THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, NY 10007

Testimony of Maya Wiley
Counsel to Mayor
Before the Committee on Civil Rights
September 12, 2014

Madam Chair, members of the Council, good morning.

Thank you for the opportunity to testify regarding Intro. # 261, which would amend the New York City Human Rights Law to prohibit employers from using an individuals' credit history in making employment decisions, whether they be hiring decisions or decisions made about the terms and conditions of employment.

The Administration supports the Council's efforts to remove unnecessary barriers to employment for New Yorkers who are eager to support their families and contribute to the City's economy. As you know, credit histories are a useful tool in helping underwriters assess whether or not to extend credit to an individual. That being said, it is also important to ensure that credit histories are used for appropriate purposes.

For many, poor credit scores are triggered by a lost job, medical crisis, overwhelming student debt, identity theft or scams. Moreover, the City is still in the process of emerging from a punishing economic crisis that has devastated the finances of many residents. Far too many New Yorkers, no matter their race, age, gender or religion have lost a job, or faced a personal crisis that may have forced them deep into debt. And New Yorkers of color are particularly likely to find themselves impacted. As the Woodstock Institute reported in 2010 residents in predominantly community of color neighborhoods in New York City are more likely to have "non-prime" credit scores than residents of predominantly white communities in New York City. It found that 21.6 percent of people had credit scores below 620, a common boundary for consideration for prime credit. Yet, 38.6 percent of the people in highly African-American neighborhoods had scores below 620. In majority Latino communities, 34.2 percent of individuals had credit scores below 620. In predominantly white communities, only 13.2 percent had credit scores below 620.

As an administration that cares deeply about equity and opportunity, we believe it is particularly important that we do not place senseless roadblocks in the path of residents who seek work to support themselves and their families.

However, this Administration also believes that there are certain contexts in which aspects of an individual's consumer financial history may, in fact, be relevant to an employer's decision-making. And in these cases we believe that it may be important to consider the impact of one's financial history on the individual's ability to serve or continue to serve in the position in question.

Ten states and the city of Chicago currently limit the use of credit histories in employment decisions, but recognize some instances in which credit history may be considered. Oregon, for example, allows the use of credit history if it is "substantially job-related". California lists several job categories for which it is permissible to examine an applicant's credit history, including law enforcement and retail positions with access to credit card information. The City of Chicago passed legislation last year, which allows the use of credit histories in evaluating applicants for jobs in banking or the insurance industry. We look forward to working with the Council to identify possible exemptions that would be appropriate for New York City.

The Administration shares the Council's deep commitment to removing obstacles that needlessly bar New Yorkers—a disproportionate number of them residents of color—from gainful employment. However, it is critically important that we also recognize the important and nuanced role that consideration of certain consumer financial information may play in particular contexts. We look forward to working with the Council to protect residents from discrimination while safeguarding other important City interests.

Testimony of Mitchell Hirsch
Access and Opportunity Advocate
National Employment Law Project
In support of Intro. 261, the Stop Credit Discrimination in Employment Act
New York City Council Committee on Civil Rights, September 12, 2014

Chairperson Mealy and Members of the Committee, thank you for the opportunity to testify today in support of Intro. 261, a measure to prohibit employment discrimination based on one's personal credit history.

My name is Mitchell Hirsch and I am an advocate with the National Employment Law Project's Access and Opportunity Program. The National Employment Law Project (NELP) is a non-partisan, not-for-profit organization that conducts research and advocates on issues affecting low-wage and unemployed workers.

Through our work and our communications with unemployed jobseekers, we have become painfully aware of the significant barriers to reemployment faced by far too many qualified, experienced unemployed workers. And one of the most serious barriers they face is the widespread, unfair and erroneous use of personal credit histories in employment. I am here today to urge passage of the Stop Credit Discrimination in Employment Act.

Credit history reporting was developed as a tool for lenders to evaluate a borrower's potential risk for timely payments or default. But, in recent years, credit history reporting has increasingly been used as an unfair screening device by employers to deny employment opportunities to qualified jobseekers.

While credit history reports can be a reasonable basis for a lender to assess potential credit risk of borrowers, such reports do not correlate to a job applicant's abilities, nor do they offer a predictive guide to an individual's workplace performance.

As such, employment credit checks are an illegitimate barrier to employment – particularly for qualified unemployed jobseekers who really want and need to be working – and, thus, taking action to restrict their unfair use is both appropriate and necessary.

Circumstances that are outside of an individual's control are frequently the cause of poor credit history. Chief among these are involuntary job losses and high-cost medical emergencies – often involving persons lacking health insurance coverage after losing a job.

The increasingly widespread use of credit history by employers to screen job applicants thus sets up a perverse "Catch-22" where New Yorkers who become unemployed through no fault of their own are unable to secure new employment because of damaged credit, and can't repair their credit because they are, in effect, locked out of the job market.

Women, particularly single female heads of households, and people of color are disparately affected negatively by the use of employment credit checks – so mitigating this discriminatory impact is yet another important outcome that would result from the enactment of the proposed measure.

In our communications with unemployed jobseekers we hear frequently of three major concerns regarding their ability to be fairly considered on their merits as applicants for jobs. One is their age; the second is their status of being unemployed; and third is the use of personal credit history in employment screening.

On March 13th of last year, the New York City Council wisely chose to enact a law protecting unemployed jobseekers from discriminatory exclusion from prospective employment opportunities based on their being unemployed. That measure was enacted by the Council over the previous administration's objection. The National Employment Law Project (NELP) strongly supported that measure, applauded the Council's action, and was grateful for the leadership of the Committee on Civil Rights and its then-chairperson, Council Member Rose, on that legislation.

So there are protections in place to prohibit employment discrimination based on age and, now, also on unemployed status.

Now it is time for the Council to address the discriminatory use of employment credit checks, which has erected another unfair barrier to employment for New Yorkers. NELP urges this Committee to take positive action toward Council enactment of Intro. 261 to help keep the doors of employment opportunity open to all qualified job-seekers.

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NEW ECONOMY PROJECT

TESTIMONY BY DEYANIRA DEL RIO, CO-DIRECTOR, NEW ECONOMY PROJECT TO THE NEW YORK CITY COUNCIL CIVIL RIGHTS COMMITTEE ON INTRO. 261, THE STOP CREDIT DISCRIMINATION IN EMPLOYMENT ACT

September 12, 2014

Good morning and thank you for the opportunity to testify at today's hearing. My name is Deyanira Del Rio and I'm the Co-Director of New Economy Project (formerly NEDAP), which works with community groups to fight for economic justice, and to build a new economy based on cooperation, democracy, equity, racial justice and ecological sustainability.

New Economy Project is a leader in the NYC Coalition to Stop Credit Checks in Employment, a broad-based coalition of labor, community, civil rights, consumer, workforce development, student, immigrant, senior and women's groups, as well as New Yorkers personally harmed by employment credit checks.

We enthusiastically support Intro. 261, which prohibits the use of credit history in the employment context and, once enacted, will eliminate an insidious and discriminatory barrier to jobs. We applaud the NYC Council for introducing this vital civil rights legislation.

We urge NYC to enact Intro. 261 in its current, strong form, and to continue to resist efforts by big business interests – including the credit reporting industry – to weaken the bill through unwarranted carve-outs and exemptions.

Today, nearly half of all employers check the personal credit histories of job applicants. Some also run periodic credit checks on their existing employees. Our coalition works with numerous New Yorkers in retail, restaurant and other industries who have been denied jobs or promotions for which they were amply qualified – and in some cases fired from jobs – based on information contained in their credit reports. You will hear today from several of these New Yorkers today.

Employment credit checks are wrong for a host of reasons: (1) Credit reports are notoriously inaccurate, with up to 80% of reports containing some error; (2) Credit reports were never intended to predict job performance, and there is no sound business purpose for using them in this way; (3) Employment credit checks have a discriminatory impact on people of color, as the Equal Employment Opportunity

Commission has repeatedly noted; (4) The practice violates workers' privacy, and can reveal information that anti-discrimination laws are intended to protect; and (5) Employment credit checks unfairly trap people in a catch-22. (See attached fact sheets.)

In my testimony I want to focus on a few key points:

1 – Ending employment credit checks is a matter of economic and racial justice. Credit reports reflect and reinforce systemic discrimination and inequity in our economy and in our credit system. Low income New Yorkers and people of color have, for example, been disproportionately harmed by predatory lending, foreclosures and debt collection – all of which can plunge people into financial insecurity and devastate their credit reports. Communities of color have higher unemployment and poverty rates, and have borne the brunt of the continuing economic downturn. Employment credit checks perpetuate and amplify inequality by making it harder for people to attain desperately-needed jobs. The Equal Employment Opportunity Commission has stated that rejecting job applicants based on credit history "has an unlawful discriminatory impact because of race and is neither job-related nor justified by business necessity."

2 – Employment credit checks must be banned, and no exemptions or loopholes added, for the law to be effective. The bill currently exempts employers who are required by state or federal law to use credit history. NYC must strenuously reject any additional exemptions, which would weaken the bill dramatically, create confusion among employers and workers, and render the law virtually unenforceable. In states where carve-outs have been made, these were not a result of any research or evidence that credit history was relevant for particular jobs or industries, but rather of aggressive lobbying by the credit reporting and other industries. As with other anti-discrimination laws, this one must apply across the board; it is difficult to fathom why *some* employers should be permitted to unfairly discriminate against workers, invade their privacy and so on.

3 – Employment credit checks are a gross overreach by employers and invasion of workers' privacy. Imagine a workplace in which an employer requires job applicants and employees to submit to deeply personal questions. "How much debt do you have, and whom do you owe? Have you ever missed a mortgage or credit card payment? Do you have medical debts or conditions? Are you behind on child support payments?" This would never be tolerated or considered a reasonable business practice.

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Why, then, should employers be allowed to mine this kind of information – and potentially much more – by checking someone's personal credit history? Meanwhile, credit reports say nothing about how long you worked at a previous job, how well you performed, or what your job skills are – nothing, in other words, that might help an employer meaningfully evaluate your ability to perform a job. Employers should not be allowed to request, see, or consider a job applicant's credit information. Period.

4 – The credit reporting industry is driving the use of credit information by employers, in order to expand their profits and build new markets. Credit reporting agencies aggressively push credit reports on employers and make claims that *not* conducting credit screening leaves employers more vulnerable to fraud and theft.[1] TransUnion, for example, has warned that restricting employers' access to personal credit information "could jeopardize the health and safety of many....residents who have come to rely on safe and secure environments, and risks the financial status of businesses...."[2] And yet TransUnion admitted, under oath, that "we don't have any research to show any statistical correlation between what's in somebody's credit report and their job performance or their likelihood to commit fraud."[3]

Experian has reported that 10% of its revenues now come from sales to employers; and that a key strategy for the company's growth is to expand its reach beyond credit and financial/banking sectors. Indeed, thanks to aggressive efforts by for-profit credit reporting agencies, our credit histories increasingly affect our access not only to credit, but to jobs, housing, insurance, and other fundamental needs. These agencies' influence over people's lives needs to be reined in, not expanded, and enacting legislation such as NYC Intro. 261 is a strong step in this direction.

5 – Local small businesses do not use credit checks, and Intro. 261 would not harm NYC's small businesses. New Economy Project and NYPIRG surveyed retail, restaurant and other small businesses across the five boroughs to learn more about their hiring practices. Of the 80 small businesses we surveyed, 77 (or 96%) did not use credit checks of any kind. These small businesses evaluated job

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1 See, for example: Testimony of Stuart K. Pratt, Consumer Data Industry Association, before the House Subcommittee on Financial Institutions and Consumer Credit, May 12, 2010: http://archives.financialservices.house.gov/media/file/hearings/111/pratt_testimony_5.12.10.pdf

2 Testimony by Eric Rosenberg, Director of State Government Relations for TransUnion, on Connecticut House Bill 5521, Credit Reports and Employment Screening, February 23, 2009: http://graphics8.nytimes.com/packages/pdf/business/10credit.pdf

3 Testimony by Eric Rosenberg, Director of State Government Relations for TransUnion, at Oregon State Legislative Hearing on SB 1045, Job Applicant Fairness Act, January 12, 2010: http://www.youtube.com/watch?v=RypwgmjZXow&feature=related

candidates based on their skills, resumes, references, and personal interviews. All businesses surveyed had fewer than 25 employees – the size of the vast majority of businesses in New York.

The reality is that large corporations, including retail and restaurant chains, are among the employers most likely to conduct credit checks on job applicants and employees. Ironically, many employers that use credit checks are the same ones that pay low wages, fail to provide secure hours to employees, and otherwise make it difficult for people to make ends meet and maintain a positive credit history.

New York City has an opportunity to protect its citizens and set a strong precedent for other cities and states by passing Intro. 261. Unfair and discriminatory practices have no place in our city, and we urge the City Council to enact this vital bill.

Thank you.

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September 9, 2014

The Honorable Darlene Mealy
Chair, City Council Committee on Civil Rights
New York City Council
New York, NY 10007

Re: Int. No. 261, regarding the use of consumer credit history for employment purposes

Dear Chairwoman Mealy:

I write on behalf of the Consumer Data Industry Association (CDIA) to offer our perspective on the fair and appropriate use of credit histories by employers in appropriate circumstances. We believe that your bill should be broadened to allow for additional uses by employers to better reflect their needs to effectively manage risk.

CDIA has long played an important role in public policy discussion related to the use of credit history for employment purposes and we are grateful to continue this critical discussion with you and your committee. We believe that the bill can still protect consumers and serve honest business needs were it amended to recognize, like the Connecticut law, for certain specific uses where credit history is vital.

By way of background, CDIA was founded in 1906 and is the international trade association that represents more than 100 consumer data companies. CDIA members represent the nation's leading institutions in credit reporting, mortgage reporting, check verification, fraud prevention, risk management, employment screening, tenant screening and collection services.

As your committee continues its discussion on the use of credit histories for employment purposes, we encourage you to keep in mind four important points. First, the use of credit reports for employment purposes is legally protected and the law provides consumers with substantial protections and means of enforcement. Second, credit reports for employment purposes are objectively tested. Third, credit reports for employment purposes are reliably proven predictors of risk. Finally, employers' use of credit reports is responsible, focused, and consistent with business necessity.

CDIA shares a core value with most Americans: employers want to hire the best people they can for the jobs available, and job applicants should not fear unlawful discrimination. However, 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. A credit report offers a seven-year look into an applicant's credit history and any difficulties caused by current conditions can be viewed in light of years of a prior positive credit history.

1. Credit reports for employment purposes are legally protected; Consumers are provided with substantial protections and means of enforcement.

Since 1971, the federal Fair Credit Reporting Act (FCRA) has served employers and applicants alike by acknowledging vibrant and lawful use of criminal history information, requiring reasonable procedures to ensure maximum possible accuracy, and requiring substantial systems to correct any inaccuracies that occur. The FCRA is "an intricate statute that strikes a fine-tuned balance between privacy and the use of consumer information."[1] Many states have their own state FCRA laws.[2]

A. *General protections*

The FCRA governs consumer reports, regulates consumer reporting agencies, and protects consumers. The law requires consumer reporting agencies to maintain reasonable procedures to assure maximum possible accuracy.[3] The law also provides many other consumer protections as well. For example:

- Those that furnish data to consumer reporting agencies cannot furnish data that they know or have reasonable cause to believe is inaccurate, and they have a duty to correct and update information.[4]
- Consumers have a right to dispute information on their consumer reports with consumer reporting agencies and the law requires dispute resolution within 30

[1] Remarks of FTC Chairman Tim Muris, October 4, 2001 before the Privacy 2001 conference in Cleveland, Ohio.

[2] *Eg.*, Cal. Civ. Code § 1785 *et seq.*; N.Y. Gen. Bus. L. § 380 *et seq.*

[3] *Id.*, § 1681e(b).

[4] *Id.*, § 1681s-2(a)(1)-(2).

days (45 days in certain circumstances). If a dispute cannot be verified, the information subject to the dispute must be removed.[5]

- A consumer reporting agency that violates federal law is subject to private lawsuits and enforcement by the Federal Trade Commission ("FTC"), Consumer Financial Protection Bureau ("CFPB"), and state attorneys general.[6]

B. Protections specific to employment screening

In addition to the general protections above, there are protections specific to the use of consumer reports for employment purposes.

For example, under § 1681k of the FCRA, a consumer reporting agency which "furnishes a consumer report for employment purposes and which for that purpose compiles and reports items of information on consumers which are matters of public record and are likely to have an adverse effect upon a consumer's ability to obtain employment," such as criminal record information, must either

- notify the consumer of the fact that public record information is being reported by the consumer reporting agency, together with the name and address of the employer to whom such information is being reported; or
- "maintain strict procedures designed to insure" that the information being reported is complete and up to date, and such information "shall be considered up to date if the current public record status of the item at the time of the report is reported."

As a result of these requirements, consumer reporting agencies that include adverse criminal record information in an employment report either notify the consumer of that fact or access directly the most up-to-date information.

Although the FCRA allows employers to review the criminal histories of prospective and existing employees,[7] this review comes with certain obligations. Under § 1681b(b) of the FCRA:

- Before ordering a consumer report for employment purposes, an employer must certify to the consumer reporting agency that the employer has and will comply with the employment screening provisions of the FCRA, and that the information from the consumer report will not be used in violation of any applicable federal or state EEO laws or regulations.

[5] *Id.*, § 1681i(a)(1), (5).
[6] *Id.*, § 1681n, 1681o, 1681s.
[7] *Id.*, § 1681b(a)(3)(B).

- Before requesting a consumer report, an employer must give the prospective employee a written disclosure that a consumer report may be obtained for employment purposes and get the consumer's authorization to obtain a consumer report for employment purposes. The disclosure document provided to the consumer must be clear and conspicuous and contain only the disclosure.
- Before taking an adverse action based on a consumer report, the employer must provide to the consumer a copy of the report and the summary of rights mandated by the CFPB. This notice gives the employee an opportunity to dispute the report.
- The employer must provide a second adverse action notice if an adverse action is actually taken.

C. Credit reports do not contain racial/ethnic information; credit scores are not used for employment screening

It is critical to consider several other protections in place for employment screening use of credit reports.

- Credit reports do not contain a consumer's race, gender, religion, creed, color, marital status, or national origin.
- Credit *scores* are not used for employment purposes.

D. The use of credit histories to discriminate against suspect classes in employment violates existing federal and state law.

Federal and state laws are clear in their prohibition of the use of credit histories to discriminate – intentionally or with a discriminatory impact – against racial or ethnic minorities. However, the EEOC has failed to make a case that the use of credit histories discriminates against any protected class. The EEOC lost a case in 2014 when the U.S. Court of Appeals for the Sixth Circuit unanimously found the Commission had no case of discrimination by Kaplan Higher Education Corp.[8] In another case, which the EEOC lost in 2013, a U.S. District Court in Maryland said that "the EEOC has failed to isolate a specific employment practice of [the] defendant's that allegedly caused a disparate impact"[9] so much so that the EEOC's case was "a theory in search of facts to support it."[10]

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[8] *EEOC v. Kaplan Higher Educ. Corp.*, 748 F.3d 749 (6th Cir.) ("*Kaplan*")
[9] *EEOC v. Freeman*, 961 F. Supp. 2d 783, 799 (D. Md.2013)
[10] *Id.*, 803.

2. Credit reports for employment purposes are objectively tested

The reliability of consumer reports is proven through economic incentives, regulators' reports, and consumer reviews.

A. Economic incentives to ensure maximum reliability

In addition to legal obligations and industry standards, there is an even bigger incentive for credit reports to be reliable. The FTC put it best: there is a "market incentive[] to maintain and improve the accuracy and completeness of [credit] reports."[11] There are approximately 200 million Americans with credit reports and credit reports are requested more than 27 million times each and every day. If credit reports were not reliable, they would not be used by businesses to manage their risks.

B. Debunking advocacy reports

Reports issued by the U.S. Public Interest Research Group (PIRG), Consumers Union (CU), and the Consumer Federation of America (CFA) are often cited to perpetuate the myth of inaccuracies.[12] The Federal Trade Commission reviewed the PIRG and CU reports and found "questions have...been raised about the sample size and representativeness of the samples", and neither of these organizations "relied on the participation of all of the...key stakeholders in the credit reporting process."[13] The General Accountability Office reviewed available literature on perceived inaccuracies, including the PIRG, CU, and CFA reports and concluded that:

> [t]wo of the studies did not use a statistically representative methodology because they examined only the credit files of their employees who verified the accuracy of the information, and it was not clear if the sampling methodology in the third study was statistically projectable. Moreover, all three studies counted any inaccuracy as an error regardless of the potential impact. Similarly, the

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[11] Federal Trade Commission, *Report to Congress Under Sections 318 and 319 of the Fair and Accurate Credit Transactions Act of 2003, Dec. 2004, 7* ("FTC Report, 2004").

[12] For example, the first PIRG report, issued in 1998, reviewed 133 files of 88 people (out of 200 million Americans with credit histories). The second PIRG report in 2004 reviewed the credit reports of 154 people, most of whom were PIRG members or staffers. The sample sizes were not representative of the population, nor were the conclusions drawn statistically sound. For example, PIRG did not seek the input of creditors with regard to likelihood of an adverse credit decision, and based its conclusions on its own staffs' opinions as to who would or would not receive credit. Consumers Union's report was based on its asking 57 employees and their relatives to obtain their credit reports and identify anything they thought was wrong, regardless of whether it might actually impact the credit decision and again based on the consumers' own conclusions.

[13] FTC Report, 2004, iii.

> studies used varying definitions in identifying errors, and provided sometimes obscure explanations of how they carried out their work. Because of this, the findings may not represent the total population of credit reports maintained by the CRAs. Moreover, none of these groups developed their findings in consultation with members of the credit reporting industry....[14]

C. *Government and academic research*

In 2013, the Federal Trade Commission (FTC) published a congressionally mandated study on credit report accuracy. The FTC looked at all of the primary groups that participate in the credit reporting and scoring process: consumers; lenders/data furnishers (which include creditors, lenders, debt collection agencies, and the court system); score developers; and the national credit reporting agencies. The FTC report is based on work with 1,001 participants who reviewed 2,968 credit reports.[15] The FTC found that:

- 97.8% of all credit reports are materially accurate, meaning that only 2.2 % of credit reports had an error that would increase the cost of credit or a loan in the credit market.[16]
- 88% of all errors could be attributed to data being transmitted to credit bureaus by data furnishers.[17]

The FTC findings are consistent with academic research completed in 2011. In 2011, the Policy and Economic Research Council (PERC) published a review of 2,000 consumers and more than 81,000 credit accounts for those consumers on their credit reports[18]. The study was the most comprehensive and statistically sound study to ever be performed on the accuracy of data collected and maintained by Equifax, Experian and TransUnion and it is the first (and only) third-party peer-reviewed study dealing

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[14] *General Accounting Office, Consumer Credit – Limited Information Exists on Extent of Credit Report Errors and Their Implications for Consumers*, GAO-03-1036T (July 31, 2003), 9-10.

[15] *Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003, Dec. 2012*, A-4, available at www.ftc.gov/os/2013/02/130211factareport.pdf.

[16] Id., A-4.

[17] Id., Appendix D.

[18] Michael A. Turner *et al., U.S. Consumer Credit Reports: Measuring Accuracy and Dispute Impacts,* Policy & Economic Research Council (PERC) (May 2011), available at http://perc.net/files/DQreport.pdf. In response to criticism of PERC's work by several consumer activists, PERC published a follow-up paper restating the validity of its work and reiterating its support by its independent, peer-review board. Michael A. Turner, *General Response to Criticisms of recent PERC report: U.S. Consumer Credit Reporting: Measuring Accuracy and Dispute Impacts,* Policy & Economic Research Council (PERC) (August 2011), available at http://perc.net/files/GR.pdf.

with the issue of credit report errors and their material effect on the creditworthiness of consumers. Among other findings, PERC found that:

- Less than one percent (0.93%) of all credit reports examined by the consumers prompted a dispute that resulted in a credit score correction and an increase of a credit score of 25 points or greater.
- After the dispute process ran its course, one-half of one percent (0.50%) of all credit reports examined by consumers had credit scores that moved to a higher "credit risk tier" as a result of a consumer dispute.
- 95% of all consumers who participated in the dispute process were satisfied with the outcome.

The Federal Reserve has reviewed the reliability of consumer reports and made several observations. Most importantly, the Federal Reserve, which looked at over 300,000 credit reports, noted that:

> Overall, research and creditor experience has consistently indicated that credit reporting company information...generally provides an effective measure of the relative credit risk posed by prospective borrowers.[19]

D. What consumers reviews show

Between December 2004 and December 2006, over 52 million free credit reports were provided to consumers who exercised their right to obtain a free credit report under the FCRA. CDIA estimates that through the combination of direct-to-consumer products and consumers exercising their rights under the FCRA (including the right to one free disclosure per year), nationwide consumer reporting agencies issued over 160 million disclosures from December of 2004 to June 2007.

Data from free credit reports provided to consumers who exercised their right to a free credit report under the FCRA shows that 89% of the credit file disclosures issued resulted in no disputes. There are a number of points to consider with regard to the 11% of consumers who did submit a dispute:

- Out of 52 million credit file disclosures reviewed by consumers, only 1.98% of these resulted in a dispute where data was deleted.
- More than half of all disputes are in reality a request that data furnishers update accurate data in a more timely fashion.

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[19] *An Overview of Consumer Data and Consumer Reporting, Federal Reserve Bulletin, Feb. 2003, 50-51* (citations omitted); *See also, Credit Reporting Accuracy and Access to Credit, Federal Reserve Bulletin, Summer 2004, 320.*

- A dispute is not synonymous with an error. Approximately one-third of consumer disputes are from credit clinic attempts to delete accurate data.

E. Credit reports are a reliably proven predictor of risk

The U.S. Equal Employment Opportunity Commission (EEOC) has determined that "[o]verdue just debts increase temptation to commit illegal or unethical acts as a means of gaining funds to meet financial obligations."[20] Because of risk that delinquent debt can pose, the EEOC runs credit checks on applicants for 84 of the agency's 97 positions.[21]

Employers work hard to create working environments that are free of fraud and theft for themselves, their customers, and their other employees. It is important to consider the issue in light of some key statistics provided by the Association of Certified Fraud Examiners (ACFE). For example,

- The ACFE reviewed occupational fraud between early-2006 and early-2008. The top two red flag warnings exhibited by perpetrators associated with the fraud were instances where the fraudster was living beyond his or her financial means (present in 39% of all cases with a median loss of $250,000) or experiencing financial difficulties (present in 34% of all cases with a median loss of $111,000).[22]
- Employee theft accounts for nearly $1 trillion annually. The average employee embezzlement totals more than $175,000, but that number increases to $200,000 for organizations with less than 100 employees.
- The most common occupational frauds in businesses involve employees writing fraudulent company checks, skimming revenues, and processing fraudulent invoices.

There are other studies that highlight the business need for credit checks in targeted circumstances:

- The "[r]esults from a [study of] of 2519 employees indicated that those with financial history concerns were significantly more likely to engage in

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[20] *Kaplan*, No. 1:10-cv-02882-PAG (U.S.C.A. 6th Cir.) Doc #: 103-16, Jan. 3, 2013, 20 of 26, page ID No. 5112. Positions subject to credit checks include not just criminal investigators, senior inspector, auditors, and HR and IT professionals, but also for public affairs specialist writer-editors, research librarians and GS-8 secretaries ($47,000). *Id.*, 24 (page ID no. 5116) and 25 (page ID no.5117)

[21] *Kaplan*, 750 (6th Cir.).

[22] Association of Certified Fraud Examiners 2008 Report to the Nation. <http://www.acfe.com/documents/2008-rttn.pdf> (viewed March 11, 2010) ("ACFE Report").

counterproductive work behaviors than those without financial history concerns."[23]

- "Those who have high levels of personal financial wellness reported better performance ratings, less absenteeism, and less work time used for personal financial matters."[24]
- "Some employees are financially stressed and this negatively affects their attitudes and behaviors at work."[25]
- "Past research has supported the relationship between financial distress and workplace absenteeism. Those reporting less financial distress miss fewer days of work. Efforts to reduce financial distress, then, also may result in less employee absenteeism. Financial education has been found to be related to reduced financial distress. Employers who provide workplace financial education, then, may see a decline in both the level of financial distress exhibited by employees and also a reduction in absenteeism."[26]
- Deborah Price, founder of the Money Coaching Institute, a California-based organization that assists clients with financial problems noted that "[o]ver time, [employees] who are burdened by debt become less reliable, patient, and productive."[27]
- A San Francisco Chronicle article showed that 20% of all data breaches are committed by employees or insiders, and that the amount of data accessed by internal breaches is two-and-a-half-times larger than other breaches."[28]

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[23] Edward S. Oppler, *et al., The Relationship Between Financial History and Counterproductive Work Behavior,* International Journal of Selection and Assessment Volume, vol. 16, no. 4 (Dec. 2008), available at http://www.wright.edu/~brian.lyons/IJSA_2008.pdf .

[24] Joo, S. (1998). Personal financial wellness and worker job productivity. Unpublished doctoral dissertation, Blacksburg: Virginia Polytechnic Institute & State University, available at http://scholar.lib.vt.edu/theses/available/etd-4198-155242/unrestricted/FRONTM_1.PDF.

[25] Kim, J., & Garman, E. T. (2003). Financial stress and absenteeism: An empirically derived research model, Financial Counseling and Planning, 14(1), 31–42, available at http://www.personalfinancefoundation.org/research/vte/An-Empirically-Derived-Research-Model.pdf.

[26] Prawitz, A. D., Haynes, G., Garman, E. T., Shatwell, P., Hanson, K. C., & Hanson, E. W. (2010). Employee financial distress, emotional health risk, and absenteeism. Proceedings of the 2010 Annual Eastern Family Economics/Resource Management Conference, 4-6, available at http://mrupured.myweb.uga.edu/pdfs/EFERMA_TwoMedicineHealth_financial_distress_emotional_health.pdf (citations omitted).

[27] Price, Deborah, Responding to Workers' Financial Crises, First Quarter 2009, 10 available at http://www.pfeef.org/research/efd/EAP_Article%20January%202009.pdf.

[28] Alejandro Martínez-Cabrera, How some ex-employees turn to cybercrime, San Francisco Chronicle, April 8, 2010, available at http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2010/04/07/BUDB1CQ2E8.DTL.

F. *Studies on the use of credit history*

i. In general

The special interest groups for consumers often decry a lack of scientific evidence proving the value of credit information for employment decisions. Yet, an absence of evidence is not evidence. As shown above, there are plenty of data showing the significance of poor credit and business risk. By way of example, assuming for the sake of argument that there were no such studies on credit for employment, there are not likely studies showing the relationship between the college an applicant attended and her work skills. Yet, the college an attended is often found at the top of her resume and it is one of the most common questions asked by employers in interviews.

ii. The liabilities of the 2003 APA study

Special interest groups often tout a 2003 paper published by the *American Psychological Society*.[29] There are several problems with this study. First, the study's premise is incorrect. The study suggests that credit reports are used as a gauge for employee "responsibility, the ability to meet deadlines, dependability and related employee characteristics". But that is not how credit reports are used for employment purposes. Credit reports are used to measure the risk of loss to a business.

Second, the study's methodology is questionable. For example, it is not clear how the study differentiates between employees who left for "negative" reasons and "non-negative" reasons. The authors appear to have asked the 178 employees why someone did not get a position, but they did not ask employers these questions.

Third, the study does not appear to have reviewed the impact of public record information which is also found on a credit report. When employers were asked what the most significant information on a credit report are that most likely impacts a decision to not offer a position, the number one reason cited was a court ordered judgment.[30]

Fourth, the study's analysis is arguable. The study indicates that "credit history data likely reflects also many events outside a person's control" such as "divorce, death [,] past youthful stupidity as well as economic shocks (e.g., layoffs) for which an

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[29] Palmer, Jerry K. and Laura L. Koppes, Further Investigation of Credit History as a Predictor of Employee Turnover, *American Psychological Society*, 2003.
[30] *SHRM Survey: Poor Credit History Not Barrier to Hiring*, available at www.shrm.org/publications/hrnews/pages/poorcreditnotbarrier.aspx ("SHRM Survey").

employee could not predict or prepare for" (sic). That is all true, but it does not detract from a person's financial standing and the potential for risk of loss.[31]

Fifth, even the authors of the paper have noted that there are legitimate uses for credit information by employers. In a news story following the release of their paper,

> Palmer and Koppes concede that some rational arguments can be made for using credit history as part of an employment check. For example, credit history can reflect past conscientiousness and whether an applicant is in current financial trouble. This could be indicative of the likelihood or temptation to steal or leave a company.
>
> In addition, Palmer says credit checks can be used as legal protection should the company be faced with a negligent hiring claim.
>
> 'These all seem like good reasons to include a credit check when considering a candidate for employment,' Palmer says. 'And, he adds, 'there may be circumstances when a credit check may be warranted.' The Federal Trade Commission in 2002 stated that checking a credit history is not uncommon for some sensitive positions, especially where money is involved.[32]

iii. *The EEOC and studies on the use of credit for employment.*

There are reliable studies supporting the use of credit information for employment and there is doubt about the value that the Palmer and Kopps report brings to the debate. However, even if one acknowledges that there are studies in support of and a study against the use of credit for employment, industrial psychologists hired by the EEOC to review the available studies said there is not enough data on which to base a public policy limit on credit use for employment.

In Oct. 2010, the U.S. Equal Employment Opportunity Commission (EEOC) conducted a hearing on the use of credit for employment decisioning. The general conclusion of the EEOC hearing was best summed up by the EEOC's own chief researcher, Dr. Richard Tonowski. In his written testimony before the EEOC, Dr. Tonowski said that "our knowledge is incomplete, but the presentations [at the hearing] have provided a start for assessing the impact of credit checks on equal employment

[31] AFSA Report, *infra.*

[32] PR Newswire, Jan. 2004, http://www.newswise.com/articles/credit-history-not-a-good-predictor-of-job-performance-or-turnover.

opportunity and their responsible use by employers."[33] Dr. Tonowski amplified that point in oral testimony. When asked by EEOC Commissioner Victoria Lipnic "it seems to me that we are really lacking in information on this topic and not necessarily how the information is being used, but the impact the information is having in terms of discrimination analysis?" Dr. Tonowski responded "I think that's a very good summary."[34]

A researcher hired by the EEOC to look in to the existing studies available on the use of credit for employment said in a hearing before the EEOC that

> when you're talking about [the] five studies [that he reviewed], what I can do is say, 'Based on the five studies that exist, this is what we know.' But I think that it's just not enough studies. So I think you can do the meta-analysis, but it's not one I would, for example, run out and try to publish. I would wait until there were another 20 or 30 studies, which at this rate, would be another couple of hundred years to get those.[35]

G. Employers use credit history checks in a responsible and focused manner

We know that our member companies – and most employers – use credit checks in a responsible and manner. CDIA data shows that 15% *of all employee background checks* involve a credit history review. In July 2012, the Society for Human Resources Management ("SHRM") released a survey on employer use of credit histories. The SHRM survey found that 47% of employers conduct a credit background check on employees, down from 53% in 2010. SHRM also reported that of those 47% that do conduct credit background checks, most employers use credit for selected positions within their companies. 87% consider credit histories because the position requires a fiduciary duty or financial responsibility; 42% consider credit histories for senior executive positions; 34% consider them for positions where there is access to highly confidential employee salary, benefits, or personal information; and 25% in situations where the person is in a position of financial trust.[36]

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[33] *Hearing before the U.S. Equal Employment Opportunity Commission, Employer Use of Credit History as a Screening Tool,* written statement of Dr. Richard Tonowski, Chief Psychologist, EEOC, Oct. 20, 2010, available at http://www.eeoc.gov/eeoc/meetings/10-20-10/index.cfm.
[34] *Id.*
[35] *Hearing before the U.S. Equal Employment Opportunity Commission, Employer Use of Credit History as a Screening Tool,* oral statement of Michael Aamodt, Ph.D., Principal Consultant, DCI Consulting Group, Inc., available at http://www.eeoc.gov/eeoc/meetings/10-20-10/index.cfm.
[36] *SHRM Survey.* See, *Background Checking—The Use of Credit Background Checks in Hiring Decisions,* available at www.shrm.org/Research/SurveyFindings/Articles/Pages/CreditBackgroundChecks.aspx.

The SHRM report goes on to say that 58% of those companies that use credit checks do so only after a conditional job offer is made and 33% do so after a job interview. Finally, SHRM reports that negative credit information is not always a bar to employment. It is clear from the SHRM report that the most significant negative credit events are debts in collection (21% to 61% of specific employment positions) and judgments (18% to 31% of specific employment positions). Yet, foreclosures, tax liens, and many other debts will not affect most applicants' ability to get a job. According to the SHRM findings, among organizations that do perform credit history checks, 80% percent have hired someone despite a poor credit reports. Finally, the SHRM data indicates that employers look for significant, long term financial difficulty, not for difficulties that may be associated with a loss of a job.[37] In short, employers use credit checks in a responsible and focused manner.

Conclusion

As shown above, the use of a prospective employee's credit history is legally protected, objectively tested, and reliably proven to predict risk. Many safeguards exist for employers to ensure that credit information is used where it is job related and consistent with business necessity.

CDIA hopes that this information is helpful to your committee as continues the discussion of credit history use as an employment screening tool. We remain willing to serve as a resource about the industry in an effort to work together to craft sound public policy.

Sincerely,

Eric J. Ellman
Senior Vice President, Public Policy and Legal Affairs

[37] *Id.*

TESTIMONY OF STEPHAN EDEL, POLICY AND CAMPAIGNS ANALYST AT THE CENTER FOR WORKING FAMILIES, BEFORE THE NEW YORK CITY COUNCIL CIVIL RIGHTS COMMITTEE ON INTRO. 261-2014, A LOCAL LAW TO AMEND THE ADMINISTRATIVE CODE OF THE CITY OF NEW YORK, IN RELATION TO PROHIBITING DISCRIMINATION BASED ON ONE'S CONSUMER CREDIT HISTORY.

SEPTEMBER 12, 2014

My name is Stephan Edel. I am the Policy and Campaigns Analyst at the Center for Working Families. The Center is a nonpartisan multi-state 501(c)3 organization that engages in issue advocacy and public education for policy campaigns at the state and local level. The Center incubates and develops compelling issue campaigns, provides resources and technical assistance, and injects our values into the national political discourse.

I want to thank the Committee for holding this hearing. Employment decision based on credit checks are bad business and bad for the City. This is an opportunity for New York City to lead on an inequality issue and a civil rights issue, by passing legislation that has no loop holes and no exceptions. NYC can protect job seekers from an inaccurate, discriminatory employment barrier that keeps qualified workers from finding gaining employment in all industries from entry-level retail to the towers of Wall Street.

Employment credit checks exacerbate inequality

Low and middle income people, the majority of New York's working families, don't have reserves, savings accounts, or wealthier family members to help out in a pinch with a gift or loans reinforcing inequality and making them more likely to have credit problems.

In July 2014 the New York State Department of Labor (NYSDOL) reported that in New York City we have an unemployment rate of 7.8 percent - 330,000 New Yorkers are out of work and actively looking.[i] The NYSDOL estimates that there are 2.2 job seekers per job opening in the region.[ii]

After multiple years of high unemployment and an increasing shift to insecure part-time work, a policy that discourages employment or advancement for those who have problems on their credit report fosters the conditions for long term unemployment and pushes workers into discouragement.

Research, including by the Federal Reserve, has shown that younger people tend to have lower credit scores as do Blacks and Hispanics.[iii] These are the same groups that are struggling most with unemployment. In New York City the unemployment rate for Latinos and African-Americans is significantly higher than for whites, with black unemployment almost double that of white New Yorkers,[iv]

Poor credit history is often linked to medical debt and periods of unemployment. Research by the Federal Reserve Board found that more than half of all accounts reported by collection agencies consist of medical debt.[v]

Added together, these facts paint a distressing picture for New York's working families with a black mark on their credit report. What start out as burdensome debts - Student debt, health care costs, or predatory lending - become barriers to employment regardless of a candidates' other qualifications. Unable to get a job because of damaged credit, many are unable to repay debts and improve their credit. This cycle can trap New Yorkers in poverty.

Employment credit checks are discriminatory.

The pain of employment discrimination based on credit doesn't fall equally. For a host of systemic and historical reasons people of color, especially African Americans are likely to have problems with credit compared to white New Yorkers, even when they have an equivalent income.[vi]

The Board of Governors of the Federal Reserve System found that Black and Hispanic households had significantly lower credit scores than whites.[vii] The Equal Employment Opportunity Commission (EEOC) said using credit history for employee screening had "an unlawful discriminatory impact because of race and is neither job-related nor justified by business necessity. In bringing the law suit the EEOC noted that the discriminatory impact rose to a level to refusing to hire a class of black job applicants.[viii]

The credit histories of Latinos and African Americans have suffered as a result of discrimination in lending, housing and employment itself. The divestment of wealth in the black community both at a household and neighborhood level can be traced back decades. Substantial evidence exists that red lining - not offering financial services to people of color regardless of income - played a major part in the recent mortgage crisis. [ix] This targeting of working and middle class communities of color in the lead up to the mortgage crisis was systematic and has had lasting impacts.[x] Latinos were 1.7 times more likely than whites to have risky hybrid or option adjustable-rate mortgages, black borrowers were 2.8 times more likely to have higher-rate loans than whites even when adjusting for credit scores, according to a 2011 report by the Center for Responsible Lending.[xi] Nearly 12 percent of Latinos and 10 percent of black homeowners have lost their homes after defaulting on their loans, almost double the foreclosure rate for whites.[xii]

Additionally, debt collection practices and false claims by debt buyers disproportionately impact communities of color. Research by the New Economy Project found that creditors targeted middle-income black communities for abusive debt collection.[xiii] Thus, abusive debt collection practices have been linked to broader discrimination, financial distress and wealth inequality.

People of color in this city have worse credit than whites and are unemployed longer than whites, even when similarly educated, because of systemic issues. While many employers probably view these credit checks as a fair and impartial sorting mechanism, there is no reasonable interpretation of this practice that doesn't implicate a deeply troubling disparate racial impact. New York City has the opportunity to require employers in all fields to look at candidates on their merits nor based on often incorrect and racially biased scores.

Credit reports are proven unreliable even for measuring credit

A report by the Federal Trade Commission found that one in four consumers was likely to find "at least one mistake in his or her credit report." that might affect their credit scores.[xiv] Studies have shown that one in four credit reports contains serious errors, and 79% of credit reports contain errors of some kind.

Because so many credit reports include erroneous information, even workers who have paid all their bills on time can be harmed by employers' use of credit reports. Legal advocates and Attorney Generals have brought repeated cases against debt buyers and collectors for false and illegal practices.[xv] In New York State, then Attorney General, Andrew Cuomo sued 35 law firms and 2 debt collectors in just one case alleging over 100,000 default judgments were improperly obtained against New York consumers.[xvi]

Experian, one of the big three credit reporting bureaus, claims: "Credit information provides insight into an applicant's integrity and responsibility toward his or her financial obligations."[xvii] However, many factors unrelated to the employees' capabilities can lead to credit problems: health issues, predatory lending, the financial burden from caring for a sick family member, and far too often false or illegal reporting.

Conclusion

Credit checks are not a reasonable tool for employment decisions. While credit bureaus make money on encouraging the adoption of employer credit checks they admit that they have no evidence of their usefulness. A TransUnion representative stated, on the record, that credit bureaus "... don't have any research to show any statistical correlation between what's in somebody's credit report and their job performance or their likelihood to commit fraud." [xviii]

Estimates are that as many as half of employers may now use credit reports when making hiring decisions. In the current weak labor markets employers are eager to search out ways to winnow down piles of applicants and protect themselves from poor employment decisions. However, most credible research indicates that credit reports have no correlation to job performance.

There are no quick fixes for finding good candidates for employment, but we can be sure that credit checks are a poor tool. Additionally, this practice has a disproportionately negative impact on communities of color and contributes to a cycle that traps those with poor credit in poverty.

I appreciate the Council members' time and the opportunity to be part of the conversation. Thank you again for holding this hearing.

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[i] NY State Department of Labor Monthly Borough Labor Force Data labor.ny.gov/stats/nyc/index.shtm

[ii] NY State Department of Labor July 2014 Unemployed Job Seekers per Opening (JOLTS data) www.labor.ny.gov/stats/job-seekers-per-opening.shtm

[iii] Federal Reserve, August 2007 Report to the Congress on Credit Scoring and Its Effects on the Availability and Affordability of Credit http://www.federalreserve.gov/boarddocs/rptcongress/creditscore/creditscore.pdf

[iv] BLS CPS 2012 annual average for NYC metro area. http://www.bls.gov/opub/gp/gpsec3.htm table 27 page 236;

[v] Robert Avery, Paul Calem, Glenn Canner & Raphael Bostic, "An Overview of Consumer Data and Credit Reporting," Federal Reserve Bulletin, 2003.

[vi] Lawyers Committee for Civil Rights, "Letter in Support of the Equal Employment for All Act" signed by the Lawyers Committee for Civil Rights, National Council of La Raza, and the NAACP among other organizations. http://www.lawyerscommittee.org/admin/employment_discrimination/documents/files/Equal-Employment-for-All-Support-Letter.pdf

[vii] Federal Reserve 2007

[viii] Washington Post 8/8/12 For Black Americans Financial Damage from Subprime Impolision is Likely to Last http://www.washingtonpost.com/business/economy/for-black-americans-financial-damage-from-subprime-implosion-is-likely-to-last/2012/07/08/gJQAwNmzWW_story.html and the Temple Law Review Volume 83, No. 4, Summer 2011 Nier and St. Cyr sites.temple.edu/lawreview/files/2012/02/83.4_Nier_St.Cyr_.pdf

[ix] Washington Post 8/8/12 For Black Americans Financial Damage from Subprime Impolision is Likely to Last http://www.washingtonpost.com/business/economy/for-black-americans-financial-damage-from-subprime-implosion-is-likely-to-last/2012/07/08/gJQAwNmzWW_story.html and the Temple Law Review Volume 83, No. 4, Summer 2011 Nier and St. Cyr sites.temple.edu/lawreview/files/2012/02/83.4_Nier_St.Cyr_.pdf

[x] Washington Post 8/8/12 For Black Americans Financial Damage from Subprime Impolision is Likely to Last http://www.washingtonpost.com/business/economy/for-black-americans-financial-damage-from-subprime-implosion-is-likely-to-last/2012/07/08/gJQAwNmzWW_story.html and the Temple Law Review Volume 83, No. 4, Summer 2011 Nier and St. Cyr sites.temple.edu/lawreview/files/2012/02/83.4_Nier_St.Cyr_.pdf

[xi] Business Week http://www.businessweek.com/articles/2012-07-09/a-racial-legacy-of-the-subprime-crisis-damaged-credit-scores

[xii] Ibid.

[xiii] NEDAP, The Debt Collection Racket in New York: How the Industry Violates Due Process and Perpetuates Economic Inequality http://www.nedap.org/resources/documents/DebtCollectionRacketNY.pdf

[xiv] Federal Trade Commission, http://www.ftc.gov/news-events/press-releases/2013/02/ftc-study-five-percent-consumers-had-errors-their-credit-reports *http://www.ftc.gov/news-events/press-releases/2013/02/ftc-study-five-percent-consumers-had-errors-their-credit-reports*

[xv] Business Week 6/11/13 How Debt Collectors Ruin Credit with Sewer Service *http://www.businessweek.com/articles/2013-06-11/how-debt-collectors-ruin-credit-reports-with-sewer-service*

[xvi] NY Attorney General ***http://www.ag.ny.gov/press-release/attorney-general-cuomo-sues-throw-out-over-100000-faulty-judgments-entered-against-new***

[xvii] New York times *http://www.nytimes.com/2013/05/12/business/employers-pull-applicants-credit-reports.html?pagewanted=all&_r=0*

[xviii] DEMOS http://www.demos.org/publication/why-new-york-needs-stop-credit-discrimination-employment-act

Dēmos

FOR THE RECORD

Testimony of Emmanuel Caicedo, State Affairs Manager, Dēmos
To the New York City Council Committee on Civil Rights

In support of Intro 261: The Stop Credit Discrimination in Employment Act

September 12, 2014

Good morning. My name is Emmanuel Caicedo and I am State Affairs Manager at Dēmos. Dēmos is a public policy organization working for an America where we all have an equal say in our democracy and an equal chance in our economy. We are based here in New York City. I want to thank the Committee on Civil Rights and Chairperson Darlene Mealy for this opportunity to testify in support of Intro 261.

Over the past decade, Dēmos has conducted extensive research on credit card debt among low- and middle-income households. As part of this research, we have become increasingly concerned with how families are being financially penalized for being in debt, making it difficult, if not impossible, for them to ever get out of debt. In 2012, we surveyed a nationally representative sample of one thousand low- and middle-income households across the country that were carrying credit card debt for three months or longer. In addition to the questions Dēmos had asked in the past about credit card debt we began to ask about the experience of these households with employment credit checks.[1]

Dēmos' first finding is that in the survey population employment credit checks are common. Among the households in the survey population that experienced unemployment, about one in seven say that a prospective employer has asked to check their personal credit history. But it's likely that this understates the extent of employment credit checks: people are asked to sign a lot of things when they apply for jobs and they may not remember every piece of paper.

Dēmos also found that credit checks have a real impact – people are shut out of job opportunities because of their credit. Under the terms of the federal Fair Credit Reporting Act employers are required to provide official notification if a credit report played any role in a decision not to hire someone.[2] The problem is that this is hard to enforce, so many job applicants may never find out that their credit report was the reason they were denied work. Nevertheless, some people are informed, and among those in the survey population who report that they had poor credit, one in seven report that they have been advised that they would not be hired for some position because of their credit. This indicates that credit checks really are a barrier to employment.

What does a credit report really reveal about someone? Dēmos found that poor or declining credit is associated with households experiencing job loss, lacking health coverage, or having medical debt.

[1] The source for Dēmos research cited throughout this testimony is: Amy Traub, "Discredited: How Employment Credit Checks Keep Qualified Workers out of a Job," Dēmos, 2013. http://www.demos.org/sites/default/files/publications/Discredited-Demos.pdf
[2] 15 U.S.C. §1681b (b) (3).

For example, Dēmos found a number of different connections between medical debt and poor credit. More than half of those who report having poor credit say that "unpaid medical bills or medical debt" contributed to their poor credit. This is consistent with a study by the Federal Reserve Board which found that 52 percent of all accounts reported by collection agencies that appeared on credit reports consisted of medical debt.[3] A lot of what employers are looking at on credit reports is medical debt, but they don't realize that.

We also find that in our sample Latino and particularly African American households are more likely to report having poor credit and less likely to report having good or excellent credit than white households. Dēmos' findings on racial disparities are consistent with previous research, including results published by the Federal Reserve Board and the Brookings Institution.[4] A number of factors contribute to the racial disparity in credit quality: unemployment is higher in communities of color; there's a tremendous racial wealth gap compared to white households; and the ongoing practice of predatory lending disproportionately impacts communities of color. All of this may contribute to worse credit. As a result, employment credit checks can amplify and perpetuate racial discrimination. That's why this is such an important civil rights issue.

Finally, I'd like to address credit reporting errors. A comprehensive study by the Federal Trade Commission finds that 21 percent of American consumers have some kind of error on their credit report.[5] They found a smaller percentage of consumers have errors that would actually affect their credit score in a way that would make it harder for them to get a loan, but this 21 percent number is the most relevant for the employment context, because employer assessments of a credit report are entirely subjective. Employers are not looking at a three-digit credit score; they're looking at list of credit accounts, how much the job applicant owes and whether they are paying as agreed or are late. There is no universally accepted way to interpret this information because credit reports were developed to guide lenders, not employers. There is a real lack of social science research proving that ***any*** credit information is relevant to job performance. An error that might be too small to affect the outcome in a lending scenario could stand out to an employer and make the difference that prevents someone from getting hired.

In conclusion, we find that in our survey population employment credit checks are common and they are keeping people from getting jobs. Yet poor credit is associated with a host of factors that we don't generally see as legitimate reasons to deny people employment: it's associated with lack of health coverage, with medical debt, and with unemployment. We also find that people of color are disproportionately likely to report poor credit. And we see a high rate of errors in credit reports. The Dēmos study is another piece of evidence that employment credit checks are an illegitimate and discriminatory barrier to employment. And so I urge the Committee on Civil Rights to stop this discrimination by passing Intro 261. If you pass it without exemptions, it will provide the strongest protection in the country against credit discrimination. Thank you.

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[3] Robert Avery, Paul Calem, Glenn Canner and Raphael Bostic, "An Overview of Consumer Data and Credit Reporting, Federal Reserve Bulletin, 2003.

[4] Board of Governors of the Federal Reserve System, "Report to the Congress on Credit Scoring and Its Effects on the Availability and Affordability of Credit," 2007; Federal Trade Commission, "Credit-Based Insurance Scores: Impacts on Consumers of Automobile Insurance," 2007; Robert B. Avery, Paul S. Calem, and Glenn B. Canner, "Credit Report Accuracy and Access to Credit," Federal Reserve Bulletin, 2004; Matt Fellowes, "Credit Scores, Reports, and Getting Ahead in America," Brooking Institution, 2006.

[5] "Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003," Federal Trade Commission, December 2012. Released to the public February 2013.

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FOR THE RECORD

New York City Council
Committee on Civil Rights
City Hall
New York, NY 10007

September 12, 2014

Re: **Hearing In Re Stop Credit Discrimination in Employment Act (Introductory Bill No. 261)**

To Chairman Mealy and members of the Committee on Civil Rights:

On behalf of the NAACP Legal Defense & Educational Fund, Inc., I submit testimony in support of swift passage of Introductory Bill No. 261 (Intro 261) to stop credit discrimination in employment.

The NAACP Legal Defense and Educational Fund, Inc. (LDF) is America's premier legal organization fighting for racial justice. Through litigation, advocacy, and public education, LDF seeks structural changes to expand democracy, eliminate disparities, and achieve racial justice in a society that fulfills the promise of equality for all Americans. We were founded by Thurgood Marshall here in New York City, and have challenged racial discrimination against African Americans and other people of color for over sixty years.[1] Currently, LDF is focused on barriers to employment that unfairly and disproportionately affect African-American workers. In addition to credit checks, these barriers include the overuse and misuse of criminal background

[1] LDF has been a separate entity from the National Association for the Advancement of Colored People since 1957.

checks and hiring and promotion exams that disproportionately screen out African American applicants and employees but that serve no legitimate business purpose.

LDF supports Intro 261 in its current form, with no additional exemptions or carve outs. If passed, New York City workers would have one of the strongest, most effective protections in the country against credit discrimination. All workers would benefit from this law given extensive evidence that credit reports are notoriously inaccurate and violate workers' privacy because reports can contain information about medical conditions, disabilities and familial status – information that employers are legally barred from basing employment decisions on. An anti-credit discrimination law would safeguard workers' privacy and shield them from unfair and potentially unlawful denials of employment opportunities.

Protections against employment credit checks are particularly important for African Americans for reasons discussed in more detail below.

A. <u>Employers' Use of Credit Checks Likely Violates Title VII.</u>

Applicable case law suggests that credit checks violate the letter and spirit of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.*; however, neither federal nor New York state courts have squarely considered or ruled on the legality of credit checks for employment decisions under Title VII.[2] Title VII bars employers from using selection devices like credit checks if they disproportionately disadvantage, i.e., have a disparate impact on, a legally protected groups of workers and are not shown to be job-related or to serve a necessary business purpose. The U.S. Equal Employment Opportunity Commission (EEOC), the federal agency charged with enforcement of Title VII, advises employers who use a selection device that has a

[2] In a recent high-profile credit discrimination case, *E.E.O.C. v. Kaplan Higher Educ. Corp.*, the EEOC brought a Title VII challenge to an employer's use of credit checks but the case was ultimately dismissed on procedural grounds without the court considering the legality of credit checks generally. No. 1:10 CV 2882, 2013 WL 322116 (N.D. Oh. April 9, 2014) (affirmed by 748 F.3d 749 (6th Cir. 2014)

disparate impact on a particular group to have the device in question evaluated by experts in accordance with the EEOC's Uniform Guidelines to determine job-relatedness.

Credit checks have in no way undergone this rigorous process of evaluation. To the contrary, there is no research or evidence that employee credit checks are job-related, much less consistent with business necessity as Title VII requires, for *any* job, including managerial or financial positions. Use of credit checks as a basis for employment decisions has not been evaluated or shown to be job-related by a single known study, much less by any study that meets the EEOC's strict standards for proving that a job requirement that has a disparate impact is legally justified.[3]

B. Social Science Research Shows Race Discrimination in Access to Credit.

While courts have not yet ruled directly on the legality of credit checks for employment decisions, social science research clearly indicates that African Americans face discrimination in the credit markets that results in more negative credit histories and lower credit scores for African Americans. This documented race discrimination in the credit markets, discussed in more detail below, is yet another reason why African-Americans in particular are harmed by employers' use of credit checks.

A 2008 Study by the Federal Reserve Bank of Boston titled "Credit Card Redlining" examined credit information from one of the three major credit bureaus for over 285,000 individuals and found disparities in access to credit based the racial composition of a credit applicant's neighborhood.[4] The study found disparities persisted even after controlling for other potential explanations such as differences in neighborhood crime rates, income levels, and

[3] The Supreme Court in *Albemarle Paper Co. v. Moody*, 422 U.S. 405 (1975), disapproved of taking a requirement validated for *one job* and applying it more broadly as a requirement for *other jobs* at the *same employer*; the Court would be even more skeptical of a requirement validated only for *non-employment* uses (*e.g.*, for lenders to evaluate whether an individual likely will be able to pay back borrowed money).
[4] Cohen-Cole, Ethan, "Credit Card Redlining," Federal Reserve Bank of Boston (Feb. 26, 2008), available at http://www.bos.frb.org/bankinfo/qau/wp/2008/qau0801.pdf.

vacancy rates. This observed "race penalty" has real consequences for consumers. The study concluded that "moving from an 80% majority White to an 80% majority Black neighborhood reduces credit by an average of $7,357."[5] The study's author similarly found a negative effect on credit scores for consumers living in predominantly black areas. The negative consequences that flow from these disparities cannot be understated. Because consumer credit is often a critical element to secure a mortgage, disparities in access to credit can lead to disparities in homeownership and overall economic security.

In the vacuum created by the discriminatory denial of more consumer-friendly credit options, African Americans are subject to more predatory credit options like payday loans, which can charge annualized interest rates of over 300%, or high-interest credit cards, which are often marketed aggressively to African-American communities. Consequently, African Americans are more than twice as likely as white cardholders to pay interest rates higher than 20%.[6]

Researchers have found that negative credit history is most often the result of hardships faced by the consumer rather than overconsumption or irresponsible spending habits. Specifically, negative credit history often indicates that a consumer has faced high medical cost, unemployment, and divorce[7] -- hardships that African Americans are more likely to face than whites.[8] One study by researchers at Harvard published in the American Journal of Medicine found that medical costs and illness contributed to over 62% of bankruptcy filings.[9] And

[5] *Id.* at 14.
[6] Jennifer Wheary and Tamara Draut, "Who Pays: The Winners and Losers of Credit Card Deregulation," at p. 6, Demos, available at http://www.demos.org/sites/default/files/publications/whopays_Demos.pdf.
[7] Elizabeth Warren, *The Over-Consumption Myth and Other Tales of Economics, Law, and Morality*, 82 WASH. U. L.Q. 1485, 1510 (2004).
[8] Theresa M. Beiner & Robert B. Chapman, *Take What You Can, Give Nothing Back: Judicial Estoppel, Employment Discrimination, Bankruptcy, and Piracy in the Courts*, 60 U. MIAMI L. REV. 1, 3 (2005) (citing Robert B. Chapman, Missing Persons: Social Science and Accounting for Race, Gender, Class, and Marriage in Bankruptcy, 76 AM. BANKR. L.J. 347, 385 (2002)).
[9] David U. Himmelstein, Deborah Thorne, Elizabeth Warren, and Steffie Woolhandler, "Medical Bankruptcy in the United States, 2007: Results of a National Study," AM. J. OF MED. (2009), available at http://www.washingtonpost.com/wp-srv/politics/documents/american_journal_of_medicine_09.pdf.

increasingly African Americans are suffering under the weight of increased student loan debt, which can negatively affect credit history. Eight out of ten African American students borrow to finance their education – more than any other group, and per student borrowing is higher for African Americans students than any other group. African Americans average $28,682 in student loan debt compared to $24,842 for white student borrowers.[10] While these factors may contribute to lower credit scores or more negative credit history they do not, and have never been shown to, predict how well a person can perform a particular job.

C. African Americans face disproportionately high employment rates in New York City.

While New Yorkers generally were hit hard by the recession and African Americans were hit especially hard. In the first half of 2013 the unemployment rate for African Americans in New York City (13.5%) was more than twice that of their white counterparts (5.5%).[11] Black New Yorkers also experience the longest periods of unemployment—an average of 42 weeks—of all racial groups.[12] Given these severe disparities in the rates and duration of unemployment, LDF is particularly concerned about obstacles to employment like credit checks that have never been shown to bear any connection to an applicant or employee's job qualifications or performance, but rather reflect the economic vulnerability and cumulative disadvantage that African Americans must overcome.

[10] Anne Johnson, Tobin Van Ostern, and Abraham White, "Student Debt Crisis," Center for American Progress (Oct. 25, 2012), available at http://www.americanprogress.org/wp-content/uploads/2012/10/WhiteStudentDebt-5.pdf. Further exacerbating these realities, African Americans are more likely to enroll in for-profit institutions that are characterized by high debt loads and high unemployment rates among their graduates.
[11] Fiscal Policy Institute, "The State of Working New York 2013: Workers Are Paying a High Price for Persistent Unemployment" at 21 (2013) *available at* http://fiscalpolicy.org/wp-content/uploads/2013/08/SWNY-2013.pdf.
[12] *Id.* at 19.

D. Conclusion

Given the legal and social science observations above, LDF strongly opposes the use of employment credit checks and wholeheartedly supports passage of Intro 261 to guarantee that applicants and employees have an equal opportunity to work regardless of their race. Thank you for the opportunity to testify today.

Sincerely,

ReNika C. Moore

Director, Economic Justice Group,
NAACP Legal Defense and
Educational Fund, Inc.

cnycn

FOR THE RECORD

Testimony by Christie Peale, Executive Director, Center for NYC Neighborhoods
On behalf of clients in mortgage distress
Regarding
Int. No. 261, The Stop Credit Discrimination in Employment Act

September 12, 2014

Dear members of the City Council Committee on Civil Rights, and the many sponsors of Intro 261, thank you for the opportunity to submit testimony regarding the Stop Credit Discrimination in Employment Act. I am the Executive Director of the Center for New York City Neighborhoods (CNYCN). I submit testimony on behalf of CNYCN's clients in mortgage distress across the City's five boroughs, particularly those neighborhoods hardest hit by foreclosure and Hurricane Sandy.

About the Center for NYC Neighborhoods
CNYCN was created in 2008 through the collaborative efforts of the Mayor, the New York City Council, community advocates, foundations, and corporate leaders to coordinate New York City's response to the foreclosure crisis. Since 2008, CNYCN and our 36 non-profit Network Partners have helped over 30,000 homeowners across the City struggling with mortgage delinquency and foreclosure. Additionally, our Network has helped homeowners prevent over 5,000 foreclosures, with thousands more at-risk homeowners continuing to work with Network counselors and attorneys to resolve their housing crises.[1] Our mission is to promote and protect affordable and sustainable homeownership in New York City, focusing on those neighborhoods hardest hit by foreclosure.

The Stop Credit Discrimination in Employment Act
I urge the City Council to consider the impact that barriers to employment may have on those New Yorkers whose credit profiles have been damaged by the nation's foreclosure crisis. Credit histories and scores are heavily impacted by an individual's payment history and their outstanding debt. A foreclosure, short sale, deed-in-lieu transaction or bankruptcy can remain on a consumer's credit history for years, and constrain an individual's ability to access credit at affordable interest rates. Moreover, credit reports can reveal deeply personal information, including about medical conditions or disability – information that anti-discrimination laws are intended to protect.

Many New York City homeowners fell behind on their mortgage payments during the recent recession. Analysis by New York University's Furman Center for Real Estate and Urban Policy of data from the New York Federal Reserve Bank indicates that almost 1 in 10 mortgages in New York State are seriously (90 days or more) delinquent. In 2012 alone, 93,007 homeowners in

[1] Center for New York City Neighborhoods data analysis, 2014.

New York City received a 90-day pre-foreclosure notice. According to data provided by the Furman Center, mortgage servicers have started foreclosure proceedings against 66,260 homeowners in New York City since 2008.

According to data from CNYCN's network partners, the majority of homeowners struggling to make their mortgage payments in New York City are suffering from underemployment. Our partners routinely assist families with at least one household member that has lost a job, or is struggling to make ends meet on reduced pay. Families are looking for a first or second job to increase their household income in order to save their home from foreclosure. Increased household income may be the critical piece that allows them to pay back mortgage arrears and to maintain current mortgage payments going forward and can be a key to stabilizing a family.

As the City Council Members well know, the stability of these homeowners directly impacts the stability of the City's neighborhoods. Impaired credit and high household debt are already heavy burdens for households to bear, and very difficult to address. Without additional employment income, a household's best option may be to avoid foreclosure through a short sale or deed in lieu. These families who cannot retain their homes will not be able to obtain a new mortgage with damaged credit, and will also struggle to find new rental housing as landlords often require a credit check. Poor credit should not be used to limit any chance a homeowner has of regaining their financial footing and affordable housing, especially if they are making the financially responsible decision to move on from a home with an unaffordable mortgage. Homeowners struggling to keep their home need more support, not more obstacles. Households should not be barred from new employment opportunities that can help stabilize their homes and their communities.

Since Hurricane Sandy hit, we have also been working with hundreds of homeowners in Staten Island, Brooklyn and Queens, who are struggling with temporary housing expenses, huge repair bills and the costs of elevating their homes in addition to their mortgage payments. Over the past two years, we have seen homeowners missing mortgage payments, using funds that could rebuild their homes and their neighborhoods to pay arrears, and an increase in pre-foreclosure filings in Sandy-impacted neighborhoods. Some of our clients lost income and jobs due to the storm as well. It's easy to imagine what it would be like to be barred from employment and income needed to rebuild your life after Sandy because your credit history has been impaired because of Sandy.

On behalf of our clients who are in foreclosure because of the housing crisis or who are at risk because of Hurricane Sandy, I want to emphasize that the effects of mortgage distress on New York City homeowners are ongoing and lasting, and that access to employment is essential to provide these homeowners with the income they need to regain financial stability and for our neighborhoods to remain vibrant and thriving. Therefore, we call on the NYC Council to pass Intro. 261, and ensure that all New Yorkers have fair access to employment.

As always, thank you for your attention to this critical issue and your ongoing support of New York City's homeowners and neighborhoods.

Testimony by Zayne Abdessalam, Director of Public Policy, Retail, Wholesale and Department Store Union

To the New York City Council Civil Rights Committee

Intro 0261-2014, THE STOP CREDIT DISCRIMINATION IN EMPLOYMENT ACT
A Local Law to amend the administrative code of the city of New York, in relation to prohibiting discrimination based on one's consumer credit history.

September 12, 2014

Good morning Chairwoman Mealy and Members of the Committee. My name is Zayne Abdessalam and I am the director of public policy for the Retail, Wholesale and Department Store Union (RWDSU). On behalf of President Stuart Appelbaum, I am pleased to testify today on this legislation calling to prohibit discrimination based on one's consumer credit history.

The RWDSU represents 100,000 workers in the United States, with 45,000 residing in New York. RWDSU members work in retail, food processing, and other low-wage sectors. Our union is deeply involved in progressive activism and movements for economic and social justice. RWDSU is committed to raising job standards across industries and occupations.

As employment lags from the worst economic downturn in decades, thousands of New Yorkers are out of work and struggling to keep up with bills for even the most basic expenses. What they need more than anything is a job. But for too many people, access to employment is blocked by the growing practice of employment credit checks. Employers now routinely check the credit histories of prospective employees, many of whom are more than qualified for the job, and may use the information to deny them the job. This practice amounts to little more than class discrimination and it must end now.

That is why RWDSU stands firmly in support of the Stop Credit Discrimination in Employment Act.

New York City has long been the progressive capital of the United States, having lead in fights for the rights of same-sex couples, women's equality, living wages for working families, and against racial and class discrimination.

Credit checks exclude qualified applicants—including people whose credit was damaged as a result of medical debt, divorce, student loans, layoffs, predatory lending, identity theft, or other events beyond their control—from the employment they desperately need. Credit checks also discriminate against women, low-income and people of color, who have been disproportionately impacted by the economic downturn.

The New York City Council must act quickly to end this discriminatory practice.

Credit Reports are Notoriously Inaccurate

In a 2008 report by the Federal Trade Commission, concerns were raised about the prevalence of errors in credit reports and the difficulties in getting incorrect information removed from a report. In fact, recent consumer studies report that almost four out of five credit reports contain errors. Yet over the past few years, the credit reporting industry has reaped huge profits from selling this personal consumer information to employers.

Credit History Does not Predict Job Performance

Research clearly shows that there is no connection between credit information and job performance or turnover, yet employers across the country run credit checks as part of their hiring processes. A representative of TransUnion, one of the "Big 3" credit bureaus, admitted under oath that "we don't have any research to show any statistical correlation between what's in somebody's credit report and their job performance or their likelihood to commit fraud." In spite of this, credit reporting agencies are aggressively marketing the use of credit reports and lobbying against bills that would restrict employment credit bills. There is no correlation between personal credit reports and an applicant's lack of character or propensity to commit a crime.

Credit Checks in Hiring Have a Discriminatory Impact on Women, Low-Income and People of Color

The Equal Employment Opportunity Commission has repeatedly warned that employment credit checks have a discriminatory impact on African American and Latino applicants, whose credit histories have suffered from discrimination in lending, housing and employment itself. These actions create unnecessary and harmful obstacles for women, low-income and people of color seeking gainful employment to support their families, pay their bills and pull themselves out of debt.

Credit Checks in Hiring Create a Double-Bind for Workers

In the aftermath of the Great Recession a growing number of New Yorkers are unable to get jobs because of damaged credit, and unable to repay debts and improve their credit because they can't get a job. Unless the City Council passes this legislation now employers will continue to deny people jobs that would help them climb out of their financial hole, simply because of the fact that they are in a financial hole.

New York City needs to take the progressive lead on this common sense issue and pass this legislation, putting qualified people back to work and ensuring that all job seekers are given a fair shot at gainful employment.

Thank you for allowing RWDSU to submit testimony today.

Testimony of
G.L. Tyler
Political Director
District Council 1707 AFSCME
September 12, 2014

New York City Council
Committee on Civil Rights
Regarding Int. No 261

I thank the Council's Committee on Civil Rights and its Chair to present this testimony. My name is G.L. Tyler. I am speaking on behalf of the Executive Board of District Council 1707 AFSCME and Executive Director Victoria Mitchell.

District Council 1707 stands firmly behind any and all laws that offer enhanced protections for working men and women seeking employment that discourages discrimination based on factors already proven not to offer a credible assessment of one's ability to perform adequately on most jobs.

Intro 261 will set a clear example to the rest of the nation that credit discrimination is regressive and credit checks were not designed to assess long or short-term job performance.

Since 2012 more than 1,200 members of our Head Start Local 95 and Day Care 205 were terminated through the former Mayor's Early Learn fiasco. These workers immediately sought new employment and anecdotally I learned that many had difficulty finding new employment.

It is embarrassing for anyone to speak about their personal finances that could have hindered their employment opportunities. But if an application requires a prospective employee's permission to seek their credit history, how many of us would refuse, knowing that the prospective employer would immediately reject their application?

At risk of employment rejection are students, recent college graduates, individuals with long-term unemployment histories, persons with expensive health issues and workers who have been chronically under-employed due to the economy.

I know child care professionals seeking employment want to work. Before they were terminated in 2012, many were on their jobs 10, 20 and 30 years. How does a credit check substantiate a notable work history? It does not. Let's pass this bill and eliminate another hurdle for New Yorkers to become employed, raise their families and contribute to their communities and the various local and citywide economies.

NYPIRG
NEW YORK PUBLIC INTEREST RESEARCH GROUP

**TESTIMONY BY AILEEN SHEIL,
CHAIRPERSON OF THE BOARD OF DIRECTORS, NEW YORK PUBLIC INTEREST RESEARCH GROUP (NYPIRG)
TO THE NEW YORK CITY COUNCIL CIVIL RIGHTS COMMITTEE
ON INTRO. 261, THE STOP CREDIT DISCRIMINATION IN EMPLOYMENT ACT
September 12, 2014**

Good morning and thank you for the opportunity to testify at today's hearing. My name is Aileen Sheil and I am the Chairperson of the Board to the New York Public Interest Research Group, better known as NYPIRG.

NYPIRG is New York's largest student-directed, non-partisan research and advocacy organization. Our board of directors consists of college and university students elected from campuses with NYPIRG chapters from across the state. NYPIRG students become well-trained, powerful advocates by working on public policy issues like environmental protection, consumer rights, voter registration, and higher education access and affordability.

We are concerned that the rising cost of higher education, the growing dependence on student loans, uncertain job opportunities for recent graduates, and the use of credit history as a criterion in hiring decisions are conspiring to create a bleak future for students.

Rising Costs
In the past three decades, the cost of attaining a college degree across the country has increased more than 1,000 percent[1]. Between 2012 and 2016, CUNY tuition will increase by 58%.

Student Debt Crisis
According to the Consumer Financial Protection Bureau student debt has topped $1 trillion. And according to The Institute for College Access and Success, New York graduates with student loan debt had an average burden of $25,537.

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[1] Bloomberg.com, "Cost of College Degree in U.S. Soars 12 Fold: Chart of the Day," Michelle Jamrisko & Ilan Kolet, August,15 2012, http://www.bloomberg.com/news/2012-08-15/cost-of-college-degree-in-u-s-soars-12-fold-chart-of-the-day.html (8 January 2013).

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Job-Scarcity
College graduates are facing unemployment, underemployment, and malemployment — they are without a job, are employed only part-time or for low-wage work, or are in a job that does not require a college degree. According to the Federal Reserve Bank of New York, from 2001 to 2012, underemployment rates jumped from 34% to 44%. Furthermore, while college graduates fare better than those without degrees, recent graduates are unemployed in higher numbers than past graduates.[2]

Credit Discrimination
Almost half of employers are checking people's credit when making hiring and promotion decisions[3] —even though there is no credible evidence linking credit history with the ability to perform well at work. This holds true across business sectors and job types. No matter what the job is – whether it entails handling money, having access to personal information, or other managerial responsibilities – there is no evidence to suggest that a person's credit history affects their job performance. We implore the City Council to pass Intro. 261 without any exemptions. A strong bill, without exemptions, is the way to protect all job seekers from this discriminatory practice.

Take Samantha Perez. As a BMCC student, Samantha spoke to El Diario for a cover story about falling into financial problems after accruing over $30,000 in student loan debt. As a result of her marred credit history, she was denied employment at the Swatch store in Midtown Manhattan.

Samantha's story is hardly unique. We frequently hear from students who have been denied employment and are struggling to pay off their tuition and worrying about falling into massive amounts of debt. And what's worse is that many more students are living in fear of what will happen when they graduate.

We call on the NYC Council to pass Intro. 261 as it stands, to ensure that all New Yorkers have fair access to employment.

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[2] Federal Reserve Bank of New York, *Current Issues in Economics and Finance*, Volume 20, Number 1, 2014. "Are Recent College Graduates Finding Good Jobs?" Jaison R. Abel, Richard Deitz, and Yaqin Su. http://www.newyorkfed.org/research/current_issues/ci20-1.pdf. (9 September 2014)

[3] Society of Human Resources Management, Background Checking: Conducting Credit Background Checks, July 19, 2012, http://www.shrm.org/research/surveyfindings/articles/pages/creditbackgroundchecks.aspx

TESTIMONY BY ANGELINA GARNEVA, POLICY AND COMMUNICATIONS ASSOCIATE OF THE NEW YORK CITY EMPLOYMENT AND TRAINING COALITION

TO THE NEW YORK CITY COUNCIL CIVIL RIGHTS COMMITTEE ON INTRO. 261, THE STOP CREDIT DISCRIMINATION IN EMPLOYMENT ACT

September 12, 2014

Good morning and thank you for the opportunity to testify at today's hearing. My name is Angelina Garneva and I am the Policy and Communications Associate of the New York City Employment and Training Coalition (NYCETC). NYCETC is an association of 200 community based organizations, educational institutions and union training funds that annually provide job training and employment services to approximately 750,000 New Yorkers - including unemployed workers, public assistance recipients, low-wage workers, at-risk youth, formerly incarcerated individuals, immigrants and the mentally and physically disabled. Our mission is to ensure that every New Yorker has access to the skills, training, and education needed to thrive in the local economy and that the private sector is able to retain a highly skilled workforce. Toward that end, we work to foster a dynamic and competent community of employment and training providers, and advocate for workforce development policies that expand opportunity for training and education. We are the voice of practice in the city, representing a robust workforce community that helps jobseekers and employers, and fosters a growing city economy.

As providers of training and employment services that work to connect New Yorkers to quality employment, our members are on the frontlines of the unemployment crisis that continues to stifle our communities and economy. NYCETC's credibility and capacity directly stems from the broad spectrum of our membership, which allows us to stay informed of the difficult issues and innovative solutions surrounding the world of work. In this capacity, we have witnessed dozens of cases in which jobseekers have reported rejections from potential employers that we understand to be based on information found in their credit reports. This is a national problem, with a 2013 Demos survey finding that 1 in 10 respondents who are unemployed were informed that they would not be hired for a job because of information found in their credit report.[1] Based on research and our members' experiences, the use of credit checks in the employment process is discriminatory, ineffective in predicting behavior, and stifling to our long-term economy. This testimony will highlight each of these three issues.

The discriminatory nature of credit checks is experienced in various ways and by multiple populations, often leading to a Catch-22 for unemployed jobseekers, who are more likely to struggle with paying their bills and maintaining a stable living environment for their family. The long-term unemployed are the hardest hit, facing more than 27 weeks of unemployment and declining credit scores that keep them from entering the workforce. Immigrants, who come from countries where credit is not a central part of financial culture, find themselves at a severe disadvantage with no or low credit history to report upon. Credit checks are also negatively skewed toward minorities, especially African-Americans and Hispanics, who have been found to have considerably lower credit scores than non-Hispanic whites. These racial disparities have been exacerbated by many factors that are outside each individual's control, such as recent predatory lending schemes that target communities of color.

Secondly, credit checks only provide surface level information, and do not include contextual data on the wide range of factors that generated the credit score. Low credit scores are often the result of uncontrollable events that are no fault of an individual, such as medical expenses,

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[1] Traub, A. (2013, February 1). Discredited: How Employment Credit Checks Keep Qualified Workers Out Of A Job. http://www.demos.org/discredited-how-employment-credit-checks-keep-qualified-workers-out-job

identity theft, and ever growing student loans. However, employers are unable to see such problems and view the existence of a low credit score as lack of responsibility, financial malfeasance, and other individual characteristics.

One striking but all too familiar example is that of Mr. K, a client seeking assistance through the Veterans Initiative at Jericho Project, a supportive housing organization and NYCETC member. Mr. K is a veteran with extensive experience in IT and help desk support living in Jericho Project's supportive housing residences and seeking employment through the organization's Veterans Employment Program. Based on his extensive work experience, strong personal characteristics and an impressive interview, Mr. K was soon hired in a lucrative position as an IT Consultant by a company specializing in IT training and services for Fortune 500 companies. However, the person that initially hired Mr. K forgot to undergo a credit check, which the company then undertook while processing Mr. K's hiring documents. Due to past difficulties with paying off his higher education tuition and loan debt, Mr. K had a low credit score that he was hoping to improve through gainful employment. Upon undergoing a credit check, the company then rejected Mr. K, with the only explanation given being that he now "did not meet their credit standards." While this is only one instance, this experience underscores the negative influence that credit scores can have in counteracting and undermining positive characteristics exhibited by an individual seeking employment. The use of credit checks unfairly penalizes job seekers whose poor credit reflects the impact of immense external challenges, exacerbates these problems, and denies those individuals the ability to utilize characteristics that are in fact most pertinent to success in the workplace – soft and hard skills, work and educational experience, personality, work ethic and drive.

Credit reports are also logistically useless in predicting an employee's behavior as no evidence has been found linking credit problems to a greater propensity to commit financial crimes on the job or underperform in job functions. This contradicts employers' assertions that that the prime reason they use credit checks is a concern that employees with credit problems are more likely to embezzle funds or engage in criminal activity. Moreover, credit reports are riddled with inaccurate information, as several studies since the early 1990s have documented poor credit bureau practices that lead to serious mistakes on credit reports. According to one 2004 report by the National Association of State PIRGs, approximately 25 percent of consumer credit reports contain serious errors that could result in the denial of credit, such as false delinquencies or accounts that did not belong to the consumer.[2]

As workforce providers who work to help jobseekers get past multiple barriers to employment in practically every neighborhood in this city, we call on the NYC Council to pass Intro. 261 and remove the barrier of inaccurate and discriminatory credit reports used in the hiring processes. All New Yorkers deserve fair access to employment opportunities, and the passage of this legislation would be a real step forward in creating a stronger and more vibrant economy for our city.

Thank you for this opportunity,

Angelina Garneva

Policy and Communications Associate
New York City Employment and Training Coalition

[2] Cassady, A., & Mierzwinski, E. (2004, June 1). Mistakes Do Happen: A Look at Errors in Consumer Credit Reports. http://georgiapirg.org/sites/pirg/files/reports/MistakesDoHappen2004-1.pdf

NYLAG
NEW YORK LEGAL ASSISTANCE GROUP

YISROEL SCHULMAN, ESQ.
President & Attorney-in-Charge

TESTIMONY BY ANNA PLATT, NEW YORK LEGAL ASSISTANCE GROUP

TO THE NEW YORK CITY COUNCIL CIVIL RIGHTS COMMITTEE

ON INTRO. 261, THE STOP CREDIT DISCRIMINATION IN EMPLOYMENT ACT

September 12, 2014

Good morning and thank you for the opportunity to testify at today's hearing. My name is Anna Platt and I am a paralegal in the consumer protection project at the New York Legal Assistance Group ("NYLAG"). NYLAG provides free civil legal services to New Yorkers who cannot afford a private attorney. Founded in 1990, NYLAG is a nonprofit law office that works to empower individuals, protect fundamental legal rights, and promote access to justice. NYLAG serves low-income consumers, immigrants, seniors, the homebound, families facing foreclosure, renters facing eviction, those in need of government assistance, children in need of special education, domestic violence victims, persons with disabilities, patients with chronic illness or disease, low-wage workers, low-income members of the LGBT community, Holocaust survivors, as well as others in need of free legal services.

I am offering my testimony today in strong support of the Stop Credit Discrimination in Employment Act because the discriminatory use of credit in making employment decisions harms New Yorkers, and prevents people who are willing to work hard from getting the jobs they need to get back on their feet and avoid further debt. Through our organization's work, we are seeing a growing number of New Yorkers who are blocked from getting jobs, housing, and other desperately needed services because of bad credit. This bad credit is often the result of identity theft, predatory loans, illness, or job loss. It is not the result of financial mismanagement, irresponsibility, or fraud. Using credit as a proxy for employability is discriminatory and unfair, and does nothing to advance the interests of employers who rely on them.

The use of credit checks is particularly insidious because credit reports are frequently inaccurate. Nearly 80% of credit reports contain some error. Additionally, use of credit histories in employment decisions disproportionately affects people of color and low income communities. Because these populations are targeted for predatory and high cost loans, those individuals who fall prey to these schemes and take out these loans end up with damaged credit, which then acts as a bar to employment.

Many of the debts that result in poor credit are the result of identity theft, and our clients only learn that accounts were opened in their names when they apply for a job or housing, and are told that their bad credit bars them from an opportunity. Even though these debts were the result of criminal activity, they still appear on credit reports, and employers can use this information against these individuals when they apply for jobs. Applicants are heavily stigmatized and labeled as untrustworthy, even though the debt that appears on the applicant's credit report is not their debt. In our work, we are frequently approached by individuals who had their identities stolen and who are now being hounded—often through illegal practices--by collectors attempting to collect on a debt the individual never incurred in the first place. For example, NYLAG is currently working with Manuel to clear his credit after a student loan was taken out in his name. Though Manuel never took out a student loan, and believes that his name was forged on the loan documents, the creditor managed to secure a default judgment by never properly serving him with notice of the lawsuit. This judgment appeared on Manuel's credit report, and prevented him from getting jobs. When NYLAG first began working with Manuel, he told us that he had gone to job interviews and been offered a position that paid more than what Manuel originally requested, only to have the offer disappear once a credit check was performed. With NYLAG's help, Manuel was able to vacate the default judgment and finally give him the opportunity to prove that he is not responsible for the loan that someone else took out in his name; however, in the meantime, Manuel lost many employment opportunities that would have enabled him to get back on his feet and begin a secure future.

Even if identity theft has not occurred, individuals often incur additional debt or fall behind on payments because of legitimate temporary hardships, such as illnesses or job loss. Though a debt reported on a credit report arose because of unfortunate life circumstance, employers can still use that fact to bar applicants from employment. Another of NYLAG's clients, Jerry, fell behind on his credit card bills after he was laid off from the job he held for seven years. While Jerry struggles to find a job so he can pay his bills on time he is hindered by his poor credit report. Failing to hire an otherwise qualified applicant for employment simply because her child was diagnosed with an expensive disability and she fell behind on credit card payments so she could pay her child's medical expenses, or not hiring someone because his mother died and he was saddled with her debts and funeral costs, makes no sense and doesn't help either the individual or the economy. This creates an even bigger problem, because without employment, individuals cannot move forward from their hardship to pay off debts and become financially stable. Using credit checks in employment only compounds the hardship people face, because it denies them the opportunity to become financially independent and earn a stable income to pay off their debts and rebuild their credit.

Even where debt is not the result of identity theft or a temporary period of financial hardship due to job loss or illness, credit reports do not reflect an applicant's ability to do a job well. Indeed, a representative of TransUnion, one of the "Big 3" credit bureaus, which profit from the sale of credit information, admitted under oath that "we don't have any research to show any statistical correlation between what's in somebody's credit report and their job performance or their likelihood to commit fraud." Nevertheless, the credit reporting agencies continue to support the use of credit checks in employment decisions because it benefits them and hikes up their profits.

NYLAG calls on the NYC Council to do the right thing and pass Intro. 261, to ensure that all New Yorkers have fair access to employment and have even the chance to become financially stable. Again, thank you for the opportunity to testify on this important bill.

chhaya CDC

Sustaining Homes
Strengthening Communities

Through our work with the community, we find that barriers to those trying to enter the workforce are English language proficiency, targeted employment services and a lack of formal employment & financial networking.

An understanding of basic financial services such as banking and credit building is missing among the immigrant population due to stress around unemployment. Chhaya work focuses with on assisting the community through career preparation services, financial education and civic participation, while taking proactive measures integrating financial education in its English classes. However, many still fall prey to practices fraudulent employment agencies, for profit technical schools, high debt and lack avenues to guided understanding of credit, banking and financing.

Among such contrary conditions for new South Asians, a 2012 DRUM study found that these new Americans were regularly underpaid, earned less than industry-wide average wages, and were mistreated by employers. Many are only beginning to assimilate and trying to stabilize income, housing and families often through major hurdles. New immigrants are hard working, often times doing two or more jobs with minimum wages to support their families and besides meeting their basic demands, fail to set up credit history or are oblivious to its long-term asset building potential. Chhaya is addressing some of these barriers through financial coaching and literacy around credit building and repair, having also launched the first formalized lending circle in NYC with support from Mission Asset Fund. Due to cultural barriers, dissimilar banking practices and lacking stable income, immigrants shy away from financial complexities, for example managing credit, saving long-term etc. Erecting an artificial employment barrier to an otherwise driven jobseeker not only disempowers the jobseeker but delays their potential to contribute toward best social and economic productivity.

Hence, we urge the council to pass Intro 261 to end consumer credit history checks for employment purposes. This practice does not correlate to employee productivity, prevents the long-term unemployed from reentering the labor market; and reduces immigrant labor from fully participating and engaging in our economy.

chhaya CDC

Sustaining Homes
Strengthening Communities

STATEMENT OF Tenzing Chadotsang
ON BEHALF OF
CHHAYA COMMUNITY DEVELOPMENT CORPORATION
TO THE
NEW YORK CITY COUNCIL COMMITTEE ON CIVIL RIGHTS

Good morning – I am here to testify today on behalf of Chhaya CDC. Based in Queens, New York, Chhaya - meaning "shelter or shade" is dedicated to creating more stable and sustainable communities by increasing civic participation and addressing the housing and community development needs of New York's South Asians and people of South Asian origin, new immigrants and their neighbors. Our work encompasses economic and workforce development, tenant rights, homeownership, foreclosure prevention, housing rights, civic engagement, and advocating for affordable housing opportunities; as well as research and advocacy around community needs.

Based on the census, South Asians are one of New York City's fastest growing ethnic populations, increasing in number from 216,000 in 2000 to over 300,000 in 2010. This represents a growth rate of 61% in the past decade. Of these, 58%, or 204,000 South Asians, reside in Queens County. Some ethnic sub-groups within this population have experienced major growth over the past decade. For example, Bangladeshi Americans nearly tripled in size from 19,148 in 2000 to 53,174 in 2010. Pakistani Americans in New York City grew by nearly 75 percent; Asian Indians grew by 12 percent. The Indo-Caribbean population is potentially among the largest of these groups; however, the census data does not adequately collect information for this community.

Based on our knowledge of the community, these numbers actually do not fully reflect the population size of South Asians in the City. However the figures clearly show the rapid growth of newcomers settling in different parts with primary needs in housing, employment and building long-term self sufficiency. Most of the community faces significant barriers through language, culture, employment and economic mobility within the larger city landscape.

Chhaya's Economic Development program was launched to meet the most pressing employment needs of the community, stabilizing individual and household finances, and increasing language proficiency.

The program has already assisted over a hundred fifty clients for employment and basic financial preparation for LMI South Asians. Combined with addressing various housing, community and civic concerns through its year around English classes, the program serves over 250 persons annually. Over 80 percent comprise of low-income South Asian and other immigrants who live below the poverty line. They come from diverse backgrounds, with higher education and trainings in their home countries. Among those served 85 percent were South Asians while some 15 percent represented other ethnic origins. Consistent with Chhaya's earlier findings, over 40 percent of those seeking services had more than two years of college and advanced degrees while at least 35 percent completed High School and some college.

MFY

LEGAL

SERVICES

INCORPORATED

TESTIMONY

ON

INT. 261-2014

A LOCAL LAW TO AMEND THE ADMINISTRATIVE CODE OF THE CITY OF NEW YORK, IN RELATION TO PROHIBITING DISCRIMINATION BASED ON ONE'S CONSUMER CREDIT HISTORY

PRESENTED BEFORE:

THE NEW YORK CITY COUNCIL
COMMITTEE ON CIVIL RIGHTS

PRESENTED BY:

ANAMARIA SEGURA
MFY LEGAL SERVICES, INC.

SEPTEMBER 12, 2014

MFY Legal Services, Inc. (MFY) submits this testimony to New York City Council Committee on Civil Rights to express our support for the passage of Int. 261-2014.

MFY envisions a society in which no one is denied justice because he or she cannot afford an attorney. To make this vision a reality, for 50 years MFY has provided free legal assistance to residents of New York City on a wide range of civil legal issues, prioritizing services to vulnerable and under-served populations, while simultaneously working to end the root causes of inequities through impact litigation, law reform and policy advocacy. We provide advice and representation to more than 9,000 New Yorkers each year. We submit this testimony based on our experience with clients from MFY's Workplace Justice Project (WJP), which advocates on behalf of low-income workers most vulnerable to exploitation and handles a range of employment problems, including discrimination and other barriers to employment, and MFY's Consumer Rights Project (CRP), which provides advice, counsel and representation to low-income New Yorkers on consumer problems, including credit-related issues.

MFY commends the Committee on Civil Rights for holding this hearing about this important legislation. Int. 261-2014, if enacted, would remove unnecessary barriers to employment by making it illegal for an employer to request or use information in a credit report for the purpose of making decisions with regard to hiring, firing, promotion, demotion, discipline, compensation, or the terms, conditions or privileges of employment. This bill removes arbitrary, baseless, and unfair barriers to employment faced by our low-income clients for whom a paycheck can mean the difference between survival and poverty. The legislation will increase employment opportunities for many unemployed New Yorkers who desperately wish to work.

Employer Credit Checks are Pervasive and Create Barriers to Employment

Research conducted by Dēmos has found that as many as 25% of unemployed workers said that a prospective employer had requested a credit check as part of a job application.[1] That same research found that among job applicants with poor credit histories, one in seven had been told that they were being denied a job because of their credit.[2] The use of credit checks presents a significant barrier to employment, especially for low-income New Yorkers and unemployed New Yorkers, whose credit has been harmed because of the economic downturn and other events beyond their control. The use of credit checks also disadvantages students who graduate from college or vocational programs with crushing student loan debt. Borrowers of private student loans generally do not have the same six-month grace period after graduation, or hardship deferments or forbearances offered by federal student loans, which can protect their credit during a difficult job search.

One example of a low-income New Yorker harmed by an employer credit check is MFY client, Mr. P, who contacted us last year after he was denied a job due to his credit history. Mr. P. had applied for an entry-level position as a document messenger with an investment banking firm in early February 2013. The pay was only $9.50 an hour, but he was looking forward to being employed. However, the company ran a credit check and Mr. P's credit report reflected three

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[1] *See* Dēmos, *Discredited: How Employment Credit Checks Keep Qualified Workers Out of a Job* 3 (Feb. 2013), *available at* http://www.demos.org/sites/default/files/publications/Discredited-Demos.pdf.
[2] *See id.*

judgments; the prospective employer gave him 30 days to clear up the credit problems or lose out on the job opportunity. Due to the events of September 11, 2001 Mr. P had lost his job and his home, and also was the victim of identity theft. As a result, a few years later he was sued by three debt buyers who purchase charged off debt for pennies on the dollar and file lawsuits in bulk in the New York City Civil Courts. However, because he was never served with the lawsuits, which is common in debt collection lawsuits filed in New York City, he only discovered that there were judgments against him after he applied for the messenger position. Though he went through the process of moving to vacate the judgments and having them removed from his credit report, the impact on his credit had already caused him hardship. As our consumer attorneys know well, it is virtually impossible to vacate a default judgment and have it removed from a person's credit report in only 30 days; such a request as a condition to being hired by a prospective employer operates as a flat-out job denial.

Another MFY client, Ms. S, a 38 year-old mother of two from Queens, used to work at a bank. She took time off to care for her disabled young son, and when she tried to re-enter the workforce, she was denied multiple positions at banks because of her poor credit history. Fortunately she ultimately was able to find work as a teller at a check-cashing store, but she makes half as much as she did in her bank job.

As Mr. P and Ms. S's stories illustrate, employers' use of credit checks blocks qualified applicants — including people whose credit was damaged as a result of life events beyond their control, such as medical debts, divorce, identity theft, or layoffs – from desperately needed jobs. Practically speaking, it is hard to imagine why Mr. P.'s past personal economic misfortunes would have any bearing whatsoever on his ability to work as a messenger. As a result, and as the economic crisis continues, a growing number of New Yorkers like Mr. P find themselves in a Catch-22: they are unable to secure a job because of damaged credit, but also unable to escape debt and improve their credit because they can't find work. This adds to the problem of long-term unemployment. Moreover, employer credit checks are unfair and harmful for several other reasons.

Employer Credit Checks Are Discriminatory

Employer credit checks have a discriminatory impact on lower income New Yorkers, women and people of color, who have been disproportionately affected by the economic downturn. The Equal Employment Opportunity Commission has warned of a discriminatory impact on people of color due to the fact that credit reports reflect existing racial disparities caused, for example, by predatory lending and unequal employment opportunities.[3] Moreover, civil rights organizations, including the NAACP, National Council of La Raza, Leadership Conference on Civil and Human Rights, and the Lawyers Committee for Civil Rights under Law have publicly opposed the use of employer credit checks, citing their racially discriminatory potential.[4] As reported by the National Partnership for Women in Families, employer credit checks are particularly harmful to women, whose credit is often damaged because of domestic violence, and

[3] *See* Equal Employment Opportunity Commission, Laws, Regulations and Guidance: Prohibited Practices, *Pre-Employment Inquiries and Credit Rating or Economic Status, available at* http://www.eeoc.gov/laws/practices/inquiries_credit.cfm.
[4] *See id* at 9.

having been disproportionately targeted for toxic loans, among other reasons.[5]

Credit Reports are Notoriously Unreliable

Credit reports are often riddled with errors. According to a comprehensive study released in February 2013 by the Federal Trade Commission, 26 percent of American consumers had an error on a credit report from at least one of the three major credit reporting agencies.[6] That same study found that 13 percent of consumers had errors that were damaging enough to lower their credit scores.[7] The states are beginning to take action on behalf of their consumers to address this problem as well. For example, in June 2014, the state of Mississippi filed a lawsuit against Experian, one of the "big three" credit reporting agencies, alleging that the company allowed erroneous information to be included on consumers' credit reports, and that it refused to correct the errors when consumers complained about them, even in the face of proof that the information was incorrect.[8]

The consumer attorneys at MFY hear from numerous clients each year who are affected by errors and problems on their credit reports, which, in our experience, are difficult and extremely time-consuming to remedy. Many of our clients do not even know they have errors on their credit reports until they are denied employment, housing, or a loan. And, although the Fair Credit Reporting Act provides people with a procedure for disputing errors on their reports, in our experience those disputes are often given a perfunctory review by the credit reporting agencies, which most often leave the errors uncorrected and the reports unchanged. Moreover, even successfully correcting errors often takes a very long time. Employers are not willing to hold jobs for potential employees while they sort out disputes with credit reporting agencies.

Employer Credit Checks Constitute an Invasion of Privacy

The use of credit checks by employers also represents an unprecedented invasion of privacy, particularly given that past due medical bills make up a significant number of accounts reported by collection agencies. For many job applicants, this means that as a pre-requisite to employment, they have to expose and discuss their personal medical histories, as well as other highly personal events that appear in an individual's credit history, such as divorce.

Employer Credit Checks Are an Example of "Mission Creep" by the Credit Reporting Industry

Credit reports were originally intended to be a means of using a person's past credit history to help lenders predict how likely that person will be to pay back an extension of credit. However,

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[5] *See* Fact Sheet, National Partnership for Women in Families, *Losing Ground: Unwarranted Credit Checks Create Barriers to Employment for Women* (November 2012) *available at* http://www.nationalpartnership.org/site/DocServer/Women_and_Credit_Checks_Fact_Sheet.pdf?docID=11521.
[6] *See* Federal Trade Commission, Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003 at 1 (December 2012); released to the public February 11, 2013), *available at* http://www.ftc.gov/os/2013/02/130211factareport.pdf.
[7] *See id.*
[8] *See State of Mississippi v. Experian Information Solutions, Inc.*, 14-CV-00243, U.S. District Court, Southern District of Mississippi (Jackson.)

in recent years, members of the credit reporting industry have pushed to extend the use of their reports to areas of workers' lives where they have no place – affecting workers' ability to obtain insurance,[9] receive medical care,[10] and, yes, whether we can get jobs. And it's only getting worse. NBC News has reported that one of the "big three" credit reporting agencies, Equifax, has assembled a private database containing 190 million employment and salary records covering more than one-third of U.S. adults.[11] Equifax profits off this database – which contains weekly paystub information, people's health care providers, whether someone has dental insurance, and if they've ever filed an unemployment claim – by selling the data to third parties, including debt collectors and other financial services companies. This is just the latest example of how the credit reporting industry is profiting from the misuse of employment and credit data.

There is No Correlation Between a Worker's Credit and Job Performance

There is no reliable research that has shown that a worker's credit history has a correlation with negative job performance.[12] In fact, recent research has found that Even TransUnion, another of the "big three" credit reporting bureaus, admitted at a legislative hearing in Oregon in 2010: "At this point we don't have any research to show any statistical correlation between what's in somebody's credit report and their job performance or their likelihood to commit fraud."[13] Nevertheless, and although credit reports were not designed as an employment screening tool, they are heavily marketed to employers by the major credit bureaus.

Conclusion

Last December, Senator Elizabeth Warren introduced the Equal Employment for All Act, which would amend the Fair Credit Reporting Act to prohibit the use of consumer credit checks for the purposes of making adverse employment decisions.[14] That is a step in the right direction, but New York City should not wait for Congress to act. We should be at the forefront of putting a stop to this abusive, ineffective practice and protecting the rights of all New Yorkers by prohibiting credit discrimination in the workplace.

Passing Int. 261-2014 will ensure that qualified applicants can obtain employment without regard to credit reports that may contain errors or reflect life events beyond their control. It will protect employee privacy in the hiring process, and guard against the perpetuation of existing racial disparities in lending and employment. It will also contribute to New York's economic

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[9] Amy Traub, *Credit Reporting "Mission Creep": Home and Car Insurance*, Demos Blog, June 29, 2011, *available at* http://www.demos.org/blog/credit-reporting-%E2%80%9Cmission-creep%E2%80%9D-home-and-car-insurance.
[10] Sarah Rubenstein, *Why Hospitals Want Your Credit Report*, THE WALL STREET JOURNAL, Mar. 18, 2008, *available at* http://online.wsj.com/article/SB120580305267343947.html.
[11] Bob Sullivan, *EXCLUSIVE: Your employer may share your salary, and Equifax might sell that data*, NBC NEWS, Jan. 30, 2013, *available at* http://redtape.nbcnews.com/_news/2013/01/30/16762661-exclusive-your-employer-may-share-your-salary-and-equifax-might-sell-that-data?lite.
[12] *See, e.g.* Demos, *Discrediting Workers: How Credit Reports are Distorting the Job Market, Prolonging Unemployment, and Denying Equal Opportunity to Workers* 1-2 (2010) *available at* http://www.demos.org/sites/default/files/publications/Discrediting_Workers_Demos.pdf; *see also* Weaver, Andrew, *Is Credit Status a Good Signal of Productivity?* (July 26, 2013) *available at SSRN:* http://ssrn.com/abstract=2266496.
[13] Editorial, *Millions Need Not Apply*, N.Y. TIMES, May 29, 2011 at A18.
[14] Equal Employment for All Act of 2013, S. 1837, 113th Cong. (1st. Sess. 2013)

recovery by helping reduce unemployment, especially long-term unemployment. In January 2013 the City Council passed Int. 814-2012, a bill outlawing discrimination in hiring based on a job applicant's unemployment status. Passing Int. 261 and making credit checks an illegal discriminatory practice is the next logical step for the Council to take toward removing another illegitimate barrier to employment.

MFY applauds the Committee on Civil Rights for holding this hearing, and urges the Council to pass this important legislation without delay. Thank you for the opportunity to submit testimony on this important bill.

For any questions about this testimony, please feel free to contact Anamaria Segura at (212) 417-3707 or asegura@mfy.org, or Evan Denerstein at (212) 417-3750 or edenerstein@mfy.org.

CAMBA
Legal Services

FOR THE RECORD

TESTIMONY

by Ricardo N. Avila of CAMBA Legal Services
to the New York City Council Civil Rights Committee
regarding the "Stop Credit Discrimination in Employment Act"

September 12, 2014

BILL NUMBER: Int. 261-2014

SPONSORS: Brad S. Lander, Deborah L. Rose, Maria Del Carmen Arroyo, Margaret S. Chin, Inez E. Dickens, Daniel Dromm , Julissa Ferreras, Daniel R. Garodnick, Andy L. King, Karen Koslowitz, Stephen T. Levin, Rosie Mendez, Donovan J. Richards, James G. Van Bramer, Jumaane D. Williams, Ruben Wills, Vincent J. Gentile, Vanessa L. Gibson, Costa G. Constantinides, Mark Levine, I. Daneek Miller, Antonio Reynoso, Helen K. Rosenthal, Ritchie J. Torres, Carlos Menchaca, Ben Kallos, Robert E. Cornegy, Jr., Laurie A. Cumbo, Elizabeth S. Crowley, Corey D. Johnson, Mathieu Eugene, Mark Treyger, Ydanis A. Rodriguez, Fernando Cabrera , Rafael L. Espinal, Jr., Inez D. Barron, Darlene Mealy, Paul A. Vallone, Peter A. Koo

TITLE OF BILL: A Local Law to amend the administrative code of the city of New York, in relation to prohibiting discrimination based on one's consumer credit history.

PURPOSE: The bill would eliminate the unfair and discriminatory use of credit checks by employers.

COMMENTS:

I would like to begin by thanking the City Council for the opportunity to speak here today. My name is Ricardo N. Avila; I am a Staff Attorney at CAMBA Legal Services' Consumer Law Project. CAMBA is a community based non-profit legal service provider located in the Flatbush neighborhood of Brooklyn.

CAMBA's Consumer Law Project arose out of its membership in the Working Poor Coalition, a five-member group that includes the Urban Justice Center, Goddard Riverside Community Center, Housing Conservation Coordinators, and Northern Manhattan Improvement Corporation. The Consumer Law Project works together with these organizations to assist working poor New Yorkers with a broad spectrum of consumer law issues including: assistance with student loan problems, inaccurate credit reporting issues, and debt collection abuse.

The chief goal of the Consumer Law Project is to help our clients achieve self-sufficiency. To this end, the Consumer Law Project has been especially involved with providing assistance to domestic violence survivors, working together with other organizations to provide consumer law assistance as part of a holistic effort to help survivors re-establish themselves. The use of credit checks for employment purposes has a particularly devastating effect on this population. Domestic violence survivors are frequently the victims of economic abuse or need to rely on credit in order to escape their abusers. The use of employment checks means that these survivors, whose credit is bad through no fault of their own, will be denied jobs and with that the ability to put their lives back together. Without the economic independence that comes through employment, survivors are often left with a choice between extreme poverty and returning to their abusers. As will be discussed in detail below, this bill would remove a significant barrier to employment for domestic violence survivors, and, if passed, will ensure that being a victim of economic abuse will no longer prevent entry into the job market.

It has become increasingly common for employers to use credit checks and credit worthiness as a hiring factor. One survey of human resources professionals notes that almost half of employers require a credit check when hiring for some or all positions.[1] The widespread use of credit checks is also confirmed by a simple search of Craigslist. This reveals that a credit check is required for all manner of jobs including positions for maintenance personnel, mailroom assistants, and doormen. It is difficult to articulate a credible reason why creditworthiness would effect the performance of these, or any job, and the research confirms this. The leading study on the issue concludes that poor credit history is simply not correlated with job performance.[2] When there limited probative value of credit worthiness is weighed against the harmful collateral consequences of denying access to the job market, the use of credit checks for employment purposes becomes difficult to justify.

The use of credit reports for employment purposes is problematic for a number of other reasons as well. First, credit reports are not particularly accurate. A 2007 Zogby poll revealed that 37% of people surveyed found an error on their credit report. Moreover, even if the credit report is accurate, none of the information is provided with any context, making it impossible to know if the debt was incurred because of severe medical issues, identity theft, or if the credit was being used as a lifeline to escape an abuser. This

[1] SHRM Survey Findings: Background Checking – The Use of Credit Background Checks in Hiring Decisions," Society of Human Resources Management July 19, 2012.
[2] Society for Industrial and Organizational Psychology, Credit History Not a Good Predictor of Job Performance or Turnover. (http://www.newswise.com/articles/view/502792).

combination of inaccurate and incomplete information means that credit reports are often uninformative, or at worst deceptive.

As discussed above, employment credit checks have an especially devastating effect on survivors of domestic violence. Domestic violence survivors frequently have negative items on their credit reports. Often, this is due to economic abuse where a partner has stolen the survivor's identity, or used violence and intimidation to coerce the survivor into taking out credit, which the abuser then uses for themselves. Additionally, domestic violence survivors often need to rely on credit cards in order to support themselves after escaping their abusers, frequently resulting in bad credit. The devastating effects of the interplay between economic abuse and credit checks are best illustrated through example, for instance, the case of Ms. X, a former CAMBA client. Ms. X is a single mother of two and a domestic violence survivor. Ms. X's husband used her identity to take out a numerous credit cards, sign various contracts, and possibly take out an auto loan. As a result of the economic abuse of her husband, Ms. X had a 60-page credit report, a judgment against her, and was being sued for a credit card she never had. Had Ms. X's job required a credit check she likely would not have been hired and Ms. X would have been forced to find another means of supporting her and her family. Fortunately, this was not the case for Ms. X, but for thousands of other domestic violence survivors in the same position it is. Faced with bad credit caused by events they had not control over, this vulnerable population is then denied access to the job market. This, in turn, makes it more likely that survivors will return to their abusers, as a means of support.

This cycle is, simply put, horrendous, and artificial barriers that prevent survivors from getting a job should not exist. Int. 261 would remove this barrier. If this legislation is passed domestic violence survivors will never again need to worry if prior instances of economic abuse will prevent them from getting a job, or force them back into an abusive relationship. This legislation is, simply, a common sense solution to a devastating problem, and there is no compelling reason why the use of credit checks for employment purposes should continue.

In closing I would again like to again thank the New York City Council for the opportunity to speak hear today and offer my support for the passage of Int. 261.

FOR THE RECORD

STATEMENT OF

SECURITIES INDUSTRY AND FINANCIAL MARKETS ASSOCIATION

BEFORE THE

NEW YORK CITY COMMITTEE ON CIVIL RIGHTS

HEARING ON

INT. NO. 261 – PROHIBITING DESCRIMINATION BASED ON ONE'S

CONSUMER CREDIT HISTORY

September 12, 2014

The Securities Industry and Financial Markets Association (SIFMA[1]), which represents the shared interests of hundreds of securities firms, banks, and asset managers, holds that – at least in the financial services industry–the ability to conduct credit background must be preserved in this bill in order for the industry to meet its regulatory responsibilities. While this legislation is well-intentioned, under the Financial Industry Regulatory Authority ("FINRA") rules, credit history is not only a relevant consideration when making hiring decisions, but is required to be considered. Therefore, we respectfully request your consideration of an amendment to your credit history ban legislation, (Int. 261) which would allow financial services employers to continue to comply with all industry-specific rules and regulations and ensure that investors in New York City can continue to be confident in the safety of their investments—an important exception already recognized by your colleague, Council Member Palma, in her social media privacy legislation (Int. 224).

While a number of states have introduced legislation with the intent of protecting the privacy of job applicants by banning the use of credit background checks, legislation which prohibits an employer from performing credit background checks on job applicants conflicts with federal and state financial services licensure requirements and may jeopardize the assets under management and security of a financial services company. SIFMA believes that the financial services industry should be granted an exemption from banning the use of credit background checks, as seen in laws recently enacted in Colorado, Connecticut, and Nevada.

Regulatory Requirements Regarding Financial Disclosure

Federal and state securities regulators have determined that knowing the personal financial circumstances of securities industry representatives is important to investor protection

[1] The Securities Industry and Financial Markets Association (SIFMA) brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA has offices in New York and in Washington, D.C. For more information, visit http://www.sifma.org.

efforts. For instance, the financial services industry is required to comply with NASD Rule 3010(e), which provides that "a member firm must ascertain by investigation the good character, business reputation, qualifications and experience of a job applicant before the firm applies to register that applicant with FINRA." FINRA is the largest independent regulator for all securities firms doing business in the United States, and has a stated mission "to protect America's investors by making sure the securities industry operates fairly and honestly."[2] Compliance with this rule requires a thorough investigation of an applicant's credit background.

In addition to Rule 3010(e), FINRA also requires, among other factors, that those seeking to be licensed as broker-dealer agents or investment adviser representatives with any of the 50+ state securities departments, or the 18 different Self-Regulatory Organizations (SROs), must electronically file a Form U4[3]. On page 14, 15, 19, and 33 of the form, applicants are required to disclose whether they have compromised with creditors, filed a voluntary or involuntary bankruptcy petition, have any outstanding judgments or liens, or had a bonding company deny, pay out or revoke a bond. On page 19, applicants also acknowledge that any jurisdiction, SRO, employer or prospective employer may conduct an investigative consumer report. Regulators then use the collected information as part of their assessment on whether a license should be granted.

The Financial Services Industry Must Continue to Be Able to Fully Vet Candidates who will be Entrusted with their Client's Funds

In the financial services industry, employees are entrusted with the care and custody of their client's funds— funds which represent the hard work, successes, dreams and life savings of your fellow New Yorkers. A money manager who has accumulated substantial debt or is in or near bankruptcy or foreclosure poses a risk to those funds, such as fraud, theft, or mismanagement. It is important that securities firms are aware of that potential risk before hiring, and that they have as many tools as necessary to ensure that they are able to safeguard the well-earned savings of the clients they serve.

Proposed Modifications to Credit Background Check Restrictions

Given the industry's regulatory requirements regarding financial disclosure cited above, we recommend adding the following provision to your bill after paragraph (b):

> (c) This act shall not apply to an entity or an affiliate that is registered as an investment advisor, broker, or dealer with the state, Securities and Exchange Commission, or the Financial Industry Regulatory Authority.

We appreciate your consideration of our concerns and look forward to future discussions on an amendment. In the meantime, please call me at 212-313-1200, if you have any questions concerning the securities industry, or visit our website at: www.sifma.org.

[2] FINRA, *About FINRA*, http://www.finra.org/AboutFINRA.

[3] FINRA Rev. Form U4, http://www.finra.org/web/groups/industry/@ip/@comp/@regis/documents/appsupportdocs/p015112.pdf.

Joel A. Klarreich | General Counsel

N·Y·S·A
NEW YORK STAFFING ASSOCIATION

FOR THE RECORD

Written Testimony Regarding Intro 261 by the New York Staffing Association

The New York Staffing Association (NYSA) is a trade association that promotes the interests of the staffing industry through legal and legislative advocacy, education, and the advancement of high standards of ethical conduct. NYSA is the sole trade organization for the staffing industry in the State of New York and serves as the voice of the industry to communicate industry matters to association members, legislative leaders, regulators, the news media and the general public. NYSA represents a diverse base of companies, ranging from small independently-owned staffing companies to large national agencies. Our members are staffing firms that operate or place positions in the New York area. The New York Staffing Association members are responsible for over 40,000 employees throughout the City of New York and an estimated $1.6 billion in economic impact.

While we support the Council's intent of Intro 261 we point out that the bill does not allow employers which are required by law to run credit checks ("Clients") to use staffing firms to perform the check for them when the staffing firm is placing workers at the Clients.

Other States have recognized this need. For example, Nevada law dealing with credit checks (NRS 613.440-613.510) defines an "Employer" to include "any person acting directly or indirectly in the interest of an employer in relation to an employee or prospective employee". Illinois ("agent of an employer" (820 ILCS § 70/5)), Colorado ("employer's agent" (CO ST 8-126 3(a))), Hawaii ("any agent" (HRS § 378-1)), Oregon ("agent" (OAR839-005-0065)), Vermont ("agent" (27 V.S.A. § 495d(1))) and Connecticut ("employer's agent" (CT. Publc Act 11-223)) extend their exemption to "agents", thus covering staffing firms and employment agencies acting on behalf of employers.

Accordingly, we would recommend the following amendment to section 23(b) of the bill:

(b) Paragraph a of this subdivision shall not apply to employers [or employment agencies or staffing firms engaged by employers] that are required by state or federal law to use an individual's consumer credit history for employment purpose.

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Alternatively, a section could be added to the bill to read:

> For the purposes of this Subdivision, Employer includes any person or firm acting directly or indirectly in the interest of an employer in relation to an employee or prospective employee.

We do not view this as a "carve out" to for the staffing industry but simply a clarification that employers can continue to use our industry to perform these checks on employees sent to them.

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Testimony of Emmett Jerome Pinkston
New York City Council Hearing
September 12, 2014

Hello,

I wish to thank the Committee on Civil Rights for inviting me to attend this hearing on Int. No. 261, in relation to prohibiting discrimination based on one's consumer credit history.

I am Emmett Jerome Pinkston. I am 57 years old, and a 30 year military veteran with extensive experience as an intelligence analyst.

In 2006, I applied to the Transportation Security Administration (TSA) for the position of Transportation Security Officer (TSO). I got through the application process, until I reached the stage where they checked my financial background. Once the TSA began its background check, they discovered that my credit report showed an outstanding debt in the amount of $8,000.00. This debt was erroneously on my credit report; I didn't know anything about it. The three major credit reporting bureaus continued to report the $8,000.00 debt while I struggled to fix the mistake on my credit report. To this date, Trans-Union is the only credit reporting bureau that corrected my credit report and removed the erroneous debt, despite my many attempts to correct it.

I was later hired by FedEx Ground Package systems as an entry level employee, and as I worked to gain employment with the TSA, I was promoted after five years at FedEx to a junior level manager and trainer.

I am currently employed by Port Authority of New York and New Jersey- PATH Division as a Signal Trainee and am on the waiting list for a promotion.

Due to the credit report errors, I was denied employment with the TSA. My proven work history and qualifications show that I would have been an exemplary employee. The TSA and by extension the United States of America has lost an asset in me by not having me as an employee in the TSA.

I am just one person affected by errors in credit reports, and by the use of these credit reports in hiring. My chosen career has been derailed due to errors in my credit report, but I am also deeply concerned about how others are affected when employers use credit history to decide whether to hire someone.

I am asking the City Council to pass Introduction number 261. It will make a big difference in the lives of New Yorkers.

Thank you for your tireless work.

TESTIMONY BY SHELLY MARTIN, RESIDENT OF HARLEM, NY

TO THE NEW YORK CITY COUNCIL CIVIL RIGHTS COMMITTEE

ON INTRO. 261, THE STOP CREDIT DISCRIMINATION IN EMPLOYMENT ACT

Thank you for the opportunity to testify at today's hearing. My name is Shelly Martin, and I live in Harlem. As someone personally and deeply affected by employment credit checks, I want to thank the City Council for addressing this issue and for giving me and other New Yorkers here today the chance to tell our stories.

My background is in Apparel Design and Fashion Marketing. I was supporting myself freelancing while making an attempt to start my own business, when the job market changed. I began to look for jobs through temp agencies. Some of these companies began to check my credit. I sent out literally hundreds of résumés during this time, and started receiving notices in the mail that my credit had been checked. I knew this was preventing me from landing a job. I told my family what I was experiencing and learned that my cousin had lost his job because of a credit check. Someone my mother worked with lost her job because of a credit check.

I'm deeply aware of the intimidating nature of the use of credit in the employment context. It's been an embarrassing experience to have to explain my credit situation and the reasons behind it. I had bad anxiety, and didn't know what to do. I believe that using credit checks for employment purposes is unfair discrimination. It is not fair to judge a person's ability to perform well in a job based on a credit report. A credit report doesn't tell you anything about the real person and their skills.

I urge the City Council to pass Intro. 261 to protect New Yorkers from unfair employment discrimination. The repercussions of employment credit checks have affected me for years. It is not easy for me to talk about my experiences and challenges, but I hope that by doing so I can contribute to the passage of this important bill. Thank you very much.

Testimony for the Committee on Civil Rights Hearing on Intro 261 Prohibiting Discrimination based on one's Consumer History

Good morning, I am Joseph Mpa, member of Community Voices Heard.
The fact that someone is in debt or has failed to establish so called good credit cannot be used as an accurate barometer of their work ethic, their experience or capability to perform at a high skill level. Individuals are more than just their credit scores. There exist a multitude of factors relating to the establishment of a credit score that may have been affected by fraud, identity theft, company error, poor judgment, a miscalculation or an act of nature (Sandy and other disasters that people have no control over).
The utilization of Credit Checks for employment verification is adding another layer of discriminatory practices which continue to enforce not only the "Tale of Two Cities" but the reality of the Tale of Two Worlds. The use of such methods only reinforces the walls of poverty, hate, dependence, despair, suffering and hopelessness which creates the downward spiral of you're not getting up and don't even think about it. Either we want to help people or we don't, and if we don't want to help then let's not pretend that we do. Make it clear to people that as long as those who control the current state of affairs are in power, that they will never avail themselves of equal opportunities, economic freedom, respect or the right to provide for their families.
The system continues to disenfranchise people through the failure of the educational system, the inadequate provision of health services, the injustices of the judicial system, the rank bias of the police and the destruction of values and moral decency by a Madison Avenue conspiracy to exploit, rob and compel people to purchase what they don't want and what they don't need.
Society cannot and should not continue to create barriers to employment which cannot be overcome by a sincere effort of one to right the ship of their life with the wind continuing to blow in there face and torpedoes being fired at the boat while you're trying to get ahead.
Let's open doors, not close them and provide people with opportunities not additional hurdles with the bar being raised so high that even the tallest ladder won't help.
A job is a necessity and a milestone in the development of a contributing member of society. People should a right to work and a right to provide for themselves and their families. Good credit should not be the only determining factor of survival and advancement for one in this society.

TESTIMONY OF LAWRENCE A. MANDELKER on behalf of THE NEW YORK METROPOLITAN RETAIL ASSOCIATION (NYMRA) before the COMMITTEE ON CIVIL RIGHTS
Chair: Hon. Darlene Mealy
Friday, September 12, 2014, 10:00 a.m.
Council Chamber
City Hall
New York, NY 10007

FOR THE RECORD

NEW YORK CITY COUNCIL PROPOSED INTRO NO. 261
Prohibiting Discrimination Based on One's Consumer Credit History

We represent the New York Metropolitan Retail Association (NYMRA). NYMRA's members consist of National Chain Retailers with stores in New York City. We wish to share our concerns about the current iteration of this bill.

The inappropriate use of credit histories in connection with employment actions raises concerns that qualified, but financially pressed individuals are being denied jobs because of poor credit histories resulting from circumstances beyond their control. These circumstances include an individual or member of his family having been laid off during the economically challenging times in which we live and/or a serious illness or injury to an individual or member of her family who lack medical insurance coverage. Supporters of the bill argue that because poor credit histories are disproportionally found among minorities and women, use of credit histories inherently discriminates against these protected classes.

Statutes passed by California, Connecticut, Florida, Nevada, Hawaii, Colorado, Maryland Oregon, Vermont, Washington and Chicago have addressed these concerns by sharply limiting the use of credit histories to employment actions in which the information being sought is reasonably related to the duties of the position being filled. Although there are differences among them, by and large the use of credit histories is permitted when the position being filled involves: a) the care, custody and handling of, or responsibility for, money, financial accounts, corporate credit or debit cards or the employer's other assets; b) access to trade secrets or other proprietary or confidential information; c) managerial or supervisory responsibility: d) access to, or the care custody, handling of or responsibility for the personal financial information of another person; e) the exercise of regulatory authority; f) employment by a financial institution, and; g) if the information being sought is reasonably related to the duties of the position for which an employee or prospective employee is being evaluated.

The principal federal laws protecting employees from discriminatory use of credit reports, the Fair Credit Reporting Act of 1970 ("FCRA") (15 USC §1681 et *seq.*) and Title VII of the Civil Rights Act of 1964 Title VII 42 USC§2000e) also address these concerns. Title VII prohibits employment discrimination based on race, color, religion, sex or national origin. It also bars employment decisions based on neutral policies, tests or selection criteria such as use of credit histories which have a disparate impact on protected groups *unless those policies standards and tests are job-related and consistent with business necessity.*

The FCRA authorizes employers to obtain consumer credit histories for employment purposes. It requires an employer to clearly disclose to an individual in writing that such a report may be obtained for employment related purposes Significantly, it requires that before an adverse action can be taken based on the credit report, an adverse action notice must be sent to the individual who has an opportunity to refute the accuracy and completeness of the information. According to a Society for Human Resource Management study dated January 22, 2010, 87% of the employers who use credit reports speak directly to the applicant and allow her to explain the circumstances surrounding the information contained in the credit report before making an employment decision. Consequently, most employers who use credit histories to help reach an employment related decision, use them at the end of the process, after an interview has been conducted or a conditional offer has been made, and not to screen out applicants early in the process.

In contrast to these statues, Intro 261, not only prohibits the use of credit histories in connection with employment decisions, it declares such use to be a discriminatory practice. There are no exceptions, save one: where a State or Federal statute mandates -- not authorizes, mandates -- that employers use a consumer's credit history for employment purposes. Stated another way, except where prevented from acting by either the supremacy clause of the Constitution (vis a vis federal law) or the legal doctrine of preemption (vis a vis New York law) the bill makes it a discriminatory practice to use one's credit history for employment purposes; no ifs, ands or buts about it. We believe that the approach followed by ten states and the federal government is better than the approach encompassed in Intro 261.

The two top reasons that employers conduct credit history checks on job candidates are: a) to reduce or prevent theft or embezzlement, and; b) to reduce legal liability for negligent hiring. Those opposing the use of credit history in connection with employment argue that credit histories have not proven to be a valid predictor of job performance or trustworthiness. However, a 2014 study by the Association of Certified Fraud Examiners entitled *Report to the Nations on Occupational Fraud and Abuse* revealed that the top two warning signs exhibited by the perpetrators of employment related fraud were that the perpetrators were living beyond their means (36%) or experiencing financial difficulties (27%). In this regard, it is the existence, rather than the cause of an applicant's financial difficulties that should place an employer on inquiry notice when seeking to fill a position requiring trust and confidence. An applicant's consumer credit history contains information that may be germane to whether an applicant is living beyond her means or experiencing financial difficulties. And that is the key, an employer's ability to inquire and an applicant's ability to respond.

As a general rule, most members of NYMRA do not use an applicant's credit history for employment purposes. Credit histories are not designed for that purpose. Nevertheless, in this age when former employees and colleagues are reluctant to share anything but the bare bones of an applicant's employment history, credit histories can be used to help flesh out the existence of information that together with other information gathered in the due diligence process, help's a prospective employer to determine an applicant's suitability to hold a position of trust or confidence such as or a position involving access to, or the handling of trade secrets, proprietary information or the personal financial information of others. In retail, examples of the duties involved with such positions include, but are not limited to: deciding what brand of goods will be sold in a particular store, where in the store they will be placed, how much shelf space they will be allocated and how they will be displayed; deciding where to locate the stores themselves or whether to approve the terms of contracts and leases; procurement of goods or services or review and approval of invoices from vendors; placement of advertising orders; having access to customer's personal financial information. The use of an applicant's credit history should be among the information that an employer should be able to consider in making an employment decision for such positions.

These are the same type of positions with respect to which the limitations imposed by ten states and Chicago on the use of an applicant's consumer credit history by employers have not been applied. They are the type of positions with respect to which employers can demonstrate that the information being sought in a credit history report is reasonably related to the duties of the position for which an employee or prospective employee is being evaluated. They are the type of position with respect to which it would be unjust to brand an employer's use of an applicant's credit history a *per se* discriminatory act.

It is not reasonable to believe that there are no problems with the use of credit histories for employment purposes. It is also not reasonable to believe that there are no circumstances when the information contained on a credit history might be reasonably related to the duties of a position being filled. NYMRA would support a balanced bill that would regulate, rather than prohibit the use of credit histories in connection with employment. We look forward to continuing this dialogue with you.

Submitted by Lawrence A. Mandelker
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NEW YORK CITY
CENTRAL LABOR COUNCIL AFL-CIO

President
VINCENT ALVAREZ

Secretary-Treasurer
JANELLA T. HINDS

NYC CLC AFL-CIO Working...for all New Yorkers

Written Testimony of Vincent Alvarez, President
New York City Central Labor Council, AFL-CIO

New York City Council Committee on Civil Rights

September 12, 2014

As President of the New York City Central Labor Council, AFL-CIO, it is of the utmost importance to me that our City works to help ensure that all working people have access to gainful, family-sustaining employment. New York City's continued economic growth, and the ability to put an end to the income disparities that are crippling communities depend on workers' access to securing good jobs providing livable wages, benefits, and worker protections. The use of tools like pre-interview credit checks serve as barriers to employment for workers, and they provide a method for employers to openly discriminate against applicants.

These discriminatory credit checks are marketed by private firms as an inexpensive way for employers to weed out applicants. The firms claim that the credit checks signal prospective employees' likelihood of stealing, yet research shows no legitimate correlation. To put it in perspective, if these firms are correct, student loans and credit card balances are significant indicators of a propensity for theft – something we all know is an unfair conclusion. If our economy is to truly rebound from the economic recession, all workers must have access to good jobs. Qualified applicants deserve the opportunity to interview for open positions. Credit history must not be a reason that qualified applicants are overlooked.

The labor movement is committed to ensuring that workers are employed, and that their employment leads to the wages, benefits, and protections that often come with union membership. Now, we are asking the City Council to stand with us to commit to strengthening our workforce by removing this unnecessary and discriminatory barrier to employment.

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THE LEGAL AID SOCIETY

Testimony of The Legal Aid Society

Hearing on Int. 261, The Stop Credit Discrimination in Employment Act

New York City Council
Committee on Civil Rights

Presented by Tashi T. Lhewa, Staff Attorney

September 12, 2014

Good morning Chairperson Mealy and members of the Committee on Civil Rights. Thank you for the opportunity to testify regarding Int. 261, The Stop Credit Discrimination in Employment Act. My name is Tashi Lhewa and I am a Consumer Law Staff Attorney at the Legal Aid Society. The Legal Aid Society is the oldest and largest legal services provider for low income families and individuals in the United States. Annually, the Society handles some 300,000 cases and legal matters for low income New Yorkers with civil, criminal and juvenile rights problems. This includes more than 43,000 individual civil matters as well as law reform cases which benefit some two million low income families and individuals.

Through a network of sixteen neighborhood and courthouse-based offices in all five boroughs and 23 city-wide and special projects, the Society's Civil Practice provides direct legal assistance to low income individuals. In addition to individual assistance, The Legal Aid Society represents clients in law reform litigation, advocacy and neighborhood initiatives, and provides extensive back up support and technical assistance to community organizations.

The Legal Aid Society commends the Committee on Civil Rights for holding today's hearing on Int. 261, which would prohibit employers from using credit histories in hiring except in the very few cases where credit checks are required by law. Credit reports are not an indicator of a job seeker's character or job performance and remain a crude and ineffective hiring instrument in today's economy when so many are struggling to pay their bills. This practice of using credit checks in the hiring process prevents people from getting jobs after their credit is adversely affected by factors unrelated to job performance, including declines in the housing market, a period of unemployment, a medical emergency or a family crisis. The Society represents and advocates on behalf of numerous low-income New Yorkers whose credit reports have left them unable to obtain housing, credit, or employment.

The use of credit checks by employers has become increasingly prevalent. Credit reporting companies aggressively market the use of employment credit reports which were originally intended to be used by lenders to assess whether to extend credit. Today, the use of credit checks for screening potential employees has become a major problem. A 2012 survey by the Society of Human Resources Management found that forty-seven percent of employers use credit checks when hiring for some or all positions.[1] As many as one in four unemployed workers are requested to provide a credit check by their prospective employer.[2] There is growing awareness of the ineffective nature and damaging consequences of this hiring practice. At least ten states have legislation that prohibits or limits employers from using credit reports to make hiring or other job decisions.[3] Legislation has been passed by the New York State Assembly and introduced at the Federal level to ban this hiring practice.[4]

Employer Credit Checks Do Not Predict Job Performance

Proponents of employer credit checks incorrectly allege that they are essential to reduce theft and embezzlement or are indicative of job performance. There is currently no research correlating poor credit and poor work performance.[5] Clients of The Legal Aid Society are often victims of stereotypes and assumptions that lack any evidence and result in discrimination. The false assumption that people who are in financial hardship are also unable to be effective employees has hurt an entire class of people and has barred them from obtaining employment.

1 Society for Human Resources Management, *Background Checking - The Use of Credit Background Checks in Hiring Decisions*, July 19, 2012.
2 Demos, Discredited: *How Employment Credit Checks Keep Qualified Workers Out of a Job* 3. February 2013.
3 CA Labor Code § 1024.5; CO Equal Opp. Act § 8-2-126 C.R.S.; CT Public Act No. 11-223; HI Rev. Stat. § 378-2(8); IL Code 820 ILCS 70/10; MD Lab & Emp Code § 3-711; NV NRS § 613.570; OR ORS § 659A.320; VT 21 V.S.A. § 495i; WA RCW § 19.182.020(2).
4 Credit Privacy in Employment Act. A07056; Blake Ellis, Bill aims to stop employers from conducting credit checks. CNN. 12/17/2013, available at http://money.cnn.com/2013/12/17/pf/employer-credit-checks/.
5 Dr. Jerry K. Palmer & Dr. Laura L. Koppes, *Further Investigation of Credit History As a Predictor of Employee Turnover*, American Psychological Society, Atlanta 2003.

A TransUnion representative admitted at a legislative hearing in Oregon: "At this point we don't have any research to show any statistical correlation between what's in somebody's credit report and their job performance or likelihood to commit fraud."[6]

Many factors which determine the quality of a person's credit have no bearing on a person's integrity, work ethic, or other traits related to job performance. These factors include information relating to the job seekers marital history, medical history, identity theft, and inaccurate reporting. Moreover, there are significant privacy concerns when prospective employers have access to credit reports. Someone's marital history, personal medical information, or child support payment history should not be included in hiring criteria. A study by the Federal Reserve Board found that more than half of all accounts reported by collection agencies on credit reports consist of medical debt.[7] It is bad public policy to impute financial irresponsibility because someone who is uninsured incurs medical debt through no fault of their own.

Credit Reports Are Rife With Errors

Credit reports are notoriously unreliable and regularly contain erroneous information. A 2013 Federal Trade Commission study found one in five consumers have material errors on their credit reports.[8] Other studies have shown that around twenty-five percent of credit reports contain serious errors which were enough to deny credit.[9] There are several reasons for these

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6 Andrew Martin, *As a Hiring Filter, Credit Checks Draw Questions*, New York Times, April 9, 2010, available at http://www.nytimes.com/2010/04/10/business/10credit.html.
7 Robert Avery, Paul Calem, Glenn Canner & Raphael Bostic, *An Overview of Consumer Data and Credit Reporting*, Federal Reserve Bulletin, 2003, available at http://www.federalreserve.gov/pubs/bulletin/2003/0203lead.pdf.
8 Federal Trade Commission. *Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003*, December 2012, available at http://www.ftc.gov/sites/default/files/documents/reports/section-319-fair-and-accurate-credit-transactions-act-2003-fifth-interim-federal-trade-commission/130211factareport.pdf.
9 Nat'l Ass'n of State PIRGs, *Mistakes Do Happen: A Look at Errors in Consumer Credit Reports* 11, June 2004, available at http://www.uspirg.org/sites/pirg/files/reports/Mistakes_Do_Happen_2004_USPIRG.pdf.

inaccuracies, but a primary factor is that credit bureaus are often unable to match a name with a particular account. The use of just a partial name match and seven of nine digits of a person's Society Security number leads to large numbers of accounts being mistakenly matched to others with similar names and social security numbers.[10] The Legal Aid Society is regularly approached by consumers seeking assistance with errors on their credit reports that result in economic repercussions. The process of correcting a credit report with the credit reporting bureaus is confusing, time consuming, and overly complicated for the average consumer. This task is far more difficult when the victim is an immigrant, a low-income individual, or a member of another vulnerable community. The high rates of inaccuracies in credit reports and difficulty in rectifying those errors make credit reports unreliable as a hiring criteria.

Also, numerous consumers are the victims of identity theft, which has an adverse impact on their credit reports and consequently their ability to obtain employment. Identity theft is widely considered to be one of the fastest growing crimes in the United States. The rapid growth of identity theft is due to the multiple ways in which we process and share information. The Federal Trade Commission (FTC) estimates that in one year, as many as ten million people – or 4.6 percent of the U.S. adult population – discover that they are victims of some form of identity theft.[11] Approximately 16.6 million persons or seven percent of persons age 16 or older were victims of identity theft in 2012.[12] Furthermore, according to the FTC, more than 50 billion

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10 Hunter, Stuart, *It's Disturbingly Likely That Your Credit Report is Wrong*, Huffington Post, August 11, 2014, available at http://www.huffingtonpost.com/2014/08/11/credit-report-bureau-mistakes-_n_5661956.html.
11Daniel Bertoni, *Identity Theft: Governments Have Acted to Protect Personally Identifiable Information, but Vulnerabilities Remain,* United States GAO, Testimony Before the Subcommittee on Information Policy, Census and National Archives, Committee on Oversight and Government Reform. House of Representatives, GAO-09-759T June 17, 2009, available at http://www.gao.gov/new.items/d09759t.pdf.
12 Erika Harrell, Lynn Langton, *Victims of Identity Theft 2012*, Bureau of Justice Statistics. December 12, 2013. available at http://www.bjs.gov/index.cfm?ty=pbdetail&iid=4821.

dollars in identity fraud is committed each year.[13]

The Legal Aid Society has seen an increasing number of clients who approach our offices with issues relating to identity theft. The victims of identity theft go through a vicious cycle where a single theft of their personal information leads to severe consequences for their ability to obtain basic necessities, and also has a lasting impact on their ability to obtain credit. Identity theft is a serious problem because, among other things, it can take a long time before a victim becomes aware that a crime has taken place. Often the victim discovers the fraud only when the adverse results of the identity theft are discovered, such as when they are denied a job because of a poor credit history.

Cancelling a credit line that has been stolen may be relatively simple when discovered, but trying to recover one's credit standing is extremely difficult and time consuming. This process includes multiple notifications to the credit reporting agencies, affidavits, police reports, documentation, and the difficult task of repeatedly contacting the credit reporting agencies regarding failure to clear the claims. This is especially difficult for lower income individuals and families who do not have extensive financial resources. The prevalence of identity theft and it's impact on the lives of the victims, many of them from vulnerable communities, provide ample reason for preventing the use of credit reports as a job screening tool.

Employer credit checks have a disproportionate adverse impact on low income individuals

The use of employer credit reports creates hardship for millions of low-income Americans. Low and moderate income families who are struggling to find their economic footing are now faced with reduced economic opportunities and denied the opportunity to stabilize their families through employment. In a depressed economy, poor credit has even less

13 GAO-09-759T, June 17, 2009. p. 3.

correlation to job performance. Currently New York has the fourth largest number of people living in poverty, behind only California, Texas and Florida.[14] Approximately five percent of New Yorkers who have earned a Bachelor's or higher degree live in poverty.[15] The gender income gap continues to grow and African Americans, Hispanics and Latinos experience poverty at more than double the rate of white New Yorkers.[16] Under these circumstances, well-qualified job seekers should not be denied an opportunity to work because of their economic circumstances. Employment plays a big role in whether low-or moderate income families are able to climb the economic ladder. This legislation will protect families from being locked out of these opportunities simply because of their credit history.

Employer Credit Checks Have A Discriminatory Impact on Minorities and Immigrants

The extensive use of employer credit checks has resulted in systemic discrimination that disproportionately disadvantages communities of color. Nationwide, African-Americans are twice as likely to be unemployed as whites. Current unemployment rates stand at 13.1 percent for blacks, 9.1 percent for Hispanics and 6.5 percent of whites.[17] Fifteen percent of Americans live in poverty, whereas 27 percent African Americans and 25.6 percent of Hispanics do.[18] Employer credit checks only compound this crisis. Studies have repeatedly shown that African American and Latino households tend to have poorer credit, on average, than white households.[19] Racial disparities in the credit reports result in minorities being denied equal opportunity to

14 New York State Community Action Association, New York State Poverty Report, April 2014. available at http://nyscommunityaction.org/wp-content/uploads/2013-Poverty-Report-Full-compressed.pdf/.
15 *Id.*
16 *Id.*
17 National Urban League, *One Nation Underemployed Jobs Rebuild America.* State of Black America. 2014.
18 The Stanford Center on Poverty and Inequality, *The Poverty and Inequality Report*, State of the Union. 2014, available at http://web.stanford.edu/group/scspi/sotu/SOTU_2014_CPI.pdf.
19 Board of Governors of the Federal Reserve System, *Report to the Congress on Credit Scoring and Its Effects on the Availability and Affordability of Credit*, 2007; Federal Trade Commission, *Credit-Based Insurance Scores: Impacts on Consumers of Automobile Insurance*, 2007; Robert B. Avery, Paul S. Calem, and BGlenn B. Canner, *Credit Report Accuracy and Access to Credit*, Federal Reserve Bulletin, 2004.

employment.

The inability of immigrants to access financial services has a direct bearing on the quality of their credit and ability to obtain employment. Immigrants have limited participation in financial markets, when compared with their native born counterparts. Studies have shown that fewer than 50 percent of immigrants in the U.S. have bank accounts.[20] While 57 percent of native-born households have a savings account, only 45 percent of immigrant households have savings accounts.[21] Overall, 79 percent of native-born households have either a savings or a checking account compared to just 68 percent of immigrant households.[22] In addition, communities with large numbers of immigrants have lower rates of overall bank account ownership, for both immigrants and the native-born.[23]

Issues such as language and systemic barriers, misinformation, cultural differences, and an underdeveloped trust for traditional financial institutions keep new immigrants from opening accounts at depository institutions. Some of the reasons immigrants choose to use alternative financial service providers, as opposed to banks, are the cost, documentation requirements, minimum balance requirements, and convenience. Outside the system for conventional credit building, many immigrants lack the ability to acquire the credit history necessary to take out loans and apply for mortgages and other financial services.[24] Immigrants are less likely to have

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20 Rio, Deyanira D., *Public Hearing on Bank Discontinuance of Money Service Business Accounts.* Assembly Standing Committee on Consumer Affairs and Protection and Standing Committee of Banks, October 4, 2006, available at http://www.nedap.org/resources/documents/NEDAPTestimony10-4-06.pdf.

21 Paulson,Anna L., Federal Reserve Bank of Chicago, and Osili, Una Okonkwo, Indiana University-Purdue University at Indianapolis. *Immigrants' Access to Financial Services and Asset Accumulation,* September 18, 2007, available at http://aida.wss.yale.edu/seminars/labor/lap07/osili-paulson-071105.pdf.

22 *Id.*

23 Paulson, Anna., Singer, Audrey., Newberger, Robin., Smith, Jeremy. *Financial Access for Immigrants: Lessons from Diverse Perspectives*. Federal Reserve Bank of Chicago and The Brookings Institute, 2006, available at http://www.chicagofed.org/digital_assets/others/region/financial_access_for_immigrants/lessons_from_diverse_perspectives.pdf. (2006).

24 An immigrant must establish a credit history from scratch in the new country. Therefore, it is usually very difficult for immigrants to obtain credit cards and mortgages until after they have worked in the new country with a

established a credit history. Using credit history for opportunities beyond lending creates disadvantages for millions of immigrants trying to obtain employment and get ahead.

Carving Out Exemptions Would Weaken The Purpose of the Bill

Several states have permitted exemptions to legislation similar to that at issue here. However, these exemptions have resulted in severely undermining the purpose of the legislation. These loopholes, which include exempting employees handling cash, employees with access to financial information, and employees of financial institutions, are based on the incorrect premise that a job applicant with poor credit history has a propensity to commit theft. As stated earlier, a credit report's quality is based on numerous factors that are beyond the control of the job applicant. The false assumption that a poor credit report implies poor job performance would lead to an entire class of job applicants being denied the chance to obtain employment and improve their credit and lives.

Many police departments continue to conduct credit checks in their hiring process. The fact that a job applicant has had medical debts or faced foreclosure has no bearing on their propensity to bribery or their integrity in performing their duties in law enforcement. Unfortunately, the consequence of the use of credit checks by police departments is that it impedes the recruitment of a more diverse police force, as minorities and people of color are more likely to have negative credit reports.

Proponents of employer credit checks also propose exemptions for managerial positions. Such loopholes result in the creation of two tiers of job opportunity depending on race and class.

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stable income for several years. These financial formulae to determine credit are proprietary to the companies that distribute them, are not well understood by the consumers affected by them, and are often ill-suited to the needs of low-income individuals, immigrants, and other persons who have no credit history or "thin" credit histories. The negative impact of credit reporting is felt most heavily by individuals and families in low-income or immigrant communities, many of whom have "thin" credit histories.

These exceptions effectively bar many minority and low income employees from any managerial or supervisory position. An exemption for managerial positions would not only apply to senior managers at banks and companies, as some commonly assume, but would also apply to local managers at small businesses and retail outlets.

There is growing recognition that the exemptions proposed by proponents of employer credit checks have weakened the purpose of the legislation. The Credit Privacy in Employment Act, passed by the New York State Assembly in 2013 would ban the practice of employment credit checks without any exemptions. Similarly, the Equal Opportunity for All Act introduced by U.S. Senator Elizabeth Warren would also bans this practice without any exemptions.

Conclusion

The practice of employer credit checks continue to trap willing and qualified job seekers in a vicious cycle of debt and unemployment. The Legal Aid Society strongly supports the passage of Int. 261 and applauds the Committee on Civil Rights for holding this hearing. On behalf of the many low income consumers we represent, thank you again for the opportunity to testify.

Respectfully submitted,

Tashi T. Lhewa, Esq.
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Legal Services NYC

Testimony before the New York City Council
Civil Rights Committee
In Support of Intro. 261,
the Stop Credit Discrimination in Employment Act

September 12, 2014
Presented By
Sarah Alba (Manhattan Legal Services)

This testimony is submitted on behalf of Legal Services NYC (LS-NYC). LS-NYC welcomes the opportunity to provide commentary on this important Act.

LS-NYC is an anti-poverty organization that seeks justice for low-income New Yorkers. For more than forty years, we have helped our clients meet basic human needs and challenged the systemic injustices that keep them poor. As the largest civil legal services program in the country, LS-NYC is unique because we combine a broad reach with deep roots in the communities we serve. With community-based offices and numerous outreach sites located throughout the city's five boroughs, LS-NYC has a singular overriding mission: to provide expert legal assistance that improves the lives and communities of low-income New Yorkers. We annually provide legal assistance across a full range of issues, helping to ensure that low income New Yorkers have access to housing, health care, food, and subsistence income. We handle almost 20,000 individual cases each year, and our systems change advocacy benefits tens of thousands more. Manhattan Legal Services is a constituent corporation of LS-NYC.

The Use of Credit Checks by Employers Is Pervasive and Hurts Economic Recovery

The use of credit reports in employment decisions is widespread. In 2012, approximately half of employers surveyed by the Society for Human Resources reported using credit checks for at least some employment decisions.[1] The practice of using credit reports and credit history in employment screening is harmful to individual job seekers and to New York's economy.

As New York continues to struggle with the economic crisis, a growing number of New Yorkers find themselves in a vicious cycle: unable to secure a job because of damaged credit, and unable to escape debt and improve their credit because they cannot find work. With some of the highest unemployment rates in the State,[2] record numbers of foreclosures and personal bankruptcies,[3] and the lingering effects

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[1] Society for Human Resources, *Background Checking—The Use of Credit Background Checks in Hiring Decisions* (July 9, 2012).

[2] Bronx County has the highest unemployment rate in New York State at 10.8% unemployed, and Kings County has the second highest rate in the State at 8.3%. Press Release, New York State Department of Labor, Rate of Unemployment By County of Residence, New York State, June 2014 (July 22, 2014) *available at* http://www.labor.ny.gov/stats/PressReleases/2014/Jul22_14county_rates.pdf.

[3] The foreclosure crisis is not over in New York. In January 2014, the number of New York foreclosure auctions reached the highest monthly level since October 2010 and foreclosure filings in New York City increased thirty percent in 2013, a three-year high. *See* Prashant Gopal, *Foreclosures Surging in New York-New Jersey Market* BLOOMBERG.COM (Feb. 26, 2014) *at*

of Hurricane Sandy, New Yorkers do not need any more barriers to employment. When employers make decisions based on credit rather than ability, those who need a job the most are most penalized.

Example: Latino Man "Unfit" for Hurricane Sandy Relief Job Because of Minor Credit Card Debt

Mr. M. is a middle-aged Latino male who, like many New Yorkers, fell behind on his bills during the economic crisis. Hoping to help his community, Mr. M. applied for a position as a Community Relations Representative with the Federal Emergency Management Agency. According FEMA's listing with the New York State Department of Labor, the job Mr. M. applied for involved "work[ing] on foot in affected localities and communicat[ing] with persons affected by the Hurricane Sandy disaster to identify their disaster related needs and offer information on what assistance is available and how to obtain it."

Mr. M. was excited to be chosen to interview with FEMA, and devastated when less than ten days after his interview he received a letter from FEMA, stating that he is "unfit for assignment as an employee with the Federal Emergency Management Agency . . . based on adverse information contained in [his] credit report . . . [which] disclosed Judgments." The judgments referenced are two civil judgments so small that they were heard in Small Claims Court.

Mr. M. was trapped; he could not afford to pay his bills if he could not find a new job, and he could not find a new job if he could not pay off his bills, even though they have nothing to do with his qualifications for the FEMA position.

Despite their Importance, Credit Checks Are Unreliable

Despite the significance of credit reports in everyday life, the system is plagued with inaccuracies. A recent FTC study showed that one in five consumer reports, or an estimated forty million reports, contained material errors.[4] Several studies have found serious errors in over twenty-five percent of credit reports.[5] Correcting errors with credit bureaus can be a costly and time consuming process, and many people do not discover inaccuracies until they have already experienced some negative action because of those mistakes, e.g., denial of employment. Our advocates report that they regularly see mistakes when reviewing credit reports with clients.

Example: Woman Hired at Macy's is Soon Fired Because of Incorrect Reporting of Criminal History

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http://www.bloomberg.com/news/2014-02-26/foreclosures-climaxing-in-new-york-new-jersey-market-mortgages.html; *see also* Furman Center for Real Estate and Urban Policy, *Foreclosed Properties in NYC: A Look at the Last 15 Years* at 6 (Jan. 14, 2010) (noting that foreclosures in New York City in each year from 2007 through 2009 significantly outnumbered foreclosures in any other year over the past fifteen years).

[4] Federal Trade Commission, *Report To Congress Under Section 319 Of The Fair And Accurate Credit Transactions Act Of 2003* at 2, 38 (2012)(finding material error on the credit reports of 19.7% of study participants and noting that the three main credit reporting agencies maintain information on approximately 200 million consumers).

[5] For a review of studies, *see* National Consumer Law Center, *Automated Injustice: How a mechanized Dispute System Frustrates Consumers Seeking to Fix Errors in Their Credit Reports* at 5-6 (Jan. 2009).

Ms. S. came to our organization after she had been fired from Macy's. She has a long and respectable employment history in retail and had worked for Macy's in the past. As part of the employment application, Ms. S. was asked to sign an authorization for Macy's to check her credit report. After an interview, Macy's let Ms. S. start working conditionally.

A few days after Ms. S. began, the Macy's security team called Ms. S. into their office and informed her that the offer of employment was revoked because her credit report showed that she had been convicted of passing forged checks in New Jersey. Ms. S. was shocked because she had never been convicted of such a crime and she had no idea why this would be on her credit report. Ms. S. was humiliated because she had already started work at Macy's and her colleagues saw her escorted from the building as though she were a criminal.

Our advocates assisted Ms. S. in getting the inaccurate information removed from her credit report and clarified the inaccuracy with Macy's. Although Macy's eventually re-hired Ms. S., she was left without wages for the time period it took to correct this mistake.

Example: Award-winning Salesperson Cannot Find Employment Because of Identity Theft

Mr. B. worked in high-end retail sales for over twenty years, and had won awards in this field. After he was laid off during the economic recession, Mr. B. applied for retail jobs across New York City. Mr. B. went on many first and second interviews that went very well, but after employers asked Mr. B. for permission to check his credit report, Mr. B. did not receive any offers. Confused as to why he could not find work in a field in which he had excelled for over two decades, Mr. B. pulled his credit report to see what it was employers were responding to. Upon receipt of his credit report, Mr. B. learned that he had been the victim of identity theft and had three judgments against him for credit cards he had never used.

In order to correct these inaccuracies, Mr. B. needed to do more than contact the credit reporting agencies. Our advocates assisted Mr. B. in vacating these judgments and having them removed from his credit report, but this is a lengthy process that takes months, months Mr. B. did not have after being out of work for over a year.

The Use of Credit Checks in Employment Decisions Enriches Credit Bureaus but Provides No Value to Employers

Major credit bureaus are heavily marketing the use of credit reports to employers and profiting handsomely off these sales,[6] yet research has shown that an individual's credit history has no correlation

[6] For example, in the fiscal year ending in March 2014, Experian reported over $4 billion in revenue, while in 2013 Equifax made over $2 billion, and TransUnion earned over $1 billion. *See* Experian, *Financial Highlights* (March 2014) *at* http://www.experianplc.com/investor-centre/key-financial-data.aspx (last visited Sept. 5, 2014); Equifax, Inc., *Annual Report (Form 10-K)* at 26 (Jan. 31, 2014) *available at* http://www.sec.gov/Archives/edgar/data/33185/000114420414012238/v368092_10k.htm; TransUnion Corp., *Annual Report (Form 10-K)* at 31 (Jan. 31, 2014) *available at* http://www.transunion.com/docs/rev/aboutTransunion/investor-relations/Q4-2013-10-K.pdf.

with job performance and no connection to propensity to commit crime on the job.[7] Even Transunion, one of the country's big three credit reporting bureaus, has admitted that "[a]t this point we don't have any research to show any statistical correlation between what's in somebody's credit report and their job performance or their likelihood to commit fraud."[8] The chief psychologist for the Equal Employment Opportunity Commission agreed, testifying in 2010 that there is "very little evidence that credit history is indicative of who can do the job better" and that it is "hard to establish a predictive relationship between credit and crime."[9]

The Use of Credit Checks in Employment Decisions is an Invasion of Privacy

The use of credit checks by employers represents an unprecedented invasion of privacy. Credit reports are replete with such deeply personal information as familial status and medical debt, information that would otherwise be protected by anti-discrimination laws.[10] This means that as a pre-requisite to employment many job applicants must expose and discuss their personal medical histories or other extremely personal events that appear in an individual's credit history, such as divorce or issues arising out of domestic violence.

> Example: Latina Mother Not Hired For Job Because of Debt Incurred in an Abusive Relationship
>
> *One of the most disturbing trends our advocates report is credit manipulation by perpetrators of domestic violence. Ms. E is a Latina single mother in her thirties who has recently escaped an abusive relationship. Ms. E was thrilled to be hired as a supervisor by Madison Square Garden. She had worked in the food service industry for years but had trouble finding work after she was laid off during the recession. Ms. E was looking forward to building her career within a new organization and supporting her young daughter.*
>
> *After only hours on the job, Ms. E was approached by a security guard and informed in front of all her colleagues that she could no longer work at Madison Square Garden because her background check showed a "red flag." Ms. E was escorted to a bathroom where a Madison Square Garden employee stood outside the stall door as Ms. E changed out of her uniform. Becoming increasingly upset, Ms. E asked what was going on and was told over and over that someone would contact her in a week and let her know.*
>
> *No one contacted Ms. E and she spent months feeling growing anxiety and humiliation about what had happened to her. Ms. E had no idea what might have come up in her background check. After five months, Madison Square Garden finally called Ms. E and told her that she cannot work in any position that required handling money because she has one debt in collection on her credit report. The debt in question was a medical debt*

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[7] Society for Industrial and Organizational Psychology, *Credit History Not a Good Predictor of Job Performance or Turnover* (Jan. 16 2004); Jeremy Bernerth et al., *An Empirical Investigation of Dispositional Antecedents and Performance-Related Outcomes of Credit Scores*, J APPL PSYCHOL (Oct. 24, 2011)(finding that poor credit scores were not correlated to theft and other deviant types of work behaviors).

[8] Editorial, *Millions Need Not Apply* NY TIMES at A18 (May 30, 2011).

[9] Statement of Dr. Richard Tonowski, Chief Psychologist, EEOC, Meeting of October 20, 2010 - Employer Use of Credit History as a Screening Tool.

[10] *See, e.g.*, Demos, *Discredited: How Employment Credit Checks Keep Qualified Workers Out of a Job* (March 4, 2013).

that Ms. E incurred while in her abusive relationship. Because Ms. E's partner controlled all access to money and mail in the household, Ms. E had never heard of this bill before.

Even though Ms. E had held managerial positions for over fifteen years, a medical debt caused her to lose an opportunity for which she was extremely qualified. Ms. E had even held positions in which she handled money in the years since she accrued this debt and never had any issue on the job. Ms. E is still unemployed. This single debt kept her from a job that would help her re-build her life after an abusive relationship.

The Use of Credit Checks in Employment Decisions is Discriminatory

The use of credit checks in employment disproportionately harms women, the disabled, immigrants, domestic violence victims, and New Yorkers of color—each of which are protected classes under our laws and Constitution. To allow employers to use credit checks in employment decisions is to permit employers to circumvent our laws and make discriminatory employment decisions.

The Equal Employment Opportunity Commission has recognized this issue and released guidance stating that "[i]nquiry into an applicant's current or past assets, liabilities, or credit rating . . . should be avoided because [this] tend[s] to impact more adversely on minorities and females."[11]

In New York City, studies show that there are clear disparities in credit characteristics between communities of color and white communities.[12] Numerous national studies have also found that communities of color are overrepresented among consumers with low credit scores and under-represented among those with high credit scores.

This is because credit reports reflect negative information that disproportionately occurs in these protected groups due in part to a history of unfair lending practices, unequal employment opportunities, and the characteristics of protected groups. For example, the elderly and disabled are more likely to have medical debt which they cannot pay. Women tend to face greater economic insecurity than men, and are at particular risk of high credit card debt due to illness.[13] People of color and women are more likely to be the targets of predatory loans such as the variable rate mortgages which set off the foreclosure crisis.[14]

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[11] EEOC Prohibited Employment Policies/Practices, Pre-Employment Inquiries and Credit Rating or Economic Status, *available at* http://www.eeoc.gov/laws/practices/inquiries_credit.cfm.
[12] *See, e.g.,* Woodstock Institute, Fact Sheet: Understanding Credit Score Patterns in New York City (Nov. 2010) *and Addendum to "Understanding Credit Score Patterns in New York City"* (Jan. 2011). For example, one study found that communities of color in New York City had a mean credit score that was nearly half that of whites. National Consumer Law Center, *Testimony on Financial Institutions and Consumer Credit Regarding Use of Credit Information beyond Lending* at 3 (May 12, 2010).
[13] National Partnership for Women and Families, *Losing Ground: Unwarranted Credit Checks Create Barriers to Employment for Women* (Oct. 2012).
[14] As the New York State Superintendent of Banks explained, "[m]ultiple external studies have made similar findings, which our internal research confirms: minority borrowers and minority communities receive higher-cost loans at a disproportionate rate." Testimony of New York State Superintendent of Banks Richard H. Neiman Before the Committee on Banks, Subprime Mortgage and Foreclosures in New York (Dec. 13, 2007).

Rampant predatory lending in New York City has led to foreclosure filings that have decimated many of New York City's predominantly non-white neighborhoods.[15] With more than ten foreclosures on a block in some areas, credit was destroyed for entire communities. The impact of the foreclosure crisis on communities of color is illustrated by the racial composition of Staten Island Legal Services' (SILS') foreclosure prevention clients: although non-whites comprise only 32.6 % of Staten Island's population, they make up 53 % of SILS's client base.[16]

Exemptions are Unjustified and Weaken Attempts to Manage this Problem

Exemptions in current laws covering the use of credit checks in employment only serve to weaken those attempts put an end to this useless and discriminatory practice. No exemption is supported by research showing that credit checks are valid for the exempted positions or by any justification for allowing certain industries to rely on an employment practice that invades privacy and disproportionally impacts nearly every protected class.[17]

We thank the City Council for addressing this important issue.

Respectfully submitted,

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[15] These include East New York, Brownsville, Bushwick, Crown Heights, Bedford Stuyvesant, and Flatbush in Brooklyn and Jamaica, St. Albans, and Springfield Gardens in Southeast Queens. *See* Statement of Josh Zinner, Co-Director, NEDAP, before the NYS Assembly Standing Committees on Judiciary, Housing, and Banks (Nov. 16, 2010); *and see* Federal Reserve Bank of New York, www.newyorkfed.org/regionalmortgages/brooklyn.html; *see also* Gopal, *supra* note 3, at 2.

[16] Franklin Romeo and Jennifer Ching, *Homes Underwater: Forbearance Alternatives for Sandy-Affected Homeowners* at 6 (Feb. 4, 2013).

[17] For example, a number of states include exemptions for employees that handle money or other valuable property, despite evidence that credit history has no relation to devious behavior at the workplace. *See* supra note 7, at 4. Credit checks for management positions simply keep people who are struggling to pay bills, particularly in communities of color, from advancing regardless of their qualifications. *See* supra pp. 5-6. An exemption for law enforcement agencies only exacerbates New York's continued concern about a lack of sufficient opportunities for people of color to be hired and promoted within those agencies. *Id.* As Professor Robert Lawless notes, "human nature makes us want to believe that credit reports must tell us something about the person involved . . . . [this] fundamental attribution error makes us want to believe they can do so, but there is almost no evidence to support that notion." Robert Lawless, *The Evidence on Pre-Employment Credit Checks*, CREDIT SLIPS BLOG (Jan. 2, 2014 3:59 PM), http://www.creditslips.org/creditslips/2014/01/the-evidence-on-pre-employment-credit-checks.html.

FOR THE RECORD

Testimony of Gustavo Panesso before the New York City Council Civil Rights Committee regarding Intro. 261, the Stop Credit Discrimination in Employment Act

September 12, 2014

Good Morning. My name is Gustavo Panesso and I live in Elmhurst, Queens. As someone who has been personally affected by discriminatory employment credit checks, I'm here to voice my support for Intro. 261. A few years ago I applied for a job with a major retail store in Manhattan and I felt like a good candidate for the position. I had previous work experience in retail and good reference letters from past employers. After passing through four rounds of interviews, the company hired me. On my way to start my orientation for the job, the company called to let me know that they were going to rescind the job offer, because there was a problem with my credit. I was shocked to hear this because I've always paid my bills on time and had perfect credit. It turned out that the issue on my credit report had nothing to do with my own credit history, but with a loan that I co-signed for my sister many years ago. She lost her own job and wasn't able to repay the loan, now that defaulted loan was showing up on my credit report.

I think it's unfair not to hire someone because they have a stain on their credit. Credit history says nothing about someone's integrity, honesty or ability to perform a job. My credit report has ended up costing me several retail jobs – despite my many years of experience, positive references from past employers, and successful interviews.

We can't keep waiting to ban employment credit checks. We need you to pass Intro. 261 this year.

Thank you,

Gustavo Panesso

FOR THE RECORD

Testimony of Alfred Carpenter before the New York City Council Civil Rights Committee regarding Intro. 261, the Stop Credit Discrimination in Employment Act

September 12, 2014

Good Morning. My name is Alfred Carpenter, I live in Brooklyn, and I have personally felt the destructive effects of employment credit checks. A few years ago, while I was between jobs and without medical insurance, I had a serious knee injury that led to $50,000 of medical bills. Because I didn't have the funds to pay these enormous bills, I was advised to file for bankruptcy. After I recovered from the injury, I began applying for jobs, and quickly realized that something was different. I suddenly wasn't good enough to hire. It wasn't that employers weren't interested in me. In fact, during interviews, I received lots of encouragement and praise from employers, who said I was management material or a great fit for the job. It was only after they checked my credit that I suddenly wasn't good enough. The bankruptcy kept me from getting a job even though it has nothing to do with my ability to do my job as a shoe salesman or a doorman or any other position.

After 2 years without work, I began receiving public assistance. There is no reason that a guy like me, a strong able bodied worker, should have to be on public assistance. It cost New York $30,000 to take care of me, when it didn't have to.

People who have bad credit are not criminals. They have had unfortunate life circumstances. I have been involved with this campaign since it began 2 years ago. I've spoken at press events, spoken to reporters, recorded a video testimonial about my story to share on our campaign website, and testified at city council hearings. I believe in this campaign. Pass Intro. 261 into law and help stop the credit discrimination.

Thank you for your time.

Alfred Carpenter

Lower East Side
people's
federal credit union

FOR THE RECORD

TESTIMONY BY LINDA LEVY, CEO, LOWER EAST SIDE PEOPLE'S FCU TO THE NEW YORK CITY COUNCIL CIVIL RIGHTS COMMITTEE ON INTRO. 261, THE STOP CREDIT DISCRIMINATION IN EMPLOYMENT ACT

September 12, 2014

Good morning, Council Members, and thank you for the opportunity to testify at today's hearing. My name is Linda Levy and I am the Chief Executive Officer of the Lower East Side People's Federal Credit Union. LESPFCU is the largest community development credit union in NYC, serving not just the Lower East Side, but also Central and East Harlem, as well as low income New Yorkers throughout the city. We have a 28-year history of mobilizing savings among our largely low income members, and reinvesting these deposits back into our communities to support affordable housing, small business development, and job creation.

LESPFCU is a member of the NYC Coalition to Stop Credit Checks in Employment. We support and urge the NYC Council to pass Intro. 261, for the following reasons:

- Using credit checks in the employment context makes no business sense. Credit reports do not, and were never intended to, measure someone's ability to perform a job. If our credit union relied on people's credit histories to screen job candidates, we likely would not have hired or promoted some of our best employees, including senior-level staff who have loyally served the credit union for a decade or more.

  Employers can and should review job applicants' resumes; conduct personal interviews; and check references by past employers. Someone's financial position or credit rating says nothing about how well he or she will perform in a job or fit into an organization, and they are simply not an employer's business.

- Employment credit checks unfairly trap people in a catch-22. As a financial institution, we see first-hand the damage done to people's credit reports by predatory lending, foreclosures, medical debt, divorce, and job loss. The credit reporting agencies, themselves, frequently make errors that can take people months or years to resolve. It is unfair to compound people's hardship by denying them the chance to work and get back on their feet, based on their credit reports, and this practice should end.

We urge NYC to enact Intro. 261.

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FOR THE RECORD

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Testimony of Rahul Saksena, Restaurant Opportunities Center of New York

before the New York City Council Civil Rights Committee

regarding Intro. No. 261, the Stop Credit Discrimination in Employment Act

September 12, 2014

My name is Rahul Saksena and I am the Policy Director for the Restaurant Opportunities Center of New York (ROC-NY). ROC-NY organizes restaurant workers citywide for improved working conditions in the restaurant industry. We are a membership based organization of restaurant workers, with over 5,700 members who reflect the diversity of New York City restaurants.

ROC-NY strongly supports Intro. 261, the Stop Credit Discrimination in Employment Act.

ROC-NY members who are past, current, or aspiring restaurant workers face numerous challenges to obtaining employment in the restaurant industry. A growing number of these members have been blocked from desperately-needed access to restaurant industry jobs based on information in their credit reports.

It is on its face both illogical and discriminatory to use credit information as a criterion for hiring. Credit information can be based on a number of factors, none of which is job performance related, including credit reporting errors, student loan debt, identity theft, or foreclosure. And while one's credit has no relationship to potential job performance, employment credit checks have a racially discriminatory effect.

Immigrants and people of color – the majority of New York City restaurant workers – are disproportionately targeted for predatory and other high-cost loans, contributing to damaged credit. Low wage-earners of color are more likely to have damaged credit. To permit employment credit checks poses a Catch-22 for these workers who desperately need jobs in order to repay debts and to improve their credit.

The last thing out-of-work families need is another barrier to jobs. New York City's high unemployment rate is even higher for communities of color, in part due to hiring policies that have a racially discriminatory effect. Employment credit checks are an example of one of those policies, and the practice must be stopped.

We strongly support Intro. 261 and we urge the New York City Council to pass it immediately.

EWVIDCO

FOR THE RECORD

August 28, 2014

The Honorable Councilmember Darlene Mealy, Chair
Committee on Civil Rights
City Hall, New York, NY 10007

Re: Intro. 261 (Lander) – Stop Credit Discrimination in Employment Act – Support

Dear Madam Chair and Members of the Committee:

As the Executive Director of East Williamsburg Valley Industrial Development Corporation (EWVIDCO), I am writing to voice our support for Intro. 261,sponsored by Councilmember Brad Lander. Intro. 261 will ban the use of credit checks in employment and remove an unjust barrier to employment for all New Yorkers.

EWVIDCO is a membership organization that promotes the development and retention of production, manufacturing and industrial service businesses thus improving neighborhoods in North Brooklyn and surrounding communities. We connect businesses with resources and opportunities to maximize their competitive advantage in the marketplace. In 2013 EWVIDCO served over 300 businesses in a variety of ways, including helping link them with financing and employees, and assisting them with City and State incentive programs.

Currently, employers are able to utilize credit checks when making hiring, firing, or advancement decisions about prospective and current employees. When used to make decisions on advancement, this practice unfairly keeps those with poor credit histories from being able to improve their financial situation. When applied to the hiring process, it creates a vicious Catch-22 where New Yorkers are unable to pay their bills because they are unable to get a job, thereby worsening their credit and making the task of finding employment even more difficult.

Additionally, there appears to be no connection between an individual's ability to be a good employee and their credit history. Intro. 261, the Stop Credit Discrimination in Employment Act, ensures that all New Yorkers have fair access to employment and allows employers to continue to focus on the relevant aspects of an individual's employability: his or her skills and experience. We urge the committee to support Intro. 261 and to bring it up for a vote before the full City Council.

Thank you in advance for your consideration. Please contact me at 718-388-7287 if you have any other questions.

Sincerely,

Leah Archibald
Executive Director, EWVIDCO

Community Service Society | Fighting Poverty Strengthening New York

Testimony of Courtney Davis, Financial Advocacy Specialist

Financial Coaching Corps, Community Service Society of New York

Civil Rights Committee of the New York City Council

September 12, 2014

Good morning. My name is Courtney Davis. I am the Financial Advocacy Specialist of the Financial Coaching Corps at Community Service Society of New York. The Financial Coaching Corps recruits and trains senior volunteers to provide one-on-one financial coaching to low-income New Yorkers at our partner sites. Presently we have 30 financial coaches at 25 sites. In 2013, our financial coaches worked with 750 clients on addressing their financial concerns and developing positive personal finance skills.

Our partner sites include work development programs to help clients learn new skills to increase their chances of finding a job. However, our partner organizations and clients report they are hampered by poor credit reports. Our coaches work with these clients to help them understand and improve their credit reports to maximize their potential to find employment. It is a slow process and an impediment to helping workers become gainfully employed.

The primary issues for our clients are correcting damaged credit and managing debt. Financial coaches begin this process by showing clients how to access their free credit report online. Most clients aren't aware they are even allowed to access their report, and very few if any have ever seen their credit report before.

What do our low-income clients find when they view their credit reports for the first time?

They find errors – everything from identity theft to misspelled names. If they've gone through a hardship they often find a long list of predatory debt buyers. And in a unique quirk of the New York civil court system which has been plagued by "sewer service" they find default court judgments and other public records that they were never notified about. These errors – big and small – can determine whether or not someone gets a job. Employers should not be allowed to use credit history information which may be flawed to make judgments about an applicant's ability to perform job duties.

We work to help our clients pay down their debts and to repair their credit, but as anyone working in this field will tell you, this is often a very long and tedious process. It takes seven years for one late payment to "fall off" a credit report. A client's credit can be damaged for years for just a few months of financial difficulty.

These problems are made exponentially worse by the large and powerful debt collection industry in New York which pursues clients relentlessly. Debt buying companies purchase debts for pennies on the dollar from large creditors and sell and resell these debts over and over. Every time the debt is sold a new negative mark is added to the report. Often these debt collectors file lawsuits against clients in civil courts and get default judgments without ever having to produce a single piece of evidence that the debt is valid – or properly notifying the client they are being sued at all.

All of these issues are compounded severely by the fact that seventy percent of my clients are unemployed. Unemployment – like other major causes of poor credit such as divorce and medical debt – disproportionally impact low-income communities of color. Unemployed clients are caught in a vicious cycle in regards to their credit history. Many had good credit before the hardship began – but after one or two accounts goes into default, their interest rates shoot up across the board, their accounts are closed and sold, and end up in the shadowy world of debt buyers. Half of unemployed New Yorkers have been unemployed for over six months and 27% for over a year. Additionally according to The Unheard Third, an annual survey of low-income New Yorkers conducted by CSS, in households where someone lost a job in the past year, 39% had no savings and 65% had less than $500 in savings. Under these conditions, it is impossible to get back on track and pay bills on time. The damage is done. Damaged credit becomes a mark against individuals as they begin the difficult work of securing a new job or finding more affordable housing – two of the only things that can really help a low-income New Yorker obtain economic self-sufficiency. As a result, clients end up in an economic sand-trap – they find it increasingly difficult to deal with their problems.

The Stop Credit Discrimination in Employment Act addresses and remedies the inequities described in this presentation. CSS wholeheartedly supports the passing of this law. Thank you.

Community Service Society | Fighting Poverty Strengthening New York

Testimony of Courtney Davis, Financial Advocacy Specialist

Financial Coaching Corps, Community Service Society of New York

Civil Rights Committee of the New York City Council

September 12, 2014

Good morning. My name is Courtney Davis. I am the Financial Advocacy Specialist of the Financial Coaching Corps at Community Service Society of New York. The Financial Coaching Corps recruits and trains senior volunteers to provide one-on-one financial coaching to low-income New Yorkers at our partner sites. Presently we have 30 financial coaches at 25 sites. In 2013, our financial coaches worked with 750 clients on addressing their financial concerns and developing positive personal finance skills.

Our partner sites include work development programs to help clients learn new skills to increase their chances of finding a job. However, our partner organizations and clients report they are hampered by poor credit reports. Our coaches work with these clients to help them understand and improve their credit reports to maximize their potential to find employment. It is a slow process and an impediment to helping workers become gainfully employed.

The primary issues for our clients are correcting damaged credit and managing debt. Financial coaches begin this process by showing clients how to access their free credit report online. Most clients aren't aware they are even allowed to access their report, and very few if any have ever seen their credit report before.

What do our low-income clients find when they view their credit reports for the first time?

They find errors – everything from identity theft to misspelled names. If they've gone through a hardship they often find a long list of predatory debt buyers. And in a unique quirk of the New York civil court system which has been plagued by "sewer service" they find default court judgments and other public records that they were never notified about. These errors – big and small – can determine whether or not someone gets a job. Employers should not be allowed to use credit history information which may be flawed to make judgments about an applicant's ability to perform job duties.

We work to help our clients pay down their debts and to repair their credit, but as anyone working in this field will tell you, this is often a very long and tedious process. It takes seven years for one late payment to "fall off" a credit report. A client's credit can be damaged for years for just a few months of financial difficulty.

These problems are made exponentially worse by the large and powerful debt collection industry in New York which pursues clients relentlessly. Debt buying companies purchase debts for pennies on the dollar from large creditors and sell and resell these debts over and over. Every time the debt is sold a new negative mark is added to the report. Often these debt collectors file lawsuits against clients in civil courts and get default judgments without ever having to produce a single piece of evidence that the debt is valid – or properly notifying the client they are being sued at all.

All of these issues are compounded severely by the fact that seventy percent of my clients are unemployed. Unemployment – like other major causes of poor credit such as divorce and medical debt – disproportionally impact low-income communities of color. Unemployed clients are caught in a vicious cycle in regards to their credit history. Many had good credit before the hardship began – but after one or two accounts goes into default, their interest rates shoot up across the board, their accounts are closed and sold, and end up in the shadowy world of debt buyers. Half of unemployed New Yorkers have been unemployed for over six months and 27% for over a year. Additionally according to The Unheard Third, an annual survey of low-income New Yorkers conducted by CSS, in households where someone lost a job in the past year, 39% had no savings and 65% had less than $500 in savings. Under these conditions, it is impossible to get back on track and pay bills on time. The damage is done. Damaged credit becomes a mark against individuals as they begin the difficult work of securing a new job or finding more affordable housing – two of the only things that can really help a low-income New Yorker obtain economic self-sufficiency. As a result, clients end up in an economic sand-trap – they find it increasingly difficult to deal with their problems.

The Stop Credit Discrimination in Employment Act addresses and remedies the inequities described in this presentation. CSS wholeheartedly supports the passing of this law. Thank you.

GNYADA

Greater New York Automobile Dealers Association

FOR THE RECORD

MEMORANDUM IN OPPOSITION

New York City Council
Committee on Civil Rights
September 12, 2014

Int. 261

The Greater New York Automobile Dealers Association (GNYADA) is a not-for-profit trade association representing nearly 400 franchised new vehicle dealers in the downstate region, with approximately 100 in New York City. GNYADA members are engaged in the retail sale and leasing of new and used vehicles, along with servicing, repairing, and supplying parts for new and used vehicles. GNYADA opposes City Council Int. 261.

Int. 261, which amends the City's Human Rights Law, would prohibit an employer from relying on any part of a job applicant's or employee's "consumer credit history" in any hiring or other employment consideration.

Some employees occupy positions in our industry that are highly sensitive with access to cash, other financial instruments, company bank accounts, official documents (such as motor vehicle ownership documents, title applications, license plates, etc.), and other employees' financial or personal information. Outlawing the use of a tool that those employers may deem valuable is contrary to good business practices.

Hiring an employee who has access to sensitive or private financial information without checking that person's credit history might be seen as "negligent hiring", subjecting the employer to liability; outlawing this practice puts the employer in a "Catch-22" situation.

If the Council's concern is that credit reports are not always accurate or are unreliable, federal law already addresses and resolves that issue. The information is not private, in that it is not culled or collected from the individual, but rather from other sources. Under federal law, any employer who takes any negative action or bases any hiring determination on such a reports must provide an "adverse action" notice to the prospective or current employee. The prospective or current employee then has an opportunity to obtain a free copy of that credit report and to refute its accuracy.

For the above reasons, the Greater New York Automobile Dealers Association opposes Int. 261.

Greater New York Automobile Dealers Association — Serving Our Members Since 1910!

18-10 Whitestone Expressway, Whitestone, New York 11357 718-746-5900 Fax 718-746-5557 www.gnyada.com

One Battery Park Plaza New York, NY 10004-1479
T 212 493 7400 F 212 344 3344 www.pfnyc.org

PARTNERSHIP for New York City

WRITTEN COMMENTS FOR THE COMMITTEE ON CIVIL RIGHTS OF THE NEW YORK CITY COUNCIL

HEARING ON INTRO 261

FRIDAY, SEPTEMBER 12, 2014

The Partnership for New York City represents the city's largest private sector employers, investors and leading entrepreneurs. We write to outline specific concerns with Intro 261, legislation before the City Council that would ban employers from using credit background checks in employment decisions. Our opposition to this legislation is two-fold: first, it is an unnecessary imposition on New York City employers; second, it interferes with the rights of employers to protect themselves and their customers against losses incurred as a result of poor vetting of employees in highly sensitive positions.

Employers use credit checks for very limited purposes. The best data available on this subject comes from a 2012 survey by the Society for Human Resource Management,[1] which suggests that the rationale for enacting this legislation is flawed:

- **Use of credit checks in employment is already regulated at the federal level.** Under current law, an employer must give a job applicant advance notice and secure the applicant's signed consent before a credit check can be performed. If an applicant is at risk of not being hired in whole or in part because of a credit report, the employer must inform the applicant and provide a copy of the report (so they may dispute any inaccuracy or incompleteness of information) and a statement of the individual's rights under federal law. Finally, the employer must provide the same individual with a second notice once a final decision to not hire is made.

- **Most employers (53 percent) do not conduct credit checks at all.** Only 13 percent conduct credit checks on all job candidates while another 34 percent only do so for select positions.

- **The vast majority of credit checks are only performed for positions that are conferred a great deal of trust.** These positions include ones with financial or fiduciary responsibilities (87 percent of employers that conduct credit checks do so for these positions), senior executive positions (42 percent), and ones with access to highly confidential employee information (34 percent).

- **Employers overwhelmingly use credit checks at the end of the hiring process, not to screen out applicants up front.** Of the employers that conduct credit checks, most either initiate them after making a contingent job offer (58 percent) or after the job interview (33 percent). Very few employers (2 percent) initiate credit checks before a job interview, as employers have to pay a fee to do so.

- **Medical treatment debt is not considered during the hiring process.** Of the employers that use credit checks, practically none (< 1 percent) consider a candidate's past medical-related debt, education-related debt, or home foreclosure when making an employment decision. Instead, employers are more focused on multiple instances of charge offs or large sums of debt from multiple sources, which may indicate that a person has exhibited questionable judgment or an inability to manage their finances. For positions dealing with company finances or consumer assets, such information may be extremely relevant.

- **Employers regularly allow candidates to explain their credit history.** Nearly two-thirds of employers (64 percent) allow candidates to explain the results of their credit report before a decision to hire or not hire is made. And 80 percent of employers have hired a job candidate whose credit report contained information that reflected negatively on the candidate's financial situation.

Intro 261 would make the use of credit checks in employment an illegal, discriminatory act with only one exception: when federal or state law mandates that an employer run a credit check. With the increasing problems of identity theft and cyber-fraud, it is more important than ever that employers ensure that employees in highly sensitive positions – financial or technological – are carefully vetted.

Ten states and the City of Chicago have passed laws that regulate credit checks, but all contain exemptions that illustrate situations in which credit history is relevant. These exceptions include certain types of employment, such as positions in law enforcement and investigative agencies, and positions in banking, financial institutions, credit unions and insurance companies. Exceptions also include persons whose employment carries a fiduciary responsibility to the employer, or to the client of the employer, including those with access to an employer's payroll information, and employees with the authority to issue payments, collect debts, transfer money and enter into contracts. Further, some laws have exempted managerial or supervisory roles, or provided exceptions based on "bona fide occupational requirement," for example, jobs that involve use of a corporate debit or credit card or access to confidential financial information, trade secrets or other confidential information.

The exceptions in these laws align with the U.S. Equal Employment Opportunity Commission's guidance on the issue, which says that credit checks should be avoided but that "exceptions exist if the employer can show that such information is essential to the particular job in question."[2] Indeed, the EEOC itself runs credit checks for 84 of its 97 positions.[3]

Credit checks are particularly important to employers in the financial services industry which employs over 300,000 people in NYC (nine percent of the city's private sector jobs) and comprises 30 percent of the total private sector payroll.[4] Credit checks are part of a due diligence process that is designed to protect consumers, which should certainly be a priority goal of the Council.

We urge the Council not to enact Intro 261 and certainly not without exemptions that are important to safeguard consumers and employers. Thank you for your consideration.

---

[1] Society for Human Resource Management. "SHRM Survey Findings: Background Checking – The Use of Credit Background Checks in Hiring," July 19, 2012.
http://www.shrm.org/Research/SurveyFindings/Articles/Pages/CreditBackgroundChecks.aspx

[2] U.S. Equal Employment Opportunity Commission. "Pre-Employment Inquiries and Credit Rating or Economic Status," accessed August 25, 2014. http://www.eeoc.gov/laws/practices/inquiries_credit.cfm

[3] *EEOC v. Kaplan Higher Education Corp, decision by the U.S. Court of Appeals for the 6th Circuit, filed April 9, 2014.*
http://www.ca6.uscourts.gov/opinions.pdf/14a0071p-06.pdf

[4] New York State Department of Labor. Preliminary data from 2013 Quarterly Census of Employment and Wages (QCEW).

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. ______ Res. No. ______
☑ in favor ☐ in opposition

Date: ______

(PLEASE PRINT)

Name: TENZING CHADOTSANG

Address: ______

I represent: CHHAYA CDC

Address: JACKSON HEIGHTS

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 261 Res. No. ______
☒ in favor ☐ in opposition

Date: ______

(PLEASE PRINT)

Name: Zayne Abdessalam

Address: 30 E 29th

I represent: RWDSU

Address: 30 E 29th

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☐ in favor ☐ in opposition

Date: ______

(PLEASE PRINT)

Name: Gustavo Panesso

Address: 42-29 Judge St ElmhurstNY

I represent: Testimony

Address: ______

Please complete this card and return to the Sergeant-at-Arms

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Appearance Card

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☑ in favor ☐ in opposition

Date: 9/12/14

(PLEASE PRINT)

Name: STEPHAN EDEL

Address: 2 NEVINS STREET Brooklyn

I represent: The Center for Working Families

Address: ______

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Appearance Card

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☑ in favor ☐ in opposition

Date: 9/12/2014

(PLEASE PRINT)

Name: DEYANIRA DEL RIO

Address: [illegible] St 2A BKLYN 11215

I represent: NEW ECONOMY PROJECT

Address: 176 GRAND ST. #300 NY NY 10013

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 126 Res. No. ______

☒ in favor ☐ in opposition

Date: 9/12/14

(PLEASE PRINT)

Name: Alexander Gleason

Address: 275 7th Avenue 18th floor

I represent: Vincent Alvarez, President NYC Central Labor Council, AFL-CIO

Address: 275 7th Ave 18th floor

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THE CITY OF NEW YORK

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☐ in favor ☐ in opposition

Date: ________

(PLEASE PRINT)

Name: G. L. TYLER

Address: 420 W 45th St

I represent: DISTRICT Council 1707, AFSCME

Address: 420 West 45th St

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THE CITY OF NEW YORK

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☑ in favor ☐ in opposition

Date: 9/12/14

(PLEASE PRINT)

Name: Emmanuel Caicedo

Address: 220 Fifth Ave

I represent: Demos

Address: ________

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Appearance Card

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☑ in favor ☐ in opposition

Date: 9/12/14

(PLEASE PRINT)

Name: Carella O'Keefe

Address: 161 Nostrand Ave, Brooklyn NY

I represent: Retail Action Project / RWDSU

Address: 30 E 29th St, New York, NY 10016

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THE CITY OF NEW YORK

Appearance Card

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☒ in favor ☐ in opposition

Date: Sept 12, 2014

(PLEASE PRINT)

Name: Shelly Martin

Address: 194 Malcolm X Blvd

I represent: ____

Address: ____

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THE CITY OF NEW YORK

Appearance Card

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☒ in favor ☐ in opposition

Date: 9/12/14

(PLEASE PRINT)

Name: Angelina Garneva

Address: 121 6th Ave. 6th Floor, New York, NY 10013

I represent: NYC Employment + Training Coalition

Address: same

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Appearance Card

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☒ in favor ☐ in opposition

Date: ____

(PLEASE PRINT)

Name: ANNA PLATT

Address: 268 Woodbine St.

I represent: New York Legal Assistance Group

Address: 7 Hanover Square, New York

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☑ in favor ☐ in opposition

Date: 9/12/14

(PLEASE PRINT)

Name: TASHI LHEWA

Address: 120-46 QUEENS BLVD. KEW GARDENS NY, 11415

I represent: THE LEGAL AID SOCIETY

Address:

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

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☐ in favor ☐ in opposition

Date:

(PLEASE PRINT)

Name: Maya Wiley

Address:

I represent: Mayor's office

Address:

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THE CITY OF NEW YORK

Appearance Card

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☐ in favor ☐ in opposition

Date:

(PLEASE PRINT)

Name: Brittny Saunders

Address:

I represent: Mayor's office

Address:

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THE CITY OF NEW YORK

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☑ in favor ☐ in opposition

Date: ______

(PLEASE PRINT)

Name: Bryant Graham
Address: 604A Kosciusko St
I represent: ROI Brothers
Address: 11-36 Farmers Blvd

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☐ in favor ☐ in opposition

Date: ______

(PLEASE PRINT)

Name: El-Hajj Bah
Address: 136-11 Farmers Blvd Jamaica NY 11434
I represent: Retail Action Project
Address: ______

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THE CITY OF NEW YORK

Appearance Card

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☑ in favor ☐ in opposition

Date: 9/12/14

(PLEASE PRINT)

Name: Sherrod Staton
Address: 81-41, 102 Rd, Ozone Park Queens
I represent: NYPIRG
Address: 9 Murray St NY, NY

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☑ in favor ☐ in opposition

Date: 9/12/14

(PLEASE PRINT)

Name: Alex Cacioppo

Address: 41 Hart St, Brooklyn NY 11206

I represent: Management Resources

Address: 419 Lafayette St, New York NY 10003

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Appearance Card

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☐ in favor ☑ in opposition

\+ For the record *Date:* September 12, 2014

(PLEASE PRINT)

Name: SIFMA

Address: ________

I represent: Securities Industry + Financial Markets Assoc.

Address: ________

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THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 261 Res. No. ________

☒ in favor ☐ in opposition

Date: 9/12/14

(PLEASE PRINT)

Name: Sarah Alba

Address: W. 125 St. 2nd Floor NY NY 1002

I represent: Legal Services NYC

Address: 40 Worth Street Suite 606 NY NY

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THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. ______ Res. No. ______
Submitted for Record ☒ in favor ☐ in opposition

Date: 9/12/2014

(PLEASE PRINT)

Name: RICARDO N. AVILA

Address: 885 Flatbush Ave. 2nd FL.

I represent: CAMBA Legal Services

Address: 885 Flatbush Ave, 2nd FL, Brooklyn NY

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 261 Res. No. ______
☐ in favor ☐ in opposition

Date: ______

(PLEASE PRINT)

Name: EMMETT JEROME PINKSTON

Address: 262 South 1 ST, Apt 1A, BK, NY 11211

I represent: NEDEP

Address: ______

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THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 261 Res. No. 2014
☒ in favor ☐ in opposition

Date: ______

(PLEASE PRINT)

Name: Anamaria Segura, MFY Legal Services

Address: 299 Broadway, 4th Floor, NY NY 10007

I represent: MFY Legal Services

Address: (personal address, 343 15th St, Apt. 4B, Brooklyn, NY 11215

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THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. / Res. No.
☐ in favor ☑ in opposition

Date: 9/12/14

(PLEASE PRINT)

Name: Ann Valdez
Address: 115 East. 106th st.
I represent: C.V.H & Peoples Coalition of Coney Isl.
Address:

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THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 261 Res. No.
☐ in favor ☒ in opposition

Date: 9/12/2014

(PLEASE PRINT)

Name: Eric J. Ellman
Address: 1090 Vermont Ave, NW Wash. DC 20005
I represent: Consumer Data Industry Assn
Address: Above

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☐ in favor ☐ in opposition

Date: 9/12/2014

(PLEASE PRINT)

Name: Joseph M. Mpa
Address: 260 Audubon Ave Apt 14B N.Y. N.Y.
I represent: For Community Voices Heard
Address: 115 East 106th St. N.Y. N.Y.

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I intend to appear and speak on Int. No. ______ Res. No. ______
☐ in favor ☐ in opposition

Date: 9/12/14

(PLEASE PRINT)

Name: Courtney Davis

Address:

I represent: Community Service Society of New York

Address: 105 E. 22nd Street, NY, NY 10010

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. ______ Res. No. ______
☐ in favor ☐ in opposition

Date: 9/12/14

(PLEASE PRINT)

Name: Robert Martin

Address: 125 Barclay Street NY NY 10007

I represent: Associate Director, Municipal Employees Legal

Address: Services (MELS), DC37

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THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 261 Res. No. ______
☑ in favor ☐ in opposition

Date: ______

(PLEASE PRINT)

Name: MITCHELL HIRSCH

Address: 97 Hurlbutt Wilton CT 06897

I represent: National Employment Law Project

Address: 75 Maiden Lane NY, NY

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