Credit Based Insurance Scoring: Meeting The Mandate Of Fair, Legal, And Appropriate Underwriting And Rating Practices By Automobile Insurers

Testimony of Nathaniel S. Shapo

Partner, Katten Muchin Rosenman LLP

nat.shapo@kattenlaw.com

United States House of Representatives

Financial Services Committee

Oversight & Investigations Subcommittee

Honorable Melvin L. Watt, Chairman

Honorable Gary G. Miller, Ranking Member

October 2, 2007

Hearing: "Credit-based Insurance Scores: Are They Fair?"

Testimony of Nathaniel S. Shapo, Partner, Katten Muchin Rosenman LLP
House Financial Services Committee, Oversight & Investigations Subcommittee
Hearing on credit based insurance scoring
October 2, 2007

Introduction

Mr. Chairman, Ranking Member Miller, and members of the subcommittee, thank you for the opportunity and the privilege to appear before you. My name is Nat Shapo. I am a partner at Katten Muchin Rosenman LLP. I was the Illinois insurance commissioner from 1999 until 2003.

In summary, my views regarding the use of credit based insurance scoring and the FTC Study are as follows:

- The Federal Trade Commission study, "Credit-Based Insurance Scores: Impacts on Consumers of Automobile Insurance" (the "FTC Study"), submitted to Congress in July 2007 to fulfill the FTC's obligations under Section 215 of the Fair and Accurate Credit Transactions Act of 2003, confirms that use of credit based insurance scoring in the underwriting and rating processes of automobile insurers is a salutary practice under which insurers have faithfully fulfilled their mandate under applicable laws to accurately and fairly assess and classify risk—and from which consumers greatly benefit through premiums which correlate with their risk to the common fund.

- Prevailing American law and public policy requires insurers to fairly discriminate between risks. It establishes a term of art: fair discrimination. In practice, under both the plain language of the state anti-discrimination statutes and the well-developed case law, this means that fair discrimination is an underwriting and rating practice which accurately predicts risk of future loss. This is fair both under the term of art of "fair discrimination" and common sense, because it results in each consumer paying her fair share. Conversely, illegal "unfair discrimination" is a risk classification scheme which is not supported by actuarial data or which explicitly discriminates against a protected class—usually race, religion, or national origin.

- The use of credit based insurance scoring, since it is an objective and more precise predictor of risk of future loss, is consistent with decades of case law interpreting the unfair discrimination standard embedded in state insurance codes. It is pro-consumer in practice: It benefits a majority of consumers while adhering to and enhancing compliance with established norms of risk classification. And it is consistent with federal public policy: The use of credit based insurance scoring has been explicitly contemplated by the U.S. Fair Credit Reporting Act for decades.

- The FTC Study establishes that credit based insurance scores provide an effective tool for determining risk of future loss, and that they do not inappropriately serve as a proxy for protected classes. This makes credit based insurance scoring practices an appropriate and pro-consumer risk classification method—recognized as "fair discrimination" under the law—and should be fostered, rather than impaired, through policymakers' prudent oversight of this important sector of commerce.

Prevailing Policy Throughout The United States Pertaining To Risk Classification Is Firmly Based On Encouraging And Requiring Insurers To Use Actuarially Based Methods Of Grouping Insurance Consumers.

The laws pertaining to risk discrimination create terms of art: fair discrimination and unfair discrimination. A rich vein of case law posits that actuarial justification is the lodestar distinguishing between fair and unfair discrimination. "'[U]nfair discrimination' is a word of art used in the field of insurance which, '[i]n a broad sense ... means the offering for sale to customers in a given market segment identical or similar products at different probable costs' [citations omitted]." *Polan v. State of New York Ins. Dept.*, 768 N.Y.S.2d 441 (N.Y.A.D. 1 Dept. 2003). Maryland's highest court stated it simply: "Unfair discrimination, as the term is employed by the Insurance Code, means discrimination among insureds of the same class based upon something other than actuarial risk." *Insurance Com'r for the State v. Engelman*, 345 Md. 402 (1997). Similarly, the Massachusetts Supreme Court explained: "This statutory scheme requires the commissioner to treat equally insureds who are of the same risk classification. This may result in 'fair discrimination.'" *Telles v. Commissioner of Ins*., 410 Mass. 560 (1991).[1]

Courts have explained that their application of the unfair discrimination laws, per the legislatures' intent, establishes a norm of fairness for consumers because they will pay in to the

[1] Courts throughout the United States have offered the same analysis of the unfair discrimination laws. *See, e.g., Thompson v. IDS Life Ins. Co*., 274 Or. 649 (1976) ("The Insurance Commissioner is instructed to eliminate unfair discrimination, whereas the Public Accommodations Act prohibits All discrimination. The reason for the different standards, as the plaintiff recognizes in her brief, is that insurance, to some extent, always involves discrimination, to a large degree based on statistical differences and actuarial tables. The legislature specifically intended, in enacting [the unfair discrimination statutes], to only prohibit Unfair discrimination in the sale of insurance policies."); *N.A.A.C.P. v. American Family Mut. Ins. Co*., 978 F.2d 287 (7th Cir. 1992) ("Insurance works best when the risks in the pool have similar characteristics. For example, term life insurance costs substantially more per dollar of death benefit for someone 65 years old than for one 25 years old, although the expected return per dollar of premium is the same to both groups because the older person, who pays more, also has a higher probability of dying during the term. Auto insurance is more expensive in a city than in the countryside, because congestion in cities means more collisions. Putting young and old, or city and country, into the same pool would lead to adverse selection: people knowing that the risks they face are less than the average of the pool would drop out. A single price for term life insurance would dissuade younger persons from insuring, because the price would be too steep for the coverage offered; the remaining older persons would pay a price appropriate to their age, but younger persons would lose the benefits of insurance altogether. To curtail adverse selection, insurers seek to differentiate risk classes with many variables. Risk discrimination is not race discrimination."); *Doukas v. Metropolitan Life Ins. Co*., 950 F.Supp. 422 (D.N.H. 1996) ("From this court's review of New Hampshire law, it appears that an insurance company's failure to rely on actuarial principles or actual or reasonably anticipated experience may be inconsistent with New Hampshire law.")

common fund in relation to their likelihood of taking out in the form of a claim.

> Indeed, valid underwriting practices promote fairness to the policyholder in not requiring him or her to bear in premiums the costs of insuring others in higher risk categories, and solvency of the insurer, another goal of insurance regulation [citation omitted].
>
> Correspondingly, provisions barring discrimination against insureds, akin to [the unfair discrimination statute], have been authoritatively construed not to apply when differential treatment has a proper underwriting basis. Thus, the statutory provision prohibiting discriminatory property and casualty rates [citation omitted] has been interpreted as "seek[ing] to assure that the rate charged shall bear reasonable relation to or be commensurate with the risk assumed and adequate for the class of risk to which they apply" [citation omitted]. And no violation of the law prohibiting discrimination by insurers based upon race, color, etc. [citation omitted] was held to have been committed by cancellation of fire insurance policies on commercial properties in heavily black-populated areas of New York City which "were motivated by underwriting and business reasons and not by racial hostility" [citation omitted]. ...
>
> [A]ppropriate classification of risks is sanctioned and encouraged throughout the Insurance Law.

Health Ins. Ass'n of America v. Corcoran, 551 N.Y.S.2d 615 (N.Y.A.D. 3 Dept. 1990).

The Massachusetts Supreme Court, not known as a conservative friend of business, similarly and crisply explained that, by correlating risk to premium levels, risk discrimination based on actuarially sound classifications benefits consumers.

> The basic principle underlying statutes governing underwriting practices is that insurers have the right to classify risks and to elect not to insure risks if the discrimination is fair.... The intended result of the process is that persons of substantially the same risk will be grouped together, paying the same premiums, and will not be subsidizing insureds who present a significantly greater hazard.

Life Ins. Ass'n of Massachusetts v. Commissioner of Ins., 403 Mass. 410 (1988).

The questions posed in today's credit based insurance scoring debate echo past legal and policy controversies pertaining to automobile insurers' use of risk factors which some objected to as not intuitively related to prediction of future loss.

In *State, Dept. of Ins. v. Insurance Services Office*, 434 So.2d 908 (Fla.App. 1 Dist. 1983), the Florida appellate court overturned a proposed regulation by the insurance commissioner which would have prohibited the use of gender, marital status, and scholastic achievement as rating factors. The court found that actuarial soundness, and correlation—as opposed to causation—is the prevailing public policy under which the law evaluates the appropriateness of a rating factor.

> [T]he insurance companies urge that the word "equitably" [citation omitted] means "accurately" in the actuarial sense. The hearing officer agreed, finding that the most equitable classification factors are those that are the most actuarially sound. In making this finding, the hearing officer relied upon the testimony of the Department's own Chief Actuary and Director of the Division of Rating. The hearing officer further found that the classification factors of sex, marital status and

> scholastic achievement, in light of the present state of the art in the industry, enhanced the actuarial soundness of a rate classification for automobile insurance. Thus, as the hearing officer concluded, the Department has not established that the use of the criteria prohibited by Rule 4-43.03 necessarily results in unfair discrimination.
>
> We find it highly significant that in presenting its argument on this point the Department has changed its own interpretation of the word "equitably," [citation omitted], as well as its interpretation of the phrase "unfairly discriminatory," relevant to this proceeding. Historically, the Department has measured the equitableness of a rating factor by its predictive accuracy....
>
> Thus, by implication, the legislature approved the interpretation that rates based upon sex, marital status or scholastic achievement are unfair only if those rating factors are found to be actuarially unsound. [Citation omitted.] As previously stated, the evidence below overwhelmingly shows these factors are actuarially sound.

Similarly, the Louisiana appellate court held that classifications based on age and gender are appropriate because they are statistically sound. The court specifically recognized that discrimination by forming actuarially based groups will penalize some members of the groups who are in fact good drivers. The court explained that this result will always occur with the use of any rating factor, but as long as the classification is objective and actuarially sound, it is welcome under the law as a fair method of assessing risk. The court pointed out, as the FTC Study found with respect to credit scoring, that the factors in question benefited a majority of drivers who paid a fairer premium.

> The evidence taken by the Commissioner indicates that there exists a sound statistical basis for using classifications based on age and sex in fixing insurance rates. It further appears that any classification system which results in different classes paying different rates for the same protection is, to some extent, discriminatory. If, for instance, age and sex are not used as factors in establishing classifications in automobile insurance rates, women and all those over 24 years of age, or about 75% of the drivers, would pay a higher premium, while those under 25 years of age, about one-fourth of the drivers, would pay substantially less than they are now paying. The older and more experienced drivers would therefore be discriminated against by having to subsidize the higher risk class of younger drivers.
>
> [The unfair discrimination statute] requires that the classifications used in establishing rates be reasonable, and not unfairly discriminatory. We agree with the trial judge that classifications based on age and sex are not unreasonable, and, although there is discrimination against the good, young driver, it is not unfair or unreasonable.

Insurance Services Office v. Commissioner of Ins., 381 So.2d 515 (La. App. 1979).

Federal law has followed these principles in its forays into regulating risk classification. Several federal courts have noted that the legislative history of the Americans With Disabilities Act (ADA) demonstrates a federal adherence to the basics of the unfair discrimination methodology described above. For instance, in *Piquard v. City of East Peoria*, 887 F.Supp. 1106 (C.D.Ill. 1995), the court reviewed the ADA and its legislative history and found that Congress had incorporated into federal law the safe harbor for actuarial justification found in the state unfair discrimination laws.

> What does state law say about underwriting, classifying, and administering risks? Much of state insurance regulation is based on model legislation drawn up by the National Association of Insurance Commissioners ("NAIC"), a national organization of state insurance regulators. [Citation omitted.] Since 1960, all 50 states and the District of Columbia have adopted provisions of the NAIC's Unfair Trade Practices Act ("UTPA") in various forms. [Citations omitted.] Section 4G(2) of the Model UTPA, which has been adopted in whole or in part by 49 states, prohibits: "Making or permitting any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees or rates charged for any accident or health insurance policy or in the benefits payable thereunder, or in any of the terms or conditions of such policy ..."
>
> [Citations omitted.] Thus, under the ADA, as the EEOC explains and state law provides, benefit plan classification and administration of risks with regard to disabled persons requires the grouping of individuals of the same class and of essentially the same hazard in the amount of premiums, benefits payable, or any other terms or conditions of such benefit plan. [Citation omitted.]
>
> Section 3 of the NAIC's Model Regulation on Unfair Discrimination in Life and Health Insurance on the Basis of Physical or Mental Impairment prohibits:
> [R]efusing to insure, or refusing to continue to insure, or limiting the amount, extent or kind of coverage available to an individual, or charging a different rate for the same coverage solely because of physical or mental impairment, except where the refusal, limitation or rate differential is based on sound actuarial principles or is related to actual or reasonably anticipated experience.
>
> [Citations omitted.] The ADA's legislative history expressly adopts state insurance unfair discrimination regulation. Virtually all States prohibit unfair discrimination among persons of the same class and equal expectation of life. The ADA adopts this prohibition of discrimination. Under the ADA, a person with a disability cannot be denied insurance or be subject to different terms or conditions of insurance based on disability alone, if the disability does not pose increased risks.
>
> [Citations to House and Senate Reports.] The House and Senate Reports further state that: [W]hile a plan which limits certain kinds of coverage based on classification of risk would be allowed under this section, the plan may not refuse to insure, or refuse to continue to insure, or limit the amount, extent, or kind of coverage available to an individual, or charge a different rate for the same coverage solely because of a physical or mental impairment, except where the refusal, limitation, or rate differential is based on sound actuarial principles or is related to actual or reasonably anticipated experience.
>
> [Citations to House and Senate Reports.] These explanations by the House and Senate of the types of benefit plans and practices allowed and prohibited under Section 501(c) exactly mirror Section 3 of the NAIC's Model Regulation on Unfair Discrimination in Life and Health Insurance on the Basis of Physical or Mental Impairment. Thus, Congress expected that under the ADA, a benefit plan or practice which refuses an individual participation solely because of a disability must be supported by actuarial principles or related to actual or reasonably anticipated experience as required by State law.

Thus, when Congress legislated to protect people from discrimination based on an essentially immutable characteristic—a disability—it still applied the basic unfair discrimination principle with respect to insurance, allowing carriers to actuarially classify risk. When applying this

Congressional approach to insurance scoring models which utilize credit scores—far from an immutable characteristic—one would expect Congress to strongly support insurers' use of what the FTC has found, as discussed below, to be an actuarially sound method of assessing and grouping risk, particularly since use of credit based insurance scores by carriers has long been authorized under the federal Fair Credit Reporting Act.

In other words, if it is allowable to use disability—an immutable characteristic—as an actuarially justified classification factor under a federal statute which is designed to protect those with that characteristic, then federal public policy would seem to strongly suggest that an actuarially sound classification factor which is not an immutable characteristic and which is explicitly condoned under federal law should be fostered, not criticized.

The FTC Report—And Studies Regarding The Effects Of The Use Of Credit Score Data On Protected Classes By The Texas Department Of Insurance And The Federal Reserve—Clearly Demonstrates That The Use Of Credit Based Insurance Scores Meets The Standard Embodied In The Law For Appropriate Underwriting, And Produces Positive Results For Consumers.

The FTC recently performed an extensive, Congressionally mandated analysis of data pertaining to the use of credit based insurance scoring. The report concluded that this risk classification practice is an accurate predictor of future loss, and, consistent with the discussion above, that credit based insurance scoring benefits consumers in a manner consistent with the norms of fair discrimination embedded in prevailing public policy and law throughout the United States.

The FTC found:

> Credit-based insurance scores are effective predictors of risk under automobile policies. They are predictive of the number of claims consumers file and the total cost of those claims. The use of scores is therefore likely to make the price of insurance better match the risk of loss posed by the consumer. Thus, on average, higher-risk consumers will pay higher premiums and lower-risk consumers will pay lower premiums.

FTC Study, p. 3. In other words, credit based insurance scoring furthers the prevailing public policy objective of matching premiums paid into the common fund with risk of loss to the fund.

As discussed above, insurance risk classifications are judged by their overall effects on the members of the group formed by the classification. Every risk factor will result in discrimination against some members of the classification who are in fact good risks. Some 16 year olds are careful and skilled drivers, but using their age as a highly probative factor is acceptable because it produces actuarially effective results for the group as whole. The FTC Study demonstrates that credit based insurance scoring similarly produces this helpful result.

The FTC Study found that credit based insurance scoring results may produce further potential benefits to consumers.

> Use of credit-based insurance scores may result in benefits for consumers. For example, scores permit insurance companies to evaluate risk with greater accuracy, which may make them more willing to offer insurance to higher-risk consumers for whom they would otherwise not be able to determine an appropriate premium. Scores may also make the process of granting and pricing insurance quicker and cheaper, cost savings that may be passed on to consumers in the form of lower premiums.

FTC Study, p. 3. Again, the findings of the FTC Study track the language in decades of case law pertaining to the positive results for consumers derived from desirable risk classification practices by insurers.

And, importantly with respect to the policy concerns regarding demographic effects of credit based insurance scoring—which largely spurred the Congressional mandate upon the FTC in the FACT Act to perform the study discussed herein—the FTC found that the use of credit based insurance scores does not serve as a proxy for race, and does not produce results which impact protected classes more severely than other underwriting and rating factors.

> Credit-based insurance scores appear to have little effect as a "proxy" for membership in racial and ethnic groups in decisions related to insurance. The relationship between scores and claims risk remains strong when controls for race, ethnicity, and neighborhood income are included in statistical models of risk.... Several other variables in the FTC's database ... have a proportional proxy effect that is similar in magnitude to the small proxy effect associated with credit-based insurance scores. Tests also showed that scores predict insurance risk within racial and ethnic minority groups (e.g., Hispanics with lower scores have higher estimated risk than Hispanics with higher scores). This within-group effect of scores is inconsistent with the theory that scores are solely a proxy for race and ethnicity.

FTC Study, p. 4.

The findings of the FTC Study mirror those of the largest state study of credit based insurance scoring, a statutorily mandated review by the Texas Department of Insurance. The insurance commissioner, in his report to the governor and the legislature, wrote:

> Prior to the study, my initial suspicions were that while there may be a correlation to risk, credit scoring's value in pricing and underwriting risk was superficial, supported by the strength of other risk variables. Hence, there would be evidence that credit scoring was a coincidental variable that served as a surrogate for an unlawful factor in rating and underwriting. If this were proven to have been the case, I would have had a legal basis to make the connection between disproportionate impact and intentional discrimination, and either ban credit scoring outright or adopt an allowable rate difference of zero, meaning no rate differences due to credit scoring.
>
> The study, however, did not support those initial suspicions. Credit scoring, if continued, is not unfairly discriminatory as defined in current law because credit scoring is not based on race, nor is it a precise indicator of one's race. Recall that not all minorities are in the worst credit score categories. Further, its use is justified actuarially and it adds value to the insurance transaction.

Cover letter from Texas Insurance Commissioner Jose Montemayor, Jan. 31, 2005, affixed to his report entitled "Use of Credit Information by Insurers in Texas."

Furthermore, the Federal Reserve study submitted to Congress pursuant to the FACT Act reached a similar result with respect to the question of credit history scores' effect on demographic groups.

> The credit history scores evaluated here are predictive of credit risk for the population as a whole and for all major demographic groups.... Results obtained with the model estimated especially for this study suggest that the credit characteristics included in credit history scoring models do not serve as substitutes, or proxies, for race, ethnicity, or sex.... There is no compelling evidence ... that any particular demographic group has experienced markedly greater changes in credit availability or affordability than other groups due to credit scoring.... Credit scoring likely increases the consistency and objectivity of credit evaluation and thus may help diminish the possibility that credit decisions will be influenced by personal characteristics or other factors prohibited by law, including race or ethnicity.... This study reviewed the extent to which the consideration or lack of consideration of certain factors by credit-scoring systems could result in a negative or positive differential effect for different populations. By law and regulation, an individual's personal characteristics—such as race or ethnicity, national origin, sex, and, to a limited extent, age—must be excluded from credit-scoring models. A concern exists that, despite that prohibition, a credit characteristic may be included in a model not because it helps predict performance but because it is a substitute, or proxy, for a demographic characteristic that is correlated with performance. The analysis of the data assembled for this report found that few credit characteristics, including those in the FRB base model, were correlated with personal demographics and that therefore they were unlikely to serve as proxies for demographic characteristics.... Reestimating the FRB base model in a race-neutral environment had little effect on credit scores. The result suggests that none of the credit characteristics included in the model serve, to any substantive degree, as proxies for race or ethnicity.

Board of Governors of the Federal Reserve System, "Report to the Congress on Credit Scoring and Its Effects on the Availability and Affordability of Credit."

Both Congressionally mandated studies under the FACT Act, as well as the Texas Department of Insurance report, thus demonstrate that the long-standing federal policy embedded in the Fair Credit Reporting Act, which explicitly contemplates that credit data will be used in the insurance risk classification process, does not result in improper detriment to protected demographic groups.

State Legislatures Are Conscientiously Considering And Addressing The Specific Concerns Raised By Consumers Regarding The Use Of Credit Based Insurance Scoring Through Reasonable Legislation Which Protects The Insurance Buying Public.

Insurance is surely a heavily regulated industry infused with the common good, and state governments shoulder the primary responsibility for regulating this essential form of commerce under the McCarran-Ferguson Act. State legislatures and insurance regulators throughout the

United States during this decade have been thoroughly debating specific concerns raised by consumers about the fair use of credit based insurance scoring models, and have been taking thoughtful and effective action by passing appropriate regulatory statutes.

Like any other innovation in commerce, credit based insurance scoring can manifest itself in ways which raise questions about fairness. A cluster of issues has been identified by policymakers as the most consistently expressed set of consumer concerns, including, but not necessarily limited to, calls for: laws instituting appropriate consumer disclosures; protections for consumers whose credit scores have suffered because of a medical emergency; preventing the use of credit as the sole factor in an underwriting or rating decision to the exclusion of all other risk classification tools; and ensuring that credit based insurance scoring decisions are made based on fresh scores.

A majority of states have passed laws—many based on the National Conference of Insurance Legislators' Model Act Regarding Use of Credit Information in Personal Insurance—regulating the use of credit based insurance scores which incorporate provisions protecting consumers with respect to these and other legitimate and well-expressed concerns of policymakers. This has had the effect of rounding sharp edges resulting from use of credit based insurance scoring which are the most likely to generate complaints from the insurance buying public.

These are reasonable restrictions which ultimately enhance the use of credit based insurance scoring, consistent with its promise to help automobile insurers meet the goal of implementing fair risk classifications for the benefit of consumers—rather than smothering the practice through draconian regulation. I urge the subcommittee to encourage the former rather than the latter approach to regulation of credit based insurance scoring, a tool which the FTC Study has shown is a positive commercial development for consumers.

States have to date balanced the market benefits of credit based insurance scoring with the need to respond to documented consumer problems. Congressional oversight of this important issue in interstate commerce is quite appropriate, but—consistent with the Fair Credit Reporting Act's affirmative authorization of the use of credit based insurance scores, and the FTC Study's conclusions in response to the mandate of the Fair and Accurate Credit Transactions Act that this risk classification method is consistent with controlling law, beneficial to consumers, and fair to protected classes—I do not believe that federal intervention to supplement the states' regulation of credit based insurance scoring is necessary in order to effectively regulate these insurer practices.

Conclusion

I believe that the FTC Study demonstrates that the use of credit based insurance scoring methods is beneficial to consumers and is consistent with insurers' obligations under well-established public policy that controls risk discrimination practices in underwriting and rating.

Testimony of Nathaniel S. Shapo, Partner, Katten Muchin Rosenman LLP
House Financial Services Committee, Oversight & Investigations Subcommittee
Hearing on credit based insurance scoring
October 2, 2007

The use of credit based insurance scores appears to be an example of insurers doing exactly what the law expects of them both in letter and spirit.

While some view the use of anything pertaining to credit scores to be somehow counter-intuitive and inconsistent with traditional notions of fair risk classification practices, all the evidence suggests the opposite.

- The use of credit based insurance scores is an excellent predictor of future risk, which is the essence of insurers' responsibility under the law.
- It is fair because it pairs premiums with an insured's likelihood to take money back from the common fund.
- It is—and has been for decades—explicitly authorized under federal law in the Fair Credit Reporting Act.
- Insurance risk classification principles revolve around pegging underwriting and rating decisions to correlation with risk of future loss, not causation, so actuarial results are dispositive and should settle the matter. Nevertheless, I do not find persuasive the argument that some have made questioning how a person's credit history could be relevant to her risk as a driver. The relationship between the rating tool and the risk seems quite logical to me: The types of personal characteristics which make a person a safe driver—patience, care, deliberate decision making, etc.; in sum, risk averseness—are the same types of traits which make a person likely to achieve a good credit score.

When an insurance practice is found to be objectively fair and beneficial to consumers, the insurance laws should not prohibit or substantially restrict it. The Fair Credit Reporting Act specifically contemplates the use of credit data by insurers in their classification of risk., and the strong import of recent studies pertaining to the practice is that this is a fair practice which benefits consumers while not harming protected demographic groups.

I therefore believe that credit based insurance scoring should be encouraged and facilitated under the law, not banned or substantially restricted, and I hope the subcommittee will consider my remarks—and, most importantly, the clear import of the conclusions reached by the FTC Study—in its oversight of this important issue.

I am deeply grateful for the honor of appearing before you today and would be pleased to answer any of the committee's questions.