

September 19, 2017

Re: The Equal Employment for All Act (S.1819)

Dear Senator,

We the undersigned organizations write in strong support of The Equal Employment for All Act (S.1819), introduced by Senator Elizabeth Warren. The bill would eliminate an unfair and discriminatory barrier to economic mobility and security for many Americans by prohibiting the use of personal credit history in employment.

The massive data breach of personal information on as many as 143 million Americans at credit reporting firm Equifax powerfully illustrates the need for greater oversight and scrutiny of the credit reporting industry.ⁱ Private, for-profit credit reporting firms like Equifax collect the personal credit information of American consumers and sell it to lenders, insurance companies, landlords and employers regardless of the relevance of the data. The use of credit information in employment is particularly troubling because there is no proven connection between personal credit history and an individual's job performance.

Today in the United States, qualified job seekers are turned away from employment because of their personal credit history. People whose credit is damaged as a result of medical debt, student loans, a layoff, divorce, predatory lending, identity theft, or simple error are shut out of jobs—despite a lack of evidence connecting personal credit history with job performance. The practice has a disparate impact on people of color, who are more likely to have poor credit as a result of predatory lending that continues to target communities of color, as well as the enduring impact of racial discrimination in employment, lending, education, and housing.

Employment credit checks are widely used. A 2012 survey by the Society of Human Resources Management found that 47 percent of employers use credit checks when hiring for some or all positions at their firm.ⁱⁱ A nationally representative survey by Dēmos finds that among low- and middle-income households with credit card debt, one in four unemployed Americans has been asked to submit to a credit check as part of a job application.ⁱⁱⁱ 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. Credit checks are used by employers to screen job applicants for a wide range of positions, including retail jobs, doing maintenance work, offering telephone tech support, or working as a delivery driver, as well as financial posts.^{iv}

There is no proven link between personal credit history and job performance—or likelihood to commit a crime. Credit reports were developed to help lenders assess the risks associated with making a loan. Over the last few years, they have been aggressively marketed to employers as a means to gauge an applicant's character or likelihood to commit theft or fraud. Yet there is no proven link between personal credit reports and criminal behavior or performance of a specific job. A spokesperson for the credit reporting firm TransUnion admitted in 2010, “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.”^v

A weak or poor credit history reflects economic difficulty—not a lack of personal responsibility. Research by the Federal Reserve Board finds that more than half of all accounts reported by collection agencies on credit reports consist of medical debt.^{vi} Dēmos’ study of Americans with credit card debt similarly finds that poor credit is associated with lack of health coverage and medical debt as well as household unemployment.^{vii} Unemployed workers in particular can become trapped in a Catch 22: job-seekers are unable to secure work because of damaged credit, and are then unable to escape debt and improve their credit because they cannot find work.

Employment credit checks are discriminatory. Research from the Federal Trade Commission, the Federal Reserve Board, and other investigators concludes that African American and Latino households tend to have weaker credit, on average, than white households.^{viii} Racial disparities in credit history reflect historic disparities in wealth and assets, as well as more recent damage done by predatory lending targeting communities of color. During the housing boom, borrowers of color were frequently steered into high-interest subprime loans even though they actually qualified for a prime loan.^{ix} As a result, since the crash, African-American, Latino 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.^x This compares to a 16 percent loss among white households. In the aftermath, families of color were left with less than a dime in wealth for every dollar held by white families. One result is that when credit history is used to evaluate job candidates, people of color are disproportionately screened out.

Employment credit checks are an invasion of privacy—a particular concern for people with disabilities and survivors of domestic abuse. Domestic abuse, divorce, and medical bills are among the leading contributors 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.^{xi} Despite common sense and legal recognition that questions about marital status, medical conditions, and abuse ought to be out of bounds in the hiring process, many employers ask prospective employees to “explain” any credit problems brought to light by a credit report. This forces job applicants to choose between discussing a recent divorce, confidential medical issues, and/or very personal details regarding the abusive dynamics in a relationship, or risk losing a job opportunity. Questions about medical debt particularly impact people with disabilities, for whom disclosure of a medical condition may lead to discriminatory treatment.

Credit reporting errors are common and impact employment decisions in unpredictable ways. A comprehensive 2013 study by the Federal Trade Commission found that one in five American consumers had a material error (an error that negatively impacted their credit history) on a credit report from one of three major credit reporting companies.^{xii} While not all of these errors are serious enough to affect consumer borrowing, the impact on employment is far broader because what employers look for in a credit report—and how much they weigh different factors like late bills, foreclosures, or accounts in collection—is entirely subjective. A credit reporting mistake that is too small to make a difference in applying for credit might nevertheless stand out to an employer and cost someone a job. At the same time, credit reporting errors are notoriously difficult for consumers to resolve.

Alternative methods can more effectively assess a job applicant’s likely performance. 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 discriminatory credit checks. Alternative practices include effective interviewing techniques and tests to assess job-relevant competencies. In addition, employers can create more effective systems for detecting and preventing financial crimes by employees once they are on the job.

Employment credit checks are an unfair and discriminatory barrier to employment for many qualified Americans and should be eliminated. We strongly support The Equal Employment for All Act (S.1819) to curtail their use.

Sincerely,

Dēmos
Allied Progress
Americans for Financial Reform
Center for Law and Social Policy
Center for Digital Democracy
Center for Popular Democracy
Center for Survivor Agency and Justice
Consumer Action
Greenlining Institute
The Leadership Conference on Civil and Human Rights
Mobilization for Justice
NAACP
National Association of Consumer Advocates
National Consumer Law Center (on behalf of its lowincome clients)
National Employment Law Project
National Partnership for Women and Families
New Economy Project
PolicyLink
Poverty and Race Research Action Council
Public Citizen
UnidosUS
U.S. PIRG
Woodstock Institute

ⁱ Tara Siegel Bernard, Tiffany Hsu, Nicole Perlroth and Ron Lieber, “Equifax Says Cyberattack May Have Affected 143 Million in the U.S.,” *New York Times*, September 7, 2017, <https://www.nytimes.com/2017/09/07/business/equifax-cyberattack.html>.

ⁱⁱ *Background Checking—The Use of Credit Background Checks in Hiring Decisions*, Society of Human Resources Management, July 19, 2012, <https://www.shrm.org/hr-today/trends-and-forecasting/research-and-surveys/pages/creditbackgroundchecks.aspx>

ⁱⁱⁱ Amy Traub, *Discredited: How Employment Credit Checks Keep Qualified Workers Out of a Job*, Dēmos, 2013, <http://www.demos.org/discredited-how-employment-credit-checks-keep-qualified-workers-out-job>

^{iv} Based on a review of online job postings stating that job applicants would be required to consent to a credit report.

^v 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.

^{vi} Robert Avery, Paul Calem, Glenn Canner and Raphael Bostic, “An Overview of Consumer Data and Credit Reporting,” *Federal Reserve Bulletin*, 2003, <https://www.federalreserve.gov/pubs/bulletin/2003/0203lead.pdf>

^{vii} Traub, *Discredited*.

^{viii} See for example: 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*, Brookings Institution, 2006.

^{ix} Debbie Gruenstein Bocian, Keith Ernst, and Wei Li, "Race, Ethnicity and Subprime Home Loan Pricing," *Journal of Economics and Business*, 2008, <http://www.sciencedirect.com/science/article/pii/S0148619507000847>

^x Rakesh Kochhar, Richard Fry, and Paul Taylor, *Wealth Gaps Rise to Record Highs Between Whites, Blacks, Hispanics*, Pew Social and Demographic Trends, July 26, 2011, <http://www.pewsocialtrends.org/2011/07/26/wealth-gaps-rise-to-record-highs-between-whites-blacks-hispanics/>

^{xi} See for example: Angela Littwin, "Coerced Debt: The Role of Consumer Credit in Domestic Violence," *California Law Review*, vol. 100, issue 4, 2012, <http://scholarship.law.berkeley.edu/californialawreview/vol100/iss4/6/>

^{xii} *Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003*, Federal Trade Commission, December 2012. Released to the public February 2013, <https://www.ftc.gov/sites/default/files/documents/reports/section-319-fair-and-accurate-credit-transactions-act-2003-fifth-interim-federal-trade-commission/130211factareport.pdf>