Dēmos

Memorandum

From: Dēmos
To: Mayor Bill de Blasio; City Council Speaker Melissa Mark-Viverito; and interested parties
Regarding: Unjustified exemptions that weaken and undermine legislation on employment credit checks

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As New York City considers Intro 261 to stop discriminatory credit checks, lawmakers are considering the harmful effects of employment credit checks, the lack of evidence justifying the practice, and the experience of other jurisdictions in restricting the use of credit history in employment. This memorandum presents a brief analysis of pending and enacted legislation restricting employment credit checks across the country, reviews the most common exemptions found in state laws, and offers a brief discussion of why each is unjustified.

"Exemptions are not substantiated by research showing that credit cards are valid for the exempted positions."

The use of personal credit history to screen job applicants and employees creates barriers to opportunity and upward mobility, exacerbates racial discrimination, and may lead to invasions of privacy.[1] As a result of these serious concerns, states, cities and the federal government have acted to restrict the use of personal credit information in making employment decisions. For example, in 2011, the city of **Hartford, CT enacted a ban on all credit checks for municipal hiring** except whether credit checks are otherwise required by state or federal law.[2] Similarly, Senator Elizabeth Warren and 18 co-sponsors have introduced legislation in the United States Senate that prohibits credit checks for all positions except those requiring national security clearance or where required by state or federal law.[3] In 2013, the New York State Assembly passed legislation prohibiting employment credit checks except where otherwise required by law.[4] Because of their strong prohibitions on credit discrimination and narrow exemptions, the Hartford law and pending bills have the potential to make a real difference for millions of employees and job applicants shut out of employment opportunities because of an irrelevant factor – their personal credit history.

Many state laws restricting the use of personal credit information in employment decisions had the same goal of preventing discrimination and expanding opportunity. Unfortunately, as a result of industry lobbying, the ten state laws currently in effect were weakened to include numerous exemptions that undermine the efficacy of the legislation.[5] These exemptions – which often carve out broad general categories or specific job positions for which employment credit checks can still be conducted – are not substantiated by research showing that credit checks are valid for the exempted positions. Indeed, no peer-reviewed studies find that a job applicant's personal credit report is a reliable indicator of the applicant's future performance on the job or likelihood of committing fraud or any other form of misconduct or crime.

Credit checks are not justified for employees handling cash or goods

A number of state laws include exemptions permitting credit checks for employees that handle cash or have access to valuable property. These exemptions are based on the mistaken premise that reviewing a job applicant's personal credit report can predict whether someone is likely to steal. However, as a spokesperson for TransUnion, one of the major credit reporting companies, admitted to the Oregon State Legislature: "we don't have any research to show any statistical correlation between what's in somebody's credit report and their job performance or their likelihood to commit fraud."[6] The financial crisis and the Great Recession caused millions of Americans to be laid off from their jobs, see their home values plummet to less than their mortgage debt, and find their savings and retirement accounts decimated – all of which can affect credit history. These are largely factors that are outside an individual's control and have no reflection on someone's "moral character" or their propensity to steal.

Credit checks are not justified for employees with access to financial information

The rationale for checking credit when hiring for positions with access to financial or other confidential information is the same as for employees who handle cash – a belief that poor credit can predict whether an employee will misuse information to steal or commit fraud. The credit reporting industry frequently cites the amount of money businesses lose to fraud annually to illustrate the seriousness of the problem. However, as discussed above, there is no evidence that reviewing credit reports is an effective tool to screen out fraud-prone employees.

Credit checks are not justified for management positions

Permitting credit checks for management or supervisory positions puts a ceiling on the advancement of people struggling to pay their bills, regardless of their qualifications. This is particularly troubling given racial disparities in credit quality. A persistent legacy of discriminatory lending, hiring, and housing policies has left people of color with worse credit, on average, than white households.[7] In recent years, historic disparities have been compounded by predatory lending schemes that targeted low-income communities and communities of color, putting them at greater risk of foreclosure and default on loans, further damaging credit.[8] By evaluating prospective employees based on credit, employment credit checks can further extend this injustice. Given the discriminatory impact of employment credit checks, creating exemptions for management or supervisory positions could statutorily create two tiers of job opportunity depending on race and class. In effect, exemptions that permit credit checks for managerial or supervisory positions would keep people who are struggling to pay their bills stuck on the bottom rungs of the job ladder, no matter how skilled they may be.

Credit checks are not justified for law enforcement positions

Despite a lack of evidence that reviewing personal credit history can reveal how responsible, honest, or reliable an applicant will be on the job, many police departments continue to conduct credit checks and reportedly disqualify candidates with poor credit.[9] This is particularly dangerous because using a faulty screening tool such as credit history may provide a false sense of security to law enforcement agencies if they erroneously believe a credit check will help to prevent them from hiring dishonest officers vulnerable to corruption. In addition, racial disparities in credit quality mean that the use of employment credit checks may make it more difficult for law enforcement agencies to hire and promote a diverse police force that reflects the jurisdiction it is policing. As law enforcement agencies across the country continue to face decades-old concerns about sufficient opportunities for people of color to be hired and promoted within their ranks, the use of employment credit checks exacerbates this core civil rights concern.

Credit checks are not justified for employees of financial institutions

Like other exemptions, a carve-out allowing banks and other financial institutions to continue doing credit checks is based on the misconception that someone who has faced financial challenges in their own life will not be a good employee at a financial institution. In fact, financial services is the only specific industry to have been the subject of a rigorous academic study: the research, published in the *Psychologist-Manager Journal* in 2012 analyzed employees holding jobs falling within a "financial services and collections" job category of a large financial services organization. The study found that information in the credit reports of these employees had no relationship with employee performance or employee terminations for misconduct (or any other negative reason). In other words, credit reports do no predict job performance in a financial services job.[10]

Broad standards-based exceptions are entirely unjustified

The worst categories of exceptions are those that permit credit checks based on broad standards, such as "relevance", "fiduciary duty" or "substantially job related." These exceptions are even less justified than exceptions for specific job categories, because they are overly expansive and leave many workers unprotected from the unfairness of employment credit checks.

New York as a progressive leader on credit discrimination

Strong legislation such as Senator Elizabeth Warren's Equal Employment for All Act and New York State Assemblyman Jeffrey Dinowitz's Credit Privacy in Employment Act represents a growing awareness that the use of employment credit checks is unfair and can have a discriminatory impact in any industry or position. As University of Illinois professor Robert Lawless notes, "human nature makes us want to believe that credit reports must tell us something about the person involved… The fundamental attribution error makes us want to believe they can do so, but there is almost no evidence to support that notion."[11] New York City has a genuine opportunity to lead the nation in a progressive direction by enacting the nation's strongest law prohibiting credit discrimination. Enacting Intro 261 without weakening it with unjustified exemptions would offer a model for the rest of the nation to follow.

Endnotes

1. For a more extensive discussion of the problems associated with employment credit checks, see: Amy Traub, "Discredited: How Employment Credit Checks Keep Qualified Workers out of a Job," Demos, 2013. http://www.demos.org/discredited-how-employment-credit-checks-keep-qualified-workers-out-job
2. See "Hartford Council Bans Employee Credit Checks," The Hartford Guardian, May 13, 2011. http://www.thehartfordguardian.com/2011/05/13/hartford-council-bans-employee-credit-checks/
3. United States Senate: S.1837 - Equal Employment for All Act of 2013. https://beta.congress.gov/bill/113th-congress/senate-bill/1837
4. New York State Assembly: A7056-2013. http://open.nysenate.gov/legislation/bill/A7056-2013
5. The ten states with laws in effect as of September 2014 are California, Colorado, Connecticut, Hawaii, Illinois, Maryland, Nevada, Oregon, Vermont, and Washington.
6. Andrew Martin, "As a Hiring Filter, Credit Checks Draw Questions," the New York Times, April 9, 2010.
7. 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," 2007; Federal Trade Commission, "Credit-Based Insurance Scores: Impacts on Consumers of Automobile Insurance," 2007; Robert B. Avery, Paul S. Calem, and Glenn B. Canner, "Credit Report Accuracy and Access to Credit," Federal Reserve Bulletin, 2004; Matt Fellowes, "Credit Scores, Reports, and Getting Ahead in America," Brooking Institution, 2006.
8. Jacob S. Rugh and Douglas S. Massey, "Racial Segregation and the American Foreclosure Crisis" American Sociological Review, Volume 75 Number 5 October 2010; Andrew Jakabovics and Jeff Chapman, "Unequal Opportunity Lenders? Analyzing Racial Disparities in Big Banks' Higher-Priced Lending," Center for American Progress, 2009. http://www.americanprogress.org/issues/housing/report/2009/09/15/6704/unequal-opportunity-lenders/
9. For example, see Robin Pyle, "Bad credit could hurt your chances of becoming a police officer," Lubbock Avalanche-Journal, September 26, 2010. http://lubbockonline.com/local-news/2010-09-26/bad-credit-could-hurt-your-chances-becoming-police-officer
10. Laura Koppes Bryan and Jerry K. Palmer, "Do JobApplicant Credit Histories Predict Performance Appraisal Ratings or Termination Decisions?" The Psychologist-Manager Journal, 2012.
11. Robert Lawless, "The Evidence on Pre-Employment Credit Checks," Credit Slips (blog) January 2, 2014. http://www.creditslips.org/creditslips/2014/01/the-evidence-on-pre-employment-credit-checks.html

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