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Legislative Hearing on H.R. 3149, The Equal Employment for All Act
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Introduction

My name is Sarah Crawford, and I am Senior Counsel with the Employment Discrimination Project of the Lawyers' Committee for Civil Rights Under Law. I am honored to testify here today in support of the Equal Employment for All Act, which would prohibit employers from using credit checks against prospective and current employees. In light of research showing the lack of predictive value of credit information, credit checks create an *unnecessary* obstacle for those seeking gainful employment. Credit checks create barriers for those who apply for a job in order to support themselves and their families, to pay their bills, and to pull themselves out of debt. I am here today to comment on the negative impact of this practice, particularly for communities of color.

Most Employers Use Credit Checks, and the Practice is Becoming Increasingly Prevalent.

Credit checks are becoming an increasingly prevalent practice in the employment sector. According to a survey by the Society for Human Resource Management, approximately 60% of its employer members use credit checks as a hiring tool, compared to 35% of employers in 2001.¹ Some employers report that they use credit checks in hiring for *all* positions.² This practice is particularly troubling in light of research indicating that credit information bears no relation to job performance or risk of crime in the workplace.

Credit Information Does Not Predict Job Performance or Risk of Crime in the Workplace.

Contrary to the fear mongering and false promises by credit bureaus that profit from selling credit reports to employers, credit information *does not* predict job performance or risk of theft in the workplace. A TransUnion official recently admitted under oath, "At this point we

¹ Society for Human Resource Management, *Background Checking: Conducting Credit Background Checks*, January 2010, available at <http://www.shrm.org/Research/SurveyFindings/Articles/Pages/BackgroundChecking.aspx>; Thomas Frank, *Job Credit Checks Called Unfair. Needy hurt most; 5 states eye limits.* USA Today, February 13, 2009, 1A.

² *Id.*

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.”³

In fact, research has shown that credit information *does not* predict job performance.⁴ In 2004, Dr. Jerry Palmer and Dr. Laura Koppes of Eastern Kentucky University studied the credit reports of nearly 200 current and former employees working in the financial services areas of six companies.⁵ The study revealed that applicants with good credit reports were no more likely to receive positive performance evaluations and were no more likely to be terminated from their jobs.⁶ In fact, one aspect of the study revealed that workers with a higher number of late payments actually received *higher* performance ratings.

Credit Reports Provide Limited and Often Flawed Information.

While credit reports may show whether bills have been paid on time, they do not reflect the circumstances surrounding debts or reasons for any late payments. A credit report would not explain that a factory worker lost his job when his employer went out of business. A credit report would not explain that a man's credit was destroyed because he was the victim of identity theft or a predatory lending scam.⁷ A credit report would not explain that a woman's credit was destroyed as a result of divorce. And a credit report would not explain that a woman lost her job and her health coverage before developing breast cancer and incurring astronomical medical bills.

Medical debts reflected in credit reports raise particular concerns about the practice of employer credit checks. Medical debt often arises due to circumstances out of an individual's control and can have a catastrophic impact on an individual's financial situation. Seventeen percent of our citizens—15 million people—are uninsured, including 12% percent of whites, 21% of Blacks, and 32% of Hispanics.⁸ What happens when the uninsured face a major illness? Often, they incur medical debt. Such medical debts are often impossible to distinguish from other forms of debt listed in a credit report. Although most employers report that they do not base hiring decisions on medical debt, the impact of medical debt could be reflected in outstanding judgments, bankruptcies, foreclosures, and other forms of debts that employers may take into consideration. Over half of collections accounts are composed of medical debt, and

³ Andrew Martin, As a Hiring Filter, Credit Checks Draw Questions, New York Times, April 9, 2010, available at <http://www.nytimes.com/2010/04/10/business/10credit.html>.

⁴ Society for Industrial and Organizational Psychology, *Credit History Not a Good Predictor of Job Performance or Turnover*, available at <http://www.newswise.com/articles/view/502792/>.

⁵ *Id.*

⁶ *Id.*

⁷ Blacks and Hispanics are significantly more likely to receive high cost loans. See National Community Reinvestment Coalition, *Income is No Shield against Racial Differences in Lending: A Comparison of High-Cost Lending in America's Metropolitan Areas*, 2007, available at http://www.ncrc.org/images/stories/mediaCenter_reports/ncrc%20metro%20study%20race%20and%20income%20disparity%20july%2007.pdf.

⁸ U.S. Census, *Income, Poverty, and Health Insurance Coverage in the United States: 2009*, available at <http://www.census.gov/prod/2010pubs/p60-238.pdf>.

more and more, Americans are being forced to pay for costly medical procedures with credit cards.

Additionally, credit reports are rife with errors. One study found that 79% of the consumer credit reports surveyed contained some kind of error or mistake.⁹ This study found that 25% the reports surveyed contained serious errors such as false delinquencies or accounts that did not involve the consumer; 54% of the reports contained personal demographic information that was misspelled, long-outdated, belonged to a stranger, or was otherwise incorrect; 22% of the reports listed the same mortgage or loan twice; 8% of the credit reports were missing major credit, loan, mortgage, or other consumer accounts that demonstrate the creditworthiness of the consumer; and 30% of the reports contained credit accounts that had been closed by the consumer but remained listed as open.¹⁰ Another study found that some accounts showed balances that were not up to date, some creditors reported only negative information, and public records inconsistently reported actions such as bankruptcies and collections.¹¹

Furthermore, there is no common standard among employers as to how to interpret credit reports. Human resources officials are given little guidance as to how to interpret technical financial information. Despite the claims of the credit reporting companies, these reports do not provide meaningful insight into a candidate's character, responsibility, or prospective job performance.

Credit Checks Negatively Impact Communities of Color.

Credit background checks disproportionately impact communities of color. Unemployment has skyrocketed in recent years, and the effects of the recession have fallen most harshly on minorities. Sixteen percent of blacks and 12% of Hispanics are unemployed, compared with 9% of whites.¹² Fourteen percent of Americans live in poverty—that is 43.6 million people living in poverty in this country.¹³ According to the Census Bureau, this is largest number in the 51 years for which poverty estimates are available. 25% of blacks and Hispanics

⁹ U.S. PIRG, *Mistakes Do Happen, a Look at Errors in Consumer Credit Reports*, 2004, available at <http://www.uspirg.org/home/reports/report-archives/financial-privacy--security/financial-privacy--security/mistakes-do-happen-a-look-at-errors-in-consumer-credit-reports>

¹⁰ *Id.*

¹¹ U.S. General Accounting Office, *Consumer Credit: Limited Information Exists on Extent of Credit Report Errors and Their Implications for Consumers*, 2003, available at <http://www.gao.gov/new.items/d031036t.pdf>.

¹² Bureau of Labor Statistics, *Employment Status of the Civilian Population by Race, Sex, and Age*, September 3, 2010, available at <http://www.bls.gov/news.release/empsit.t02.htm>.

¹³ U.S. Census, *Income, Poverty, and Health Insurance Coverage in the United States: 2009*, available at <http://www.census.gov/prod/2010pubs/p60-238.pdf>.

live in poverty.¹⁴ A recent report revealed that the median wealth for single black women is only \$100 and \$120 for single Hispanic women, as compared to \$41,000 for single white women.¹⁵

Credit checks only compound this crisis. A 2007 Freddie Mac study found that 43% of African Americans and 34% of Hispanics had lower credit scores, as compared to 27% of whites. The study found that nearly half of black borrowers and a third of Hispanics have a record of delinquent loans or bankruptcy -- compared with a quarter of whites.

A 2004 Texas Department of Insurance study found that the average credit score for African Americans is 10% to 35% lower than the average credit score for whites, and the average credit score for Latinos is 5% to 25% lower than that of whites.¹⁶ Because minorities are significantly more likely to have poor credit, credit checks tend to screen out disproportionate numbers of minorities from job opportunities.

Credit Checks Can Run Afoul of Existing State and Federal Laws.

Finally, credit checks can run afoul of existing laws. A number of states already have enacted laws to limit employers' use of credit information, including Washington, Hawaii, Oregon, and Illinois, and many others are considering similar legislation.

At the federal level, Title VII of the Civil Rights Act of 1964¹⁷ prohibits employers from using a practice that disproportionately screens out minorities or women, unless the employer has a "business need" to use the practice. Most employers would not be able to meet this standard, because research has shown that credit information does not predict job performance or risk of theft in the workplace. Even if employers could prove a business need for the practice of running credit checks, Title VII requires employers to explore a "less discriminatory alternative" to the discriminatory practice.

In keeping with Title VII's disparate impact provisions, the Equal Employment Opportunity Commission cautioned that "if an employer's use of credit information disproportionately excludes African-American and Hispanic candidates, the practice would be unlawful unless the employer could establish that the practice is needed for it to operate safely or efficiently."¹⁸ The EEOC recently filed a Title VII complaint challenging the use of credit histories and criminal background check histories by a corporate event-planning company.¹⁹

¹⁴ *Id.*

¹⁵ Mariko Chang, *Lifting as We Climb: Women of Color, Wealth, and America's Future*, March 2010, available at <http://www.insightcced.org/uploads/CRWG/LiftingAsWeClimb-WomenWealth-Report-InsightCenter-Spring2010.pdf>.

¹⁶ Texas Department of Insurance, *Use of Credit Information by Insurers in Texas*, December 30, 2004.

¹⁷ 42 U.S.C. 2000e et seq.

¹⁸ EEOC letter, *Title VII: Employer Use of Credit Checks*, March 9, 2010, available at <http://www.eeoc.gov/eeoc/foia/letters/2010/titlevii-employer-creditck.html>.

¹⁹ *EEOC v. Freeman Cos.*, D. Md., No. 09-CV-02573, filed September 30, 2009.

It is important to note that the Equal Employment for All Act does not impose a blanket restriction on the use of credit checks. The bill would still permit employers to use consumer reports where there may be a true business need--for example, for positions requiring security clearance; for certain state or local jobs; for certain positions with financial institutions, and when otherwise required by law.

The Equal Employment for All Act Would Provide Much Needed Reform.

Despite the research, despite the disparate impact on communities of color and others, despite errors in credit reports, and despite existing legal restrictions on the practice, credit checks are an increasingly prevalent practice. The practice is based on mistaken assumptions that credit information will ferret out poor performers or those who will steal from their employers. However, research has proven that these assumptions are wrong.

The Equal Employment for All Act will eliminate unnecessary obstacles and put people back to work. This law will eliminate an unjustified hiring screen that disproportionately screens out people of color. This law will enable people to pay their bills and escape the vicious cycle of debt and unemployment.

SARAH CRAWFORD is Senior Counsel with the Employment Discrimination Project of the Lawyers' Committee for Civil Rights Under Law. In this position, Ms. Crawford advocates for worker protections and litigates high impact employment discrimination cases at trial and on appeal. Before joining the Lawyers' Committee, she worked as an attorney with the Department of Labor's Office of the Solicitor in the Division of Civil Rights. She serves on the Employment Task Force of the Leadership Conference on Civil and Human Rights. Ms. Crawford received her undergraduate degree and law degree at William and Mary in Williamsburg, Virginia and is admitted in Virginia and Washington, D.C.