

Testimony of Chi Chi Wu,
National Consumer Law Center
Before Joint Committee Labor & Workforce Development Committee
in support of H2019/S1154: An Act Regulating the Use of Credit Reports by Employers
June 29, 2021

Dear Chair Jehlen, Chair Cutler, and Honorable Members of the Committee,

The National Consumer Law Center¹ (NCLC) thanks you for holding this hearing on [H2019/S1154: An Act Regulating the Use of Credit Reports by Employers](#), or the Fair Chance in Employment Act--the FCEA for short. Also thanks to Senator Barrett and Representative Malia for introducing these bills. NCLC offers this testimony in support of H2019 and S1154 on behalf of our low income clients.

These bills protect workers from an unfair and harmful practice that threatens their ability to re-enter or remain in the workforce as they struggle back to normal in the wake of the COVID crisis--namely using credit reports to deny workers jobs or promotions, or even terminate them.

The use of credit reports in employment decisions is harmful and unfair to workers for a number of reasons. First is the absurdity of the practice. Considering credit histories in hiring creates a vicious Catch-22 for job applicants. A worker who loses their job is likely to fall behind on paying their bills due to lack of income. They can't rebuild their credit history if they can't get a job to pay those bills, and they can't get a job if they've got bad credit. It's a form of financial death spiral. Workers are especially vulnerable to this death spiral in the wake of a year where unemployment hit 16.4% in Massachusetts and where it is still far higher than it was before the pandemic.²

The use of credit histories is especially unfair given that many workers suffer damage to their credit reports due to circumstances beyond their control, such as illness, divorce or death of a spouse, economic recession, and of course, job loss. This has always been true but has never been more important than now when people are trying to reenter the workforce after COVID decimated entire industries like the hospitality sector. The use of credit histories presents yet another barrier to economic recovery – representing the proverbial practice of kicking someone when they are down. Yet

¹ The National Consumer Law Center is a nonprofit organization specializing in consumer issues on behalf of low-income people. We work with thousands of legal services, government and private attorneys, as well as community groups and organizations, from all states who represent low-income and elderly individuals on consumer issues. As a result of our daily contact with these advocates, we have seen many examples of the damage wrought by inaccurate credit reporting from every part of the nation. It is from this vantage point – many years of observing the problems created by incorrect credit reporting in our communities – that we supply these comments. Fair Credit Reporting (7th ed. 2013) is one of the twenty-one practice treatises that NCLC publishes and annually supplements. This testimony was written by Chi Chi Wu, lead author of that treatise, and Michael Best.

² FRED Economic Data, Unemployment Rate in Massachusetts. <https://fred.stlouisfed.org/series/MAUR>.

unfortunately, nearly a third of employers use credit histories for screening some job candidates, and 1 in 6 use them for all job candidates.³

The use of credit histories in hiring also discriminates against Black and Latinx applicants. Study after study has documented how, as a group, Black and Latinx consumers have lower credit scores. This includes studies by the Consumer Financial Protection Bureau,⁴ the Federal Reserve,⁵ the Federal Trade Commission,⁶ and the Brookings Institution.⁷ A list of older studies is available in our policy brief, [Past Imperfect: How credit scores and other analytics “bake in” past discrimination and perpetuate it \(2016\)](#). A more recent report found that over 50 percent of white households had a FICO credit score above 700, compared with only 20.6 percent of Black households.⁸ While employers supposedly do not use credit scores, but review the full credit reports, these studies are very relevant given that credit scores are supposed to be an accurate translation of the quality of a consumer’s credit report and creditworthiness.

Unfortunately, lower credit scores for African Americans and Latinos is not a surprise, because of both the legacy of discrimination and that these groups have been disproportionately affected by predatory credit practices, such as the marketing of subprime mortgages. Furthermore, the racial wealth gap - in which African American families have less than 13 cents and Latino families have 20 cents for every dollar in assets that a typical white household has – means that people of color are far less able to cushion the blow of financial catastrophes.⁹ The lack of assets to pay bills during times of financial crisis then results in damage to their credit histories. In fact, in Massachusetts, 16% of folks in white communities have a debt in collection, more than doubling to 35% in communities of color.¹⁰

There is no evidence that credit history benefits employers by predicting job performance, turnover or propensity for fraud. As a Stanford professor who reviewed several relevant studies for her PhD thesis concluded, “existing research provides few convincing correlations between personal financial data and

³ National Association of Professional Background Screeners, How Human Resource Professionals View the Usage and Effectiveness of Background Screening Methods, 2108, at 10, <https://pubs.thepbsa.org/pub.cfm?id=9E5ED85F-C257-C289-9E8E-A7C7A8C58D00>.

⁴ Analysis of Differences Between Consumer- and Creditor-Purchased Credit Scores, CFPB, at 18, Sept. 2012. http://files.consumerfinance.gov/f/201209_Analysis_Differences_Consumer_Credit.pdf.

⁵ Report to the Congress on Credit Scoring and Its Effects on the Availability and Affordability of Credit, Board of Governors of the Federal Reserve System, at 80-81, August, 2007. <http://www.federalreserve.gov/boarddocs/rptcongress/creditscore/creditscore.pdf>.

⁶ Credit Based Insurance Scores: Impacts on Consumers of Automobile Insurance, Federal Trade Commission, at 3, July 2007. https://www.ftc.gov/sites/default/files/documents/reports/credit-based-insurance-scores-impacts-consumers-automobile-insurance-report-congress-federaltrade/p044804facta_report_credit-based_insurance_scores.pdf.

⁷ Credit Scores, Reports, and Getting Ahead in America, Matt Fellowes, Brookings Inst., at 9-10, May, 2006. <https://www.ciaonet.org/attachments/2800/uploads>.

⁸ Jung Hyun Choi, et al., Urban Inst., Explaining the Black-White Homeownership Gap: A Closer Look at Disparities across Local Markets (Nov. 2019), <https://www.urban.org/research/publication/explaining-black-white-homeownership-gap-closer-look-disparities-across-local-markets>, at 8.

⁹ Neil Bhutta, Andrew C. Chang, Lisa J. Dettling, and Joanne W. Hsu, Federal Reserve, Disparities in Wealth by Race and Ethnicity in the 2019 Survey of Consumer Finances, FED Notes, September 28, 2020, <https://www.federalreserve.gov/econres/notes/feds-notes/disparities-in-wealth-by-race-and-ethnicity-in-the-2019-survey-of-consumer-finances-20200928.htm>.

¹⁰ Debt in America: An Interactive Map, Urban Institute, March, 2021. https://apps.urban.org/features/debt-interactive-map/?type=overall&variable=pct_debt_collections&state=25.

employee behavior.”¹¹ Even industry representatives have admitted this, with the Legislative Director for a top credit reporting bureau once saying, “...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.”¹²

The fact that medical debt that makes up such a large portion of debt collection accounts on credit reports – the Consumer Financial Protection Bureau found they constitute over half of debt collection items - is a good example of why credit reports have nothing to do with whether a worker is responsible or honest.¹³ Medical bills are often sent to collections for reasons completely out of the consumer’s control, such as disputes between insurance companies and providers.

Finally, the credit reporting system has significant rates of inaccuracy – rates that are unacceptable for purposes as important as use in employment. The Federal Trade Commission found that about 21% of consumers had verified errors in their credit reports, 13% had errors that affected their credit scores, and 5% had errors serious enough to be denied or pay more for credit.¹⁴ So if we assume that the credit reporting agencies have files on about 4.5 million Massachusetts residents have credit files, this would translate into 945,000 residents who have errors in their credit reports, 585,000 of whom have lower scores as a result, and 225,000 of whom have serious errors damaging enough to cause them to be denied or charged more for credit – or to lose a job. Even if we use the lowest figure, that leaves hundreds of thousands of Massachusetts workers in jeopardy of being denied employment on the basis of an inaccurate credit report.

As the Commonwealth starts the long road back to normal, we shouldn’t allow credit reports that don’t predict job performance, are riddled with errors, and perpetuate historic racial inequities and injustices to keep people from the jobs they need to get past the fallout from the COVID economic crisis.

I urge you to support H2019 and S1154.

Additional Studies On Credit Reports and Employment:

1. **Studies Do Not Generally Show Link Between Financial Data and Job Performance:** “existing research provides [few convincing correlations](#) between personal financial data and employee behavior” (listing studies).

¹¹ Barbara Kiviat, The art of deciding with data: evidence from how employers translate credit reports into hiring decisions, *Socio-Economic Review*, Volume 17, Issue 2, April 2019, Pages 283–309, <https://doi.org/10.1093/ser/mwx030> (citing studies from Weaver (2015) finding no link between credit outcomes and productivity; Bryan and Palmer (2012) finding no consistent relationship between credit report data and job performance or termination and Bernerth et al. (2012) finding no correlation between credit scores and supervisors’ reports of bad workplace behavior).

¹² Bad Credit Shouldn’t Block Employment: How to Make State Bans on Employment Credit Checks More Effective, DEMOS, February 25, 2016. <https://www.demos.org/research/bad-credit-shouldnt-block-employment-how-make-state-bans-employment-credit-checks-more>.

¹³ Market Snapshot: ThirdParty Debt Collections Tradeline Reporting, Consumer Financial Protection Bureau, July 2019.

https://files.consumerfinance.gov/f/documents/201907_cfpb_third-party-debt-collections_report.pdf#page=14.

¹⁴ Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003, Federal Trade Commission, December 2012 <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#page=8>.

2. **Hiring Decision Makers Bring Class and Other Bias to Financial Data:** Noting how a hiring decision maker "...[comes from generation after generation of inherited wealth](#) has no idea how hard it is to maintain a good credit rating, but he sat in judgment of these women post-2008, and he held that against them."
3. **Using Credit Scores Creates Barriers to Entry for African Americans and Latinos:** One study notes that "the combination of a negatively viewed screening tool [credit reports] (Nielsen & Kuhn, 2009) with racial differences [could result in the filing of discrimination claims](#) (Goldman, Gutek, Stein, & Lewis, 2006) that on the surface appear to hold considerable merit."
4. **Credit Scores Do Not Predict Workplace Deviance:** Study noting that while there were relationships between some work behaviors and credit scores, "[c]redit scores [did not, however, predict workplace deviance.](#)"
5. **Information in Credit Reports Does Not Predict Work Performance or Turnover:** Study noting that "[p]redictors extracted from applicant credit reports, such as number of times [late with payments, had no relationship](#) with either performance appraisal ratings or termination decisions. The authors therefore recommend caution in using credit report data for making selection decisions."