Credit Reports and Employment: Findings from the 2012 National Survey on Credit Card Debt of Low- and Middle-Income Households

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I. INTRODUCTION

Today, it is common for employers to look at job applicants' credit history before making hiring decisions. Even a cursory look at a popular job-listing website reveals that employers require credit checks for jobs as diverse as doing maintenance work, offering telephone technical support, assisting in an office, working as a delivery driver, selling insurance, laboring as a home-care aide, supervising a stockroom, and scooping frozen yogurt.[1] The Society for Human Resources Management (SHRM) surveyed its members in 2010 and concluded that 60% of them check an employee's credit history when hiring for some or all positions.[2] Yet despite the prevalence of employment credit checks, researchers, policymakers, and employers understand little about what credit checks reveal to employers, their consequences for job applicants, or their overall impact on our society. This Article, drawing on new data from Dēmos's 2012 National Survey on Credit Card Debt in Low- and Middle-Income Households, addresses these questions and finds substantial evidence that employment credit checks constitute an illegitimate barrier to employment.[3]

Dēmos's survey, conducted by national research firm Knowledge Networks between February 7 and March 2, 2012, queried a nationally representative sample of 997 low- and middle-income American households who carry credit

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1. Based on the author's review of job postings on the Craigslist website in the states of Vermont and Colorado in February 2012. *See generally* CRAIGSLIST, http://www.craigslist.org (last visited Mar. 29, 2013).

2. *See* SOC'Y FOR HUMAN RES. MGMT., BACKGROUND CHECKING: CONDUCTING CREDIT BACKGROUND CHECKS 3 (Jan. 22, 2010), *available at* http://www.shrm.org/Research/SurveyFindings/Documents/Background%20Check_Credit_FINAL.pptx.

3. *See* AMY TRAUB & CATHERINE RUETSCHLIN, DĒMOS, THE PLASTIC SAFETY NET: FINDINGS FROM THE 2012 NATIONAL SURVEY ON CREDIT CARD DEBT OF LOW- AND MIDDLE-INCOME HOUSEHOLDS 24-25 (2012), http://www.demos.org/sites/default/files/publications/PlasticSafetyNet-Demos.pdf (recommending ban on employment credit checks); *see also* Amy Traub & Catherine Ruetschlin, *The Plastic Safety Net: 2012*, DĒMOS (May 22, 2012), http://www.demos.org/publication/plastic-safety-net (summarizing findings of study). While some of the Dēmos findings from this study have been published in the report mentioned above, this Article contains additional survey data not previously published.

card debt.[4] We find that among unemployed survey respondents, employment credit checks are common and people have been denied jobs because of them. We also find that poor credit is associated with factors such as unemployment, lack of health coverage, and unpaid medical bills, suggesting that employment credit reports may reveal more about the economic stresses facing a household than an individual's suitability as an employee. Our findings are consistent with previous research concluding that African Americans are less likely to have good credit than the population as a whole.[5] Finally, survey respondents with poor credit are concerned that their reports contain errors. Given the dearth of research finding that credit history correlates with meaningful employment factors, we conclude that credit history illegitimately obstructs access to employment, often for the very job applicants who need work the most.

This Article will first provide an overview of employment credit checks and their legal basis in Part II,[6] then offer evidence that employment credit checks are prevalent and are widely used to deny employment in Part III.[7] Part IV takes a step back from our survey findings to include a critical look at employers' rationale for conducting employment credit checks, and to examine the empirical research concerning their relevance and validity.[8] Part V draws on our survey data to provide evidence that poor credit reflects factors such as race, unemployment, and medical debt.[9] Part VI explores the prevalence of errors in credit reports and the difficulty in addressing them.[10] Part VII integrates the findings of the previous sections and concludes that credit checks represent an illegitimate barrier to employment.[11]

II. AN OVERVIEW OF EMPLOYMENT CREDIT CHECKS AND THEIR LEGAL BASIS

Credit reports were initially developed as a tool for lenders to evaluate

4. *See* THE PLASTIC SAFETY NET, *supra* note 3, at 4 (explaining methodology of study). Knowledge Networks conducted a survey of 997 households who had carried credit card debt for more than three months. Respondents were randomly sampled using Knowledge Panel—a nationally representative panel that incorporates the views and opinions of all Americans and is not susceptible to the biases of "opt-in" panels. For our survey, "low- to middle-income" is defined as a total household income between 50% and 120% of the local (county-level) median income. All of our respondents were at least 18 years of age. In order to ensure that the indebted sample captured households who carry credit card debt, as opposed to those carrying a temporary balance, we only included households who reported having a balance for more than three months. The margin of error for the indebted sample is +/- 3.9 percentage points. An additional sample was used to obtain reliable base sizes for African-American and Latino populations. The margin of error for the oversample of 152 African-American households is +/- 11.3 percentage points. The margin of error for the oversample of 205 Latino households is +/- 9.1 percentage points. *See id.*

5. *See infra* note 36 and accompanying text.

6. *See infra* Part II.

7. *See infra* Part III.

8. *See infra* Part IV.

9. *See infra* Part V.

10. *See infra* Part VI.

11. *See infra* Part VII.

whether a would-be borrower would be a good credit risk: By looking at someone's history of paying his or her debts, lenders decide whether to make a loan and on what terms. Accordingly, credit reports include not only an individual's name, address, previous addresses, and Social Security number, but also information on: mortgage debt; student loans; car payments; credit card accounts, including balances, credit limits, and monthly payments; bankruptcy records; bills in collection; and tax liens. Employers may purchase credit reports through any number of companies that offer employment background checks (which also may include checks of criminal records or other public data) but the credit portion of the report is typically supplied by one of three large global corporations: Equifax, Experian, and Transunion, which are known as consumer reporting agencies (CRAs). Credit scores—used by lenders and consisting of a single number calculated on the basis of information in a credit report—are not typically provided to employers.

Employers may legally access credit reports on job applicants and existing employees under the terms of the Fair Credit Reporting Act (FCRA), which authorizes a CRA to furnish a credit report "[t]o a person which it has reason to believe . . . intends to use the information for employment purposes . . . ."[12] The FCRA requires that employers requesting credit reports get written permission from the individual whose report they want.[13] Under the statute, employers must also notify individuals before they take "adverse action" (in this case, failing to hire, promote, or retain an employee) based in whole or in part on any information in the credit report.[14] Along with this notification, the employer must provide a copy of the report and a written description of the consumer's rights.[15] After providing job applicants with a short period of time (typically three to five business days) to identify and begin disputing any errors in their credit report, employers may then act based on the report and must once again notify the job applicant of their action.[16]

While these consumer protections are important, they are insufficient to prevent credit checks from becoming a barrier to employment because employers can reject any job applicant who refuses a credit check. And while a growing number of state laws restrict the circumstances under which an employer can discriminate against job applicants on the basis of credit history, federal law permits employers to use credit history as a basis for denying employment.[17]

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12. 15 U.S.C. § 1681b(a)(3)(B) (2006).

13. *See id.* § 1681b(b)(2).

14. *See id.* § 1681b(b)(3).

15. *See id.* (establishing conditions for adverse actions based on consumer report).

16. *See* 15 U.S.C. § 1681b(b)(3).

17. *See, e.g.*, CAL. LAB. CODE § 1024.5 (West 2012); HAW. REV. STAT. ANN. §§ 378-2(a)(8), 378-2.7 (LexisNexis 2013); 820 ILL. COMP. STAT. ANN. §§ 70/1-70/30 (West 2012); MD. CODE ANN., LAB. & EMPL. § 3-711 (LexisNexis 2013); OR. REV. STAT. ANN. § 659A.320 (West 2013); VT. STAT. ANN. tit. 21, § 495i (2012); WASH. REV. CODE ANN. § 19.182.020 (West 2012); *see also* Act of July 13, 2011, 2011 Conn. Legis.

III. THE PREVALENCE AND IMPACT OF EMPLOYMENT CREDIT CHECKS

The federal government collects no public information on the number of job applicants subjected to credit checks as a condition of employment. The most commonly cited statistic on the prevalence of employment credit checks comes from the SHRM, which finds 13% of employers conduct credit checks on all job applicants and 47% conduct credit checks on some applicants.[18] But this statistic fails to clarify how many employees are actually subjected to credit checks, or the likelihood that a job seeker will be obliged to consent to one in order to be considered for a job. Our survey of low- and middle-income households carrying credit card debt finds that among those survey respondents who are unemployed, one in four recalls that a potential employer has requested to check the applicant's credit report. Yet there is reason to believe that the actual prevalence of employment credit checks may be significantly higher: In the flurry of paperwork that often surrounds the job-application process, applicants may quickly forget the specifics of the many documents they signed. Indeed, many survey respondents cannot remember whether they have been asked to authorize a credit check or not. In addition, the prevalence of credit checks is likely to be greater among the higher-income households excluded from our survey because SHRM finds that employers are more likely to conduct credit checks for senior executive positions and jobs with significant financial responsibility, positions likely to be so well paid as to push household income outside our survey's bounds in many cases.

To represent a truly widespread barrier to employment, credit checks must not only be widely conducted, but actually become a basis for losing job opportunities. We find that one in ten participants in our survey who are unemployed has been informed that he would not be hired for a job because of the information in his credit report. Among job applicants with blemished credit histories, one in seven has been advised that he was not hired because of his credit.[19] However, the true number may be higher still: While the FCRA requires employers to provide official notification when a credit report played a role in the decision not to hire someone, compliance with this provision is difficult to oversee. In the unlikely event that they are investigated, employers who do not want to bother with FCRA-mandated disclosures can falsely claim that the credit report was not a factor in their decision to not hire an employee. Again, the fact that our survey included only low- and middle-income

Serv. 11-223 (West) (limiting employers' use of credit scores).

18. *SHRM Research Spotlight: Credit Background Checks*, SOC'Y FOR HUM. RESOURCE MGMT. 1 (Sept. 2010), http://www.shrm.org/research/surveyfindings/articles/documents/ccflier_final.pdf.

19. Throughout this paper we define blemished or "poor" credit history to encompass consumers with self-reported FICO credit scores below 620, commonly regarded as the cut-off point for prime loans. While employers do not have access to employee credit scores, these scores offer a window into the credit information that employers examine in a credit report because scores are based on the same information contained in credit reports.

households may also understate the proportion of total job applicants rejected by employers because of their poor credit.

IV. SUMMARY OF EMPIRICAL RESEARCH ON THE RELEVANCE OF EMPLOYMENT CREDIT CHECKS

Employers who conduct credit checks argue that "a poor credit history may reflect irresponsibility or carelessness" that would carry over into the workplace,[20] that checking credit is a way to reduce or prevent "theft and embezzlement, [or] other criminal activity,"[21] or simply that credit history provides a full picture of job applicants necessary to determine who would be the "best fit" for a job.[22] Not surprisingly, these mirror the claims made by companies marketing credit-background-checking services to employers. Yet there is little evidence that credit reports reliably provide relevant information about an individual's propensity to commit crime or ability to do a particular job. The few peer-reviewed studies that do address the question often fail to reproduce the circumstances under which employment credit checks are used in the real world, limiting their applicability.

A 2011 study by Bernerth, Taylor, Walker, and Whitman published in the *Journal of Applied Psychology* purported to show a connection between workplace-task performance and credit scores, although the authors found no association between credit scores and deviant workplace activity, such as stealing or harassing coworkers.[23] The job-performance portion of the study was based on asking supervisors about the job performance of 113 subjects and comparing these assessments with the subjects' credit scores. The research failed to reflect the real-world use of employment credit reports in several ways that limit its relevance. First, the researchers used credit scores, rather than the more subjectively assessed credit reports available to employers conducting credit checks.[24] A more problematic aspect is that the job-performance portion of this study looked only at subjects who were employed at the time the credit check was conducted. In fact, the average supervisor's time of supervising the study's subjects was more than three years, suggesting that most employees in

20. Elizabeth Owens Bille, Assoc. Counsel, Soc'y for Human Res. Mgmt., Statement to the Communications, Financial Services and Interstate Commerce Committee of the National Conference of State Legislatures 4 (Dec. 11, 2009), *available at* http://www.ncsl.org/documents/standcomm/sccomfc/SHRM-ElizabethBilleStatement.pdf.

21. SOC'Y OF HUMAN RES. MGMT., *supra* note 2, at 10.

22. Dan Pilcher, *Senate Committee Approves Bill Restricting Employers Use of Credit Checks When Evaluating Job Applicants and Current Workers*, COLO. CAPITOL REP. (Feb. 17, 2012), http://www.cochamber.com/legislative/pdf/CACI%20Capitol%20Report_February%2017.htm.

23. *See generally* Jeremy B. Bernerth et al., *An Empirical Investigation of Dispositional Antecedents and Performance-Related Outcomes of Credit Scores*, 97 J. APPLIED PSYCHOL. 469 (2012).

24. *See id.* at 470 & n.1 (defining components of credit report constituting overall credit score). Our research also uses credit scores as a proxy for the harder-to-distill information in credit reports. However, our survey does not attempt to directly measure the correlation between credit and employment outcomes.

the sample had many years of steady employment. As a result of this sample bias, the study excluded a significant real-world population of job applicants—the unemployed and those with an unstable work history. Leaving out the unemployed is particularly limiting because, as we will see, Dēmos's research suggests that unemployment can negatively affect credit. Thus the study has little to say about whether credit reports tell employers anything relevant about the future job performance of unemployed job applicants.

A 2008 study by Oppler, Lyons, Ricks, and Oppler published in the *International Journal of Selection and Assessment* looked at the personnel files of employees at a federal government agency and found a weak correlation between "counterproductive work behaviors" (such as theft or misuse of the employers' credit cards) and employees' answers on a self-reported questionnaire that asked about both personal and work-related financial history.[25] In particular, the questionnaire asked: "In the last 7 years, have you, or a company over which you exercised some control, filed for bankruptcy, been declared bankrupt, been subject to a tax lien, or had legal judgment rendered against you for a debt?"[26] Again, the study did not look at the commercial credit reports used by employers conducting employment credit checks. What's more, the study conflated personal and job-related credit history, failing to address the key question about whether one's *personal* financial history affects job performance or likelihood to commit crimes. Ultimately, even the connection between financial missteps at a past company and financial misconduct with the current employer was tenuous.

Finally, in a study published in 2012 in *The Psychologist-Manager Journal*, Laura Koppes Bryan and Jerry Palmer sampled 178 employees, split between active and terminated workers, holding "financial services and collections" jobs with an employer.[27] Koppes Bryan and Palmer used commercially available employment credit reports and compared each of the specific categories of credit information—for example, the number of past-due accounts in an employee's report—with the performance ratings of the active employees and termination data for those who had left the organization. The study found no relationship between the various indicators of poor credit and either the performance ratings of active employees or whether the employee was terminated. In a follow-up study, which also showed that "there was virtually no relationship between credit history and performance ratings," the researchers found a weak correlation between employees who had a higher number of thirty-day late payments on their credit report and higher performance ratings—that is, worse credit in this category was associated with better

25. *See* Edward S. Oppler et al., *The Relationship Between Financial History and Counterproductive Work Behavior*, 16 INT'L J. SELECTION & ASSESSMENT 416, 417-19 (2008).

26. *Id.* at 417.

27. *See* Laura Koppes Bryan & Jerry K. Palmer, *Do Job Applicant Credit Histories Predict Performance Appraisal Ratings or Termination Decisions?*, 15 PSYCHOL.-MANAGER J. 106 (2012).

employee performance.[28] The researchers theorized that financial problems might have been motivating employees to work harder. Like the other studies, the portion of the research that analyzed the connection between job performance and credit looked only at currently employed workers and thus excluded the potential impact of unemployment.

In addition to the peer-reviewed academic research, supporters of employment credit checks also cite a survey by the Association of Certified Fraud Examiners, which recommends that employers conduct credit checks where permitted by law because a portion of people who commit workplace fraud are living beyond their financial means or experiencing financial difficulties.[29] But this reasoning is critically flawed: The fact that employees who commit fraud often experience financial difficulties does not mean that any but a tiny proportion of employees with financial problems will illegally defraud their employers. The survey also found that male employees caused losses from fraud twice as high as female employees; that workers older than age 50 are liable for twice as much in fraud losses as younger employees; and that divorce is another major warning sign of workplace fraud. Yet few would argue that individuals in these demographics should be subject to employment discrimination if an effort to avert fraudulent activity.

In sum, there is little evidence that credit checks reveal information relevant to employment. While employers understandably want an indicator that can help them hire hard-working, responsible employees who will not steal or otherwise engage in misconduct on the job, the research provides an insufficient basis to believe that employment credit reports meet this need.

V. WHAT POOR CREDIT HISTORY REALLY REVEALS

Credit checks do not indicate who will be a model employee, but Dēmos's 2012 National Survey on Credit Card Debt of Low- and Middle-Income Households suggests they do tell employers something: Among the low- and middle-income households with credit card debt in our sample, we find that poor or declining credit is associated with having children in the household, with being African American, with losing one's job, and with lacking health coverage or having medical debt.[30] In the following section, we will explore each of these influences in greater depth, but the list raises an important question: Are any of these factors a legitimate reason to deny someone a job?

Racial discrimination is clearly against the law and, as we discuss below, employers have been held liable for the disparate impact that using credit checks in hiring can have on racial minorities. President Obama has proposed a

28. *See id.*

29. *See* ASS'N OF CERTIFIED FRAUD EXAM'RS, REPORT TO THE NATIONS ON OCCUPATIONAL FRAUD AND ABUSE: 2010 GLOBAL FRAUD STUDY 70 (2010), *available at* http://www.acfe.com/uploadedFiles/ACFE_Website/Content/documents/rttn-2010.pdf.

30. *See* THE PLASTIC SAFETY NET, *supra* note 3, at 17-18 (listing common damages from poor credit).

law banning discrimination against the unemployed in hiring, and New Jersey and Oregon have already enacted laws restricting the practice.[31] Several states have also considered legislation banning hiring discrimination against parents, while Alaska and the District of Columbia have done so already.[32] Finally, the Americans with Disabilities Act bans discrimination against one group of people likely to face high medical bills.[33] The legal litany is not intended to suggest that Americans are adequately protected against the potentially discriminatory impact of credit checks—indeed, they are not—but rather to demonstrate that making hiring decisions based on some of the factors associated with poor credit is widely considered discriminatory and illegitimate, inspiring calls for legislative action.

Our survey found that households of color are at a serious disadvantage when it comes to credit history.[34] While the majority of low- and middle-income white households with credit card debt report good or excellent credit, the opposite is true for African Americans. Sixty-five percent of white households in our sample describe their credit scores as good or excellent, much higher than the 44% of African-American households who identify in the good or excellent categories.[35] In contrast, over half of African-American households fall into the range of fair and poor credit. Among households with credit card debt who know their credit score within a range, just 15% of white households in our sample have credit scores below 620, compared to more than a third of African-American households. Most white households (59%) report scores of 700 or above, displaying strong credit, while less than one-quarter of African Americans (24%) are able to attain the same high credit-rating status. Our findings are consistent with previous research on the racial gap in credit scores, including studies by the Federal Reserve Board, the Federal Trade Commission (FTC), and the Brookings Institution.[36]

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31. *See* American Jobs Act of 2011, S. 1549, 112th Cong. §§ 371-79 (1st Sess. 2011) (prohibiting employment discrimination against unemployed); Act of Mar. 29, 2011, ch. 40, 2011 N.J. Laws (codified as amended at N.J. STAT. ANN. § 34:8B (West 2013)) (prohibiting employers from stating current employment as job qualification); S.B. 1548, 76th Leg. Assemb. (Or. 2012) (prohibiting job postings excluding unemployed).

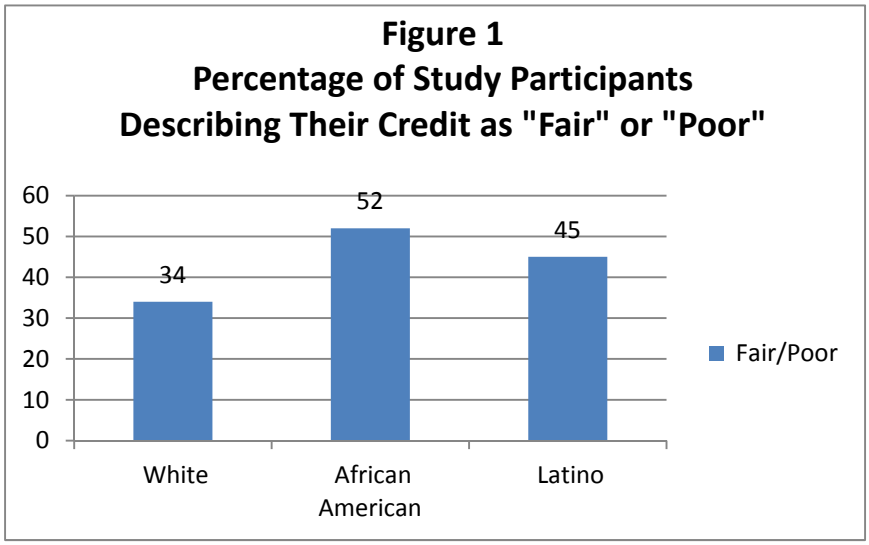
32. *See* ALASKA STAT. § 18.80.220 (2013) (prohibiting discrimination on basis of parenthood); D.C. CODE § 2-1401.01 (2012) (prohibiting discrimination on basis of "family responsibilities").

33. *See* ADA Amendments Act of 2008, 42 U.S.C. § 12101 (2006 & Supp. III 2009).

34. *See* THE PLASTIC SAFETY NET, *supra* note 3, at 2.

35. *See infra* Figure 1. Participants were asked, "What best describes your credit score: Excellent, Good, Fair, or Poor?"

36. *See* BD. OF GOVERNORS OF THE FED. RESERVE SYS., REPORT TO THE CONGRESS ON CREDIT SCORING AND ITS EFFECTS ON THE AVAILABILITY AND AFFORDABILITY OF CREDIT, at S-4 (Aug. 2007), *available at* http://www.federalreserve.gov/boarddocs/rptcongress/creditscore/creditscore.pdf; FED. TRADE COMM'N, CREDIT-BASED INSURANCE SCORES: IMPACTS ON CONSUMERS OF AUTOMOBILE INSURANCE 61-67 (July 2007), *available at* www.ftc.gov/os/2007/07/P044804FACTA_Report_Credit-Based_Insurance_Scores.pdf; MATT FELLOWES, THE BROOKINGS INST., CREDIT SCORES, REPORTS, AND GETTING AHEAD IN AMERICA 9 tbl.1 (May 2006), *available at* http://www.brookings.edu/~/media/research/files/reports/2006/5/childrenfamilies%20fellowes/20060501_creditscores; Robert B. Avery et al., *Credit Report Accuracy and Access to Credit*, 2004 FED. RES. BULL. 297, 313 chart 3, *available at* http://www.federalreserve.gov/pubs/bulletin/2004/summer04



The racially discriminatory potential of employment credit checks is the key reason that civil rights organizations such as the NAACP, the National Council of La Raza, the Leadership Conference on Civil and Human Rights, and the Lawyers Committee for Civil Rights Under Law have publicly opposed the use of employment credit checks.[37] In general, civil rights law mandates that employers justify the appropriateness of an employment practice if it creates a disparate impact on a group historically subject to workplace discrimination.[38] Although specific cases of discrimination can be difficult to prove, some high-profile suits have been won. For example, the Department of Labor won a case in 2010 against Bank of America in which the bank was found to have discriminated against African Americans by using credit checks to hire entry-level employees. A significantly higher proportion of African-American candidates (11.5%) were excluded because of the credit check than white candidates (6.6%).[39]

Raising children also has a negative association with credit scores, as households with one or more child at home are more likely to report poor credit. Twenty-three percent of indebted households raising children describe

_credit.pdf.

37. *See* Letter to the U.S. House of Representatives, Cosponsor the Equal Employment for All Act (H.R. 321) (June 21, 2012), *available at* http://www.civilrights.org/advocacy/letters/2012/cosponsor-the-equal.html (listing nearly forty advocacy groups urging legislation to prohibit employment credit checks).

38. *See* Griggs v. Duke Power Co., 401 U.S. 424, 431 (1971) (requiring demonstrable relationship between challenged employment practice and job performance).

39. *See* Office of Fed. Contract Compliance Programs v. Bank of Am., No. 1997-OFC-16, 2010 WL 9034675, at *16 (Ben. Rev. Bd. 2010).

their credit scores as poor, compared to 12% among indebted households without kids. These numbers correlate to reported scores: 25% of households who have children at home and know their credit scores within a range classify their credit score below 620, compared with 12% of households without children at home. Instead, households without children are more likely to have scores at the top of the ranking, with 17% of these households reporting a credit score of 800 or higher, compared to 5% in this category among indebted households with children living at home.

It is easy to understand how having an income-earner in one's household out of work for an extended period of time might make it more difficult to keep up with bills and thus to maintain good credit. We find that households coping with prolonged unemployment were more likely than others in our sample to have other household members work extra hours or get an additional job, borrow money from family and friends, dip into retirement savings, or sell valuable items such as a car or jewelry to deal with unexpected expenses. But these measures were not always enough: 31% of households who have had a member out of work for two months or longer in the past three years say their credit score has declined over the same period of time, compared to just 22% of those who haven't experienced extended unemployment in their household. Moreover, people with low credit scores are significantly more likely to have incurred expenses related to job loss over the past three years. Nearly half (45%) of those with credit scores below 620 say they have incurred expenses relating to the loss of a job in the last three years. This compares with just 19% of those with scores over 700. In sum, it appears much easier to maintain good credit if you are not coping with extended unemployment.

It makes little sense to say that someone is not a good candidate for a job because they are still coping with the expense of a costly family medical emergency from three years prior. Yet this may be exactly the type of situation that a blemished credit history indicates: Having unpaid medical bills or medical debt is cited as one of the leading causes of bad credit among survey respondents who say their credit is poor, with more than half citing medical bills as a factor. Households with poor credit are more likely to have medical debt on their credit cards than those with good credit. In addition, more than half of those with self-reported credit scores under 620 also have medical debt that is not on their credit cards. A lack of health coverage is also a factor in poor credit: In our sample, households that include someone without health coverage are more than twice as likely to report that their credit score has declined a lot in the past three years.

Our findings about the prevalence of medical debt parallel those of previous studies. The Commonwealth Fund found that in 2007, 41% of working-age adults had accrued medical debt or reported a problem paying their medical

bills.[40] Similarly, a Federal Reserve study found that the credit reports of about 15.7% of middle-income people and nearly 23% of low-income people included collection accounts for medical debt.[41] The vast majority of these individuals had lower credit scores as a result. The most startling statistic is that Federal Reserve Board researchers found that 52% of all accounts reported by collection agencies consisted of medical debt.[42] Poor credit tells a story of medical misfortune far more convincingly than one of poor work habits.

VI. CREDIT REPORTING ERRORS

A final factor limiting the reliability of credit reports for employment is the high rate of credit reporting errors. In our sample, 12% of respondents who say that they have poor credit assert that errors in their credit report were a contributing factor. This rate of error mirrors other major research on the subject, including a 2008 FTC-sponsored pilot study that found that about 31% of people who reviewed their credit report found errors they wanted to dispute and that roughly 11% of people (comparable to our 12% finding) reported errors that were categorized by the FTC as "material," i.e., errors that significantly affected credit scores. Similarly, a 2011 study funded by the credit reporting industry and conducted by the Policy & Economic Research Council (PERC) found that 19.2% of people who reviewed their credit reports identified information that appeared to be erroneous; and 12.1% reported those apparent errors could have a material impact. While the researchers stress that not all consumers chose to dispute the errors they identified and that most information that was disputed did not lead to large changes in credit scores or in the study's risk tiers, the findings remain troubling. Credit reports are so pervasive that a 12% rate of material errors means that 20 million Americans have inaccurate information about their debts or payment record on their credit reports.

As noted in Part II, the Fair Credit Reporting Act includes some safeguards to protect job-seekers subject to employment credit checks.[43] Employers must notify job applicants before implementing a decision not to hire them based wholly or in part on information from a credit report.[44] Job applicants must be given both a copy of the report and a chance to dispute errors. CRAs are supposed to resolve disputes within thirty days.[45] In practice, the process of

40. MICHELLE M. DOTY ET AL., THE COMMONWEALTH FUND, SEEING RED: THE GROWING BURDEN OF MEDICAL BILLS AND DEBT FACED BY U.S. FAMILIES 2 (2008), *available at* http://www.commonwealthfund.org/usr_doc/Doty_seeingred_1164_ib.pdf.

41. Avery et al., *supra* note 36, at 320 tbl.6.

42. Robert B. Avery et al., *An Overview of Consumer Data and Credit Reporting*, 2003 FED. RES. BULL. 47, 69 & tbl.11, *available at* http://www.federalreserve.gov/pubs/bulletin/2003/0203lead.pdf.

43. *See supra* text accompanying notes 14-17.

44. *See supra* text accompanying notes 14-17.

45. *See supra* text accompanying notes 14-17.

identifying and disputing credit-reporting errors—and getting employers to acknowledge the result—may not occur so smoothly. *The New York Times* described the struggle of one woman who, after years of steady employment, spent nearly two years looking for work and was still unable to land a job despite assistance from a workforce development agency.

> Ms. Ortiz was baffled by the repeated rejections until her caseworker checked her credit report. Everything made sense then: it showed that damaging, faulty information had been added to her report.
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> "It said I owe over $75,000 and that I have two cars," Ms. Ortiz squealed. "I don't drive! It said I have a mortgage. I don't have a house!"
>
> Quickly realizing that she needed to correct the false information, Ms. Ortiz and her caseworker sent letters to more than 20 companies and the credit bureaus to set straight which debts were veritably hers.
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> "I did have a lot of credit cards, but I always paid them on time," she said. "I only had $500 of credit card debt, maybe less, and they weren't outstanding."
>
> Her credit reputation has since been restored, and she has achieved a nearly perfect TransUnion score, 798, but the blemish on her record took several months to reverse and was not without consequences.
>
> In the summer of 2010, Ms. Ortiz went to a second interview for a position as a bank teller on Long Island.
>
> "I thought I was going to get the job, but they ran my report and told me no," she said. Despite the letters Ms. Ortiz had sent out, her report still reflected incorrect information.[46]

Ms. Ortiz's story is instructive. It is impossible to know how many of the jobs she applied for over the years rejected her as a result of incorrect credit information while the employers simply did not provide the notification required under the FCRA. As we noted earlier, compliance with the notification requirement is difficult to monitor or enforce.[47] At a minimum, it appears that the bank-teller position did not provide the required opportunity to address the already-disputed errors in her credit report before rejecting her for the job. Finally, it is revealing that even with the help of a dedicated case worker, it took Ms. Ortiz months to fix errors in her credit report. As a practical matter, disputing an error can be a time-consuming, nearly impossible three-party negotiation between the credit bureau, the creditor, and the individual—a negotiation for which the outcome is ultimately controlled by the

46. Rebecca White, *A Credit Nightmare, But Coming out Better in the End*, N.Y. TIMES, Jan. 11, 2012, www.nytimes.com/2012/01/12/nyregion/a-credit-nightmare-but-coming-out-better-in-the-end.html.

47. *See supra* Part II.

sometimes-arbitrary decision of the agency.[48]

VII. CONCLUSION

As worker advocate Nat Lippert puts it, the use of credit reports in employment "puts job seekers in a catch-22. They can't pay their bills because they can't get a job and now they can't get a job because they can't pay their bills . . . ."[49] Our research indicates that the catch-22 does indeed trap many job seekers who struggle with poor credit. But the fundamental unfairness of the situation goes a step further: There is little evidence that credit reports reveal valid and relevant information about employee performance or likelihood to commit a crime on the job and far more evidence that poor credit history is associated with factors such as race, unemployment, parenting responsibilities, and medical debt, none of which are legitimate reasons for selecting an employee. We conclude that credit history illegitimately obstructs access to employment. Many Americans seem to agree: When we asked our sample of low- and middle-income workers with credit-card debt whether employers should be able to look at a job applicant's credit report, 75% said no.

48. *Credit Reports: Consumers' Ability to Dispute and Change Inaccurate Information: Hearing Before the H. Comm. on Fin. Servs.*, 110th Cong. 15 (2007) (statement of Chi Chi Wu, Staff Att'y, Nat'l Consumer Law Ctr.), *available at* http://archives.financialservices.house.gov/hearing110/oswu061907.pdf (noting difficulty of correcting errors).

49. Kathleen Pender, *New Law Stops Bosses Using Credit Info in Hiring*, S.F.GATE, Oct. 13, 2011, http://www.sfgate.com/business/networth/article/New-law-stops-bosses-using-credit-info-in-hiring-2327455.php (quoting Unite Here research analyst Nat Lippert).