

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON CIVIL RIGHTS

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HELD AT: Council Chambers
City Hall

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DEBORAH L. ROSE
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Margaret S. Chin
James G. Van Bramer

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2 CHAIRPERSON ROSE: This hearing is
3 now called to order and good morning.

4 MULTIPLE VOICES: Good morning.

5 CHAIRPERSON ROSE: Ooh, I like
6 that. Responsive. My name is Debbie Rose and I
7 am the chair of the Committee on Civil Rights.
8 Today we will be holding our first hearing on
9 Introductory Bill number 857, a local law to amend
10 the Administrative Code of the city of New York in
11 relation to prohibiting discrimination based on
12 one's consumer credit history. I'd like to thank
13 my colleagues who are joining me today for today's
14 hearing, including Council Member Chin, Council
15 Member Ferreras, Council Member Garodnick, and
16 Council Member Brad Lander, who is the sponsor,
17 and I'd like to thank Julene Beckford, who is my
18 counsel and Damien Butvig [phonetic], who is the
19 policy analyst for their help in preparation for
20 this hearing. According to the New York State
21 Department of Labor, the unemployment rate in New
22 York City in February was 9.2 percent. This is
23 significantly higher than the state unemployment
24 rate that month, which was 8.8 percent and the
25 national unemployment rate, which was 8.1 percent.

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2 At 12.5 percent, the Bronx has the second highest
3 unemployment rate of any county in this state.

4 Unfortunately, the unemployment rates among
5 certain communities of color have historically
6 been significantly higher than that of the general
7 population. According to an analysis by the
8 Fiscal Policy Institute Hispanics in New York
9 suffered a 10.9 percent unemployment rate from
10 June 2011 to May 2012 and black non-Hispanics
11 endured a startling high 14 percent during that
12 same time period. At a time when unemployed New
13 Yorkers are finding themselves falling behind on
14 their bills, they are also encountering a
15 significant obstacle along the path to gain full
16 employment, their credit history. Whereas in the
17 past credit reports were used by financial
18 institutions to evaluate the level of risk
19 associated with extending credit to a potential
20 borrower. They are increasingly being used as
21 part of an employee background check according to
22 a 2012 survey by human resource managers by the
23 Society of Human Resource Management. 34 percent
24 of respondents said that their organizations
25 incorporate credit history into an employee

1 background check for certain positions and 13
2 percent use credit history as part of an employee
3 background check for all positions. The
4 usefulness of credit reports in employee
5 background is still not entirely clear. While
6 proponents of using credit checks in this manner
7 suggest that it can be used as a reliable
8 indicator of risk in hiring a certain candidate
9 numerous studies have indicated that there is no
10 such correlation between a person's credit history
11 and his or her job performance. For the long term
12 unemployed falling behind on bills is almost
13 inevitable. According to a 2012 - - survey of low
14 and middle income family with credit card debt, 31
15 percent of the respondents reported a decline in
16 their credit score when one family member was
17 unemployed for two months or longer. Of course,
18 there are also times when one has a negative
19 credit report through no fault of his or her own.
20 A 2013 study by the Federal Trade Commission
21 recently found that 21 percent of Americans had an
22 error on at least one of the credit reports
23 produced by the three main credit reporting
24 agencies, Equifax, Experian and Transunion. For
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2 13 percent, those mistakes were significant enough
3 to have an adverse effect on that person's credit
4 score. Unfortunately, many job applicants may not
5 be given the opportunity to explain their negative
6 credit reports until it is too late. The 2012
7 survey by the Society of Human Resource Management
8 found that eight percent of perspective employers
9 did not give applicants enough opportunity to
10 explain their negative credit report, and 28
11 percent only do so after a hiring decision has
12 been made. While there is no law banning
13 employment discrimination on the basis of a credit
14 report, companies do have certain legal
15 obligations if they use these reports. The Fair
16 Credit Reporting Act requires a perspective
17 employer to certify that it has disclosed that a
18 credit report may be ordered for employment
19 purposes, and that a credit report will not be
20 used in violation of federal or state equal
21 employment laws. If an employer takes an adverse
22 action against an applicant on the basis of a
23 credit report, the applicant must be informed of
24 his or her rights under the Fair Credit Reporting
25 Act. New York State's Fair Credit Reporting Act

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2 sets forth similar protections. Of course a job
3 candidate can refuse to submit a credit background
4 check, but those who choose to do so may be
5 legally excluded from consideration for the
6 position. Introductory Bill number 857 introduced
7 by Council Member Brad Lander seeks to address
8 this issue. If passed Intro 857 would prohibit
9 employers, labor organizations, employment
10 agencies and licensing agencies from requesting or
11 using information found in the consumer credit
12 history of an applicant or employee for employment
13 purposes. This would not apply to employers that
14 are required by state or federal law to use an
15 employer's consumer credit history for employment
16 purposes. Discrimination in employment on the
17 basis of one's credit history risks perpetuating
18 that person's unemployment and future and further
19 damaging his or her credit history. In this
20 troubling economic climate, we must adopt policies
21 with an eye toward helping the unemployed, to
22 hurting them. I believe that Intro 857 has the
23 potential to assist perspective employees who have
24 been adversely affected by a negative credit
25 report. With that, I will turn the mic over to

1 the bill's sponsor, Council Member Brad Lander.

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3 COUNCIL MEMBER LANDER: Thank you
4 very much, Chair Rose, and to my other colleagues
5 for being here. I am very honored we are here
6 today to discuss Intro 857. Intro 857, the stop
7 credit discrimination in employment act addresses
8 a simple matter of fairness. Hundreds of
9 thousands of New Yorkers with damaged credit
10 records face being denied job opportunities, being
11 denied promotion opportunities by companies that
12 use credit histories to screen applicants despite
13 no good information that there is any correlation
14 between credit histories and employment success.
15 This number has grown substantially as the Chair
16 mentioned in recent years from 20 percent in the
17 mid-'90s to as many as 60 percent of employers
18 now, and there is reasonably that is not because
19 employers want to actually use it more, but
20 because the credit agencies, the very agencies who
21 did so much harm in the financial crisis, are
22 looking for products to sell, and as a result the
23 number of employers using this has gone up
24 substantially. Unfortunately, credit checks are
25 simply not reliable for employment. No empirical

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2 evidence has demonstrated a correlation between
3 personal credit reports and a propensity to commit
4 a crime, to engage in fraud or to be a bad
5 employee, and in fact, a spokesperson for
6 Transunion, one of the major credit reporting
7 companies, admitted as much saying, and I quote
8 "We don't have any research to show any
9 statistical correlation between what is in
10 somebody's credit report and their likelihood to
11 commit fraud. There are good things that credit
12 reports can be good indicators of, which is why
13 they are used by lenders; they are just not
14 relevant to employment." Now you might say what is
15 the harm. Isn't a little more information good
16 even if we don't have any statistical correlation
17 or empirical evidence? The problem is there is
18 very real and very demonstrated harm. Many people
19 who have bad credit histories have it because of a
20 major medical expense--healthcare debt is a huge
21 indicator of what is on your credit history--
22 because they got divorced and got stuck by their
23 spouse or escaped domestic violence. Many people
24 are victims of identity fraud. 25 percent of
25 credit reports have been found simply to have

1 errors, so there is an enormous number of people
2 who have errors. You might say well, you just get
3 asked about that and you can give an answer to it,
4 but what a violation of privacy it is in an
5 employment situation to have to talk about your
6 divorce or your healthcare condition or what
7 happened with your college loan repayments before
8 you are even in the door to get your first job or
9 be considered for a promotion, and it adds up to
10 an even worse problem. The evidence is quite
11 clear that discriminating based on credit in
12 employment adds up to discrimination against
13 African Americans, Latinos and people of color,
14 who are disproportionately likely to have been
15 victims of predatory lending schemes and to have
16 bad credit for other reasons and in fact there
17 have been employers like Bank of America, who were
18 found to have discriminated as a result of over
19 reliance on credit histories in employment. I
20 guess the one way I think of it is using credit
21 histories in employment is like choosing to hire
22 people whose parents were able to pay for them to
23 go to college over people who had to borrow to go
24 to college. That is what we are doing in
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2 aggregate as a result of using it, and it is just
3 not fair. The good news is we can stop it with
4 very little harm. This bill unlike others when
5 you try to block some kind of discrimination that
6 requires looking at intent or setting up sort of
7 back end, what we can do here is simply say you
8 can't use credit histories in employment. We have
9 so many employers--I know some people have asked
10 this question about small businesses, NEDAP and
11 NYPIRG have done a great new study in which they
12 interviewed dozens of small businesses and only a
13 tiny percentage indicated that they were using
14 credit histories in employment because they are
15 hiring people the right way, which is looking at
16 appropriate available information, talking to
17 references and making good decisions. Intro 857
18 will make sure we are doing that across the board,
19 and I want to thank the advocates who have helped
20 bring this issue forward, especially Neighborhood
21 Economic Development Advocacy Project, NYPIRG,
22 DEMOS [phonetic], and a range of legal service
23 organizations, who have seen individuals who have
24 been a victim of credit discrimination. I look
25 forward to hearing from them, to hearing from

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2 individuals who have been affected by the problem
3 and working together with my colleagues to make
4 this the law in New York City. Thank you very
5 much, Madam Chair.

6 CHAIRPERSON ROSE: Thank you so
7 much, Council Member Lander. I'd like to
8 acknowledge that we have been joined by Council
9 Member Brewer and that we have for the record
10 testimony from the Restaurant Opportunities Center
11 of New York and from CAMBA [phonetic] Legal
12 Services. And now, we will have our first panel
13 member, Bill Heinzen, who is the deputy counsel to
14 the mayor. It's all yours.

15 BILL HEINZEN: Thank you very much.
16 Good morning, Chairperson Rose and members of the
17 Council. My name is Bill Heinzen. I am the
18 deputy counselor to the mayor. I am here to
19 testify this morning on behalf of the
20 administration and thank you for that opportunity.
21 We want to talk today about Intro 857, which would
22 amend the city's human rights law to make it
23 illegal for employers to request an individual's
24 credit history or consider that history in hiring
25 and other employment decisions, except where that

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2 employer is required by federal or state law to
3 use that information. While the administration
4 shares the Council's concern for persons who have
5 suffered employment discrimination, we believe
6 Intro 857 fails to take into account instances
7 when a credit check would be appropriate in making
8 employment decisions, and we do not believe in any
9 event that the proposed legislation is necessary
10 to protect New Yorkers in part because this issue
11 is already addressed under federal law. Intro 857
12 fails to take into account the many reasons why a
13 person's credit history may be relevant to their
14 fitness for a job. The purpose of the human
15 rights law is to prevent irrational discrimination
16 that are based on characteristics beyond a
17 person's control and which are irrelevant to their
18 ability to perform a job unlike characteristics
19 such as a person's race, gender and ethnic
20 background, which cannot be the basis of a
21 decision to deny employment. Credit history is
22 not necessarily something that is beyond a
23 person's control. Indeed it is often a reflection
24 of actions they have taken or not taken, nor is a
25 person's credit history necessarily irrelevant to

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2 a person's employment. Indeed, we think that the
3 fact that intro 857 already contains an exception
4 for positions where federal or state law requires
5 a credit history demonstrates that there is
6 nothing inherently arbitrary or irrational about
7 considering a person's credit history when making
8 an employment determination. Although some states
9 and the city of Chicago have enacted similar
10 legislation, these laws contain several additional
11 exemptions not present in Intro 857 each of which
12 further illustrates the several situations in
13 which credit history is relevant to employment.
14 These exceptions include certain types of
15 employment such as positions in law enforcement
16 and investigative agencies, positions in banking,
17 financial institutions, credit unions and
18 insurance companies. Exceptions also include
19 persons whose employment carries a fiduciary
20 responsibility to the employer or to the client of
21 the employer, including those with access to an
22 employer's payroll information, employees with the
23 authority to issue payments, collect debts,
24 transfer money and enter into contracts. Further,
25 some laws have exempted managerial supervisory

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2 roles or provided exceptions based on a bona fide
3 occupational requirement. For example, jobs that
4 involve the use of a corporate debit or credit
5 card or access to confidential financial
6 information, trade secrets or other confidential
7 information, thus all of the other jurisdictions
8 that have enacted legislation like this have
9 imposed broader exceptions, all of which seem to
10 recognize that in many instances there is a
11 legitimate need to inquire into an employee or
12 potential employee's credit history. It should be
13 noted the city's Department of Investigation
14 includes credit history and the background checks
15 it runs on several sensitive city positions. DOI
16 does a background check on all city managers, all
17 other non-competitive positions that pay over
18 \$80,000 a year, all DOI employees, all employees
19 whose duties directly involve negotiation,
20 authorization or approval of contracts, leases,
21 franchises, revocable consents, concessions and
22 applications, zoning changes, variances and
23 special permits, and DOI also checks the
24 background of employees who serve in data
25 processing titles when they perform as part of

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2 their duties, analysis, design or programming of
3 computer systems or when they are involved with
4 the handling of negotiable documents that are
5 protected by computer systems. We are therefore
6 concerned that Intro 857 which only contains
7 exceptions for state and federal requirements for
8 - - credit history would impair the city's ability
9 to perform background checks to ensure the
10 integrity and responsible of its own workforce,
11 including in the areas of law enforcement and
12 financial management where credit history can be
13 relevant to the fitness of potential employee to
14 handle money or finances in the best interest of
15 the public. Moreover as has been alluded to,
16 federal law already covers this area. The federal
17 fair credit reporting act not only governs the - -
18 of credit records and protects both employees and
19 potential employees. It also permits actions that
20 this law would prohibit, specifically federal law
21 allows employers to conduct background checks on
22 current and potential employees, including a - -
23 credit report as long as the employer first
24 obtains the employee's written consent. That
25 credit report does not include a credit score, but

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2 it does list the person's debt, their bill paying
3 history and whether they have ever been sued for
4 bankruptcy or filed for bankruptcy. Again,
5 obtaining this credit record requires the
6 individual's written consent. Then under federal
7 law before an employer can take an adverse action
8 against an individual based on his or her credit
9 record, the employer must provide the individual
10 with a pre adverse action disclosure that consists
11 of a copy of the credit report and a written
12 summary of the individual's rights under the fair
13 credit reporting act. If an employer takes
14 adverse action it must then provide the individual
15 with an adverse action notice as well as the
16 contain information of the agency that provided
17 the credit report so the individual can dispute
18 any inaccurate information. Additionally under
19 existing federal law, New Yorkers are prevented
20 against employment discrimination based solely on
21 either their current or prior status as a bankrupt
22 or as a debtor under the bankruptcy code or
23 because they haven't paid a debt that was
24 dischargeable in bankruptcy. Thank you for
25 allowing me to testify today and I am happy to

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take any questions.

CHAIRPERSON ROSE: Thank you so much for your testimony, and I know that my sponsor of this bill is chomping at the bit to ask questions, and so I was just--you seem to imply that the only problem is that we haven't considered the types--that there should be certain exceptions made to this bill because certain jobs require a certain level of risk so if this bill considered some of the exceptions that you have mentioned in your testimony would you then support this legislation?

BILL HEINZEN: Well, as I have said before I am not really here to negotiate from the witness table, and they would go after me if I did, but I think that I raised the fact that the exemptions in other jurisdictions to point out not just what this bill is missing but the fact that so many other jurisdictions have found that there are several legitimate reasons to inquire into the credit history of an employee or a potential employee, and we don't just object to the legislation because we think it doesn't contain enough exceptions. We object to it because we

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2 don't think this human rights law should be
3 expanded to include things that are not-- basis
4 that are not themselves irrational, and we have
5 said that before, and we also although I
6 understand that based on the data there appear to
7 be more people seeking credit checks of employees
8 nothing I have heard indicates that there is any
9 connection between the increase in credit checks
10 and an increase in employment in New York City or
11 anywhere else, so we don't think this is an
12 effective tool to fight against unemployment. We
13 don't think it belongs in the human rights law,
14 and we think that the bill is missing several
15 crucial exceptions.

16 CHAIRPERSON ROSE: Would you admit
17 that there are a number of things that are
18 reported in a person's credit report that are
19 beyond their control, like unemployment, medical
20 debt, the fact that some communities have
21 disproportionately high number of poor credit
22 ratings, bankruptcy, medical bills. With that
23 being said, with those being some of the facts
24 would you agree that the credit report is still a
25 good judge of whether a person is a good risk for

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an employer?

BILL HEINZEN: I think that information in a credit report can be a good indicator of a risk and can provide useful information. For each of the categories you have mentioned I can think of several instances where that would be within a person's control.

CHAIRPERSON ROSE: Really?

BILL HEINZEN: Yes.

CHAIRPERSON ROSE: Unemployment, medical--

BILL HEINZEN: [interposing] Bankruptcy for one.

CHAIRPERSON ROSE: --medical bills.

BILL HEINZEN: I can think of instances where it would be in a person's control and where it wouldn't be in a person's control, but what I don't see is a real connection between information in credit records that indicates that someone has bad credit and unemployment. There hasn't been anything pointed to that shows that actual connection or that actual existence of discrimination. What I have seen is--and I just got the committee report this morning, so I

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2 apologize. I haven't gone through it yet, but
3 what I have seen there is an op-ed in the Daily
4 News today that anecdotal information, that has
5 mays and mights and coulds, but what I don't see
6 is actual data showing that use of credit records
7 is having an impact disproportionate or otherwise
8 on hiring of people or particularly on the hiring
9 of minorities.

10 CHAIRPERSON ROSE: Well, then I'd
11 like to ask you to stay around to hear the
12 testimony from the advocates and some of the
13 individuals that have experienced that, and the
14 numbers have been documented, so I suggest that
15 you stay around. Brad, would you like to ask some
16 questions?

17 COUNCIL MEMBER LANDER: Thank you,
18 Madam Chair and thank you, Deputy Counselor
19 Heinzen for appearing for us today and having this
20 conversation, so you indicate in your testimony
21 that you believe that a person's credit history is
22 not necessarily irrelevant to a person's
23 employment. Do you have any evidence you can site
24 that a person's credit history bears any relation
25 to their job performance?

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BILL HEINZEN: Yes. Evidence?

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COUNCIL MEMBER LANDER: Evidence,

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yes.

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[crosstalk]

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COUNCIL MEMBER LANDER: The

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Bloomberg Administration has taught us it's a good

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idea.

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BILL HEINZEN: That is why I was

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looking for it in support of this legislation.

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Are you questioning where if someone has personal

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debt that could lead them to--if someone has

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pressing personal finance problems that could be a

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legitimate area of concern about whether they

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should handle money or--

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COUNCIL MEMBER LANDER:

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[interposing] Do you have any evidence that

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actually people who have--people's credit

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histories predict--I guess you are suggesting... Let

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me just tease it out.

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[crosstalk]

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BILL HEINZEN: I point to several

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different news stories in the last two weeks

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involving public officials.

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COUNCIL MEMBER LANDER: So this is

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2 wonderful. If you are going to go with this
3 argument, I think you will find yourself
4 supporting this legislation by the end of this
5 hearing, and let's have the dialogue because I
6 really would love to have it. There actually is
7 quite a lot of data on this subject. We have
8 researched it, and it doesn't appear to me the
9 Bloomberg Administration has looked at it. It is
10 ordinarily pretty data driven in its approach to
11 policy, and here I think it is--

12 [crosstalk]

13 COUNCIL MEMBER LANDER: But you are
14 testifying that there is a link, which ordinarily
15 you would want to have evidence to support, and so
16 far the evidence you offered is that some elected
17 officials are corrupt and violate the public
18 trust, and that is evidence--

19 BILL HEINZEN: [interposing] No,
20 this isn't what I am saying, Councilman. What I
21 am saying is I don't see any reason to amend the
22 human rights law.

23 [crosstalk]

24 COUNCIL MEMBER LANDER: Please
25 answer my questions, and don't restate your

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testimony. I want to try to--I believe you are mistaken, but I would like to ask some questions--

BILL HEINZEN: [interposing] I am trying to answer your question.

COUNCIL MEMBER LANDER: No, my question was do you have any evidence, do you have one study, do you have anything that actually backs up the statement that there is a correlation between people's credit histories and their likelihood to be good employees?

BILL HEINZEN: Do I have a study? I am not here today to justify this legislation. I am here to testify against it.

COUNCIL MEMBER LANDER:
[interposing] So there are plenty of studies that for example the most recent and most thorough one by Laura Koppas Bryan [phonetic] and Jerry Palmer [phonetic] that found no relationship between credit reports and employee performance, and it was an extensive study that looked at the reasons people hire, the reasons people succeed and what people's credit histories are and quite a few other reports and not one of them has documented a link, and I actually just want to tease out what

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2 you are saying because you didn't say it quite so
3 explicitly. It seems you are suggesting that
4 people with bad credit histories are more likely
5 to steal or commit fraud.

6 [crosstalk]

7 BILL HEINZEN: --the New York
8 Police Department and the New York Department of
9 Investigation check for that information as part
10 of background checks.

11 COUNCIL MEMBER LANDER: So what is
12 the theory? You have no evidence and no data.
13 There is evidence.

14 [crosstalk]

15 COUNCIL MEMBER LANDER: Go ahead.
16 Try again. What is the theory by which you
17 believe that an employment history--that a credit
18 history excuse me is a good predictor of
19 somebody's employment?

20 [crosstalk]

21 BILL HEINZEN: The question is
22 this--why should we amend the human rights law
23 when there doesn't seem to be the data to support
24 this? We'll look at the data. We are happy to
25 look at it, but I haven't seen it.

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2 COUNCIL MEMBER LANDER: Well, we
3 have provided a lot of it. It is on the website,
4 and in fact, are you aware of the Equal Employment
5 Opportunities Commission's investigations that
6 suggest quite clearly that the use of employment
7 credit checks does discriminate against people of
8 color, African Americans--

9 BILL HEINZEN: [interposing] I am
10 aware they have issued guidance. I am aware they
11 brought a lawsuit in the northern district of Ohio
12 that was dismissed.

13 COUNCIL MEMBER LANDER: And are you
14 aware that Bank of America actually was found to
15 have discriminated against people of color based
16 on their used of employment credit checks?

17 BILL HEINZEN: I am not aware of
18 that.

19 COUNCIL MEMBER LANDER: Well, they
20 were. So the cause for concern--and are you aware
21 of extensive research that shows that people with
22 poor credit histories are more likely to be people
23 of color?

24 BILL HEINZEN: I am aware of that
25 data. That doesn't to me say amend the city's

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human rights law to prevent employers from using credit history.

COUNCIL MEMBER LANDER: Okay, but you acknowledge in fact--

[crosstalk]

BILL HEINZEN: --that is not a cause of unemployment.

COUNCIL MEMBER LANDER: It is definitely not a cause of unemployment, so I want to be clear--

[crosstalk]

BILL HEINZEN: So I am not sure what the ill is that you are trying to remedy.

[crosstalk]

COUNCIL MEMBER LANDER: No, it's not sir. I beg to disagree. I have never said and I don't think people proposing this bill have indicated--of course it doesn't change unemployment. I mean if there is a job opening and someone gets hired, there is one person in the job, but discrimination is an entirely different thing, and so your argument is that there is no problem with discrimination?

BILL HEINZEN: No, that is not my

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argument.

[crosstalk]

CHAIRPERSON ROSE: No cross. Ask your question, Brad, and please address the question as being asked.

COUNCIL MEMBER LANDER: I agree with you that there is not evidence of a correlation between unemployment and employment and credit checks, but there is a significant correlation between discrimination and employment credit checks, and that is why it is precisely a good use of the New York City human rights law. I would ask that you look at the data because there is a lot of data that there is no correlation. You have provided no indication that there is. There is a lot of data, and you have even acknowledged that in fact poor credit history you are much more likely to be an African American or a Latino so there is a lot of reason for concern. Now in your testimony you also indicate that credit history is not necessarily something beyond a person's control. Are you aware that healthcare debt is a major reason that people have poor credit history?

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2 BILL HEINZEN: Yes, I am very aware
3 of that.

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COUNCIL MEMBER LANDER: Is that
5 within a person's control?

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BILL HEINZEN: It depends on the
7 situation. I think you know that as well as I do.

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COUNCIL MEMBER LANDER: You think
9 people choose not to have health insurance and to
10 have major medical problems and wind up with a lot
11 of healthcare debt?

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BILL HEINZEN: No. Please stop
13 putting words in my mouth.

14

COUNCIL MEMBER LANDER: Would you
15 acknowledge that there are many, many people who
16 have poor credit for reasons that are entirely
17 beyond their control?

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BILL HEINZEN: I am sure that is
19 true. I don't know.

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COUNCIL MEMBER LANDER: Okay.
21 Thank you. That is the set of people who are also
22 caught up in the problem that is created here.
23 Then, I guess you cite the fair credit reporting
24 act, but do you really believe that a job seeker
25 would be making a wise choice simply to say I

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2 don't want to look at my credit history and refuse
3 to sign the document? Is that a meaningful
4 protection?

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BILL HEINZEN: I don't think that
is necessarily the protection here. The
protection is to be made of aware of if there is a
problem in your credit history.

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COUNCIL MEMBER LANDER: You cited
two protections--the first was that you have to
give written consent. I don't believe that is a
meaningful protection because if you want the job,
you have to sign the form, so it's no meaningful
protection. Do you really believe that employers
if they decide based on that would choose to
provide the adverse action notice in many cases or
do you think there could be cases where they
simply decline the applicant without providing a
reason even though they were doing it based on
their credit history?

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BILL HEINZEN: I'm not going to
speculate on that.

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COUNCIL MEMBER LANDER: It seems
pretty likely.

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BILL HEINZEN: - - but I am not

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going to speculate on that.

COUNCIL MEMBER LANDER: Alright.

Well, I guess I appreciate that the Bloomberg Administration doesn't see a problem with discrimination but--

BILL HEINZEN: [interposing] That is completely inappropriate and completely false. That is completely inappropriate.

COUNCIL MEMBER LANDER: You said that you didn't think employment credit checks created a problem - - .

BILL HEINZEN: You just said that you appreciate the fact that the Bloomberg Administration doesn't think there is a problem with discrimination.

[crosstalk]

COUNCIL MEMBER LANDER: --you said you don't see a problem with discrimination in employment credit checks. Did I misunderstand?

BILL HEINZEN: We do not think that there is a demonstrated problem with discrimination in background checks. That is correct.

COUNCIL MEMBER LANDER: I hope

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after you review the data that suggests that there is that you will consider supporting the bill.

BILL HEINZEN: We will definitely review it. - -

COUNCIL MEMBER LANDER: Thank you very much, Madam Chair.

BILL HEINZEN: Thank you.

CHAIRPERSON ROSE: Thank you, Council Member Lander. Council Member Brewer?

COUNCIL MEMBER BREWER: This is my experience, and that is why I support the bill-- there are, thank God, tons more kids going to college, and people taking hopefully care of themselves and going to the doctor, so in terms of the college issue this is my experience. Lots of young people don't have somebody to sign the form so that you can get a loan, so I sign hundreds of them to be honest with you. They are always kids working when they get out of college. You don't have to pay back until you get out of college, but sometimes they get behind, so I have a stack. Every single one of these people I assume now has some kind of a credit challenge. I know less about this than my colleagues here. Every single

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2 one of them is working, but the fact of the matter
3 is because they are working in some cases the
4 kitchen or a low wage job in a non-profit or doing
5 after school at - - --that is the kind of jobs
6 that they are doing. These are all college
7 graduates. They are unbelievably hard working and
8 trying to make a success out of themselves and
9 their families, and it is good that they all went
10 to college. I enjoy trying to be supportive, and
11 it is good that they are looking to get support
12 from me or somebody else to sign that form, but
13 believe me, I know exactly what it says, how much
14 they owe and when the owing is still is an issue,
15 and as a late payment, I get a form from whatever
16 federal office. I don't even know what it is--
17 some federal office. You all know in the
18 audience. That is the kind of thing that we
19 should not be--I don't know if the word is
20 discriminating. I don't know if the word is
21 hurting. But this particular bill would address
22 the fact that these are very employable, wonderful
23 citizens who will go on and be fabulous New
24 Yorkers. That is what I think we need to address.
25 Now the medical issue. I don't know about you but

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2 I always fight with whatever doctor you have to
3 co-pay, you go to the doctor, and then this one
4 won't pay and you have got to fight. In the end,
5 I am not paying something I don't owe, and I don't
6 know if other people have big mouths like I do,
7 but let me tell you there a lot of New Yorkers
8 that fight as consumers I am sure on medical
9 bills. When I think I don't have to pay for it, I
10 am usually right. I wait until I fight to make
11 sure that the bill gets paid by the insurance
12 company. That is a fight. Anybody who has ever
13 had to deal with health issues in a family, it is
14 a fight. I am sure that the credit record--not
15 just me, others, is related to bad credit because
16 we have the audacity to fight. Within housing,
17 there is another whole issue. I don't if you are
18 living in a build where you have decided you are
19 going to fight the landlord, you are a renter, you
20 then end up putting money in escrow, you then end
21 up losing or winning the case as a tenant
22 association, guess what? It goes on your credit
23 history. Believe me, you are a good rent paying
24 individual. Thank God you fought 'cause sometimes
25 you win. I can tell you - - empty. I have seen

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2 100 units empty over night because they are afraid
3 of their credit history. Every single one of them
4 was working. They should not end up because they
5 put their money in escrow not being able to get a
6 job in the future, and let me tell you, I am at
7 those tenant meetings, so I know what they say. I
8 had never heard of anything like that until five
9 years ago. The building disappeared over night.
10 I said, where did you go? We are worried about
11 our credit history. I said, what? If you put
12 your money in escrow, it is going to end up on
13 your credit history. What? I couldn't believe
14 it. That never happened before. It is probably
15 what the Chair indicated the companies are looking
16 for extra I call them apps or whatever the term
17 is--fundraising, revenue enhancement and more
18 people can get on this credit history. I am just
19 saying something has to give. That is what I am
20 saying. It is a different society. We also have
21 a lot of immigrant students going to college.
22 They are taking out loans. Half of the young
23 people I know who are using me as a signatory are
24 immigrant, young people. They can't even get
25 grant to go to CUNY. They have to take out loans.

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2 There is something underneath here that with all
3 due respect the administration has to deal with,
4 and I think this bill--I am really good at making
5 changes to bills. I just spent four years working
6 on a bill, so I know about making changes to
7 bills. So there is room for changes, I am sure,
8 but I can tell you this is a huge issue. Let me
9 just tell you about what Brad indicated who pays
10 and who doesn't going to college. Rich people pay
11 for college. Poor people don't. It is
12 discriminatory just starting right there, so
13 everyone taking out loans that is who is going to
14 get discriminated against if that is the right
15 word, in terms of credit history, so medical - -
16 and college students. The other day there was an
17 article in the paper, in the Times business
18 section, oh my God, the amount of money that is
19 being given out to students for college loans
20 could save the debt of our country almost. Those
21 are all people who are perhaps going to be
22 discriminated against when they get behind one
23 month because they are working at the Beacon after
24 school program and not on Wall Street. I am
25 trying to give you a suggestion that this is a

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huge problem, so can you think about supporting this bill?

BILL HEINZEN: Yes, I can think about it, and I heard everything you said.

COUNCIL MEMBER BREWER: I know this guy. He is not a bad guy, but he does need to have a different perspective. Thank you.

CHAIRPERSON ROSE: Thank you, Council Member Brewer.

BILL HEINZEN: Can you tell my mother that?

COUNCIL MEMBER BREWER: If she lives on the West Side, I'd be glad to.

CHAIRPERSON ROSE: Council Member King?

COUNCIL MEMBER KING: Good morning. Excuse my tardiness, but I am not going to just ask a question because I want to just make a real statement to you. As all New Yorker students, the reality is discrimination exists in all aspects, not just in credit histories, but in everything that we do, and we do ourselves a disservice - - to come to any hearing and act like it doesn't exist, so all I ask is that the administration if

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2 there are some concerns with regards to this
3 legislation see how we can come to a meeting of
4 the minds and get it passed because we know
5 discrimination is - - who just applies for credit
6 and doesn't get the credit, but every time their
7 credit scores get checked, their credit scores go
8 down whether you got approved or not, and that is
9 something that you don't have control over, which
10 the system needs to be changed. I just want us to
11 take a look at this and come to a meeting of the
12 minds and do what we got to do in the best
13 interest of all New Yorkers. Thank you again for
14 your testimony today.

15 CHAIRPERSON ROSE: Council Member
16 Jackson?

17 COUNCIL MEMBER JACKSON: Thank you,
18 Madam Chair, and thanks everyone for being here,
19 and Brad, let me thank you as the lead sponsor in
20 this particular matter. I am a signatory to this
21 proposed legislation, and I do know that based on
22 the rallies that I have attended where there were
23 many, many people, especially young college
24 students and as a father of three girls who all
25 went to college and all of them had college loans,

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2 and for myself someone that was involved with I
3 guess being denied a loan based on the fact that
4 years ago I co-signed a loan for my nephew, who
5 from a legal point of view I guess his father and
6 I were responsible for, and then I was signing for
7 my daughter's college loan, \$25,000 a year with
8 Citibank, they approved me the first year, they
9 approved me the second year, the third year they
10 denied me and I was shocked. They said there was
11 some legal action against me going back I guess 15
12 or 20 years ago with my nephew, so my wife had to
13 sign the loans for my daughter to continue to get
14 the money to go to college. But I do know that
15 these young people that are being negatively
16 impacted by credit checks on their situation and I
17 do believe there is discriminatory practices, not
18 all the time, and I agree with my colleague, Brad.
19 I appreciate him fighting to try to move this
20 legislation, and I can understand your response
21 representing the mayor in some respects, but I do
22 agree with my colleague, Andy King, that if the
23 mayor and his advisors feel that there needs to be
24 discussions and negotiations so we can come up
25 with a bill that we all can live with that is

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2 going to better protect the people that are being
3 negatively impacted that that is what we want to
4 see happen. I don't want to be put in a situation
5 where we move forward on a bill and the mayor
6 vetoes the bill and we have to override the
7 mayor's veto. I mean ideal situation let's come
8 and talk about the issues and concerns, and let's
9 see if we can work on a bill that is going to meet
10 the needs of our objective, and as I said, I gave
11 you my background with respects to some personal
12 issues with myself, and I have owed money my
13 entire life, and I have owed banks and credit
14 cards my entire life, and what most people do is
15 if they have got a credit card company that is
16 going to give them a lower interest rate, they are
17 going to take that to try to reduce the high
18 interest rate to keep juggling until you can get a
19 credit company that will charge you one percent
20 versus 18 percent, 17 percent in order to reduce
21 the type of money that they owe, and obviously
22 many of us get into trouble for many, many
23 reasons--you know that, I know that--because we
24 overextend ourselves with credit card debt, what
25 have you and so forth. Some people are just

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2 trying to survive and they use their credit cards
3 to pay their rent or to pay for their healthcare
4 or to try to use their credit card to pay the
5 college bills in order for them to uplift
6 themselves and their families through education,
7 and I was thinking about when the dialogue was
8 talking place--

9 CHAIRPERSON ROSE: [interposing]
10 Council Member, can you move it along?

11 COUNCIL MEMBER JACKSON: Yes, I
12 will, Madam Chair. I appreciate the opportunity.
13 I am only expressing myself and my personal
14 perspective, but I know this is the expressions of
15 many people that we present. There was a bill
16 that we passed basically it said you cannot
17 discriminate against someone that is unemployed,
18 and the point that I am making is many employers
19 think they can do anything that they want to do,
20 and we are here to say they cannot, and in my
21 opinion, this is one of the situations where we
22 are saying they cannot do what they want to do,
23 and legislators are going to stand up and make
24 laws that is going to protect the people that we
25 represent. So I ask you to please tell the mayor

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and your people to negotiate and let's bring this to a resolution. Thank you, Madam Chair.

CHAIRPERSON ROSE: Thank you so much, Council Member. Council Member Chin?

COUNCIL MEMBER CHIN: Thank you, Madam Chair. I am also one of the co-sponsors on the bill, and the other point that I wanted to raise is that from my experience working in the immigrant community a lot of time people have no credit history. They don't have credit cards and they probably never borrowed money using credit cards and they pay their bills on time. It is because they have no credit history. The experience that we had before was that when they go a bank and try to get a loan to purchase a house, they get discriminated because they have no credit history, and we have to help them put together a non-traditional way of showing their credit worthiness. At the same time, some of them are discriminated because they have to pay a higher down payment because they have no credit, so the credit check is not--it could be used against them, and then also the issue with identity theft. People who don't even know that

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2 they have some bad credit out there because
3 somebody have used their names and then they don't
4 even know that they have a bad credit on their
5 credit report. They don't even know what that is.
6 So I think you have got to look at all of the
7 aspects of whether using credit reports and credit
8 history where that there will be people who are
9 going to be harmed by that, so I really ask you to
10 really discuss with us and get all of the studies
11 and really help us to stop discrimination so that
12 people can get jobs. Thank you.

13 CHAIRPERSON ROSE: Before, I know
14 Council Member Lander has a question, but I would
15 just like to say you have heard the testimony of
16 each of the council members, many of which have
17 shared with you personal credit stories. I
18 personally think that the statistics that we have
19 that have been quoted are grossly underreported.
20 I think everybody here on this particular
21 committee as well as throughout the City Council
22 can tell you numerous stories of people who have
23 issues with bad credit or being labeled having bad
24 credit, and it adversely affecting some aspects of
25 their daily lives. I think that the overarching

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2 issue is does the administration believe that
3 credit checks can be used in a discriminatory way
4 in the hiring process? Have you--

5 BILL HEINZEN: Sure. I'm sure that
6 they could be used in a discriminatory way.

7 CHAIRPERSON ROSE: We are here
8 today telling you that it has been. So would it
9 be appropriate at this point to say that the
10 administration would be willing to have further
11 dialogue with this committee and the sponsors in
12 terms of the effects of consumer credit rating?

13 BILL HEINZEN: Yes. Absolutely.

14 CHAIRPERSON ROSE: Okay. Thank
15 you. Council Member Lander?

16 COUNCIL MEMBER LANDER: Yeah.
17 First I just want to thank my colleagues for their
18 passionate, but calm testimony. I just wanted to
19 say, Mr. Heinzen, I did not mean to suggest and I
20 recognize in looking back that the Bloomberg
21 Administration broadly doesn't care about
22 discrimination. I was really saying the concern
23 about discrimination in employment credit checks,
24 so I feel passionately about the issue because I
25 have met quite a lot of people who have had it

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2 happen to them and I have become convinced that it
3 really is a very big problem, and I hope given
4 what you have heard that you will take that back
5 and that we can have more dialogue about it, but I
6 certainly didn't mean to suggest broadly that
7 there is not a concern about discrimination in the
8 administration. Thank you, Madam Chair.

9 CHAIRPERSON ROSE: Thank you,
10 Council Member Lander. With that, I want to thank
11 you for agreeing to meet with us to discuss this.
12 We have some experts here like Council Member
13 Brewer who has been through how we make a bill
14 that the administration can support, but also that
15 does not water down the purpose of this bill and
16 it serves the populations that have been adversely
17 affected by this. I thank you so much for your
18 testimony today. I will call the next panel.
19 Okay. Deyanira Del Rio from NEDAP, Renica Moore
20 [phonetic] from the NAACP Legal Defense Fund and
21 Amy Traub [phonetic] from DEMOS [phonetic]. When
22 you get there before you testify identify yourself
23 and the organization you represent. Thank you.

24 [long pause]

25 CHAIRPERSON ROSE: When you are

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ready, please identify yourself. Ms. Del Rio?

DEYANIRA DEL RIO: I wasn't sure who was going first. Good morning and thank you for the opportunity to testify at today's hearing. My name is Deyanira Del Rio. I am the associate director of NEDAP, an economic justice organization here in New York City. We work with community groups throughout New York to promote economic justice in New York City neighborhoods and to eliminate discriminatory economic practices that harm communities and perpetuate inequality and poverty. We are thrilled to be here today and thrilled that the City Council is taking on this issue and holding the hearing today, and I want to thank Council Member Brad Lander for being the chief sponsor of the bill and the champion, Council Member Rose and the committee for holding today's hearing and all of the bill's 35 sponsors, so we salute and thank you. NEDAP is one of the leaders of the New York City Coalition to Stop Credit Checks in Employment. This coalition I just want to give a nod, and many of them are in the room, it's an incredible cross section of groups, more than 60 organizations including labor

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2 groups, community, civil rights, consumer,
3 workforce development, student, immigrant, women's
4 and senior's groups, and the reason we have been
5 able to build such a broad coalition is because
6 this is the broad range of New Yorkers who are
7 harmed by the unfair and discriminatory practice
8 of employment credit checks. I just want to make
9 sure that everyone is clear about the numbers that
10 almost half of all employers today report using
11 credit checks in employment in some way, and I
12 also want to make sure that people understand that
13 it is not just job applicants, but actually many
14 employers running routine credit checks on their
15 existing employees and using that information in
16 many cases to deny people promotions and other
17 opportunities. We have even heard from many
18 people, many New Yorkers who had jobs they had
19 excelled in, been promoted, were doing fabulously
20 and then because of these routine credit checks
21 were fired from their existing jobs, so in some
22 cases employers are actually putting more weight
23 on these credit checks than on someone's actual
24 performance in their very position, which is
25 clearly unfair. You all have copies of my

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2 testimony and some fact sheets that detail some of
3 the many reasons why this practice is unfair and
4 should stop and you have already outlined many of
5 them today. I want to spend a couple of minutes
6 highlighting a few different points and maybe also
7 responding to some of the previous person's
8 testimony. So one is I want to underscore that
9 NEDAP and NYPIRG did undertake a survey of local
10 small businesses very recently. We surveyed about
11 80 small businesses, all with fewer than 25
12 employees, and as you know, that size represents
13 the vast majority of businesses in new York City,
14 and out of those 80 businesses surveyed 77
15 reported that they did not use credit checks of
16 any kind, so you will hear proponents of credit
17 checks and opponents of this bill say this bad for
18 small businesses, this is going to hurt them,
19 credit checks is a tool that small businesses
20 need. You are going to hear testimony from others
21 today that coincides with our findings that this
22 is not something that affects small business. It
23 is a moot issue for small businesses. They do not
24 use credit checks. They instead use the
25 traditional methods that someone would use to

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2 evaluate a job applicant--interviews, references,
3 job skills and other things that actually speak to
4 someone's ability to perform a job. Another thing
5 I just want to point out is I think that some of
6 us who do this work and I have been working on
7 foreclosure issues and debt collection, we know
8 that this is not anecdotal. The foreclosure
9 crisis is not anecdotal. The fact that subprime
10 loans were overwhelmingly concentrated in
11 neighborhoods of color and targeted to people of
12 color despite their credit score and despite their
13 income is not anecdotal. These are systemic
14 problems that result in systemic discrimination
15 against protected classes. We would never
16 tolerate employers conducting job interviews in
17 which they ask the job applicant to describe for
18 them every credit card that they have and how much
19 they owe on each, who they owe money to and do
20 they pay on time, have they ever missed a payment,
21 are they behind on child support payments. These
22 are all invasions of privacy that if asked
23 outright would be clearly unfair and invasions of
24 privacy and yet employers are currently allowed to
25 mine this kind of information and much more by

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2 conducting credit checks on job applicants. In
3 response to the previous testimony about
4 exemptions we just want to point out that
5 exemptions in other cities and states that have
6 passed bills have not been the result of them
7 finding any valid use of credit checks in
8 employment; it has been the result of aggressive
9 lobbying by industries that want to preserve
10 employers' access to credit checks. There has
11 been no study--I just want to be emphatic about
12 it--that shows any correlation between credit
13 history and job performance. The credit reporting
14 agencies, which as you have heard are the main
15 companies that benefit from employers using credit
16 checks. They have more incentive than anybody to
17 find a correlation and they have been unable to,
18 and so that argument is moot. We think it is
19 really important that the bill remains strong as
20 is. New York City has a real opportunity to pass
21 a bill that is strong that does not include
22 exemptions that in effect would gut the bill and
23 make it nearly impossible to enforce and we really
24 hope that you preserve the strong legislation that
25 you have before you today, so thank you for your

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time.

CHAIRPERSON ROSE: Thank you.

AMY TRAUB: Hi. Good morning. My name is Amy Traub and I am a senior policy analyst with DEMOS. DEMOS 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, and we see this bill fitting in very well with giving everyone an equal chance in our economy. We are a national organization, but we are based here in New York City, and I want to thank the Committee and Chairperson Rose for this opportunity to testify in support of the bill. Over the past decade, DEMOS 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 penalized financially for being in debt, which makes it difficult if not impossible for them to ever get out of debt. In 2012 we surveyed a nationally representative sample of about 1,000 low and middle income households that were carrying credit card debt for three months or longer. This is a scientific

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2 study. It is not anecdotal. I was the principal
3 researcher on that study. In addition to the
4 questions DEMOS asked in the past about credit
5 card debt, I began to ask about the experience of
6 these households with employment credit checks.
7 My first finding is that in the survey population
8 employment credit checks are common. Among the
9 households in the survey population that
10 experienced unemployment about one in seven say
11 that a perspective employer has asked to check
12 their personal credit history, but it is likely
13 that this actually understates the extent of
14 employment credit checks. People are asked to
15 sign all kinds of paperwork when they apply for
16 jobs and they may not remember every piece of
17 paper that they sign. Nevertheless one in seven
18 do remember it. I also found that credit checks
19 have a real impact. People are shut out of job
20 opportunities because of their credit. Under the
21 terms of the federal fair credit reporting act,
22 employers are required to provide official
23 notification if a credit report played any role in
24 a decision not to hire someone. The problem is
25 that this is very hard to enforce, so many job

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2 applicants may never find out that their credit
3 report was the reason they were denied work.
4 Nevertheless some people are informed. Some
5 employers do follow the law. They tell people
6 hey, the credit is the reason we are not able to
7 hire you and among those in the survey population
8 who report that they had poor credit, one in seven
9 report that they had been advised they would not
10 be hired for some position because of their
11 credit. This indicates that credit checks really
12 are a barrier to employment for people. What does
13 a credit report really reveal about someone? I
14 find that poor or declining credit is associated
15 with households experiencing job loss, lacking
16 health coverage or having medical debt. New York
17 City recently passed landmark legislation outlying
18 job discrimination against people who are
19 currently unemployed. Unfortunately employment
20 credit checks are another means of discrimination
21 against this same population of people who are out
22 of work because it is hard to maintain good credit
23 when your household has been coping with extended
24 unemployment. That is exactly what I found in
25 this research. I found a number of different

1 connections between medical debt and poor credit.
2 For example, I found that 55 percent, more than
3 half of those who report having poor credit, say
4 that unpaid medical bills or medical debt
5 contributed to their poor credit. That is a huge
6 impact, and that means that a lot of what
7 employers are looking at on credit reports is
8 medical debt, but they don't realize that. We
9 also find that in our sample, Latino and
10 particularly African American households are more
11 likely to report having poor credit and less
12 likely to report having good to excellent credit
13 than white households. For example, 65 percent of
14 white households in our sample describe their
15 credit as good or excellent compared to just 44
16 percent of African American households. Latino
17 households tend to fall somewhere in the middle in
18 our study. Unfortunately our sample sizes were
19 too small to have statistically significant data
20 about other racial or ethnic groups. We would
21 have liked to look at that more extensively as
22 well and weren't able to. I want to note that our
23 data on racial disparities is consistent with
24 previous research including findings by the
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1
2 Federal Reserve Board and the Brokings [phonetic]
3 Institution. Other researchers have pointed out
4 that a number of factors contribute to the racial
5 disparity that we see in credit quality.
6 Unemployment is higher in communities of color.
7 There is a tremendous underlying disparity in
8 wealth and assets compared to white households and
9 there is also the legacy of predatory lending that
10 disproportionately impacts communities of color.
11 All of this may contribute to worse credit.
12 Employment credit checks can amplify and
13 perpetuate this racial discrimination and I'd
14 argue that that is irrational. Employer
15 assessments of credit reports are entirely
16 subjective. Employers are not looking at a three
17 digit credit score when they ran the op-ed that
18 Council Member Garodnick and I wrote in the Daily
19 News this morning. Even though they were tempted
20 to put that word credit score into the subtitle,
21 employers don't look at a credit score. They are
22 looking at a list of credit accounts, how much the
23 job applicant owes and whether they are paying as
24 agreed or they are late. There is no universally
25 accepted way to interpret this information.

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2 Credit reports after all were developed to be
3 guiding lenders making a loan, not employers, and
4 there is a real lack of social science research
5 proving that any credit information is relevant to
6 job performance. Now the mayor's office noted
7 early that there are exemptions in some state laws
8 and one would think and hope that those exemptions
9 are based on some kind of research saying, well,
10 for law enforcement actually credit does predict
11 something. The thing is I would suggest that I
12 know that that research just isn't out there. The
13 exemptions we see in other state laws are not
14 based on evidence, and I have actually had an
15 opportunity to see some of these laws negotiated
16 in some of the states Connecticut and Vermont I
17 worked with the bill's sponsors, and I can say
18 that based on that experience, industries don't
19 want to change their practices so they lobby for
20 exemptions. The credit reporting industry wants
21 to keep selling credit reports, and so they lobby
22 for the largest exemptions they can. They don't
23 want to lose that market, and that is where the
24 exemptions come from. They don't come from
25 evidence that credit reports are actually

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2 relevant. I will conclude by just summing up our
3 research. We find that in our survey population
4 credit checks are common. They are keeping people
5 from getting jobs, and yet poor credit is
6 associated with factors that we don't see as
7 legitimate reasons to deny people employment. It
8 is associated with a lack of health coverage, with
9 medical debt, and with unemployment--things that
10 aren't in people's control. We also find that
11 people of color are disproportionately likely to
12 report poor credit, and we see a high rate of
13 errors in credit reports. Employers don't realize
14 this is what they are looking at on a credit
15 report, but to a large extent it is, and so the
16 DEMOS study is another piece of evidence that
17 employment credit checks are an illegitimate
18 barrier to employment, and I urge you to stop this
19 discrimination by passing Intro 857. Thank you.

20 CHAIRPERSON ROSE: Thank you so
21 much. Before you start, Ms. Moore, I'd like to
22 acknowledge that we were joined by Council Member
23 Van Bramer. Thank you, Ms. Moore.

24 RENICA MOORE: Thanks. Good
25 morning, Chairman Rose and members of the Civil

1
2 Rights Committee. My name again is Renica Moore,
3 and I am the director of economic justice at the
4 NAACP Legal Defense and Educational Fund. I am
5 here today to support passage of Intro 857 in its
6 current form. The NAACP Legal Defense Fund and
7 Educational Fund is one of America's premiere
8 legal organizations fighting for racial justice.
9 We use litigation, advocacy, and public education
10 to see structural changes that expand democracy,
11 eliminate disparities and achieve racial justice
12 so that the society fulfills its promise of
13 equality for all Americans. We were founded by
14 Thurgood Marshall here in New York City, but we
15 are also a national organization and we have
16 challenged racial discrimination against African
17 Americans and other people of color for over 60
18 years. and I'll note just because even my
19 grandmother sometimes gets this confused that we
20 have been a separate entity from the NAACP since
21 1957. Currently LDF is focused on barriers to
22 employment that unfairly and disproportionately
23 affect African American workers. These barriers
24 include the overuse and the misuse of background
25 checks, and particularly which is why I am here

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2 today to talk about credit checks, and we also
3 deal with overuse and misuse of criminal
4 background checks, but I will save that for
5 another day. So we look at background checks
6 because they disproportionately screen out African
7 Americans, and they often have been proven to
8 serve no legitimate business interests. So we
9 want this bill passed without exemptions or carve
10 out for the reasons that have been stated
11 repeatedly already this morning, and if this bill
12 was passed in its current form, New York City
13 workers would have the strongest and most
14 effective protections in the country against
15 credit discrimination. All workers would benefit
16 from this law given the extensive evidence that
17 credit reports are notoriously inaccurate and they
18 violate workers' privacy because the reports do
19 commonly contain information about medical
20 conditions, disabilities and familial status--
21 information that employers are legally barred from
22 basing employment decisions on. An anti-credit
23 discrimination law would safeguard workers'
24 privacy and shield them from unfair and
25 potentially unlawful denials of employment

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2 opportunities, and we think protection against
3 employment credit checks are particularly
4 important for African Americans for some reasons I
5 would like to detail here today. So first the
6 employers' use of credit checks in any form would
7 likely violate Title 7. So Title 7 essentially
8 protections against discrimination in the
9 employment context, and we think that credit
10 checks violate both the letter and the spirit of
11 Title 7 and so Title 7 bars employers from using
12 selection devices like credit checks if the device
13 disproportionately disadvantages a protected
14 group, and the second component of that test is
15 that whether the device has been shown to be job
16 related or to serve a specific necessary business
17 purpose. In the United States Equal Employment
18 Opportunity Commission, which is the federal
19 agency charged with enforcement of Title 7,
20 advises employers that if they are going to use a
21 select device like credit checks that has a
22 disparate impact on a particular group that the
23 device in question be evaluated by experts in a
24 process known as validation in accordance with the
25 EEOC's uniform guidelines to determine if the

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2 device is in fact job related, and credit checks
3 as we have heard today in no way have undergone
4 this rigorous process of evaluation--to the
5 contrary, there is no research or evidence that
6 employment credit checks are job related much less
7 consistent with business necessity as Title 7
8 requires, and that is for any job--that includes
9 managerial jobs, that includes financial
10 positions, and I think that is important to
11 reiterate because we often hear that certain jobs
12 already require them, and it's sort of a do it
13 because we did it, but that is not what Title 7
14 requires and even for those positions there has
15 been no evidence that the information provided in
16 credit checks indicates the ability to perform a
17 job or trustworthiness or whether someone deserves
18 the job. I am going to talk a little about the
19 social science regarding race discrimination and
20 access to credit, which I think filters in in why
21 African Americans and other minority groups often
22 have more negative credit history and lower credit
23 scores. The documented race discrimination in
24 credit markets is why we should not be using
25 employer use of credit checks. There is a 2008

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2 study that Amy Traub referenced by the Federal
3 Reserve Bank of Boston titled Credit Card
4 Redlining, which examined credit information from
5 one of three major credit bureaus for over 285,000
6 individuals, and what they found is that
7 disparities--there are disparities in access to
8 credit based on the racial composition of a credit
9 applicant's neighborhood. So the study found that
10 disparities persisted even after controlling for
11 other potential explanations such as neighborhood
12 differences in crime rates, income levels or
13 vacancy rates. This observed race penalty had
14 real consequences for consumers. The study
15 concluded that "moving from a 80 percent majority
16 white to an 80 percent majority black neighborhood
17 reduces the access to credit by an average of
18 \$7,357." The study's author similarly found a
19 negative effect on credit scores for consumers
20 living in predominantly black areas, and the
21 negative consequences actually seemed to grow for
22 people that had better credit, and these negative
23 consequences the negative consequences that flow
24 from the disparities can't be understated because
25 a good credit history is often a necessary element

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2 for securing a mortgage; thus the disparities in
3 access to credit lead to disparities in home
4 ownership and overall economic security, and then
5 in the vacuum that is created by the
6 discriminatory denial of more consumer friendly
7 credit options, African Americans are subject to
8 predatory credit options like payday loans, which
9 can charge annualized interest rates of over 300
10 percent or high interest credit cards, which are
11 often marketed aggressively to African American
12 communities. Consequently African Americans are
13 more than twice as likely as white cardholders to
14 pay interest rates higher than 20 percent on their
15 credit cards. Researchers have found the negative
16 credit history is often the result of hardships
17 faced by the consumer rather than overconsumption
18 or irresponsible spending habits, so we would
19 challenge the assertion that credit history
20 reflects personal choices. So the negative credit
21 history often indicates that a consumer has faced
22 high medical costs, unemployment or divorce--
23 hardships that African Americans are more likely
24 to face than whites. In one study by researchers
25 at Harvard found that medical costs and illness

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2 contributed to over 62 percent of bankruptcy
3 filings and African Americans have been shown to
4 be more likely to file for bankruptcy than other
5 groups and increasingly African Americans are
6 suffering under the weight of increased student
7 loan debt, which can also negatively affect credit
8 history. Eight out of ten African Americans must
9 borrow to finance their education and more than
10 any other group, their per student borrowing is
11 higher and the Center for American Progress
12 recently conducted a student and found that
13 African Americans average \$28,682 in loan debt,
14 which is 4,000 more than the typical white
15 borrower. So while these factors contribute to
16 lower credit scores or more negative credit
17 history they do not and have never been shown to
18 predict how well a person can perform a job, and
19 so I think that is important because we talked
20 about there was a discussion in the first panel
21 about whether credit checks have any correlation
22 to unemployment, and I think Councilman Lander hit
23 that nail on the head in terms of explaining that
24 it is about discrimination and not necessarily
25 about unemployment, and so while New Yorkers were

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2 generally hit hard by the recession, African
3 Americans were hit especially hard. I think the
4 stat was already mentioned, but the unemployment
5 rate for African Americans in New York City was 14
6 percent at its highest, which was more than twice
7 the unemployment rate for white New Yorkers. And
8 for young black men without a high school diploma,
9 that rate was over 50 percent, and so I think
10 these do have real consequences. And so given
11 these staggering rates of unemployment, LDF is
12 particularly concerned about obstacles to
13 employment like credit checks that have never been
14 shown to bear any connection to an applicant or an
15 employee's job qualifications or performance, and
16 rather, they reflect the economic vulnerability
17 and the cumulative disadvantage that African
18 Americans face in the employment sector and in our
19 economy generally. So for that reason, LDF
20 opposes the use of employment credit checks and
21 wholeheartedly supports the passage of Intro 857
22 without further exemptions or carve outs to
23 guarantee applicants and employees equal
24 opportunity to work regardless of their race.
25 Thank you for the opportunity to testify here

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today.

CHAIRPERSON ROSE: Thank you. I thank all of the advocates for your testimony and understanding that you clearly believe that this bill is necessary; it's passage is necessary. What portions of this bill do you think would be the most effective or have the greatest impact?

RENICA MOORE: Well, so what makes this bill really powerful is that it completely takes this unfounded credit check off the table for employers. It doesn't say, well, you can use it in certain circumstances and not others, which makes it really difficult for both employers I think to comply and for enforcement agencies to enforce. What is strong about it is that because of everything you have heard so far and what you are going to hear today during the rest of this hearing if the City Council believes this is an unfair practice, if it has been demonstrated to have a discriminatory impact, if it is a wrong practice, then it should be banned. It should be prohibited. It should not be allowed that some employers get to invade your privacy, discriminate against you and unfairly deny you jobs. It should

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2 be across the board, and so really that is what
3 makes this bill so powerful. That is why there is
4 such a strong coalition of groups supporting it
5 because it is not a watered down bill. It is
6 something that will have meaningful impact for New
7 Yorkers, and it is the key. It is what would make
8 this bill do anything for New Yorkers at all.

9 CHAIRPERSON ROSE: In terms of
10 exemptions, it has been widely touted that certain
11 positions should be exempted. Do you think that
12 there should be any positions that are exempted
13 from this bill?

14 DEYANIRA DEL RIO: No. The bill
15 has an exemption honestly for positions where
16 state or federal law otherwise requires that a
17 credit check be used. I think a lot of those
18 state and federal laws in and of themselves might
19 not be justifiable. We can have another
20 conversation in Albany and in Washington D.C.
21 about changing some of those laws, but in the
22 meantime that exemption is in there to protect the
23 city from having any kind of liability for being
24 preempted, but those are the only cases where just
25 as a pure issue of preemption there is an

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2 exception, and I think that is the only
3 justifiable exemption from the position of the
4 research.

5 CHAIRPERSON ROSE: Are there any
6 protections out there for New Yorkers that are
7 being discriminated against because of poor credit
8 reports?

9 DEYANIRA DEL RIO: If you could
10 prove that the use of credit reports was
11 systematically causing a disparate impact on
12 protected groups and perhaps, Renica can speak to
13 this better than I that you would have a case and
14 the challenge is that that is difficult to
15 provide.

16 RENICA MOORE: Right, so there are
17 under the human rights law there are some
18 protections for practices that have a disparate
19 impact, but disproportionately disadvantage a
20 particular group that is protected by the law.
21 The problem though is that we are fairly certain
22 that people are not always told when decisions are
23 being made based on their credit, that that puts
24 the burden on the worker and the individual to
25 pursue the claim and they don't always know and

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2 companies don't always keep good stats and so part
3 of what had happened actually in the EOC case in
4 the district of Ohio against Kaplan was that the
5 company had not kept race data with the credit
6 report data and so it wasn't clear, which
7 employees--what race the employees who were
8 screened out of the job belonged to, and so there
9 are record keeping issues as well that make it
10 difficult often times to challenge credit
11 discrimination.

12 CHAIRPERSON ROSE: Have your
13 agencies seen an uptick in the number of
14 complaints about this type of discrimination and
15 what do you think is driving the increase?

16 DEYANIRA DEL RIO: Absolutely.
17 NEDAP, we have a legal hotline through which we
18 get calls from people who are reporting that they
19 are being denied jobs as well as housing and lots
20 of other things because of their credit history.
21 We also do a lot of community outreach and
22 education and workshops, community meetings. When
23 we talk about this inevitably a slew of people
24 have either been affected personally or they know
25 people to whom this has happened to. What is

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2 driving it is really the credit reporting
3 agencies. We can't underscore that enough. If
4 you take a look at any of these companies--
5 Experian, Equifax, Transunions, Materials--their
6 testimonies at other hearings, their annual
7 reports, they make very clear that their business
8 practice, their strategic plan is to grow by
9 expanding the sale of people's information beyond
10 the traditional credit and banking spheres. This
11 is their plan for growth and they go and testify
12 at hearings and advertise to employers really
13 blatantly and without evidence to back it up that
14 not conducting employment credit checks means that
15 you are missing out on a key piece of information
16 about workers that you are exposing your
17 workplace, your organization, your business, your
18 other staff members to fraud and to theft and all
19 of these other problems, and again, with no merit
20 at all, so it is really the credit bureaus driving
21 this. Just to be clear these are by and large
22 very large companies that conduct credit checks on
23 employees. These are big box stores, chain
24 retailers. You are going to hear from some New
25 Yorkers themselves about the types of jobs they

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2 were turned down for because of credit checks. It
3 is everything from the famous dog walker ads that
4 people see--do not apply if you don't have great
5 credit--to shoe salesmen, retail sales, restaurant
6 workers. Ironically, these are a lot of the
7 industries in which these same employers are
8 cutting workers' wages, switching them to part
9 time instead of full time work and just paying
10 very low wages and making it hard for people to
11 stay out of debt and stay on top of their credit,
12 so it is not small businesses. In our survey we
13 did a survey of again businesses under 25
14 employees and these were clothing stores,
15 restaurants, retailers and others and they do not
16 use credit checks, so this is not a harm to small
17 business. It wouldn't be a cost to the large
18 businesses either. It would mean that they would
19 have to exclude that from their background checks,
20 something that they can clearly afford to do.

21 CHAIRPERSON ROSE: Just an aside,
22 so this becomes very profitable for the credit
23 reporting agencies to increase the number of
24 people who are seeking these reports. Yes?

25 FEMALE VOICE: Right because every

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2 employer or employment screening company that uses
3 credit checks is another paying employee to the
4 credit bureaus. That is their business, that is
5 how they profit is to sell, get more people buying
6 their information.

7 CHAIRPERSON ROSE: Thank you.

8 Council Member Lander.

9 COUNCIL MEMBER LANDER: Thank you
10 very much, Madam Chair, and thank you for the
11 testimony even though I have been working on this
12 issue for a while, I found it very powerful and
13 adding up all the research. I want to just focus
14 on this question of exemptions a little bit more
15 'cause I really think it goes to in many ways the
16 heart of the bill, and it's therefore important to
17 unpack, and I tried perhaps to strongly to tease
18 out the rationale, but I think it is important to
19 say, right, because it must be--I mean the
20 rationale as you say the reason they are getting
21 used is that they are getting sold and marketed,
22 and people hesitate to even--and there is no
23 evidence, and people hesitate to even articulate
24 the rationale, but I do think it's important to
25 say out loud if we are going to show that it is

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2 not true, what is the rational that either you
3 hear or you think people must be implying for
4 using these?

5 FEMALE VOICE: It's not hard to
6 tease out 'cause you get to look at all the ads
7 selling--because I do research on this, now I get
8 all the little ads on my computer when I use
9 Google saying don't hire the wrong person. Here
10 is how much is stolen from companies every year.
11 You don't want to hire a thief. You don't want to
12 hire someone that is dishonest. Hire somebody
13 reliable, who is really going to show up to work
14 every day, and what company wants to hire somebody
15 who is going to steal from them or who is going to
16 be lazy or irresponsible? If there was really--if
17 a credit report really showed you all those things
18 that would be--you could make a cause for looking
19 at them. The fact is that it doesn't show those
20 things.

21 FEMALE VOICE: I was only going to
22 add that the other piece of that is that is how
23 credit card companies pitch the sale of them, but
24 I think the second piece of that is what happens
25 at the point of the decision maker and when they

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2 review the credit history, and I think there is
3 also a problem where they have all this
4 information and even for the things that they know
5 they are not supposed to make decisions on they
6 do, and so we see that in other context where for
7 instance in the criminal records context where
8 they are only supposed to look at minor
9 convictions past seven years, but we know
10 employers will make decisions based on things
11 outside of those parameters and so one of the
12 concerns here is that there is so much on the
13 credit history report that what happens at the
14 point of the decision maker often people will also
15 make decisions on things that are outside the
16 bounds of what is lawfully able to be considered.

17 COUNCIL MEMBER LANDER: Thank you.

18 I think people must be saying or meaning bad
19 credit means you are more likely to steal, to be a
20 thief, to be a lazy or not to show up for work,
21 or else why would we be having the conversation at
22 all? Almost no one is really willing to say it
23 out loud because it sounds preposterous once you
24 start looking at who actually has poor credit both
25 in kind of the macro sense around discrimination

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2 and then in the micro sense around healthcare and
3 this whole other range of things, and once you
4 have accepted that there is no correlation,
5 someday maybe they will have a DNA test where you
6 can tell who is going to be a thief or show up
7 late for work, and we will fight about that
8 another day, but once you realize there is no
9 evidence that credit checks are any kind of
10 predictor of whether people are likely to steal or
11 be late for work, then the whole argument for
12 exemptions sort of melts away, and I find myself
13 when I introduce this bill there is a certain kind
14 of natural common sense desire to kind of hold on
15 to them as though somewhere there is a job, but if
16 there is no correlation there is no correlation.
17 And so I think the other thing, Ms. Traub, that
18 you said, and I just want to make sure I
19 understood this right, you haven't seen a place
20 where exemptions were rooted in industry specific
21 or job specific research because if someone came
22 forward and said here is some jobs specific or
23 industry specific research that credit checks are
24 valuable we would be interested in that. What you
25 have seen is a mix of lobbying and marketing have

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2 gotten people exempted not any information or
3 data.

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5 AMY TRAUB: And I think the other
6 point is the point Councilman Jackson made earlier
7 that employers just want to do what they want to
8 do. They want to be able to have the right to
9 look at whatever they want, and that is a lot of
10 the lobbying frankly has come from some state
11 chambers of commerce that really are just saying
12 we don't want any restrictions on what employers
13 can look at just because we think employers should
14 be able to do whatever they want to do.

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16 COUNCIL MEMBER LANDER: So I just
17 want to issue an invitation. I don't know that we
18 are going to have that many--we did reach out to a
19 lot of human resources and business industry
20 representatives to ask them to come testify. I
21 don't know how many of them are coming to testify.
22 If anyone has some research that suggests a
23 correlation, that suggests that there are reasons
24 for specific sectors, specific jobs, we would be
25 glad to look at it, but in the absence of some
evidence, there is not a reason to believe that
exemptions are anything more than we don't want to

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do it. So thank you.

CHAIRPERSON ROSE: --Council member Lander. Thank you to the panel, and we hear you, and we are looking forward to hearing from the public. Thank you for your testimony. The next panel will be Emmett Pinkston [phonetic], Alfred Carpenter [phonetic], and Onica O'Keefe [phonetic]. Before you testify, please state your name. You may begin.

ONICA O'KEEFE: My name is Onica O'Keefe, and I am a member of the Retail Action Project. It is an organization of retail workers working in partnership with the retail, wholesale and department store union. We want to change working conditions in retail because there is a lot of stuff going on like these credit checks, and that just isn't right. I have been working in retail for over four years in New York City and I am currently a manager at my current job, and I have been in a manager position at my previous jobs as well. I am responsible for a large amount of money, counting out multiple tills and making daily cash deposits as well as overseeing the sales associates. Earlier last year, I applied

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2 for a full time managerial position at a large
3 department store for which I was more than
4 qualified. In the interview the store supervisor
5 told me that there would be a credit check because
6 I would be responsible for counting tills and the
7 safe daily. It was really insulting that he was
8 implying that I might be a thief if my credit was
9 bad. The thing is a few years ago I went to a
10 private college in upstate New York. I was really
11 excited to delve into new ideas, so my mom and I
12 applied for loans to make this possible for me. I
13 stayed there for a year, and when I realized that
14 I was incurring a lot of debt, I moved back home
15 and transferred to a city school. Eventually my
16 combined tuition and student loan bills grew so
17 much that I haven't been able to go back to school
18 at all. When I didn't hear back from the store, I
19 called about the position and they said that they
20 went with another applicant, but that there was
21 another position available. They suggested I
22 apply for a part time, non-managerial position and
23 it paid significantly less. It was a slap in the
24 face because I knew that I was more than qualified
25 for the position that I previously applied for.

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2 My managers have always trusted me, and I have
3 never been fired from a job. Having a low credit
4 score has nothing to do with how I do my job. In
5 fact, I am proud that I want to continue my
6 education and that I want to get out of debt. The
7 retail industry employers over one in ten workers
8 in New York City and is one of the few industries
9 that is hiring across the state. Applications
10 require a credit report authorization at huge
11 corporate retail employers like Lane Bryant,
12 Vitamin Shoppe, Finish Line and the Gap. A low
13 credit score should not bar someone from a job
14 that would help them get out of debt. To put it
15 into words that government would understand, this
16 practice prevents potentially qualified workers
17 such as myself from much needed jobs and slows
18 economic and job growth at a time of high
19 unemployment. Thank you.

20 ALFRED CARPENTER: Hi. My name is
21 Alfred Carpenter. I was born in Brooklyn, New
22 York, graduated Lafayette High School, graduated
23 Kingsborough Community College. When I was at
24 Kingsborough Community College, I was a security
25 guard actually at Macy's, the world's largest

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2 store. I had the keys to the store. I locked up,
3 and then I went on to the Pierre Hotel on Fifth
4 Avenue where they made me a doorman. They said we
5 would love to have you be a doorman, and I was
6 there for a while, and I wanted to get into
7 retail, so a friend of mine told me to go to
8 Salvatore Ferragamo on Fifth Avenue where I worked
9 for a number of years selling expensive shoes, and
10 I went to Fertelli Rosetti [phonetic]. I sort of
11 moved around I always got more money, so that is
12 why I left, and I was a doorman at the Palladium
13 Hotel--actually, I met Steve Rabel [phonetic] when
14 he got out of prison, and I met him at a club and
15 he introduced me, and he said I am opening a club
16 called the Palladium, and I want you to be my VIP
17 doorman. He said you have what it takes, so I
18 worked there. It was really nice, and then after
19 a while, I left and I had an illness actually and
20 then in 2010, the bills got overwhelming. I
21 wasn't working. There was no jobs around, and so
22 I filed for bankruptcy and I thought that would be
23 good because I went to a lawyer, and he said you
24 are working now, just wipe out your bills and get
25 a fresh start, which I thought would be good and

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2 which I did and then when I got better 'cause I
3 lost some weight and I finally got better I have
4 friends in the retail industry. I worked since
5 1981 in retail, so I have friends all over the
6 city. I went to Bergdorf Goodman. I have two
7 friends that work there, and they told me you
8 don't get to Bergdorf Goodman unless somebody
9 recommends you 'cause these guys make 100,000 a
10 year selling shoes, and when I went there I
11 interviewed, the guy loved me. He goes, wow, you
12 are a great salesman. He says, you have the best
13 resume I have seen, and I had another interview
14 with them and then never heard back from them.
15 This is after bankruptcy now, and I actually got a
16 letter from Transunion that said Bergdorf Goodman
17 did a background check, and the only thing they
18 found was the bankruptcy and I called them up. I
19 told them I had an illness. I wasn't working, and
20 basically, they didn't want to hear it. They
21 ignored me. Then I went to Stuart Weitzman where
22 a good friend of mine works and same thing.
23 Actually I dropped my resume. They interviewed me
24 the same day. They don't do that if they don't
25 like you. I was told that there were two

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2 openings. I have two friends that actually work
3 there, so there is no problem there, and when I
4 was in the interview same thing. This time I told
5 them. I said, look, I just wanted to let you know
6 I had a bankruptcy. It is discharged. I have
7 credit now. He sort of gave me a weird look, the
8 manager, when I told them that and then a couple
9 days later obviously I didn't hear from them. I
10 spoke to my friend Alan, who works there and I
11 told him, was it the bankruptcy? And he says, oh
12 yeah, they won't hire you if you have any negative
13 credit, even a bankruptcy. They don't care, and
14 also in Burberry I have a friend - - , who was a
15 manager there. He got me the interview because he
16 knew me from Ferragamo. Same thing, I went for
17 the interview, they told me you are going to be
18 our lead salesman, and again, I interviewed and
19 went for a second interview, and then I realized
20 that this is going to affect me and I don't know
21 what to do. So then I put my resume on Career
22 Builder, and the same day I got a call from
23 Sleepy's. They say, wow, we love your resume.
24 We'd like you to sell our mattresses. And I
25 interviewed with Stephanie Gray. She is a human

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2 resource--she is still there, and again, I told
3 her. I says look, I had a bankruptcy and all of a
4 sudden everything disappeared. They loved me.
5 Now they don't want to have anything to do with
6 me. And then the worst was actually I went to a
7 church group because I was desperate for work. I
8 was running out of money, and a friend of mine
9 told me if you go to this church uptown, miracles
10 happen, so I said let's go. I went up there. It
11 was a beautiful church. As soon as I walked in, I
12 met this lady and she talked to me and she goes, I
13 want to help you. She goes I am the secretary of
14 the president of the - - the president's doorman
15 of the city of New York. He is the guy. If he
16 wants you to work, you have got a job. There is
17 no problem. He interviewed me. He said, wow, I
18 can't believe you had all these great doorman
19 jobs. I had the best doorman jobs in the city,
20 and same thing happened. He told me everything
21 about the job, how much the salary was. He
22 basically told me--he even brought me to the
23 building where I was going to work. He says I
24 have a new luxury building. He says you will be
25 my best doorman. On the way there, I told him

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2 look, you are a union guy, so you should
3 understand that I had had a bankruptcy. It is
4 discharged. I don't owe any money. I don't owe
5 any bills. I paid all my taxes, and again, right
6 away, his face went like--like all of a sudden I
7 became a criminal basically. I handed him my
8 application. I never heard from him again. He
9 told me you are going to go for a background
10 check, so that is why I let him know ahead of time
11 that I am not a bad person, and again, never heard
12 back from them, and it got pretty bad for a while.
13 I did find work eventually. California has
14 already done this. Seven states have already done
15 this, so I think New York should do the fair
16 thing, and like somebody like me I should have
17 been working years ago. There is no reason. I
18 actually had to get food stamps for a while. It
19 is crazy. Everybody I tell the story to they tell
20 me the same thing--what does a bankruptcy have to
21 do with working? You are a good worker. I have
22 been working in this city since 1977, and this has
23 got to stop. Please pass 857. I am not a second
24 class citizen, and I don't want to be any more. I
25 want to be just like everyone in this room. Thank

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you.

EMMETT PINKSTON: Hello. I am Emmett Pinkston, and I am a 30 year U.S. military veteran and before I begin my testimony, I would like to thank this City Council for having this hearing for Introduction 857, Council Member Lander and all the council members, Chair Deborah Rose and all the NEDAP, NYPIRG and everyone here and advocates in favor of this introduction. I am a person affected by erroneous credit reports. I have a top secret U.S. government security clearance. I am a Vietnam era veteran as well as a veteran of the Iraqi war. I worked on the battle staff for the 42nd infantry brigade tactical team where I was actually in charge of assigning missions on a brigade level. I was responsible for 4,000 people under my government security clearance while I was in Iraq, and I currently have White House credentials. Everything I can say to you today is documented and credentialed, so my background as a person is well vetted. I have no issues concerning bad credit as far as the type of person that would be someone that would be liable for a company to be liable for having debt

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2 or just plain ol' not showing up for work. One of
3 the things that is of interest to me is that this
4 credit report showed an \$8,000 debt that I was not
5 responsible. I notified Transunion, one of the
6 major three. Transunion worked with me, cleared
7 my erroneous credit report, but not before the
8 government's transportation security
9 administration turned me down for a job at the
10 airport. With my background, I would have been an
11 ideal candidate for a position working for the
12 U.S. government at the airport. Today I am
13 currently on another waiting list after two years
14 and they're now reconsidering me because
15 Transunion said, we could not find any reason to
16 not hire you. Experian is currently working to
17 correct their entry. The credit entries are
18 separate from three separate industries--
19 Transunion, Experian and Equifax. Neither one of
20 them are coordinated with the other. They sell
21 these credit reports to small collection agents
22 and collection agents can just get a license as in
23 New York City, a local license you can buy at city
24 hall, get a list of 100 people that may owe money
25 or may owe a debt and then go after that and

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2 collect it. It is a major industry going across
3 the entire country, a simple business to get
4 started and it fuels Transunion. It fuels
5 Experian and it fuels Equifax. So not only
6 myself, but someone with an erroneous credit
7 entry, but students, people with medical issues,
8 histories, we can all fall part in a sense - -
9 just become plain affected by credit reports that
10 may be beyond our control. As in my case it was
11 beyond my control because the debt was erroneous
12 to begin with. I am here today to ask the City
13 Council for the continued effort on their part to
14 push through Introduction 857 the stop credit
15 discrimination in employment act. I am hoping
16 that this bill passes and becomes law in New York
17 City and they can move forward from there because
18 we need it as a whole for the entire country, and
19 I thank everyone here for their tireless efforts
20 in this. Any questions?

21 CHAIRPERSON ROSE: Thank you so
22 much. What was the length of time that you have
23 been unemployed before you were able to secure
24 another job each of you?

25 EMMETT PINKSTON: That was

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approximately I would say one and a half years.

ALFRED CARPENTER: I was out three years. As I said I got the interviews. I know the people. - - working. They love me. It's just the bankruptcy basically.

ONICA O'KEEFE: As for me, as I was searching for that job I was already like currently working at the time, and then I was able to find a job that had the same qualifications within maybe four months.

CHAIRPERSON ROSE: And so now the fact that you have been unemployed for a year at least between jobs, that now makes you the hardcore unemployed now?

ALFRED CARPENTER: I got a job now. As I said, I didn't stop. I have got to find somebody. This place they didn't check my credit, and they hired me on the spot, but I lost all my savings and that is not right. That money I wasted because I should have been hired years ago, and it is just discrimination. They didn't even give me a chance to tell them that it was just a medical issue. I am not a thief. I didn't steal anything. - - . That's the problem. You can't

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explain it. They won't let you.

CHAIRPERSON ROSE: Each of you had references, right? Were your references checked or just your credit report?

ALFRED CARPENTER: With me, it was just the bankruptcy. Once they heard that everything got shut down.

ONICA O'KEEFE: The numbers, like the people's numbers that I gave like the contact information that I gave to the company I didn't hear from any of the people that they were called or notified or anything like that.

EMMETT PINKSTON: Councilwoman, in my particular case. The Transportation Security Administration sent me a letter I still have today stating that their current guidelines was at \$7,000. Anything a debt reported over \$7,000 would eliminate you from employment with the Transportation Security Administration, a federal agency. My erroneous credit report entry was at \$8,000. Halfway through the process, I had passed my drug test, passed my physical, passed my computer training, set up to go to John F. K. Airport over here in Queens. We must stop your

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2 hiring process at this point because we have found
3 a credit entry that says you are no longer
4 eligible to be employed by us. They sent me a
5 copy of the credit report. The letter said we
6 regret that we can no longer hire you for this and
7 good luck in the future.

8 CHAIRPERSON ROSE: So basically
9 they are using the credit report as the sole
10 instrument or determinant for employment despite
11 having good references, good work history. For
12 you, you went through all of the drug testing, all
13 of the other background checks and so the credit
14 report is being used solely as the determining
15 factor on the ability or your employability.

16 EMMETT PINKSTON: That is correct,
17 ma'am. My discriminate was solely based on the
18 erroneous credit report. I went as far as to send
19 them a copy and say, look, this credit report is
20 wrong. I fought against it, and they said, well,
21 at this point we have given your job to someone
22 else. In the future when another opening appears,
23 apply again, and we will consider beginning you
24 again on this process.

25 CHAIRPERSON ROSE: Did each of the

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2 credit reporting agencies have the same
3 information--maybe I should have asked the
4 advocates--but no, no, you are here.

5 EMMETT PINKSTON: The various three
6 major credit industries, Transunion, Experian and
7 Equifax, they have access to public records, and
8 in this particular case I believe they got that
9 information from the state of Georgia where was my
10 former state of living, residence. The Transunion
11 is the one that this particular TSA used to verify
12 my background. They could have chosen any of the
13 three. When TSA found that that information was
14 there, they did not crosscheck with Experian.
15 They didn't crosscheck with Equifax. They all run
16 separate operations, but the information is
17 available to all three. So as in my case in this
18 one instance I corrected it with Transunion. They
19 sent me a letter that said we are so sorry and
20 corrected it. Experian is now trying to get rid
21 of it off of their record. In one case I paid the
22 same bill with another--when there was a
23 legitimate debt of less than \$100 I paid it over
24 four separate times because that debt identifier--
25 it was some credit card--the debt identifier

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2 number was different between all three
3 organizations, and the debt collectors use
4 separate identifying numbers, so myself thinking,
5 oh, this must be four separate debts, I just
6 automatically paid them because I want to keep a
7 good credit record. It wasn't until sometime
8 later that I looked and got a feel for it, and I
9 said, wait a minute. I don't owe all this money.
10 I looked them up. I called them. I made phone
11 numbers. It was the same exact bill being sold
12 off that--say you get a list of 100 people. A
13 thousand small debt collectors can buy your name
14 one thousand times and charge you, put their own
15 identifying number on it, and I just kept paying
16 because I want to have a good credit history. I
17 am just going to pay it. It's wrong for them to
18 have no oversight, no regulation, so that is one
19 of the reasons I am supporting Introduction 857
20 because I want us to be able to do something to
21 stop unlawful or unregulated use of something like
22 a credit report governing so much of our lives
23 without even us being aware of it.

24 CHAIRPERSON ROSE: I want to thank
25 you all for your testimony. Do you have any

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questions, Brad?

COUNCIL MEMBER LANDER: [off mic]

CHAIRPERSON ROSE: Thank you, and so sorry that you had to even endure that. The next panel is Linda Levy [phonetic], Leah Gonzalez [phonetic] and Rob Lederer [phonetic]. Would you identify yourself for the record and begin?

SARAH LUDWIG: Yes. My name is Sarah Ludwig [phonetic]. I am the co-director of NEDAP, but I am actually here reading the testimony of Linda Levy, who is the chief executive officer of the Lower East Side People's Federal Credit Union, who was sorry she couldn't be here in person to share her testimony. She wants to thank you for the opportunity to testify, and I am going to read this in the first person even though I am not Linda. The Lower East Side People's Federal Credit Union is a not for profit financial cooperative dedicated to meeting the financial services and credit needs of local residents, businesses and community organizations. Lower East Side People's Federal Credit Union has a 27 year history of spurring economic and the community development in the communities we serve

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2 by providing a safe, affordable and democratic
3 alternative to traditional banks and by
4 reinvesting in affordable housing, small business
5 development and job creation in our communities.
6 Our credit union managed \$35 million in assets and
7 serves more than 6,000 members. Approximately 82
8 percent of our members are low or moderate income,
9 two-third are Latino. The majority of our
10 borrowers are female heads of households. Our
11 credit union offers a full range of financial
12 services from savings and checking accounts to
13 credit cards, business and real estate loans and
14 money transfer services. Since the credit union's
15 inception, we have provided \$60 million in capital
16 to more than 8500 families, small businesses and
17 non-profit organizations in our target
18 communities. So here is what I came here to say.
19 If our credit union relied on checking people's
20 credit histories in hiring and promotions
21 decisions, we would have missed out on some of our
22 best employees, including managers and some
23 employees who have now been in the credit union on
24 its staff for 15 to 20 years. Checking job
25 applicants and employees' credit is an unfair,

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2 wrong practice harming qualified workers and
3 ultimately hindering our business. Our credit
4 union prioritizes hiring from within our local
5 communities as well as promoting staff from within
6 the organization. When we hire employees we look
7 for and rely on relevant information including
8 from personal interviews and references from past
9 employers. As a credit union that serves low
10 income neighborhoods we know firsthand the damage
11 done to people's credit reports as a result of
12 abusive and unfair financial practices, not to
13 mention rampant credit reporting errors. For us
14 to then turn around and block people from
15 employment based on that credit information would
16 make no sense to us and would be entirely contrary
17 to our mission. We believe New York City should
18 ban employment credit checks and pass intro 857.
19 Thank you for the opportunity to testify today.

20 LEAH GONZALEZ: Good morning,
21 Chairwoman Debbie Rose, Council Member Brad
22 Lander. Thank you for the opportunity to offer
23 testimony today on this really important bill. My
24 name is Leah Gonzalez, and I am the political
25 director for the Retail, Wholesale and Department

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2 Store Union, RWDSU. On behalf of our president,
3 Stewart Applebaum [phonetic], I am pleased to
4 testify today on this legislation calling to
5 prohibit discrimination based on one's consumer
6 credit history, Intro 857 2012 A, the stop credit
7 discrimination in employment act. RWDSU
8 represents 100,000 workers in the United States
9 with 45,000 residing in New York. The union
10 represents predominantly workers in retail, food
11 processing and other sectors, including low wage
12 workers. Our union is deeply involved in
13 progressive activism and movements for economic
14 and social justice. RW is united by a shared
15 commitment to raising job standards across
16 industries and occupations. In the midst of the
17 worst economic downturn in decades, thousands of
18 New Yorkers are out of work and struggling to keep
19 up with bills for even the most basic expenses.
20 What they need more than anything is a job, but
21 for too many people access to employment is
22 blocked by the growing practice of employment
23 credit checks. Employers in the public and
24 private sectors now routinely check the credit
25 histories of prospective employees, many of which

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2 are beyond qualified for employment and may use
3 the information to deny them jobs as the last
4 panel so poignantly testified to. This practice
5 amounts to little more than class discrimination
6 and it must end now. That is why RWDSU stands
7 firmly in support of the stop discrimination in
8 employment act. Credit checks exclude qualified
9 applicants including people whose credit was
10 damaged as a result of medical debt, divorce,
11 layoffs, predatory lending, identity theft or
12 other events beyond their control from employment
13 they desperately need. Credit checks also
14 discriminate against women, low income and people
15 of color who have been disproportionately impacted
16 by the economic downtown. I am going to diverge
17 from the written testimony for a brief moment.
18 Much of it that is in the testimony has already
19 been spoken to very strong and articulated by
20 prior panelists. RW is committed to winning
21 contracts that recognize the rights to equality in
22 the workplace based upon gender, race and sexual
23 orientation. Members of the union have fought
24 hard for the broadest language to protect against
25 harassment and our contracts have broken ground in

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2 protecting workers on the basis of sexual
3 orientation. Credit reports have no place in
4 hiring and promotion in the retail sector. Retail
5 in New York City runs the gamut from dollar stores
6 to Fifth Avenue luxury boutiques. Retail is one
7 of the few occupations that continues to grow in
8 this economic recovery, and it's a vital source of
9 employment for workers young and old. Workers
10 have a right to be judged by the merits and our
11 union is committed to eradicating credit report
12 screening because it has a discriminatory impact
13 on hiring, especially for women and people of
14 color. There is still a wage gap for minorities
15 and women in the retail sector. We learned this
16 month in a report released from the Institute for
17 Women's Policy Research that full time retail
18 salespersons who are women earn 63.4 percent per
19 week compared to their male counterparts. There
20 are many causes for this effect, but the Council
21 can act to ensure that women and minorities who
22 traditionally have had less access to credit and
23 lending have a fair shot in the workplace. The
24 use of credit reports in hiring only exacerbates
25 the already uneven field in hiring and promotion

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2 for minority groups. A survey of 500 workers in
3 New York City conducted jointly by the Retail
4 Action Project, one of whose members just spoke on
5 the prior panel and the City University of New
6 York found that in this city there is a wage gap
7 that needs to be addressed. The study found that
8 controlling for other factors, women in retail
9 earn less, are less likely to receive a promotion
10 and are less likely to receive health insurance
11 than their male counterparts. An astounding 77
12 percent of Latina women would earn less than ten
13 dollars an hour while the median hourly wage for
14 men was \$10.13. The Council cannot singlehandedly
15 erase the effects of employment discrimination,
16 but prohibiting the use of credit reports in
17 retail sector employment will give women and
18 minority members a fair shot at closing the wage
19 gap. So of course, just in closing to be brief,
20 credit reports are notoriously inaccurate.
21 Studies have shown that one in four credit reports
22 contain series errors and 79 percent of credit
23 reports contain errors of some kind. Two, credit
24 history does not predict job performance. A
25 representative of Transunion and I think one of

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2 the prior panelists also touched on this one of
3 the big credit bureaus admitted under oath that
4 "we don't have any research to show any
5 statistical correlation between what is in
6 somebody's credit report and their job performance
7 or their likelihood to commit fraud." In spite of
8 this, credit reporting agencies are aggressively
9 marketing the use of credit reports and lobbying
10 against bills that would restrict employment
11 credit bills. Lastly, credit checks in hiring
12 have a discriminatory impact on people of color as
13 we have heard all morning. People in communities
14 of color have been disproportionately targeted for
15 predatory and high cost loans, which contribute to
16 damaged credit. The Equal Employment Opportunity
17 Commission has stated that rejecting job
18 applicants based on credit history "has an
19 unlawful discriminatory impact because of race and
20 is neither job related nor justified by business
21 necessity." Thank you.

22 ROB LEDERER: Council members,
23 thank you for the opportunity to appear before you
24 today. My name is Rob Lederer. I am founder and
25 president of Management Resources, a New York

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2 State S corporation founded in 2003. I live in
3 Fort Greene, Brooklyn and our offices are in
4 downtown Manhattan. Our mission at Management
5 Resources is to help small to midsize businesses
6 run better and grow. We help business leaders get
7 the right things on and off their plates and the
8 right team around them to do the rest of the work.
9 We are not a recruiting or personnel agency. We
10 are a management and organizational consulting
11 firm, and ours is a small business. One way to
12 look at my company is that we are in the employee
13 business. Team building is central to our
14 services among other things. We help businesses
15 develop employees, promote or reassign employees
16 and hire employees. Not only do we do that for
17 clients, we have to bring on our own staff and
18 talent. A screening needs to be relevant to the
19 specific job. What makes credit history relevant?
20 I don't know how to use a credit report in
21 employee hiring and promotion for most jobs if any
22 and neither does anyone on my team. Furthermore,
23 our team having worked with hundreds of businesses
24 I can tell you that most people making hiring
25 decisions in business don't know how to use these

1 things either. We work with these people who
2 don't know how they would use this. People make
3 mistakes. They interpret. They draw inferences
4 and have impressions and biases and conclusions.
5 Most people wouldn't know how to use this. Even
6 trained, it is hard to use it well, and as we have
7 heard, there is not a lot of evidence that there
8 is any correlation between credit history and
9 employment. In spite of the legal protections
10 such that they are, it is too easy for people who
11 make hiring decisions and promotion decisions to
12 use it wrong and with harmful effect as with any
13 other form of redlining. If you want to screen
14 for scruples, there are ways to do it. This is
15 not one of them. If I relied on credit history
16 with the oldest and most trusted member of my
17 staff, I might be tempted to terminate our
18 relationship given the personal financial
19 management mess that family is in, and it is only
20 getting worse thanks to health issues and a
21 recently arrested teenage son; however, I rely on
22 this person with my credit cards and most personal
23 account information. This person's character,
24 honestly and trustworthiness has nothing to do
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2 with their personal financial history. Well,
3 let's go in the other direction. If we include
4 credit history because of some notion that it
5 somehow tells me something about someone's
6 employability why stop there? Why can't I
7 consider every job candidate's parking ticket
8 history? Everyone here knows someone who has
9 gotten a parking ticket, present company excluded
10 I am sure. There are lots of reasons people get
11 parking tickets, and I can certainly make that the
12 argument that that means something bad about that
13 person's character. That doesn't make it a valid
14 argument, but I can make it. And if my business
15 fortunes depended on selling more data on parking
16 ticket history, I certainly might be tempted to
17 scare and motivate businesses to use the data for
18 employment screening. What a bonanza of new
19 business. So let me revise my claim that there is
20 no valid business purpose for credit history. I
21 can think of one--growing the profits of the
22 credit reporting agencies and industry. It is an
23 unscrupulous attempt by employees in that industry
24 to cloak themselves in virtue through the claim
25 that they are surfacing unscrupulous employees in

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2 the broader workforce. I believe that we in
3 business need to not only ask ourselves how will
4 it make or save me money, but also how can I be a
5 good corporate citizen? One way is to not
6 participate in an evil. Other witnesses have told
7 or will tell you about the various evils and
8 misuses of credit history in employment decisions,
9 and I will leave that mostly to them. I do want
10 to say a few things though. We businesses are
11 hiring people. We are not buying them. There are
12 limits to how much access to someone's life and
13 information we should have, especially when so
14 many people in business don't know how to evaluate
15 the relevancy of such information. There has been
16 a dangerous trend in this country to encroach upon
17 the liberty of individuals in the name of business
18 and security. We need to protect individual
19 liberty and protect people's ability to pursue
20 honest employment. Credit agencies and their
21 catch 22s already have too much power over people
22 who have too little ability, time and resources to
23 set the record straight when it is wrong and to
24 paraphrase the famous dictum, the only thing
25 required for evil to triumph is for good

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2 businesses to do nothing. We as businesses need
3 to stand up and say publically that not only will
4 we not participate on doing evil, we will not
5 stand by when evil is done. My argument comes
6 down to the business case and rights and wrong.
7 The business case is I don't know how it will make
8 or save me or my clients' money to do this because
9 there is no valid reason to do it and it doesn't
10 do what its proponents claim. This is a practice
11 to help only the CRAs and the agents, no other
12 business. Rights and wrong, this is an assault on
13 individual liberty and freedom, the freedom from
14 invalid and unwarranted intrusions into a person's
15 life and the right to honest work. It is wrong to
16 place this kind of burden on the people in the
17 labor force, anyone, especially those who are
18 reeling or suffering from trying to make ends meet
19 or get out from under the nightmare of cleaning up
20 their credit history. This claim that it is
21 somehow a good thing to use credit history in
22 employment considerations is a red herring. It is
23 not good for my business, not my clients'
24 businesses, not for the human beings who are
25 harmed by the practice. Not passing this bill

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2 would make it the credit reporting industry
3 profitability act. It is not good for anyone
4 else. I support the bill before you.

5 CHAIRPERSON ROSE: Thank you all
6 very much. What training are these employment
7 screeners often given?

8 ROB LEDERER: Well, it really
9 depends on the business and most of our clients
10 are small to midsize businesses and they have
11 let's say no training except real world
12 experience. When it comes to more corporate
13 businesses, larger businesses, different human
14 resources professionals have different levels of
15 training. A member of our team has a PhD in
16 industrial organizational psychology, so he is
17 super trained in this kind of stuff, and he is one
18 of the people who doesn't know how this stuff
19 could be used in a valid way, in a reliable way.
20 So really--and also I should say that it is not
21 just human resources departments in corporations,
22 it is also individual managers hiring managers,
23 and it is also their administrative who may have
24 no training whatsoever who are asked to just take
25 a look at these applicants. I am doing this for a

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2 client right now, having an administrative level
3 person screen resumes to see if they should get to
4 my attention for a client, and it is too easy for
5 someone who has no training to make a whim
6 decision, be influenced whatever their personal
7 biases are and even when well-trained in
8 preparation for today I spoke with our IO
9 psychologist I mentioned and he said it takes him
10 great self-awareness to notice his own biases when
11 they come up when he Googles candidates online and
12 finds that they filed for bankruptcy and the
13 gentleman who is sitting here before me said. It
14 is hard for him to keep that bias out of his head,
15 and he is not just a trained professional, he has
16 got a doctoral dissertation in this stuff.

17 CHAIRPERSON ROSE: So would the
18 panel be able to say what factors should be--what
19 values should be brought that these examiners
20 should look at when they are hiring?

21 SARAH LUDWIG: I am representing
22 Linda Levy from the credit union, and in her
23 testimony she made very clear that they rely on
24 personal interviews and references and they do
25 sort of good, old fashioned--it was likened to the

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2 underwriting that they do. It is a financial
3 institution and they are relying on people's
4 qualities, their credentials, their
5 qualifications, not on sort of cold information
6 often that is based on error and that has no place
7 in their financial institution.

8 CHAIRPERSON ROSE: Thank you.

9 Brad, do you have any questions?

10 COUNCIL MEMBER LANDER: No. Thank
11 you. I thought that the employer perspective was
12 especially helpful to provide, and I appreciate
13 your coming out and doing it and Ms. Gonzalez, do
14 you have something more you want to add here?

15 LEAH GONZALEZ: - - .

16 SARAH LUDWIG: While she is
17 looking, may I add something very quick? The
18 question of exemptions that has come up throughout
19 the day, I just want to underscore, now I am
20 speaking from NEDAP and I think also for the
21 credit union that Linda represents when I say that
22 first off all the exemptions that you see in other
23 bills are not based on anything legitimate. I
24 know that that has come up a few times, but the
25 first panelist said that over and over again, so I

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2 feel that we need to say that over and over again
3 that it is certainly not based on some legitimate
4 considerations of there were carve outs that we
5 thought were important. These were negotiated by
6 industry almost universally, and we as a coalition
7 of groups through the New York City Coalition to
8 Stop Employment Credit Checks feel very strongly
9 that exemptions that will then basically gut the
10 bill have no place and that if you think about, I
11 will give you an example. Sometimes you hear
12 well, what about supervisory positions? Shouldn't
13 you be able to check someone's credit if they are
14 going to be supervising other people? When you
15 start to tease that out, you think well, actually
16 what you are doing is you are making sure that the
17 very protected classes that we have been
18 discussing today will have less opportunity and
19 access to those supervisory positions, and it
20 becomes a way of creating a ceiling for women, for
21 people of color, for people with errors in their
22 credit reports, that you are going to hear others
23 talk about today how maddening and incredibly
24 challenging it is under the best of circumstances
25 to get those errors fixed, so there is just a

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2 morass around credit reports and issues around
3 that that make every single public policy reason
4 for saying we don't want to have exemptions and
5 that it is not about legitimate sectors or types
6 of positions and that that is--if people say that,
7 we need to ask them what is the evidence for that
8 over and over again because there is none.

9 CHAIRPERSON ROSE: Including in the
10 exemptions that are in state and federal law?

11 SARA LUDWIG: So what is in the
12 bill now from what I see is it doesn't apply where
13 state or federal law require a credit check and
14 that is by operation of law. That is a question
15 of making--that would be the case in effect even
16 if it weren't in writing in the bill, but yeah, so
17 that is the exemption.

18 LEAH GONZALEZ: I just wanted to
19 add a quick addendum to give the committee the
20 growing scope of this issue, and a very non-
21 scientific review of online applications for non-
22 union retail companies that have store locations
23 in New York City the following list are some of
24 the retail stores that require you sign an
25 authorization for the company to pull your entire

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2 credit report, and if you don't sign, then it is
3 highly likely that they won't ever call you in for
4 an interview. So by virtue of practice it becomes
5 a condition of hiring. So the Apple Store,
6 Vitamin Shoppe, Saks, Victoria's Secret, Lane
7 Bryant, Bath and Body Works and the Finish Line
8 just to name some.

9 CHAIRPERSON ROSE: Thank you so
10 much, Leah. And thank you all for your testimony.
11 The next panel Eric Ellman [phonetic] from
12 Consumer Data Industry Association, Robert Martin
13 and Lucy Rimes [phonetic]. Identify yourself, Mr.
14 Ellman.

15 ERIC ELLMAN: Good afternoon, Madam
16 Chair, members of the Committee. My name is Eric
17 Ellman. I am with the Consumer Data Industry
18 Association, CDIA in Washington D.C. We are a
19 trade association representing the consumer
20 reporting community. I want to thank you and the
21 Committee for engaging in this important
22 discussion and debate this morning and into the
23 afternoon. A lot of important issues were
24 discussed, and I want to highlight a few of them.
25 This is obviously a hot public policy topic--seven

1 states as it has been noted, perhaps, eight at
2 this point have passed legislation that regulates
3 but does not ban the use of credit. We in the
4 consumer reporting community think just as there
5 should not be an appropriate place for a flat ban
6 on the use of credit there should not be--there is
7 probably not situations where credit should be
8 required in all circumstances, and I think there
9 is some balance to be had, and you have heard some
10 discussion about exemptions and things like that
11 as well. Consumer report use for employment
12 purposed is legally protected. There are ample
13 protections for consumers under the fair credit
14 reporting act as have been discussed. There are
15 significant obligations on consumer reporting
16 agencies and the employers that use them. As we
17 know as it has been noted credit reports do not
18 carry information about race, religion, creed,
19 color, national origin, et cetera, and of course,
20 as we also know, it is a violation of both
21 federal, state and local law to discriminate in
22 any fashion against any protected class of people.
23 Credit reports are reliable and they are relied
24 upon by employers. All of the studies that we
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1
2 have seen bear out that employers use credit
3 information in focused, targeted careful and
4 responsible ways. I want to respond to a couple
5 of the issues that came up earlier. There have
6 been a number of discussions about errors in
7 credit reports. The FTC just issued a study at
8 the end of last year, early this which ultimately
9 concluded that only 2.2 percent of all credit
10 reports contained a material error that would
11 result in the increased cost of credit for
12 consumers. That means 97.8 percent of all credit
13 reports are materially accurate. There have been
14 discussions about studies. There are plenty of
15 studies that indicate some degree of relationship
16 between credit and employment. As was noted,
17 credit scores - a common myth, credit scores are
18 not used in employment context, but credit reports
19 are. There has been discussion about people not
20 knowing when credit is used if they are denied a
21 job and that would be a violation of law. It is a
22 violation of federal law to deny somebody in whole
23 or in part on a credit report without telling them
24 and giving them an opportunity to come in.
25 Employers are not required to use credit as of

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2 course we know, but many employers find this
3 information helpful and useful. It is just one of
4 many tools in their toolbox to help create
5 productive and profitable businesses. I will be
6 happy to answer any questions that you have.

7 BOB MARTIN: Good afternoon,
8 everyone. I want to thank the committee members,
9 the sponsor and everyone else involved in this
10 bill for giving it the attention that it deserves.
11 My name is Bob Martin. I am from District Council
12 of 37 of - - where I am the associate director of
13 the DC 37 municipal employees legal services plan.
14 I have a somewhat different perspective, and I
15 should add that the union employees, upwards of
16 900 people and our HR people don't run credit
17 checks because we don't think we need to, and
18 don't think that they would be helpful. The
19 matter before you today is an issue that cuts
20 across the most vital aspects of working peoples'
21 lives. This issue is an intersection of whether
22 people can live fairly and freely in the worlds of
23 consumer credit in employment. What I want to do
24 is just tick off three or four truths--I think
25 they are truths--that other people have spoken

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2 about and then I will get to what I really what I
3 think will add a little bit to the discussion.
4 Credit history does not predict job performance.
5 The reason that the administration's--the person
6 who testified couldn't answer your question,
7 Councilman Lander, a very clear question about
8 where is the evidence, do you have any--the reason
9 he couldn't is that there are no studies that make
10 a correlation between a blip on a credit report
11 and job conformance. If you pick it apart, the
12 notion that - - John Doe, who has an imperfect
13 credit report, will be more likely to steal. It's
14 a knee jerk and an ultimately unsupportable
15 proposition, and I see heads nodding, and I think
16 we should keep taking on that proposition 'cause
17 there is just something wrong with that notion.
18 Number two, credit reports are routinely
19 inaccurate, and whether is two percent or 20
20 percent, that is the reality, and the way that it
21 cuts is that if you are applying for a job, so you
22 go and fix your credit report, that takes a while,
23 you can go back and get the job, the job will
24 still be there, right? No, it doesn't work that
25 way. It cuts in a particularly bad way in this

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2 setting. Employer credit checks are
3 discriminatory, and the EEOC studies, the NAACP
4 their report all show that individuals there is an
5 impact on individuals, women, lower income
6 workers, people of color and upon neighborhoods.
7 When employers can run credit checks and keep
8 people from being employed that has an impact on
9 our community, and last but not least, employer
10 credit checks, they do benefit the credit
11 reporting industry. In fact this industry is the
12 main or the only beneficiary of this practice and
13 that is why they are pushing. It is an area that
14 they can move into, and it is a money maker. So
15 what I wanted to add if you will is when I think
16 about the last 50 years of the history of the
17 succession of important civil rights laws in our
18 country, there is a little bit of déjà vu here
19 'cause what I remember is that every time that the
20 laws were going to be strengthened and moved
21 forward, there were always doubters and skeptics
22 and we could go through the list of important
23 civil rights legislation over the decades and see
24 that that was the case in those areas also.
25 Gender, disability, family status, age, sexual

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2 orientation and on and on there were always people
3 who said don't add this category or don't give
4 enforcement authority to the government agency
5 that enforces civil rights laws or put in
6 exceptions or water it down. Well, all the acts
7 at the national, the state and the local level
8 have stood the test of time and they are part of
9 the law of the land, and that is what is should be
10 done in this instance. New York City has always
11 been a leader in ensuring that its citizens have
12 the benefit of laws that require fairness and
13 prevent discrimination and the most recent was the
14 bill that prohibits discrimination if you have
15 been unemployed, and I was thinking this--this is
16 not in my testimony, but I am thinking back three
17 or four years ago and there was a law that I think
18 went through this committee that is not in the
19 area of employment but it is in the housing area,
20 and it's the legislation that prohibits
21 discrimination based on source of income, and so
22 what are we talking about? We are talking about
23 Section 8, welfare, SSI and a whole variety of
24 housing grants and particularly those that go to
25 people that are HIV position or have active AIDS,

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2 and--I will digress for a second, so that
3 legislation was so important because some of what
4 happens is under the surface and the protections
5 in that law also intersect with impact
6 discrimination in the areas of race and disability
7 and some other areas, and I have the feeling
8 really about this legislation because it has a
9 discriminatory impact. People don't always know
10 it and maybe in most cases you have been denied a
11 job because your credit report you don't know.
12 And if you look at the cases and the actions that
13 have been brought on the source of income housing
14 discrimination law, you will see that it was good
15 that you guys or your predecessors passed that
16 law. And so that is why I bring it up.
17 Preventing harm in the workplace by banning the
18 use of unfair, discriminatory, unreliable and
19 irrelevant credit reports is an important step
20 that the times now demand, and we will keep saying
21 over and over this bill should become law without
22 any exceptions. There are good reasons in those
23 other states and cities that passed similar laws.
24 It is great they did it. There was no good reason
25 to have all of those exceptions in there, and so

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2 we will keep on saying that over and over and over
3 again. We call on the City Council, the Speaker
4 and the Mayor to pass intro 857 and thank you very
5 much.

6 CHAIRPERSON ROSE: Thank you.

7 CHRISTY PEEL: Good afternoon. My
8 name is Christy Peel [phonetic]. Lucy Rimes put
9 her name down for me, so I just wanted to be
10 clear. So Councilman Rose, Councilman Lander,
11 members of the City Council on Civil Rights, my
12 name is Christy Peel. I am the executive director
13 for the Center for New York City Neighborhoods.
14 Thank you for the opportunity to testify today. I
15 am here on behalf of CNYCN's clients in mortgage
16 distress across the city's five boroughs,
17 particularly in those neighborhoods hardest hit by
18 foreclosure and Hurricane Sandy. We really wanted
19 to emphasize for the Council today the impact the
20 barriers to employment can have on New Yorkers
21 whose credit profiles have been damaged by manmade
22 disasters like the nation's foreclosure crisis and
23 natural disasters like Hurricane Sandy. Credit
24 histories and scores at their most accurate are
25 heavily impacted by an individual's payment

1 history and outstanding debt. A foreclosure,
2 short sale, deed in - - transaction or bankruptcy
3 can remain on a consumer's credit history for
4 years and can strain an individual's ability to
5 access credit at affordable interest rates. Many
6 New York City homeowners fell behind on their
7 mortgage payments during the recent recession.
8 Analysis by the Fuhrman Center [phonetic] and the
9 Federal Reserve indicates that almost one in ten
10 mortgages in New York State are seriously or more
11 than 90 days delinquent. In 2012 alone, 93,000
12 homeowners in New York City received a 90 day pre-
13 foreclosure notice, and again, data from the
14 Fuhrman Center tells us that mortgage servicers
15 have started foreclosure proceedings against
16 66,000 homeowners in New York City since 2008. So
17 according to the data from our network of 38
18 groups working with homeowners, the majority of
19 their clients struggling to make their mortgage
20 payments are suffering from underemployment. Our
21 partners routinely assist families where one
22 household or another has lost a job or is
23 struggling to make ends meet on reduced pay, so we
24 want to make sure that we are really subtle about
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2 when we say what loss of income is. It is not
3 going from full employment to zero percent. It
4 could be three people in the family working, one
5 person lost a job, somebody lost overtime pay, so
6 reduced income is a much more subtle and difficult
7 problem in some ways to characterize than complete
8 loss of income and unemployment. So families are
9 looking for a first or second job to increase
10 their household income in order to save their
11 homes. This increased income could be a critical
12 piece that allows them to pay back arrears and to
13 maintain ongoing mortgage payments and it can be
14 the key to stabilizing a family and obviously a
15 neighborhood as well. So as you well know, the
16 interaction between individual homeowners'
17 economic situations directly impacts the
18 stabilization of their communities. Impaired
19 credit and high household debt are already heavy
20 burdens for households to bear, and it is very
21 difficult to address. Even when you are not
22 contesting credit report errors, just managing
23 consumer debt on top of mortgage debt is really
24 difficult. Without additional employment income a
25 household's best option may be to avoid

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2 foreclosure through a short sale or a deed in lieu
3 [phonetic] transaction, and these families who
4 can't retain their homes clearly cannot get a new
5 mortgage, and how are they going to get new
6 housing? It becomes a cycle where somebody's
7 credit is impaired by the foreclosure. They can't
8 get new housing. They can't get new income and
9 they can't get back on their feet. So poor credit
10 should not be used to limit the chance for any
11 homeowner to regain their financial footing and
12 access new affordable housing, especially when
13 they are making that really difficult decision to
14 leave an unaffordable mortgage, right? It is very
15 hard for homeowners to say I have too much debt.
16 I can't afford it. I am going to move into a
17 rental situation and then for them to be barred
18 from that rental situation because of impaired
19 credit history, it is a very difficult--it's not
20 even a cycle. It's a downward spiral. So
21 homeowners in this situation they need more
22 support, not more obstacles. They should not be
23 barred from new employment opportunities that
24 could help stabilize them, their homes and their
25 communities. So I am going to skip a little bit.

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2 I just wanted to talk about what we are also
3 seeing for homeowners that have been impacted by
4 the hurricane. So we have been working with
5 hundreds of homeowners in Staten Island, Brooklyn
6 and Queens. They are struggling with temporary
7 housing expenses. They have huge repair bills.
8 They are looking at the cost of elevating their
9 homes to comply with new flood zones. We have
10 already seen homeowners who are not able to make
11 their mortgage payments on top of these increased
12 expenses. They are using funds that could rebuild
13 their homes to maintain their mortgage payments,
14 and we are already seeing from the Department of
15 Financial Services an increase in pre-foreclosure
16 filings in these Sandy impacted neighborhoods,
17 which is really, really troubling. So some of our
18 homeowners have also lost income from the
19 hurricane. They have lost jobs, maybe somebody
20 was a laborer in a community, they don't have
21 employment any more, and so it is really easy to
22 imagine what it would be like to bar from
23 employment an income you need to rebuild your life
24 after Sandy because your credit history has been
25 impacted because of Sandy, so it's an instance

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2 that we really, really want to avoid. On behalf
3 of all of our clients who are in foreclosure
4 because of the housing crisis or who are at risk
5 because of disasters like Sandy I want to
6 emphasize that the effects of mortgage distress on
7 New York City homeowners are ongoing and lasting
8 and that access to employment is essential to
9 provide these homeowners with the income they need
10 to regain their financial stability and for our
11 neighborhoods to remain vibrant and thriving, and
12 as always, thank you for your attention to these
13 critical issues and your ongoing support of our
14 homeowners and neighborhoods.

15 CHAIRPERSON ROSE: I know that
16 Council Member Lander has some questions. I just
17 want to ask Mr. Ellman, you said in your testimony
18 that only 2.2 percent errors were made in the
19 credit reports. Is that within the entire
20 industry or are you--each credit reporting agency
21 has their own--do their own reports, and so is
22 that within each of those agencies?

23 ERIC ELLMAN: Madam Chair, thank
24 you for the question. That data comes from the
25 Federal Trade Commission from their study that

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they conducted--

CHAIRPERSON ROSE: [interposing] So that is industry wide?

ERIC ELLMAN: It is industry wide. That is correct.

CHAIRPERSON ROSE: And that came from the Federal Trade Commission, that is not an independent study by the credit reporting agencies?

ERIC ELLMAN: Page A4 of the Federal Trade Commission report.

CHAIRPERSON ROSE: Do each of the credit reporting agencies use the same report? So if I have a delinquent payment in Equifax, does it also show up in Transunion and - - ?

ERIC ELLMAN: Madam Chair, if you are making a late payment--if you are making payments current or late each of the three nationwide consumer reporting agencies have different methods of receiving data from their banks or financial institutions. If you take some of the largest financial institutions in the country, they will generally report to all three consumer reporting agencies, but not every lender

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will report information to all three bureaus.

CHAIRPERSON ROSE: So I could have a bad credit rating with one credit reporting agency and not the other two?

ERIC ELLMAN: Well, if you are making late payments with a creditor or a lender if that lender is reporting to all three, all three are going to have that same information, but if that lender is reporting to one or two, but not all three, then the information is going to be whatever institution--

CHAIRPERSON ROSE: [interposing] And so an employer has a choice of which of these credit reporting agencies that they get this report from, right?

ERIC ELLMAN: Yes, that is correct. In fact, there is significant competition in the industry so much so that the FTC in a report a couple of years ago said that there is an economic incentive to warrant accurate data from the credit reporting industry.

CHAIRPERSON ROSE: And so I could have a bad report from one and that is the one that this particular employer chooses to look at

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2 as opposed to the other two that would not record
3 that same debt?

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ERIC ELLMAN: I can't speak to you
5 why some employers will choose one credit
6 reporting agency over another. It could vary for
7 lots of different reasons including for perhaps,
8 who has the best and most reliable product.

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CHAIRPERSON ROSE: So I could be a
10 high risk according to them, and that is who the
11 employer looks at that, and I not get the job or I
12 could get away with--if using the logic of the
13 reporting agencies that I am a bad person because
14 I have this debt, I could get away with this being
15 this person that they wouldn't hire if they use
16 the report from the wrong agency that didn't
17 report that debt, right?

18

ERIC ELLMAN: Let me respond to a
19 couple of points you made. First of all nobody is
20 saying that you are a bad person just because you
21 have missed a payment or two. That is not the
22 point--

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CHAIRPERSON ROSE: [interposing]
24 But that is in fact what they are saying. When
25 they discriminate, when they tell me that because

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2 of my credit rating, I am not a good risk for them
3 to take by hiring me, they are saying that.

4 ERIC ELLMAN: But also it depends,
5 when you talk about am I a bad credit risk, it
6 depends on upon what each employer just like you
7 would depend upon what each lender's tolerance for
8 risk is. Some employers might few one thirty day
9 late payment two years ago as not a big deal, but
10 maybe another employer--let's say the position
11 that we are talking about is for a chief financial
12 officer of a major financial institution--they
13 might think any late payments ever is a problem,
14 so I think it would have to depend upon what one
15 employer's--

16 CHAIRPERSON ROSE: [interposing] So
17 you are saying that there is a class differential.
18 Like I might be okay if I am a low wage earner to
19 have a late payment, but as the CEO, I am not?

20 ERIC ELLMAN: No, that is not what
21 I am saying at all, but if you look at--

22 CHAIRPERSON ROSE: [interposing]
23 But you did say that.

24 ERIC ELLMAN: --but if you look at
25 the data since we spent a lot of time today

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2 talking about data Society for Human Resource
3 Management says that 91 percent of employers will
4 use a credit check for positions that require
5 fiduciary duty or financial responsibility. 46
6 percent use them for senior or executive
7 positions. 34 percent of them use them for
8 employees with access to highly confidential
9 information.

10 CHAIRPERSON ROSE: And we also
11 heard the advocates here today. I heard them very
12 clearly say that these exemptions shouldn't be,
13 that there is--since the argument is there is no
14 correlation, that it is not important for any
15 position. Are you saying that there really is a
16 reason for these exemptions that these exemptions
17 are justified?

18 ERIC ELLMAN: A couple of things,
19 first is there is data, and I will provide them to
20 the Committee that shows a relationship between
21 poor credit and employer risk. Secondly, I think
22 you would have to go back--

23 CHAIRPERSON ROSE: [interposing] Do
24 you have that with you?

25 ERIC ELLMAN: Sure. I can leave it

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2 with you, of course. But I think you would have
3 to ask the employers themselves, and I of course
4 don't represent the employers, but you would have
5 to ask the employers themselves why are you using
6 this information? They use the information, they
7 buy the information from consumer reporting
8 agencies because they think this has value because
9 it helps them better identify risk, so I think you
10 would have to direct that question to the
11 employers, but clearly they find some use into it
12 otherwise they wouldn't use it.

13 CHAIRPERSON ROSE: And I agree with
14 you. I should direct that to them; however, my
15 point is is that I could either get a job having--
16 whatever my credit report is based on which
17 reporting agency they use, I could either get the
18 job or not, and I am the same person. So the
19 correlation between my credit and the risk seems
20 not to actually be justified by the use.

21 ERIC ELLMAN: Madam Chair, I am not
22 sure that that is entirely the case because an
23 employer who is looking at a credit report in
24 addition to all of the other things that the
25 employer is looking at, a resume, references, the

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2 schools that you went to, the education or the
3 training or the occupational licenses that you
4 have, this is just one factor. Just like an
5 employer who conducts, and there are plenty of
6 employers now who are using social media, you are
7 still the same person, but one employer might find
8 something valuable that they find on social media
9 or through Google or through other searching, and
10 you are still the same person, but some other
11 employer doesn't, and they make two different
12 decisions based upon the same person based upon
13 the information that they find or they don't find.

14 CHAIRPERSON ROSE: But as you are
15 looking at my resume and you are looking at my
16 references, that is actual information that is
17 experiential, that is based on the work that I
18 have put in, based on former employers'
19 information about me. That is not the same as
20 using my credit as a use to determine my
21 employability.

22 ERIC ELLMAN: Okay.

23 CHAIRPERSON ROSE: I am sorry.
24 Council Member Lander?

25 COUNCIL MEMBER LANDER: Thank you

1
2 very much, Chair Rose. Mr. Ellman, I do
3 appreciate your being here and taking the time to
4 share this point of view with us. I guess I would
5 like to ask first can you tell us a little bit
6 about the Consumer Data Industry Association?

7 ERIC ELLMAN: Sure. We are a trade
8 association based in Washington D.C. We represent
9 several hundred consumer reporting agencies,
10 including some of the household names that we have
11 mentioned today like Equifax, Experian and
12 Transunion.

13 COUNCIL MEMBER LANDER: So it is
14 largely your members who sell the credit reports
15 to employers that we are talking about?

16 ERIC ELLMAN: That is correct.

17 COUNCIL MEMBER LANDER: Okay. Fair
18 for you to come represent their interest here. I
19 just think that is important to be clear, and we
20 did invite a lot of employers to come talk about
21 the need for this--

22 ERIC ELLMAN: [interposing] I am
23 either braver or dumber than all of them, I
24 suppose--maybe both. I don't know.

25 COUNCIL MEMBER LANDER: Anyway, we

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2 appreciate your being here, and everybody has got
3 a job to do, and we respect it. I want to talk a
4 little more about the FTC study that you
5 mentioned. So five percent of consumers had
6 errors that resulted in less favorable loan terms.
7 How many consumers had errors on their credit
8 report that might affect their credit according to
9 the FTC?

10 ERIC ELLMAN: The FTC data is five
11 percent of consumers and 2.2 percent of credit
12 reports.

13 COUNCIL MEMBER LANDER: So the FTC
14 data is one in four consumers identified errors on
15 their credit reports that might affect their
16 credit scores. I am reading that from the FTC
17 website. True or false?

18 ERIC ELLMAN: That is true, but if
19 you drill down deeper into the data--

20 COUNCIL MEMBER LANDER:
21 [interposing] How many consumers had an error that
22 was reported by a credit reporting agency that was
23 corrected after it was disputed?

24 ERIC ELLMAN: Let's start this way,
25 you take 100 percent of the people that were

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2 participating in the study--24 percent who thought
3 there was an error and filed a dispute, 21 percent
4 who had a change made as a result of the dispute--

5 COUNCIL MEMBER LANDER:

6 [interposing] Can we stop there a minute 'cause
7 actually that is the most important statistic.
8 You go ahead.

9 ERIC ELLMAN: I will tell you why
10 it isn't, and you can tell me why it is. There
11 are--let's take an example. Let's say you live in
12 Broome Street, but Broome has an E on the end, but
13 the credit report doesn't put an E at the end.
14 That is an error, but that is not an error that is
15 going to impact your ability to get credit. I am
16 very partial to my middle initial, but if I don't
17 see my credit report with my middle initial, I
18 think that is wrong, it is wrong, but that is not
19 going to affect my ability to get credit, but if
20 you look at the errors that actually will move a
21 score in a negative direction, it's 2.2 percent--

22 COUNCIL MEMBER LANDER:

23 [interposing] So here is the problem though. You
24 said before correctly right that actually
25 employers aren't using the credit score; they are

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using the credit report. Am I correct?

ERIC ELLMAN: That is correct.

COUNCIL MEMBER LANDER: So in the loan context there is a lot of back and forth between an applicant and their lender about what is in their credit report, but we have seen that what happens quite often in employment and this speaks to why employers are actually using it, and I don't think we have actually heard people narrate--I think they use it because they are offered relatively cheaply, it adds up, but relatively cheaply a piece of information. They take it. They have got a lot of people. They have a lot of applicants to hire. They take this information and whatever they have got to sort between people they use. The aggregate impact as we have heard repeated testimony on winds up having a disproportionate racial impact, but in each individual case, it's a lot of information. If I have got someone who I am concerned about their credit report, I might just put them over here, and look at the rest of the folks, and so they never wind up having the dialogue with the applicant that you wind up having in the loan

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2 context, and so that 20 percent of folks who have
3 errors that would wind up getting corrected if
4 they brought it to the attention, and look, this
5 is a good reminder for everyone to check your
6 credit report because one in five of you have
7 serious errors that you need to get corrected--

8 ERIC ELLMAN: [interposing] But the
9 good news is only 2.2 percent will result in an
10 increase in - - .

11 COUNCIL MEMBER LANDER:
12 [interposing] That is fine if you are going for a
13 loan. The problem is if you are going for a job
14 you are probably never going to know about it, so
15 you are likely to wind up--it is quite possible
16 you will wind up being discriminated against. It
17 is true they are supposed to give you a whole form
18 that says we discriminated against you because of
19 your credit report, but I got to tell you if you
20 think employers are doing that, I have a bridge to
21 sell you. They put the bad credit reports with
22 the applicants in the no pile. They still have
23 many to look at. They move on. You never know
24 that is what happened. You never have an
25 opportunity to have it corrected. You never get

1
2 your--I forget what the form is called--your
3 adverse impact form, but you get a - - .

4 [crosstalk]

5 ERIC ELLMAN: The federal law
6 requires employers who are going to take an
7 adverse action decision, first you have to say I
8 am going to take one and then that will be the
9 opportunity as the data for the Society for Human
10 Resources bears out, employers give consumers an
11 opportunity to explain and then you get an adverse
12 action, and if that isn't done, then federal law
13 has been violated, state law has been violated.
14 Consumers can sue, the Federal Trade Commission
15 can sue and the state attorney general can sue.

16 COUNCIL MEMBER LANDER: It sounds
17 wonderful, but I think everyone from common sense
18 knows you will never ever know about it, and you
19 would have a very difficult time proving it, and
20 yet there is a lot of reason to believe it
21 happens. It just isn't a good protection. I
22 guess I do want to come to the question of the
23 study for a minute. Can you just tell me which
24 study it is that you are referring to?

25 ERIC ELLMAN: Well, there is about

1
2 five or six of them. I will leave them with the
3 Committee before I go, but you had mentioned,
4 Councilman, the Palmer and Kops [phonetic] study,
5 but even Palmer and Kops recognizes that there are
6 certain uses for credit reports. In fact, they
7 said in Newswire in March 2012 that they can see
8 that there are rational arguments that can be made
9 for using credit histories as part of an
10 employment check, so even they see uses for a
11 credit check, and I think - - .

12 COUNCIL MEMBER LANDER:

13 [interposing] There is rational arguments that can
14 be made. That doesn't mean that there is data
15 bearing out a correlation.

16 ERIC ELLMAN: But there is a couple
17 of significant flaws in the Palmer and Kops study.
18 The study's premise is incorrect. The methodology
19 is questionable, and the study's analysis is
20 arguable. I will provide the Committee more
21 information about that, but other than that, it is
22 a good study.

23 COUNCIL MEMBER LANDER: Just a
24 minute ago you said they actually said something
25 different. - -

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[crosstalk]

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3

COUNCIL MEMBER LANDER: I assume

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that you are applying on the Bernith Taylor study

5

[phonetic], which I think first looks at credit

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scores and not at credit reports, and actually my

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favorite piece of data from the Bernith Taylor

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study is that it found actually that employees

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with higher credit scores measured lower on the

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trait of agreeable on personality scales, making

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them more likely in the words of the study's

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authors to be uncooperative, antagonistic and

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manipulative, but I suspect that that doesn't keep

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employers from hiring people with higher credit

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scores, so...

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ERIC ELLMAN: I think, Councilman,

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the lesson from all of that is that when you are

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making a hiring decision, you don't look at a

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number. You don't look at the credit score. You

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look at the person who comes in your door. You

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look at their application. You look at their

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experience. You look at their qualifications, and

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some employers some of the time will also look at

24

a credit history.

25

COUNCIL MEMBER LANDER: I think

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2 that the data shows that especially in the
3 aggregate what that winds up doing is
4 discriminating against people with poor credit
5 histories which has the negative impacts that we
6 have discussed here today for no good reason. I
7 thought the NAACP testimony was especially good on
8 this. The consequent--you have got to weigh here
9 what is the compelling business rationale against
10 what is the consequence and the compelling
11 business rationale is weak. It might be there. I
12 am not saying you could never have a study that
13 provided its correlation, but no one has actually
14 shown one, and the evidence of the discriminatory
15 impacts and the consequent sort of accidental
16 negative impacts are pretty compelling, so while I
17 appreciate your coming here today, I think the
18 fact that Transunion admitted that there isn't a
19 statistical correlation is honest and I appreciate
20 your coming here. We will - - .

21 ERIC ELLMAN: [interposing] If you
22 look at the Transunion testimony in its entirety,
23 then you would get a different picture.

24 COUNCIL MEMBER LANDER:

25 [interposing] I know Transunion would like to

1
2 continue selling credit reports to employers. I
3 am very clear on that. That at least speaks
4 straightforwardly to what the data shows.

5 ERIC ELLMAN: [interposing]
6 Councilman, the dilemma in this debate is that
7 there are very few studies that have been
8 conducted in either way going any direction. In
9 fact, when the EEOC had their hearing in October
10 of 2010 the two PhDs industrial organizational
11 psychologists that they retained on their payroll
12 to look at all the studies, one said, "our
13 knowledge is incomplete" and the other said that
14 the correlation of poor credit to poor performance
15 is statistically significant, but it is very
16 small. So there is--

17 COUNCIL MEMBER LANDER:
18 [interposing] I will give you that that is
19 uncertain, but this is why that goes to law and
20 not against the law because what we are weighing
21 is is the compelling rationale sufficient to
22 justify the harmful impacts, and we see the
23 harmful impacts, so we would need very strong
24 evidence of compelling business rationale, and the
25 absence of correlation, the fact that you can't

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2 prove it, doesn't mean well, let's just leave it
3 in the middle. It means we don't have sufficient
4 evidence of a compelling business rationale to
5 justify the harmful impacts.

6 ERIC ELLMAN: Well, all I can tell
7 you is you have got studies. I have got studies.
8 Employers where the rubber meets the road tell us
9 that this is important for them. It is valuable
10 for them to help them make risk decisions.

11 COUNCIL MEMBER LANDER: I will just
12 reissue an offer to any employers out there who
13 want to come tell us that, we are listening, so
14 alright. Thank you very much, Madam Chair.

15 CHAIRPERSON ROSE: Thank you,
16 Council Member Lander. I thank the panel very
17 much, and our next panel is Katie Penner
18 [phonetic] from Urban Justice Center, Sarah Alba
19 [phonetic] Legal Services NYC, and - - Oh. I am
20 sorry--Anamaria Segura from MFY. Thank you. You
21 may state your name and begin your testimony.
22 Thank you.

23 KATIE PENNER: Thank you for the
24 opportunity to add my testimony today. My name is
25 Katie Penner, and I am here representing the

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2 consumer justice practice of the community
3 development project at the Urban Justice Center.
4 The Urban Justice Center serves New York City's
5 most vulnerable residents through a combination of
6 direct legal services, systemic advocacy,
7 community education and political organizing. The
8 community development project runs free consumer
9 debt legal clinics each month in Manhattan,
10 Brooklyn, the Bronx and Queens with the help of
11 various grassroots community organizations. You
12 have already heard statistics both ways about the
13 prevalence of credit report inaccuracies. Today I
14 want to speak specifically about the credit
15 reporting industry's problem with credit reporting
16 errors as I have seen it, and how this problem
17 undermines the industry's implicit claim that
18 their reports provide employers with reliable
19 information about perspective job candidates. As
20 a consumer advocate, I work with clients one on
21 one to correct, dispute and verify information
22 found on their credit reports. Many of the
23 clients we see are motivated to improve their
24 credit because they are planning to apply for new
25 lines of credit or apartment hunting or trying to

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2 find employment. In one instance of many, a
3 client came to us after seeing his credit report
4 for the first time in 20 years. He was shocked to
5 discover an overwhelming amount of evidence and
6 incorrect information which included many accounts
7 in collection or default, incorrect home
8 addresses, a variation of his social security
9 number, and even a spouse he had never heard of
10 before. This is an example of a serious problem
11 where the credit bureaus are unable to properly
12 separate consumers' credit files that might be
13 because they have a common or popular name or a
14 victim of identity theft as well. The result here
15 is a credit report riddled with inaccurate
16 information, which can be detrimental to a
17 consumer who actually has good credit. It is
18 imperative that given the history of inaccurate
19 credit reporting as my organization has seen it,
20 that credit reports no longer be used in New York
21 City to determine who gets hired or even fired
22 from a job. The use of credit reports in this way
23 creates an unnecessary hurdle for low income,
24 unemployed and minority groups in their attempts
25 to gain employment. The community development

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2 project strongly supports this legislation. We
3 believe that this legislation will offer
4 additional protections to low income and minority
5 groups in New York City. Thank you for the
6 opportunity to comment and add our support.

7 SARAH ALBA: Good afternoon, and
8 thank you for the opportunity to testify today.
9 My name is Sarah Alba, and I am testifying on
10 behalf of the Legal Services New York City. I am
11 a staff attorney with Manhattan Legal Services,
12 which is part of Legal Services New York City.
13 Legal Services NYC is a community based, anti-
14 poverty organization that seeks equal justice for
15 low income New Yorkers. For more than 40 years we
16 have helped our clients meet basic needs and
17 challenge the systemic injustices that keep them
18 poor. We target the most pressing problems of low
19 income New Yorkers through specialized units that
20 deliver expert, high quality legal services, and
21 our services are constantly evolving to address
22 the changing legal issues facing communities of
23 color and low income New Yorkers, which includes
24 employment credit checks, Manhattan Legal Services
25 launched its consumer protection project in 2007

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2 to provide legal representation, education to low
3 income New York City residents experiencing
4 consumer problems. In September of 2012,
5 Manhattan Legal Services opened the employment
6 discrimination project to address the needs of the
7 growing number of our clients facing
8 discrimination because of employment credit checks
9 and already, the project has dozens of cases. The
10 practices--

11 CHAIRPERSON ROSE: [interposing]
12 Ms. Alba, can you speaker louder and into your
13 mic?

14 SARAH ALBA: Okay. The practice of
15 using credit reports and credit history in
16 employment screening is harmful to individual job
17 seekers and harmful to New York's economy. As New
18 York continues to struggle with high unemployment
19 due to the economic crisis, a growing number of
20 New Yorkers find themselves in a vicious cycle--
21 unable to secure a job because of damaged credit
22 and then unable to escape the debt because they
23 can't get a job. With high unemployment and
24 record numbers of foreclosures and personal
25 bankruptcies, New Yorkers hardest hit by the

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2 recession are further penalized by employers' use
3 of credit reports to deny employment
4 opportunities, and I just want to respond to
5 earlier statements and note that although the bill
6 is not intended to lower the overall unemployment
7 rate, the bill may lower this rate for the
8 communities with the highest unemployment rates,
9 which are communities of color, and it is
10 extremely important that all New Yorkers have
11 equal access to jobs. In my practice I work with
12 clients who have had consumer issues which have
13 kept them from jobs, and we have seen multiple
14 examples of clients denied jobs because of their
15 credit history. One of our clients is a middle
16 aged Hispanic male who like many New Yorkers fell
17 behind on his bills during the economic crisis.
18 He applied for a position with FEMA in December of
19 last year for a job that involved working on foot
20 in communities speaking with people about their
21 needs and telling them about what assistance would
22 be available to them. He was very excited to get
23 an interview and was devastated when less than ten
24 days after that interview, FEMA sent him a letter
25 stating that he is unfit--that is a direct quote--

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2 for work with FEMA because his credit report
3 disclosed two judgments, and these two judgments
4 are two very small civil judgments, so small that
5 they were heard in small claims court, and they
6 have absolutely nothing to do with his
7 qualifications for a job, which involves
8 essentially talking to people about their needs.
9 I had another client who worked for 20 years in
10 retail and he won awards for his work. He was
11 laid off during the recession, and so he began
12 applying to many jobs. He was getting interviews
13 and second interviews, and then as soon as the
14 employer checked his credit report, he was never
15 contacted again, so he pulled his credit report,
16 and found that there were three judgments against
17 him, and each of them was because of identity
18 theft. None of them were actually his debt.
19 Despite the significance of credit reports, the
20 system is plagued with inaccuracies such as that
21 and correcting errors with credit bureaus can be a
22 costly and time consuming process, and many people
23 don't discover the errors until they have already
24 experienced some type of negative action. Our
25 advocates report that they regularly see mistakes

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2 when reviewing credit reports with clients, and I
3 can say that I have never reviewed a credit report
4 with a client that did not have at least one
5 mistake, and in response to the FTC study, I am
6 not exactly sure how the FTC defined material
7 inaccuracies, but it seems it must be extremely
8 narrow given what I have seen in my practice. One
9 example of this is a client who was fired because
10 of incorrect reporting of criminal history. She
11 came to our organization after she had been fired
12 from Macy's and as part of the employment
13 application she was asked to sign an authorization
14 for Macy's to check her credit report. After the
15 interview she was allowed to start working
16 conditionally, but a few days later the Macy's
17 security team called her into their office and
18 informed her that her offer of employment was
19 revoked because her credit report showed that she
20 had been convicted of passing forged checks in New
21 Jersey. She was shocked to hear this because she
22 had never been convicted of such a crime, and she
23 had no idea why it would be on her credit report,
24 and she was humiliated because the security team
25 escorted her out of the building in front of her

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2 colleagues as if she were a criminal. Our
3 advocates were able to assist her in getting the
4 inaccurate information removed from her credit
5 report and clarifying the inaccuracy with Macy's,
6 but our client was left without wages for the time
7 period it took to correct that mistake. So I just
8 want to reiterate that not only are credit reports
9 riddled with errors but they are of no use to
10 employers as you have already heard, and I won't
11 repeat the statistics, but the research has shown
12 that individuals credit history has no correlation
13 to job performance, and there are a few studies
14 saying that, and this makes the use of credit
15 checks by employers all the more disturbing
16 because this practice represents an unprecedented
17 invasion of privacy. Credit checks are replete
18 with deeply personal information such as familial
19 status and medical debt, information which should
20 be protected by anti-discrimination laws, and this
21 means as a prerequisite to employment many job
22 applicants must expose and discuss their personal
23 medical histories or other extremely personal
24 events in their life, such as divorce. Further,
25 and most importantly I want to stress that the use

1 of credit checks in employment is discriminatory.
2 This practice disproportionately harms women, the
3 disabled, immigrants and New Yorkers of color,
4 each of which are protected classes under our laws
5 and constitution. To allow employers to use
6 credit checks in employment decisions is to permit
7 employers to circumvent our laws and make
8 discriminatory employment decisions. Credit
9 reports reflect negative information that
10 disproportionately occurs in these protected
11 groups. For example, the elderly and disabled are
12 more likely to have medical debt which they cannot
13 pay. Women tend to face greater economic
14 insecurity than men and are at particular risk of
15 high credit card debt due to illness, and it is
16 well documented that people of color and women are
17 more likely to be targets of predatory loans such
18 as the variable rate mortgages that led to the
19 foreclosure crisis. Legal Services New York City
20 does a lot of foreclosure work and we have seen
21 firsthand that rampant predatory lending in New
22 York City has led to foreclosure filings, which
23 have destroyed credit for entire communities,
24 particularly communities of color. The impact of
25

1
2 the foreclosure crisis on communities of color is
3 illustrated by the client composition of one of
4 our offices the Staten Island Legal Services, so
5 although non-whites comprise about 32 percent of
6 Staten Island, they make up 53 percent of Staten
7 Island's foreclosure prevention client base. So
8 Legal Services New York City and Manhattan Legal
9 Services urge the Council to put a stop to this
10 useless and discriminatory practice by passing
11 Intro 857, and we thank the Council for addressing
12 this important issue.

13 ANAMARIA SEGURA: Good afternoon,
14 Chairwoman Rose, council members. I'd like to
15 thank you for the opportunity to testify today.
16 My name is Anamaria Segura. I am a staff attorney
17 at MFY Legal Services in the workplace justice
18 project, and thank you very much to Council Member
19 Lander. I started MFY in 2007 in the consumer
20 rights project, worked there for about four and a
21 half years and switched to the workplace justice
22 project, so I kind of look at this issue with two
23 different hats. First the years that I spent with
24 consumers who were dealing with the consumer
25 credit crisis, which started--at least we started

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2 our project in about 2004, 2005 and now in my new
3 capacity as an advocate for low wage workers in
4 New York City, and whether you call them
5 consumers, workers, people with mortgages in
6 distress, it all is just basic unfairness to
7 continue to use employer credit checks that is
8 targeting so many New Yorkers. I am not going to
9 read my entire testimony. I just want to pull out
10 a couple of pieces, and I do have to explain a
11 little bit about MFY. So MFY envisions a society
12 in which no one is denied justice because he or
13 she cannot afford an attorney. To make this
14 vision a reality for 50 years MFY has provided
15 free legal assistance to residents of New York
16 City on a wide range of civil legal issues
17 prioritizing services to vulnerable and
18 underserved populations while simultaneously
19 working to end the root causes of inequities
20 through impact litigation, law reform and policy
21 advocacy. We provide advice and representation to
22 more than 8,000 New Yorkers each year. Our
23 workplace justice project advocates on behalf of
24 low income workers and handles a range of
25 employment problems including unpaid wage claims,

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2 discrimination and barriers to employment. MFY's
3 consumer rights project provides advice, counsel
4 and representation to low income New Yorkers on
5 consumer problems including credit related issues.
6 I want to echo what - - said about how exciting it
7 is to have this hearing today. A lot of us have
8 been waiting for a long time to get the
9 opportunity to speak about this. I am relatively
10 late on this panel, so I am not going to repeat
11 everything that everyone has said, but what was
12 disheartening actually was at the very beginning
13 to hear the Deputy Counsel to the Mayor talk a
14 little bit about this issue and really kind of
15 show a basic lack of understanding about what we
16 are all seeing on the ground every day.
17 Membership organizations, legal services
18 organizations with clients who have, yes, they
19 tell anecdotal stories, but at some point you
20 start seeing patterns and you start seeing it
21 across different - - in labor groups, civil rights
22 groups, legal services, and you start saying that
23 we are not all just making this up or imagining
24 it. I want to talk about at least one client, and
25 tell his story because I feel like I can't not

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2 tell it since he is not here, and then talk a
3 little bit about what we have seen trying to help
4 people in his position. So one example of a low
5 income New Yorker harmed by an employer credit
6 check is someone I will call Mr. P, who recently
7 contacted us after he was denied a job due to his
8 credit history. Mr. P had applied for an entry
9 level position as a document messenger with an
10 investment banking firm on Wall Street in early
11 February of this year. The pay was only \$9.50 an
12 hour, but he had been unemployed for a little
13 while and he was really looking forward to having
14 a job, even a low paying job, but the company ran
15 a credit check, and his credit report reflected
16 three judgments that he had not previously been
17 aware of. The perspective employer gave him 30
18 days to clear up the credit problems--that term
19 clear up makes it sound like it is just so easy,
20 just press a button and clear up. It is not that
21 way, but they said clear it up in 30 days or lose
22 our on the job opportunity. His credit had taken
23 a hit after September 11th, Mr. P had lost his job.
24 He had lost his home. His world was kind of
25 upside down, and also it turned out he was the

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2 victim of identity theft by a person who he had
3 previously loved and trusted very much, so as a
4 result some years later as a result of some of his
5 credit cards being run up and just general
6 economic hardship, he was sued by three debt buys
7 who purchased charged off debts for pennies on the
8 dollar and filed lawsuits. These debt buyers file
9 lawsuits in bulk in the New York City civil
10 courts, and in the past years there has been a lot
11 of talk about these debt buyers and the impact
12 they have had on New York City, and there have
13 been some good laws passed by the Council
14 targeting their abusive practices, but anyway, so
15 he was kind of a victim of that because he
16 actually was never served with these lawsuits,
17 which is really common in these debt collection
18 cases filed in the courts, so he only discovered
19 anything about these judgments after he applied
20 for this messenger position years later. So now
21 he is in the process of attempting to vacate these
22 judgments one at a time, have them removed from
23 his credit report after they are vacated and after
24 the lawsuits hopefully are dismissed, which can
25 take months and months. 30 days isn't even going

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2 to get him a hearing for his request to the court
3 to even let him talk about why the judgments
4 should be vacated, and our consumer attorneys know
5 very well, some of them are in the audience, it is
6 virtually just impossible to vacate a default
7 judgment and have it removed in only 30 days, so
8 that request by this investment banking firm it
9 came to basically being told, sorry, look
10 elsewhere. So his story really illustrates that
11 qualified applicants such as Mr. P are being
12 denied jobs because of life events that were
13 completely beyond their control, and that is where
14 Mr. Heinzen really needs to start paying attention
15 because yes, a lot of people have credit because
16 of things that they had absolutely no control
17 over, and it's not just medical debt although that
18 is a huge one and that is a big reason people end
19 up filing for bankruptcy, but something you could
20 never anticipate, which is what would happen to
21 you after a terrorist attack or after a loved one
22 betrays you by using your credit. So you know,
23 those kinds of personal economic misfortunes
24 should just have no bearing whatsoever on Mr. P or
25 any New Yorker's ability to work as a messenger or

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2 fill in the blank job. So this catch 22 that Mr.
3 P is finding himself in is just very common. We
4 have heard from other legal services advocates in
5 other organizations that this is happening to
6 their people too. So there is his story, and I
7 just want to touch a little bit on the
8 unreliability of these credit reports. And I
9 could talk all day and give examples of the
10 different ways in which people kind of got dinged
11 on their credit report. I just want to talk about
12 a couple of them. Outright fraud and the
13 extension of credit, not just predatory lending in
14 certain communities of color being targeted for
15 subprime loans, which yes, there is a lot of
16 documentation, but I could just tell a million
17 stories about this particular dentist's office
18 than ran up a \$5,000 charge for dental work that
19 was never done, and it resulted in a care credit
20 card dispute or a veterinarian who said oh, you
21 can't afford to put down your cat yourself, so
22 here is an extension of care credit. You can
23 charge it but there is no interest, and it turns
24 out later that there is interest, and by the time
25 the dispute is decided a year later, okay, you won

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2 the dispute but you not have like a 90 day late
3 payment on your credit card. These are the kind
4 of stories that they are kind of every day not
5 anything really enormously mind blowing, but when
6 you think about why should you have to pay a debt
7 that you really didn't incur in the first place or
8 hey, I want to buy a TV on no interest for the
9 first year, and later there is interest, and by
10 the time you finally try to get it resolved, it is
11 sold to a debt buyer who doesn't care what your
12 story is. They just want to collect and they sue
13 you and they don't tell you about it. So these
14 are the reasons that a lot of people have these
15 negative credit histories. Oh, and I just want to
16 say something about the fair credit reporting act,
17 which is great - - it does give you a cause of
18 action if you want to go hire an attorney to sue
19 one of the credit reporting agencies, but
20 practically speaking as Council Member Lander
21 mentioned that is probably not going to happen for
22 most people, and frankly, a lot of people don't
23 even know that they can do that in the first
24 place. They are just going to kind of cut their
25 losses and move on. So FICRA is as not we're

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2 concerned not an answer to this issue, and MFY
3 strongly supports Intro 857, and thanks the
4 Council very much for this hearing. One last
5 thing that I want to say is that just is a natural
6 extension of the next step of the passage of 814,
7 which outlawed discrimination in hiring based on a
8 job applicant's unemployment status, so thank you
9 very much.

10 CHAIRPERSON ROSE: I want to thank
11 you for what you are doing for people who find
12 themselves in this situation and especially the
13 Sandy folks who have been greatly impacted on
14 Staten Island and as we saw the foreclosure
15 debacle that really did disproportionately affect
16 communities of color in Staten Island. Council
17 Member, do you have any questions?

18 COUNCIL MEMBER LANDER: No. just
19 thanks very much again for also all of your work
20 both here today and on policy matters and also for
21 all those individuals who need it. Thank you.

22 CHAIRPERSON ROSE: Jobe - -
23 [phonetic]. Forgive me, please. Andrew Callock
24 [phonetic] and Carrie Anderer [phonetic] on behalf
25 of Lawrence Mandelker [phonetic]. You can begin.

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Just identify yourself

JOBE THOYELIL: Hi. Can you hear me? Alright. Thank you, Chairperson Rose and I commend you for just trying to say my last name.

CHAIRPERSON ROSE: Thank you for not being angry.

JOBE THOYELIL: My name is Jobe Thoyelil [phonetic], and I actually work for NEDAP, but I am testifying--I am going to read into the record the testimony of - - Hussein and - - Garun, who worked for Chaya CDC [phonetic]. They are a member of the New York City Coalition to Stop Credit Checks in Employment and they regret that they couldn't be here on their own today. I am not going to read the whole testimony. You have copies. I am just going to read sort of portions of it. Based in Queens, New York, Chaya 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 Asian and people of New York south Asian and people of south Asian origin new immigrants and their neighbors. Our work

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2 encompasses economic and workforce development,
3 tenants' rights, home ownership, foreclosure
4 prevention, housing rights, civic engagement and
5 advocating for affordable housing opportunities as
6 well as research and advocacy around community
7 needs. As a direct response to addressing
8 employment barriers Chaya launched a workforce
9 development program last year. In our first year,
10 we have already assistance over 80 clients for
11 employment readiness preparation, over 80 percent
12 of who are low income and live below the poverty
13 line. Among the major barriers to those trying to
14 enter the workforce and build long term self-
15 sufficiency are English language proficiency,
16 cultural skills, contextualized employment
17 services and lack of formal network and
18 understanding of employment and finances. As a
19 HUD counseling agency and based on our financial
20 education and counseling, it is clear that credit
21 history is not an indicator of job readiness or
22 capability. A 2012 study by - - Rising Up and
23 Moving found that south Asians were regularly
24 underpaid, earned less than industry wide average
25 wages and were mistreated by employers. Many are

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2 only beginning to assimilate and trying to
3 stabilize their income, housing and families. Due
4 to cultural barriers, unfamiliar banking processes
5 and misinformation, many immigrants shy away from
6 banking and building and maintaining credit. This
7 practice of using informal budgeting practices;
8 however, does not indicate a lack of commitment to
9 perform well on the job. On the contrary,
10 immigrants are hardworking often times doing two
11 or more jobs in minimum wages to support their
12 family and besides meeting their basic demands and
13 should not be penalized for having failed to build
14 a strong credit history. During these challenging
15 economic times, many hard working individuals face
16 job losses, which led to an impact on their
17 credit. Equating credit reports to measure job
18 performance creates an additional barrier to
19 accessing jobs for an already challenges immigrant
20 population that is critical to our economy. In
21 these adverse circumstances where the recession
22 has slashed the workforce and decreased consumer
23 spending power, businesses would be best served
24 with new immigrant labor power utilizing untapped
25 talent using innovative ideas and practices. For

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2 these reasons Chaya is strongly in support of
3 Intro 857 to end credit checks in employment and
4 strongly urges the NYC Council to pass the bill.
5 Thank you.

6 CARRIE ANDERER: Good afternoon,
7 Chair Rose and members of the Committee. My name
8 is Carrie Anderer, and I am testifying today on
9 behalf of Lawrence Mandelker on behalf of NYMRA,
10 the New York Metropolitan Retail Association.
11 NYMRA is an organization consisting of national
12 chain retailers operating in the city of New York.
13 For the following reasons NYMRA opposed adoption
14 of Intro 857. As drafted except for the
15 limitation in proposed Section 21b, this bill
16 would apply to virtually all decisions affecting
17 present or perspective employment regardless of
18 job description and responsibility. Executive,
19 management and supervisory positions and positions
20 of trust and confidence would all be covered by
21 the provisions of this bill. There are employment
22 promotion and demotion decisions with respect to
23 such positions for which it would not be
24 unreasonable for an employer to access information
25 tending to show whether a present or perspective

1 employee is experiencing financial difficulties.

2 Under such circumstances a present or perspective

3 employer should not be prohibited from doing so.

4 In the retail business certain employees either

5 have the ability to confer or withhold substantial

6 financial benefits to others or are relied upon to

7 handle financial transactions. Examples include

8 but are not limited to employees who decide what

9 brands of goods will be sold in a particular

10 store, where in the store they will be placed, how

11 much shelf space they will be allocated and how

12 they will be displayed, employees who decide where

13 to locate the stores themselves or approve the

14 terms of contracts and lease, employees who

15 procure goods or services or view and approve

16 invoices from vendors, employees who place

17 advertising orders, employees who are cashiers or

18 work as bookkeepers and employees who supervise

19 loading platforms and decide how long a driver

20 must wait before a truck is loaded or unloaded.

21 It is a potential corruption risk when such

22 employees are themselves under financial stress.

23 To label an employer's desire to access credit

24 history in such cases as a discriminatory practice

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2 with all the consequences that flow from such a
3 characterization would eliminate a potentially
4 useful tool from the employment decision toolbox.
5 The exemptions in Section 21b should be expanded
6 to exclude management or supervisory positions or
7 positions of trust and confidence or positions for
8 which an employer can demonstrate that access to a
9 candidate's credit history might be relevant.

10 Thank you.

11 ANDREW CALLOCK: Good afternoon.

12 My name is Andrew Callock. I am a lawyer in the
13 office of Manhattan Borough President, Scott
14 Stringer. Thank you very much, Chair rose and
15 Council Member Lander for bringing this important
16 issue to light. On behalf of the borough
17 president, I am here to testify in support of
18 Intro 857. In October of 2011 an investigation by
19 the borough president's office showed that many
20 job listings in New York required credit checks.
21 As a result at that time, the borough president
22 recommended that New York City pass a local law
23 just like Intro 857 that would bar discrimination
24 on the basis of credit history. The need for such
25 a protection has never been greater as more and

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2 more employers are using credit checks to screen
3 applicants. Millions of New Yorkers have had
4 their credit scores affected by unemployment and
5 the foreclosure crisis that followed the most
6 recent financial crisis. In addition to those
7 impacted by the great recession two other groups
8 are often victimized by credit history
9 discrimination and other forms of financial abuse--
10 -domestic violence survivors and people of color.
11 We have heard quite a bit about people of color
12 this morning. Our written testimony applies to
13 both groups, but I will focus my remarks on the
14 effect on domestic violence survivors. In October
15 of last year, the borough president published a
16 report titled Economic Abuse: The Untold Cost of
17 Domestic Violence, which found that economic
18 violence is an all too common component of
19 domestic violence. That includes obtaining credit
20 cards, loans and mortgages in the victim's name
21 and amassing debt, stealing money, documents and
22 personal belongings, selling the victim's personal
23 identifying information to identity thieves and
24 obtaining access to credit reporting information
25 illegally. Often survivors of domestic violence

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2 are not even aware that they have been subjected
3 to economic abuse, rather its devastating effects
4 are only reviewed when survivors seek to obtain a
5 loan or a credit card only to find out that their
6 credit rating is ruined or that they may owe
7 thousands of dollars that they neither borrowed
8 nor spent. Now both New York State and New York
9 City law have broad prohibitions against
10 discrimination on the basis of domestic violence
11 victim status, but I ask you this, what good is
12 that type of prohibition if employers and others
13 can discriminate on the basis of credit histories
14 which are often a proxy for domestic violence
15 victim status. It is a gaping loophole, and it
16 needs to be closed. Several states have already
17 passed laws limiting the use of credit history in
18 hiring decisions, and there is legislation pending
19 in Albany that would bring the Empire State in
20 line with those--legislation that the borough
21 president strongly supports, but New York City
22 should not wait. Just as this Council has acted
23 to expand our city's human rights law beyond the
24 scope of the state law, so must we continue to
25 lead the way in advancing progressive policy that

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2 helps New Yorkers who are struggling to find
3 employment. Thank you very much.

4 CHAIRPERSON ROSE: Thank you.
5 Council Member Lander?

6 COUNCIL MEMBER LANDER: Actually,
7 let me start, Jobe I just I was actually going to
8 ask you, and then the borough president's
9 testimony reminded me, and I know Chaya obviously
10 doesn't speak for the whole south Asian community
11 to be sure, but I do want to point out that I know
12 that SAKI [phonetic] for south Asian women has
13 been one of the groups that has worked with the
14 coalition, worked with the borough president's
15 office and kind of flagged this particular problem
16 of the way in which being a survivor of domestic
17 violence can amongst many, many other problems
18 stick you with bad credit then winds up in the
19 situation that we are talking about, so just
20 making connections between two of the panelists.
21 Ms. Anderer, I guess I just want to ask for a
22 little more. You gave some very specific tasks
23 that employees would do, choosing what goods,
24 where they would be placed in the store, shelf
25 space allocation, and then at the end you said

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2 that the bill should be amended to speak to where
3 employers could demonstrate relevance of the
4 credit information to the job, and I guess I would
5 just like to ask, can you demonstrate relevance
6 for me between what we have heard today about
7 consumer credit history and those items that
8 retail managers might be asked to do?

9 CARRIE ANDERER: To be honest, I
10 was very recently briefed on this, and I am
11 filling in for Mr. Mandelker, who had a last
12 minute conflict, but he did convey to me that any
13 questions he would be answer subsequent to the
14 hearing, and I have also throughout today have
15 taken down several questions that I know would be
16 relevant to his testimony here today, so he can
17 provide answers.

18 COUNCIL MEMBER LANDER: I'm sure
19 Chair Rose too, but I would be happy personally to
20 sit down with him and talk this through a little
21 bit. I think we are of course sympathetic to the
22 desire of retailers to not have problems, and I
23 know retailers throughout the scale and size do
24 lose money as a result of people stealing from
25 them or even occasionally from corruption or

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2 kickback schemes, so someone I guess an employee
3 could sell shelf space to a favored supplier in
4 exchange for a kickback, and so if we could find
5 someone to root that out, and we want to work
6 together to think about how we can address
7 corruption in the retail industry I am thrilled to
8 think about how we do that because it would be
9 great if we could figure out a way to avoid those
10 losses, but I think what you are hearing from us
11 is that unfortunately the reasons people steal or
12 cheat are not always easy to predict, but they
13 certainly don't seem to be predicted by people's
14 credit histories and the consequences of using it
15 hit a whole set of people who are not in any way a
16 risk, so we will look forward to following up and
17 having that conversation. Thank you.

18 CHAIRPERSON ROSE: Thank you. I
19 just want to say that I don't think the credit
20 score is a measure of one's integrity. Thank you
21 for testifying. The next and last panel is Monica
22 Garcia [phonetic] on behalf of Lincoln Wressler
23 [phonetic], Jonathan Fox, the Financial Clinic and
24 Michelle Woo, the Coalition for Asian American
25 Children and Families. Monica Garcia?

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MONICA GARCIA: Yes, I am here.

CHAIRPERSON ROSE: Jonathan Fox?

Michelle Woo or Mitchell Woo? Okay. And so as soon as you sign in we will let you come join the panel.

[background conversation]

CHAIRPERSON ROSE: Oh, you thought you could just come in and testify, huh? Andrew Morrison [phonetic] from NYPIRG. Alright. Okay. So Monica Garcia, would you state your name for the record and begin your testimony? Thank you.

MONICA GARCIA: Sure. My name is Monica Garcia and I work for NEDAP, but I am reading this testimony on behalf of Mr. Lincoln Wressler, who was actually here earlier, but had to leave so he left us his testimony. So I thank you for the opportunity to speak on his behalf. Good morning and thank you for the opportunity to testify at today's hearing. My name is Lincoln Wressler, and I am the managing director of the New York City Employment and Training Coalition. This coalition is an association of 200 community based organizations, educational institutions and union training funds that provide job training and

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2 employment services to approximately 750,000 New
3 Yorkers annually including welfare recipients,
4 unemployed workers, low wage workers, at risk
5 youth, formerly incarcerated individuals,
6 immigrants and the mentally and physically
7 disabled and everyone else under the sun. Our
8 mission is to ensure that every New Yorker has
9 access to the skills, training and education
10 needed to thrive in the local economy and every
11 business is able to attract and maintain a highly
12 skilled workforce. Toward that end, we provide
13 technical assistance services to foster a dynamic
14 and competent community of employment and training
15 providers and advocate for workforce development
16 policies that extend opportunity for training and
17 education. As providers of training and
18 employment services that work to connect New
19 Yorkers to quality employment, our members are on
20 the front lines of the unemployment crisis that
21 continues to stifle our communities and economy.
22 In this capacity we have witnessed dozens of cases
23 in which job seekers have reported rejections from
24 potential employers that we understand to be based
25 on information found in their credit reports.

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2 Research has shown that this is a national problem
3 with a recent DEMOS survey finding that one in ten
4 respondents who are unemployed were informed
5 that they would not be hired for a job because of
6 information found in their credit report. We
7 believe this is not only a discriminatory
8 practice, but also one that severely undermines
9 the growth of our city's economy. The use of
10 credit checks during the hiring process can extend
11 the length of time people are unemployed. The use
12 of credit reports is yet another example of
13 discrimination faced by unemployed job seekers who
14 are more likely to struggle with paying their
15 bills. Prior to the recession 15 percent of the
16 170 million consumers with active credit accounts
17 or 25.5 million people had poor credit. By April
18 2010 one-quarter of U.S. consumers, nearly 43.4
19 million people had poor credit. The
20 discriminatory nature of these credit checks is
21 also deeply skewed towards minorities, especially
22 African Americans and Hispanics, who have been
23 found to have considerably lower credit than non-
24 Hispanic whites. These racial disparities have
25 been exacerbated by many factors that are outside

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2 of each individual's control, such as recent
3 predatory lending schemes that target communities
4 of color, which have already been mentioned. I
5 won't read the entire testimony because it does
6 touch on a lot of the points that have already
7 been mentioned, so I will skip down to the other
8 information that is specific to this testimony.
9 As workforce providers who work to help job
10 seekers get past multiple barriers to employment
11 in practically every neighborhood in this city, we
12 call on the New York City Council to pass Intro
13 857 and remove the barrier of inaccurate and
14 discriminatory credit reports used in the hiring
15 processes. All New Yorkers deserve fair access to
16 employment opportunities and the passage of this
17 legislation would be a real step forward in
18 creating a stronger and more vibrant economy for
19 our city. Thank you for this opportunity.

20 CHAIRPERSON ROSE: Thank you, and
21 could we get a copy of that testimony?

22 MONICA GARCIA: Yes. I think he
23 left copies when he left, but we can make sure
24 that you get a copy regardless.

25 CHAIRPERSON ROSE: Okay. Mr.

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Morrison?

ANDREW MORRISON: Thank you. So my goal was to get through this without revealing that this is my first time doing this, but that is not going to happen, so thanks for letting me sneak in at the end here. So I wanted to add-- this is a Twitter hash tag we have in our campaign, not in my testimony, but Bernie Madoff had good credit. People have said that before, but I wanted to make sure if you haven't heard it, that you know to say that next time someone claims that your credit history is an indication of your character. So thanks for having me and giving me the opportunity to testify at the hearing today. Again, I am Andy Morrison. I am the statewide outreach director at the New York Public Interest Research Group better known as NYPIRG, and I also just want to give a shout out to all of the students who were in the spillover room before. They were making some noise in there at a critical juncture of this hearing, and they were really enthused and they have just played a huge role in the work, and they are just incredibly passionate about this issue. NYPIRG is New York's largest

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2 student directed non-partisan research and
3 advocacy organization. Our board of directors is
4 made up entirely of college and university
5 students elected from campuses with NYPIRG
6 chapters all over the state. NYPIRG students
7 become well trained, powerful advocates by working
8 on public policy issues like environmental
9 protection, consumer rights, voter registration
10 and higher education access and affordability. We
11 are concerned that the rising cost of higher
12 education the growing dependence on student loans,
13 the shrinking job opportunities for recent
14 graduates and the increasing emphasis on credit
15 history as a criterion in hiring decisions are
16 conspiring to create a bleak future for students,
17 and it was noted several times that this is of
18 particular concern to several of the council
19 members, so I am really happy to talk a little bit
20 about this. In the past three decades, the cost
21 of attaining a college degree across the country
22 has increased more than 1000 percent. According
23 to the Consumer Financial Protection Bureau
24 student debt has topped one trillion dollars, and
25 according to - - social and demographics trends

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2 that breaks down to an average burden of \$26,682
3 per household. According to a Rutgers' University
4 study half of all college graduates over the last
5 five years are unemployed or underemployed and up
6 to 60 percent of employers are now checking
7 people's credit when making hiring and promotion
8 decisions even though as stated a bunch of times
9 today there is no credible evidence linking credit
10 history with the ability to perform well at work.
11 Take BMCC, Borough of Manhattan Community College,
12 student Samantha Perez. Samantha spoke to El
13 Diario [phonetic] and is a member of our NYPIRG
14 chapter there for a cover story about falling into
15 financial problems after accruing over \$30,000 in
16 student loan debt. As a result of her marred
17 credit history she was denied employment at the
18 Swatch Store in Midtown Manhattan. Samantha's
19 story is hardly unique. We hear from students
20 every day who have been denied employment and are
21 struggling to pay off their tuition and worrying
22 about falling into massive amounts of debt, and
23 what is worse is that many more students are
24 living in fear of what will happen when they
25 graduate, so we call on the New York City Council

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2 to pass Intro 857 and ensure that all New Yorkers
3 have fair access to employment. Thank you.

4 CHAIRPERSON ROSE: Thank you.

5 Questions? No.

6 COUNCIL MEMBER LANDER: Thank you.

7 I think the Bernie Madoff quote is a great way to
8 end the hearing, so we appreciate your providing
9 it.

10 CHAIRPERSON ROSE: We want to thank
11 everybody for their testimony and those of you who
12 promised to submit us supporting documentation, we
13 look forward to getting that. I am sure Council
14 Member Lander as well as the Civil Rights
15 Committee is looking forward for additional
16 conversations. I want to thank all of you for
17 coming. Before we close, I want to say for the
18 record there is testimony here from the Financial
19 Clinic that we will enter before this hearing is
20 closed and the National Employment Law Project.

21 COUNCIL MEMBER LANDER: I echo the
22 thanks to the advocates and say again that like
23 the Chair, we are interested in seeing information
24 and data including from the other side, and I also
25 want to thank the Chair for her patience and good

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2 questions and interest throughout this topic and
3 hearing.

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CHAIRPERSON ROSE: Thank you.

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Thank you for being here. This meeting is

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adjourned.

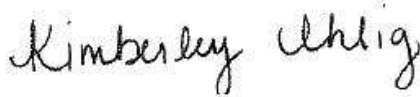
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[gavel]

C E R T I F I C A T E

I, Kimberley Uhlig certify that the foregoing transcript is a true and accurate record of the proceedings. I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

Signature _____

Date _____ 4/27/13