

Midas Issue Brief: Regulating the Misuse of Credit Scores for Employment



Rising instability in employment for lower wage and entry level workers by the improper use of credit scores leads to discrimination

Financial insecurity and inequality is at an all-time high, especially in Massachusetts¹. As a recognized leader on the issues of consumer financial protection and asset building, The Midas Collaborative promotes advocacy and research at the state and federal level to address the systemic issues that lead to financial insecurity. Through Midas' direct service work and from our member collaborative of 25+ community organizations, we've seen a rise of instability in employment for lower wage and entry level workers. This issue has been exacerbated by unnecessary barriers in the labor market, which require attention by policymakers in Massachusetts.

Job applicants face discrimination due to the improper use of credit scores as an employment screen. A 2016 report by Demos found that 1 in 10 unemployed workers in a low or moderate income household were denied a job because of a credit check².

Credit checks have increasingly been used as a screening measure beyond their original design. What began as an assessment tool for consumer credit by banks and retailers has been marketed and sold by credit reporting agencies as a measure to determine access to insurance, housing leases, and employment. According to the Society for Human Resources Management (SHRM), 47 percent of employers conduct credit checks on some or all applicants³. The initial employment credit screening that was used for finance-related positions has expanded to assessing individuals applying for lower paid, service sector positions by large, national companies. Individuals, who already struggle to find

sustainable employment, are held back by another barrier that does not accurately reflect their abilities in the workplace.

Credit scores are not good indicators of job performance or even credit histories.

- There is no viable research linking credit scores with job performance or retention.
- Data management by credit agencies has been poor. In addition to inadequate data security measures⁴, the accuracy of the transaction entries is questionable, so credit scores have a high fail-rate. Error rates have been found by the Federal Trade Commission to be as high as 26%⁵ and of the 913,000+ of the complaints to the federal government about financial products, the highest number (23%) pertained to credit reporting errors⁶.
- The methodology for calculating credit scores is inaccessible, secret, and unique to each data reporting corporation. Credit scoring changes are outside of the purview of legal processes; consumers cannot make use of speedy or due process in correcting, appealing, or updating entries on the reports.
- According to a 2015 study, banning credit checks increase overall employment in low-credit census tracts by between 2.2 and 3.3 percent⁷.
- By using an inappropriate tool of credit scores as an employment screen, workers face discrimination and a repeating cycle of economic hardship.

RECOMMENDATIONS:

At the state level, passage of the Act Regulating the Use of Credit Reports by Employers [S985:

Lead Sponsor Senator Mike Barrett, H3153: Lead Sponsor Representative Liz Malia] takes the necessary steps in:

1. Protecting employees and jobseekers from an unfair practice
2. Preventing an employer from considering a worker or job applicant's credit report in employment decisions, such as hiring, firing, promotion, demotion, discipline or compensation.
3. Making it unlawful for an employer to ask an employee or job applicant about her credit report or about information regarding her credit history.
4. Allowing an employer to use credit reports in making employment decisions where federal or state law or a self-regulatory financial organization requires it, where the position at hand is an executive or managerial position at a financial institution, where the position at hand involves significant financial responsibility to the employer, or where the position at hand requires national security clearance.
5. Adding protections for the subset of employees and job applicants subject to credit checks

that include written disclosure of the employer's reason for accessing the consumer report and, if applicable, why the report impacted the employer's decisions pertaining to the employee or job applicant. The law also includes a provision that prohibits any of the cost associated with obtaining the credit report from being passed on to the employee or applicant.

At the national level, reform efforts have gained in momentum in recent years, with:

- **10 states and multiple cities passing that laws restrict the use of credit reports by employers.** The states that have passed these laws include California, Connecticut, Maryland, and Vermont and cities include New York City and Chicago⁸.
- **U.S. Senator Elizabeth Warren has filing-similar legislation on the federal level,** saying that "limiting the use of credit reports by employers in hiring decisions will help level the playing field for hardworking families who deserve a fair shot."

Enactment of pending legislation ensures a stronger workforce with a greater contribution from all workers and advances financial security.

Supported by:

ACLU of Massachusetts, Bunker Hill Single Stop, The Charles Hamilton Houston Institute for Race and Justice, Demos, EMPATH, Greater Boston Labor Council, Greater Boston Legal Services, Institute for Career Transitions, Jewish Community Relations Council, Massachusetts AFL-CIO, MA Jobs with Justice, Mass. Law Reform Institute, MassPIRG, The Midas Collaborative, NAACP New England Area Conference, National Consumer Law Center, National Employment Law Project, Operation A.B.L.E.

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The Midas Collaborative advances the financial security of low and moderate income residents across Massachusetts in collaboration with its member organizations and partners. We facilitate asset development and asset protection of families in a manner that is collaborative, helps build communities, and is practitioner-tested and informed by state and national initiatives.

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¹ The Gini index for Massachusetts, a measure of income inequality, was 6th highest in the US, according to US Census Bureau, 2015.

² Amy Traub, "Discredited," 2013, Demos. Available at: <http://www.demos.org/sites/default/files/publications/Discredited-Demos.pdf>.

³ "SHRM Survey Findings: Background Checking – The Use of Credit Background Checks in Hiring Decisions," Society of Human Resources Management July 19, 2012.

⁴ See information on Equifax data breach: <https://www.mass.gov/equifax-data-breach>

⁵ Federal Trade Commission, "Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003," Jan, 2015. <https://www.ftc.gov/system/files/documents/reports/section-319-fair-accurate-credit-transactions-act-2003-sixth-interim-final-report-federal-trade/150121factareport.pdf>

⁶ Consumer Financial Protection Bureau, Consumer Complaint Database, <https://lendedu.com/blog/credit-reporting-complaints>

⁷ Robert Clifford and Daniel Shoag, "No More Credit Score' Employer Credit Check Bans and Signal Substitution," (2015). Available at: http://scholar.harvard.edu/files/shoag/files/no_more_credit_score_employer_credit_check_bans_and_signal_sub.pdf?m=1448384143

⁸ Ibid.