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Oct. 6, 2016

The Honorable Michael Flaherty  
Boston City Council  
1 City Hall Sq.  
Boston, MA 02201

Re: An ordinance on the use of credit for employment decisions

Dear Councilmember Flaherty:

I write on behalf of the Consumer Data Industry Association (CDIA) to offer our perspective on the fair and appropriate use of credit histories by employers in appropriate circumstances and to request your committee oppose the legislation at hand. The proposed ordinance that the council is considering would unfairly limit employers' (especially small businesses) ability to adequately manage risk of loss and would ultimately penalize the very people the proposed ordinance is trying to protect.

CDIA has long played an important role in public policy discussion related to the use of credit history for employment purposes and we are grateful to continue this critical discussion with you and your committee. We believe that the proposed ordinance can still protect consumers and serve honest business needs were it amended to recognize, like the Connecticut law, for certain specific uses where credit history is vital.

By way of background, CDIA was founded in 1906 and is the international trade association that represents more than 100 consumer data companies. CDIA members represent the nation's leading institutions in credit reporting, mortgage reporting, check verification, fraud prevention, risk management, employment screening, tenant screening and collection services.

As your committee continues its discussion on the use of credit histories for employment purposes, we encourage you to keep in mind four important points. First, the use of credit reports for employment purposes is legally protected and the law provides consumers with substantial protections and means of enforcement. Second, credit reports for employment purposes are objectively tested. Third, credit reports for employment purposes are reliably proven predictors of risk. Finally, employers' use of credit reports is responsible, focused, and consistent with business necessity.

CDIA shares a core value with most Americans: employers want to hire the best people they can for the jobs available, and job applicants should not fear unlawful discrimination. However, in a climate of economic uncertainty, where employers are likely choosing from a large employment pool, they need to be critically careful about protecting their businesses and their customers. A credit report offers a seven-year look into an applicant's credit history and any difficulties caused by current conditions can be viewed in light of years of a prior positive credit history.

## **1. Credit reports for employment purposes are legally protected; Consumers are provided with substantial protections and means of enforcement.**

Since 1971, the federal Fair Credit Reporting Act (FCRA) has served employers and applicants alike by acknowledging vibrant and lawful use of criminal history information, requiring reasonable procedures to ensure maximum possible accuracy, and requiring substantial systems to correct any inaccuracies that occur. The FCRA is "an intricate statute that strikes a fine-tuned balance between privacy and the use of consumer information."<sup>1</sup> Many states have their own state FCRA laws.<sup>2</sup>

### ***A. General protections***

The FCRA governs consumer reports, regulates consumer reporting agencies, and protects consumers. The law requires consumer reporting agencies to maintain reasonable procedures to assure maximum possible accuracy.<sup>3</sup> The law also provides many other consumer protections as well. For example:

- Those that furnish data to consumer reporting agencies cannot furnish data that they know or have reasonable cause to believe is inaccurate, and they have a duty to correct and update information.<sup>4</sup>

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<sup>1</sup> Remarks of FTC Chairman Tim Muris, October 4, 2001 before the Privacy 2001 conference in Cleveland, Ohio.

<sup>2</sup> *Eg.*, Cal. Civ. Code § 1785 *et seq.*; N.Y. Gen. Bus. L. § 380 *et seq.*

<sup>3</sup> *Id.*, § 1681e(b).

<sup>4</sup> *Id.*, § 1681s-2(a)(1)-(2).

- Consumers have a right to dispute information on their consumer reports with consumer reporting agencies and the law requires dispute resolution within 30 days (45 days in certain circumstances). If a dispute cannot be verified, the information subject to the dispute must be removed.<sup>5</sup>
- A consumer reporting agency that violates federal law is subject to private lawsuits and enforcement by the Federal Trade Commission (“FTC”), Consumer Financial Protection Bureau (“CFPB”), and state attorneys general.<sup>6</sup>

### ***B. Protections specific to employment screening***

In addition to the general protections above, there are protections specific to the use of consumer reports for employment purposes.

For example, under § 1681k of the FCRA, a consumer reporting agency which “furnishes a consumer report for employment purposes and which for that purpose compiles and reports items of information on consumers which are matters of public record and are likely to have an adverse effect upon a consumer’s ability to obtain employment,” such as criminal record information, must either

- notify the consumer of the fact that public record information is being reported by the consumer reporting agency, together with the name and address of the employer to whom such information is being reported; or
- “maintain strict procedures designed to insure” that the information being reported is complete and up to date, and such information “shall be considered up to date if the current public record status of the item at the time of the report is reported.”

As a result of these requirements, consumer reporting agencies that include adverse criminal record information in an employment report either notify the consumer of that fact or access directly the most up-to-date information.

Although the FCRA allows employers to review the criminal histories of prospective and existing employees,<sup>7</sup> this review comes with certain obligations. Under § 1681b(b) of the FCRA:

- Before ordering a consumer report for employment purposes, an employer must certify to the consumer reporting agency that the employer has and will comply with the employment screening provisions of the FCRA, and that the

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<sup>5</sup> *Id.*, § 1681i(a)(1), (5).

<sup>6</sup> *Id.*, § 1681n, 1681o, 1681s.

<sup>7</sup> *Id.*, § 1681b(a)(3)(B).

information from the consumer report will not be used in violation of any applicable federal or state EEO laws or regulations.

- Before requesting a consumer report, an employer must give the prospective employee a written disclosure that a consumer report may be obtained for employment purposes and get the consumer's authorization to obtain a consumer report for employment purposes. The disclosure document provided to the consumer must be clear and conspicuous and contain only the disclosure.
- Before taking an adverse action based on a consumer report, the employer must provide to the consumer a copy of the report and the summary of rights mandated by the CFPB. This notice gives the employee an opportunity to dispute the report.
- The employer must provide a second adverse action notice if an adverse action is actually taken.

***C. Credit reports do not contain racial/ethnic information; credit scores are not used for employment screening***

It is critical to consider several other protections in place for employment screening use of credit reports.

- Credit reports do not contain a consumer's race, gender, religion, creed, color, marital status, or national origin.
- Credit scores are not used for employment purposes.

***D. The use of credit histories to discriminate against suspect classes in employment violates existing federal and state law.***

Federal and state laws are clear in their prohibition of the use of credit histories to discriminate – intentionally or with a discriminatory impact – against racial or ethnic minorities. However, the EEOC has failed to make a case that the use of credit histories discriminates against any protected class. The EEOC lost a case in 2014 when the U.S. Court of Appeals for the Sixth Circuit unanimously found the Commission had no case of discrimination by Kaplan Higher Education Corp.<sup>8</sup> In another case, which the EEOC lost in 2013, a U.S. District Court in Maryland said that “the EEOC has failed to isolate a specific employment practice of [the] defendant’s that allegedly caused a disparate impact”<sup>9</sup> so much so that the EEOC’s case was “a theory in search of facts to support it.”<sup>10</sup>

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<sup>8</sup> *EEOC v. Kaplan Higher Educ. Corp.*, 748 F.3d 749 (6<sup>th</sup> Cir.) (“*Kaplan*”)

<sup>9</sup> *EEOC v. Freeman*, 961 F. Supp. 2d 783, 799 (D. Md.2013)

<sup>10</sup> *Id.*, 803.

## 2. Credit reports for employment purposes are objectively tested

The reliability of consumer reports is proven through economic incentives, regulators' reports, and consumer reviews.

### A. *Economic incentives to ensure maximum reliability*

In addition to legal obligations and industry standards, there is an even bigger incentive for credit reports to be reliable. The FTC put it best: there is a "market incentive[] to maintain and improve the accuracy and completeness of [credit] reports."<sup>11</sup> There are approximately 200 million Americans with credit reports and credit reports are requested more than 27 million times each and every day. If credit reports were not reliable, they would not be used by businesses to manage their risks.

### B. *Debunking advocacy reports*

Reports issued by the U.S. Public Interest Research Group (PIRG), Consumers Union (CU), and the Consumer Federation of America (CFA) are often cited to perpetuate the myth of inaccuracies.<sup>12</sup> The Federal Trade Commission reviewed the PIRG and CU reports and found "questions have...been raised about the sample size and representativeness of the samples", and neither of these organizations "relied on the participation of all of the...key stakeholders in the credit reporting process."<sup>13</sup> The General Accountability Office reviewed available literature on perceived inaccuracies, including the PIRG, CU, and CFA reports and concluded that:

[t]wo of the studies did not use a statistically representative methodology because they examined only the credit files of their employees who verified the accuracy of the information, and it was not clear if the sampling methodology in the third study was statistically projectable. Moreover, all three studies counted any inaccuracy as an error regardless of the potential impact. Similarly, the studies used varying definitions in identifying errors, and provided sometimes

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<sup>11</sup> Federal Trade Commission, *Report to Congress Under Sections 318 and 319 of the Fair and Accurate Credit Transactions Act of 2003*, Dec. 2004, 7 ("FTC Report, 2004").

<sup>12</sup> For example, the first PIRG report, issued in 1998, reviewed 133 files of 88 people (out of 200 million Americans with credit histories). The second PIRG report in 2004 reviewed the credit reports of 154 people, most of whom were PIRG members or staffers. The sample sizes were not representative of the population, nor were the conclusions drawn statistically sound. For example, PIRG did not seek the input of creditors with regard to likelihood of an adverse credit decision, and based its conclusions on its own staffs' opinions as to who would or would not receive credit. Consumers Union's report was based on its asking 57 employees and their relatives to obtain their credit reports and identify anything they thought was wrong, regardless of whether it might actually impact the credit decision and again based on the consumers' own conclusions.

<sup>13</sup> FTC Report, 2004, iii.

obscure explanations of how they carried out their work. Because of this, the findings may not represent the total population of credit reports maintained by the CRAs. Moreover, none of these groups developed their findings in consultation with members of the credit reporting industry....<sup>14</sup>

### *C. Government and academic research*

In 2013, the Federal Trade Commission (FTC) published a congressionally mandated study on credit report accuracy. The FTC looked at all of the primary groups that participate in the credit reporting and scoring process: consumers; lenders/data furnishers (which include creditors, lenders, debt collection agencies, and the court system); score developers; and the national credit reporting agencies. The FTC report is based on work with 1,001 participants who reviewed 2,968 credit reports.<sup>15</sup> The FTC found that:

- 97.8% of all credit reports are materially accurate, meaning that only 2.2 % of credit reports had an error that would increase the cost of credit or a loan in the credit market.<sup>16</sup>
- 88% of all errors could be attributed to data being transmitted to credit bureaus by data furnishers.<sup>17</sup>

The FTC findings are consistent with academic research completed in 2011. In 2011, the Policy and Economic Research Council (PERC) published a review of 2,000 consumers and more than 81,000 credit accounts for those consumers on their credit reports<sup>18</sup>. The study was the most comprehensive and statistically sound study to ever be performed on the accuracy of data collected and maintained by Equifax, Experian and TransUnion and it is the first (and only) third-party peer-reviewed study dealing with the issue of credit report errors and their material effect on the creditworthiness of consumers. Among other findings, PERC found that:

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<sup>14</sup> *General Accounting Office, Consumer Credit – Limited Information Exists on Extent of Credit Report Errors and Their Implications for Consumers*, GAO-03-1036T (July 31, 2003), 9-10.

<sup>15</sup> *Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003*, Dec. 2012, A-4, available at [www.ftc.gov/os/2013/02/130211factareport.pdf](http://www.ftc.gov/os/2013/02/130211factareport.pdf).

<sup>16</sup> *Id.*, A-4.

<sup>17</sup> *Id.*, Appendix D.

<sup>18</sup> Michael A. Turner *et al.*, *U.S. Consumer Credit Reports: Measuring Accuracy and Dispute Impacts*, Policy & Economic Research Council (PERC) (May 2011), available at <http://perc.net/files/DQreport.pdf>. In response to criticism of PERC's work by several consumer activists, PERC published a follow-up paper restating the validity of its work and reiterating its support by its independent, peer-review board. Michael A. Turner, *General Response to Criticisms of recent PERC report: U.S. Consumer Credit Reporting: Measuring Accuracy and Dispute Impacts*, Policy & Economic Research Council (PERC) (August 2011), available at <http://perc.net/files/GR.pdf>.

- Less than one percent (0.93%) of all credit reports examined by the consumers prompted a dispute that resulted in a credit score correction and an increase of a credit score of 25 points or greater.
- After the dispute process ran its course, one-half of one percent (0.50%) of all credit reports examined by consumers had credit scores that moved to a higher “credit risk tier” as a result of a consumer dispute.
- 95% of all consumers who participated in the dispute process were satisfied with the outcome.

The CFPB reviewed accuracy rates in 2012 and found that the rate of credit-active consumers who disputed one or more items with credit bureaus was between 1.3% and 3.9%, or an accuracy rate of 96.1% to 98.7%.<sup>19</sup>

The Federal Reserve has reviewed the reliability of consumer reports and made several observations. Most importantly, the Federal Reserve, which looked at over 300,000 credit reports, noted that:

Overall, research and creditor experience has consistently indicated that credit reporting company information...generally provides an effective measure of the relative credit risk posed by prospective borrowers.<sup>20</sup>

#### *D. What consumers reviews show*

Between December 2004 and December 2006, over 52 million free credit reports were provided to consumers who exercised their right to obtain a free credit report under the FCRA. CDIA estimates that through the combination of direct-to-consumer products and consumers exercising their rights under the FCRA (including the right to one free disclosure per year), nationwide consumer reporting agencies issued over 160 million disclosures from December of 2004 to June 2007.

Data from free credit reports provided to consumers who exercised their right to a free credit report under the FCRA shows that 89% of the credit file disclosures issued resulted in no disputes. There are a number of points to consider with regard to the 11% of consumers who did submit a dispute:

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<sup>19</sup> *Key Dimensions and Processes in the U.S. Credit Reporting System: A review of how the nation’s largest credit bureaus manage consumer data*, Consumer Financial Protection Bureau, Dec. 2012, p. 27, [http://files.consumerfinance.gov/f/201212\\_cfpb\\_credit-reporting-white-paper.pdf](http://files.consumerfinance.gov/f/201212_cfpb_credit-reporting-white-paper.pdf).

<sup>20</sup> *An Overview of Consumer Data and Consumer Reporting*, *Federal Reserve Bulletin*, Feb. 2003, 50-51 (citations omitted); See also, *Credit Reporting Accuracy and Access to Credit*, *Federal Reserve Bulletin*, Summer 2004, 320.

- Out of 52 million credit file disclosures reviewed by consumers, only 1.98% of these resulted in a dispute where data was deleted.
- More than half of all disputes are in reality a request that data furnishers update accurate data in a more timely fashion.
- A dispute is not synonymous with an error. Approximately one-third of consumer disputes are from credit clinic attempts to delete accurate data.

*E. Credit reports are a reliably proven predictor of risk*

The U.S. Equal Employment Opportunity Commission (EEOC) has determined that “[o]verdue just debts increase temptation to commit illegal or unethical acts as a means of gaining funds to meet financial obligations.”<sup>21</sup> Because of risk that delinquent debt can pose, the EEOC runs credit checks on applicants for 84 of the agency’s 97 positions.<sup>22</sup>

Employers work hard to create working environments that are free of fraud and theft for themselves, their customers, and their other employees. It is important to consider the issue in light of some key statistics provided by the Association of Certified Fraud Examiners (ACFE). For example,

- The ACFE reviewed occupational fraud between early-2006 and early-2008. The top two red flag warnings exhibited by perpetrators associated with the fraud were instances where the fraudster was living beyond his or her financial means (present in 39% of all cases with a median loss of \$250,000) or experiencing financial difficulties (present in 34% of all cases with a median loss of \$111,000).<sup>23</sup>
- Employee theft accounts for nearly \$1 trillion annually. The average employee embezzlement totals more than \$175,000, but that number increases to \$200,000 for organizations with less than 100 employees.
- The most common occupational frauds in businesses involve employees writing fraudulent company checks, skimming revenues, and processing fraudulent invoices.

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<sup>21</sup> *Kaplan*, No. 1:10-cv-02882-PAG (U.S.C.A. 6<sup>th</sup> Cir.) Doc #: 103-16, Jan. 3, 2013, 20 of 26, page ID No. 5112. Positions subject to credit checks include not just criminal investigators, senior inspector, auditors, and HR and IT professionals, but also for public affairs specialist writer-editors, research librarians and GS-8 secretaries (\$47,000). *Id.*, 24 (page ID no. 5116) and 25 (page ID no.5117)

<sup>22</sup> *Kaplan*, 750 (6<sup>th</sup> Cir.).

<sup>23</sup> Association of Certified Fraud Examiners 2008 Report to the Nation.

<<http://www.acfe.com/documents/2008-rttn.pdf>> (viewed March 11, 2010) (“ACFE Report”).



There are other studies that highlight the business need for credit checks in targeted circumstances:

- The “[r]esults from a [study of] of 2519 employees indicated that those with financial history concerns were significantly more likely to engage in counterproductive work behaviors than those without financial history concerns.”<sup>24</sup>
- “Those who have high levels of personal financial wellness reported better performance ratings, less absenteeism, and less work time used for personal financial matters.”<sup>25</sup>
- “Some employees are financially stressed and this negatively affects their attitudes and behaviors at work.”<sup>26</sup>
- “Past research has supported the relationship between financial distress and workplace absenteeism. Those reporting less financial distress miss fewer days of work. Efforts to reduce financial distress, then, also may result in less employee absenteeism. Financial education has been found to be related to reduced financial distress. Employers who provide workplace financial education, then, may see a decline in both the level of financial distress exhibited by employees and also a reduction in absenteeism.”<sup>27</sup>
- Deborah Price, founder of the Money Coaching Institute, a California-based organization that assists clients with financial problems noted that “[o]ver time, [employees] who are burdened by debt become less reliable, patient, and productive.”<sup>28</sup>

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<sup>24</sup> Edward S. Oppler, *et al.*, *The Relationship Between Financial History and Counterproductive Work Behavior*, *International Journal of Selection and Assessment* Volume, vol. 16, no. 4 (Dec. 2008), available at [http://www.wright.edu/~brian.lyons/IJSA\\_2008.pdf](http://www.wright.edu/~brian.lyons/IJSA_2008.pdf).

<sup>25</sup> Joo, S. (1998). Personal financial wellness and worker job productivity. Unpublished doctoral dissertation, Blacksburg: Virginia Polytechnic Institute & State University, available at [http://scholar.lib.vt.edu/theses/available/etd-4198-155242/unrestricted/FRONTM\\_1.PDF](http://scholar.lib.vt.edu/theses/available/etd-4198-155242/unrestricted/FRONTM_1.PDF).

<sup>26</sup> Kim, J., & Garman, E. T. (2003). Financial stress and absenteeism: An empirically derived research model, *Financial Counseling and Planning*, 14(1), 31–42, available at <http://www.personalfinancefoundation.org/research/vte/An-Empirically-Derived-Research-Model.pdf>.

<sup>27</sup> Prawitz, A. D., Haynes, G., Garman, E. T., Shatwell, P., Hanson, K. C., & Hanson, E. W. (2010). Employee financial distress, emotional health risk, and absenteeism. *Proceedings of the 2010 Annual Eastern Family Economics/Resource Management Conference*, 4-6, available at [http://mrupured.myweb.uga.edu/pdfs/EFERMA\\_TwoMedicineHealth\\_financial\\_distress\\_emotional\\_health.pdf](http://mrupured.myweb.uga.edu/pdfs/EFERMA_TwoMedicineHealth_financial_distress_emotional_health.pdf) (citations omitted).

<sup>28</sup> Price, Deborah, *Responding to Workers’ Financial Crises*, First Quarter 2009, 10 available at [http://www.pfeef.org/research/efd/EAP\\_Article%20January%202009.pdf](http://www.pfeef.org/research/efd/EAP_Article%20January%202009.pdf).

- A San Francisco Chronicle article showed that 20% of all data breaches are committed by employees or insiders, and that the amount of data accessed by internal breaches is two-and-a-half-times larger than other breaches.”<sup>29</sup>

## *F. Studies on the use of credit history*

### *i. In general*

The special interest groups for consumers often decry a lack of scientific evidence proving the value of credit information for employment decisions. Yet, an absence of evidence is not evidence. As shown above, there are plenty of data showing the significance of poor credit and business risk. By way of example, assuming for the sake of argument that there were no such studies on credit for employment, there are not likely studies showing the relationship between the college an applicant attended and her work skills. Yet, the college an attended is often found at the top of her resume and it is one of the most common questions asked by employers in interviews.

### *ii. The liabilities of the 2003 APA study*

Special interest groups often tout a 2003 paper published by the *American Psychological Society*.<sup>30</sup> There are several problems with this study. First, the study’s premise is incorrect. The study suggests that credit reports are used as a gauge for employee “responsibility, the ability to meet deadlines, dependability and related employee characteristics”. But that is not how credit reports are used for employment purposes. Credit reports are used to measure the risk of loss to a business.

Second, the study’s methodology is questionable. For example, it is not clear how the study differentiates between employees who left for “negative” reasons and “non-negative” reasons. The authors appear to have asked the 178 employees why someone did not get a position, but they did not ask employers these questions.

Third, the study does not appear to have reviewed the impact of public record information which is also found on a credit report. When employers were asked what the most significant information on a credit report are that most likely impacts a

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<sup>29</sup> Alejandro Martínez-Cabrera, How some ex-employees turn to cybercrime, San Francisco Chronicle, April 8, 2010, available at <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2010/04/07/BUDB1CQ2E8.DTL>.

<sup>30</sup> Palmer, Jerry K. and Laura L. Koppes, Further Investigation of Credit History as a Predictor of Employee Turnover, *American Psychological Society*, 2003.

decision to not offer a position, the number one reason cited was a court ordered judgment.<sup>31</sup>

Fourth, the study's analysis is arguable. The study indicates that "credit history data likely reflects also many events outside a person's control" such as "divorce, death [,] past youthful stupidity as well as economic shocks (e.g., layoffs) for which an employee could not predict or prepare for" (sic). That is all true, but it does not detract from a person's financial standing and the potential for risk of loss.<sup>32</sup>

Fifth, even the authors of the paper have noted that there are legitimate uses for credit information by employers. In a news story following the release of their paper,

Palmer and Koppes concede that some rational arguments can be made for using credit history as part of an employment check. For example, credit history can reflect past conscientiousness and whether an applicant is in current financial trouble. This could be indicative of the likelihood or temptation to steal or leave a company.

In addition, Palmer says credit checks can be used as legal protection should the company be faced with a negligent hiring claim.

'These all seem like good reasons to include a credit check when considering a candidate for employment,' Palmer says. 'And, he adds, 'there may be circumstances when a credit check may be warranted.' The Federal Trade Commission in 2002 stated that checking a credit history is not uncommon for some sensitive positions, especially where money is involved.<sup>33</sup>

*iii. The EEOC and studies on the use of credit for employment.*

There are reliable studies supporting the use of credit information for employment and there is doubt about the value that the Palmer and Kopps report brings to the debate. However, even if one acknowledges that there are studies in support of and a study against the use of credit for employment, industrial psychologists hired by the EEOC to review the available studies said there is not enough data on which to base a public policy limit on credit use for employment.

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<sup>31</sup> SHRM Survey: Poor Credit History Not Barrier to Hiring, available at [www.shrm.org/publications/hrnews/pages/poorcreditnotbarrier.aspx](http://www.shrm.org/publications/hrnews/pages/poorcreditnotbarrier.aspx) ("SHRM Survey").

<sup>32</sup> AFSA Report, *infra*.

<sup>33</sup> PR Newswire, Jan. 2004, <http://www.newswise.com/articles/credit-history-not-a-good-predictor-of-job-performance-or-turnover>.

In Oct. 2010, the U.S. Equal Employment Opportunity Commission (EEOC) conducted a hearing on the use of credit for employment decisioning. The general conclusion of the EEOC hearing was best summed up by the EEOC's own chief researcher, Dr. Richard Tonowski. In his written testimony before the EEOC, Dr. Tonowski said that "our knowledge is incomplete, but the presentations [at the hearing] have provided a start for assessing the impact of credit checks on equal employment opportunity and their responsible use by employers."<sup>34</sup> Dr. Tonowski amplified that point in oral testimony. When asked by EEOC Commissioner Victoria Lipnic "it seems to me that we are really lacking in information on this topic and not necessarily how the information is being used, but the impact the information is having in terms of discrimination analysis?" Dr. Tonowski responded "I think that's a very good summary."<sup>35</sup>

A researcher hired by the EEOC to look in to the existing studies available on the use of credit for employment said in a hearing before the EEOC that

when you're talking about [the] five studies [that he reviewed], what I can do is say, 'Based on the five studies that exist, this is what we know.' But I think that it's just not enough studies. So I think you can do the meta-analysis, but it's not one I would, for example, run out and try to publish. I would wait until there were another 20 or 30 studies, which at this rate, would be another couple of hundred years to get those.<sup>36</sup>

### *G. Employers use credit history checks in a responsible and focused manner*

We know that our member companies – and most employers – use credit checks in a responsible and manner. CDIA data shows that 15% of *all employee background checks* involve a credit history review. In July 2012, the Society for Human Resources Management ("SHRM") released a survey on employer use of credit histories. The SHRM survey found that 47% of employers conduct a credit background check on employees, down from 53% in 2010. SHRM also reported that of those 47% that do conduct credit background checks, most employers use credit for selected positions within their companies. 87% consider credit histories because the position requires a fiduciary duty or financial responsibility; 42% consider credit histories for senior executive positions; 34% consider them for positions where there is access to highly

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<sup>34</sup> *Hearing before the U.S. Equal Employment Opportunity Commission, Employer Use of Credit History as a Screening Tool*, written statement of Dr. Richard Tonowski, Chief Psychologist, EEOC, Oct. 20, 2010, available at <http://www.eeoc.gov/eeoc/meetings/10-20-10/index.cfm>.

<sup>35</sup> *Id.*

<sup>36</sup> *Hearing before the U.S. Equal Employment Opportunity Commission, Employer Use of Credit History as a Screening Tool*, oral statement of Michael Aamodt, Ph.D., Principal Consultant, DCI Consulting Group, Inc., available at <http://www.eeoc.gov/eeoc/meetings/10-20-10/index.cfm>.

confidential employee salary, benefits, or personal information; and 25% in situations where the person is in a position of financial trust.<sup>37</sup>

The SHRM report goes on to say that 58% of those companies that use credit checks do so only after a conditional job offer is made and 33% do so after a job interview. Finally, SHRM reports that negative credit information is not always a bar to employment. It is clear from the SHRM report that the most significant negative credit events are debts in collection (21% to 61% of specific employment positions) and judgments (18% to 31% of specific employment positions). Yet, foreclosures, tax liens, and many other debts will not affect most applicants' ability to get a job. According to the SHRM findings, among organizations that do perform credit history checks, 80% percent have hired someone despite a poor credit reports. Finally, the SHRM data indicates that employers look for significant, long term financial difficulty, not for difficulties that may be associated with a loss of a job.<sup>38</sup> In short, employers use credit checks in a responsible and focused manner.

#### *H. When credit is banned, minority candidates can suffer*

A recent study from Robert Clifford, an economist at the Boston Fed, and Daniel Shoag, an assistant professor at Harvard's Kennedy School, "finds that when employers are prohibited from looking into people's financial history, something perverse happens: African-Americans become more likely to be unemployed relative to others."<sup>39</sup> According to the study, "bans on credit checks in employment are associated with fewer employer credit checks and employment gains in low-credit score areas"<sup>40</sup> and that overall "the changes induced by these bans [on credit use by employers] generate relatively worse outcomes for those with mid-to-low credit scores, for those under 22 years old, and for Blacks, group commonly thought to benefit from such legislation."<sup>41</sup>

## **Conclusion**

As shown above, the use of a prospective employee's credit history is legally protected, objectively tested, and reliably proven to predict risk. Many safeguards exist

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<sup>37</sup> SHRM Survey. See, *Background Checking—The Use of Credit Background Checks in Hiring Decisions*, available at [www.shrm.org/Research/SurveyFindings/Articles/Pages/CreditBackgroundChecks.aspx](http://www.shrm.org/Research/SurveyFindings/Articles/Pages/CreditBackgroundChecks.aspx).

<sup>38</sup> *Id.*

<sup>39</sup> Guo, Jeff, *The law was supposed to reduce discrimination. But it made hiring more racially biased*, Wash. Post WonkBlog, March 23, 2016, <https://www.washingtonpost.com/news/wonk/wp/2016/03/23/the-law-was-supposed-to-reduce-discrimination-but-it-made-hiring-more-racially-biased/>, citing Shoag, Daniel and Clifford, Robert, *No More Credit Score: Employer Credit Check Bans and Signal Substitution* (February 15, 2016). HKS Working Paper No. RWP16-008. Available at SSRN: <http://ssrn.com/abstract=2746642>

<sup>40</sup> Shoag and Clifford, 20.

<sup>41</sup> *Id.*, 1.

for employers to ensure that credit information is used where it is job related and consistent with business necessity.

CDIA hopes that this information is helpful to your committee as continues the discussion of credit history use as an employment screening tool. We remain willing to serve as a resource about the industry in an effort to work together to craft sound public policy.

Sincerely,

A handwritten signature in blue ink, appearing to read 'E. J. Ellman', with a long horizontal flourish extending to the right.

Eric J. Ellman  
Interim President & Chief Executive Officer  
Senior Vice President, Public Policy and Legal Affairs