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**PRESENTED TO THE
COMMUNICATIONS, FINANCIAL SERVICES AND INTERSTATE
COMMERCE (CFI) COMMITTEE**

**OF THE
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Introduction

Chairman Kennedy, Legislative Staff Chair Calderwood and members of the Committee, my name is Elizabeth Owens Bille. I am the Associate Counsel for the Society for Human Resource Management (SHRM). On behalf of SHRM, I thank you for the opportunity to appear before the Committee today to share the employer's perspective in this session entitled, "Your Credit Score and You."

SHRM is the world's largest association devoted to human resource management. Representing more than 250,000 members in over 140 countries, the Society serves the needs of HR professionals and advances the interests of the human resource profession. Founded in 1948, SHRM has more than 575 affiliated chapters within the United States and subsidiary offices in China and India.

SHRM has been tracking with interest the intensifying current debate on both the national and state levels regarding legislation to restrict an employer's ability to view and consider an applicant's credit history and other background information in the employment process. SHRM and its members fully appreciate that our nation's high unemployment rate, rampant foreclosures and the overall health of the economy have had a severe impact on countless individuals' credit scores and, therefore, the heightened relevance of this issue at this time. However, SHRM strongly believes there is a compelling need to develop a comprehensive and national policy on how employers can assess the skills, abilities, work habits, and integrity of potential hires in the employment process that balances the needs of both employers and employees.

In my statement today, I will explain what background information employers currently use, the problem of occupational fraud, the results of a new SHRM survey report on employment background screening, state and federal legislative developments affecting credit checks in employment, and considerations for future legislation in this area.

The Use of Background Information in Employment

At organizations large and small, HR professionals are charged with ensuring that each individual hired possesses the talent, skills, and work ethic needed for the organization's success.

The consequences of making a poor hiring choice can be great, possibly leading to financial losses or, if the employee engages in severe misconduct, legal liability to customers, shareholders or other employees in the form of a negligent hiring lawsuit or other legal claims. As a result, HR professionals strive to make the most informed choices possible when selecting candidates for their organizations.

Once a group of candidates or a finalist is selected for a position, the HR department typically conducts a background check on the candidate or candidates. While the background check process is often a standard practice performed by an employer, some states statutorily require employers to conduct specific background checks for certain positions such as licensed health care professionals, day care providers, teachers and athletic coaches, and police and firefighters.

The specific background check process will vary from employer to employer and even from position to position inside an organization but may include checking an individual's previous work history; their personal references; their education, professional and other credentials; their criminal history and their credit history. In addition, employers place a different emphasis on each element of the process. For example, some employers may place a great deal of importance on a steady work history, personal references, and credit history while other employers may value education and work history above all else.

One major problem of the current process is that most previous employers of an individual are reluctant to provide an accurate assessment of the former employee's work history, strengths, and weaknesses for fear of the potential liability they could suffer from claims made by the employees themselves (in the form of a defamation or retaliation lawsuit) or a future employer (negligent referral) by giving an unabridged assessment of a candidate's work background – whether good or bad. As a result, most employers provide the minimum in a reference check – “name, rank, and serial number” – confirming that the candidate had worked for them, their title, and dates of employment.

This lack of direct, complete reference information from the previous employer on the potential hire forces many employers to seek additional information that can be legally obtained about the candidate through the use of third-party background check companies. Employers will use the services of a background check company in an attempt to obtain the most accurate picture of the potential employee's previous work history; personal references; and education, professional and other credentials; criminal history and credit history. Under the federal Fair Credit Reporting Act (FCRA), an employer that uses a third-party provider in the background process must notify the potential employee in advance of the process and obtain the applicant's approval to have his or her background checked by the provider. An employer is also required to notify the applicant if the individual was not chosen because of information in the report.

As discussed above, credit histories, like other aspects of the background check process, are but one piece of the puzzle HR professionals use to evaluate whether an individual should be hired. The consideration of credit history information can not only be useful in determining whether the potential hire has the skills and responsibility necessary for a particular job, but also whether the individual is qualified to handle money. A person's stellar credit history may provide evidence of the individual's maturity and responsibility while a poor credit history may reflect irresponsibility or carelessness.

The Problem of Occupational Fraud

While employee advocates make strong arguments in this debate, we believe the arguments by employers are also compelling. At a time when financial pressures on households are increasing, employee theft is on the rise and is a major financial problem for companies. The National Retail Security Survey estimates that the U.S. retail industry lost about \$15.9 billion in 2008 due to employee theft. With losses such as these, it's understandable why employers are using every type of screening method they can to avoid making a poor hiring decision.

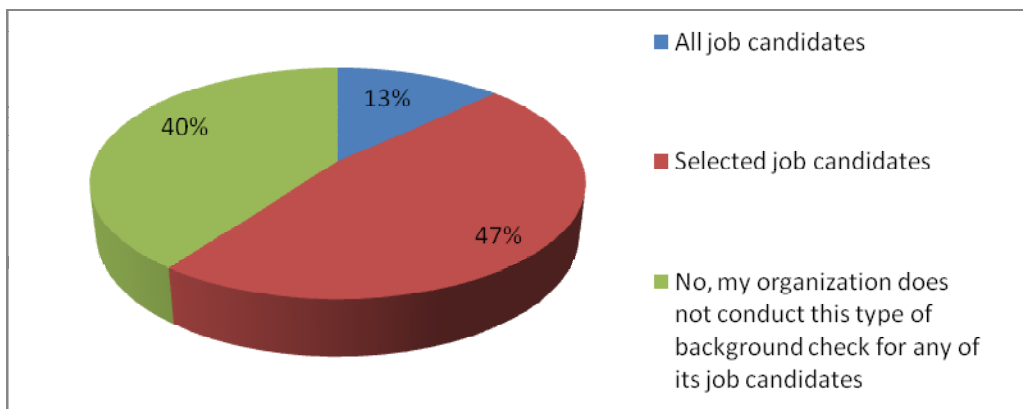
According to the Association of Certified Fraud Examiners' 2008 Report to the Nation on Occupational Fraud and Abuse, employees who engage in fraud in the workplace (such as check tampering, theft, and fraudulent reimbursement schemes) are usually first-time offenders. The study also found that employee financial pressures are one of the "key motivating factors" of

workplace fraud and theft. In fact, “financial difficulties” and “living beyond one’s means” were the two most common warning signs for employees who commit such workplace theft. Thus, the study concluded, “Given that financial difficulties are often associated with fraudulent behavior, it would seem advisable for organizations to devote more efforts to conducting credit background checks on new applicants.”

New SHRM Research on the Use of Credit Checks in Hiring

If you have read or heard any of the media coverage on the issue of employers’ use of credit checks in the hiring process, a 2006 survey conducted by SHRM is often cited – noting, “43 percent of U.S. employers are using credit checks in their hiring process.” Regretfully, the way this statistic has been used by the media is often misleading. Many media stories have implied that 43% of employers run credit checks on all candidates and use the results to deny employment regardless of the position sought.

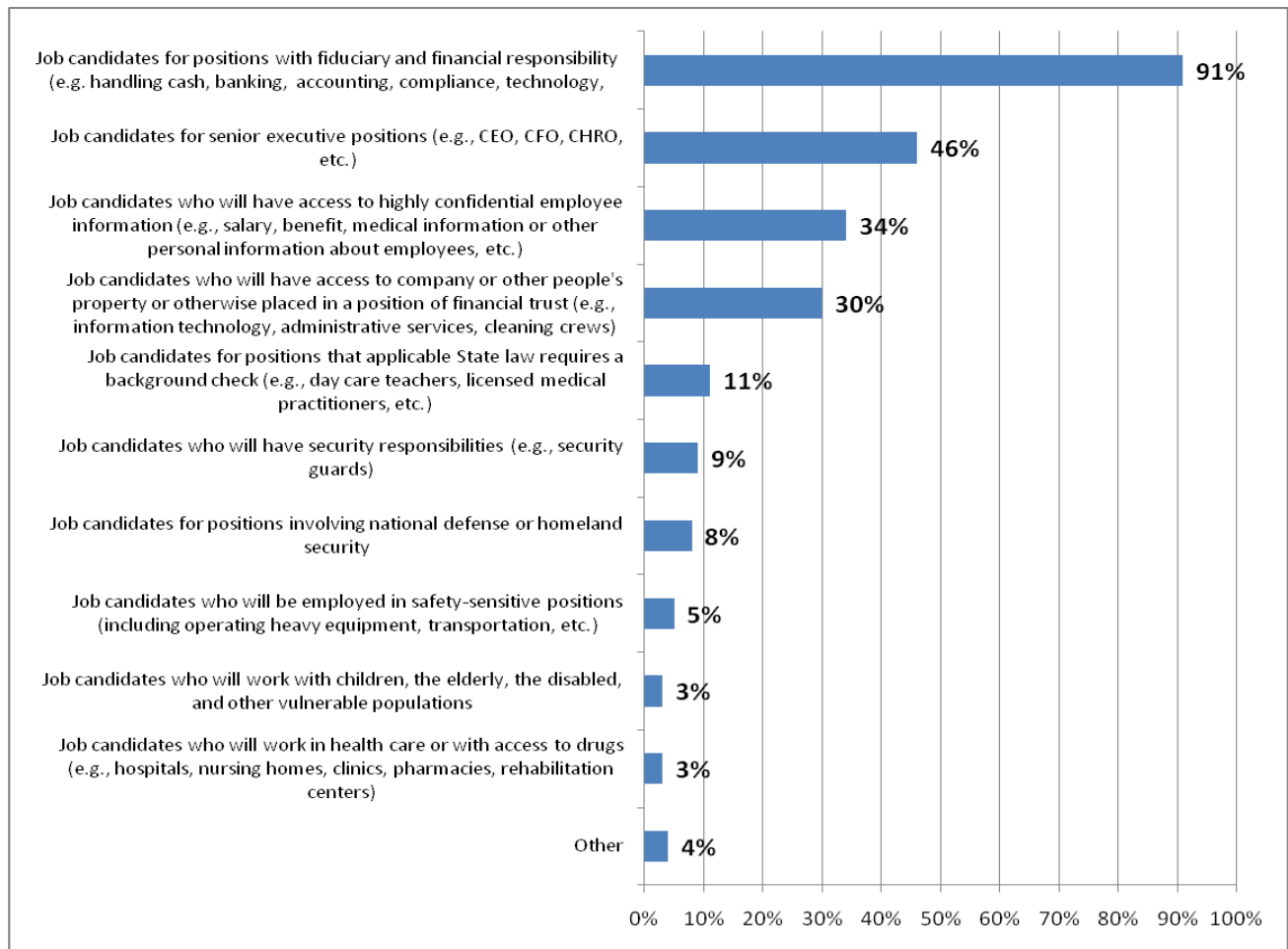
In an attempt to provide a more complete picture of the background check process, SHRM conducted a survey of our membership in the Fall of 2009. It includes data from large employers (500 or more workers), medium-sized employers (100-499 employees), and small employers (1-99 employees) from both the public and private sectors. While the full report has not yet been released, the SHRM survey found that 47 percent of respondents limit their use of credit background checks to job candidates for certain types of positions, 40 percent do not conduct this type of background check on any job candidates, and 13 percent conduct credit checks on all candidates.



Note: n=343;

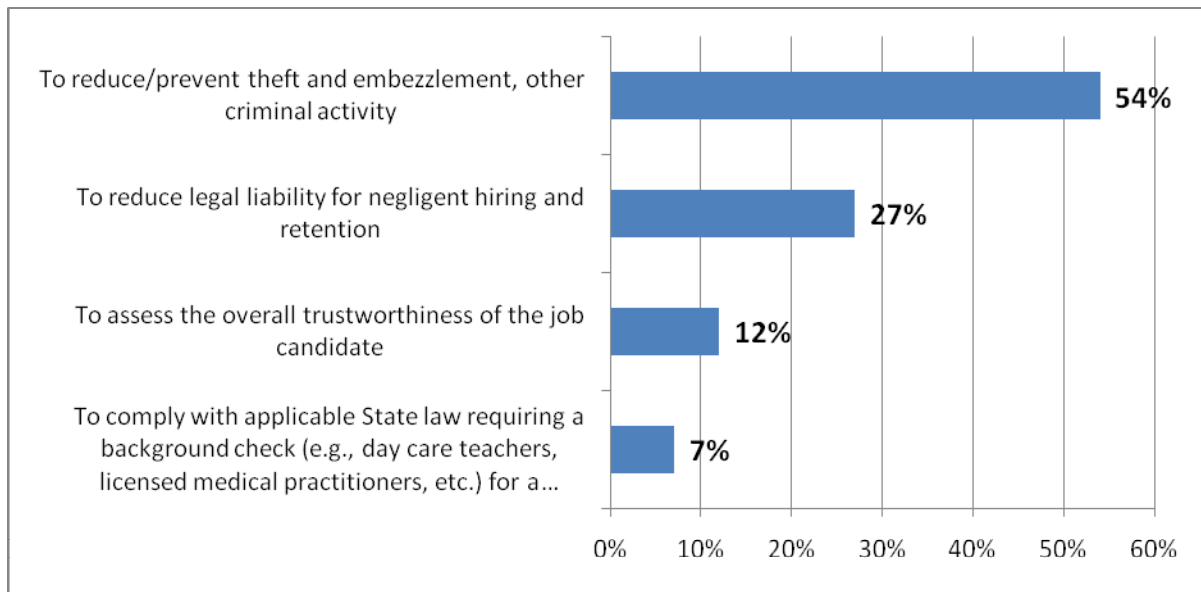
Source: Background Checks (SHRM, 2009)

Of those respondents who conduct credit background checks on select job candidates, 91 percent run checks on candidates for positions with fiduciary or financial responsibility such as handling cash or sensitive credit card information, accounting, or budgeting. Forty-six percent of respondent companies perform credit checks on senior executive employees, while 34 percent do so for positions that have access to confidential business or employee medical information.

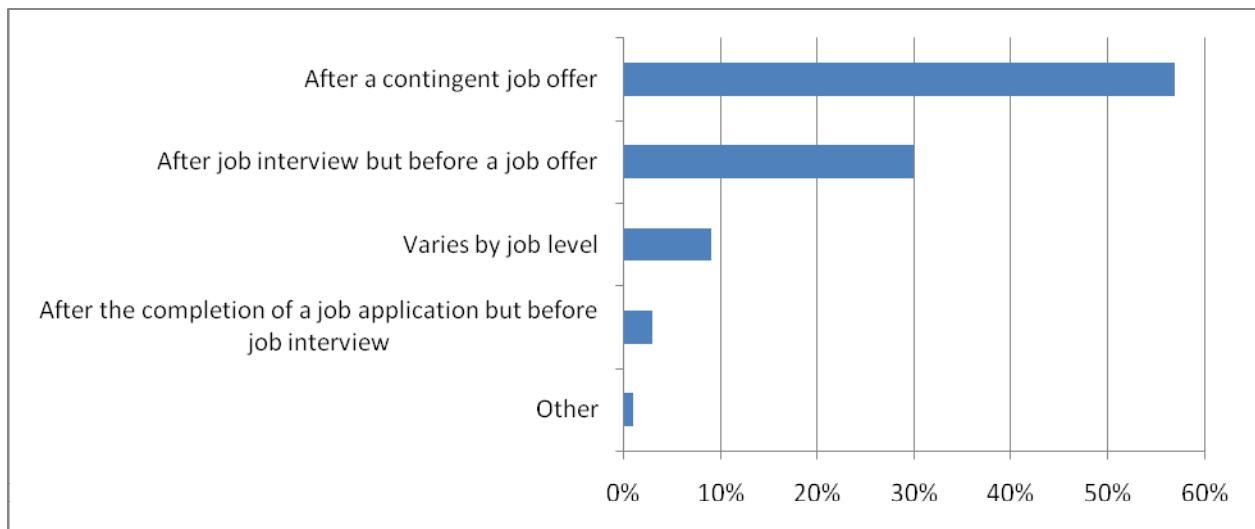


Note: The data in this figure represent organizations that conduct credit background checks on select job candidates. Percentages do not total to 100% as respondents were allowed multiple choices. (n = 158)
Source: Background Checks (SHRM, 2009)

We were also interested in capturing information about the primary reason organizations conduct credit background checks on selected job candidates. The results show that the overwhelming reason HR professionals conduct credit background checks on certain job candidates is to reduce and/or prevent theft and embezzlement, as well as to reduce the legal liability for negligent hiring and retention.



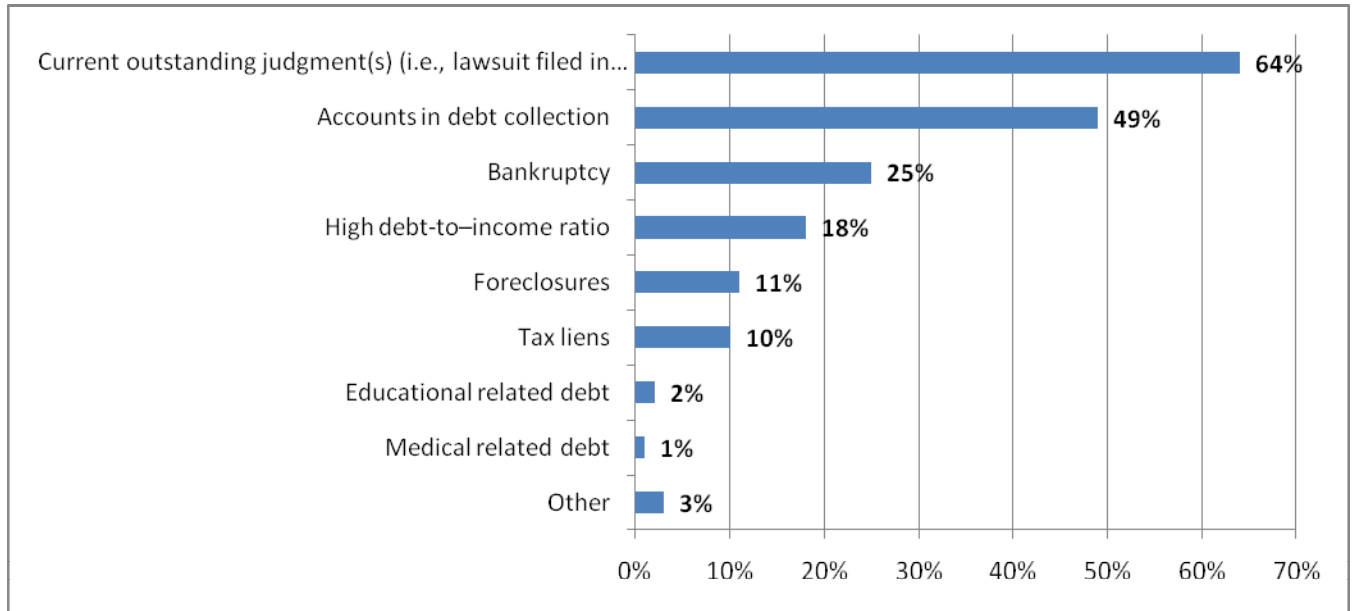
In addition, we sought to identify when organizations initiate credit checks on job candidates. The results indicate that nearly 60 percent of respondents initiate a credit check after a contingent job offer has been made and another 30 percent initiate the check after the job interview and before an offer.



Note: n = 199

Source: *Background Checks (SHRM, 2009)*

Lastly, we asked respondents, if negative information on a credit check were discovered, what types of information would be most likely to impact their decision to not extend a job offer to a candidate. Those results appear below:



Note: Percentages do not total to 100% as respondents were allowed multiple choices. Respondents were asked to select their top two options. (n = 201)

Source: Background Checks (SHRM, 2009)

As you will note, our members indicated that an applicant with a current judgment filed against them or with various accounts subject to debt collection were most likely to be eliminated from the job search. Foreclosure, tax-liens, education debt or medical-related debt had little impact on hiring decisions.

State and Federal Legislative Developments

Recently, a number of states and the U.S. Congress have begun to turn their attention to this issue. As you may be aware, the Hawaii Legislature last summer overrode the veto of the State’s governor of House Bill 31. The new law establishes an employer’s use of an individual’s credit history in hiring and termination decisions (except for managerial and supervisory employees) as an unlawful discriminatory practice, unless it directly relates to a bona fide occupational qualification. The statute permits employers to inquire into credit history if

“expressly permitted or required to inquire into an individual’s credit history for employment purposes pursuant to any federal or state law.”

Similar legislation has been enacted in the state of Washington and has been under consideration in such states as Connecticut, New York, Missouri, Wisconsin and Texas. In 2008, California Governor Arnold Schwarzenegger vetoed legislation restricting an employer’s ability to conduct credit background checks on certain job candidates and employees. We expect similar legislation to again be considered next year by a number of states across the country.

On the national front, legislation has been introduced in the U.S. House of Representatives to amend the FCRA to prohibit the use of consumer credit checks against prospective and current employees during the hiring or firing processes. This bill (H.R. 3149), entitled the “Equal Employment for All Act,” would not apply to job applicants subject to a national security clearance, a person applying for public-sector position that requires a credit check, and supervisory or managerial positions at a financial institutions. However, applicants in these instances would still have to be notified that their credit information is being reviewed and, if they are rejected due to a credit issue, they must be notified as to why.

Conclusion

To reiterate, SHRM and its members understand the heightened relevance of the issue of credit history and employment at this time. SHRM believes there is a compelling need to develop a comprehensive national policy on how employers can assess the skills, abilities, work habits, and integrity of a potential hires in the employment process that balances the needs of both employers and employees. HR professionals, whether working in the public sector for federal, state, or local government entities, or in the private sector, need to have a consistent set of rules to follow in obtaining background information about a potential hire in order to accurately assess the prospective employee. Nationwide consistency is needed so that employers are clear about legal obligations no matter where they employ people. SHRM urges a discussion at the national level rather than enactment of a series of state laws using different definitions and requirements.

Given the complexities of this issue and the serious challenges faced by employers, SHRM is deeply concerned with blanket efforts to restrict an employer's ability to consider an applicant's credit history as one aspect of the overall hiring process. As shown by SHRM's data, employers are not conducting wholesale credit checks on job applicants, regardless of the position in question; rather, those that use this tool are carefully tailoring that use to the unique financial, security, and fiduciary needs of their businesses. Legislation must include carefully defined exceptions that are broad enough to address the uniqueness of each organization's structure and needs. Legislative attempts to outlaw the consideration of employee credit histories through a one-size-fits-all framework can expose organizations to financial losses and legal liability and jeopardize the security of customer and public information.

Indeed, if legislation is considered, SHRM urges a comprehensive look at background checks, including laws surrounding reference checking. Many states have laws providing employers with immunity for providing an honest assessment of a former employee's work to potential employers. Obtaining an honest assessment of an individual's past performance is critical to a potential employer's ability to assess a candidate. Such information, combined with other background checks yields a fuller picture of the potential hire.

In closing, SHRM appreciates the opportunity to provide information on how employers currently use background check information. Once the full results of our survey on the use of all types of background checks is available, we will be happy to share our findings with members of the Committee and their staffs.

Thank you for your invitation to participate in today's discussion, and I welcome the opportunity to answer any questions you may have about my testimony.