

EMPLOYMENT CREDIT CHECKS: The Case for Requiring Employers to Use More Accurate and Fair Assessments

A core value of American society is the opportunity to work hard and get ahead. Yet today in the United States, willing job-seekers are facing a new barrier to employment—credit checks. Despite the lack of evidence connecting people’s credit histories to their on-the-job performance, a 2012 survey by the Society for Human Resource Management found that almost half (47 percent) of firms use employment credit checks.¹ The use of employment credit checks is creating a tragic catch-22 for the unemployed. It means that workers who have fallen behind on their bills because they are unemployed are finding it harder to get the job that would make it possible for them to pay off their bills. Employment credit checks also subject job applicants to unwarranted intrusions on their privacy and, in the case of communities of color, can have an illegal discriminatory impact.

WEAK CREDIT AMONG PROSPECTIVE EMPLOYEES REFLECTS THE WEAK ECONOMY—NOT A LACK OF PERSONAL RESPONSIBILITY.

Employment credit screening imposes an automatic second-class status on the 13 million Americans who lost their job during the recession through no fault of their own—or who have fallen victim to the unregulated predatory lending leading up to the financial crisis.² Prior to the recession, on average, just 15 percent of the 170 million consumers with active credit accounts, or 25.5 million people, had poor credit, defined as FICO scores below 600 out of a possible 850. As of April 2010, one-quarter of U.S. consumers, nearly 43.4 million people, had poor credit.³

NO EVIDENCE CONNECTS CREDIT PROBLEMS TO GREATER PROPENSITY TO COMMIT FINANCIAL CRIMES ON THE JOB.

The most common reason employers cite for requiring employment credit checks is a concern that employees who are behind on their bills will be more likely to embezzle funds or engage in other criminal activity.⁴ Yet, there is little evidence to support this fear. As of 2010, a spokesman for one of the largest companies selling credit reports to employers admitted that there is no evidence of a link between credit problems and employees’ propensity to commit financial crimes on the job. Eric Rosenberg, Director of State Government Relations for TransUnion, told Oregon legislators, “At this point 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.”⁵ Richard Tonowski, the Chief Psychologist for the Equal Employment Opportunity Commission agreed with Mr. Rosenberg. In 2010, he testified that there is, “very little evidence that credit history is indicative of who can do the job better” and it is “hard to establish a predictive relationship between credit and crime.”⁶

A more recent study from 2011 also failed to find a link between low credit scores and propensity to commit financial crime at work.⁷

EMPLOYMENT CREDIT CHECKS ARE AN INVASION OF PRIVACY.

The organization that represents corporate HR professionals, the Society for Human Resource Management, notes that when they have a concern about a potential employee's credit history, employers generally ask the individual to explain why they are behind on their bills.⁸ Given that past due medical bills make up the majority of accounts reported by collection agencies,⁹ for a significant number of prospective employees, this will mean that they will have to discuss their personal medical histories as a pre-requisite for obtaining employment.

This is contrary to Americans' strong belief in a right to privacy of their medical histories. That right is embodied in our expectation of confidentiality in the doctor-patient relationship and numerous bi-partisan pieces of legislation, including the 1996 Health Insurance Portability and Accountability Act, the 2003 amendments to the Fair Credit Reporting Act that require medical debt to be masked on credit reports, and the Americans with Disability Act, which specifically prohibits employers from inquiring about medical history prior to making a job offer.

Another personal matter that is a common cause of financial problems and is brought into the employment process by employers' use of credit checks is divorce. In divorce cases involving domestic abuse, it is not uncommon for the abuser to purposely ruin their spouse's credit as a way of controlling them. Many states bar employers from discrimination in employment on the basis of marital status, and the federal government is prohibited from discriminating in its employment decisions on the basis of marital status. Despite common sense and legal recognition that questions about marital status ought to be out of bounds in the hiring process, many prospective employees asked to explain their credit problems now must choose between discussing a recent divorce or risk losing a job opportunity.

CREDIT CHECKS ARE DISCRIMINATORY

A 2007 report by the Federal Reserve Board found that African-Americans and Hispanics had considerably lower credit scores than non-Hispanic whites.¹⁰ Various factors contribute to these racial disparities, including many outside of the control of individual consumers. In the last decade, predatory lending schemes targeting communities of color compounded historic disparities in wealth and assets. During the housing boom, borrowers of color were frequently steered into subprime (or high-interest) loans even though they actually qualified for a prime loan.¹¹ As a result, since the crash, African-Americans, Latinos and Asian-American households have lost over 50 percent of their family wealth—exactly the assets that workers draw on during emergencies to avoid debt. This compares to a 16 percent loss among white households; today, families of color have less than a dime in wealth for every dollar held by white families.¹² Employment credit checks are now compounding historic injustices and recent weak regulatory oversight, ensuring that similarly-qualified job-seekers cannot compete on an even playing field. That is why organizations including the Lawyers Committee for Civil Rights, National Council of La Raza, and the NAACP have publicly opposed the use of employment credit checks.

The courts have recognized the discriminatory impact of employment credit screening. The Department of Labor won a verdict against Bank of America stemming in part from the bank's use of credit checks to hire entry-level employees, which had a discriminatory impact on African-Americans.¹³ Under Title VII of the Civil Rights Act, employers may not use an assessment tool that disproportionately disqualifies minorities from employment without providing a legitimate business reason for doing so. For reasons discussed above, the bank could not provide any such justification.

EMPLOYERS OUGHT TO USE ALTERNATIVES TO PROTECT AGAINST ON THE JOB CRIMES BY EMPLOYEES.

There are superior methods for determining whether employees are likely to perform well and preventing theft on the job that do not have the downsides of subjecting large numbers of prospective employees to credit checks. For example, effective interviewing techniques, tests to assess job relevant competencies, and personality tests. Also, employers can create more effective systems for detecting and preventing financial crimes by employees once they are on the job.

THE NEED FOR LEGISLATION: THE EQUAL EMPLOYMENT FOR ALL ACT (H.R. 321).

As a first step in preventing discrimination against the long-term unemployed and minorities in the employment process and unwarranted invasions into job-seekers personal lives, Congress should pass the Equal Employment for All Act. This legislation would prohibit employers from using employment credit checks for most positions.

ENDNOTES

1. Thirteen percent report using credit checks for all positions, 34% for some. SHRM Survey Findings: "Background checking—The Use of Credit Background Checks in Hiring Decisions". 2012, available at <http://www.shrm.org/Research/SurveyFindings/pages/creditbackgroundchecks.aspx>
2. Bureau of Labor Statistics, December 2011, available at www.bls.gov
3. "More Americans' Credit Scores Sink to New Lows," available at <http://www.moneynews.com/Headline/US-Credit-Scores-New/2010/07/12/id/364341>
4. SHRM, 2012.
5. Testimony of TransUnion Director of State Government Relations Eric Rosenberg, Informational Hearing of the Oregon Senate Committee on Commerce and Workforce Development, January 12, 2010.
6. Statement of Richard Tonowski, EEOC Chief Psychologist, EEOC Meeting on Employer Use of Credit History as a Screening Tool, October 20, 2010.
7. Jeremy B. Bernerth et al, "An Empirical Investigation of Dispositional Antecedents and Performance-Related Outcomes of Credit Scores" *Journal of Applied Psychology*, October 24, 2011.
8. SHRM, 2012.
9. Robert Avery et al, "An Overview of Consumer Data and Credit Reporting," *Fed. Reserve Bull.* At 69 (Feb 2003).
10. 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.
11. Debbie Gruenstein Bocian, et al, "Ethnicity and Subprime Home Loan Pricing," *Journal of Economics and Business*, 2008.
12. Rakesh Kochhar, "Wealth Gaps Rise to Record Highs Between Whites, Blacks, Hispanics," *Pew Social and Demographic Trends*, July 26, 2011.
13. 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.

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