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December 3, 2013

Become an Original Cosponsor of The Equal Employment for All Act

Dear Senator:

On behalf of The Leadership Conference on Civil and Human Rights and the undersigned organizations, we urge you to become an original cosponsor of "The Equal Employment for All Act" sponsored by Senator Elizabeth Warren (D-MA). In addition to the weak economy, job-seekers today confront another less discussed challenge—employers that require credit checks as a condition of employment. Not only does this practice discriminate against the long-term unemployed, it has a disparate impact on communities of color and people with disabilities and constitutes an unwarranted invasion into job seekers' personal lives. This bill would reduce employment discrimination and protect job seekers' privacy by prohibiting employers from using credit checks as part of their hiring and promotion decisions for most positions.

Use of employment credit checks is common and people are denied jobs because of them. A 2012 survey by the Society for Human Resource Management found that 47 percent of firms use employment credit checks for some positions.ⁱ A nationally-representative 2012 survey by Dēmos finds that 1 in 4 unemployed people from low- and middle-income households with credit card debt has been asked to submit to a credit check as part of a job application.ⁱⁱ The actual prevalence of employment credit checks may be significantly higher. In the flurry of paperwork that surrounds the job application process, applicants may quickly forget the specifics of the many documents they sign. The Dēmos survey also finds that 1 in 7 jobseekers with poor credit say they had been told they would not be hired for a position because of their credit history.

Credit checks create a catch-22 for job seekers. 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. The use of employment credit checks is creating a catch-22 for job seekers. 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.

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.ⁱⁱⁱ Yet, there is virtually no evidence to support this fear. In 2010, Eric Rosenberg, Director of State Government Relations for TransUnion, one of the largest credit reporting companies, 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."^{iv} 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.”^v

More recent studies have also failed to find a link between low credit scores and propensity to commit financial crime at work.^{vi}

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.^{vii} 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.^{viii}

Employment credit checks are an invasion of privacy. The organization that represents corporate HR professionals, the Society for Human Resource Management, notes that when employers have a concern about a potential employee’s credit history, they generally ask the individual to explain why he or she is behind on their bills.^{ix} Given that past due medical bills make up the majority of accounts reported by collection agencies,^x 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 bipartisan 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. This is an issue that impacts all Americans, but particularly impacts people with disabilities, who have good reason to fear that disclosure of their medical conditions will lead to discriminatory treatment.

Domestic abuse and divorce also frequently lead to credit problems. In cases of domestic abuse, it is not uncommon for the abuser to purposely ruin a spouse’s credit as a way of controlling the spouse. In divorces, individuals frequently find their credit record tarnished by the poor decisions of their former spouse. 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 and/or very personal details regarding the abusive dynamics in a relationship, or risk losing a job opportunity. Furthermore, subjecting potential employees to credit checks will make it more difficult for financially abused spouses to achieve the financial security necessary to end an abusive relationship, thus potentially trapping them in that abusive relationship.

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.^{xi} Additional research, including studies by the Federal Trade Commission and the Brookings

Institution, has also documented a racial gap in credit scores.^{xii} **While employers only have access to credit reports, rather than prospective employees' credit scores, the same issues that lead to disparities in credit scores will lead to disparities in the reports that employers do receive.**

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.^{xiii} As a result, since the crash, African-American, Latino and Asian-American households have lost more than 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. Thus, today, families of color have less than a dime in wealth for every dollar held by white families.^{xiv} Similarly, Americans with disabilities are less likely than Americans without disabilities to have the assets to weather economic setbacks^{xv}—making it more likely for people with disabilities that a setback will lead to real hardship and bad credit. Employment credit checks are thus compounding historic injustices and recent weak regulatory oversight, ensuring that similarly-qualified job seekers cannot compete on an even playing field.

Legal challenges have also raised the discriminatory impact of employment credit screening. The Department of Labor won an administrative hearing officer decision 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.^{xvi} 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 for preventing theft on the job that do not have the downsides of subjecting large numbers of prospective employees to invasive and discriminatory credit checks, including, effective interviewing techniques, and asking employees to provide references. Also, employers can create more effective systems for detecting and preventing financial crimes by employees once they are on the job.

We urge you to become an original cosponsor of the Equal Employment for All Act, which will help prevent discrimination against the long-term unemployed and people of color in hiring and promotion decisions, and limit the invasion of job seekers' privacy. **To become an original cosponsor, please contact Dan Geldon in Sen. Warren's office at (202) 224-2215.** If you have any questions, please feel free to contact Lexer Quamie at The Leadership Conference on Civil and Human Rights (202) 466-3648, Benjamin Peck at Dēmos at 202.559.1543 ext. 110, or Tanya Clay House at the Lawyers' Committee for Civil Rights Under Law at (202) 662-8330. Thanks for your valued consideration of this critical legislation.

Sincerely,

9to5
AFGE Women's and Fair Practices Departments
American Association for Affirmative Action (AAAA)

American Association of People with Disabilities (AAPD)
American Federation of Labor-Congress of Industrial Relations (AFL-CIO)
American Federation of State, County and Municipal Employees (AFSCME)
Americans for Financial Reform
Asian American Justice Center
Bazelon Center for Mental Health Law
Black Women's Roundtable
Campaign for Community Change
Charles Hamilton Houston Institute for Race & Justice
Center for Law and Social Policy (CLASP)
Consumer Action
Dēmos
Disability Rights Education and Defense Fund (DREDF)
Disability Rights Legal Center
Job Opportunities Task Force
Lawyers' Committee for Civil Rights Under Law
The Leadership Conference on Civil and Human Rights
Legal Action Center
MFY Legal Services
NAACP
NAACP Legal Defense and Educational Fund
National Association of Consumer Advocates
National Black Justice Coalition
National Coalition on Black Civic Participation
National Consumer Law Center (on behalf of its low-income clients)
National Council of La Raza
National Council on Independent Living
National Employment Law Project
National Employment Lawyers Association (NELA)
National Fair Housing Alliance
National Gay and Lesbian Task Force Action Fund
National Network to End Domestic Violence
National Organization for Women
National Partnership for Women and Families
National Women's Law Center
National Workrights Institute
Neighborhood Economic Development Advocacy Project (NEDAP)
New York Legal Assistance Group
PolicyLink
Poverty and Race Research Action Council
Public Citizen
Public Justice Center
Service Employees International Union (SEIU)
U.S. PIRG

UNITE HERE
Wider Opportunities for Women
Women Employed

ⁱ 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>

ⁱⁱ Amy Traub, "Credit Reports and Employment: Findings from the 2012 National Survey on Credit Card Debt of Low-and Middle-Income Households," Dēmos, 2013.

ⁱⁱⁱ Society for Human Resource Management, "Background Checking: The Implications of Credit Background Checks on Hiring Decisions," August 24, 2010, available at <http://www.shrm.org/Research/SurveyFindings/Articles/Pages/BackgroundCheckingImplications.aspx>.

^{iv} Testimony of TransUnion Director of State Government Relations Eric Rosenberg, Informational Hearing of the Oregon Senate Committee on Commerce and Workforce Development, Jan. 12, 2010.

^v Statement of Richard Tonowski, EEOC Chief Psychologist, EEOC Meeting on Employer Use of Credit History as a Screening Tool, October 20, 2010

^{vi} Jeremy B. Bernerth et al, "An Empirical Investigation of Dispositional Antecedents and Performance-Related Outcomes of Credit Scores" *Journal of Applied Psychology*, Oct. 24, 2011; Laura Koppes Bryan and Jerry K. Palmer, "Do Job Applicant Credit Histories Predict Performance Appraisal Ratings or Termination Decisions?" *The Psychologist-Manager Journal*, 2012.

^{vii} Bureau of Labor Statistics, December 2011, available at www.bls.gov.

^{viii} More Americans' Credit Scores Sink to New Lows," available at [www.moneynews.com/Headline/US Credit-Scores-New/2010/07/12/id/364341](http://www.moneynews.com/Headline/US-Credit-Scores-New/2010/07/12/id/364341).

^{ix} Society for Human Resource Management, "Background Checking."

^x Robert Avery et al, "An Overview of Consumer Data and Credit Reporting," *Fed. Reserve Bull.* At 69 (Feb. 2003).

^{xi} 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.

^{xii} 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.

^{xiii} Debbie Gruenstein Bocian, et al, "Ethnicity and Subprime Home Loan Pricing," *Journal of Economics and Business*, 2008.

^{xiv} Rakesh Kochhar, "Wealth Gaps Rise to Record Highs Between Whites, Blacks, Hispanics," *Pew Social and Demographic Trends*, July 26, 2011.

^{xv} Kessler Foundation Survey of Americans with Disabilities. Available at: www.2010disabilitysurveys.org/pdfs/surveyresults.pdf.

^{xvi} 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, Jan. 21, 2010.