


EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION OWI
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ADVISORY: TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 11-14

TO: AMERICAN JOB CENTERS
STATE WORKFORCE AGENCIES
STATE WORKFORCE ADMINISTRATORS
STATE WORKFORCE LIAISONS
STATE AND LOCAL WORKFORCE BOARD CHAIRS AND DIRECTORS
STATE AND LOCAL EQUAL OPPORTUNITY OFFICERS
STATE LABOR COMMISSIONERS
WORKFORCE INVESTMENT ACT SECTION 166 INDIAN AND NATIVE AMERICAN GRANTEEES
WORKFORCE INVESTMENT ACT SECTION 167 MIGRANT AND SEASONAL FARMWORKER JOBS PROGRAM GRANTEEES
SENIOR COMMUNITY SERVICE EMPLOYMENT PROGRAM GRANTEEES
EMPLOYMENT AND TRAINING ADMINISTRATION REGIONAL ADMINISTRATORS
JOB CORPS CONTRACTORS
RECIPIENTS OF DEPARTMENT OF LABOR FINANCIAL ASSISTANCE
SUB-RECIPIENTS OF DEPARTMENT OF LABOR FINANCIAL ASSISTANCE

FROM: PORTIA WU 
Assistant Secretary
Employment and Training Administration

NAOMI BARRY-PEREZ 
Director
Civil Rights Center

SUBJECT: Update on Complying with Nondiscrimination Provisions: Credit History Restrictions and Possible Disparate Impact Based on Race, National Origin, Sex, and Disability

1. Purpose. The purpose of this Training and Employment Guidance Letter (TEGL) is to provide information to the public workforce system and other entities (including the “covered entities” listed above) that receive federal financial assistance to operate job banks, about the use of credit information to exclude, screen, or select applicants for employment and to provide tools

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to educate employers about the practical and legal drawbacks of this employment practice. This guidance is being issued by the Employment and Training Administration (ETA), in conjunction with the Civil Rights Center (CRC).

This TEGL is accompanied by Training and Employment Notice (TEN) number 12-14: *Promising Practices and Resources for Addressing Long-Term Unemployment*,¹ which outlines proactive steps that a number of employers, employer organizations, and workforce agencies have implemented or pledged to implement to address the unique barriers to employment facing many of the long-term unemployed. One of these barriers, the practice of using credit information to exclude applicants from employment, is the subject of this TEGL. Long-term unemployed individuals may be more likely than employed or short-term unemployed individuals to fall into debt due to prolonged periods when they lack sufficient income or employer-sponsored benefits such as health insurance to meet basic needs. As a result, these long-term unemployed individuals may be more likely to be negatively impacted by these credit screening practices.

2. Background. This TEGL addresses the practice of considering job applicants' credit information and excluding job seekers with negative credit information from consideration for job vacancies.² According to a 2012 survey by the Society for Human Resource Management (SHRM), almost 50 percent of its employer members use credit checks³ in making hiring decisions. Employers report that they use credit information to evaluate an applicant's proclivity for theft or embezzlement, and to reduce potential legal liability for negligent hiring.⁴

This TEGL provides covered entities in the public workforce system, including those listed above (and their employer customers), with tools to ensure that exclusionary policies regarding workers' credit information are not at cross-purposes with the system's efforts to promote employment opportunities for all workers. In addition, this TEGL provides guidance on compliance with nondiscrimination obligations when credit information is used in making employment decisions. This TEGL applies to all jobs available through a covered entity's job bank.

¹ Training and Employment Notice 12-14, *Promising Practices and Resources for Addressing Long-Term Unemployment*, issued October 17, 2014, available at http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=7919.

² Examples of such job announcements recently found posted in public workforce system job banks include: "Must have a good credit rating"; "Must be able to pass a credit check prior to hire"; and "Ability to pass pre-employment background investigation, including credit check."

³ Employers can obtain credit information by purchasing it from credit reporting agencies (CRAs). A credit report provided to an employer may include information on an individual's current and past employment, credit and payment history, and collection agency activity, as well as public record information such as bankruptcies, foreclosures, tax liens, arrests, convictions, and court judgments and filings. See Federal Trade Commission, *40 Years of Experience With the Fair Credit Reporting Act* at 1 (July 2011), available at <http://www.ftc.gov/reports/40-years-experience-fair-credit-reporting-act-ftc-staff-report-summary-interpretations>; see generally Chi Chi Wu, *Credit Reporting and Repair for Domestic Violence Survivors* (National Consumer Law Center Apr. 27, 2010), available at www.nclc.org/images/pdf/domestic_violence/credit-reporting.pdf.

⁴ SHRM, *Background Checking – The Use of Credit Background Checks in Hiring Decisions* (July 19, 2012), available at <http://www.shrm.org/research/surveyfindings/articles/pages/creditbackgroundchecks.aspx>.

3. Actions to be taken by covered entities.

a. Covered entities must provide the attached Notices to Employers (Attachments 1 and 2), which describe the drawbacks of using credit information in any part of the hiring process, and encourage employers to adopt best practices for such screening. At a minimum, covered entities must advise employers, through use of the Notices to Employers, about some of the reasons why screening job seekers based on credit history may be imprudent:

- Negative information on credit reports may reflect that applicants have experienced difficult circumstances beyond their control that have no relationship to their ability to perform the job, such as a medical emergency, disability, layoff, loss of a spouse, or identity theft.
- Credit reports may contain inaccuracies.⁵
- No reliable body of evidence validates the use of credit history in hiring decisions.⁶
- Using credit history as an employment screening tool may disproportionately exclude certain racial and ethnic groups, women, and people with disabilities from hiring consideration.⁷

⁵ See, e.g., Statement of Chi Chi Wu, Esq., National Consumer Law Center, at 4 (Oct. 20, 2010), submitted for EEOC Meeting on Employer Use of Credit History as a Screening Tool (hereinafter “EEOC Meeting on Credit History”), available at <http://www.eeoc.gov/eeoc/meetings/10-20-10/wu.cfm> (summarizing available data on accuracy showing material error rates of 12 to 37 percent in credit reports). *But cf.* Michael A. Turner, et al., *U.S. Consumer Credit Reports: Measuring Accuracy and Dispute Impacts* (Policy & Economic Research Council (PERC) 2011), available at <http://www.perc.net/wp-content/uploads/2013/09/DQreport.pdf> (finding that 1.78% of credit reports that were subjected to the Fair Credit Reporting Act (FCRA) dispute resolution process were found to contain errors that had lowered the individual's credit score by 10 or more points, but failing to examine the error rate for credit reports that were not subjected to the dispute resolution process). Because the results of studies that measure the accuracy of credit reports vary widely, Congress directed the Federal Trade Commission (FTC) to conduct a nationwide study of the accuracy of credit reports. See FTC, *Report to Congress Under Section 318 and 319 of the Fair and Accurate Credit Transactions Act of 2003* at 2-3, 5 (Dec. 2004), available at <http://www.ftc.gov/reports/facta/041209factarpt.pdf>. Accordingly, the FTC has conducted two pilot studies and a nationwide representative study. See FTC, *Fourth Interim Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act* at 2-6 (Dec. 2010), available at <http://www.ftc.gov/reports/section-319-fair-accurate-credit-transactions-act-2003-fourth-interim-federal-trade>; and FTC, *Fifth Interim Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act* (Dec. 2012), available at <http://www.ftc.gov/reports/section-319-fair-accurate-credit-transactions-act-2003-fifth-interim-federal-trade>. The FTC's December 2012 report found that approximately 20 percent of consumers had an error that was corrected by a credit reporting agency (CRA) after it was disputed, on at least one of their three credit reports; four out of five consumers who filed disputes experienced some modification to their credit report; and approximately 13 percent of consumers saw a change in their credit score after the CRAs modified errors on their credit report.

⁶ See, e.g., Laura Koppes Bryan & Jerry K. Palmer, *Do Job Applicant Credit Histories Predict Performance Appraisal Ratings or Termination Decisions?*, THE PSYCHOLOGIST-MANAGER JOURNAL, Vol. 15, Issue 2, at 106-27 (2012) (finding no relationship between credit history and job performance or negative reasons for terminations); compare Jeremy B. Bernerth et al., *An Empirical Investigation of Dispositional Antecedents and Performance-Related Outcomes of Credit Scores*, J. APPLIED PSYCHOL. Vol. 97, Issue 2, at 469-78 (Mar. 2012) (finding credit scores may be related to certain measures of job performance, but not to “workplace deviance”); see also Statement of Michael Aamodt, Ph.D., Principal Consultant, DCI Consulting Group, Inc., at 2, submitted for EEOC Meeting on Credit History, available at <http://www.eeoc.gov/eeoc/meetings/10-20-10/aamodt.cfm> (concluding after meta-analysis of available studies that “[t]here is so little research on the topic that any conclusions would be premature”).

⁷ Studies have shown racial disparities in what is considered “good” or “bad” credit history and credit scores. (A credit score is a number created by the credit bureaus using a mathematical formula based on data from the credit

In addition, covered entities should advise employers, through use of the notices, about best practices to avoid or minimize improper decisions based on an applicant's credit information:

- An employer should only take credit information into account if:
 - the employer will be able to show that it has an objective, clearly-defined reason why credit information used to disqualify an applicant is job-related for the position in question and consistent with business necessity (for example, necessary for the safe and efficient performance of the job in question);
 - the use of credit histories is not prohibited by governing state or local law; and
 - the employer will comply with the Fair Credit Reporting Act (FCRA), 15 U.S.C. 1681 et seq., which mandates certain procedures when employers screen applicants using credit reports (see below).
- If the employer has an objective, clearly-defined reason why credit information is relevant to a particular job, to ensure consistency with business necessity, the employer should:
 - verify whether the information in an applicant's credit report is accurate and how recent it is;
 - determine the reasons the applicant may have negative information on a credit report;

report; employers typically see credit reports rather than credit scores.) For example, a 2007 Federal Reserve study reported that the mean credit score (based on a model score used for the study, where a higher score connotes better credit) for Asians was 54.8; for non-Hispanic whites was 54.0; for Hispanics was 38.2; and for blacks was 25.6. *See* Bd. of Governors of the Federal Reserve, *Report to the Congress on Credit Scoring and Its Effects on the Availability and Affordability of Credit* at 80 (Aug. 2007), available at <http://www.federalreserve.gov/boarddocs/rptcongress/creditscore/default.htm>. A 2004 Texas Department of Insurance study concluded that "Blacks have an average credit score that is roughly 10% to 35% worse than the credit scores for Whites" and that "Hispanics have an average credit score that is roughly 5% to 25% worse than those for Whites." Texas Dep't of Insurance, *Use of Credit Information by Insurers in Texas* at 13 (Dec. 2004), available at <http://www.tdi.texas.gov/reports/credit3.html>. Further, a 2000 Freddie Mac study reported that 48% of African Americans, 34% of Hispanics, and 27% of whites had "bad" credit. *See* Testimony of Adam Klein, Partner, Outten & Golden, LLP, before the H. Subcomm. on Financial Services and Consumer Credit, at 1 (Sept. 23, 2010) (citing Freddie Mac National Consumer Credit Survey (2000)), available at www.financialservices.house.gov/Media/file/hearings/111/Klein092310.pdf. Additionally, studies have shown that women, who have higher medical debt that leads to credit card debt, and persons with disabilities, who have higher medical expenses, could be disadvantaged by credit checks. *See, e.g.*, Statement of Sarah Crawford, Esq., Lawyers Committee for Civil Rights Under Law, submitted for EEOC Meeting on Credit History at 2, available at <http://www.eeoc.gov/eeoc/meetings/10-20-10/crawford.cfm>; *see also* Mariko Chang, *Lifting as We Climb: Women of Color, Wealth, and America's Future* at 13 (Insight Center for Community and Economic Development Spring 2010), available at <http://www.insightcced.org/uploads/CRWG/LiftingAsWeClimb-WomenWealth-Report-InsightCenter-Spring2010.pdf> (women are more likely to have credit card debt than men, and the overall debt burden for black women is among the highest of all groups). Disparities in credit history may be attributed to disparities in income levels, unemployment, and health insurance coverage, among other factors. *See, e.g.*, Testimony of Stuart J. Ishimaru, Then-Acting Chairman of the EEOC, before the Hawaii State Senate Committee on Labor at 2-3 (Mar. 19, 2009), available at http://www.capitol.hawaii.gov/session2009/testimony/HB31_TESTIMONY_LBR_03-19-09_LATE.pdf

- determine whether the applicant has taken steps, such as credit counseling, to improve any of the circumstances reflected in the negative information;
- not discourage job seekers by stating in vacancy announcements that only those with “good credit” need apply; and
- not rely exclusively on negative information in a credit report to automatically disqualify applicants; instead, the employer should always consider other relevant information regarding the applicant’s fitness for the job the applicant is seeking.

b. Covered entities should conduct their activities using safeguards to prevent discrimination against individuals in protected groups based on their credit information. Using negative credit information to disqualify applicants from hiring consideration may amount to unlawful discrimination under federal civil rights laws, as discussed below. Covered entities also should familiarize themselves with the FCRA and any state or local laws that impose conditions on the use of credit information to screen and select applicants for employment or to make other employment decisions. The information contained in this TEGl does not supersede those laws.

i. Posting job announcements in Job Banks. Covered entities should establish policies and procedures to ensure that job announcements containing restrictions based on credit information are handled as described below.

- When an employer registers with the American Job Center (AJC) (or other covered entity) to use a job bank, the applicable covered entity must provide the employer a notice that appears as Attachment 1 to this TEGl. This notice explains practical considerations that counsel against employers excluding job seekers on the basis of negative credit information. This notice also advises employers not to automatically exclude job seekers based on their credit history or any other hiring criterion unless it is job-related and consistent with business necessity, because these types of employment practices may violate federal civil rights laws if they have a disparate impact on protected groups. In addition, the notice provides information for employers about their obligations under the FCRA, which requires employers to obtain applicants’ permission before asking a consumer reporting agency for a credit report and to provide applicants with a copy of the report and a summary of their rights before taking adverse action, such as denying employment.
- Covered entities should use a system (automated or otherwise) for identifying job postings that include hiring restrictions based on credit history. This system may be the same system that entities already use to identify other discriminatory language in job postings.
- When job postings that exclude applicants based on credit history have been identified, covered entities must provide employers that have posted these vacancy announcements the notice that appears as Attachment 2 to this TEGl. This notice states that the employer will be given the opportunity to remove or edit the vacancy announcement. The notice and opportunity to remove or edit must be provided to the employer whether the vacancy announcement has been posted directly with the covered entity or has instead been made available in the Job Bank through other means.

- Any job postings containing language that excludes candidates based on credit history should remain posted only when accompanied by the Notice to Job Seekers that appears as Attachment 3 to this TEGL. This notice explains that the exclusions in the posting may be unlawful under certain circumstances. The notice further informs job seekers that the covered entity does not prohibit individuals with negative credit information from applying for the posted position, and that they may obtain a free copy of their credit report by visiting www.AnnualCreditReport.com or calling 1-877-322-8228. Covered entities that accept job applications from job seekers should continue to forward to employers the applications of all applicants who otherwise meet the job qualifications, despite language in vacancy announcements excluding candidates based on their credit history.

The Department recognizes that covered entities have a variety of systems in place to comply with nondiscrimination obligations, and that such entities engage with employer customers in varying ways. Covered entities may elect to take steps other than those listed above that are at least equally effective in preventing unlawful exclusions based on credit history, except that covered entities must provide the attached notices as discussed in this TEGL.

ii. Screening and referral based on credit history restrictions. When screening or referring applicants for job postings, job orders, training, or other employment-related services:

- Covered entity staff should refrain from screening and refusing to make job referrals based on what may be perceived (by the applicant, staff, or employer) as negative credit information. Job seekers who are referred for positions where the job posting states that the employer takes credit history into account must receive a copy of the notice to job seekers (see Attachment 3), along with the job announcement.
- Nothing in this TEGL prevents covered entity staff from taking into account an individual's credit history for purposes of providing appropriate employment-related services or participating in programs designed to provide credit-related help.

c. Covered entities are also encouraged to consult the TEN 12-14: *Promising Practices and Resources for Addressing Long-Term Unemployment*, which contains best practices for overcoming barriers to employment for the long-term unemployed.⁸

4. Applicable civil rights statutes, regulations, and guidance.

The nondiscrimination provisions that apply to the federally-assisted workforce system prohibit intentional discrimination on the basis of race, national origin, sex, disability and other protected bases, as well as policies or practices that appear neutral, but which have a disparate impact on these protected groups and cannot be justified as job-related and consistent with business necessity. Although individuals with negative credit histories are not a protected group under the applicable federal civil rights laws, and FCRA permits the use of credit reports for employment decisions, antidiscrimination laws may be implicated when credit history is used to

⁸ Training and Employment Notice 12-14, *Promising Practices and Resources for Addressing Long-Term Unemployment*, October 17, 2014 available at http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=7919.

make employment decisions. For example, if applicants of a particular race receive more favorable hiring consideration than applicants of another race who have the same or similar negative credit information, this could indicate a form of intentional discrimination. As another example, if an employer screens out all workers who have negative credit information, this may have a disparate impact on certain protected groups whose members have negative credit history at a disproportionately higher rate than other groups. To determine whether a particular practice violates federal antidiscrimination statutes, an analysis of the relevant facts of the particular case and, if available, more refined data would be necessary.

a. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e et seq., prohibits employment discrimination based on race, color, religion, sex, and national origin. *See* 42 U.S.C. 2000e-2. Entities within the public workforce system, such as State Workforce Agencies and AJCs, may be regarded as “employment agencies” under Title VII.⁹ Thus, Title VII prohibits employment agencies from failing or refusing to refer an individual for employment or otherwise discriminating against any individual based on race, color, religion, sex, or national origin. 42 U.S.C. 2000e-2(b). In addition, employment agencies may be liable for violating Title VII if they “print or publish or cause to be printed” any job announcement that discriminates based on race, color, religion, sex, or national origin.¹⁰

The Equal Employment Opportunity Commission (EEOC), the federal agency that administers and enforces Title VII,¹¹ held a public meeting on October 20, 2010, on Employer Use of Credit History as a Screening Tool.¹² Credit check policies, when used as employee selection tools, are subject to Title VII employment discrimination analysis.¹³

⁹ *See* 42 U.S.C. 2000e(c) (defining “employment agency” as “any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer”); EEOC, COMPLIANCE MANUAL, SEC. 2, THRESHOLD ISSUES (2000), *available at* <http://www.eeoc.gov/policy/docs/threshold.html>. EEOC POLICY GUIDANCE, NO. N-917.002, WHAT CONSTITUTES AN EMPLOYMENT AGENCY UNDER TITLE VII, HOW SHOULD CHARGES AGAINST EMPLOYMENT AGENCIES BE INVESTIGATED, AND WHAT REMEDIES CAN BE OBTAINED FOR EMPLOYMENT AGENCY VIOLATIONS OF THE ACT? *available at* 1991 WL 11665181, at *1-2 & n.1 (Sept. 20, 1991).

¹⁰ 42 U.S.C. 2000e-3(b). *See, however,* 47 U.S.C. 230, which may shield Internet-based Job Banks from civil liability for posting content created by third parties.

¹¹ The Department’s Office of Federal Contract Compliance Programs (OFCCP) administers Executive Order 11246, which, similar to Title VII, prohibits covered federal contractors, federally-assisted construction contractors, and covered subcontractors from discriminating in employment decisions on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin. *See* Executive Order 11246, as amended. OFCCP enforces the nondiscrimination requirements of Executive Order 11246 in accordance with Title VII. The Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended (VEVRAA), which requires covered federal government contractors to post certain categories of job announcements in the state workforce agency job bank or with American Job Centers, also is administered and enforced by OFCCP. *See* 38 U.S.C. 4212(a)(2).

¹² Testimony and a transcript of that meeting are available at <http://www.eeoc.gov/eeoc/meetings/10-20-10/>.

¹³ *See* Ishimaru Testimony at 1. *see also* EEOC, “Pre-Employment Inquiries and Credit Rating or Economic Status,” *available at* http://www.eeoc.gov/laws/practices/financial_information.cfm (“[i]nquir[ies] into an applicant’s current or past assets, liabilities, or credit rating” that are not job-related and consistent with business necessity “generally should be avoided because they tend to impact more adversely on minorities and females”); *see* EEOC Factsheet “Employment Tests and Selection Procedures” (last modified Sept. 23, 2010), *available at* http://www.eeoc.gov/policy/docs/factemployment_procedures.html; EEOC Informal Discussion Letter, Title VII: Employer Use of Credit Checks (Mar. 9, 2010), *available at* <http://www.eeoc.gov/eeoc/foia/letters/2010/titlevii-employer-creditck.html> (“Title VII prohibits an employment practice that disproportionately screens out racial

b. Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, applies to all programs or activities receiving federal financial assistance, such as covered entities that receive assistance under the Workforce Investment Act and/or the Wagner-Peyser Act. Title VI and its implementing regulations prohibit any program or activity from excluding from participation in or denying the benefits of programs, or otherwise subjecting anyone to discrimination, on the ground of race, color, or national origin. 42 U.S.C. 2000d; 29 C.F.R. 31.3(a). The Department's CRC administers and enforces these requirements.

Recipients may not use any "criteria or methods of administration which have the effect of subjecting individuals to discrimination because of race, color or national origin." 29 C.F.R. 31.3(b)(2). Further, the "selection and referral of individuals for job openings or training opportunities and all other activities performed by or through employment service offices" must be done without regard to race, color, or national origin. 29 C.F.R. 31.3(d)(1)(i).

c. The Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101 et seq., prohibits discrimination against qualified individuals on the basis of disability. 42 U.S.C. 12112. The ADA also applies to employment agencies, 42 U.S.C. 12111(2), as well as state and local government programs, services, and activities, 42 U.S.C. 12132; 28 C.F.R. Part 35. The CRC is delegated responsibility by the Department of Justice for enforcing Title II of the ADA with regard to "[a]ll programs, services, and regulatory activities relating to labor and the work force." 28 C.F.R. 35.190(b)(7).

d. The Rehabilitation Act of 1973, 29 U.S.C. 794 (Section 504), prohibits discrimination against qualified individuals with a disability "under any program or activity receiving federal financial assistance."¹⁴ CRC administers and enforces the Department's regulations implementing Section 504 that apply to recipients of the Department's financial assistance. These regulations state that no qualified individual shall, on the basis of disability, "be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity," 29 C.F.R. 32.4(a), nor may a recipient use criteria or administrative methods that "have the effect of subjecting qualified . . . individuals [with disabilities] to discrimination on the basis of [disability]." 29 C.F.R. 32.4(b)(4)(i).

e. The Workforce Investment Act (WIA), 29 U.S.C. 2801 et seq., is the key source of federal assistance for state and local workforce development activities. The relevant nondiscrimination provision in WIA states that no "individual shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with, any such program or activity" on the basis of race,

minorities, women, or another protected group unless the practice is job related and consistent with business necessity. Thus, if an employer's use of credit information disproportionately excludes African-American and Hispanic candidates, the practice would be unlawful unless the employer could establish that the employment practice is needed for it to operate safely or efficiently.").

¹⁴ The Department's OFCCP enforces Section 503 of the Rehabilitation Act, 29 U.S.C. 793, which requires covered federal contractors and subcontractors to take affirmative action to employ and advance in employment qualified people with disabilities. The same standards that are applicable under the ADA to determine whether discrimination has taken place also apply to Sections 503 and 504 of the Rehabilitation Act. Similar standards apply under WIA Section 188 and its implementing regulations.

color, religion, sex, national origin, age, disability, or political affiliation or belief. 29 U.S.C. 2938(a)(2). The regulations implementing this provision, which CRC administers and enforces, apply to all programs and activities that are operated by AJC (formerly known as One-Stop) partners as part of the AJC delivery system. 29 C.F.R. 37.2(a)(2). Similarly, under the Wagner-Peyser Act regulations, states are required to assure nondiscrimination regarding any services or activities authorized under that Act. 20 C.F.R. 652.8(j)(1).¹⁵

The WIA nondiscrimination regulations prohibit recipients from using “standards, procedures, criteria, or administrative methods” that have the purpose or effect of subjecting individuals to discrimination on a prohibited ground due to the recipient’s administration of programs providing aid, benefits, services, training or facilities “in any manner.” 29 C.F.R. 37.6(d). In addition, the Wagner-Peyser Act regulations specifically require states to “[a]ssure that discriminatory job orders will not be accepted, except where the stated requirement is a bona fide occupational qualification (BFOQ).” 20 C.F.R. 652.8(j)(2).

5. Action Requested. Covered entities and their program operators are directed to review their existing policies and procedures and make any changes necessary to implement the guidance provided in this TEGL. They are also encouraged to consult TEN 12-14: *Promising Practices and Resources for Addressing Long-Term Unemployment*,¹⁶ which contains best practices for overcoming barriers to employment for the long-term unemployed.

6. Contact Information. Inquiries about incentive programs and other efforts to promote employment opportunities should be addressed to the appropriate ETA regional or national office. Inquiries about civil rights issues in the public workforce system should be addressed to CRC by phone at 202-693-6500 (voice) or 202-693-6516 (TTY); by relay at 800-877-8339 (TTY/TDD), or 877-709-5797 or myfedvrs.tv (video); or by e-mail at CivilRightsCenter@dol.gov. Complaints alleging discrimination by entities in the system may be filed with CRC by postal mail, e-mail, or fax, addressed to Director, Civil Rights Center, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-4123, Washington, DC 20210, CRCEXternalComplaints@dol.gov, 202-693-6505 (fax). Further information about the discrimination complaint process is available on CRC's website at <http://www.dol.gov/oasam/programs/crc/external-enforc-complaints.htm>.

Inquiries relating to discrimination in employment by federal contractors and subcontractors should be addressed to Office of Federal Contract Compliance Programs, U.S. Department of Labor, 200 Constitution Avenue, NW, Room C-3325, Washington, DC 20210. Further information is available at: <http://www.dol.gov/ofccp>, 1-800-397-6251 (Help Desk).

¹⁵ The Workforce Innovation and Opportunity Act (WIOA), signed into law on July 22, 2014, supersedes the Workforce Investment Act of 1998 and amends the Wagner-Peyser Act and the Rehabilitation Act of 1973. In general, WIOA takes effect on July 1, 2015, which is the first full program year after it was enacted. Enactment of WIOA in no way changes the nondiscrimination and equal opportunity obligations discussed in this TEGL.

¹⁶ Training and Employment Notice 12-14, *Promising Practices and Resources for Addressing Long-Term Unemployment*, issued October 17, 2014, available at http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=7919.

7. **Attachments.**

- Notice to Employers Regarding Job Bank Nondiscrimination and Hiring Restrictions Based on Credit Information
- Notice to Employers Regarding Job Posting Containing Hiring Restrictions Based on Credit Information
- Notice to Job Seekers to be Attached to Job Postings with Hiring Restrictions Based on Credit Information

Notice to Employers Regarding Job Bank Nondiscrimination and Hiring Restrictions Based on Credit Information

We advise employers not to automatically exclude job seekers based on their credit history unless the employer can show that a credit history restriction is related to the job posted and consistent with the employer's business needs. While employers are permitted to use credit reports in hiring and other decisions, this type of screening requirement may unjustifiably limit the employment opportunities of applicants in protected groups and may therefore violate federal civil rights laws. Any employer that submits a job announcement containing restrictions or exclusions based on an applicant's credit information will have an opportunity to edit or remove the announcement.

Practical Considerations:

- Screening job seekers based on their credit information may be imprudent because:
 - Negative information on credit reports may reflect that applicants have experienced difficult circumstances beyond their control that have no relationship to their ability to perform the job, such as a medical emergency, disability, layoff, loss of a spouse, or identity theft.
 - Credit reports may contain inaccuracies.
 - No reliable body of evidence supports the use of credit history in hiring decisions.
 - Using credit history as an employment screening tool may disproportionately exclude certain racial and ethnic groups, women, and people with disabilities from hiring consideration.

- Best practices to avoid or minimize improper decisions based on an applicant's credit history:
 - An employer should only take credit information into account if:
 - the employer will be able to show that it has an objective, clearly-defined reason why credit information used to disqualify an applicant is job-related for the position in question and consistent with business necessity (for example, necessary for the safe and efficient performance of the job in question);
 - the use of credit histories is not prohibited by governing state or local law; and
 - the employer will comply with the Fair Credit Reporting Act (FCRA), 15 U.S.C. 1681 et seq., which mandates certain procedures when employers screen applicants using credit reports (see below).
 - If the employer has an objective, clearly-defined reason why credit information is relevant to a particular job, to ensure consistency with business necessity, the employer should:
 - verify whether the information in an applicant's credit report is accurate and how recent it is;
 - determine the reasons the applicant may have negative information on a credit report;

- determine whether the applicant has taken steps, such as credit counseling, to improve any of the circumstances reflected in the negative information;
- not discourage job seekers by stating in vacancy announcements that only those with “good credit” need apply; and
- not rely exclusively on negative information in a credit report to automatically disqualify applicants; instead, the employer should always consider other relevant information regarding the applicant’s fitness for the job the applicant is seeking.

Relevant Information from Federal Agencies

The U.S. Department of Labor, Civil Rights Center (CRC), is responsible for investigating complaints concerning public workforce system entities and programs that allege discrimination on the basis of race, color, religion, sex, national origin, or disability, among others. More information about the laws CRC enforces and its external complaint process is available at <http://www.dol.gov/oasam/programs/crc/external-enforc-complaints.htm>, (202) 693-6500 (voice) or 202-693-6516 (TTY); by relay at 800-877-8339 (TTY/TDD), or 877-709-5797 or myfedvrs.tv (video); or by e-mail at CivilRightsCenter@dol.gov.

The Equal Employment Opportunity Commission (EEOC) is responsible for investigating charges of employment discrimination on the basis of race, color, religion, national origin, or sex under Title VII of the Civil Rights Act of 1964, and disability under Title I of the Americans with Disabilities Act of 1990. Both laws apply to employers with 15 or more employees. More information about the laws EEOC enforces and its complaint process is available at <http://www.eeoc.gov/facts/howtofil.html>, (800) 669-4000 (voice), or (800) 669-6820 (TTY).

The Federal Trade Commission enforces the Fair Credit Reporting Act, which requires that employers:

- Tell the applicant that the employer may obtain a credit report and get the applicant’s written consent before asking a consumer reporting agency for a credit report.
- Provide the applicant with a copy of the report and a summary of the applicant’s rights before the employer takes an adverse action (such as denying an application for employment) based on information in the credit report.

For more information, please visit: <http://business.ftc.gov/documents/bus08-using-consumer-reports-what-employers-need-know>.

Notice to Employers Regarding Job Postings Containing Hiring Restrictions Based on Credit Information

The public workforce system has identified hiring restrictions based on credit history in the job announcement submitted for posting by this employer or in a job announcement referenced in a job bank.

We advise employers not to automatically exclude job seekers based on their credit history unless the employer can show that a credit history restriction is related to the job posted and consistent with the employer's business needs. While employers are permitted to use credit reports in hiring and other decisions, this type of screening requirement may unjustifiably limit the employment opportunities of applicants in protected groups and may therefore violate federal civil rights laws. Any employer that submits a job announcement containing restrictions or exclusions based on an applicant's credit information has an opportunity to edit or remove the announcement.

Please take this opportunity to remove or edit the announcement as needed. If you continue to post the announcement as is, the announcement will be posted along with information for job seekers about the civil rights laws that may apply to restrictions based on credit history.

Practical Considerations:

- Screening job seekers based on their credit information may be imprudent because:
 - Negative information on credit reports may reflect that applicants have experienced difficult circumstances beyond their control that have no relationship to their ability to perform the job, such as a medical emergency, disability, layoff, loss of a spouse, or identity theft.
 - Credit reports may contain inaccuracies.
 - No reliable body of evidence supports the use of credit history in hiring decisions.
 - Using credit history as an employment screening tool may disproportionately exclude certain racial and ethnic groups, women, and people with disabilities from hiring consideration.

- Best practices to avoid or minimize improper decisions based on an applicant's credit history:
 - An employer should only take credit information into account if:
 - the employer will be able to show that it has an objective, clearly-defined reason why credit information used to disqualify an applicant is job-related for the position in question and consistent with business necessity (for example, necessary for the safe and efficient performance of the job in question);
 - the use of credit histories is not prohibited by governing state or local law; and

- the employer will comply with the Fair Credit Reporting Act (FCRA), 15 U.S.C. 1681 et seq., which mandates certain procedures when employers screen applicants using credit reports (see below).
- If the employer has an objective, clearly-defined reason why credit information is relevant to a particular job, to ensure consistency with business necessity, the employer should:
 - verify whether the information in an applicant’s credit report is accurate and how recent it is;
 - determine the reasons the applicant may have negative information on a credit report;
 - determine whether the applicant has taken steps, such as credit counseling, to improve any of the circumstances reflected in the negative information;
 - not discourage job seekers by stating in vacancy announcements that only those with “good credit” need apply; and
 - not rely exclusively on negative information in a credit report to automatically disqualify applicants; instead, the employer should always consider other relevant information regarding the applicant’s fitness for the job the applicant is seeking.

Relevant Information from Federal Agencies

The U.S. Department of Labor, Civil Rights Center (CRC), is responsible for investigating complaints concerning public workforce system entities and programs that allege discrimination on the basis of race, color, religion, sex, national origin, or disability, among others. More information about the laws CRC enforces and its external complaint process is available at <http://www.dol.gov/oasam/programs/crc/external-enforc-complaints.htm>, (202) 693-6500 (voice) or 202-693-6516 (TTY); by relay at 800-877-8339 (TTY/TDD), or 877-709-5797 or myfedvrs.tv (video); or by e-mail at CivilRightsCenter@dol.gov.

The Equal Employment Opportunity Commission (EEOC) is responsible for investigating charges of employment discrimination on the basis of race, color, religion, national origin, or sex under Title VII of the Civil Rights Act of 1964, and disability under Title I of the Americans with Disabilities Act of 1990. Both laws apply to employers with 15 or more employees. More information about the laws EEOC enforces and its complaint process is available at <http://www.eeoc.gov/facts/howtofil.html>, (800) 669-4000 (voice), or (800) 669-6820 (TTY).

The Federal Trade Commission (FTC) enforces the Fair Credit Reporting Act, which requires that employers:

- Tell the applicant that the employer may obtain a credit report and get the applicant’s written consent before asking a consumer reporting agency for a credit report.
- Provide the applicant with a copy of the report and a summary of the applicant’s rights before the employer takes an adverse action (such as denying an application for employment) based on information in the credit report.

For more information, please visit: <http://business.ftc.gov/documents/bus08-using-consumer-reports-what-employers-need-know>.

Notice to Job Seekers Regarding Job Postings with Hiring Restrictions Based on Credit Information

Notice: The attached job announcement contains a hiring restriction based on credit information. You are not prohibited from applying for this job, even though you may have “bad” credit or a poor credit history. Further, rejecting you for reasons related to credit may violate federal civil rights laws, depending on the circumstances. Please see below for more information.

Relevant Information from Federal Agencies

The U.S. Department of Labor, Civil Rights Center (CRC), is responsible for investigating complaints concerning public workforce system entities and programs that allege discrimination on the bases of race, color, religion, sex, national origin, or disability, among others. Inquiries about civil rights issues in the public workforce system should be addressed to CRC by phone at 202-693-6500 (voice) or 202-693-6516 (TTY); by relay at 800-877-8339 (TTY/TDD), or 877-709-5797 or myfedvrs.tv (video); or by e-mail at CivilRightsCenter@dol.gov. Complaints alleging discrimination by entities in the system may be filed with CRC by postal mail, e-mail, or fax, addressed to Director, Civil Rights Center, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-4123, Washington, DC 20210, CRCEXternalComplaints@dol.gov, 202-693-6505 (fax). Further information about the discrimination complaint process is available on CRC's website at <http://www.dol.gov/oasam/programs/crc/external-enforc-complaints.htm>.

The Equal Employment Opportunity Commission (EEOC) is responsible for investigating charges of employment discrimination on the bases of race, color, religion, national origin or sex under Title VII of the Civil Rights Act of 1964, and disability under Title I of the Americans with Disabilities Act of 1990. Both laws apply to employers with 15 or more employees. More information about the laws EEOC enforces and its complaint process is available at <http://www.eeoc.gov/facts/howtofil.html>, (800) 669-4000 (voice), or (800) 669-6820 (TTY).

The Federal Trade Commission (FTC) enforces the Fair Credit Reporting Act, which requires that employers:

- Tell the applicant that the employer may obtain a credit report and get the applicant’s written consent before asking a consumer reporting agency for a credit report.
- Provide the applicant with a copy of the report and a summary of the applicant’s rights before the employer takes an adverse action (such as denying an application for employment) based on information in the credit report.

For more information, please visit:

<http://www.consumer.ftc.gov/articles/0157-employment-background-checks>.

To obtain a free copy of your credit report, visit www.AnnualCreditReport.com or call 1-877-322-8228.