] Employees referred to loans in African-American neighborhoods as "ghetto loans."[58] Finally, they referred to Prince George's County as the "subprime capital" of Maryland.[59] Comparatively, Wells Fargo employees felt that predominately white counties like Howard County, Maryland were bad places for subprime mortgages;[60]
- Gave employees substantial financial incentives for steering borrowers who actually qualified for prime mortgages into the subprime market.[61]

Both the private and public sectors perpetuate the bias witnessed in America's separate and unequal financial system. The following are statistics that demonstrate our dual financial system:

(noting one borrower's score of 620 qualified him for prime loan).

53. *See generally* Third Amended Complaint for Declaratory and Injunctive Relief and Damages, Mayor of Balt. v. Wells Fargo Bank, N.A., No. 1:08-cv-00062-JFM (D. Md. Filed Oct. 21, 2010), 2010 WL 4219868 (claiming defendants' acts, policies, and practices racially biased).

54. *See generally* Declaration of Elizabeth M. Jacobson, Mayor of Balt. v. Wells Fargo Bank, N.A., No. 1:08-cv-00062-JFM (D. Md. Filed Apr. 7, 2010) *available at* http://www.nclc.org/images/pdf/unreported/jacobson-decl.pdf; Declaration of Tony Paschal ¶ 8, Mayor of Balt. v. Wells Fargo Bank, N.A., No. 1:08-cv-00062-JFM (D. Md. Filed Apr. 7, 2010) *available at* https://www.nclc.org/images/pdf/unreported/paschal-decl-balt.pdf.

55. *See* Declaration of Tony Paschal, *supra* note 54, ¶ 8.

56. *See* Declaration of Elizabeth M. Jacobson, *supra* note 54, ¶¶ 27-28; Declaration of Tony Paschal, *supra* note 54, ¶ 12.

57. *See* Declaration of Tony Paschal, *supra* note 54, ¶¶ 8, 16.

58. *See id.* ¶ 8.

59. *See* Declaration of Elizabeth M. Jacobson, *supra* note 54, ¶ 26.

60. *See* Declaration of Tony Paschal, *supra* note 54, ¶ 8.

61. *See id.* ¶ 13.

- "African-American and Hispanic homebuyers face a statistically significant risk of receiving less favorable treatment than comparable whites when they ask mortgage-lending institutions about financing options;"[62]
- The denial rate for first-lien mortgages for African-American borrowers was 2.5 times higher than the rate for Non-Hispanic white borrowers in 2010.[63]
- In 2008, African Americans were 2.63 times more likely, and Hispanics more than 2 times more likely, than their white counterparts to receive a higher-priced loan.[64]
- Even higher income African Americans and Latinos received a disproportionate share of subprime loans.[65] According to one study that analyzed more than 177,000 subprime loans, borrowers of color were more than 30% more likely to receive a higher rate loan than white borrowers, even after accounting for differences in creditworthiness.[66]
- Borrowers residing in zip codes with a population at least 50% nonwhite were 35% more likely to receive loans with prepayment penalties than financially similar borrowers in zip codes where nonwhites make up less than 10% of the population.[67]

It follows, then, that borrowers of color are disproportionately represented in foreclosure claims, and that communities of color experience higher foreclosure rates than the general population. A recent study released by the Center for Responsible Lending (CRL) reveals that a home owned by an African-American family is 76% more likely to go into foreclosure than a home owned by a white family.[68] The CRL estimates that African-American and Latino

62. Mel Martinez, *Foreword* to MARGERY AUSTIN TURNER ET AL., URBAN INST., ALL OTHER THINGS BEING EQUAL: A PAIRED TESTING STUDY OF MORTGAGE LENDING INSTITUTIONS (2002).

63. *See* Robert B. Avery et al., *The Mortgage Market in 2010: Highlights from the Data Reported Under the Home Mortgage Disclosure Act*, 2011 FED. RES. BULL. 1, 56 tbl.19, *available at* http://www.federalreserve.gov/pubs/bulletin/2011/pdf/2010_HMDA_final.pdf.

64. *See* Robert B. Avery et al., *The 2008 HMDA Data: The Mortgage Market During a Turbulent Year*, 2010 FED. RES. BULL., A169, A202-04, *available at* http://www.federalreserve.gov/pubs/bulletin/2010/pdf/hmda08final.pdf.

65. *See* DEBBIE GRUENSTEIN BOCIAN ET AL., CTR. FOR RESPONSIBLE LENDING, UNFAIR LENDING: THE EFFECT OF RACE AND ETHNICITY ON THE PRICE OF SUBPRIME MORTGAGES 31 (2006), http://www.responsiblelending.org/mortgage-lending/research-analysis/rr011-Unfair_Lending-0506.pdf.

66. *See id.*

67. *See* DEBBIE GRUENSTEIN BOCIAN, & RICHARD ZHAI, CTR. FOR RESPONSIBLE LENDING, BORROWERS IN HIGHER MINORITY AREAS MORE LIKELY TO RECEIVE PREPAYMENT PENALTIES ON SUBPRIME LOANS 1 (2005), http://www.responsiblelending.org/mortgage-lending/research-analysis/rr004-PPP_Minority_Neighborhoods-0105.pdf.

68. *See* DEBBIE GRUENSTEIN BOCIAN ET AL., CTR. FOR RESPONSIBLE LENDING, FORECLOSURES BY RACE AND ETHNICITY: THE DEMOGRAPHICS OF A CRISIS 8 (2010), http://www.responsiblelending.org/mortgage-lending/research-analysis/foreclosures-by-race-and-ethnicity.pdf.

communities will lose $194 billion and $177 billion, respectively in housing wealth as a result of the foreclosure crisis including the resulting depreciation of living near foreclosed properties.[69]

These high rates of foreclosure caused by discriminatory practices have resulted in thousands of bank-owned (also known as real-estate-owned or REO) properties in communities of color. A recent undercover investigation by the National Fair Housing Alliance (NFHA) and some of its members revealed that discrimination by the banks continues even after foreclosure.[70] The investigation found striking disparities in the maintenance and marketing of foreclosed properties in white neighborhoods compared to those in neighborhoods of color.[71] Investigators used 39 different factors to evaluate the maintenance and marketing of REO properties, subtracting points for broken windows and doors, water damage, overgrown lawns, no "for sale" sign, trash on the property, and other deficits.[72] Overall, REO properties in communities of color were 42% more likely to have more than 15 maintenance problems than properties in white neighborhoods.[73] NFHA has since filed housing-discrimination complaints against Wells Fargo and U.S. Bancorp for disparities in the maintenance and marketing of REO properties.[74]

C. The Proliferation of Fringe Lenders in Communities of Color

As described above, fringe lenders, including payday lenders and check cashers, have historically been a primary source of credit for underserved borrowers and are highly concentrated in communities of color. One analysis revealed that there were more payday-lender outlets in the country than McDonalds and Burger King restaurants combined.[75] These fringe lenders saturate predominantly African-American and Latino neighborhoods. A study of fringe lenders in California found that payday lenders were nearly 8 times as concentrated in neighborhoods with the largest shares of African-Americans and Latinos as compared to white neighborhoods, draining nearly $247 million in fees per year from these communities.[76] The study includes several maps of

69. *See id.* at 11.

70. *See*, NAT'L FAIR HOUS. ALLIANCE, THE BANKS ARE BACK—OUR NEIGHBORHOODS ARE NOT: DISCRIMINATION IN THE MAINTENANCE AND MARKETING OF REO PROPERTIES 18 (2012), *available at* http://www.nationalfairhousing.org/Portals/33/the_banks_are_back_web.pdf (describing discriminatory practices by banks after foreclosures).

71. *See id.* at 18 (giving examples of racial disparity in REO properties).

72. *See id.* at 14 (listing factors).

73. *See id.* at 2.

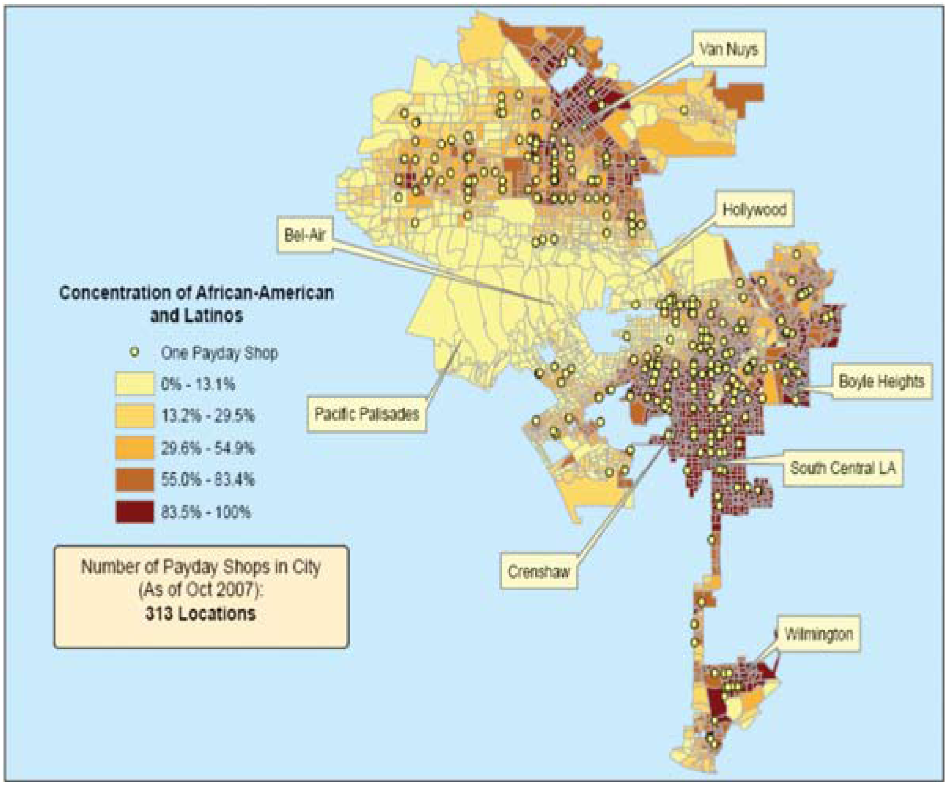
74. *See* Press Release, Miami Valley Fair Hous. Center, *MVFHC and NFHA File Discrimination Complaint Against U.S. Bank* (Apr. 17, 2012), http://www.mvfairhousing.com/news.php?articleID=126 (explaining NFHA filed HUD complaints against U.S. Bancorp and Wells Fargo).

75. *See* Klein, *supra* note 49.

76. *See* WEI LI ET AL., CTR. FOR RESPONSIBLE LENDING, PREDATORY PROFILING: THE ROLE OF RACE AND ETHNICITY IN THE LOCATION OF PAYDAY LENDERS IN CALIFORNIA 2 (2009), http://www.responsible

communities throughout California showing this pattern. Below is a map of Los Angeles depicting the heavy concentration of payday lenders in African-American and Latino communities.

Map—Center for Responsible Lending



Conversely, there are few mainstream bank facilities in predominantly African-American and Latino communities. Borrowers who are targeted by fringe lenders and shunned by mainstream financial institutions are susceptible to volatile credit markets. Consumers who access credit from fringe lenders will undoubtedly have lower credit scores because institutions peddle products having abusive terms that carry higher delinquency and default rates.

lending.org/california/ca-payday/research-analysis/predatory-profiling.pdf.

III. CREDIT SCORING HAS A DISCRIMINATORY IMPACT AND IS NOT THE BEST MEASURE OF RISK

Do you have a mortgage from a finance company? Your credit will likely be lower than if you had received the loan from a depository lending institution. Did you lose that home to foreclosure because you could no longer make the inflated payments? If so, your credit score just went down again.

As described above, people of color were disproportionately steered to subprime loans and targeted by fringe lenders.[77] One might then think that credit scores would not rely on discriminatory assumptions to measure risk because they and other automated valuation systems are promoted as great equalizers and nondiscriminatory ways of measuring credit risk. Yet, in some instances, that is exactly what they do. For example, some scoring mechanisms assume that a borrower who received a loan from a finance company is a greater credit risk than one who received a loan from a depository institution. In fact, the opposite may be true. A credit-scoring system relying on this false premise penalizes the borrower who simply may not have had access to a mainstream lender, but had abundant access to fringe lenders. Indeed, credit-scoring mechanisms reflect the lending and finance systems producing the data upon which the mechanisms are built. Oftentimes, credit-scoring mechanisms assess the riskiness of the lending environment, product type, or loan features a consumer uses rather than his or her risk profile.

A simple analogy will illustrate this point. Suppose the Department of Motor Vehicles tests a car driver to determine his or her driving abilities. In this test, the driver must drive through a path and navigate a series of cones and obstacles. But the driver is placed in a car that is essentially a lemon. The brakes do not work, it does not turn well, and the transmission malfunctions. The driver knocks over several cones, runs into obstacles, and completes the course, receiving a low score. But then, this same driver is placed into a different car and asked to drive the same course again. This time the car is not a lemon. It is in pristine condition—with no problems. The second time through, the driver passes with flying colors and receives a high score.

Did the driver change? Of course not. What changed is the vehicle the driver used. The test accurately measured how well the driver navigated the course as influenced by the quality of the vehicle, but not his or her driving abilities. Similarly, credit-scoring mechanisms often reflect the lending environment or loan-product type, but not the risk profile of the borrower.

The financial mainstream fails to properly serve consumers of color who disproportionately access credit in more volatile financial environments. The financial-services world routinely tests consumers of color using lemons. As a result, current credit-scoring mechanisms that do not evaluate or calibrate

77. *See supra* Part II.B-C.

scores based on the safety or soundness of the lending environment may misjudge consumers of color, causing them harm.

A. Limited Scope, Quality, and Transparency of Credit Information

The information used to build credit-scoring models comes from a variety of sources; however, modelers tend to rely heavily on credit-reporting data from credit bureaus. The quality or accuracy of the scoring model is intrinsically tied to the quality of data upon which the model is based: the better the data quality, the better the scoring system. If modelers rely on limited or inaccurate data, they will develop scoring models that are less effective and have limited predictive power and market applicability. The less predictive a scoring model, the greater the likelihood for miscalculating risk.

Companies can use data purchased from third-party sources or privately held data to develop scoring systems. Larger companies having abundant information about a large number of consumers oftentimes use in-house data to develop unique scoring systems or to enhance systems acquired from outside sources. But, by and large, the data upon which scoring models are built are purchased from large credit repositories, and this data is often flawed. The National Association of State Public Interest Research Groups conducted a study revealing the following:

- Overall, 79% of credit reports contained errors;
- 25% of credit reports contained significant errors that would result in denial of credit;
- 54% had inaccurate personal information;
- 30% listed closed accounts as open; and
- 8% did not list major credit accounts.”[78]

Not only can the data be flawed, it can also be incomplete. Not all creditors report consumer information to credit repositories. Indeed, positive credit information from fringe lenders often goes unreported while negative information is almost always reported. Payday lenders, for example, are concentrated in communities of color. According to the Community Financial Services Association of America (CFSA), “[p]ayday advances are not reported to traditional credit bureaus.”[79] If a consumer obtains a payday loan, the fact

78. *See* ALISON CASSADY & EDMUND MIERZWINSKI, NAT’L ASS’N OF STATE PIRGS, MISTAKES DO HAPPEN: A LOOK AT ERRORS IN CONSUMER CREDIT REPORTS 4 (2004), http://georgiapirg.org/sites/pirg/files/reports/MistakesDoHappen2004-1.pdf.

79. *See Frequently Asked Questions: Is My Payday Loan History Reported to a Credit Bureau?* CMTY. FIN. SERVS. ASS’N OF AM., http://cfsaa.com/what-is-a-payday-advance/frequently-asked-questions.aspx (last visited Nov. 26, 2013). The CFSA is a national organization for “small dollar, short-term lending or payday

that the consumer has paid off the debt on time is not reported to credit bureaus. However, unpaid payday loans are often reflected on the consumer's credit report. The Consumer Federation of America reports that unpaid payday loans can lead to negative credit ratings and difficulties opening bank accounts.[80]

Creditors are not required to report consumer data to the credit repositories. Nor, if they do report, must they report positive data along with negative data. Some creditors may opt not to submit data because they wish to avoid reporting costs, while others want to prevent competitors from identifying and poaching their best-paying customers. And while a creditor may be unable or unwilling to report positive data on a regular basis, it can report negative data by referring the matter to a collection agency or filing a collection action against the consumer. This tilts the entire system against the consumer, especially those who access credit outside of the financial mainstream.

Smaller creditors like community development financial institutions (CDFIs) that want to report positive data may be prohibited from doing so because of their size. An informal survey conducted by the NFHA underscores the difficulty of collecting comprehensive information on consumer credit habits. The major credit repositories are structured to collect data from larger creditors with a large number of consumer files. Some repositories require creditors to have at least 500 files when reporting data; others require 1000 files. These numbers are often beyond the reach of CDFIs and other community-based institutions.

In addition to posing accuracy and access challenges, credit-scoring mechanisms lack transparency. The formulas are proprietary and not disclosed to the public. While there are a number of individual factors that help determine the score, only some of them are public. It is not clear exactly how the factors used in the credit-scoring systems affect a consumer's score. There are potentially thousands of variables that can be included. These variables can be comprised of individual and combined components, including such elements as the number of: 30-day late payments, inquiries, inquiries by subprime lenders, open trade lines, late mortgage loan payments, or installment loans. Additionally, variables might include length of employment or length of individual revolving loan accounts.

Each variable is purportedly tested to first determine if it is related to a particular outcome, such as likelihood of a mortgage loan default or filing of an auto-insurance claim. Next, the variables are weighted within the credit-scoring formula. This is done through experts who subjectively assign each variable a score.

advances." *About CFSA*, CMTY. FIN. SERVS. ASS'N OF AM., http://cfsaa.com/about-cfsa.aspx (last visited Nov. 26, 2013).

80. *See How Payday Loans Work*, CONSUMER FED'N OF AM., http://www.paydayloaninfo.org/facts (last visited Nov. 26, 2013).

Notably, credit-scoring modelers are trying to determine whether a particular variable correlates to a certain outcome, but the mere presence of a correlative relationship between a variable and an outcome does not necessarily indicate a causal relationship. For example, variable testing may indicate a correlation between gas-company credit cards and higher rates of mortgage-loan defaults, but this does not mean that having a gas-company credit card will cause a consumer to default on a mortgage.

It stands to reason that not all variables with a correlative relationship can, or should, be used in a credit-scoring system. For example, some analysis shows hair or eye color correlates to certain types of insurance claims. Other analysis reveals links between zodiac signs and frequency of auto claims.[81] Under this methodology, those born under the sign of Taurus or Virgo would pay higher premiums than Cancers or Aquarians. It also follows that credit-scoring systems should use neither race, national origin, nor any indicative proxy, not only because it flies in the face of our nation's laws and policies, but because it makes as little sense as using a zodiac sign to price car insurance.

B. Disparate Impact of Credit-Scoring Factors

While it is illegal to evaluate risk using protected class characteristics, credit-scoring systems continue to have a significant disparate impact on people of color and other underserved consumers because some seemingly facially neutral factors actually have discriminatory effects.

Take, for example, the factors used by the FICO scoring system, which is widely known and often touted as the industry standard for use in mortgage lending. While it remains unknown how FICO weighs variables in its scoring system, several broad categories impacting the score are public: payment history, amounts owed, length of credit history, new credit, and types of credit used.[82] Below, FICO's chart illustrates the value assigned to each variable.[83]

81. *See Allstate: Virgos Have Most Crashes*, UPI.COM (Jan. 28, 2011), http://www.upi.com/Odd_News/2011/01/28/Allstate-Virgos-have-most-crashes/UPI-28291296246090. While the Allstate press release announcing the findings was tongue-in-cheek, the data and analysis were real. *See* Aaron Smith, *Allstate Zodiac Joke Bombs*, CNN MONEY (Feb. 3, 2011), http://money.cnn.com/2011/02/02/news/companies/allstate_zodiac/index.htm; *see also Aquarius With the Fewest Claims, Taurus Lives More Dangerously*, ALLIANZ SUISSE (Feb. 17, 2011), https://www.allianz.com/en/press/news/studies/news_2011-02-17.html.

82. *See What's in My FICO Score*, MYFICO.COM, http://www.myfico.com/CreditEducation/WhatsInYourScore.aspx (last visited Nov. 26, 2013).

83. *See id.*

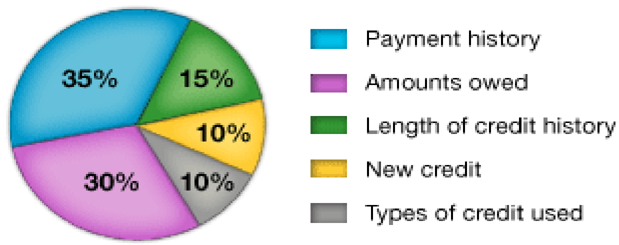


Figure 1—FICO Score Calculation

Each category poses a concern about disparate impact and unintended discriminatory outcomes, as well as affects access to sustainable, affordable, and fair credit. Below is a more detailed description of the fair-lending concerns related to each category of the FICO scoring system.

1. Payment History: 35% of FICO Score

The payment-history component of the FICO score includes information about whether borrowers make timely debt payments, including some subprime loans.[84] As mentioned above, subprime loans carry much higher default and delinquency rates, not necessarily because of the borrower's traits, but instead because of the aspects and features of the loans.[85] Because African Americans and Latinos are targeted for subprime loans, data suggests that they will undoubtedly experience higher rates of poor performance in payment history.[86]

A unique study comparing two similar groups of low- and moderate-income

84. *See Payment History*, MYFICO.COM, http://www.myfico.com/CreditEducation/Credit-Payment-History.aspx (last visited Nov. 26, 2013).

85. *See* According to Mortgage Bankers Association National Delinquency Survey Data, which was released on May 19, 2010, the seasonally adjusted delinquency rate was 6.17% for prime fixed loans, 13.52% for prime adjustable rate mortgage (ARM) loans, 25.69% for subprime fixed loans, 29.09% for subprime ARM loans, 13.15% for FHA loans, and 7.96% for VA loans. *See* Press Release, Mortg. Bankers Ass'n, *Delinquencies, Foreclosure Starts Increase in Latest MBA National Delinquency Survey* (May 19, 2010), http://www.mbaa.org/newsandmedia/presscenter/72906.htm. The foreclosure starts rate was 0.69% for prime fixed loans, 2.29% for prime ARM loans, 2.64% for subprime loans, 4.32% for subprime ARM loans, 1.46% for FHA loans, and 0.89% for VA loans. *See id.* These trends have held steady. The same data released on August 20, 2009 revealed the following: the seasonally adjusted delinquency rate was 6.41% for prime loans, 25.35% for subprime loans, 14.42% for FHA loans, and 8.06% for VA loans. *See* Press Release, Mortg. Bankers Ass'n, *Delinquencies Continue to Climb, Foreclosures Flat in Latest MBA National Delinquency Survey* (Aug. 20, 2009), http://www.mbaa.org/newsandmedia/presscenter/70050.htm. The foreclosure inventory rate was 3% for prime loans, 15.05% for subprime loans, 2.98% for FHA loans, and 2.07% for VA loans. *See id.*

86. *See generally* DEBBIE GRUENSTEIN BOCIAN ET AL., CTR. FOR RESPONSIBLE LENDING, LOST GROUND, 2011: DISPARITIES IN MORTGAGE LENDING AND FORECLOSURES (Nov. 2011), *available at* http://www.responsiblelending.org/mortgage-lending/research-analysis/Lost-Ground-2011.pdf.

borrowers demonstrates this point.[87] The study compared two mortgage-loan portfolios, one comprised of low-cost, fixed-rate loans, and the other of subprime loans.[88] Using propensity-score match methodology, researchers were able to isolate borrowers with similar characteristics.[89] The divergent variables were the loan terms, conditions, and the channel used to obtain mortgages.[90] While traits of both borrower groups were similar, performance outcomes were not.[91] The default rate for the subprime portfolio was *four to five times higher* than that for the lending-program portfolio for low- and moderate-income borrowers.[92]

Moreover, the study revealed compelling evidence that loan characteristics and origination channel significantly impacts loan performance.[93] Specifically, prepayment penalties, adjustable interest rates, and elevated costs negatively impact the loan performance, even after controlling for credit score.[94] Additionally, loans originating through broker channels tend to result in higher default rates.[95]

This data conflicts with the underlying assumption behind scoring mechanisms. It, along with other studies, suggests that a borrower may end up with a damaged credit score not because the borrower was more risky or negligent, but rather because he or she obtained a loan through a broker or received loan terms that increase the likelihood of delinquency and default. Existing credit-scoring systems do not distinguish between risk caused by borrower behavior and risk caused by loan terms and conditions. Thus, risky loans are likely to negatively impact the borrowers' credit scores, even though they may have had a perfect payment record had they been able to obtain a less risky loan.

2. Amounts Owed: 30% of FICO Score

The FICO score calculation of amounts owed is comprised of multiple factors, but FICO does not reveal details concerning each factor or how each is weighted. However, FICO reports that the amounts-owed category takes into consideration the amount of credit available to a borrower for certain types of revolving and installment loan accounts.[96] To the extent that underserved

87. *See generally* Lei Ding et al., *Risky Borrowers or Risky Mortgages: Disaggregating Effects Using Propensity Score Models*, (Ctr. for Cmty. Capital, Working Paper 2010), http://www.ccc.unc.edu/documents/Risky.Disaggreg.5.17.10.pdf.

88. *See id.* at 14.

89. *See id.* at 2-3.

90. *See id.* at 3.

91. *See* Ding et al., *supra* note 87, at 3

92. *See id.*

93. *See id.* at 28-31.

94. *See id.*

95. *See* Ding et al., *supra* note 87, at 28-31.

96. *See Amounts Owed*, MYFICO.COM, http://www.myfico.com/CreditEducation/Amounts-Owed.aspx

communities have restricted access to credit, and the type of credit that loan companies may positively report to credit repositories in particular, amounts owed can pose a disparate discriminatory impact.

A study by the San Francisco Federal Reserve Board provides an analysis of individuals who do not have a checking or savings account in the region.[97] "The unbanked tend to be young, low-income, non-white adults, and without a college degree."[98] The Board goes on to reveal that approximately half of African Americans and Latinos fall into this category, and that unbanked individuals are concentrated in lower income census tracts.[99] The Board also documents the preponderance of payday lenders and check cashers in predominately Latino neighborhoods.[100]

The lack of access to mainstream lenders may impact the ability of underserved consumers to obtain revolving or installment lines of credit. If these borrowers experience undue difficulty in accessing quality credit, they may well suffer a lower credit score from a system that considers how much "extra" credit they may have available in certain revolving and installment accounts. Here again, amounts owed is not only measuring the ability of the borrower to effectively manage credit accounts, but is also measuring consumer's access to certain credit accounts.

3. Length of Credit History: 15% of FICO Score

Presumably, the longer a borrower holds an account, and to the extent that the account is reported to the credit repositories, the higher the borrower's credit score. If this is indeed the case, then borrowers with access to credit that goes unreported to credit repositories will be negatively impacted by this component.

We provide a fairly detailed analysis above of how mainstream creditors historically discriminated against communities of color.[101] Moreover, as referenced above, borrowers of color are much less likely than their white counterparts to have access to mainstream banks and, consequently, are much more likely to access credit from fringe lenders who do not report positive data to credit repositories.[102] This means that borrowers of color will be less likely to have a lengthy credit history.

This factor penalizes borrowers who deal on a cash basis, access credit outside of the financial mainstream, cannot access traditional credit, or obtain

(last visited Nov. 26, 2013).

97. *See Understanding the Unbanked Market in San Francisco: A Preliminary Analysis*, FED. RESERVE BANK OF S.F. (on file with authors).

98. *See id.* at 2.

99. *See id.* at 5.

100. *See id.* at 11.

101. *See supra* Part II.A

102. *See supra* Part II.C.

credit from lenders who do not report positive data. Borrowers with these circumstances are disproportionately persons of color.[103]

4. New Credit: 10% of FICO Score

New credit considers the number of accounts a consumer recently opened.[104] FICO does not provide details on how establishing new credit affects a consumer's credit score. FICO advises consumers to avoid opening new lines of credit because it *might* result in a lower credit score.[105] Further, opening new accounts lowers the average account age, causing a lower credit score.[106]

New credit also considers the number of credit accounts a consumer pursues. Therefore, shopping for a mortgage and applying for credit at different places may negatively impact a consumer's credit score. To guard against this, FICO advises consumers to shop for a mortgage loan within a short window of time.[107]

There are two areas of concern with respect to disparate outcomes under new credit. First, we are concerned because there is a higher likelihood that consumers of color will access new credit accounts. As discussed above, credit access is a major challenge for underserved groups and these groups are much more likely to be unbanked and underbanked.[108] It stands to reason, therefore, that underserved groups will be among those who are newly entering the credit markets in order to access credit for the first time and therefore, establishing or attempting to establish new accounts. FICO counts credit inquiries under the new-credit category.[109]

The second concerning area emanates from the higher mortgage-loan declination rates for borrowers of color. As described earlier, HMDA data reveals that financial institutions are much more likely to decline a borrower of

103. *See supra* Part I. *See generally* FED. DEPOSIT INS. CORP., 2011 FDIC SURVEY OF BANKS' EFFORTS TO SERVE THE UNBANKED AND UNDERBANKED (Dec. 2012), http://www.fdic.gov/unbankedsurveys/2011survey/2011report.pdf.

104. *See New Credit,* MYFICO.COM, http://www.myfico.com/CreditEducation/New-Credit.aspx (last visited May 31, 2013).

105. *How to Repair My Credit and Improve My FICO Credit Score*, MYFICO.COM, http://www.myfico.com/crediteducation/improveyourscore.aspx (last visited Nov. 26, 2013).

106. *See New Credit*, *supra* note 104.

107. *See id.* On its website for consumers, www.myfico.com, FICO does not specify the best window of time to which consumers should limit their search. Under "New Credit Tips," the website reads: "Do your rate shopping for a given loan within a focused period of time. FICO scores distinguish between a search for a single loan and a search for many new credit lines, in part by the length of time over which inquiries occur." *Id.*

108. *See* FED. DEPOSIT INS. CORP, 2011 FDIC SURVEY OF UNBANKED AND UNDERBANKED HOUSEHOLDS 14 (Sept. 2012) https://www.fdic.gov/householdsurvey/2012_unbankedreport.pdf ("Black (21.4 percent), Hispanic (20.1 percent), and American Indian (14.5 percent) households have the largest proportions of unbanked households.").

109. *See New Credit*, *supra* note 104 ("How many recent inquiries you have" affects your credit score).

color's loan application than their white counterparts.[110] Given these higher declination rates, borrowers of color are likely to apply to several lenders before successfully acquiring a loan.

If mortgage-loan inquiries or applications are undertaken in a short time frame, the applications may not hurt a consumer's credit score.[111] However, if a consumer applies for a mortgage with one lender, waits to be declined, and then applies for a mortgage with another lender, this process may well negatively impact the consumer's credit score due to the longer lapse in time between inquiries. More analysis and research is needed to determine if borrowers of color have a higher incidence of shopping for a mortgage with different lenders over longer periods of time and, ultimately, how that might impact their credit scores.

5. Types of Credit Used: 10% of FICO Score

Again, FICO does not reveal exactly how the type of credit a borrower uses affects his or her credit score, however, there is evidence that certain types of credit—such as credit provided by finance companies—are treated less favorably than credit provided by mainstream lenders like depository banking institutions. According to the Federal Reserve Board, "[m]any credit-scoring models consider the number and type of credit accounts you have. A mix of installment loans and credit cards may improve your score. However, too many finance company accounts or credit cards might hurt your score."[112] If this is indeed the case, this category also presents dangerous implications for borrowers of color.

In a guide advising consumers on how to improve their credit score, FICO suggests that they have installment loans and credit cards that are reported to credit repositories.[113] FICO urges that these credit sources will play a favorable role in the FICO credit-scoring system.[114] But, these types of credit may actually penalize consumers who access them outside of the financial mainstream. In the end, this component may focus more on the quality of the environment or type of loan product a consumer accesses, rather than the risk characteristics of the consumer.

C. Existing Credit-Scoring Systems Do Not Adequately Predict Risk

The current crisis revealed that credit-scoring mechanisms are an insufficient measure for predicting and managing performance. While the FICO Score is

110. *See supra* note 63 and accompanying text.

111. *See supra* note 107 and accompanying text.

112. *5 Tips: Improving Your Credit Score,* BOARD OF GOVERNORS OF FED. RES. SYS., http://www.federalreserve.gov/consumerinfo/fivetips_creditscore.htm (last updated June 17, 2010).

113. *See id.*

114. *See id.* (discussing benefits of installment loans and credit cards).

designed to assess risk and predict a borrower's performance, recent analysis demonstrates its ineffectiveness. Default rates for all borrowers have increased precipitously, regardless of credit score, and one study found that "higher FICO scores have been associated with bigger increases in default rates over time."[115]

In the years before the economic crisis, more thorough and comprehensive underwriting criteria allowing for the evaluation of unique and compensating factors were common. More recently, however, lenders began substituting the comprehensive criteria with flimsy underwriting standards. If a borrower had a higher credit score, the lender could truncate the underwriting process by foregoing a fully documented underwriting review. In order to maximize short-term profits, lenders took great strides to increase volume. One way to increase volume was to shorten the time it took to approve a loan.

Institutions largely disregarded sound underwriting criteria, such as verifying savings and other deposits, income and employment, or documenting timely rental payments. However, lenders gave substantially more weight to the credit-score factor. In that environment, the FICO score became a proxy for sound underwriting. Whereas the credit score might have safely been used as an important tool in the underwriting toolbox, it was instead overvalued, leading to poor lending decisions. Even FICO admits that lenders were too reliant on the model.[116]

The Federal Reserve Bank of St. Louis published another study looking at credit scores and borrowers who received subprime mortgages.[117] It revealed that, for borrowers with the lowest FICO scores (500 to 600), the rate of seriously delinquent loans was twice as high in 2007 than in 2005.[118] Comparatively, for borrowers with the highest FICO scores (above 700), the rate of seriously delinquent loans was almost four times as high in 2007 than in 2005.[119] Borrowers with lower FICO scores saw a 100% increase in seriously delinquent loans while borrowers with higher FICO scores saw a 300% increase.[120] The study's author concludes that "the credit score has not acted as a predictor of either true risk of default of subprime mortgage loans or of the subprime mortgage crisis."[121] Lenders' heavy reliance on FICO scores during the most recent housing boom has contributed to the system's ineffectiveness. Even industry analysts have recognized the flaws in FICO's system.[122] In a

115. Yuliya Demyanyk, *Did Credit Scores Predict the Subprime Crisis?*, REGIONAL ECONOMIST, Oct. 2008, at 12, *available at* http://www.stlouisfed.org/publications/re/2008/d/pdf/mortgage.pdf.

116. *See* Bob Sullivan, *Credit Scores 102: A Crisis, and Some Changes*, REDTAPE CHRONS. ON NBCNEWS (March 18, 2008, 8:00 AM), http://redtape.nbcnews.com/_news/2008/03/18/6345890-credit-scores-102-a-crisis-and-some-changes?lite.

117. *See* Demyanyk, *supra* note 115.

118. *See id.*

119. *See id.*

120. *See id.*

121. Demyanyk, *supra* note 115.

122. *See* Stephen Gandel, *Lenders Look Beyond Credit Scores To Gauge Who's a Risk*, TIME, Jan. 9,

document written to clients, an analyst at the Canadian Imperial Bank of Commerce World Markets called FICO scores "virtually meaningless."[123]

Borrowers with higher FICO scores are, in many cases, acting the way analysts predict borrowers with very low scores will act. In reviewing private loan portfolios, some analysts have found that loan characteristics were better predictors of loan performance than the borrower's FICO score. Indeed, both FICO and TransUnion have reported that borrowers with higher FICO scores are performing in uncharacteristic ways.[124] These borrowers, in a trend never before seen, are more likely to pay their credit-card debt than their mortgage-loan debt. This offers additional proof that a credit score alone cannot predict long-term mortgage performance.

Many lenders that either do not rely on credit-scoring mechanisms at all, or minimally rely on them, experience default rates that are lower than the industry average. For example:

> Golden West Financial, a lender that did not rely on FICO because of its unpredictable nature, experienced a default rate of .75% while the industry average for the same class of loans was 1.04%. Golden West relied on careful underwriting, including income and asset verification and employed a different mechanism for compensating appraisers. Instead of compensating an appraiser based on the number of appraisals completed, Golden West compensated appraisers on the accuracy of the appraisal over the life of the loan. Underscoring the tentative reliability of the FICO score, a Golden West representative reported that some of Golden West's best clients had very low FICO scores and some of their worst clients had high FICO scores. The North Carolina State Employees' Credit Union indicated that for their borrowers who would be classified as subprime, the default rate is 1.25%, well below the industry average. NCSE attributes the higher default rates among subprime loans with higher interest rates and poor underwriting practices.[125]

2009, http://www.time.com/time/business/article/0,8599,1870450,00.html.

123. Dean Foust & Aaron Pressman, *Credit Scores: Not-So-Magic Numbers*, BLOOMBERG BUSINESSWEEK, Feb. 6, 2008, http://www.businessweek.com/stories/2008-02-06/credit-scores-not-so-magic-numbers.

124. *See* Bob Tedeschi, *Even High-Score Borrowers at Risk of Mortgage Default*, N.Y TIMES, Mar. 12, 2010, http://www.nytimes.com/2010/03/14/realestate/14Mort.html.

125. Letter from Lisa Rice, Vice President, Nat'l Fair Hous. Alliance, to Jennifer J. Johnson, Sec'y, Bd. of Governors of Fed. Reserve Sys. (Sept. 8, 2010), at 32, *available at* http://www.federalreserve.gov/SECRS/2011/January/20110112/OP-1388/OP-1388_091310_53977_588528735033_1.pdf.

D. Risky Loan Products and Unsafe Lending Environments—Not Borrowers—Were Clearly the Culprit

When looking at loan terms and conditions over the past ten years, it becomes clear why some borrowers failed and some succeeded. Failed underwriting processes and unsuitable loan products were higher contributors to poor loan performance than were the credit characteristics of the borrower. Even borrowers with good credit, who paid their bills on time, quickly found themselves in trouble after getting a predatory or subprime loan, or accessing credit in an unsafe environment.

Analysts observed similar outcomes among corporations such as Lehman Brothers and Bear Stearns, who turned more and more to risky investment products and tenuous financial deals. Just as the creation and sale of unregulated, complex derivative investment products was a bad idea, and led otherwise sound companies into ruin, so was the creation and sale of unwise mortgage-loan products with highly risky features, like prepayment penalties and negative amortization, both of which led otherwise good consumers into default.

Some lenders might improve overall loan performance by improving the quality of the underwriting process. In a presentation on the impact of the qualified residential-mortgage requirements, a number of organizations, including NFHA, the National Association of Realtors® and the Mortgage Bankers Association, highlighted a number of factors that are most important in decreasing default risk.[126] Those factors included full-loan documentation and verification processes.[127] The organizations identified these critical underwriting components as key elements in improving loan-portfolio performance and management.[128]

The organizations also cite risky loan features including:

- negative amortization loans;
- interest-only loans;
- loans with balloon payments;
- loans exceeding thirty years in maturity;
- prepayment penalties;
- unverified income, employment, assets and other debts—no-doc or low-doc—loans;

126. *See* NFHA et al., Presentation on Impact of Qualified Residential Mortgage Requirements (on file with authors) (identifying factors needed to decrease default risks).

127. *See id.*

128. *See id.*

- underwriting for ARMs based on an introductory rate rather than the fully-indexed interest rate;
- total points and fees exceeding three percent of loan amount;
- unstable or undocumented payment history;
- ARM reset caps above two percentage points per year;
- investor loans;
- yield spread premiums; and
- piggyback seconds.[129]

Proposed regulations for the qualified mortgage (QM) and the qualified residential mortgage (QRM) have identified many of these risky loan features. Most of these features are prohibited under the final QM regulations; the final QRM regulations have not yet been released. Instead of concentrating the risk analysis on the borrower, financial analysts should evaluate available products, the environment in which the credit is provided, and the mortgage lender's underwriting process.

IV. Why the Federal Government and Lenders Have an Obligation to Change the System

Federal agencies, their grantees, and others associated with housing and community development, have a special obligation to further the purposes of the Fair Housing Act. The Act covers policies and practices that disparately impact protected classes.[130] The federal government must act to correct any disparate impact caused by credit scoring.

The Fair Housing Act seeks to eliminate housing discrimination and promote residential integration. The Act requires government agencies to dedicate housing and community development in a manner that affirmatively furthers fair housing.[131] The Act applies to government agencies having regulatory or supervisory authority over financial institutions. As stated in Section 808(d) of the Fair Housing Act:

> All executive departments and agencies shall administer their programs and activities relating to housing and urban development (including any Federal agency having regulatory or supervisory authority over financial institutions) *in a manner affirmatively to further the purposes of this subchapter* and shall cooperate with the Secretary [of Housing and Urban Development] to further

129. *See id.*
130. *See generally* Fair Housing Act, 42 U.S.C. §§ 3601-3619 (2006).
131. *See id.* § 3608(d).

such purposes.[132]

The Act, along with executive orders, further defines the obligations of federal agencies.[133] The Obama Administration has also affirmed its commitment to fair housing and fair lending.[134]

Courts interpret this affirmative obligation to require efforts to eliminate segregation.[135] Eliminating segregation is important to our nation's well being because where we live determines our access to opportunities, wealth, and resources.[136] In this context, equal access to credit, financial services, and products cannot be overstated. The largest federal housing program ever, the Troubled Asset Relief Program (TARP) provided funding for major banks and insurance companies.[137] As recipients of federal funds, these entities are required to affirmatively further fair housing with TARP, as well as any other government funds accepted.[138] Fair housing laws also cover credit-scoring systems that are clearly related to housing and community development.

V. POLICY AND ENFORCEMENT SOLUTIONS TO IMPROVE CREDIT-SCORING SYSTEMS

Because credit scoring significantly affects a wide range of access issues, such as credit access, employment opportunities, and insurance availability, credit-scoring mechanisms need major improvements if not a complete overhaul. Intrinsic and persistent discrimination in the lending markets and

132. *Id.* (emphasis added); *see id.* §§ 3601-3619 (describing duties to further fair housing).

133. *See id.* § 3605 (detailing discrimination in residential real estate); *id.* § 3608 (describing responsibilities of Secretary of Housing and Urban Development); Exec. Order No. 11063, 27 Fed. Reg. 11,527 (Nov. 20, 1962) (stating federal agencies must further fair housing); Exec. Order No. 12892, 59 Fed. Reg. 2939 (Jan. 20, 1994) (mandating agencies further fair housing). Section 808 also explains how the Secretary of Housing and Urban Development applies the law to other federal agencies. *See* 42 U.S.C. § 3608 (2006). While the executive orders clarify what "programs and activities" means in relation to housing and urban development. *See* Exec. Order No. 12892, 59 Fed. Reg. 2939; *see also* Exec. Order No. 11063, 27 Fed. Reg. 11,527.

134. *See* Shaun Donovan, Sec'y of Hous. & Urban Dev., Prepared Remarks for Secretary of Housing and Urban Development Shaun Donovan at the National Fair Housing Alliance Conference (June 8, 2009), http://www.hud.gov/news/speeches/2009-06-08.cfm.

135. *See* Young v. Pierce, 544 F. Supp. 1010, 1018 (E.D. Tex. 1982) ("This statute explicitly commands the Secretary of HUD to act in furtherance of the ideal of fair housing . . . . A variety of cases have explicitly recognized this affirmative duty."); *see also* Otero v. N.Y.C. Hous. Auth., 484 F.2d 1122, 1134 (2d Cir. 1973) ("Action must be taken to fulfill . . . the goal of open, integrated housing patterns, and to prevent the increase of segregation . . . of racial groups whose lack of opportunities the [Fair Housing] Act was designed to combat.").

136. *See* James H. Carr & Nandinee K. Kutty, *The New Imperative for Equality*, *in* SEGREGATION, THE RISING COSTS FOR AMERICA, *supra* note 26, at 1, 2.

137. *See About TARP*, U.S. DEP'T OF TREASURY, http://www.treasury.gov/initiatives/financial-stability/about-tarp/Pages/default.aspx (last updated Sept. 11, 2013).

138. DEIDRE SWESNIK ET AL., NAT'L FAIR HOUS. ALLIANCE, FAIR HOUSING AND THE TROUBLED ASSET RELIEF PROGRAM: HOW TARP FUNDS COULD (AND SHOULD) BE USED TO IMPROVE OUR NEIGHBORHOODS 3 (2009), http://www.nationalfairhousing.org/Portals/33/AFFH%20and%20TARP%20paper.doc.

America's dual- and unequal-credit markets continue to contribute to serious credit-access problems for borrowers and communities of color. Below, we offer some recommendations on how to improve credit-scoring mechanisms and suggest how to monitor and evaluate these systems.

A. Broaden the Scope of Financial Data Utilized by Underwriting and Credit-Scoring Models

Broadening the scope and quality of data upon which the scoring systems are based will improve credit-scoring models. Currently the primary source of data is major credit repositories. Credit repositories should make it easier for smaller financial institutions to report positive data. Moreover, credit repositories must be proactive and ensure that financial institutions can submit positive data from nontraditional sources. Models should also include data from state housing-finance agencies; CDFIs; micro-lending organizations; credit unions; and affiliation or community groups, such as churches, faith-based institutions, and benevolent organizations.

Broadening the scope of credit information will create a more robust data pool with additional information about and from consumers who access credit in safe, but nontraditional environments. It will also enable credit-scoring systems to accurately assess a broad range of consumers. This will, in turn, reduce the likelihood that a consumer will be incorrectly characterized in various credit-scoring systems.

Finally, credit repositories must create mechanisms to correct the current system's slant toward reporting only negative data. For example, repositories could develop a mechanism that allows consumers to report and submit verifiable and documented information about their credit payment histories. Credit repository data should reflect consumers who pay debt obligations on time, a problem that negatively affects communities of color.

B. Improve the Quality of Data

Credit bureaus must make it easier for consumers to correct erroneous information on their credit reports. Incorrect information can lead to low credit scores, credit denials, and limited access to quality, affordable credit.

Improving data quality will also contribute to better scoring models that more accurately assess consumer risk. Everyone who provides credit to consumers should make improving scoring-model performance a goal. Regulators overseeing financial institutions should likewise seek to improve scoring-model performance. Ensuring that consumers have access to quality credit will expand opportunities for consumers, promote healthy financial practices, and contribute to the growth of consumer net worth.

C. Make the System More Transparent

Agencies have taken years to reveal what has amounted to very little information about how various factors impact consumer credit scores. There is much we do not know. This lack of information leads housing professionals and credit and housing counselors to ineffectively advise consumers on how to manage their credit. Moreover, because different scoring mechanisms are used for different reasons, a consumer's credit score may be hurt when the consumer acts to improve his or her insurance score.

Consumers and consumer counselors are generally uninformed about how to positively impact the consumer's score. Making the scoring systems more transparent will help consumers better manage their financial affairs. It will also help advocates, financial institutions, federal regulators, and legislators.

D. Adequately Assess the Impact of Credit-Scoring Mechanisms on Underserved Groups

The CFPB, federal banking regulators, and federal enforcement agencies including the DOJ and the U.S. Department of Housing and Urban Development should examine the impact of credit-scoring mechanisms, especially as they relate to underserved groups. Regulators should also analyze the disparate impact of credit-scoring systems. It is imperative that regulatory and enforcement agencies analyze data from a broad range of sources. It is crucial that regulators do not rely predominantly on industry-developed data. Credit-score developers should also analyze their own systems to identify fair-lending concerns and implement less discriminatory alternatives.

E. Reduce the Overreliance on Credit-Scoring Mechanisms

The current crisis revealed that credit-scoring mechanisms are an insufficient measure for predicting and managing consumer performance. Borrowers have not behaved as their credit scores predicted. Lenders, investors, regulators, and legislators must caution against using credit scores as a replacement for underwriting, or as the only assessment of risk. Many factors affect loan risk, including the presence of prepayment penalties, inefficient appraisals, poor documentation practices, and other abusive loan features. The credit score may be the least significant factor when it comes to risk analysis. Therefore, lenders, investors, regulators, and legislators must adopt approaches that objectively consider other elements that impact risk.

F. Evaluate Product Risk

In addition to reducing the reliance on credit-scoring systems, federal regulators and legislators should push for the evaluation of credit and financial-services products. Additionally, institutions should evaluate underwriting systems and practices for their risk level. This information should be readily available to consumers, who will use it to understand which products and underwriting practices pose the most risk to their credit score. This transparency will enable consumers to make informed and sound financial decisions.

As discussed above, multiple studies reveal that unsafe products and unsavory underwriting practices significantly impact loan performance and credit risk. Therefore, it is quite practical to consider these functions in the risk analysis. Focusing analyses on borrower characteristics will not improve the quality of the assessment of risk; rather, objectively considering all factors affecting credit risk will result in a better understanding of risk exposure.

G. Fix Credit Scores for Victims of Discrimination

Complaints, settlements, and remedies should include repairing credit scores damaged by discrimination. For example, the recent DOJ settlement with Countrywide demonstrated discrimination against African-Americans and Latinos in steering and fees.[139] Thousands of families who should have received prime loans were steered to subprime loans.[140] It is reasonable to assume that their credit scores were negatively impacted by the mere fact that they received a more expensive subprime loan. Those borrowers should be made whole and their remedies should include restoring damaged credit scores.

As part of remedies and settlements, regulators, enforcement agencies, and courts should fix credit scores as a matter of course. In fact, some settlements between banks or fair-housing organizations and consumer groups already do this. When predatory lending was especially rampant in the early 2000s, fair-housing organizations were sometimes successful in getting a borrower's credit history amended as part of a settlement. In consultation with the credit-reporting agency, the bank would have the predatory loan deleted from the borrower's credit report. This, in turn, erased the loan from the borrower's history, as if it had never been made. In recent years, however, some lenders have not agreed to delete the trade line entirely and instead have agreed only to report the loan as *satisfied*. This means that the credit report shows that there is no debt remaining on the loan, but any history of late payments and other blemishes remains on the credit report. Unfortunately, because of the opacity of credit-scoring mechanisms, it is hard to tell which approach might be best for a specific consumer at any given time.

VI. CONCLUSION

By 2042, the majority of people in this country will be people of color.[141]

139. *See* U.S. Attorney's Office Cent. Dist. of Cal., *supra* note 46.
140. *See id.*
141. *See* Press Release, U.S. Census Bureau, *An Older and More Diverse Nation by Midcentury* (Aug. 14,

Given these changing demographics, it is past time to make our nation's credit system work equally for everyone. When civil-rights groups called for a foreclosure moratorium on subprime loans more than five years ago, predicting that the nation was headed for a financial and foreclosure crisis while referencing the disproportionate damage these loans were causing communities of color, Federal Reserve Chairman Ben Bernanke told the groups that the problem of foreclosure would be contained and restricted to the subprime market.[142] The Mortgage Bankers Association responded that, "[e]ach loan is an individual transaction and situation, one which needs to be addressed individually between the lender and the borrower."[143]

It is now obvious that such responses to the burgeoning crisis were naïve, and that regulators and industry leaders failed to recognize the breadth of the ensuing crisis despite warnings by civil-rights and consumer-protection groups. The foreclosure problems not only went beyond the nation's subprime market, but also turned into an international economic crisis of proportions not seen since the Great Depression.

Credit-scoring mechanisms are negatively affecting the largest growing segments of our country and economy. America cannot be successful if increasing numbers of our residents are isolated from the financial mainstream, and subjected to abusive and harmful lending practices. Credit scores have an increasing impact on our daily activities, and determine everything from whether we can get a job, to whether we will be able to successfully own a home. The current credit-scoring systems work against the goal of moving qualified consumers into the financial mainstream because they are too much a reflection of our broken dual credit market. This paradigm must change.

We believe that the recommendations presented here are important steps towards broadening access to good credit for all qualified borrowers.

2008), http://www.census.gov/newsroom/releases/archives/population/cb08-123.html.

142. *Civil Rights Groups Urge Freeze on Foreclosures,* L.A. TIMES, Apr. 6, 2007, http://articles.latimes.com/2007/apr/06/business/fi-wrap6.2 (reporting civil-rights groups urging lenders to agree on foreclosure moratorium).

143. Press Release, Mortg. Bankers Ass'n, *MBA Chairman Robbins Responds To Call for Moratorium on Foreclosures* (Apr. 4, 2007), http://www.mortgagebankers.org/newsandmedia/presscenter/51530.htm.