



**Testimony of Amy Traub**  
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**Before the**  
**Council of the District of Columbia**  
**Committee on Public Services and Consumer Affairs**  
**November 9, 2011**

Thank you, Chairperson Alexander and members of the Committee for providing the opportunity to present testimony this morning. I am a Senior Policy Analyst in the Economic Opportunity Program at Dēmos, a national, non-profit, non-partisan policy research and advocacy organization, established in 2000, with offices in Boston, New York, Washington, D.C., and Austin, Texas. The Dēmos Economic Opportunity Program works to achieve a more equitable economy with opportunity for all. I am pleased to be here today to testify in support of Bill 19-38, the Equal Access to Employment for All Act, which aims to prohibit the use of consumer credit checks against prospective and current employees for the purpose of making adverse employment decisions.

Over the past nine years, Dēmos has conducted extensive research on credit card debt among low- and middle -income households. As part of this research, we have become increasingly concerned with how families are being financially penalized for being in debt, making it difficult, if not impossible, for them to ever get out of debt. The proliferation of the use of credit reports and scores in particular have resulted in families in debt being forced to pay more for basic services, such as water and gas, being denied a rental apartment, being charged more for auto or homeowners' insurance, or, as I'll discuss today in more detail, being denied a job— which is the very thing they need to get out of debt.

**Credit checks increasingly used for employment – despite a lack of evidence for their validity**

Six out of ten American employers now look at a job applicant's credit report when hiring for some or all positions.<sup>1</sup> Employment credit checks have become commonplace because employers are looking for a way to predict if a potential employee will be honest, if they will handle money responsibly, if they are likely to steal or commit fraud. For-profit credit reporting

agencies take advantage of these concerns to market credit reports to employers. However, reviewing the social science research on this issue, I have found no credible evidence that credit reports reveal this information.<sup>2</sup> In fact, one of the major credit reporting agencies has admitted that it has no evidence to support the use of credit checks for employment purposes.<sup>3</sup>

It's important to emphasize that credit reports evolved as a means for lenders to evaluate whether someone would be a good credit risk based on their past payment history. These reports detail whether someone has fallen behind on their bills, whether they have had to declare bankruptcy, and if they've faced foreclosure. In fact, credit reports can be a good indicator of the tremendous economic stresses that are facing households in the District of Columbia during these difficult economic times. Demos' extensive research on credit card debt among middle- and low-income households has found that most indebted families go into debt to pay for basic expenses: groceries, utilities, child care, and health care. In fact, in a 2008 survey we commissioned of low-and-moderate income households, 37% of credit card indebted families had used their credit cards to pay for basic expenses and 52% had used them to pay for medical care in the past year.<sup>4</sup> Simply put, Americans are borrowing to make ends meet.

You can often see the effects of that economic hardship in a credit report. What a credit report will not reveal is how well applicants are likely to perform on the job. The use of credit reports for employment purposes has no validity – and it's our position that there is no job category in which they have proven to be useful or reliable. For any employer that comes before this committee asserting that they need the opportunity to inquire about a prospective employees' credit history, I respectfully suggest that you ask them for the evidence that this consumer credit history reveals something relevant about a job applicant's qualifications.

### **Employment credit checks are discriminatory**

In addition to their irrelevance, employment credit checks are also discriminatory, and I urge the committee to think of Bill 19-38 as a significant piece of civil rights legislation. The reality is that employment credit checks disproportionately impact communities of color. For this reason organizations including the Lawyers Committee for Civil Rights, National Council of La Raza, and the NAACP have taken repeated stands against employment credit checks.<sup>5</sup> Various factors contribute to racial disparities in credit scores. People of color have a higher unemployment rate, a higher poverty rate, and have fewer assets, on average, that they can draw on in an emergency. All of that makes people more likely to use credit and to go into debt to deal with emergencies. There are also issues of credit being offered on discriminatory terms – in the last decade predatory lending schemes targeting communities of color compounded historic disparities in wealth and assets, leaving African-Americans, Latinos, and other people of color at greater risk of foreclosure and default on loans.<sup>6</sup>

Employment credit checks can perpetuate and amplify this injustice. In a 2007 report, the Federal Reserve Board found that African-Americans and Latinos had considerably lower credit scores than non-Hispanic whites.<sup>7</sup> A number of other studies, from the Brookings Institution to the Federal Trade Commission, came to similar conclusions.<sup>8</sup> I delve into that research in a report I authored on credit screening, which I am pleased to provide to members of the committee.<sup>9</sup> The Department of Labor won a case last year against Bank of America in which the bank was found to have discriminated against African Americans by using credit checks to hire entry level employees.<sup>10</sup> A similar case brought by the Equal Employment Opportunity Commission is now pending against Kaplan Higher Education Corporation.<sup>11</sup> The use of credit checks in hiring is, at its heart, a civil rights issue and an employment discrimination issue, and ironically, the same employers that seek protection by using the practice may find themselves with legal liability as a result of it.

### **Exemptions are unnecessary**

I would like to take a moment to address the exemptions in this legislation. As it is currently written, Bill 19-38 permits the continued use of employment credit checks in the case of jobs that require national security or FDIC clearance; positions with a state or local government agency; supervisory, managerial, professional, or executive positions at a financial institution; or when otherwise required by law. It extends beyond my expertise to comment on matters of national security, but for these other categories of exemptions, I reassert that there is no evidence that credit checks are useful or reliable.

I would especially urge the committee to rethink the exemption for state or local employees – credit checks can shut qualified people out of public employment, which harms both job seekers and the public that could benefit from their services. In fact, the City of Hartford, CT unanimously passed an ordinance prohibiting its own public agencies from performing credit checks as part of the employment process for city jobs.<sup>12</sup> Since there is no evidence that credit checks are a valid means of predicting employee performance or fraud, Hartford decided to set an example and stop using them, including no exemptions in its bill. The District of Columbia might consider that as well.

Finally, this powerful piece of civil rights legislation needs an enforcement mechanism. Providing people who have been discriminated against through an employment credit check with a private right of action would be a suitable way to enforce the law.

### **Conclusion**

These unwarranted exemptions aside, the Equal Access to Employment for All Act will remove an unnecessary barrier that prevents qualified DC residents from getting the work they need. By enacting this bill, the Council will join the growing number of jurisdictions – including seven states, from California to Connecticut – that have taken action to restrict the use of credit checks in employment. I urge you to pass this legislation. Thank you.

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## NOTES

<sup>1</sup> Society of Human Resources Management, Background Checking: Conducting Credit Background Checks, January 22, 2010.

<sup>2</sup> See: Shawn Fremstad and Amy Traub, “Discrediting America: The Urgent Need to Reform the Nation’s Credit Reporting Industry,” Demos, 2011.

[http://www.demos.org/sites/default/files/publications/Discrediting\\_America\\_Demos.pdf](http://www.demos.org/sites/default/files/publications/Discrediting_America_Demos.pdf)

<sup>3</sup> Andrew Martin, “As a Hiring Filter, Credit Checks Draw Questions,” *The New York Times*, April 9, 2010.

<sup>4</sup> Jose Garcia and Tamara Draut, “The Plastic Safety Net: How Households are Coping in a Fragile Economy,” Demos, 2009. [http://www.demos.org/sites/default/files/publications/PlasticSafetyNet\\_Demos.pdf](http://www.demos.org/sites/default/files/publications/PlasticSafetyNet_Demos.pdf)

<sup>5</sup> See, for example, “Letter in Support of the Equal Employment for All Act” signed by the Lawyers Committee for Civil Rights, National Council of La Raza, and the NAACP among other organizations.

[http://www.lawyerscommittee.org/admin/employment\\_discrimination/documents/files/Equal-Employment-for-All-Support-Letter.pdf](http://www.lawyerscommittee.org/admin/employment_discrimination/documents/files/Equal-Employment-for-All-Support-Letter.pdf)

<sup>6</sup> Debbie Gruenstein Bocian, Wei Li, and Keith S. Ernst, “Foreclosures by Race and Ethnicity: The Demographics of a Crisis,” The Center for Responsible Lending, 2010.

<sup>7</sup> 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.

<sup>8</sup> 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,” Brookings Institution, 2006.

<sup>9</sup> Shawn Fremstad and Amy Traub, *ibid.*

<sup>10</sup> In the Matter of: Office of Federal Contract Compliance Programs, United States Department of Labor v. Bank of America, Recommended Decision and Order, Case No.: 1997-OFC-16, January 21, 2010.

<sup>11</sup> Steven Greenhouse, “EEOC Sues Kaplan over Hiring,” *The New York Times*, December 21, 2010.

<sup>12</sup> City of Hartford, Ord. No. 16-11, May 9 2011.