E.E.O.C. Sues Kaplan Over Hiring
By Steven Greenhouse
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Sending a sharp warning to employers nationwide, the Equal Employment Opportunity Commission sued the Kaplan Higher Education Corporation on Tuesday, accusing it of discriminating against black job applicants through the way it uses credit histories in its hiring process.

The lawsuit, an unusual intervention by the federal government on the issue, comes amid rising concerns that employers are denying jobs to applicants with damaged credit histories, even in cases where creditworthiness does not appear to be directly relevant to the job.

Several states, including Hawaii, Washington, Oregon and Illinois, have banned or severely limited the use of credit reports in hiring, partly out of worry that the practice could prevent unemployed, financially pressed Americans from getting back into the work force. Other states and Congress have considered similar laws.

Private and government surveys have suggested that about half of all employers use credit histories in at least some hiring decisions.

Justine Lisser, an E.E.O.C. spokeswoman, said that credit histories were often inaccurate and might not be a good indicator of a person’s qualifications for a particular job. “Credit histories were not compiled to show responsibility,” she said. “They were compiled to show whether or not someone was paying the bills, which is not always the same thing.”

In the E.E.O.C.’s suit, which was filed in federal district court in Cleveland, the agency said that since at least January 2008, Kaplan had rejected job applicants based on their credit history, with a “significant disparate impact” on blacks.

“This practice has an unlawful discriminatory impact because of race and is neither job-related nor justified by business necessity,” the commission said. The agency did not specify what types of jobs were involved.

Kaplan, which is owned by the Washington Post Company, operates a chain of for-profit colleges and training schools around the country. The parent company’s shares fell more than 2 percent in Tuesday trading.

In a statement, Kaplan said, “We are an equal opportunity employer, and we are proud of the diversity of our work force.”

The company added that it typically conducted background checks on all prospective employees. “The checks are job-related and a necessity for our organization to ensure that staff handling financial matters, including financial aid, are properly screened,” Kaplan said. Kaplan and other for-profit education companies have come under intense scrutiny from the federal government because of concerns that the industry leaves too many students unable to repay large federally backed education loans, while providing them with little help in finding jobs. The Department of Education has proposed
regulations that would cut off federal financing to for-profit education companies whose graduates have high debt-to-income ratios and low repayment rates.

The federal lawsuit is seeking a permanent injunction to stop Kaplan’s use of credit histories in hiring and other employment decisions. The agency is also seeking lost wages and benefits for people who were not hired because of Kaplan’s use of credit reports to screen applicants, and it wants Kaplan to make employment offers to those individuals.

Michael J. Zimmer, a professor of employment law at Loyola University in Chicago, said that, under federal law, “if an employment practice has a disparate impact on a certain race, you have a case.” He said that the E.E.O.C. would not have brought the case unless it had reviewed statistics about Kaplan’s hiring.

“I think the issue is going to boil down to whether it’s justified as job-related and necessary for business,” he said. “That’s the defense’s standard in a disparate impact case.”

The E.E.O.C. typically brings discrimination cases only when it is convinced that serious abuse has occurred. Ms. Lisser said that 99,000 charges were filed with the E.E.O.C. in its most recent fiscal year, but the agency filed just 250 lawsuits that year, usually in what it saw as especially strong or significant cases. The agency said the Kaplan case was only the third time it has sued over the misuse of credit reports in employment.

In a recent letter to the agency, the Consumer Data Industry Association strongly defended using credit histories in hiring decisions. It told the agency that employers tried hard to create working environments that were free from fraud and theft.

In that letter, Eric J. Ellman, the association’s vice president for public policy and legal affairs, said, “In a climate of economic uncertainty, where employers are likely choosing from a large employment pool, they need to be critically careful about protecting their businesses and their customers.”

Mr. Ellman noted that the use of credit reports for employment purposes was legally protected and that “credit reports for employment purposes are reliable predictors of risk.”

“Many safeguards exist for employers to ensure that credit information is used where it is job-related and consistent with business necessity,” he concluded in his letter to the agency.

But Ms. Lisser, the E.E.O.C. spokeswoman, vigorously disagreed. “It’s not clear that employers who are relying on credit histories know if someone has never paid a bill for 10 years or if someone was a very responsible bill payer for years until they lost a job or someone in their family had a medical emergency and they suddenly couldn’t make a payment. We don’t think it’s a good marker for responsibility in employment,” she said.