October 9, 2024

To: Ms. Elizabeth Maxeiner, Bureau Chief, Illinois Attorney General's Office
Mr. Brent Stratton, Chief Deputy Attorney General, Illinois Attorney General's Office
Ms. Caitlyn McEllis, Senior Policy Advisor, Illinois Attorney General's Office

From: Scott Olson, Executive Director, Community Home Lenders of America

Re: Antitrust Inquiry into Fair Isaac Corporation (FICO)

The Community Home Lenders of America (CHLA), a trade organization representing the interests of small and mid-sized independent mortgage banks, is contacting you to express our significant concerns regarding Fair Isaac Corporation's (FICO's) market behavior.

CHLA believes that FICO's 90% market-share, entrenched position in the Credit Scoring sector has resulted in anti-competitive practices that disproportionately affect marginalized communities, including low-income, minority, and other underserved populations.

We have many of our members lending to families in your state, and we see first-hand the harm caused by aggressive Fair Isaac price hikes, which have totaled 400% in just the past 24 months.

Therefore, CHLA respectfully asks your office to consider an antitrust investigation into FICO's practices, as these actions are likely hindering competition, stifling innovation, and ultimately harming consumers in Illinois.

In support of our request, please find enclosed:

1) Letter Outlining Concerns Regarding FICO's Anticompetitive Practices by CHLA Executive Director Scott Olson.
2) CHLA Supplemental Information: "Proposal to Open Antitrust Inquiry Into Fair Isaac Corporation"
3) United States Senator Josh Hawley's Letter to Department of Justice Urging Investigation into FICO (March 12, 2024) (Link)
4) CHLA White Paper on the Credit Scoring Industry (January 2024) (Link)
5) Article by Matt Stoller: "Inside FICO and the Credit Bureau Cartel" (June 22, 2024) (Link)
6) Consumer Financial Protection Bureau, Director Rohit Chopra's Recent Comments on FICO (May 20, 2024) (Link)

Thank you for your attention to this urgent matter. We look forward to your response and hope for a favorable consideration of our proposal to protect consumer rights and promote fair competition in Illinois.

October 9, 2024

Dear Attorney General Raoul,

I am writing to bring to your attention a pressing matter that directly impacts low-income, minority, and other underserved communities across Illinois: the monopolistic practices of Fair Isaac Corporation (FICO). As the primary player in the Credit Scoring industry, FICO's dominance and implications on market competition necessitate immediate scrutiny.

FICO's near-total control over Credit Scoring has led to several adverse effects on these vulnerable groups:

Increased Financial Burden. The recent 400% surge in FICO's pricing (just over the past two years) has significantly inflated the cost of credit scoring, placing a substantial financial burden on consumers across Illinois. This escalation is particularly detrimental to individuals with limited financial means, as it exacerbates their economic vulnerabilities. Low-income, minority, and other underserved communities are disproportionately impacted by these rising costs, which further strain their already precarious financial situations. As the cost of accessing credit increases, these groups find themselves trapped in a cycle of financial instability, with diminished prospects for economic mobility.

Restricted Access to Credit. FICO's dominance in the credit scoring market severely restricts the availability of alternative models that could provide more equitable and accurate assessments of creditworthiness. This monopolistic control disproportionately affects low-income, minority, and veteran borrowers, who are often underserved by traditional credit scoring systems. The lack of competition stifles the development and adoption of innovative scoring models that could better capture the unique financial circumstances of these groups. As a result, these borrowers face reduced access to affordable credit, exacerbating their financial hardships and limiting their opportunities for economic advancement. The absence of alternative scoring options perpetuates a system where marginalized populations are systematically excluded from the credit market.

Economic Disparities. FICO's pricing strategies, which consistently drive up the cost of credit, place a heavy financial strain on small lenders and credit unions—key providers of financial services to underserved communities. The increased operational costs borne by these institutions often result in a reduction of lending activities, further restricting access to credit for those who need it most. As small lenders and credit unions are forced to scale back their lending or pass on higher costs to borrowers, the economic divide between affluent and marginalized communities is further entrenched.

Stifled Innovation. FICO's control over the credit scoring market hampers innovation and competition. The absence of alternative scoring models limits potential advancements in credit assessment technologies, which could otherwise benefit consumers by providing more accurate and inclusive credit evaluations. This stranglehold disproportionately impacts low-income and minority populations, who are often penalized by traditional credit scoring methods. These groups are more likely to have thin credit files or non-traditional credit histories that FICO's models inadequately capture, leading to higher rates of credit denials or less favorable loan terms. The lack of innovation in credit scoring perpetuates systemic inequalities, as the current models fail to account for alternative data sources that could paint a more comprehensive and fair picture of an individual's creditworthiness. Without competition driving the adoption of more inclusive and dynamic scoring models, these populations continue to face barriers to financial opportunities, deepening the cycle of economic disadvantage.

Given these concerns, and more as discussed in the attached detailed memo, we urge the Illinois Attorney General's Office to initiate a formal antitrust inquiry into FICO. Such an investigation should focus on uncovering the extent of FICO's market dominance, examining its exclusionary practices, and assessing the broader impacts on Illinois consumers, particularly those from low-income, minority, and other underscored communities.

The attached memorandum and supplemental information provide a detailed analysis of FICO's practices, including evidence of its monopolistic behavior and resulting harm to consumers. We believe that a thorough investigation is crucial to ensure a competitive and fair credit-scoring market that truly serves the best interests of all Illinois residents.

Thank you for your attention to this urgent matter. We look forward to your response and hope for a favorable consideration of our proposal to protect consumer rights and promote fair competition in Illinois.

Sincerely,

Community Home Lenders of America

SUPPLEMENTAL INFORMATION

To: Office of Illinois Attorney General

From: Community Home Lenders of America

Date: October 9th, 2024

Re: Proposal to Open Antitrust Inquiry into Fair Isaac Corporation (FICO)

Executive Summary

Fair Isaac Corporation (FICO) is *the* major player in the credit scoring industry, with its FICO Score being the most widely used credit score by lenders to assess creditworthiness.[1] While FICO's methodologies and products have become industry standards, there are growing concerns about the company's market practices and their implications for competition and consumer choice in Illinois.[2]

The Community Home Lenders of American is nationwide trade organization representing the interests of small and mid-size Independent Mortgage Banks (IMBs). Our lenders remain concerned of any U.S. mortgage market concentration that limits consumer choice and drives up the price of mortgage credit beyond what would exist in a competitive marketplace. This memo proposes opening an antitrust inquiry into FICO due to potential anti-competitive practices that may harm consumers and businesses in Illinois. The inquiry should examine FICO's dominance in the credit scoring market, potential exclusionary practices, and any unfair competition that could stifle innovation and market entry, specifically affecting Illinois residents.

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[1] *See* FICO® Score Remains the Most Widely Used Credit Score in the Securitization Market, Keeping Lender Confidence (September 28, 2023)

[2] *See* DOJ investigating FICO's dominance in credit market (March 2020)

Key Issues

Market Dominance

A recent study found that more than 95% of asset-backed securitizations across seven collateral classes (i.e., Auto Leasing, Subprime Auto, Prime Auto, Student Loans, Timeshares, Consumer Finance, and Credit Cards) relied on FICO Scores to value their asset-backed securitizations in 2022.[3] In the mortgage credit score space, Fair Isaac has at least 90% of the market. The reliance on FICO Scores by major financial institutions and lenders creates high barriers to entry for new competitors. This widespread adoption of FICO Scores has resulted in significant market power, effectively creating a de facto standard that other credit scoring models find challenging to compete against.[4] This pervasive use of FICO Scores by critical financial sectors creates a substantial entry barrier for new competitors, as they struggle to gain acceptance and adoption among lenders who are accustomed to and often required to use FICO's credit scoring model. Furthermore, many widely used government lending programs require the use of FICO scores further cementing its dominance.

- **Example 1**: Major mortgage lenders, and Government Sponsored Enterprises (GSEs) such as Fannie Mae and Freddie Mac, ***require the use of FICO Scores for loan approval***. This requirement is embedded in their underwriting guidelines, which mandate that lenders utilize FICO Scores when assessing borrower creditworthiness.[5] Consequently, lenders align their lending standards with the GSE's guidelines to ensure they can sell the loans to these enterprises. This practice effectively creates a government-subsidized monopoly, as it centralizes the credit scoring system around FICO, limiting competition and perpetuating reliance on a single scoring model.[6]
- **Example 2**: In the auto loan industry, nearly all lenders use FICO Scores to determine loan eligibility and terms. The National Automobile Dealers Association (NADA) confirms that the vast majority of auto loans are based on FICO Scores, further solidifying its dominance.[7]
- **Example 3**: The credit card industry also relies heavily on FICO Scores. Major issuers, such as American Express, JPMorgan Chase, and Citibank, predominantly use FICO Scores in their credit approval processes[8], which limits the market opportunities for alternative scoring models.

[3] *See* FICO® Score Remains the Most Widely Used Credit Score in the Securitization Market, Keeping Lender Confidence (September 28, 2023)
[4] *Id.*
[5] *See* Fannie Mae: Selling Guide, at B3-5.1-0; Freddie Mac: Seller/Servicer Guide, at 5203.2; USDA: Handbook, at 10.3 and 10.4 (essentially modeled after GSE framework)
[6] *See* FICO® Score Remains the Most Widely Used Credit Score in the Securitization Market, Keeping Lender Confidence (September 28, 2023)
[7] *Id.*
[8] *Id.*

Exclusionary Practices

Restrictive Contracts: FICO has been accused of using restrictive contracts with lenders and credit bureaus to limit their ability to use or promote alternative scoring models.[9] These contracts often include clauses that penalize lenders for using non-FICO scores or provide financial incentives to exclusively use FICO products.

- **Example 1**: FICO's agreements with major credit bureaus (Experian, Equifax, and TransUnion) and mortgage lenders often include exclusivity clauses that restrict these bureaus from promoting or selling alternative credit scoring models like VantageScore. These clauses can include financial penalties or reduced rates for FICO Scores if the bureaus promote competing products.[10]
- **Example 2**: Contracts with lenders frequently contain volume-based discounts and other financial incentives that make it financially advantageous for lenders to use FICO Scores exclusively. Such terms discourage lenders from experimenting with or adopting alternative credit scoring models, thus maintaining FICO's market dominance.

Litigation Against Competitors: FICO has engaged in litigation against competitors to maintain its market dominance. For example, FICO sued VantageScore (the sole competitor- created by the three major credit bureaus) for antitrust violations, although these claims were later dismissed. This type of litigation can be seen as an attempt to intimidate and suppress competition.

- **Example 1**: In 2006, FICO filed a lawsuit against VantageScore and the three major credit bureaus, alleging antitrust violations and trademark infringement. Although FICO's antitrust claims were eventually dismissed, the litigation created a significant financial and operational burden on VantageScore, which could be interpreted as a tactic to hinder its competitive potential.[11]
- **Example 2**: In 2017, FICO sued TransUnion for breach of contract and other allegations, including antitrust violations.[12] TransUnion countersued, claiming that FICO engaged in anti-competitive practices designed to maintain its monopoly in the credit-scoring market.

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[9] *See [FICO loses bid to dismiss antitrust claims over credit-scoring market](#)*

[10] *See* [In re Fico Antitrust Litig. Related Cases](#), 1:20-CV-02114, 4-5 (N.D. Ill. Sep. 28, 2023) ("Dynamic Royalty Schedule. The Dynamic Royalty Schedule clause allows FICO to control the pricing of FICO Scores through the royalties that FICO charges the Credit Bureaus. DPCC ¶ 116; IPAC ¶ 136. According to TransUnion, FICO "abused and exploited" this provision by establishing new contract terms and royalty categories. DPCC ¶ 117; IPAC ¶ 137. For example, FICO implemented a "Pre-Qualification" royalty category in 2015. DPCC¶ 118; IPAC ¶ 138. This category imposed a seven times penalty rate on lenders that purchased a FICO score for use in "Pre-Qualification" along with VantageScore (or any other credit score). DPCC ¶ 119; IPAC ¶ 140. The Plaintiffs allege that this penalty was intended to prevent, and did in fact prevent, lenders from relying on additional or alternative credit scores such as VantageScores. DPCC ¶¶ 119, 123; IPAC ¶¶ 140, 144.")

[11] *See* [In re Fico Antitrust Litig. Related Cases](#), 1:20-CV-02114, 13-14 (N.D. Ill. Sep. 28, 2023); In 2006, FICO filed a lawsuit against the Credit Bureaus and VantageScore "with the intended purpose of driving VantageScore Solutions out of business." DPCC ¶¶ 9, 88; IPAC ¶¶ 103-104. FICO alleged antitrust, trademark, false advertising, and trade secret claims. See generally Fair Isaac Corp. v. Experian Info. Sols. Inc.

[12] *Id*. "In November 2017, FICO brought suit against TransUnion, alleging that TransUnion underpaid royalties, committed copyright infringement and conversion, breached several written agreements, and committed false advertising related to VantageScore."

The court allowed TransUnion's antitrust claims to proceed, highlighting the contentious and competitive nature of FICO's market strategies.[13]

Impact on Consumers

FICO's ongoing price increases for its credit scoring products have significant negative impacts on Illinois consumers. These price hikes not only raise the cost of credit scoring for individuals but also create broader economic consequences that affect various aspects of consumer financial health and access to credit in the state.

This year, Community Home Lenders of America (CHLA) reported that FICO has raised prices by 400% in the last two years. Across the industry in 2024, this is expected to cost consumers an additional $4 billion. This issue is particularly relevant for low to moderate-income borrowers. Furthermore, for people who need to improve their credit to qualify for a loan, lenders must pull their credit more often, making it more expensive for the lender and the potential borrower.

Increased Cost of Credit Access

- **Higher Loan Fees**: Lenders are increasing application or origination fees to cover the higher cost of obtaining FICO Scores.[14] The CHLA report also covered this topic in detail.
- **Elevated Interest Rates**: The increased operational costs can lead to higher interest rates on loans, making borrowing more expensive for consumers.[15]
- **Reduced Access to Credit**: Small lenders and credit unions, which may have less financial flexibility, might reduce their lending activities, limiting credit access for Illinois residents.[16]

Burden on Financial Institutions

- **Operational Cutbacks**: Financial institutions may reduce services or limit credit product offerings to manage costs, impacting consumer choice and availability of financial services.
- **Impact on Smaller Lenders**: Smaller independent mortgage bankers, community banks and credit unions, which play a crucial role in providing credit to underserved populations, may find it difficult to absorb the increased costs, potentially leading to fewer lending options for consumers.[17]

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[13] *Id.*

[14] *See* "Credit reports will be more expensive for mortgage lenders in 2024" (December 2023) "two mortgage executives who spoke on the condition of anonymity for fear of retaliation, told HousingWire that they expect prices to increase by more than double in some cases. Ultimately, the sources added that lenders will charge more to their borrowers, who are already facing affordability challenges."

[15] *See* How Interest Rates Affect the U.S. Markets (December 2023)

[16] *See* Home-Mortgage Lending Near Two-Decade Low as Slump Continues Across U.S. During Fourth Quarter (February 2024)

[17] See CFPB Report Finds Large Banks Charge Higher Credit Card Interest Rates than Small Banks and Credit Unions (February 2024)

Economic Disparities and Consumer Inequality

The state of Illinois has a diverse population with varying levels of income and financial stability. FICO's pricing strategies can exacerbate economic disparities by disproportionately affecting lower-income, minority, and veteran communities:

- **Higher Financial Burden**: Low-income consumers, who may already face financial challenges, will bear the brunt of increased costs. This can lead to higher levels of indebtedness and financial instability.[18]
- **Limited Financial Mobility**: As credit becomes more expensive, it becomes harder for individuals to improve their financial situations, trapping them in cycles of high-interest debt and limiting their economic mobility.[19]
- **Disproportionate Impact on Vulnerable Groups**: Communities with limited access to traditional banking services, such as rural areas and minority populations, are more vulnerable to the negative impacts of FICO's price increases.[20]

Reduced Competition and Innovation

FICO's dominant market position and continuous price increases stifle competition and innovation within the credit scoring market while. This lack of competition can harm Illinois consumers in several ways:

- **Lack of Alternative Scoring Models**: With FICO maintaining a stronghold on the market, alternative credit scoring models that may offer more equitable or innovative solutions struggle to gain traction.[21]
- **Slower Technological Advancement**: Innovation in credit scoring technology may be hindered, resulting in fewer advancements that could benefit consumers, such as more accurate risk assessments and personalized credit products.[22]
- **Dependence on Outdated Systems**: Over time, Illinois consumers are forced to rely on FICO's potentially outdated scoring models, which may not reflect current financial behaviors and trends accurately.[23]

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[18] *See* High inflation disproportionately hurts low-income households (January 2023)
[19] *Id.*
[20] *Id.*
[21] *See* Prepared Remarks of CFPB Director Rohit Chopra at the Mortgage Bankers Association (May 2024)
[22] *Id.*
[23] *Id.*

Transparency and Accountability Issues

FICO's proprietary algorithms and lack of transparency compound the negative effects of price increases:

- **Consumer Confusion**: Without a clear understanding of how their credit scores are calculated and the reasons behind scoring changes, consumers are unable to take effective actions to improve their creditworthiness.[24]
- **Difficulty in Error Resolution**: Higher costs do not equate to better service in resolving inaccuracies within credit reports. Consumers may face challenges in correcting errors, which can have long-term negative effects on their financial health. Notably, this is even a larger issue with veterans and service members. When issues with credit reporting, debt collection, or medical billing are not appropriately resolved, the consequences for servicemembers and military families can include loss of housing, separation from service, denial of security clearances, or loss of access to affordable healthcare.[25]

Legal Authorities for Inquiry

- **Illinois Antitrust Act** : The purpose of this Act is to promote the unhampered growth of commerce and industry throughout the State by prohibiting restraints of trade which are secured through *monopolistic* or oligarchic practices and which act or tend to act to decrease competition between and among persons engaged in commerce and trade, whether in manufacturing, distribution, financing, and service industries or in related for-profit pursuits in Illinois.
- **Sherman Antitrust Act**: *Section 1*, prohibits contracts, combinations, or conspiracies that restrain trade, and *Section 2*, prohibits monopolization, attempts to monopolize, or conspiracies to monopolize any part of interstate commerce.
- **Federal Trade Commission Act**: *Section 5* prohibits unfair or deceptive acts or practices in or affecting commerce.

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[24] *See* Gen Z, Millennials, and the credit score blind spot (January 2024); *See also* Consumer Survey Reveals Key Relationship between Financial Confidence and Credit Scores

[25] *See* CFPB Report Highlights Experiences of Military Families with Medical Billing, Credit Reporting, and Debt Collection (June 13, 2022)

Conclusion

Based on the preliminary evidence and potential anti-competitive practices identified, it is recommended to initiate a formal antitrust inquiry into Fair Isaac Corporation (FICO). This investigation should seek to uncover the extent of FICO's market dominance, exclusionary practices, and their impact on Illinois consumers and competitors. The findings should guide potential regulatory actions to ensure a fair and competitive credit-scoring market that serves the best interests of Illinois residents.

COMMUNITY HOME LENDERS OF AMERICA