Prohibiting Credit Discrimination

THE PROBLEM

When employers conduct credit checks as part of their hiring, retention, or promotion process, personal credit history becomes a barrier to employment. As a result, qualified job seekers are turned away from jobs. The practice discriminates against 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.[1] By evaluating prospective employees based on credit, employment credit checks can further extend this discrimination. People with disabilities, who are more likely to have medical debt, are also disproportionately harmed.[2] But the problem isn't limited to these communities: Americans from all walks of life whose credit is damaged as a result of medical debt, student loans, a layoff, divorce, identity theft, simple error, or myriad other reasons are shut out of jobs – despite a lack of evidence connecting someone's credit history with their job performance.[3]

Yet because for-profit credit reporting companies market credit checks as a tool to assess employee integrity and reliability, nearly half of all employers now run credit checks on new job applicants.[4] Credit checks may be ordered for jobs as diverse as doing maintenance work, offering telephone tech support, working in retail, or selling frozen yogurt, as well as many financial posts. Among low- and middle-income households carrying credit card debt, 1 in 4 households experiencing unemployment report that a prospective employer asked to check their credit as part of a job application.[5] This number likely underrepresents the full scope of the problem: while the federal Fair Credit Reporting Act requires employers to notify job applicants if their credit history played any role in an employment decision, the law is difficult to enforce and many job seekers never find out they were passed over because of their credit.

NO CREDIT CHECK!

"Americans from all walks of life whose credit is damaged as a result of medical debt, student loans, a layoff, divorce, identity theft, simple error, or myriad other reasons are shut out of jobs – despite a lack of evidence connecting someone's credit history with their job performance."

— **Amy Traub**, **Credit Reports and Employment (2013)**

THE SOLUTION

The Fair Credit Reporting Act permits employers to conduct employment credit checks but also allows states and cities to establish stronger protections. So far ten states have restricted the use of personal credit information in employment. Unfortunately, as a result of industry lobbying, these laws include numerous exemptions that undermine the laws' efficacy. These exemptions allow credit checks for broad general categories or specific job positions, and are not substantiated by evidence or research. Bills in **New York City**, as well as at the state level in New York and Massachusetts, aim to outlaw employment credit checks for all positions except where otherwise required by state or federal law. In 2011, the city of **Hartford, CT** banned credit checks for all municipal government positions.

POLICY ISSUES

CLOSING LOOPHOLES: Credit reports are often sold as part of an overall "background check" bundled with searches of public records (such as past addresses, liens, or bankruptcies) and criminal records. However, these checks can also be disaggregated – it is possible for employers to purchase a public records search or criminal background check without inquiring into personal credit history.

Cities that are considering banning credit checks by employers should ensure that the following loop-hole exemptions are closed.

"Among low- and middle-income households carrying credit card debt, 1 in 4 households experiencing unemployment report that a prospective employer asked to check their credit as part of a job application."

– Amy Traub, Discredited: How Employment Credit Checks Keep Qualified Workers out of a Job (2013)

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. Since the recession began, millions of Americans have been laid off from their jobs, seen their home values plummet to less than their mortgage debt, and found their savings and retirement accounts decimated—all of which can affect credit history. These factors lie outside an individual's control and have no reflection on someone's fitness for work.

CREDIT CHECKS ARE NOT JUSTIFIED FOR EMPLOYEES WITH ACCESS TO FINANCIAL INFORMATION OR EMPLOYEES OF FINANCIAL INSTITUTIONS: The incorrect 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.

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 exemption traps workers on the bottom rungs of the job ladder, no matter how skilled they may be.

CREDIT CHECKS ARE NOT JUSTIFIED FOR LAW ENFORCEMENT POSITIONS: Many police departments conduct credit checks and reportedly disqualify candidates with poor credit. 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 officers vulnerable to corruption. In addition, racial disparities in credit 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.

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 overly expansive and leave many workers unprotected from the discriminatory impact of employment credit checks.

LANDSCAPE AND RESOURCES

For more information on banning credit checks, visit **Demos the New Economy Project**; the **NAACP Legal Defense Fund**, the **National Council of La Raza**, the **National Employment Law Project**, the **Lawyers Committee for Civil Rights Under Law**; as well as consumer groups such as the **National Consumer Law Center, USPIRG** and **state PIRGs**.

NOTES

1. 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; Avery, Calem, and Canner, "Credit Report Accuracy and Access to Credit," Federal Reserve Bulletin, 2004.
2. Angela Littwin, "Coerced Debt: The Role of Consumer Credit in Domestic Violence," California Law Review, 2012.
3. see Amy Traub, "Credit Reports and Employment: Findings from the 2012 National Survey on Credit Card Debt of Low- and Middle-Income Households," Suffolk University Law Review, Vol. 46, No. 3, Summer 2013.
4. "Background Checking—The Use of Credit Background Checks in Hiring Decisions" Society of Human Resources Management, July 19, 2012.
5. Amy Traub, "Discredited: How Employment Credit Checks Keep Qualified Workers out of a Job," Demos, 2013.

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