Providing Relief After a Natural Disaster Through Credit Reports

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The COVID-19 pandemic forced the world to re-think systems that have been in place for decades, quickly adapting—at least temporarily—to the new normal. Among those systems was the credit reporting system. In response to the pandemic, Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act; an act that, among other things, amends the Fair Credit Reporting Act in regard to how credit reporting agencies should respond to delinquencies resulting from the pandemic.[1] The CARES Act aids consumers by mandating that if a consumer requests an accommodation, a credit reporting agency must continue to report a

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1. Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. No. 116-36, § 4021, 134 Stat. 281, 489 (2020).

consumer's account as current or maintain the status of the account that it was at when the accommodation was requested.[2] While a global pandemic was an unprecedented event that no one could have predicted, other disasters—specifically, natural disasters—have become almost a constant in our lives, to the point where some of these temporary fixes should be expanded upon and made permanent.

Credit reporting has opened doors to financial opportunities that were unavailable before the credit system was developed, and for many, these opportunities are life changing.[3] Credit reporting and credit scores enable lenders to make accurate and reliable determinations about consumers and their credit risk in just a few minutes.[4] The current version of the credit score was implemented in 1989 and has changed little since then. Given the dramatic changes in technology and consumer living between 1989 and 2021, there is a need for improvement and adaptation. While the current system works well for many, consumers with lower credit scores are often fighting the system rather than benefiting from it.[5] They often find themselves in a Catch-22 where their scores continue to fall due to high interest rates and debt.[6] As a result, a low credit score can impose crippling hurdles for consumers even in the best of situations. It can be absolutely devastating for those who have found themselves with a low score as a result of an event that was out of their control.

Credit scores largely determine one's financial opportunities by informing lenders as to whether, and on what terms, credit should be extended.[7] Credit scores influence one's interest rates, ability to purchase a house, take out a loan, or even rent an apartment.[8] In

2. Fair Credit Reporting Act, 15 U.S.C. § 1681s-2(a)(1)(F)(ii).

3. *See* Sean Trainor, *The Long, Twisted History of Your Credit Score*, TIME (July 22, 2015), https://time.com/3961676/history-credit-scores/ [https://perma.cc/U7TN-9FNX].

4. FED. TRADE COMM'N, REPORT TO CONGRESS UNDER SECTION 319 OF THE FAIR AND ACCURATE CREDIT TRANSACTIONS ACT OF 2003, at 2 (2012), https://www.ftc.gov/sites/default/files/documents/reports/section-319-fair-and-accurate-credit-transactions-act-2003-fifth-interim-federal-trade-commission/130211factareport.pdf [https://perma.cc/A6MQ-CWMU].

5. *See* CONSUMER FIN. PROT. BUREAU, KEY DIMENSIONS AND PROCESSES IN THE U.S. CREDIT REPORTING SYSTEM: A REVIEW OF HOW THE NATION'S LARGEST CREDIT BUREAUS MANAGE CONSUMER DATA 10 (2012), https://files.consumerfinance.gov/f/201212_cfpb_credit-reporting-white-paper.pdf [https://perma.cc/C3NV-HVFJ].

6. *See id.*

7. *See generally* CHERYL R. COOPER & DARRYL E. GETTER, CONG. RSCH. SERV., R44125, CONSUMER CREDIT REPORTING, CREDIT BUREAUS, CREDIT SCORING, AND RELATED POLICY ISSUES 1 (2020).

8. *See* JON GOLINGER & EDMUND MIERZWINSKI, PUB. INT. RSCH. GRPS., PIRG: MISTAKES DO HAPPEN: CREDIT REPORT ERRORS MEAN CONSUMERS LOSE (1998), https://uspirg.org/sites/pirg/files/reports/Mistakes_Do_Happen_1998_USPIRG.pdf [https://perma.cc/ZT7B-XVWP].

addition, credit scores have implications beyond the extension of credit. Insurance companies may use a score to determine whether to offer coverage to a consumer, and an employer may rely on a prospective employee's credit score in determining whether to extend a job offer.[9] Just one missed payment can substantially affect an individual's credit score,[10] and raising a fallen credit score can prove to be an arduous task. It can take years to rebuild credit after certain financial events, such as filing for bankruptcy.[11] As such, there is no doubt that the accuracy of a credit score is of great importance.[12]

The industry recognized a need for an improvement to the system, one that allows at least a bit of leeway for those whose credit reports may not accurately reflect their financial history. This improvement was made via a code, used at the discretion of a creditor, that appears on a consumer's credit report. The code designates certain accounts that should be noted as a possible result of unusual circumstances. While this is certainly a step forward, it falls short of ensuring that someone who encounters a situation that is out of their control—such as a natural disaster—would not spend years trying to financially recover. There are a few minor adjustments that should be made to the code's application to aid consumers who are recovering from an event that was out of their control.

This Note argues that in order to adapt to the increasing occurrence of natural disasters, the U.S. government must implement a system in which a consumer can easily alert their creditors when they become a victim of a natural disaster. As a result, creditors' and furnishers' responsibilities will shift when they learn that someone has become a victim of a natural disaster. This Note begins by considering the credit reporting and scoring system currently in place. It then touches on the current system's strengths and shortcomings and introduces the Fair Credit Reporting Act—Congress's response to the key credit reporting issues

9. COOPER & GETTER, *supra* note 7, at 11; *see also* BD. OF GOVERNORS OF THE FED. RSRV. SYS., CONSUMER'S GUIDE: CREDIT REPORTS AND CREDIT SCORES, https://www.federalreserve.gov/creditreports/pdf/credit_reports_scores_2.pdf [https://perma.cc/TZE7-5WSG].

10. LIZ WESTON, YOUR CREDIT SCORE: HOW TO IMPROVE THE 3-DIGIT NUMBER THAT SHAPES YOUR FINANCIAL FUTURE 2 (4th ed. 2012); *see* Louis DeNicola, *How Long Do Late Payments Stay on Credit Reports?*, EXPERIAN (Jan. 14, 2020), https://www.experian.com/blogs/ask-experian/how-long-do-late-payments-stay-on-credit-reports/ [https://perma.cc/9UY8-4E3L].

11. *See* Jessica Dickler, *Here's How Long It Takes to Improve Your Credit Score*, CNBC (Sept. 14, 2019), https://www.cnbc.com/2019/09/14/heres-how-long-it-takes-to-improve-your-credit-score.html [https://perma.cc/U2KM-85PJ].

12. *See* FED. TRADE COMM'N, *supra* note 4, at 5; *See* Julie Birkenmaier, Jamie Curley & Patrick Kelley, *The Financial Credit Profile of Low-Income Families Seeking Assets*, 2 J. FIN. THERAPY 68, 70 (2011).

facing consumers. Part II discusses the system's failures in the face of natural disasters, specifically how the system hinders rather than helps victims. The system, as it stands, does not differentiate between consumers who are less creditworthy because they made poor financial decisions and consumers who have been devastated by a natural disaster and have exhausted their resources as a result. Finally, this Note will offer three concrete suggestions for how to improve the system to accommodate those whose credit score was affected by a natural disaster rather than poor decision-making: (1) a requirement that an AW code be applied to a consumer's credit report if the consumer is a victim of a natural disaster and requests it; this request should trigger a responsibility to furnishers and credit reporters that the code should be reflected in all of the consumer's reports; (2) a requirement that the AW code remain on a credit report for a prescribed amount of time; and (3) a requirement for credit reporting agencies and furnishers to educate themselves on the AW code and their responsibilities towards consumers who request such a code. These small but significant changes will enable disaster survivors to protect their credit and allow them an opportunity to rebuild their lives without debilitating roadblocks.

I. CURRENT CREDIT REPORTING AND SCORING SYSTEM

A. Credit Reports and Credit Scores: How They Work

A credit report is a type of consumer report[13] from which a credit score is calculated[14] and is comprised of billions of bits of data supplied to credit reporting agencies by furnishers.[15] Furnishers can include creditors,

13. A consumer report is defined in the Fair Credit Reporting Act as "any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for—(A) credit or insurance to be used primarily for personal, family, or household purposes; (B) employment purposes; or (C) any other purpose authorized under section 1681b of this title." 15 U.S.C. § 1681a(d)(1) (2018).

14. *What Is the Difference Between a Credit Report and a Credit Score?*, CONSUMER FIN. PROT. BUREAU (Aug. 3, 2017), https://www.consumerfinance.gov/ask-cfpb/what-is-the-difference-between-a-credit-report-and-a-credit-score-en-2069/ [https://perma.cc/GQV2-3BWT].

15. The Fair Credit Reporting Act defines furnisher as an "entity that furnishes information relating to consumers to one or more consumer reporting agencies for inclusion in a consumer report." 16 C.F.R. § 660.2(c) (2009). There are some exceptions to this definition, such as someone acting as a "consumer reporting agency" or a personal acquaintance that is providing personal information regarding another. 16 C.F.R. § 660.2(c)(1)–(4) (2009); Chi Chi Wu & Richard Rubin, *The Latest on Metro 2: A Key Determinant as to What Goes into Consumer Reports*, NAT'L CONSUMER L. CTR. (Oct. 17, 2018), https://library.nclc.org/latest-metro-2-key-determinant-what-goes-consumer-reports [https://perma.cc/K5XU-UCDB].

debt collectors, and other businesses that report back to credit reporting agencies about consumers' borrowing history.[16] Furnishers may use discretion in determining which information they choose to report and how much.[17] There are three main[18] credit reporting agencies: Experian Information Services, LLC (Experian); TransUnion, LLC (TransUnion); and Equifax Information Services, LLC (Equifax).[19] Each of these agencies maintain credit reports on over two hundred million adults and receive information from over ten thousand furnishers.[20]

While furnishers are afforded a fair amount of discretion in how they operate and report credit information to credit agencies, most credit reporting agencies have adopted the Metro 2 format.[21] The Metro 2 format is a standardized system that consists of different codes and required fields used to supply information to credit reporting agencies about the various accounts held by consumers.[22] By using this format, credit reporting agencies can streamline the process of sharing information by receiving it in a standardized format that is easier to interpret by credit reporters and consumers alike.[23] Although the Metro 2 is not legally enforceable because it is governed by the Consumer Data Industry Association (CDIA), a private association, it is considered the standard format across major reporting agencies, and it is the furnisher's responsibility to report information in accordance with the reporting agency's preference.[24]

A credit report is primarily used to show a consumer's borrowing and payment history; it summarizes a consumer's financial history, including basic information such as the type of accounts held by the consumer, credit limits, and payment history.[25] It also includes the status of each account (e.g., "current," "past due" sixty or ninety days, "charged off," or "other collection activity").[26] In addition to financial information, a credit report includes personal information such as a consumer's address,

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16. Wu & Rubin, *supra* note 15.

17. COOPER & GETTER, *supra* note 7, at 5.

18. There are smaller credit reporting agencies and agencies that report on specific consumer industries, such as utilities and telephone services, but three main agencies provide the majority of the information found in consumer reports and factored into credit scores.

19. COOPER & GETTER, *supra* note 7, at 3.

20. CONSUMER FIN. PROT. BUREAU, *supra* note 5, at 3.

21. Wu & Rubin, *supra* note 15.

22. *Id.*

23. *See generally* CONSUMER FIN. PROT. BUREAU, *supra* note 5, at 20.

24. Wu & Rubin, *supra* note 15.

25. CHI CHI WU, LEONARD A. BENNETT & EVAN HENDRICKS, NAT'L CONSUMER L. CTR., AUTOMATED INJUSTICE: HOW A MECHANIZED DISPUTE SYSTEM FRUSTRATES CONSUMERS SEEKING TO FIX ERRORS IN THEIR CREDIT REPORTS 4 (2009), https://www.nclc.org/images/pdf/pr-reports/report-automated_injustice.pdf [https://perma.cc/U44W-76C8].

26. *Id.*

social security number, and employer, as well as public information including court judgments, garnishments, and bankruptcies.[27] Some information on a credit report has a shelf life—delinquencies, late payments, and civil suits, for example, are only reported for a period of seven years.[28] Generally, bankruptcies are only permitted to be reported for a maximum of ten years.[29] Thus, credit reports can improve over time without any intervention by the consumer. The downside to this, however, is that resorting to this remedy leaves a consumer financially disabled for a significant amount of time.

Credit scores[30] are generated based on a consumer's credit report and are intended to be a reflection of a borrower's creditworthiness.[31] Every reporting agency has its own algorithm for determining a score, which results in differing scores among agencies.[32] These formulas used to calculate credit scores are trade secrets,[33] and consumers are only afforded a general idea of what impacts their score and to what extent.[34] Information used in determining one's score includes, among other factors, credit repayment history, length of credit history, and amount of credit used.[35] Due to the lack of transparency within the industry, it is difficult for consumers to anticipate their score and what will affect it.

Unfortunately, mistakes on credit reports are common and can have a severe impact on consumers.[36] A survey showed that 70% of credit reports contained an error of some kind and 29% of consumers' credit reports reflected serious errors—some serious enough to preclude their access to credit.[37] Examples of serious errors as defined by the survey include accounts that are inaccurately noted as delinquent and reports that

27. *Id.*

28. CONSUMER FIN. PROT. BUREAU, *supra* note 5, at 9.

29. *Id.*

30. Credit scores can range between 300 and 850. Scores that are 750 or above are considered high enough to receive the best terms. *How Credit Reporting Works*, CONSUMER DATA INDUS. ASS'N, https://www.cdiaonline.org/for-consumers/how-credit-reporting-works/ [https://perma.cc/9Y6H-4SMY].

31. *Id.*

32. *Id.*; Birkenmaier, Curley, & Kelley, *supra* note 12, at 71.

33. Birkenmaier, Curley, & Kelley, *supra* note 12, at 71.

34. *See How Are Credit Scores Calculated?*, EQUIFAX, https://www.equifax.com/personal/education/credit/score/how-is-credit-score-calculated/ [https://perma.cc/D9MU-AX6K]; *What's in My FICO Scores?*, MYFICO, https://www.myfico.com/credit-education/whats-in-your-credit-score [https://perma.cc/X7BF-KEE7]; *How Credit Scoring Works*, TRANSUNION (Mar. 7, 2016), https://www.transunion.com/blog/credit-advice/how-credit-scoring-works-transunion [https://perma.cc/TNT7-QPFK].

35. COOPER & GETTER, *supra* note 7, at 7.

36. *See* GOLINGER & MIERZWINSKI, *supra* note 8.

37. *Id.*

contain information for a different consumer, which thereby includes incorrect credit accounts and incorrect judgments or public records.[38]

Moreover, the survey showed that contacting an agency about an error is not simple; when consumers tried to contact credit reporting companies to resolve inaccuracies reflected on their credit reports, at least 14% of them had to make multiple phone calls in order to receive assistance.[39] It can often take multiple complaints, and sometimes even intervention by an attorney, to fix errors reflected on one's credit report.[40] As mentioned above, consumers will suffer dire consequences arising from just one piece of negative information present on their credit reports. Those with serious errors could end up paying a higher interest rate than they would have paid if their creditworthiness had been accurately reflected.[41] In some cases, people are denied credit altogether based on inaccuracies in reporting.[42]

B. Fair Credit Reporting Act

In response to the prevalence of mistakes on credit reports, Congress enacted the Fair Credit Reporting Act in 1970.[43] The Act was designed to ensure that "consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for a consumer's right to privacy."[44] It imposes certain duties on furnishers when they are alerted to inaccuracies by a credit reporting agency, such as the duties to correct misinformation and provide notice of disputes, closed accounts, and delinquent accounts.[45]

Moreover, the Act outlines a credit reporting agency's duties when a consumer files a dispute.[46] For example, a credit reporting agency must report the information at the center of the dispute, within five days, to all affected furnishers.[47] However, the Act does not require credit reporting

38. *Id.*

39. *Id.*

40. See *id.*

41. FED. TRADE COMM'N, *supra* note 4, at 5.

42. *Id.*

43. Fair Credit Reporting Act, 15 U.S.C. § 1681 (2018). *See generally* Sandra F. Braunstein, *Consumer Credit Reports*, BD. OF GOVERNORS OF THE FED. RSRV. SYS. (June 19, 2007), https://www.federalreserve.gov/newsevents/testimony/braunstein20070619a.htm [https://perma.cc/NYT4-JSBM].

44. 15 U.S.C. § 1681(a)(4) (2018).

45. *Credit Reports: Consumers' Ability to Dispute and Change Inaccurate Information: Hearing Before the H. Comm. on Fin. Serv.*, 110th Cong. 9–10 (2007) (statement of Sandra F. Braunstein, Director, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System); 15 U.S.C. § 1681.

46. 15 U.S.C. § 1681i (2018).

47. 15 U.S.C. § 1681i(a)(2)(A) (2018).

agencies to seek out possible inaccurate information.[48] Although the Act also grants consumers a few rights, these are limited to the right to request their credit score, to know what is in their file, and to dispute incorrect or inaccurate information.[49]

Before the Act, consumers did not have the right to dispute items on their credit reports and, as a result, had little control over what became part of their credit reports.[50] Consumers now have the option to provide a letter to credit reporting agencies identifying alleged inaccurate information along with any evidence, such as paperwork, receipts, or correspondence, to support their claim.[51] The relevant credit reporting agency then has between thirty and forty-five days to investigate the disputed information.[52] Following its investigation, the agency must alert the furnishers if the information is inaccurate and provide the consumer with a copy of the investigation report regardless of whether a mistake is found.[53] The right to dispute and correct information on a credit score creates an important safeguard against misinformation leading to bad credit scores, but the process for disputing and correcting that information is time-consuming, complex, and, at times, fruitless.[54]

In addition, the dispute process itself can be confusing despite the Act's best efforts to simplify and improve the process. A recent case, *Burrell v. DFS Services, LLC*, provides an example of how complicated it can be for someone to navigate the reporting process to correct an issue on their credit report. Additionally, this case highlights a loophole in the Act that allows furnishers to avoid responsibility for inaccurate information. In that case, the plaintiff repeatedly alerted his credit card companies that

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48. *See* 15 U.S.C. § 1681i. The 1996 FCRA and the 2003 FACT Act provide duties to respond. For example, the FCRA requires a credit reporting agency to investigate reportedly inaccurate information but does not require a credit reporting agency to verify the accuracy of information received from a furnisher before reporting it. Similarly, the FACT Act requires a furnisher to reinvestigate any disputes received from a credit reporting agency but does not require it to investigate the accuracy of its information absent a dispute.

49. *A Summary of Your Rights Under the Fair Credit Reporting Act*, CONSUMER FIN. PROT. BUREAU, https://www.consumer.ftc.gov/articles/pdf-0096-fair-credit-reporting-act.pdf [https://perma.cc/KM7V-L3ZK].

50. *See* FED. TRADE COMM'N, *supra* note 4, at 4.

51. *Id.*

52. *Id.*

53. *Id.* Currently, there is a bill in process that focuses on improving protections for consumers. The bill proposes provisions including shortening the amount of time that adverse information is reported on a credit report. It also proposes releasing consumers from loans acquired through predatory lending, specifically in regard to mortgages and student loans. Finally, it would prohibit credit reporting agencies from reporting credit restoration acts as adverse information. H.R 3622, 116th Cong. (2020).

54. *Id.* at 4–5.

he was a victim of identity theft and that, as a result, his credit report showed inaccurate information.[55] The United States District Court held that his reports of inaccuracies were not sufficient to trigger the furnisher's duty to alert the credit reporting agency of the identity theft-related inaccuracies under the Act.[56] The court reasoned that in order to ensure that a dispute is handled under the Act, the consumer must report the dispute to a credit reporting agency.[57] The credit reporting agency, in turn, must report the dispute to the furnisher.[58] This report then triggers the furnisher's obligation to investigate and correct inaccurate information.[59] As a result, the plaintiff was left without remedy and a ruined credit score after two years of being told by the furnisher that they would investigate the issue.[60] The consumer was unaware that he was required to call the reporting agency in order to address issues with a furnisher and, though the furnisher stated it would investigate the complaint, nothing required it to actually do so.[61]

Logically, consumers would reason that if they had an issue with inaccurate information on their credit reports, the appropriate action would be to directly report it to the creditor. Since it is the creditor's job to report accurate information to the credit reporting agencies, it makes sense that the creditor would then turn around and report the information correctly upon being notified of an inaccuracy. As it turns out, the creditor has no responsibility to correct inaccurate information reported by a consumer; only the credit reporting agencies have such an obligation.[62]

Furnishers must identify how consumers should report inaccuracies to them, but they do not have a responsibility to act on such inaccuracies once reported.[63] *Burrell* demonstrates a loophole within the Act's provisions, which essentially permits furnishers to avoid their responsibilities to consumers. Furnishers are required to provide an address to which a consumer can complain, but the Act does not contain any language requiring the furnishers to respond to the complaints they receive.[64] As a result, a consumer is unknowingly required to "submit disputes not to the credit card companies and other creditors with which

55. Burrell v. DFS Servs., LLC, 753 F. Supp. 2d 438, 440–41 (D.N.J. 2010).
56. *Id.* at 448.
57. *Id.*
58. *Id.*
59. *Id.* at 445–46.
60. *Id.* at 441–42.
61. *Id.*
62. *See id.* at 446.
63. *Id.* at 445.
64. *Id.* at 446–47; 15 U.S.C. § 1681s-2 (2018).

they regularly interact, but to credit reporting agencies—obscure third parties with which they are unlikely to be familiar."[65] The illogical approach to reporting credit inaccuracies combined with the inactive complaint address seems as if creditors and credit reporting agencies are hiding the ball in how disputes should be made. Consumers would not know that they need to report the inaccuracies to the credit reporting agencies unless they specifically asked but providing a complaint line that is ultimately a dead-end makes them feel as if they have done all they can and would prevent them from questioning the process. The plaintiff in *Burrell* jumped through plenty of administrative hoops in an attempt to fix his credit; unfortunately, unbeknownst to him, they were fake hoops that would never resolve his issue.

Even under the best of circumstances, consumers face an uphill battle to ensure the accuracy of their credit reports—reports that have the ability to negatively impact a wide range of important aspects of their lives. Under the worst of circumstances, such as after a natural disaster, the impact of a poor credit report can be devastating, and the opportunity to fight these battles becomes virtually impossible when energy and resources are scarce.

II. Credit Issues Resulting from Natural Disasters

A. The Financial Burden of Natural Disasters

Natural disasters[66] are increasingly frequent and will continue to be an ongoing burden for the foreseeable future.[67] Between 1990 and 2014, approximately 217 million people per year were affected by natural disasters globally.[68] Between 1980 and 2017, over 200 natural disasters occurred in the United States alone.[69] Social scientists once believed that natural disasters were "status levelers" due to the fact that they affected

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65. *Burrell*, 753 F. Supp. 2d at 445.

66. Natural disasters are generally separated into two categories: climate-related and geophysical. Those that are climate-related include hurricanes, floods, and tropical storms. Geophysical disasters include earthquakes, landslides, and volcanos. Samaria Garrett, *Are Natural Disasters Increasing?*, BORGEN PROJECT (June 14, 2015), https://borgenproject.org/natural-disasters-increasing/ [https://perma.cc/X39C-T7GJ].

67. Jennifer Leaning & Debarati Guha-Sapir, *Natural Disasters, Armed Conflict, and Public Health*, 369 NEW ENG. J. MED. 1836, 1836 (2013); *see also* Garrett, *supra* note 66.

68. Leaning & Guha-Sapir, *supra* note 67, at 1836.

69. ZACHARY BLEEMER & WILBERT VAN DER KLAAUW, FED. RSRV. BANK OF N.Y. STAFF REPS., STAFF REP. 807, DISASTER (OVER-) INSURANCE: THE LONG-TERM FINANCIAL AND SOCIOECONOMIC CONSEQUENCES OF HURRICANE KATRINA 1 (2017), https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr807.pdf [https://perma.cc/Q5SY-9J82].

people of all socioeconomic groups randomly and indiscriminately.[70] While it is true a natural disaster affects everything and everyone in its path, the impact of a natural disaster affects people in varying degrees based on their financial vulnerability.[71] Certain factors including economic status, age, and gender may increase a citizen's vulnerability to disasters.[72] This Note will focus on how financial vulnerability affects the population when faced with a disaster.

In 2017, 40% of Americans would not have been able to cover a $400 unexpected expense without selling personal property or borrowing money from friends or family.[73] However, it is not only those who are lower income that face difficulties handling the unexpected emergency expenses that come with a natural disaster event—middle-class and even upper-class families are also at risk.[74]

Natural disasters create various unforeseen and unplanned short-term financial burdens that quickly snowball into long-term financial burdens.[75] Common expenses following a natural disaster include damage to personal property, health care costs to address physical and psychological injury, and loss of wages due to affected businesses.[76] People who experience natural disasters have upfront costs as well, before the natural disaster even hits, to ensure their safety in preparation for the event. For example, costs are associated with evacuation, finding alternative shelter, and stockpiling supplies.[77] Additionally, homeowners must continue making mortgage or loan payments on properties that suffer substantial property damage—property that is rendered uninhabitable by the disaster event.[78] In sum, in the wake of a disaster, people are forced to change spending

70. Alice Fothergill & Lori A. Peek, *Poverty and Disasters in the United States: A Review of Recent Sociological Findings*, 32 NAT. HAZARDS 89, 89 (2004); Claude de Villie de Goyet & André Griekspoor, *Natural Disasters, the Best Friend of Poverty*, GEO. J. ON POVERTY L. & POL'Y 61, 62 (2007).

71. de Villie de Goyet & Griekspoor, *supra* note 70, at 65–67.

72. *Id.*

73. BD. OF GOVERNORS OF THE FED. RSRV. SYS., REPORT ON THE ECONOMIC WELL-BEING OF U.S. HOUSEHOLDS IN 2017, at 2 (2018), https://www.federalreserve.gov/publications/files/2017-report-economic-well-being-us-households-201805.pdf [https://perma.cc/LN9H-VQ87].

74. CAROLINE RATCLIFFE, WILLIAM J. CONGDON, ALEXANDRA STANCZYK, DANIEL TELES, CARLOS MARTÍN & BAPUCHANDRA KOTAPATI, URB. INST., INSULT TO INJURY: NATURAL DISASTERS AND RESIDENTS' FINANCIAL HEALTH 1 (2019), https://www.urban.org/sites/default/files/publication/100079/insult_to_injury_natural_disasters_1.pdf [https://perma.cc/AYD5-MRGE].

75. *See id.* at 3.

76. *Id.*

77. Emily Naser-Hall, *The Disposable Class: Ensuring Poverty Consciousness in Natural Disaster Preparedness*, 7 DEPAUL J. FOR SOC. JUST. 55, 60 (2013); *See* de Villie de Goyet & Griekspoor, *supra* note 70, at 67.

78. RATCLIFFE, CONGDON, STANCZYK, TELES, MARTÍN & KOTAPATI, *supra* note 74, at 3.

habits, spending more on household expenses and less on healthcare expenses and paying off debt.[79] Not only do areas affected by a natural disaster see changes in a person's spending habits but also see a significant decrease in credit scores,[80] an increase in debt collections, and more frequent bankruptcies compared to similar areas that have not experienced a natural disaster.[81]

Natural disasters also often lead to a sudden loss of employment. A 2017 study conducted using data from nineteen hurricanes that made landfall in Florida between 1988 and 2005 estimated that employment declined as much as 4.8% after an event.[82] Furthermore, the study showed that even as employment rates returned to pre-event levels, the available jobs might have differed from those previously obtainable, resulting in a mismatch of workers' skills and employment opportunities.[83]

Through various programs and relief efforts, governmental and non-profit organizations have been able to lift some of the burden from consumers, but that assistance can only do so much.[84] Furthermore, the amount and extent of their assistance depends on multiple factors, including the severity of the event, the political interest, and the media coverage it generated.[85] This creates a gap in aid for events that are classified as medium-sized disasters, i.e., those that cause damage but receive less federal aid than large disasters.[86] One study showed that four years after a medium-sized event, the negative effect on credit scores was nearly twice as large as it was after a disaster that was considered a large-scale event.[87] As a result of inconsistent levels of aid, there is variation within how much credit scores are affected by a natural disaster.[88]

More effective systems are needed to ensure that aid will reach communities in the most dire situations. While financial assistance after a natural disaster is invaluable and provides relief to the tune of billions of

79. *Id.*

80. *Id.* at 19.

81. *See id.* at 15.

82. Kelly D. Edmiston, *Financial Vulnerability and Personal Finance Outcomes of Natural Disasters* 6 (Fed. Rsrv. Bank of Kan. City Rsch., Working Paper No. 17-09, 2017), https://doi.org/10.18651/RWP2017-09 [https://perma.cc/LN8N-YWHT].

83. *Id.*

84. RATCLIFFE, CONGDON, STANCZYK, TELES, MARTÍN & KOTAPATI, *supra* note 74, at 3–5.

85. Edmiston, *supra* note 82, at 31.

86. RATCLIFFE, CONGDON, STANCZYK, TELES, MARTÍN & KOTAPATI, *supra* note 74, at VI. Medium-sized disasters are those that resulted in less than $200 million of damage but were still big enough to qualify for FEMA assistance. In contrast, large disasters are those that resulted in more than $200 million in damage. *Id.* at 10–11.

87. *Id.* at 18.

88. *See* Edmiston, *supra* note 82, at 1.

dollars annually, reports suggest that such assistance benefits some more than others.[89] Recently, reports have shown that those who need assistance the most have been the ones to receive the least amount of support.[90] The communities who are often hit the hardest are lower income communities and communities of color.[91] An investigation done by National Public Radio found that white communities received a disproportionate amount of federal aid relative to communities of color.[92] As such, it is important that there are systems created that allow everyone to receive the help that they need and that are not reliant on qualifying factors or a third party determining their worthiness.

B. Credit Reporting and Natural Disasters

The need for an update to the current system has not gone entirely unnoticed as the world experiences an uptick in and severity of natural disasters: credit reporting agencies have implemented codes to address these changes. Credit reporting agencies use codes as standard procedure to relay account information in credit reports[93] and denote action on and status of accounts such as closed, charged off, or past due sixty or ninety days.[94] Credit reporting agencies have created a code to denote if a consumer has gone through a natural disaster; however, it is up to the agency to decide whether it would like to apply the code and for how long.[95]

The natural or declared disaster code, appearing on a credit report as "AW," alerts a furnisher that an individual holding an account was affected by a natural disaster.[96] The CDIA released an update to the Metro

89. Junia Howell & James R. Elliott, *Damages Done: The Longitudinal Impacts of Natural Hazards on Wealth Inequality in the United States*, 66 SOC. PROBS. 448, 451–52 (2019).

90. *Id.* at 449; *see also* Robert Benincasa, *Search the Thousands of Disaster Buyouts FEMA Didn't Want You to See*, NPR (Mar. 5, 2019), https://www.npr.org/2019/03/05/696995788/search-the-thousands-of-disaster-buyouts-fema-didnt-want-you-to-see [https://perma.cc/BF53-E2B8]; RATCLIFFE, CONGDON, STANCZYK, TELES, MARTÍN & KOTAPATI, *supra* note 74, at 2.

91. RATCLIFFE, CONGDON, STANCZYK, TELES, MARTÍN & KOTAPATI, *supra* note 74, at VI; Benincasa, *supra* note 90.

92. Benincasa, *supra* note 90.

93. *See* Letter from Nat'l Consumer L. Ctr. et al. to Experian, Equifax, TransUnion & Consumer Data Indus. Ass'n (Jan. 18, 2019), https://www.nclc.org/images/pdf/credit_reports/ltr-credit-reporting-natural-disaster.pdf [https://perma.cc/22W5-FEQL] [hereinafter Letter to Credit Rep. Agencies].

94. *See* *Metro Contact Description Codes*, COLLECT, https://www.collect.org/cv11/Help/metrocontactdescriptioncodes.html [https://perma.cc/4NDU-D35J].

95. *See* Letter to Credit Rep. Agencies, *supra* note 93.

96. *Id.*; CONSUMER FIN. PROT. BUREAU, NATURAL DISASTERS AND CREDIT REPORTING: QUARTERLY CONSUMER CREDIT TRENDS 2 (2018),

2 in June 2018, entitled *Frequently Asked Questions (FAQ) 58*, which advises furnishers on how to use the natural or declared disaster code to assist their customers who have been affected by such an event.[97] *FAQ 58* gives furnishers two options for handling these types of accounts, which they can do in accordance with their internal policies.[98] The first option is to denote the account as deferred in addition to the special comment code AW.[99] If an account is denoted as deferred, it alerts whoever is reading the report to the fact that the payments are temporarily halted without penalty.[100] The second option is to simply apply the AW code without the deferment code.[101] If an account is not deferred, it simply alerts the reader that the account has been affected by a disaster, but payments are still due.[102] Essentially, it allows the reader of the report to decide if they will take into consideration the fact that a consumer was a victim of a natural disaster when evaluating their creditworthiness.[103]

In 2018, the Consumer Financial Protection Bureau (CFPB) released a report on how a natural disaster affects a consumer's credit report, highlighting some of the trends seen with the application of the natural disaster code.[104] While the percentages of credit reports that applied the code (8.3%) aligned with the estimated numbers of individuals affected by a natural disaster, the code was not used consistently among all types of furnishers.[105] Shockingly, a majority of the furnishers within the report did not use the code at all.[106] Of the firms that did employ the code, they generally tended to be large in size and in the mortgage or auto loan industries.[107] Credit card furnishers and student loan furnishers applied the

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https://files.consumerfinance.gov/f/documents/bcfp_quarterly-consumer-credit-trends_report_2018-11_natural-disaster-reporting.pdf [https://perma.cc/YA2B-KQGF] [hereinafter C.F.P.B. NATURAL DISASTERS REPORT].

97. Press Release, Consumer Data Indus. Ass'n, Updated Metro 2 Guidance: Reporting Accounts for Consumers Affected by Natural Disasters (June 25, 2018), https://www.cdiaonline.org/updated-metro-2-guidance-reporting-accounts-for-consumers-affected-by-natural-disasters/ [https://perma.cc/5RXT-UJFX].

98. CONSUMER DATA INDUS. ASS'N, FREQUENTLY ASKED QUESTIONS AND ANSWERS NO. 58, http://s3.amazonaws.com/crrg/2018+CRRG+6+FAQ.58.pdf [https://perma.cc/BNJ3-6N94].

99. *Id.*

100. *Managing Your Credit Through Financial Hardship*, TRANSUNION (May 26, 2020), https://www.transunion.com/blog/credit-advice/managing-credit-through-financial-hardship [https://perma.cc/TT9Q-QVMH].

101. CONSUMER DATA INDUS. ASS'N, *supra* note 98.

102. *See id.*

103. *See id.*

104. *See generally* C.F.P.B. NATURAL DISASTERS REPORT, *supra* note 96, at 2 (highlighting the aftereffects of Hurricane Harvey that made landfall in Texas in August of 2017).

105. *See id.* at 2–3.

106. *Id.* at 5.

107. *Id.* at 5–6.

code the least out of industries within the report.[108] Where the code was reflected on a consumer credit report, it appeared on the report for an average of only two months, a short amount of time compared to how long it generally takes a victim to recover after a natural disaster.[109]

It is possible that the disproportionately high use of the special natural disaster code by mortgagers is a result of mortgage companies implementing their own guidelines for dealing with consumers whose property has been in an area hit by a natural disaster.[110] Some mortgage companies, including Freddie Mac and Fannie Mae, have recognized a need and have taken charge to address the issue privately. Fannie Mae has put policies in place to protect customers, such as providing a three-month forbearance plan to individuals facing hardship as a result of a natural disaster.[111] In addition, Fannie Mae requires the loan servicer to stop reporting to credit reporting agencies, even if payments are past due, if the hardship is directly attributable to a natural disaster event.[112] Freddie Mac offers homeowners the option to suspend mortgage payments for up to a year, waives late fees, and suspends reporting delinquencies and late payments to credit reporting agencies.[113] The willingness of private companies to delay reporting late payments or delinquencies to credit agencies shows that not only do these companies recognize a need for such a service but also that they are willing to provide it. As consumer advocacy groups point out in a letter to credit reporting agencies, it is "illogical and unfair" to provide such a service primarily to mortgages: "if a consumer was impacted by a natural disaster with regards to their mortgage loan, they would be impacted as to their credit card account and other tradelines as well."[114]

While credit card companies are the least likely to apply the natural or declared disaster code to their accounts, some such companies privately

108. *Id.*

109. *Id.* at 3.

110. Letter to Credit Rep. Agencies, *supra* note 93.

111. *Disaster Relief—Single-Family Selling/Servicing Frequently Asked Questions (FAQs)*, FANNIE MAE 5–6 (Sept. 17, 2020), https://www.fanniemae.com/media/38066/display [https://perma.cc/2UHT-RNQG]. A forbearance plan is one that assists those in need by either suspending payments or reducing payments. It will then be followed up by a reinstatement of the loan as it was before the hardship or another payment plan that is negotiated with Fannie Mae.

112. *See id.*; *Servicing Guide: Suspending Credit Bureau Reporting*, FANNIE MAE (July 15, 2020), https://servicing-guide.fanniemae.com/THE-SERVICING-GUIDE/Part-C-Mortgage-Loan-Payment-Processing-Remitting-Account/Chapter-C-4-Reporting/Section-C-4-1-Credit-Bureau-Reporting-Requirements/C-4-1-02-Suspending-Credit-Bureau-Reporting/1041147781/C-4-1-02-Suspending-Credit-Bureau-Reporting-07-15-2020.htm [https://perma.cc/VX9L-H4HC].

113. *Mortgage Assistance for Those Impacted by Recent Natural Disasters*, FREDDIE MAC, http://www.freddiemac.com/about/hurricane-relief.html [https://perma.cc/5JTC-D6ZU].

114. Letter to Credit Rep. Agencies, *supra* note 93.

recognized a need for assistance. Chase, for example, provides assistance for all accounts held with them, whether they are mortgages, checking accounts, or credit card accounts.[115] This highlights, once again, that a private company is both willing and able to provide such relief to all accounts that may be impacted by a natural disaster.

In January 2019, the National Consumer Law Center (NCLC) released a letter with the support of multiple signatories, urging credit reporting agencies and the CDIA to improve their regulations regarding the natural disaster code based on the findings of the 2018 CFPB report.[116] The letter urges the recipients to implement three major policy adjustments.[117] Firstly, the letter encourages companies to use the AW code as a trigger.[118] A trigger makes it so that when the code is applied to one account, it is automatically applied to any other delinquent account that became delinquent within a similar timeframe.[119] Secondly, it proposes that the code should remain on the account(s) for a minimum of six months.[120] Thirdly, it advises that accounts marked with the AW code should be immune from having negative information reported; they should instead have no information reported or be marked as current.[121]

While the implementation of the AW code is a great start, leaving it up to each furnisher to determine how, or even if, they use it renders the code less effective than it could be. Adding a few requirements in how the code should be utilized would render it much more effective and would allow it to provide relief on a large scale across all communities that need it.

III. IMPROVEMENTS TO THE CREDIT REPORTING SYSTEM

A. Proposed Adjustments to the Credit Reporting System

Two things are readily apparent: (1) natural disasters are an increasing threat; and (2) the current system, while it is helpful in some respects, requires improvements and adjustments in order to address the

115. *Natural Disasters: Important Information*, CHASE, https://www.chase.com/personal/mortgage/natural-disaster [https://perma.cc/Y2KN-CDVN].

116. Letter to Credit Rep. Agencies, *supra* note 93. Forty-one companies and organizations signed onto this letter including Consumer Advocates Against Reverse Mortgage Abuse (CAARMA), the National Association for the Advancement of Colored People (NAACP), the Disaster Law Project, U.S. Public Interest Research Group (U.S. PIRG), and the National Law Housing Project.

117. *Id.*

118. *Id.*

119. *Id.*

120. *Id.*

121. *Id.*

impending threats. Some improvements could include requiring the use of the AW code for all who request it for their accounts and requiring a specific amount of time that the code be applied.

The NCLC's proposed approach as expressed through its letter focuses on accounts with delinquencies and eliminating negative account information that may be the result of a disaster.[122] While this approach is consumer-friendly and would be efficient in protecting vulnerable credit reports and scores, it comes with risks that may not be worth the possible benefits—adjusting consumer reports automatically based upon the alleged location of the consumer, as proposed by the NCLC, creates space for errors. One such risk is that by eliminating negative account information, a consumer's information may be deleted or reported as "no information" against the consumer's wishes due to the fact that it is done proactively without the consumer's knowledge.[123] Another risk is that a credit report may incorrectly identify a consumer as one affected by a natural disaster.[124] This is especially a risk when the code is applied automatically based on a consumer's geographical location rather than when a consumer requests the code be used.[125] In fact, simply applying the code to accounts that may be affected by a natural disaster based on the consumer's location has resulted in codes applied to accounts of consumers who have not been affected at all.[126] This could become a predictably larger issue when the code is applied to a larger number of consumer reports and it creates bigger changes, such as when information is deleted on multiple accounts within the report. An alternative approach would focus less on eliminating information on delinquent accounts and more on improving the transparency between lenders and borrowers while keeping consumers in charge of their reports.

Since the implementation of the Act, the consumer's responsibility has primarily been to ensure that their credit report is accurate.[127] Simple improvements could be made to the Act, similar to the scope or protection provided through the CARES Act during the COVID-19 pandemic, that would ensure that consumers are protected and governmental assistance is

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122. *See id.*

123. *See id.*

124. *See Fort Worth Couple Upset Over Disaster Code on Credit Report*, CBS DALL.-FORT WORTH (Dec. 13, 2017), https://dfw.cbslocal.com/2017/12/13/disaster-code-credit-report\ [https://perma.cc/C2NP-7BDT].

125. *See id.*

126. *Id.*

127. *See* FED. TRADE COMM'N, *supra* note 4, at 2–4.

not diverted or extended.[128] The improvements should focus on allowing the consumer to continue to have control over the accuracy of their own credit reports while also allowing for easier avenues to exercise such control by requiring credit reporting agencies to eliminate some of the hurdles that currently stand between consumers and accurate reports. In order to do so, there are three major adjustments that should be considered. First, if an affected consumer requests it, the AW code should be put on their credit report. The consumer should be able to submit this request to either a credit reporting agency or another company. Second, following in the NCLC's footsteps, the code should appear on a consumer's credit report for a prescribed amount of time. Third, training and other measures to promote awareness should be provided to companies, lenders, and furnishers about what the code denotes and how companies should support consumers after a disaster. This support could come in the form of companies offering to report no information, as the NCLC proposes, or a grace period that companies like Chase and Fannie Mae offer.[129]

The response to COVID-19, through the CARES Act, has been partially consistent with the additions proposed in this Note. As an example, when a consumer requests an accommodation, the furnisher is obligated to report specific information to the credit reporting agencies. However, in some instances, the CARES Act provides changes that are more aggressive than those proposed in this Note. For example, rather than simply denoting the natural disaster code, the CARES Act requires that an account retain its current status for a certain amount of time.[130] The CARES Act and the NCLC's proposed approach is a great start to reforming the credit reporting system to allow for providing relief in times of need; however, there are a few permanent changes that could be added and implemented to ensure that this relief is provided on an ongoing basis.

B. Required and Widespread Code Usage

The first proposed change would require a credit report to brandish the natural disaster code and a credit reporting agency or furnisher to apply it to all accounts within that report. As discussed earlier, it is currently up to the discretion of the furnisher to decide whether it will employ the natural or declared disaster code on a consumer report. This has led to disproportionate usage among industries, with some using it often and

128. Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. No. 116-36, § 4021, 134 Stat. 281, 489 (2020).

129. *See* Letter to Credit Rep. Agencies, *supra* note 93; CHASE, *supra* note 115; FANNIE MAE, *supra* note 111.

130. Fair Credit Reporting Act, 15 U.S.C. § 1681s-2(a)(1)(F)(ii).

others hardly at all.[131] As the NCLC addresses in its letter to the CDIA and credit reporting agencies, this discrepancy makes little sense.[132] If the consumer requires the code on one account, it ought to be applied to the consumer's other accounts as well.[133]

Similarly, it makes little sense to allow an agency or furnisher to deny applying the code at their own discretion. While many of the furnishers who apply the code also allow other accommodations such as waiving late fees, these accommodations are not required.[134] The code simply alerts those who are consulting the report that the consumer experienced a natural disaster and, thus, the disaster may be an explanation for any changes in financial health or behavior. If a credit report is obliged to relay accurate information regarding a consumer's financial health, a furnisher or agency should not have the discretion to opt out of a mechanism that is intended to do just that.

C. Simplified Reporting and Extended Responsibilities for Furnishers

A consumer should be able to report their circumstance to just one of their furnishers, which in turn would trigger the furnisher's responsibility to report it to the credit reporting agency. Alternatively, the consumer can report it directly to the credit reporting agency. The credit reporting agency would be required to treat it similarly to a reported dispute; it would have the responsibility of alerting all furnishers and updating the reported information. A consumer would only need to report the situation once to trigger the chain reaction that results in the code appearing on all accounts, no matter the account type or how the account was affected.

This adjustment closes the loophole that was highlighted in *Burrell v. DFS Services, LLC*.[135] It keeps consumers in control of their own report and maintains the report's accuracy while also decreasing the number of administrative hoops consumers need to jump through. The loophole is created when a furnisher has a complaint phone line set up for consumers to report inaccuracies or grievances but is not required to act on those complaints. The conversation between a company, such as a credit card company or mortgage company, and a consumer about the personal hardships inflicted by a natural disaster should never go through an automated complaint line. Thus, it would not make sense to allow that loophole to apply in such a situation. This adjustment is similar to one

131. C.F.P.B. NATURAL DISASTERS REPORT, *supra* note 96, at 5.
132. Letter to Credit Rep. Agencies, *supra* note 93.
133. *Id.*
134. *See* FREDDIE MAC, *supra* note 113.
135. Burrell v. DFS Servs., LLC, 753 F. Supp. 2d 438 (D.N.J. 2010).

proposed by the NCLC in its letter, which states that there should be a chain reaction once one account is determined to qualify for the code.[136]

The difference between the adjustment proposed here and that of the NCLC is that the consumer would need to make the initial affirmative step to set that in motion rather than rely on credit reporting companies doing so proactively.[137] Once it is in motion, it should be out of the consumer's hands and become the responsibility of the companies to disseminate the correct information about the consumer's account. The initial affirmative step by the consumer need only be a simple statement to their creditors or credit reporting agency when calling for any reason. A consumer would likely need to call at least one of the companies that would be considered a furnisher in the wake of a natural disaster. By allowing this call to double as an alert that triggers the chain reaction, it decreases the likelihood that this step will be missed.

The typical recovery time for communities affected by a natural disaster is a full year.[138] After Hurricane Katrina, it took at least two years for credit scores to begin to recover[139] and for local lenders to return to regular lending practices.[140] In order for the AW code to be effective, it needs to remain on a consumer's credit report through at least the majority of the recovery process, if not through the entire recovery process. It is less than helpful to report the code for only a fraction of the time that it takes the consumer and the affected community to recover. The NCLC proposes that the AW code should be required to appear on a credit report for a period of at least six months.[141] While recovery time after disasters vary by the degree of damage and of aid rendered, studies have shown that a consumer would benefit from having the code denoted on their report for at least a year.[142] Considering the fact that natural disasters are only increasing in frequency and are taking on unprecedented forms, such as the COVID-19 global pandemic, it seems to reason that a year is a more appropriate minimum in terms of timing.

D. Education About the Usage and Interpretation of the Code

Finally, it is important that both consumers and furnishers are in agreement about what the code means. Consumers need to be educated

136. Letter to Credit Rep. Agencies, *supra* note 93.

137. *See id.*

138. Fothergill & Peek, *supra* note 70, at 98.

139. Edmiston, *supra* note 82, at 8.

140. Justin Gallagher & Daniel Hartley, *Household Finance After a Natural Disaster: The Case of Hurricane Katrina*, 9 AM. ECON. J. 199, 202 (2017).

141. Letter to Credit Rep. Agencies, *supra* note 93.

142. *See* Edmiston, *supra* note 82, at 7–8.

about their rights when disasters strike. Furnishers need to be aware of their responsibilities towards the consumers, and lenders need to learn how to read and interpret a credit report of a consumer who has utilized the AW code. Consumers should know that they have the ability to protect themselves with just one phone call, and that phone call can be to either a company with which they have an account, such as their mortgage company or credit card company, or to the credit reporting agency itself. It is important that they are aware of the various avenues to the same end. Protecting one's credit report should not be another burden that overwhelms a consumer while they navigate the aftermath of a natural disaster.

Furnishers should be aware that once they are alerted by a consumer within a disaster zone, they have similar responsibilities to those that arise from a credit reporting agency reporting a dispute. They have the responsibility to verify the information and notify the credit reporting agency to ensure that it is accurately applied to the credit report. A company's prescribed responsibilities end when they apply the code. Under these provisions, companies are not required to stop reporting on an account, delinquent or otherwise. However, they should be encouraged to aid the consumer in their time of need. As an example, if a consumer calls about their mortgage payments after suffering a disaster, a company should be encouraged to alert them to their right to employ the natural or declared disaster code through that phone call. In a perfect situation, companies would follow in the footsteps of companies like Chase,[143] Freddie Mac,[144] and Fannie Mae[145] and offer their own policies in addition to the ones required of them.

Perhaps most importantly, lenders need to be aware of how to interpret a credit report with the AW code on it. The code is meant to alert a lender that a credit report containing the AW code may not be the best representation of the consumer's financial health or habits. Essentially, it alerts the reader that the consumer's creditworthiness should be evaluated based on the whole of the report, not just the most recent activity which may have been influenced by a natural disaster. While it is important for the code to provide a possible explanation for the negative financial consequences of a disaster, it is likewise important for a lender to have possible insight into a sudden positive change in a consumer's credit report. This is because reports and surveys have found that there are cases

143. CHASE, *supra* note 115.
144. FREDDIE MAC, *supra* note 113.
145. FANNIE MAE, *supra* note 111, at 5.

in which a credit report or score actually improves after a consumer has suffered a disaster due to insurance payouts.[146]

By applying the code to all accounts, the lender should be put on notice that it needs to analyze both the positives and the negatives of the credit report and keep in mind the consumer's situation. A lender that can interpret this type of report correctly could avoid the risk of wrongly assuming that the consumer is a high credit risk. This would help a lender avoid unfairly denying a consumer's credit in their time of dire need. Further, it may prevent a lender from charging interest fees that a consumer would not have ordinarily been subject to. The lender would also avoid making the assumption that the consumer is in a better financial situation than they are and, as a result, offer them a loan that they would not otherwise be offered at the risk of default.

The main goal of such provisions is to protect all parties while preserving the cornerstones of the credit reporting system already in place. By enacting these provisions, the consumer retains control of their consumer report as they would in any other situation. It would be unprecedented to allow the credit report agencies to make changes as influential as stopping the reporting of delinquent accounts for a period of at least six months without the consumer's input. Moreover, to erase a part of a consumer's credit report, even in times of hardship, does not align with the main goal of credit reports: to provide a complete and accurate idea of a consumer's financial health.[147] To do this, a report must show all information available, and the information needs to be interpreted in relation to the consumer's circumstances. By requiring the code to remain on the report for a minimum amount of time and by providing information on how to interpret the code, lenders can make judgments about a consumer's financial health based on the entirety of the circumstances and not simply a portion of the facts.

CONCLUSION

Natural disasters are unfortunately an ever-present danger of life around the world. While we are unable to control nature, it is possible to control and adjust the systems that have been implemented to help those who face disasters, rather than allowing the systems to add to the devastation. One such system is the credit reporting system, which has grown to become immensely complex and can reach all corners of a consumer's life. A consumer's credit report is fragile. A

146. *See generally* Edmiston, *supra* note 82, at 7–8.
147. *See* FED. TRADE COMM'N, *supra* note 4, at 2.

few late payments or one delinquency can destroy a credit report and score for years. Preparing for and recovering from a natural disaster can wreak havoc on any consumer's credit, regardless of their prior credit history or social status.

By adjusting the current policies and implementing new ones, it is possible to reduce the chance that a consumer's credit report will add unneeded stress and hardship to an already devastating situation. These adjustments simply expand upon the natural or declared disaster code option that is already gaining traction among some furnishers. By expanding the amount of time the code remains on a report, the number of companies required to use the code, and awareness of the code among furnishers, credit reporting agencies, and consumers alike, it may be possible to ease at least some of the heavy burden that rests on the shoulders of disaster victims.