

**NEW YORK CITY OFFICE OF THE MAYOR
HEARING BEFORE THE CITY COUNCIL
COMMITTEE ON CIVIL RIGHTS
APRIL 11, 2013**

Good morning Chairperson Rose, and members of the Council, my name is Bill Heinzen, and I serve as Deputy Counselor to the Mayor. Thank you for the opportunity to testify today regarding Intro # 857, which would amend the City's Human Rights Law to make it illegal for employers to request an individual's credit history, or to consider that history in hiring and other employment decisions, except where that employer is required by federal or state law to use that information.

While the Administration shares the Council's concern for persons who have suffered employment discrimination, we believe Intro 857 fails to take into account instances when a credit check would be appropriate in making employment decisions, and we do not believe in any event that the proposed legislation is necessary to protect New Yorkers, in part because this issue is already addressed under federal law.

Intro 857 is overbroad and fails to take into account the many reasons why a person's credit history may be relevant to their fitness for a job. The purpose of the Human Rights Law is to prevent irrational discrimination based on characteristics that are beyond a person's control, and which are irrelevant to their ability to perform a job. Unlike characteristics such as a person's race, gender, and ethnic background, which cannot be the basis of a decision to deny employment, credit history is not necessarily something that is beyond a person's control; indeed, it is often a reflection of actions they have taken or not taken. Nor is a person's credit history necessarily irrelevant to a person's employment. Indeed, the fact that Intro 857 already contains an exception for positions where federal or state law requires a credit history

demonstrates that there is nothing inherently arbitrary or irrational about considering a person's credit history when making an employment determination.

Although some states and the City of Chicago have enacted similar legislation, these laws contain several additional exemptions not present in Intro 857, each of which further illustrate the several situations in which credit history is relevant to employment. These exceptions include certain types of employment, such as positions in law enforcement and investigative agencies, and positions in banking, financial institutions, credit unions and insurance companies. Exceptions also include persons whose employment carries a fiduciary responsibility to the employer, or to the client of the employer, including those with access to an employer's payroll information, and employees with the authority to issue payments, collect debts, transfer money and enter into contracts. Further, some laws have exempted managerial or supervisory roles, or provided exceptions based on a "bona fide occupational requirement," for example, jobs that involve use of a corporate debit or credit card or access to confidential financial information, trade secrets or other confidential information.

It should be noted that the City's Department of Investigation includes credit history in the background checks it runs on several sensitive City positions, including all City managers; all other non-competitive positions paying \$80,000 or more; all DOI employees; all employees whose duties directly involve the negotiation, authorization, or approval of contracts, leases, franchises, revocable consents, concessions, and applications for zoning changes, variances and special permits; as well as employees serving in data processing titles who perform, as part of their major duties, the analysis, design or programming of computer systems, or the handling of negotiable documents produced by computer systems. We are therefore concerned that Intro 857, which only contains exceptions for state and federal requirements regarding credit history,

would impair the City's ability to perform background checks to insure the integrity and responsibility of its own workforce, including in the areas of law enforcement and financial management, where credit history can be relevant to the fitness of a potential employee to handle money or finances in the best interests of the public.

Moreover, federal law has already covered this area. The federal Fair Credit Reporting Act not only governs the field of credit records and protects both employees and potential employees, it also permits actions that this law would prohibit. Specifically, federal law allows employers to conduct background checks on current and potential employees, including obtaining a credit report, as long as the employer first obtains the employee's written consent. The credit report does not include a credit score, but does list the person's debt, bill-paying history and whether an individual has been sued or has filed for bankruptcy. Again, obtaining this credit record requires the individual's written consent.

Then, before an employer may take an adverse action against an individual based on his or her credit record, the employer must provide the individual with a "pre-adverse action disclosure" that consists of a copy of the credit report and a written summary of the individual's rights under the Fair Credit Reporting Act. If an employer takes adverse action, it must then provide the individual with an "adverse action notice" as well as the contact information of the agency that provided the credit report, so that the individual can dispute any inaccurate information. These provisions are enforced administratively by the Federal Trade Commission.

Additionally, existing federal law protects New Yorkers against employment discrimination based solely on an individual's current or prior status as bankrupt or a debtor under the Bankruptcy Code, or because the individual has not paid a debt that was dischargeable in bankruptcy.

Thank you for allowing me to testify; at this time I would be happy to answer your questions.

Statement of Christie Peale

On behalf of clients in mortgage distress of the

Center for New York City Neighborhoods

Regarding

Int. No. 857, in Relation to Prohibiting Discrimination Based on One's Consumer Credit History

Before the New York City Council, Committee on Civil Rights

April 11, 2013

Councilwoman Rose, members of the City Council Committee on Civil Rights, and the many sponsors of Intro 857, thank you for the opportunity to testify before you today. I am the Executive Director of the Center for New York City Neighborhoods (CNYCN). I testify here today on behalf of CNYCN's clients in mortgage distress across the City's five boroughs, particularly those neighborhoods hardest hit by foreclosure and Hurricane Sandy.

I urge the Council to consider the impact that barriers to employment may have on those New Yorkers whose credit profiles have been damaged by the nation's foreclosure crisis. Credit histories and scores are heavily impacted by an individual's payment history and the outstanding debt. A foreclosure, short sale, deed-in-lieu transaction or bankruptcy can remain on a consumer's credit history for years, and constrain an individual's ability to access credit at affordable interest rates.

Many New York City homeowners fell behind on their mortgage payments during the recent recession. Analysis by New York University's Furman Center for Real Estate and Urban Policy of data from the New York Federal Reserve Bank indicates that almost 1 in 10 mortgages in New York State are seriously (90 days or more) delinquent. In 2012 alone, 93,007 homeowners in New York City received a 90-day pre-foreclosure notice. According to data provided by the Furman Center, mortgage servicers have started foreclosure proceedings against 66,260 homeowners in New York City since 2008.

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

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

CNYCN and our 38 non-profit network partners are currently serving hundreds of homeowners across the City who have fallen behind on their mortgage payments and are trying to keep their homes. CNYCN was created in 2008 through the collaborative efforts of Mayor Bloomberg, the New York City Council, community advocates, foundations, and corporate leaders to coordinate New York City's response to the

foreclosure crisis. Since 2008, CNYCN and our non-profit network partners have helped over 19,000 homeowners across the City struggling with mortgage delinquency and foreclosure. We have helped 3,300 homeowners achieve loan modifications, reducing their mortgage payments by an average of \$1,000 a month. Every day, the homeowners walking into the offices of the housing counseling and legal services organizations in our network to seek assistance with their mortgages bear witness to the fact that the foreclosure crisis continues in New York City.

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

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

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

FOR THE RECORD

**Testimony of Mitchell Hirsch, unemployed worker advocate,
National Employment Law Project,
Submitted in support of Int. 857
New York City Council Committee on Civil Rights, April 11, 2013**

Chairperson Rose and Members of the Committee, thank you for the opportunity to submit this testimony in support of Int. 857, a measure to prohibit employment discrimination based on one's credit history.

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

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

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

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

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

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

The unfair use of employment credit checks is one of two major discriminatory barriers to employment that Council Members have, rightly, chosen to address this year.

On March 13, 2013, the New York City Council wisely chose to enact a law protecting unemployed jobseekers from discriminatory exclusion from prospective employment

opportunities based on their being unemployed. That measure was enacted by the Council over the mayor's objection. The National Employment Law Project (NELP) strongly supported that measure, and applauded the Council's action.

Now it is time for the Council to address the discriminatory use of employment credit checks, which has erected another unfair barrier to employment for New Yorkers. NELP urges this Committee to take positive action toward Council enactment of Int. 857.

NELP applauds Council Members Lander, Dromm and Comrie for introducing this bill, and commends the 32 other co-sponsors and this Committee for pursuing this legislation that will help keep the doors of employment opportunity open to all qualified job-seekers.

###

Testimony by ReNika C. Moore
Director, Economic Justice Group
NAACP Legal Defense & Educational Fund, Inc.

Hearing *In Re* Stop Credit Discrimination in Employment Act
(Introductory Bill No. 857)
Before the New York City Council Committee on Civil Rights

Thursday, April 11, 2013
10:00 a.m.
14th Floor Committee Room
250 Broadway, New York, NY

Good morning, Chairman Rose and members of the Committee on Civil Rights. Thank you for the invitation to testify here today. My name is ReNika Moore, and I am Director of the Economic Justice Group of the NAACP Legal Defense & Educational Fund, Inc. I am here today to support swift passage of Introductory Bill No. 857 (Intro 857) to stop credit discrimination in employment.

The NAACP Legal Defense and Educational Fund, Inc. (LDF) is America's premier legal organization fighting for racial justice. Through litigation, advocacy, and public education, LDF seeks structural changes to expand democracy, eliminate disparities, and achieve racial justice in a society that fulfills the promise of equality for all Americans. We were founded by Thurgood Marshall here in New York City, and have challenged racial discrimination against African Americans and other people of color for over sixty years.¹ Currently, LDF is focused on barriers to employment that unfairly and disproportionately affect African-American workers. In addition to credit checks, these barriers include the overuse and misuse of criminal background checks and hiring and promotion exams that disproportionately screen out African American applicants and employees but that serve no legitimate business purpose.

LDF supports Intro 857 in its current form. If passed without exemptions or carve-outs, New York City workers would have the strongest, most effective protections in the country against credit discrimination. All workers would benefit from this law given extensive evidence that credit reports are notoriously inaccurate and violate workers' privacy because reports can contain information about medical conditions, disabilities and familial status – information that employers are legally barred from

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

basing employment decisions on. An anti-credit discrimination law would safeguard workers' privacy and shield them from unfair and potentially unlawful denials of employment opportunities.

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

A. Employers' Use of Credit Checks Likely Violates Title VII.

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

Credit checks have in no way undergone this rigorous process of evaluation. To the contrary, there is no research or evidence that employee credit checks are job-related, much less consistent with business necessity as Title VII requires, for any job, including managerial or financial positions. Use of credit checks as a basis for employment decisions has not been evaluated or shown to be job-related by a single known study,

much less by any study that meets the EEOC's strict standards for proving that a job requirement that has a disparate impact is legally justified.²

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

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

A 2008 Study by the Federal Reserve Bank of Boston titled "Credit Card Redlining" examined credit information from one of the three major credit bureaus for over 285,000 individuals and found disparities in access to credit based the racial composition of a credit applicant's neighborhood.³ The study found disparities persisted even after controlling for other potential explanations such as differences in neighborhood crime rates, income levels, and vacancy rates. This observed "race penalty" has real consequences for consumers. The study concluded that "moving from an 80% majority White to an 80% majority Black neighborhood reduces credit by an average of \$7,357."⁴ The study's author similarly found a negative effect on credit scores for consumers living in predominantly black areas. The negative consequences that flow from these disparities cannot be understated. Because consumer credit is often a critical

² The Supreme Court in *Albemarle Paper Co. v. Moody*, 422 U.S. 405 (1975), disapproved of taking a requirement validated for *one job* and applying it more broadly as a requirement for *other jobs* at the *same employer*; the Court would be even more skeptical of a requirement validated only for *non-employment* uses (e.g., for lenders to evaluate whether an individual likely will be able to pay back borrowed money).

³ Cohen-Cole, Ethan, "Credit Card Redlining," Federal Reserve Bank of Boston (Feb. 26, 2008), available at <http://www.bos.frb.org/bankinfo/qau/wp/2008/qau0801.pdf>.

⁴ *Id.* at 14.

element to secure a mortgage, disparities in access to credit can lead to disparities in homeownership and overall economic security.

In the vacuum created by the discriminatory denial of more consumer-friendly credit options, African Americans are subject to more predatory credit options like payday loans, which can charge annualized interest rates of over 300%, or high-interest credit cards, which are often marketed aggressively to African-American communities. Consequently, African Americans are more than twice as likely as white cardholders to pay interest rates higher than 20%.⁵

Researchers have found that negative credit history is most often the result of hardships faced by the consumer rather than overconsumption or irresponsible spending habits. Specifically, negative credit history often indicates that a consumer has faced high medical cost, unemployment, and divorce⁶ -- hardships that African Americans are more likely to face than whites.⁷ One study by researchers at Harvard published in the *American Journal of Medicine* found that medical costs and illness contributed to over 62% of bankruptcy filings.⁸ And increasingly African Americans are suffering under the weight of increased student loan debt, which can negatively affect credit history. Eight out of ten African American students borrow to finance their education – more than any other group, and per student borrowing is higher for African Americans students than any

⁵ Jennifer Wheary and Tamara Draut, "Who Pays: The Winners and Losers of Credit Card Deregulation," at p. 6, Demos, available at http://www.demos.org/sites/default/files/publications/whopays_Demos.pdf.

⁶ Elizabeth Warren, *The Over-Consumption Myth and Other Tales of Economics, Law, and Morality*, 82 WASH. U. L.Q. 1485, 1510 (2004).

⁷ Theresa M. Beiner & Robert B. Chapman, *Take What You Can, Give Nothing Back: Judicial Estoppel, Employment Discrimination, Bankruptcy, and Piracy in the Courts*, 60 U. MIAMI L. REV. 1, 3 (2005) (citing Robert B. Chapman, *Missing Persons: Social Science and Accounting for Race, Gender, Class, and Marriage in Bankruptcy*, 76 AM. BANKR. L.J. 347, 385 (2002)).

⁸ David U. Himmelstein, Deborah Thorne, Elizabeth Warren, and Steffie Woolhandler, "Medical Bankruptcy in the United States, 2007: Results of a National Study," *AM. J. OF MED.* (2009), available at http://www.washingtonpost.com/wp-srv/politics/documents/american_journal_of_medicine_09.pdf.

other group. African Americans average \$28,682 in student loan debt compared to \$24,842 for white student borrowers.⁹ While these factors may contribute to lower credit scores or more negative credit history they do not, and have never been shown to, predict how well a person can perform a particular job.

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

While New Yorkers generally were hit hard by the recession and African Americans were hit especially hard. In 2010 the unemployment rate for young black men without a high school diploma, was over 50%.¹⁰ At 14% the unemployment rate for all African Americans in New York City was more than twice the rate of white unemployment.¹¹ Given these staggering rates of unemployment, LDF is particularly concerned about obstacles to employment like credit checks that have never been shown to bear any connection to an applicant or employee's job qualifications or performance, but rather reflect the economic vulnerability and cumulative disadvantage that African Americans must overcome.

D. Conclusion

Given the legal and social science observations above, LDF strongly opposes the use of employment credit checks and wholeheartedly supports passage of Intro 857 to

⁹ Anne Johnson, Tobin Van Ostern, and Abraham White, "Student Debt Crisis," Center for American Progress (Oct. 25, 2012), available at <http://www.americanprogress.org/wp-content/uploads/2012/10/WhiteStudentDebt-5.pdf>. Further exacerbating these realities, African Americans are more likely to enroll in for-profit institutions that are characterized by high debt loads and high unemployment rates among their graduates.

¹⁰ David R. Jones, *Hot, Jobless Summer for NYC's Young People of Color*, CMTY. SERV. SOC'Y, June 3, 2011, <http://www.cssny.org/userimages/downloads/CSS%20Statement6.3.11HotJoblessSumme%20fo%20NYCYoungPeopleo%20Color.pdf>.

¹¹ <http://www.nytimes.com/interactive/2012/06/21/nyregion/black-new-yorkers-not-keeping-pace.html?ref=nyregion>

guarantee that applicants and employees have an equal opportunity to work regardless of their race. Thank you for the opportunity to testify today.



Neighborhood Economic Development Advocacy Project

176 Grand Street, Suite 300, New York, NY 10013
Tel: (212) 680-5100 Fax: (212) 680-5104
www.nedap.org

TESTIMONY BY DEYANIRA DEL RIO, ASSOCIATE DIRECTOR, NEDAP TO THE NEW YORK CITY COUNCIL CIVIL RIGHTS COMMITTEE ON INTRO. 857, THE STOP CREDIT DISCRIMINATION IN EMPLOYMENT ACT

APRIL 11, 2013

Good morning and thank you for the opportunity to testify at today's hearing. My name is Deyanira Del Rio and I'm the Associate Director of NEDAP, a resource and advocacy center based in NYC. NEDAP works with community groups to promote economic justice in New York City neighborhoods, and to eliminate discriminatory economic practices that harm communities and perpetuate inequality and poverty.

NEDAP is a leader in the NYC Coalition to Stop Credit Checks in Employment, and we enthusiastically support Intro 857. The bill would eliminate an insidious and discriminatory barrier to jobs, by prohibiting employers from using credit checks in hiring, promotions and other employment decisions. We applaud the City Council for introducing this vital legislation and the Civil Rights Committee for holding today's hearing, and we urge the City Council to bring this bill – which has a veto-proof majority of sponsors – swiftly to a vote.

The NYC Coalition to Stop Credit Checks in Employment includes a cross-section of more than 60 organizations – including labor, community, civil rights, consumer, workforce development, student, immigrant, senior and women's groups – underscoring the diverse populations harmed by the growing practice of employment credit checks. New Yorkers directly harmed by employment credit checks are also active members of the coalition, and several are testifying here today about their personal experiences.

Today, nearly half of all employers check the personal credit histories of job applicants when making hiring decisions. Some employers also run routine credit checks on their employees, and may deny people promotions and other opportunities based on information in their credit reports. We have heard from many New Yorkers who were *fired* from their jobs as a result of routine credit checks. In one case, a domestic violence survivor's spouse had ruined her credit. In another, a young single mother who was a victim of identity theft was fired from her position as a security officer, even after she showed her employer a police report and other evidence that she had been defrauded. She had received two promotions at the company in the previous year and a half.

I am attaching fact sheets detailing the many reasons why employment credit checks are unfair and discriminatory. I want to make just a few points in my testimony:

1 – We would never tolerate employers conducting job interviews in which they demand, “Tell me everyone to whom you owe money, and how much you owe. Have you ever missed a mortgage or car payment? What credit cards do you have, and do you pay them in full each month? Are you behind on child support payments?”

Why, then, are employers allowed to mine this kind of information – and potentially much more – by checking someone’s personal credit history?

Credit reports reveal a lot of information, but they say nothing about how long you worked at a previous job, how well you performed, or what your job skills are – nothing, in other words, that might help an employer meaningfully evaluate someone’s ability to perform a job. Employers should not be allowed to request, see, or consider a job applicant’s credit information. Period.

2 – The credit reporting industry is driving the use of credit information by employers, through aggressive marketing and false claims that *not* conducting credit screening leaves employers more vulnerable to fraud and theft.¹

TransUnion, for example, has testified at legislative hearings around the country about the value of employment credit checks. The company’s director of state government relations has warned that restricting employers’ access to personal credit information “could jeopardize the health and safety of many....residents who have come to rely on safe and secure environments, and risks the financial status of businesses across the state.”²

And yet the same TransUnion official admitted, under oath, that “we don’t have any research to show any statistical correlation between what’s in somebody’s credit report and their job performance or their likelihood to commit fraud.”³

Experian has reported that 10% of its revenues now come from sales to employers; and that a key strategy for the company’s growth is to expand its reach beyond credit and financial/banking sectors. Indeed, thanks to aggressive efforts by for-profit credit reporting agencies, our credit histories increasingly affect our access not only to credit, but to jobs, housing, insurance, and other fundamental needs. These agencies’ influence over people’s lives needs to be reined in, not expanded, and enacting legislation such as NYC Intro. 857 is a strong step in this direction.

3 – Local small businesses do not use credit checks, and Intro. 857 would not harm NYC’s small businesses. NEDAP and NYPIRG recently surveyed retail, restaurant and other small businesses

¹ See, for example: Testimony of Stuart K. Pratt, Consumer Data Industry Association, before the House Subcommittee on Financial Institutions and Consumer Credit, May 12, 2010: [http://archives.financialservices.house.gov/media/file/hearings/111/pratt testimony 5.12.10.pdf](http://archives.financialservices.house.gov/media/file/hearings/111/pratt%20testimony%205.12.10.pdf)

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

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

ácross the five boroughs to learn more about their hiring practices. Of the 80 small businesses we surveyed, 77 (or 96%) did not use credit checks of any kind.

Instead, these small businesses evaluated job candidates based on their skills, resumes, references, and personal interviews. Most of the employers and managers we spoke with were dumbfounded that the practice of employment credit checks exists at all, and volunteered their opinion that credit history has nothing to do with someone's ability to perform a job. All businesses surveyed had fewer than 25 employees; the vast majority of businesses in New York have 25 or fewer employees.

Some proponents of employment credit checks claim that these checks are a valuable tool for small businesses, and that restricting employers' access to credit reports would hurt small businesses. This is untrue. The reality is that large corporations and chain stores are the employers most likely to conduct credit checks on job applicants and employees. Ironically, many of these employers are retail stores and restaurant chains that are reducing their workforces, moving full-time workers to part-time status, and paying low wages – all of which make it harder for their employees to make ends meet and avoid falling behind on debts.

4 – Credit reports reflect – and reinforce – inequities in our credit system and economy.

Employment credit checks discriminate against low and moderate income New Yorkers and people of color, who have been disproportionately harmed by the economic downturn, and whose communities have been devastated by wave after wave of predatory financial practices, including abusive subprime mortgages, foreclosures, and illegal and improper debt collection lawsuits – all of which can devastate people's credit reports. Communities of color have higher unemployment and poverty rates and fewer assets, on average, that can be drawn down in case of emergencies or to pay for higher education. These factors can contribute to higher reliance on debt. Employment credit checks perpetuate and amplify inequality by making it harder for people to get jobs. The Equal Employment Opportunity Commission has stated that rejecting job applicants based on credit history "has an unlawful discriminatory impact because of race and is neither job-related nor justified by business necessity."

Eight states and several municipalities have enacted – and many more are considering – legislation to curb employment credit checks. New York City has an opportunity to protect its citizens and set a strong precedent for other cities and states by passing Intro. 857, which would prohibit employment credit checks. Unfair and discriminatory hiring practices have no place in our city, and we urge the City Council to enact this vital bill.

Thank you.

Dēmos

Testimony of Amy Traub, Senior Policy Analyst, Dēmos
To the New York City Council Committee on Civil Rights

In support of Intro 857: The Stop Credit Discrimination in Employment Act

April 11, 2013

Good morning. My name is Amy Traub and I am a senior policy analyst with Dēmos. Dēmos is a public policy organization working for an America where we all have an equal say in our democracy and an equal chance in our economy. We are based here in New York City. I want to thank the Committee on Civil Rights and Chairperson Debi Rose for this opportunity to testify in support of the Stop Credit Discrimination in Employment Act.

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

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

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

¹ The source for Dēmos research cited throughout this testimony is: Amy Traub, “Discredited: How Employment Credit Checks Keep Qualified Workers out of a Job,” Dēmos, 2013.

<http://www.demos.org/sites/default/files/publications/Discredited-Demos.pdf>

² 15 U.S.C. §1681b (b) (3).

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

New York City recently passed landmark legislation outlawing job discrimination against people who are currently unemployed. Unfortunately, employment credit checks are another means of discrimination against people who are out of work: it's hard to maintain good credit when your household has been coping with extended unemployment. That's exactly what I found in this research.

I found a number of different connections between medical debt and poor credit. I found that 55 percent – more than half – of those who report having poor credit say that “unpaid medical bills or medical debt” contributed to their poor credit. That's a huge impact. That includes people who have health insurance of one kind or another. But among the uninsured in our sample, the impact on credit appears even more powerful. Households that include someone who is uninsured are more than twice as likely to describe their credit as poor and are also more than twice as likely to say that their credit score has declined significantly over the past three years, compared to households where everyone has insurance coverage. This is consistent with a study by the Federal Reserve Board which found that 52 percent of all accounts reported by collection agencies that appeared on credit reports consisted of medical debt.³ A lot of what employers are looking at on credit reports is medical debt, but they don't know that.

We also find that in our sample Latino and particularly African American households are more likely to report having poor credit and less likely to report having good or excellent credit than white households. For example, 65 percent of white households in our sample describe their credit as “good” or “excellent” compared to just 44 percent of African American households. Latino households tend to fall somewhere in the middle. Unfortunately our sample sizes were too small to have statistically significant data about other racial or ethnic groups.

Our data on racial disparities is consistent with previous research, including findings by the Federal Reserve Board and the Brookings Institution.⁴ Other researchers have pointed out that a number of factors contribute to the racial disparity in credit quality: unemployment is higher in communities of color and there's a tremendous underlying disparity in wealth and assets compared to white households. There's also a legacy of predatory lending that disproportionately impacts communities of color. All of this may contribute to worse credit. Employment credit checks can amplify and perpetuate this racial discrimination.

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

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

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

In conclusion, we find that in our survey population employment credit checks are common and they are keeping people from getting jobs. Yet poor credit is associated with a host of factors that we don't generally see as legitimate reasons to deny people employment: it's associated with lack of health coverage, with medical debt, and with unemployment. We also find that people of color are disproportionately likely to report poor credit. And we see a high rate of errors in credit reports. . Employers may not realize this is what they are looking at on a credit report, but to a large extent, it is. The Dēmos study is another piece of evidence that employment credit checks are an illegitimate barrier to employment. And so I urge the Committee on Civil Rights to stop this discrimination by passing Intro 857. Thank you.

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



Lower East Side
people's
federal credit union

**TESTIMONY BY LINDA LEVY, CEO
LOWER EAST SIDE PEOPLE'S FEDERAL CREDIT UNION
TO THE NEW YORK CITY COUNCIL CIVIL RIGHTS COMMITTEE
ON INTRO. 857, THE STOP CREDIT DISCRIMINATION IN
EMPLOYMENT ACT**

APRIL 11, 2013

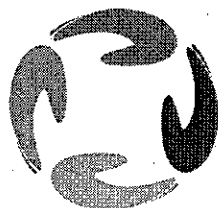
Good morning and thank you for the opportunity to testify at today's hearing. My name is Linda Levy and I am the Chief Executive Officer of the Lower East Side People's Federal Credit Union.

The Lower East Side People's Federal Credit Union (LESPFCU) is a not-for-profit financial cooperative dedicated to meeting the financial services and credit needs of local residents, businesses and community organizations. LESPFCU has a 27-year history of spurring economic and community development in the communities we serve, by providing a safe, affordable and democratic alternative to traditional banks, and by reinvesting in affordable housing, small business development, and job creation in our communities.

Our credit union manages \$35 million in assets and serves more than 6,000 members. Approximately 82% of our members are low or moderate income; two-thirds are Latino. The majority of our borrowers are female heads of households. Our credit union offers a full range of financial services, from savings and checking accounts to credit cards, business and real estate loans, and money transfer services. Since the credit union's inception, we have provided \$60 million in capital to more than 8,500 families, small businesses, and nonprofit organizations in our target communities.

Here's what I came here today to say:

- If our credit union relied on checking people's credit histories in hiring and promotions decisions, we would have missed out on some of our best employees, including managers and some employees who have now been with the credit union for 15 to 20 years.
- Checking job applicants' and employees' credit is an unfair, wrong practice, harming qualified workers and ultimately hindering our business.



Lower East Side
people's
federal credit union

- Our credit union prioritizes hiring from within our local communities, as well as promoting staff from within the organization. When we hire employees, we look for and rely on relevant information, including from personal interviews and references by past employers.
- As a credit union that serves low income neighborhoods, we know first-hand the damage done to people's credit reports as a result of abusive and unfair financial practices – not to mention rampant credit reporting errors. For us to then turn around and block people from employment based on that credit information would make no sense to us, and would be entirely contrary to our mission.

We believe New York City should ban employment credit checks and pass Intro. 857.

Thank you for the opportunity to testify today.

Testimony by Rob Lederer, president and founder of Management Resources, to the Committee on Civil Rights of the New York City Council, on April 11, 2013 *in re* Int. No. 857.

Councilmembers, thank you for the opportunity to appear before you today.

My name is Rob Lederer, I'm founder and president of Management Resources, a New York State S Corporation founded in 2003. I live in Ft. Greene, Brooklyn and our offices are in downtown Manhattan. Our mission at Management Resources is to help small to midsize businesses run better and grow. We help business owners get the right things on and off their plates to free them to build the business and we help them get the right team around them to do the rest of the work of the business. We are not a recruiting or personnel agency. We are a management and organizational consulting firm. Ours is a small business.

One way to look at my company is that we are in the employee business. Team building is central to our services. We help businesses develop employees, promote or reassign employees, and hire employees. Not only do we do that for clients, we have to bring on our own staff and talent.

That brings me to the subject at hand: using a job candidate's credit history as a tool for evaluating the candidate's fitness as an employee.

No Valid Business Purpose (in vast majority of circumstances):

I ask the people of the City Council: How would you use a credit report to help you evaluate a candidate's fitness? [Pause]

Don't know? For most jobs, I don't either.

If you do know how you'd use it, how do you know it's a valid predictor? What does it say about an employee? [Pause]

Don't know? I don't either.

A screening needs to be relevant to the specific job. **What makes credit history relevant?** [Pause]

Don't know? I don't either. I don't know how to use a credit report in employee hiring and promotion for most jobs and neither does anyone on my team. Furthermore, our team having worked with hundreds of businesses, I can tell you that most people making hiring decisions in business don't know either. It's too easy for people who make hiring and promotion decisions to use this information wrong and with harmful effect, as with any other form of redlining.

If you want to screen for scruples, there are ways to do it. This is not one of them. If I relied on credit history with the oldest and most trusted member of my staff, I might be tempted to

terminate our relationship, given the personal financial management mess that family's in, and it's only getting worse no thanks to health issues and a recently arrested teenage son. However, I rely on this person with my credit cards and most personal account information – this person's honesty and trustworthiness has nothing to do with their personal financial history.

Let's go in the other direction. If we include credit history because of some notion that it somehow tells me about someone's employability, why stop there? Why can't I consider every job candidate's parking ticket history?

Everyone here knows someone who's gotten a parking ticket. There are lots of reasons people get parking tickets. I can certainly make the argument that that means something bad about that person's character. That doesn't make it a valid argument but the argument could be made. And if my business fortunes depended on selling more data on parking ticket history, I certainly might be tempted to scare and motivate businesses to use the data for employment screening. What a bonanza of new business!

Let me revise my claim that there's no valid business purpose. I can think of one: growing the profits of the Credit Reporting Agencies and industry. It is an unscrupulous attempt by employees in that industry to cloak themselves in virtue through the claim that they're surfacing unscrupulous employees in the broader workforce.

Good Corporate Citizenship:

I believe that we in business need to not only ask ourselves "how will it make or save us money" but also "how can we be a good corporate citizen." One way is to not participate in an evil.

Other witnesses have told or will tell you about the various evils and misuses of credit history in employment decisions. I will leave it mostly to them. I do want to say a few things, though:

1. We businesses are hiring people, not buying them. There are limits to how much access to someone's life and information we should have, especially when so many people in business don't know how to evaluate the relevancy of such information. There's been a dangerous trend in this country to encroach upon the liberty of individuals in the name of business and security. We need to protect individual liberty and protect people's ability to pursue honest employment.
2. Credit agencies and their Catch-22's already have too much power over people who have too little ability, time, and resources to set the record straight when it is wrong.
3. To paraphrase the famous dictum: The only thing required for evil to triumph is for good businesses to do nothing. We as businesses need to stand up and say publicly that not only will we not participate in doing evil, we will not stand by when evil is done.

My argument comes down to:

1. The Business Case:

- a. I don't know how it will make or save me or my clients money to do this because there's no valid reason to do it and it doesn't do what its proponents claim.
- b. This is a practice designed to help only the CRA's and their agents, no other business.

2. Rights and Wrong:

- a. This is an assault on individual liberty and freedom, the freedom from invalid and unwarranted intrusions into a person's life and the right to honest work.
- b. It is wrong to place this kind of burden on the people in the labor force -- anyone -
- *especially* those who are reeling or suffering from trying to make ends meet or get out from under the nightmare of cleaning up their credit history.

This claim that it is somehow a good thing to use credit history in employment considerations is a red herring. It's not good for my business. Not my clients' businesses. Not for the human beings who are harmed by the practice. It is the Credit Reporting Industry Profitability Act. It's not good for anyone else.

I support the bill before you.



Testimony of Leah Gonzalez, Political Director
The Retail, Wholesale and Department Store Union (RWDSU)

Intro 857-2012A

The Stop Credit Discrimination in Employment Act

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

Before the New York City Council's Committee on Civil Rights

April 11, 2013

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

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

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

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

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

New York City has long been the progressive capital of the United States, having lead in fights to recognize same-sex couples, women's equality, achieve living wages for workers and against blatant racial and class discrimination. In fact, according to a poll by the Society for Human Resources Management, 60 percent of

employers now conduct employment credit checks for some or all positions when they are hiring. For a practice like this to continue – at this time, in our great city – is the worst type of injustice.

The New York City Council must act quickly to end this discriminatory practice, mainly:

Credit Reports are Notoriously Inaccurate

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

Credit History Does not Predict Job Performance

Research clearly shows that there is no connection between credit information and job performance or turnover, yet employers across the country run credit checks as part of their hiring processes. In fact, one study recently featured in the New York Times found no empirical evidence demonstrating a correlation between personal credit reports and an applicant's lack of character or propensity to commit a crime.

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

The Equal Employment Opportunity Commission (EEOC) has repeatedly warned that employment credit checks have a discriminatory impact on African American and Latino applicants, whose credit histories have suffered from discrimination in lending, housing and employment itself. These actions create unnecessary and harmful obstacles for women, low-income and people of color seeking gainful employment to support their families, pay their bills and pull themselves out of debt. In fact, the EEOC has sued two employers over its use of credit reports as a hiring tool.

Credit Checks in Hiring are a Catch-22 for Workers

Growing numbers of New Yorkers are unable to get jobs because of damaged credit, and unable to repay debts and improve their credit because they can't get a job. With NYC's unemployment rate at a near-record 10%, the last thing out-of-work families need is another barrier to jobs. Employment credit checks are the ultimate Catch-22 for workers.

We need to put an end to credit check discrimination, so that all people have the chance to find quality work and support their families. New York's working people, in this situation, need a solution, because for so many, there is literally no way out.

The City Council must pass this legislation now, as employers will continue to be able to deny people work that would help them climb out of their financial hole, because of the fact that they're – in fact -- in a financial hole.

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

Thank you for allowing the RWDSU to submit testimony today.



Urban Justice Center

123 William Street, 16th Floor, New York, NY 10038
Tel: (646) 602-5600 • Fax: (212) 533-4598
www.urbanjustice.org

Testimony of Katie Penner for the Committee on Civil Rights for the Stop Credit Discrimination in Employment Act on behalf of the Community Development Project of the Urban Justice Center

250 Broadway, 14th Floor Committee Room, New York City
April 11, 2013 10:00 a.m.

Thank you for the opportunity to add my testimony today, my name is Katie Penner, and I am here representing the consumer justice practice of the Community Development Project at the Urban Justice Center (CDP/UJC).

CDP/UJC serves New York City's most vulnerable residents through a combination of direct legal service, systemic advocacy, community education and political organizing. The Community Development Project runs free Consumer Debt legal clinics each month in Manhattan, Brooklyn, the Bronx, and Queens, with the help of various grassroots community groups. Our work is informed by the belief that real and lasting social change in low-income, urban neighborhoods is often rooted in the empowerment of these grassroots community groups.

I am here to endorse and urge support for Intro. 857, to stop hiring discrimination of potential employees based on their credit history. I would like to begin by expressing my belief that this new legislation represents huge progress in providing equal opportunity for job candidates of all economic backgrounds.

You have already heard from other advocates and consumers about the importance of this bill for ordinary New Yorkers who are seeking employment. You have also likely heard the statistics about credit reporting inaccuracies-how according to US Pirg 1 in 4 Americans have an error on their credit report. Today I want to speak specifically about the credit reporting industry's problem with credit reporting errors and how this problem undermines the industry's implicit claim that their reports provide employers with reliable information about prospective job candidates. I will share anecdotes from my work with consumers to dispute these credit reporting errors.

The Community Development Project has represented alleged debtors in New York Civil Court for credit card, cell phone, and medical debt cases, as well as victims of consumer fraud and unfair debt collection practices in affirmative litigation in Federal court. Much of our work begins when we review a client's credit report, identifying incorrect information and any red flags. As a consumer advocate I work with clients one-on-one to correct, dispute, and verify information on their credit reports. Many of the clients that we see are motivated to improve their credit because they are planning to apply for new lines of credit, are apartment hunting, or trying to find employment.

Discovering incorrect information on a client's credit report is a commonplace occurrence and can range from an incorrect spelling of the client's name or home address to much more serious problems. In one instance, a client came to us after seeing his credit report for the first time in 20 years. He was shocked to discover an overwhelming amount of incorrect information, which included: many accounts in collection or default, incorrect home addresses, a variation of a social security number, and even a spouse that he had never heard of. This is an example of a serious problem, where the credit bureaus are unable to properly separate consumer's credit files. The result is a credit report riddled with inaccurate information, which can be detrimental to a consumer who actually has good credit.

individual rights = social change

Recently, we assisted a client who had been unable to correct inaccuracies on his credit report despite his own attempts. Two fraudulent accounts appeared on the report, but despite many directed letters and phone calls over the course of a year to both the credit reporting agencies and to the creditor in dispute, the alleged accounts remained on his report. The credit reporting agencies said that they had verified the account, but responses from the creditor suggested otherwise. The client became so frustrated that he sought our assistance. This client's experience highlights how frustrating and time-consuming it can be to correct inaccuracies. In this client's particular case, it took months just to get a response from the credit reporting agencies.

In another instance of identity theft, a consumer's identity was stolen when she subletted her apartment for several weeks. Despite precautions she took to remove or hide personal information, the subletter was able to gather enough of her personal information (aided by the mailing of a renewal credit card by Capital One bank) to open several new lines of credit. She had made attempts to dispute the fraudulent accounts on her own – with little success. Fortunately, we were able to assist her in navigating the process to prove her claim and have the fraudulent and adverse accounts removed from her report.

The Fair Credit Reporting Act says that each candidate for a job who is disqualified based on the results of credit check must be notified by providing them a copy of the credit report that was used to disqualify them as well as an adverse action notice, explaining to them their rights to see and correct the inaccurate information. It is our experience, that many rejected candidates do not ever receive these notices and are left unaware of inaccuracies that may exist in their credit report to their own detriment.

It is imperative that, given the history of inaccurate credit reporting, that credit reports no longer be used in New York City to determine who gets hired or even fired from a job. Credit reports are an inaccurate tool to evaluate a consumer for employment, promotion, reassignment or retention as an employee. The use of credit reports in this way creates an unnecessary hurdle for low-income, unemployed and minority groups in their attempts to gain employment. Employers should instead focus on more valid and predictive measures of employee success, such as employment history and real skills and qualifications.

The Community Development Project strongly supports this legislation and its attempt to prevent employer discrimination of candidates based on their credit reports. We believe that this legislation will offer additional protections to low-income and minority groups in New York City and better offer them equal opportunity.

Thank you for the opportunity to comment and add our support to this legislation.

**Testimony before the New York City Council
Civil Rights Committee
In Support of
Intro. 857, the Stop Credit Discrimination in Employment Act**

April 11, 2013

Presented By

Sarah Alba (Manhattan Legal Services)

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

LS-NYC is an anti-poverty organization that seeks justice for low-income New Yorkers. For more than 40 years, we have helped our clients meet basic human needs and challenged the systemic injustices that keep them poor. As the largest civil legal services program in the country, LS-NYC is unique because we combine a broad reach with deep roots in the communities we serve. With community-based offices and numerous outreach sites located throughout the city's five boroughs, LS-NYC has a singular overriding mission: to provide expert legal assistance that improves the lives and communities of low-income New Yorkers. We annually provide legal assistance across a full range of issues, helping to ensure that low income New Yorkers have access to housing, health care, food, and subsistence income. We handle almost 20,000 individual cases each year, and our systems change advocacy benefits tens of thousands more.

Manhattan Legal Services ("MLS") is a legal services provider with deep roots in the culturally diverse and low-income communities that encompass the Borough of Manhattan. MLS launched its Consumer Protection Project in 2007 to provide legal representation and education to low income New York City residents experiencing consumer problems. Since that time, we have become one of the leading resources in New York City for the countless number of residents facing consumer financial abuse. In 2012, MLS opened the Employment Discrimination Project to serve the growing numbers of New Yorkers city-wide who are facing discrimination because of employment credit checks.

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

The use of credit reports in employment decisions has dramatically increased in the past few years. "[S]ixty percent of employers recently surveyed by the Society for Human Resources Management said they run credit reports on at least some job applicants, compared with compared with 42% in a

somewhat similar survey in 2006.”¹ The practice of using credit reports and credit history in employment screening is harmful to individual job seekers and harmful to New York’s economy.

As New York continues to struggle with the economic crisis, a growing number of New Yorkers find themselves in a vicious cycle: unable to secure a job because of damaged credit, and unable to escape debt and improve their credit because they cannot find work. With high unemployment and record numbers of foreclosures and personal bankruptcies, New Yorkers hardest hit by the economic crisis are further penalized by employers’ use of consumer reports to deny employment opportunities.²

Example: Hispanic Man “Unfit” for Hurricane Sandy Relief Job Because of Minor Credit Card Debt

Mr. M. is a middle-aged Hispanic male who, like many New Yorkers, fell behind on his bills during the economic crisis. Hoping to help his community, Mr. M. applied for a position as a Community Relations Representative with the Federal Emergency Management Agency in December 2012. According FEMA’s listing with the New York State Department of Labor, the job Mr. M. applied for involved “work[ing] on foot in affected localities and communicat[ing] with persons affected by the Hurricane Sandy disaster to identify their disaster related needs and offer information on what assistance is available and how to obtain it.”

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

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

Despite their Importance, Credit Checks Are Unreliable

Despite the significance of credit reports, the system is plagued with inaccuracies. Several studies have found serious errors in over 25 percent of credit reports.³ Correcting errors with credit bureaus can be a

¹ *States May Ban Credit Checks on Job Applicants*, USA Today (March 5, 2010) available at http://usatoday30.usatoday.com/money/workplace/2010-03-01-jobs-credit-checks_N.htm ; and see Society for Human Resource Management, *Background Checking: Conducting Credit Background Checks* (Jan. 2010).

² As of the most recent report, the unemployment rate in New York City has risen to 9.9%. State Labor Department Releases January 2013 Area Unemployment Rates (March 13, 2013) available at <http://www.labor.ny.gov/pressreleases/2013/march-12-2013-1.shtm>. Foreclosures in New York City in each year from 2007 through 2009 significantly outnumbered foreclosures in any other year over the past fifteen years. See Furman Center for Real Estate and Urban Policy, *Foreclosed Properties in NYC: A Look at the Last 15 Years* at 6 (Jan. 14, 2010).

³ For a review of studies, see National Consumer Law Center, *Automated Injustice: How a mechanized Dispute System Frustrates Consumers Seeking to Fix Errors in Their Credit Reports* at 5-6 (Jan. 2009) available at http://www.nclc.org/images/pdf/pr-reports/report-automated_injustice.pdf.

costly and time consuming process, and many people do not discover inaccuracies until they have already experienced some negative action because of those mistakes, e.g., denial of employment. Our advocates report that they regularly see mistakes when reviewing credit reports with clients.

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

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

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

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

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

Major credit bureaus are heavily marketing the use of credit reports to employers as a way to expand sales, yet research has shown that an individual's credit history has no correlation to job performance.⁴ Even Transunion, one of the country's big three credit reporting bureaus, has admitted that "[a]t this point we don't have any research to show any statistical correlation between what's in somebody's credit report and their job performance or their likelihood to commit fraud."⁵

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

The use of credit checks by employers represents an unprecedented invasion of privacy. Credit reports are replete with such deeply personal information as familial status and medical debt, information which

⁴ Society for Industrial and Organizational Psychology, *Credit History Not a Good Predictor of Job Performance or Turnover* (Jan. 16 2004).

⁵ Editorial, *Millions Need Not Apply* NY TIMES at A18 (May 30, 2011) available at http://www.nytimes.com/2011/05/30/opinion/30mon3.html?_r=0.

should be protected by anti-discrimination laws.⁶ This means that as a pre-requisite to employment many job applicants must expose and discuss their personal medical histories or other extremely personal events that appear in an individual's credit history, such as divorce.

The Use of Credit Checks in Employment Decisions is Discriminatory

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

The federal Equal Employment Opportunity Commission has recognized this issue and released guidance stating that “[i]nquiry into an applicant’s current or past assets, liabilities, or credit rating . . . should be avoided because [this] tend[s] to impact more adversely on minorities and females.”⁷

In New York City, studies show that there are clear disparities in credit characteristics between communities of color and white communities.⁸ Numerous national studies have also found that communities of color are overrepresented among consumers with low credit scores and underrepresented among those with high credit scores.

This is because credit reports reflect negative information that disproportionately occurs in these protected groups due in part to a history of unfair lending practices and unequal employment opportunities. For example, the elderly and disabled are more likely to have medical debt which they cannot pay. Women tend to face greater economic insecurity than men, and are at particular risk of high credit card debt due to illness.⁹ People of color and women are more likely to be the targets of predatory loans such as the variable rate mortgages which set off the foreclosure crisis.¹⁰

Rampant predatory lending in New York City has led to foreclosure filings which have decimated many of New York City’s predominantly non-white neighborhoods.¹¹ With more than ten foreclosures on a

⁶ See, e.g., DEMOS, *Discredited: How Employment Credit Checks Keep Qualified Workers Out of a Job* (March 4, 2013) available at <http://www.demos.org/discredited-how-employment-credit-checks-keep-qualified-workers-out-job>.

⁷ EEOC Prohibited Employment Policies/Practices, Pre-Employment Inquiries and Credit Rating or Economic Status, available at http://www.eeoc.gov/laws/practices/inquiries_credit.cfm.

⁸ See, e.g., Woodstock Institute, Fact Sheet: Understanding Credit Score Patterns in New York City (Nov. 2010) and Addendum to “Understanding Credit Score Patterns in New York City” (Jan. 2011). For example, one study found that communities of color in New York City had a mean credit score that was nearly half that of whites. National Consumer Law Center, *Testimony on Financial Institutions and Consumer Credit Regarding Use of Credit Information beyond Lending* at 3 (May 12, 2010).

⁹ National Partnership for Women and Families, *Losing Ground: Unwarranted Credit Checks Create Barriers to Employment for Women* (Oct. 2012) available at

http://www.nationalpartnership.org/site/DocServer/Women_and_Credit_Checks_Fact_Sheet.pdf?docID=11521.

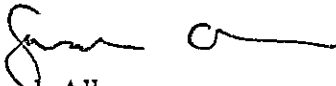
¹⁰ As the New York State Superintendent of Banks explained, “[m]ultiple external studies have made similar findings, which our internal research confirms: minority borrowers and minority communities receive higher-cost loans at a disproportionate rate.” Testimony of New York State Superintendent of Banks Richard H. Neiman Before the Committee on Banks, Subprime Mortgage and Foreclosures in New York (Dec. 13, 2007) available at <http://www.banking.state.ny.us/sp071213.htm>.

¹¹ These include East New York, Brownsville, Bushwick, Crown Heights, Bedford Stuyvesant, and Flatbush in Brooklyn and Jamaica, St. Albans, and Springfield Gardens in Southeast Queens. See Statement of Josh Zinner, Co-Director, NEDAP, before the NYS Assembly Standing Committees on Judiciary, Housing, and Banks (Nov. 16, 2010) available at

block in some areas, credit was destroyed for entire communities. The impact of the foreclosure crisis on communities of color is illustrated by the racial composition of Staten Island Legal Services' (SILS') foreclosure prevention clients: although non-whites comprise 32.6 % of Staten Island's population, they make up 53 % of SILS's client base.¹²

Legal Services NYC and Manhattan Legal Services urge the Council to put a stop to this useless and discriminatory practice by passing Intro. 857, the Stop Credit Discrimination in Employment Act as currently written. We thank the City Council for addressing this important issue.

Respectfully submitted,



Sarah Alba
LS-NYC | Manhattan Legal Services
salba@mls.ls-nyc.org
(646) 442 3188

<http://www.nedap.org/resources/documents/11-17-10nysassemblytestimony-w-map.pdf>; and see Federal Reserve Bank of New York, www.newyorkfed.org/regionalmortgages/brooklyn.html.

¹² Franklin Romeo and Jennifer Ching, *Homes Underwater: Forbearance Alternatives for Sand-Affected Homeowners* at 6 (Feb. 4, 2013).



LEGAL

SERVICES

INCORPORATED

TESTIMONY

ON

INT. 857 - 2012

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

PRESENTED BEFORE:

**THE NEW YORK CITY COUNCIL
COMMITTEE ON CIVIL RIGHTS**

PRESENTED BY:

**ANAMARIA SEGURA
MFY LEGAL SERVICES, INC.**

APRIL 11, 2013

MFY Legal Services, Inc. (MFY) submits this testimony to the New York City Council Committee on Civil Rights to express our support for the passage of Int. 857-2012.

MFY envisions a society in which no one is denied justice because he or she cannot afford an attorney. To make this vision a reality, for 50 years MFY has provided free legal assistance to residents of New York City on a wide range of civil legal issues, prioritizing services to vulnerable and under-served populations, while simultaneously working to end the root causes of inequities through impact litigation, law reform and policy advocacy. We provide advice and representation to more than 8,000 New Yorkers each year. MFY's Workplace Justice Project (WJP) advocates on behalf of low-income workers and handles a range of employment problems, including unpaid wage claims, discrimination, and barriers to employment. MFY's Consumer Rights Project (CRP) provides advice, counsel and representation to low-income New Yorkers on consumer problems, including credit-related issues.

MFY commends the Committee on Civil Rights for holding this hearing about this important legislation. Int. 857-2012, if enacted, would remove unnecessary barriers to employment by making it illegal for an employer to request or use information in a credit report for the purpose of making decisions with regard to hiring, firing, promotion, demotion, discipline, compensation, or the terms, conditions or privileges of employment. This bill removes arbitrary, baseless, and unfair barriers to employment faced by our low-income clients for whom a paycheck can mean survival. The legislation will increase employment opportunities for many unemployed New Yorkers who desperately wish to work.

Employer Credit Checks are Pervasive and Create Barriers to Employment

According to a recent survey of human resources professionals, almost half of all employers check an employee's credit history when hiring.¹ More recent research has found that the number might be higher; according to surveys conducted by Dēmos, as many as one in four unemployed workers said that a prospective employer had requested a credit check as part of a job application.² That same research found that, among job applicants with poor credit histories, one in seven had been told that they were being denied a job because of their credit history.³ The use of credit checks presents a significant barrier to employment, especially for low-income New Yorkers and unemployed New Yorkers, whose credit has been harmed because of the economic downturn and other events beyond their control. The use of credit checks also disadvantages students who graduate from college or vocational programs with crushing student loan debt. Borrowers of private student loans generally do not have the same six-month grace period after graduation, or hardship deferments or forbearances as borrowers of federal loans, which can protect their credit during a difficult job search.

¹ See Society of Human Resources Management, *SHRM Survey Findings: Background Checking – the Use of Credit Background Checks in Hiring Decisions*, July 19, 2012, available at <http://www.shrm.org/research/surveyfindings/articles/pages/criminalbackgroundcheck.aspx>.

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

³ See *id.*

One example of a low-income New Yorker harmed by an employer credit check is MFY client, Mr. P., who recently contacted us after he was denied a job due to his credit history. Mr. P. had applied for an entry-level position as a document messenger with an investment banking firm in early February 2013. The pay was only \$9.50 an hour, but he was looking forward to being employed. However, the company ran a credit check and Mr. P.'s credit report reflected three judgments; the prospective employer gave him 30 days to clear up the credit problems or lose out on the job opportunity. After September 11, 2001 Mr. P. had lost his job and his home, and also was the victim of identity theft. As a result, a few years later he was sued by three debt buyers who purchase charged-off debt for pennies on the dollar and file lawsuits in bulk in the New York City Civil Courts. However, because he was never served with the lawsuits, which is common in debt collection cases filed in New York City, he only discovered that there were judgments against him after he applied for the messenger position. He is now in the process of attempting to vacate the judgments and have them removed from his credit report, but the impact on his credit has already caused him hardship. As our consumer attorneys know well, it is virtually impossible to vacate a default judgment and have it removed from a person's credit report in only 30 days; such a request as a condition to being hired by a prospective employer is akin to a flat-out job denial.

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

Employer Credit Checks Are Discriminatory

Employer credit checks have a discriminatory impact on lower income New Yorkers, women and people of color, who have been disproportionately affected by the economic downturn. The Equal Employment Opportunity Commission has warned of a discriminatory impact on people of color due to the fact that credit reports reflect existing racial disparities caused, for example, by predatory lending and unequal employment opportunities.⁴ Moreover, civil rights organizations, including the NAACP, National Council of La Raza, Leadership Conference on Civil and Human Rights, and the Lawyers Committee for Civil Rights under Law have publically opposed the use of employer credit checks, citing their racially discriminatory potential.⁵ As reported by the National Partnership for Women in Families, employer credit checks are particularly harmful to women, whose credit is often damaged because of domestic

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

⁵ See *id.* at 9.

violence, and having been disproportionately targeted for toxic loans, among other reasons.⁶

Credit Reports are Notoriously Unreliable

Credit reports are often riddled with errors. According to a comprehensive study released in February 2013 by the Federal Trade Commission, 26 percent of American consumers had an error on a credit report from at least one of the three major credit reporting agencies.⁷ That same study found that 13 percent of consumers had errors that were damaging enough to lower their credit scores.⁸ The consumer attorneys at MFY hear from numerous clients each year who are affected by errors and problems on their credit reports which, in our experience, are difficult and extremely time-consuming to remedy. Many of our clients do not even know they have errors on their credit reports until they are denied employment or housing or a loan. And, although the Fair Credit Reporting Act provides people with a procedure for disputing errors on their reports, in our experience those disputes are often given a perfunctory review by the credit reporting agencies, which most often leave the errors uncorrected and the reports unchanged. Moreover, even successfully correcting errors often takes a very long time. Employers are not willing to hold jobs for potential employees while they sort out disputes with credit reporting agencies.

Employer Credit Checks Constitute an Invasion of Privacy

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

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

Credit reports were originally intended to be a means of using a person's past credit history to help lenders predict how likely that person will be to pay back an extension of credit. However, in recent years, members of the credit reporting industry have pushed to extend the use of their reports to areas of our lives where they have no place – affecting the ability to obtain insurance,⁹ receive medical care,¹⁰ and, now, whether people can get jobs. And it's only getting worse. NBC News recently reported that the credit reporting agency, Equifax, has assembled a private database containing 190 million employment and salary records covering more than one-third of

⁶ See Fact Sheet, National Partnership for Women in Families, *Losing Ground: Unwarranted Credit Checks Create Barriers to Employment for Women* (November 2012) available at http://www.nationalpartnership.org/site/DocServer/Women_and_Credit_Checks_Fact_Sheet.pdf?docID=11521.

⁷ See Federal Trade Commission, Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003 at 1 (December 2012); released to the public February 11, 2013), available at <http://www.ftc.gov/os/2013/02/130211factareport.pdf>.

⁸ See *id.*

⁹ Amy Traub, *Credit Reporting "Mission Creep": Home and Car Insurance*, Demos Blog, June 29, 2011, available at <http://www.demos.org/blog/credit-reporting-%E2%80%9Cmission-creep%E2%80%9D-home-and-car-insurance>.

¹⁰ Sarah Rubenstein, *Why Hospitals Want Your Credit Report*, THE WALL STREET JOURNAL, Mar. 18, 2008, available at <http://online.wsj.com/article/SB120580305267343947.html>.

U.S. adults.¹¹ Equifax profits off this database – which contains weekly paystub information, people’s health care providers, whether someone has dental insurance, and if they’ve ever filed an unemployment claim – by selling the data to third parties, including debt collectors and other financial services companies. This is just the latest example of how the credit reporting industry is profiting from the misuse of employment and credit data.

There is No Correlation Between an Individual’s Credit and Job Performance

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

Conclusion

Passing Int. 857-2012 will ensure that qualified applicants can obtain employment without regard to credit reports that may contain errors or reflect life events beyond their control. It will also protect employee privacy in the hiring process, and guard against the perpetuation of existing racial disparities in lending and employment. It will also contribute to New York’s economic recovery by helping reduce unemployment, especially long-term unemployment. In January 2013 the City Council passed Int. 814-2012, a bill outlawing discrimination in hiring based on a job applicant’s unemployment status. Passing Int. 857 and making credit checks an illegal discriminatory practice is the next logical step for the Council to take toward removing another illegitimate barrier to employment. New York City should be at the forefront of putting a stop to this abusive, ineffective practice and protecting the rights of all New Yorkers by prohibiting credit discrimination in the workplace.

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

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

¹¹ Bob Sullivan, *EXCLUSIVE: Your employer may share your salary, and Equifax might sell that data*, NBC NEWS, Jan. 30, 2013, available at http://redtape.nbcnews.com/_news/2013/01/30/16762661-exclusive-your-employer-may-share-your-salary-and-equifax-might-sell-that-data?lite.

¹² See, e.g. Demos, *Discrediting Workers: How Credit Reports are Distorting the Job Market, Prolonging Unemployment, and Denying Equal Opportunity to Workers* 1-2 (2010) available at http://www.demos.org/sites/default/files/publications/Discrediting_Workers_Demos.pdf

¹³ Editorial, *Millions Need Not Apply*, N.Y. TIMES, May 29, 2011 at A18.

**TESTIMONY OF LAWRENCE A. MANDELKER on behalf of
THE NEW YORK METROPOLITAN RETAIL ASSOCIATION (NYMRA) before the
COMMITTEE ON CIVIL RIGHTS**

**Chair: Debbie Rose
Thursday, April 11, 2013, 10:00 a.m.
Hearing Room 14th Floor
250 Broadway
New York, NY 10007**

**NEW YORK CITY COUNCIL PROPOSED
INTRO NO. 857
Prohibiting Discrimination Based on One's
Consumer Credit History**

Chair Rose and members of the Committee: I am testifying today on behalf of NYMRA, the New York Metropolitan Retail Association. NYMRA is an organization consisting of national chain retailers operating in the City of New York. For the reasons stated below, NYMRA opposes adoption of Intro 857

As drafted, except for the limitation in proposed section 21 (b), this bill would apply to virtually all decisions affecting present or prospective employment, regardless of job description and responsibility. Executive, management and supervisory positions and positions of trust and confidence would all be covered by the provisions of this bill. There are employment, promotion and demotion decisions with respect to such positions for which it would not be unreasonable for an employer to access information tending to show whether a present or prospective employee is experiencing financial difficulties. Under such circumstances, a present or prospective employer should not be prohibited from doing so.

In the retail business certain employees either have the ability to confer or withhold substantial financial benefits to others, or are relied upon to handle financial transactions. Examples include, but are not limited to: employees who decide what brand of goods will be sold in a particular store, where in the store they will be placed, how much shelf space they will be allocated and how they will be displayed; employees who decide where to locate the stores themselves or approve the terms of contracts and leases; employees who procure goods or services or review and approve invoices from vendors; employees who place advertising orders; employees who are cashiers or work as bookkeepers, and; employees who supervise loading platforms and decide how long a driver must wait before her truck is loaded or unloaded. It is a potential "corruption" risk when such employees are themselves under financial stress. To label an employer's desire to access credit history in such cases as a discriminatory practice – with all the consequences that flow from such a characterization – would eliminate a potentially useful tool from the employment decision toolbox.

The exemptions in Section 21 (b) should be expanded to exclude management or supervisory positions or positions of trust and confidence or positions for which an employer can demonstrate that access to a candidate's credit history might be relevant.

Submitted by Lawrence A. Mandelker

Kantor|Davidoff

Kantor, Davidoff, Wolfe, Mandelker Twomey & Gallanty, P.C.

51 East 42nd Street, Floor 17

New York, NY 10017

Ph: 212-682-8383; Fx: 212-949-5206

Email: mandelker@kantorlawonline.com



THE CITY OF NEW YORK
OFFICE OF THE PRESIDENT
BOROUGH OF MANHATTAN

SCOTT M. STRINGER
BOROUGH PRESIDENT

**Testimony of Manhattan Borough President
Scott M. Stringer**

Before the Committee on Civil Rights of the New York City Council

Regarding **Int. 857**, A Local Law to amend the administrative code of the city of New York, in relation to prohibiting discrimination based on one's consumer credit history

April 11, 2013

Thank you, Chairperson Rose for holding this hearing today, Council Member Lander for sponsorship of this important legislation and all the members of this committee who have worked so hard to bring the issue of credit history discrimination to light. I urge the Council to pass Intro 857.

In October 2011, an investigation by my office showed that many job listings in New York required credit checks, despite the fact that TransUnion has found no statistical correlation between someone's credit score, job performance, and likelihood to commit fraud.

As a result, I recommended that New York City pass a local law like Intro 857 that would bar discrimination on the basis of credit history. The need for such a protection has never been greater, as more and more employers are using credit checks to screen applicants. The latest survey from the Society for Human Resource Management showed that nearly half of all employers used credit checks in the application process, up from 20 percent in the mid-1990s.

Millions of New Yorkers have had their credit scores affected by unemployment and the foreclosure crisis that followed the collapse of global financial markets in 2008. In addition to those impacted by the Great Recession, two other groups are often victimized by credit history discrimination and other forms of financial abuse—domestic violence survivors and people of color.

In October 2012, my office published a report titled, "Economic Abuse: The Untold Cost of Domestic Violence,"¹ which found that economic violence is an all-too-common component of domestic violence, including:

- Obtaining credit cards, loans, and mortgages in the victim's name and amassing debt;
- Stealing money, personal documents and belongings;

¹ <http://www.mbpo.org/uploads/EconomicAbuseUntoldCostofDV.pdf>.

- Selling survivors' personal identifying information to identity thieves; and
- Obtaining access to credit reporting information illegally

Survivors of domestic violence are often not even aware that they have been subjected to economic abuse. Rather, its devastating effects are only revealed when survivors seek to obtain a loan or a credit card and find out that their credit rating is ruined or that they may owe thousands of dollars that they neither borrowed nor spent.

Both New York State and New York City law have broad prohibitions against discrimination on the basis of domestic violence victim status. But I ask you this: what good is that prohibition if employers and others can discriminate on the basis of credit scores which are often a proxy for domestic violence victim status? It's a gaping loophole and it needs to be closed.

Discrimination on the basis of credit history not only has a disproportionate effect on domestic violence survivors, but also on people of color. As recently detailed in my office's report on Minority and Women-Owned Business Enterprises, people of color have faced a long and sordid history of discrimination in the credit market—from redlining designed to maintain residential segregation to being the targets of the most abusive lending practices in the years leading up to the most recent financial crisis.²

While the Great Recession has exacerbated the problem, the racial disparity in credit scores existed well before the most recent crisis. In 2003, in the most comprehensive study on race and credit scoring to date, the Federal Reserve found that less than a quarter of Black Americans had prime credit scores, while about 65 percent of White Americans did.³

In addition, as a recent study found, Black- and Latino-owned firms with identical firm and owner traits (other than race) and credit histories gain less access to bank credit than matched White-owned firms, making it harder to build credit.⁴

Thus, not only does credit history discrimination have the effect of discriminating against domestic violence survivors, it also has the de facto effect of racial discrimination.

Several states—Washington, Connecticut, Hawaii, Illinois, California, Maryland and Oregon—have already passed laws limiting the use of credit screening in hiring decisions. There is legislation pending in Albany that would bring the Empire State into line with these states and I urge the legislature to pass meaningful protection this year.

But New York City should not wait. Just as this Council has acted to expand our Human Rights Law beyond the scope of the State law, so must we continue to lead the way in advancing progressive policy that protects New Yorkers who are struggling to find employment.

Thank you for the opportunity to testify.

² http://www.washingtonpost.com/business/economy/for-black-americans-financial-damage-from-subprime-implosion-is-likely-to-last/2012/07/08/gJQAwNmzWW_story.html.

³ <http://web.uta.edu/economics/workshop/Credit%20Scoring%20Paper%201%20for%20UTA.pdf>.

⁴ <http://www.forbes.com/sites/kauffman/2012/07/30/minority-owned-businesses-come-up-short-in-access-to-capital-its-time-to-change-the-equation-for-mbes/>.



chhaya CDC

Sustaining Homes
Strengthening Communities

**STATEMENT OF IMTIAZ HOSSAIN and MAMTA GURUNG
ON BEHALF OF
CHHAYA COMMUNITY DEVELOPMENT CORPORATION
TO THE
NEW YORK CITY COUNCIL COMMITTEE ON CIVIL RIGHTS**

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

South Asians in New York have been an integral part of the City for decades, and are now one of its largest ethnic groups. According to the 2010 census, South Asians are one of New York City's fastest growing immigrant populations, increasing in number from 216,000 to over 300,000 since the 2000 census report, representing a growth rate of 61% in the past decade. South Asians contribute to the city's civic and public life, and thriving economy- they drive our taxis, provide us with healthy food in the middle of our busy streets, care for our children and seniors, build our homes, teach our children, and keep our city efficiently functioning as civil servants. Chhaya's original research in 2000 found that access to employment opportunities was the top concern for this community. As an emerging immigrant community, South Asians faces significant barriers through language, culture, employment and economic mobility within the larger city landscape.

As a direct response to addressing employment barriers, Chhaya launched a workforce development program last year. In our first year we have already assisted over eighty clients for employment readiness preparation, over 80 percent of who are low-income and live below the poverty line. Among the major barriers to those trying to enter the workforce and build long-term self sufficiency are English language proficiency, cultural skills, contextualized employment services and lack of formal network and understanding of employment and finances.

As a HUD counseling agency and based on our financial education and counseling, it is clear that a credit score is not an indicator of job readiness or capability. A 2012 study by Desis Rising Up and Moving (DRUM) found that South Asians were regularly underpaid, earned less than industry-wide average wages, and were mistreated by employers. Many are only beginning to assimilate and trying to stabilize their income, housing and families. Due to cultural barriers, unfamiliar banking practices, and

chhaya CDC
37-43 77th Street, 2nd Floor
Jackson Heights, NY 11372
P (718) 478-3848
F (718) 651-1004

www.chhayacdc.org



chhaya CDC

Sustaining Homes
Strengthening Communities

misinformation many immigrants shy away from banking, and building and maintaining credit. This practice of using informal budgeting practices, however, does not indicate a lack of commitment to perform well on the job. On the contrary immigrants are hard working, often times doing two or more jobs in minimum wages to support their families and besides meeting their basic demands, and should not be penalized having failed build a strong credit history.

During these challenging economic times, many hard working individuals faced job losses which led to an impact on their credit. Equating credit reports to measure job performance creates an additional barrier to accessing jobs for an already challenged immigrant population that is critical to our economy.

In these adverse circumstances, where the recession has slashed the workforce and decreased consumer spending power, businesses would be best served with new immigrant labor power utilizing untapped talent, using innovative ideas and practices.

Chhaya is strongly in support of Intro 857 to end credit check in employment, and strongly urge the NYC Council to pass the bill.

chhaya CDC
37-43 77th Street, 2nd Floor
Jackson Heights, NY 11372
P (718) 478-3848
F (718) 651-1004

www.chhayacdc.org

FOR THE RECORD



To: The Committee on Civil Rights, Chairperson Deborah L. Rose, Council Member Julissa Ferreras, Council Member Margaret S. Chin, Council Member James G. Van Bramer, Council Member Andy King
From: The Financial Clinic, by Ambika Panday, Esq.
Re: Intro 857, The Stop Credit Discrimination in Employment Act
Date: April 10, 2013

Introduction

The Financial Clinic ("the Clinic") is pleased to submit this written testimony in support of the "Stop Credit Discrimination in Employment Act," Intro 857, which, if enacted, could help improve the financial security of thousands of New York City's most vulnerable residents.

The Clinic is a nonprofit financial development firm that builds the financial security of working poor people in New York and across the country. The Clinic serves 4,500 families each year at 32 sites in New York City and Newark, NJ. Our professional Financial Coaches provide free, one-on-one coaching services to low and moderate income New Yorkers who want to work on: building assets, lowering banking costs, improving credit, reducing debt, and filing taxes. When necessary, staff attorneys work to assert clients' rights in debt collection, bankruptcy, and tax cases and under the Fair Debt Collection Practices Act, Fair Credit Reporting Act, and other federal, state, and local consumer protection laws. We are intimately familiar with the barriers that prevent low and moderate income families from building financial security. Poor credit score and negative information on a credit report are two of the top reasons why our customers cannot get ahead.

Pre Employment Credit Checks Disproportionately Impact Communities of Color, Low-Income New Yorkers, and Survivors of Domestic Violence

Given the bleak economic picture for low- and moderate-income New Yorkers (both with and without gainful employment) we find it distressing that up to 60 percent of employers rely on pre-hiring credit checks to screen job candidates. Having served more than 15,000 customers and reviewed tens of thousands of credit reports in the past seven years, we know that: (1) the majority of credit reports include errors; (2) the credit report bears no relation to an individual's ability to perform well in a job; and (3) pre-employment credit checks adversely affect low-income New Yorkers, communities of color, and already vulnerable survivors of domestic violence who are trying to rebuild their lives.

Pre-employment credit checks especially jeopardize the financial health and well-being of the 35,000 domestic violence survivors who seek assistance at the City's Family Justice Centers each year and countless other survivors who do not reach out for help.¹ Under Section 8-107.1, survivors are already protected from discrimination in the workplace based on their having experienced domestic violence. But they are screened out of jobs because of rampant financial abuse.

Research indicates that some 99 percent of survivors, the majority of whom are women, fall prey to financial abuse in their intimate relationships. Abusers use finances to control their intimate partners; they demand written accounts of funds earned and spent; they force their partners to turn over their Social Security Numbers and other personal information under the

¹ Mayor's Office to Combat Domestic Violence, *Domestic Violence Annual Fact Sheet 2012*, available online at http://www.nyc.gov/html/ocdv/downloads/pdf/2012_annual_fact_sheet.pdf.

threat of physical violence. Armed with this information, abusers open credit cards, bank accounts, and even mortgages in survivors' names, and without their permission but give the survivors no access to these assets. If a survivor flees the relationship, she generally walks away with all of the debt in her name, while the abuser absconds with the assets. And too often, she is unaware of her financial or credit situation until she gets rejected for a job or an apartment.

Consider Sandra who is a working mother from Queens, whose husband physically, emotionally, and financially abused her and her three children for years. Sandra worked in banking for more than a decade before getting laid off in 2008. She tirelessly applied for jobs at banks, but was always rejected for work because of bad credit. Sandra didn't realize until she started working with a Financial Coach in 2010 that her abusive husband had stolen her Social Security Number and other personal information to obtain a slew of credit cards and private loans in Sandra's name. Of course, her abuser didn't pay back any of the debt that he had run up in her name. Sandra is still unemployed, struggling to pay her mortgage, and working on clearing up her credit which her abuser damaged by stealing her identity. It is a true shame, and a failure of our system, that her abuser's unlawful acts have prevented Sandra from finding gainful employment. She suffers under her abuser's control still.

By enacting Intro 857, and banning pre-employment credit checks, New York City Council can help tens of thousands of survivors in New York City come out from underneath their abusers' control. Ending pre-employment credit checks would help survivors avoid being re-traumatized by their abusers' illegal and malicious actions. Instead, these survivors will get a fair shot at being seriously considered to fill position for which they are qualified.

Employers' Inability to Decipher Information on Specialty Reports, Argues in Favor of Expanding 857 at a Later Date to cover Criminal Background Checks

The passage of 857 would be a significant milestone that will go very far to protect vulnerable New Yorkers from credit discrimination. The Clinic wants to alert the Committee on Civil Rights to the highly distressing phenomenon of so-called specialty reports. These are credit reports often used by employers to conduct criminal background checks on prospective employees. Specialty reports are considered credit reports under the Fair Credit Reporting Act (FCRA), but the protections of the FCRA are insufficient to protect prospective employees from these frequently inaccurate reports. The use of pre-employment background checks is also distressing given so many employers lack the training needed to decipher the information and decode the terminology used on credit reports. Sadly, this does not stop uninformed employers from making hiring decisions based on the often inaccurate, inconclusive, and incomplete information received when running background checks on prospective employees.

Consider Valerie who was living in a New York City shelter with her two school age children. Valerie applied to work as a file clerk for a local hospital. When she went in for the interview, she learned they would conduct a drug test and background check on her. Valerie immediately told the hiring manager that she had been arrested previously due to a domestic violence incident and that she had a favorable disposition from the New York City court.

The prospective employer ran a credit check and discovered what she believed to be a conviction and correctional facility history from California on Valerie's Intellicorp credit report. The report stated that the conviction was a "possible match" for Valerie based on a first and last name match and year of birth match. The employer asked Valerie if she had ever lived in or been to California. Valerie truthfully responded no. Shortly after this brief exchange, Valerie learned that she was not selected for the job because "she did not meet the criteria for the position" due to the "possible match" of the conviction.

Valerie worked with a Clinic Staff attorney to remove the “possible match” information which was erroneous. But the damage had been done. The employer assumed “possible match” meant that Valerie had a conviction in California that she was lying about, and as a result, Valerie lost the chance to secure a job matching her professional skills and career goal.

Valerie’s experience is a clear indication of how pernicious these pre employment background checks can be. The employer believes that its interpretation of the credit report is accurate and that the prospective employee is a convicted felon, when the truth is clearly otherwise. Prospective employees are rarely given the chance to provide the employer with proof and the employer makes a swift and baseless rejection. The Clinic would very much look forward to discussing the dangers of using pre employment credit report background checks at a later date.

Conclusion

Pre-employment credit checks force job-hunters, especially survivors of domestic violence, to overcome daunting obstacles that serve no valid purpose when the deck is already stacked against them. The Financial Clinic urges City Council to pass Intro 857 to prohibit pre-employment credit checks for the purpose of making an adverse hiring decision. The livelihood of New York City’s most vulnerable workers and job seekers hangs in the balance.



**TESTIMONY BY ANDY MORRISON, STATEWIDE OUTREACH DIRECTOR, NEW
YORK PUBLIC INTEREST RESEARCH GROUP (NYPIRG)
TO THE NEW YORK CITY COUNCIL CIVIL RIGHTS COMMITTEE
ON INTRO. 857, THE STOP CREDIT DISCRIMINATION IN EMPLOYMENT ACT
APRIL 11, 2013**

Good morning and thank you for the opportunity to testify at today's hearing. My name is Andy Morrison and I am the Statewide Outreach Director at the New York Public Interest Research Group, better known as NYPIRG.

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

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

Rising Costs

In the past three decades, the cost of attaining a college degree across the country has increased more than 1,000 percent.ⁱ

Student Debt Crisis

According to the Consumer Financial Protection Bureau student debt has topped \$1 trillion. And according to Pew Social and Demographics Trends, that breaks down to an average burden of \$26,682 per household.

Job Scarcity

According to a Rutgers University study, half of all college graduates over the last five years are unemployed or underemployed.ⁱⁱ

Credit Discrimination

Up to sixty percent of employers are checking people's credit when making hiring and promotion decisionsⁱⁱⁱ—even though there is no credible evidence linking credit history with the ability to perform well at work.

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

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

We call on the NYC Council to pass Intro. 857, and ensure that all New Yorkers have fair access to employment.



ENDNOTES:

1. Bloomberg.com, "Cost of College Degree in U.S. Soars 12 Fold: Chart of the Day," Michelle Jamrisko & Ilan Kolet, August, 15 2012, <http://www.bloomberg.com/news/2012-08-15/cost-of-college-degree-in-u-s-soars-12-fold-chart-of-the-day.html> (8 January 2013).
2. Stone, Charlie, Carl Van Horn & Cliff Zukin. Chasing the American Dream: Recent College Graduates and the Great Recession. Rutgers State University. May 2012.
3. Society of Human Resources Management, Background Checking: Conducting Credit Background Checks, January 22, 2010, <http://www.shrm.org/Research/SurveyFindings/Articles/Pages/BackgroundChecking.aspx>

THE HIDDEN THREAT

IDENTITY THEFT AND SURVIVORS OF DOMESTIC VIOLENCE

I. INTRODUCTION

In 2010, the United Way of New York City launched a large-scale financial development integration initiative called Ready, Set, GreenLight. The Financial Clinic (the “Clinic”) has been a proud partner to help achieve GreenLight’s dual mission to (a) train domestic violence advocates at all of levels of the New York City Human Resource Administration’s domestic violence shelter system in financial development work and (b) provide consumer law legal services to domestic violence survivors (“survivors”) associated with shelters. To date, the initiative has:

- ▶ Trained 204 advocates at 28 organizations from 58 different shelter programs;
- ▶ Helped survivors eliminate more than \$90,000 of debt; and
- ▶ Provided “Know Your Rights” workshops to more than 150 survivors.

In the project’s second year, the Clinic continues to provide introductory and advanced trainings to domestic violence shelter case workers, while also offering high-quality, free legal services to survivors. Capitalizing on the lessons learned from two years of training and direct advocacy, the Clinic has created a Field Report series to provide advocates with concrete strategies and tools to overcome the many barriers that survivors encounter on their path to financial security. This Field Report also sets forth several policy recommendations that local, state, and national decision makers should adopt to better protect the rights and the financial security of survivors.

II. IDENTITY THEFT AMONG SURVIVORS OF DOMESTIC VIOLENCE

A. A UNIQUELY VULNERABLE GROUP

Identity theft is an insidious and serious crime. Incidents of identity theft have ballooned due to accessibility of information through the Internet. Survivors are particularly vulnerable to identity theft at the hands of their abusers. In addition to inflicting physical and emotional violence, many abusers also engage in financial abuse in order to maintain control in their relationship. The most common forms of financial abuse involve:

- ▶ restricting access to bank accounts and other financial assets,
- ▶ demanding details of income earned and spent, and
- ▶ using survivors personal information to obtain credit or secure employment.

The numbers are significant: 14 percent of survivors are victims of identity theft and an astonishing 24 percent indicate that they know the thief as a family member, friend, or spouse/ex-spouse.¹

"The abuser keeps the assets in his name and the debts in the name of the survivor."
– ADRIANA, DOMESTIC VIOLENCE ADVOCATE (NY, NY)

B. DEVASTATING CONSEQUENCES

The costs of identity theft to the survivor are real. The average identity theft victim spends 68 hours and \$527 trying to remedy the financial mess that the crime creates.² For victims who have had new financial accounts opened in their name, it takes an average of \$2,104 and 141 hours to remedy the situation.³ Never mind the opportunity costs from prospective employers and landlords screening survivors' job and apartment applications through credit reports.

SURVIVOR SPOTLIGHT: Sandra has three children and receives public assistance. Her abuser recently went to a major commercial bank and opened up an account for their two youngest children using Sandra's name and social security number. The abuser deposited enough funds into the account to force Public Assistance to close Sandra's benefits case, and then withdrew all of the funds leaving a negative balance in the account. Because the account has a negative balance, Sandra cannot close it. She is working with an advocate to rectify this mess, but in the meantime, Sandra has no income or resources to support her family.

Identity theft prevents a survivor from opening or closing a bank account, obtaining public assistance, and clearing up credit—all threatening to re-traumatize and re-victimize those who have survived physical, emotional, and financial abuse. The consequences of identity theft create entrenched financial insecurity that may force survivors to stay in dangerous relationships or prompt them to return to abusers for financial reasons. This Field Report will highlight some of the most common identity theft issues that we see in credit, debt, banking, and taxes. Additionally, it will present concrete remedies and policy recommendations to change current regulations and practices.

III. UNTANGLING A SURVIVOR'S FINANCIAL LANDSCAPE: IMPROVING CREDIT AND REDUCING OR ELIMINATING DEBT FOR IDENTITY THEFT VICTIMS

Establishing financial security is critical for anyone who is fleeing an abuser or contemplating leaving an abusive relationship. Yet, even establishing the financial landscape of a survivor can be difficult. Many abusers use control over household finances as a further means of intimidation. The abuse is both overt and hidden. In the most extreme situations, abusers force victims into depositing wages, refunds and other income into bank accounts that they cannot access. They create a cloud of such intimidation and physical repercussions that victims feel as if they have no choice but to sign whatever is placed in front of them.

The abuser does not need to rely on physical intimidation alone; after all, an abuser is uniquely positioned to know, watch, and wreck his partner's finances. He knows when his partner gets a new job, files her taxes, gets a bonus or pay raise. He has easy access to financial documents, bank account numbers, balances and basic personal identification like passport and social security numbers. With this reach, it is not unusual for an abuser to use a survivor's name and social security number to obtain a credit card, a car loan, or even a mortgage. A skilled identity thief runs up large debts using

fraudulently obtained credit, but then skips out on the bill. Abusers may also hide mail from survivors, thus shielding them from financial statements, bills, and legal notices. When the bill does arrive, it is the survivor, the identity theft victim, who is held responsible for paying back the debt.

A. DISPELLING MYTHS

One of the most valuable first steps in building a survivor's financial security and confidence is helping her understand her rights. We find that survivors often make financial decisions based on false assumptions and misinformation, especially regarding liabilities that the abuser incurred through identity theft. The worst abusers can achieve a dubious hat trick: open up credit cards through identity theft, rack up debts on these fraudulent accounts, and then convince survivors that they are legally responsible for paying back these same debts. The most common false assumption is that an identity theft victim is responsible for repaying the debts when the identity thief is her spouse. Not true! No identity theft victim is legally responsible for repaying the debts incurred by someone who used her personal information without her explicit permission. This stands true regardless of whether the identity theft victim is married to the thief, or doesn't even know the thief.

Many survivors also mistakenly believe that they are accomplices to their abusers' crimes because they have not been able to prevent them from opening up fraudulent accounts, or have not reported their unconfirmed suspicions of identity theft to the police. This is also untrue.

Best Practice: Never assume that survivors know their rights. Advocates should insure survivors understand that they are victims of identity theft and that there are a number of options to undo the damages to their finances.

B. COMBATING IDENTITY THEFT ON A CREDIT REPORT

The most important step in uncovering identity theft is reviewing one's credit report. By asking survivors if they have recently reviewed their credit report, domestic violence service providers and advocates may help survivors start to take control of their financial lives.

- ▶ If the survivor has reviewed her report, the advocate may consider explaining that accounts which the survivor did not willingly open are not her responsibility and should be disputed with the creditor.
- ▶ If the survivor has not recently reviewed her credit report (or if she has never seen it), the advocate should help the survivor **pull all three credit reports from annualcreditreport.com**.⁴

Best Practice: While accessing an online credit report, the survivor should be mindful of her safety. A smart identity thief will also have access to her credit report. If the thief is also her abuser, and if the survivor is living in a confidential location, the survivor should be careful about revealing her current address or location.

- ▶ Once the survivor has a credit report in hand, she should **review it carefully and mark off any accounts that she does not recognize as her own**. Accounts that an abuser forced her to open should also be highlighted.
- ▶ Once these items are identified, the survivor should **contact the creditor for each account** and explain that she is the victim of identity theft. Most creditors will ask a victim of identity theft to do one of the following:
 - Send the identity theft victim an affidavit to complete and return. The affidavit generally asks the identity theft victim to describe the circumstances that led to the identity theft and to assert that she is telling the truth; or
 - Ask identity theft victims to complete and submit the Federal Trade Commission's Identity Theft Affidavit form, which is accessible online <http://www.ftc.gov/bcp/edu/resources/forms/affidavit.pdf>
- ▶ **Obtain a police report** to document the identity theft.
- ▶ After the identity theft affidavit has been completed and sent to the creditor, a creditor will generally relieve an identity theft victim of any responsibility of paying debts associated with fraudulent accounts. Further, **fraudulent accounts should be removed from a credit report altogether**.

Best Practice: If the creditor does not remove fraudulent information automatically, survivors and their advocates should write a credit report dispute letter to the consumer reporting agency demanding that the account(s) be removed. The attached Credit Report Dispute Letter is a helpful guide for writing effective letters. After submitting the dispute letters, advocates should evaluate whether it would be necessary to put a fraud alert or a security freeze on the survivors' credit reports.

Policy Recommendation: Filing a police report to document the identity theft is a daunting task. In big cities, such as New York, where police forces face more urgent crimes, it may be next to impossible.⁵ Because of the bureaucratic obstacles preventing identity theft victims from filing these reports, the Clinic recommends that a rule or law be passed eliminating creditors' power to require identity theft victims to file police reports in order to have fraudulent accounts removed from a report.

IV. SAFE BANKING FOR VICTIMS OF IDENTITY THEFT

Establishing and maintaining a secure bank account for survivors is another critical piece of becoming financially secure.

A. SECURING EXISTING BANK ACCOUNTS

Survivors should immediately change ATM or online passwords to any existing bank accounts even if they are the only account holders. Even better, a survivor may consider opening up a brand new account. There are some excellent free checking accounts available online and area banks.

Best Practice: Encourage survivors to open lifeline accounts. Lifeline accounts, which can be opened with less than \$25 and have very low maintenance fees, must be offered by all banks and financial institutions in New York.

B. CLOSING DOWN JOINT ACCOUNTS

Some survivors and identity theft victims may have joint bank accounts with their abusers. This is extremely dangerous as it gives the abuser unfettered and authorized access to the survivor's finances and whereabouts. Authorized access to this sensitive information makes it easier for an abuser to commit identity theft and harder for the identity theft victim to prove the crime. Therefore, survivors holding joint accounts with their abusers should withdraw all monies from the account and close the account immediately.

Policy Recommendation: Some banks require both account holders to give permission to close a joint account. In order to eliminate the effects of identity theft and begin building financial security, survivors of domestic violence must be able to unilaterally withdraw funds from a joint account and close it immediately. The Clinic recommends that financial institutions and their governing agencies establish rules permitting survivors to take this important step without securing the permission of their abuser.

As with all other aspects of working with survivors, safety should be of paramount concern. Withdrawing funds from a joint bank account could anger an abuser and put the survivor in danger. If it is too dangerous for the survivor to withdraw money and close the account, she should be advised to open an account for herself at a separate financial institution immediately.

V. TAX FRAUD IS A FORM OF IDENTITY THEFT

Tax Fraud occurs when a filer lies on a tax return in order to obtain a bigger refund or reduce their tax bill. Using someone else's personal information, or claiming another person's dependents are also forms of tax fraud.

Tax fraud is common in abusive relationships where one partner has control over financial information and income records. Tax fraud is also a form of identity theft. Advocates and service providers should ask survivors whether they have previously filed their taxes and whether they prepared the taxes themselves. Advocates should also inquire about whether survivors have received notices from the Internal Revenue Service (IRS) or their state tax department. A notice could signal that the survivor's return has been flagged for an audit, or reveal that the survivor has a tax debt.

A. UNCOVERING IDENTITY THEFT DURING TAX FILING

Since survivors have such a high risk of having themselves or their dependents claimed on their abuser's tax returns, advocates should encourage survivors to prepare for this issue. Survivors should attempt to obtain copies of social security cards, birth certificates, school records and medical records that confirm their identities, the relationships between the household members and that the survivor is the head of the household. In the event of an audit or request for more information, these records will help survivors verify who they are and help them exercise their rights to claim their children on their tax returns.

Best Practice: Help survivors protect their identity at tax time by obtaining a special pin number from the IRS for identity theft victims.

B. INNOCENT SPOUSE RELIEF

An individual whose federal tax debt was incurred without her knowledge may try to eliminate the tax liability with the IRS by applying for *innocent spouse relief*. In order to secure this relief, a filer must show that when she signed a joint tax return, she was unaware or had no reason to know that an understated tax existed and that it would be inequitable to hold her liable for that unpaid tax. Innocent Spouse Relief is a powerful remedy that the IRS invokes sparingly.

It is difficult for any filer, especially survivors of domestic violence, to prove the elements required for innocent spouse relief. The most challenging part is proving that the filer had “no knowledge or reason to know” that an understated tax existed. How does a filer prove a negative? The United States Treasury, which oversees the IRS, does provide some relief for survivors in obtaining innocent spouse relief. If a survivor can prove that she was the victim of abuser before she signed a joint tax return, she will not have to prove that she had no knowledge of an understated tax. Although most states have adopted innocent spouse relief provisions, they have not adopted the Treasury’s exception to the knowledge requirement for survivors of domestic violence.

Policy Recommendation: State tax departments should adopt domestic violence-specific exceptions to the knowledge requirement in innocent spouse relief rules. Without this exception, a survivor may be held responsible for a tax debt that she did not knowingly incur and for which she bears no personal or moral responsibility.

CLIENT SUCCESS STORY: Katherine had endured decades of physical and emotional abuse at the hands of her husband. She had been working in the banking industry for 15 years before getting laid off in 2010. Katherine began applying for new banking jobs and kept getting rejected. With the help of her domestic violence shelter advocate, Katherine pulled her credit report for the first time. On it, she saw two credit card accounts that she did not recognize. Katherine soon learned that that her abuser-husband used her personal information to obtain the two credit cards in her name and without her knowledge. Katherine's abuser stopped making payments on the card and they appeared as negative accounts. Prospective employers reviewed Katherine's credit report after she submitted her job applications and immediately rejected her for banking jobs because of the negative accounts. Katherine and her advocate were able to have the negative accounts removed from her credit report, which improved her credit profile substantially. Katherine recently obtained an entry level position as a financial services associate at a major commercial bank.

VI. CONCLUSION

Survivors of domestic violence are at increased risk of becoming victims of identity theft. Because the crime of identity theft is so pervasive, and because it can prevent a survivor from obtaining safe housing, securing gainful employment, and establishing financial security, survivors should begin addressing the harmful effects of identity theft as soon as it is detected. Advocates at domestic violence service organizations may help survivors take concrete steps to redress identity theft, while making the survivor more financially secure along the way. The Clinic encourages all domestic violence service providers to help survivors pull their credit reports, dispute negative or incorrect information, and file police reports to document the identity theft. The United Way of New York City, the Clinic, and the domestic violence service community calls upon decision-makers in all levels of government to participate in these efforts, by making it easier for survivors to establish safe bank accounts and to qualify for innocent spouse relief for tax debt. The overall experience will not only empower survivors and arm them with the tools to protect their credit and finances in the future, it will also help them break the brutal cycle of violence and financial control once and for all.

NOTES

¹ *Identity Theft: The Aftermath 2009*, Identity Theft Resource Center, 2010, p. 3, available at http://www.idtheftcenter.org/artman2/uploads/1/Aftermath_2009_20100520.pdf

² Consumer Sentinel Network Data Book for January–December 2010, Federal Trade Commission, March 2011, p. 14, available at <http://www.ftc.gov/sentinel/reports/sentinel-annual-reports/sentinel-cy2010.pdf>.

³ *Ibid.*

⁴ If the survivor cannot pull a credit report from annualcreditreport.com, she should mail away for hard copy reports. For more information on how to retrieve credit reports by mail, visit www.thefinancialclinic.org.

⁵ Al Baker and Joseph Goldstein, "A Police Tactic: Keeping Crime Reports Off the Books," *New York Times*, Dec. 30, 2011, available online at: <http://www.nytimes.com/2011/12/31/nyregion/nypd-leaves-offenses-unrecorded-to-keep-crime-rates-down.html?scp=1&sq=Police%20Tactic:%20Keeping%20Crime%20Reports%20Off%20the%20Books&st=cse> December 30, 2011

DC 37 MUNICIPAL EMPLOYEES LEGAL SERVICES

125 Barclay Street, New York, NY 10007-2179

Telephone: (212) 815-1818 Fax: (212) 815-1343

Telephone: (646) 425-6702 • Email: rmartin@dc37.net



JOAN L. BERANBAUM
Director and Chief Counsel

ROBERT A. MARTIN
Associate Director

Testimony of Robert A. Martin Associate Director, District Council 37 Municipal Employees Legal Services

On Int. 857 - 2012
New York City Council
Committee on Civil Rights
April 11, 2013

Good morning. I am Associate Director of District Council 37 Municipal Employees Legal Services, or MELS. I am testifying today on behalf of DC 37 in support of legislation to bring fairness to and prevent discrimination against job seekers who may lose out on employment for which they are qualified because of a blip on their credit report.

MELS is a prepaid legal plan providing services to some 120,00 city workers and 35,000 retired city employees and their dependents. Our lawyers give representation in a range of legal matters, including consumer credit and debt collection cases.

In this day and age, and for better or worse, we all know intuitively the importance of one's credit report. The matter before you today – whether employers should be allowed to use credit reports as a basis for employment decisions – is an issue that cuts across the most vital aspects of working peoples' lives. This issue is an intersection of whether persons can live fairly and freely in the worlds of consumer credit and employment.

The supporters of Intro 857 use the term “Catch 22” to describe the predicament in which job seekers are placed when employers use credit reports to make employment-related decisions. And that's just what it is: you have negative information on your credit report because you have been out of work, and now you can't get a job due to your imperfect credit report.

I bring to your attention the following:

- An increasing number of employers – half or more – now use credit reports when hiring.
- But credit history does not predict job performance. There is no evidence or research showing a correlation between an employee's failure to pay a credit card bill (or

a student loan or medical bill) and his or her job performance, including the likelihood of committing fraud. If you pick it apart, the notion that Mary or John Doe who has an imperfect credit report will be more likely to steal, is a knee-jerk and unsupportable proposition. In fact, employers are being sold a bill of goods when they are made to believe that credit reports will make their hiring decisions easier. Perhaps some employers would say, “we don’t care, because credit reports will let us sift through the volume of applications we receive,” but should they be allowed to do that? The answer is no.

- Credit reports are routinely inaccurate. That is what all the studies show, and most of us have likely experienced inaccurate information on our own credit report.

- Employer credit checks are discriminatory. When employers run credit checks on job applicants, it has a discriminatory effect on lower income workers, women and people of color, and on our neighborhoods. The Equal Employment Opportunity Commission has warned of the discriminatory impact of credit reports, and all the civil rights organizations across the country who have looked at employer credit checks have said the same thing.

- Employer credit checks do benefit the credit reporting industry. In fact, the credit reporting industry is the main or only beneficiary of this practice. The industry has pushed and marketed employer credit checks, because it is a money maker for the industry. It is another extension of credit reporting beyond the purpose for which it was originally intended – with significant and even devastating consequences for ordinary people and workers.

As with any change in the law to bring fairness and prevent discrimination, there may be doubters and skeptics about this bill. We could go through the list of important civil rights legislation over the decades and see that this was the case for those steps also. All those acts, at the national, state and local level, have stood the test of time and are now part of the law of the land.

Preventing harm in the workplace by banning the use of unfair, discriminatory, unreliable, and irrelevant credit exports is an important step that the times now demand. New York City has always been a leader in ensuring that its citizens have the benefit of laws that require fairness and prevent discrimination. We call on the City Council, the Speaker, and the Mayor to pass Intro 857.

Thank you for the opportunity to testify today.

FOR THE RECORD

**TESTIMONY BY LINCOLN RESTLER, MANAGING DIRECTOR OF
THE NEW YORK CITY EMPLOYMENT AND TRAINING COALITION**

**TO THE NEW YORK CITY COUNCIL CIVIL RIGHTS COMMITTEE ON
INTRO. 857, THE STOP CREDIT DISCRIMINATION IN EMPLOYMENT ACT**

APRIL 11, 2013

Good morning and thank you for the opportunity to testify at today's hearing. My name is Lincoln Restler and I am the Managing Director of the New York City Employment and Training Coalition (NYCETC). NYCETC is an association of 200 community based organizations, educational institutions and union training funds that provide job training and employment services to approximately 750,000 New Yorkers annually - including welfare recipients, unemployed workers, low-wage workers, at-risk youth, formerly incarcerated individuals, immigrants and the mentally and physically disabled, and everyone else under the sun. Our mission is to ensure every New Yorker has access to the skills, training, and education needed to thrive in the local economy and every business is able to attract and maintain a highly skilled workforce. Toward that end, we provide technical assistance services to foster a dynamic and competent community of employment and training providers, and advocate for workforce development policies that expand opportunity for training and education.

As providers of training and employment services that work to connect New Yorkers to quality employment, our members are on the frontlines of the unemployment crisis that continues to stifle our communities and economy. In this capacity, we have witnessed dozens of cases in which jobseekers have reported rejections from potential employers that we understand to be based on information found in their credit reports. Research has shown that this is a national problem, with a recent Demos survey finding that 1 in 10 respondents who are unemployed were informed that they would not be hired for a job because of information found in their credit report¹. We believe this is not only a discriminatory practice, but also one that severely undermines the growth of our city's economy.

The use of credit checks during the hiring process can extend the length of time people are unemployed. The use of credit reports is yet another example of discrimination faced by unemployed jobseekers, who are more likely to struggle with paying their bills. Prior to the recession 15 percent of the 170 million consumers with active credit accounts, or 25.5 million people, had poor credit. By April 2010, one-quarter of U.S. consumers – nearly 43.4 million people – had poor credit. The discriminatory nature of credit checks is also deeply skewed toward minorities, especially African-Americans and Hispanics, who have been found to have considerably lower credit scores than non-Hispanic whites. These racial disparities have been exacerbated by many factors that

¹ <http://www.demos.org/publication/employment-credit-checks-case-requiring-employers-use-more-accurate-and-fair-assessments>

are outside each individual's control, such as recent predatory lending schemes that target communities of color.

Some of the above-mentioned problems arise out of the fact that a credit score only provides surface level information, and does not include contextual data on the wide range of factors that generated the credit score. Low credit scores are often the result of uncontrollable events [ex. emergency medical expenses, identity theft, large student loans] that are no fault of an individual. However, employers are unable to see such problems and view the existence of a low credit score as lack of responsibility, financial malfeasance, and other individual characteristics. Moreover, credit reports are riddled with inaccurate information, as several studies since the early 1990s have documented poor credit bureau practices that lead to serious mistakes on credit reports. According to one 2004 report by the National Association of State PIRGs, approximately 25 percent of consumer credit reports contain serious errors that could result in the denial of credit, such as false delinquencies or accounts that did not belong to the consumer². Along with being inaccurate, credit reports are also logistically useless in predicting an employee's behavior as no evidence has been found linking credit problems to a greater propensity to commit financial crimes on the job or underperform in job functions. This contradicts employers' assertions that that the prime reason they use credit checks is a concern that employees with credit problems are more likely to embezzle funds or engage in criminal activity.

Despite these glaring errors and lack of research demonstrating their usefulness, credit reporting companies – especially the three major credit bureaus Experian, Equifax, and Trans Union – continue to aggressively market the use of credit reports and lobby against bills similar to Intro. 857. These efforts are undertaken not because they assist employers in finding the best-qualified employees, but rather because they provide large and easy profits based on a deeply entrenched misconception about the correlation between credit scores and a jobseeker's abilities.

As workforce providers who work to help jobseekers get past multiple barriers to employment in practically every neighborhood in this city, we call on the NYC Council to pass Intro. 857 and remove the barrier of inaccurate and discriminatory credit reports used in the hiring processes. All New Yorkers deserve fair access to employment opportunities, and the passage of this legislation would be a real step forward in creating a stronger and more vibrant economy for our city.

Thank you for this opportunity,

Lincoln Restler,

Managing Director
New York City Employment and Training Coalition

² <http://georgiapirg.org/sites/pirg/files/reports/MistakesDoHappen2004-1.pdf>

**TESTIMONY BY EMMETT PINKSTON, SPECIALIST,
ARMY NATIONAL GUARD OF THE UNITED STATES, RETIRED,
TO THE NEW YORK CITY COUNCIL CIVIL RIGHTS COMMITTEE
ON INTRO. 857, THE STOP CREDIT DISCRIMINATION IN EMPLOYMENT ACT**

APRIL 11, 2013

Good morning and thank you for the opportunity to testify at today's hearing. My name is Emmett Pinkston and I am a person who has been affected by an erroneous credit report entry. I am a 30 year military veteran and have a U.S. Government TS/SCI security clearance.

After returning to the U.S. from a two-year deployment in Iraq, I applied for a job with the Transportation Security Administration (TSA). I passed all the tests and the physical required for the job, but was rejected due to an erroneous credit report entry. It took me several months to determine that the debt on my credit report was bogus. By the time I got the debt removed from my credit report, the TSA job was taken.

Even if I did owe the bogus debt, I don't see how it disqualifies me from screening passengers. A credit report does not prove what a person's character is or is not. Introduction 857, the "Stop Credit Discrimination in Employment Act" will help me as well as others obtain employment. Thank you again for the opportunity to testify today.



CAMBA
Legal Services

FOR THE RECORD

TESTIMONY

April 11, 2013

BILL NUMBER: Int. 857-2012

SPONSORS: Brad S. Lander, Daniel Dromm , Leroy G. Comrie, Jr., Charles Barron, Gale A. Brewer, Margaret S. Chin, Inez E. Dickens, Mathieu Eugene, Julissa Ferreras, Daniel R. Garodnick, Sara M. Gonzalez, Robert Jackson, Letitia James, G. Oliver Koppell, Melissa Mark-Viverito, Rosie Mendez, Annabel Palma, Domenic M. Recchia, Jr., Diana Reyna, Deborah L. Rose, Albert Vann, Jumaane D. Williams, Ruben Wills, Stephen T. Levin, Maria Del Carmen Arroyo, Fernando Cabrera , Ydanis A. Rodriguez, Michael C. Nelson, Helen D. Foster, James G. Van Bramer, Vincent J. Gentile, Jessica S. Lappin, Karen Koslowitz, Andy King, Eric A. Ulrich

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

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

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

CAMBA's Consumer Law Project arose out of its membership in the Working Poor Coalition, a five-member group that includes the Urban Justice Center, Goddard Riverside Community Center, Housing Conservation



Coordinators, and Northern Manhattan Improvement Corporation. The Consumer Law Project works together with these organizations to assist working poor New Yorkers with a broad spectrum of consumer law issues including: assistance with student loan problems, inaccurate credit reporting issues, and debt collection abuse.

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

It has become increasingly common for employers to use credit checks and credit worthiness as a hiring factor. A recent survey of human resources professionals notes that almost half of employers require a credit check when



CAMBA

Legal Services

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

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

As discussed above, employment credit checks have an especially devastating effect on survivors of domestic violence. Domestic violence survivors frequently have negative times on their credit reports. Often, this is due to economic abuse where a partner has stolen the survivor's identity,

¹ SHRM Survey Findings: Background Checking – The Use of Credit Background Checks in Hiring Decisions,” Society of Human Resources Management July 19, 2012.

² Society for Industrial and Organizational Psychology, Credit History Not a Good Predictor of Job Performance or Turnover. (<http://www.newswise.com/articles/view/502792>).



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

This cycle is, simply put, horrendous, and artificial barriers that prevent survivors from getting a job should not exist. Int. 857 would remove this barrier. If this legislation is passed domestic violence survivors will never again need to worry if prior instances of economic abuse will prevent them from getting a job, or force them back into an abusive relationship. This legislation is, simply, a common sense solution to a devastating problem,



CAMBA

Legal Services

and there is no compelling reason why the use of credit checks for employment purposes should continue.

In closing I would again like to again thank the New York City Council for the opportunity to speak hear today and offer my support for the passage of Int. 857.

FOR THE RECORD



RESTAURANT OPPORTUNITIES CENTER OF NEW YORK
275 SEVENTH AVE., 17th FLOOR
NEW YORK, N.Y. 10001
TEL: (212) 343-1771
FAX: (212) 343-7217

Testimony of Rahul Saksena, Restaurant Opportunities Center of New York
before the New York City Council Civil Rights Committee
regarding Intro. No. 857, the Stop Credit Discrimination in Employment Act

April 11, 2013

My name is Rahul Saksena and I am the Policy Director for the Restaurant Opportunities Center of New York (ROC-NY). ROC-NY organizes restaurant workers citywide for improved working conditions in the restaurant industry. We are a membership based organization of restaurant workers, with over 5,500 members who reflect the diversity of New York City restaurants.

ROC-NY strongly supports Intro. 857, the Stop Credit Discrimination in Employment Act.

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

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

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

With an unemployment rate near 10% in New York City, the last thing out-of-work families need is another barrier to jobs. The unemployment rate is even higher for communities of color, in part due to hiring policies that have a racially discriminatory effect. Employment credit checks are an example of one of those policies, and the practice must be stopped.

We strongly support Intro. 857 and we urge the New York City Council to pass it immediately.

Onieka O’Kieffe Statement before the Civil Rights Committee, 4/11/2013

My name is Onieka, and I’m a member of the Retail Action Project, which 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’s a lot going on, like these credit checks – that just isn’t right. I’ve been working in retail for four years in New York City, and I am a manager at my current job – and have been a manager in my past two positions as well. I’m responsible for large amounts of money, counting out multiple tills, and making daily cash deposits, and overseeing sales associates.

Earlier this year, I applied for a full-time managerial position at a large department store, for which I was more than qualified. In the interview, the store supervisor told me that there would be a credit check, because I would be responsible for counting tills and the safe daily. It felt insulting that he was implying that I might be a thief if my credit was bad. The thing is, a few years ago, I went to a private college in upstate New York. I was really excited to delve into new ideas, so my mom and I applied for loans to make this possible for me. I stayed there for a year, and when I realized that I was incurring a lot of debt, I moved back home and transferred to a city school. Eventually, my combined tuition and student loan bills grew so much, that I haven’t been able to continue school at all.

When I didn’t hear back from the store, so I called to ask about the position. They said that they went with another applicant, but that there was another position available. They suggested I apply for a part time non-managerial position, and it paid much less. This felt like a slap in the face, because I was more than qualified for the position.

My managers have always trusted me, and I have never been fired from a job. Having a low credit score has nothing to do with how I do my job. In fact, I’m proud that I want to continue my education, and that I want to get out of debt. The retail industry employs over 1 in 10 workers in New York City and is one of the few industries that is hiring across the state. Applications require a credit report authorization at huge corporate retail employers like: Lane Bryant, Vitamin Shoppe, Finish Line & The GAP. A low credit score should not bar someone from a job that would help them get out of debt. To put it into words that government would understand: this practice prevents potentially qualified workers, such as myself, from much needed jobs, and slows economic and job growth at a time of high unemployment.

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Andrew Morrison

Address: _____

I represent: NYPIRG

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 857 Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Monica Garcia on behalf of Lincoln Restler

Address: _____

I represent: Lincoln Restler

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Bill Heinzen

Address: Deputy Counsel to the Mayor

I represent: _____

Address: _____

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

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 857 Res. No. _____

in favor in opposition

Date: _____

Name: LEAH GONZALEZ (PLEASE PRINT)

Address: 30 E 29th St.

I represent: RWDSU

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 857 Res. No. _____

in favor in opposition

Date: 4/11/13

Name: Amy Traub (PLEASE PRINT)

Address: 237 W 109th St #1D NY, NY 10025

I represent: Demos

Address: 220 Fifth Avenue, 5th Fl NY NY 10001

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 857 Res. No. _____

in favor in opposition

Date: April 11, 2013

Name: Robert M. ... (PLEASE PRINT)

Address: 74 ... Suite 1400 NY NY 10006

I represent: Center for New York City Neighborhoods

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 854 Res. No. _____

in favor in opposition

Date: 4/11/2013

(PLEASE PRINT)

Name: Robert Martin

Address: 125 Barclay Street

I represent: District Council 37 Municipal Employees Legal Services

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 857 Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Lincoln Kestler

Address: 121 6th Avenue

I represent: NYC Employment & Training Coalition

Address: 121 6th Avenue

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Bill Heivsen

Address: Deputy Counsel to the Mayor

I represent: _____

Address: _____

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

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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

Date: _____

(PLEASE PRINT)

Name: MITCHEL WU

Address: 50 Broad St

I represent: Coalition for Asian American Children and Families

Address: 50 Broad St

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 857 Res. No. _____
 in favor in opposition

Date: 4/11/13

(PLEASE PRINT)

Name: Joby Thoyalil

Address: 1296 Pacific St. Brooklyn, NY 11216

I represent: NEDAP/Chhaya CDC

Address: 176 Grand St. NYC 10013

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 857 Res. No. _____
 in favor in opposition

Date: 4/11/13

(PLEASE PRINT)

Name: Sarah Alba

Address: 1 W 125th St, Fl. 2, NY, NY

I represent: Legal Services NYC

Address: 40 Worth St, NY, NY

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

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 857 Res. No. _____

in favor in opposition

Date: 4.11.13

(PLEASE PRINT)

Name: Ambikai Prasadu

Address: 21 E 2nd St #33 NY 10003

I represent: The Financial Clinic

Address: 115 W. 30th St, # 700 NY NY 10001

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 857 Res. No. _____

in favor in opposition

Date: 4/11/13

(PLEASE PRINT)

Name: Jonathan Fox

Address: 1701 Albemarle Rd, Apt D9, Brooklyn NY 11226

I represent: The Financial Clinic

Address: 115 W. 30th, suite 700, New York 10001

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 857 Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: LeNika Moore

Address: 99 Hudson St, 10th Fl

I represent: NAAEP Legal Defense Fund

Address: same as above

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

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 857 Res. No. _____

in favor in opposition

Date: 4/11/13

(PLEASE PRINT)

Name: Rob Lederer

Address: 194 Adelphi St Brooklyn 11205

I represent: ASBC

Address: NYC/DC

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 857 Res. No. _____

in favor in opposition

Date: 4/11/13

(PLEASE PRINT)

Name: DEYANIRA DEL RIO

Address: 176 Grand St. (NEDAP) #300, NY

I represent: NEDAP

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 857 Res. No. _____

in favor in opposition

Date: 4/11/13

(PLEASE PRINT)

Name: Linda Levy (Sarah Ludwig will read testimony)

Address: 57 Ave B, NYC 10009

I represent: Lower East Side People's Federal

Address: W. 4th Union

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

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 857 Res. No. _____

in favor in opposition

Date: 04/11/13

(PLEASE PRINT)

Name: Omeka Okoffe

Address: PO Box 821956 NY NY 10637

I represent: Retail Action Project

Address: 140 W 31st St. NY NY 10001

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 857 Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Alfred Carpenter

Address: 8732 Bay Park Way

I represent: Self

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 857 Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Managua Segura

Address: MNY Legal Services, 299 Broadway

I represent: UPFLAW NY NY 10007

Address: 1343 15th St. Brooklyn, NY 11215

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

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 857 Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: EMMETT PINKSTON

Address: 262 South 7th St, BKlyn, NY 11211

I represent: PERSONS AFFECTED by CREDIT REPORTS

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 857 Res. No. _____

in favor in opposition

Date: 4/11/13

(PLEASE PRINT)

Name: Andrew L. Kalloch

Address: 1 Centre St, 19th Fl. NY NY 10007

I represent: Manhattan Borough President Scott Stringer

Address: 11

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. 0857

in favor in opposition

Date: 4/11/2013

(PLEASE PRINT)

Name: Eric J. Ellman

Address: _____

I represent: Consumer Data Industry Assn.

Address: 1090 Vermont Ave, NW, Suite 200, Wash DC

20005

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

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 857 Res. No. _____
 in favor in opposition CS 7

Date: 4/11/13

(PLEASE PRINT)

Name: Carrie Anderer (on behalf of Lawrence Mandelker)

Address: 51 East 42nd St 17th Fl New York, NY 10017

I represent: New York Metropolitan Retail Association

Address: 11 Penn Plaza New York, NY 10001-2180

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

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 857 Res. No. _____
 in favor in opposition

Date: April 11th/2013

(PLEASE PRINT)

Name: Katie Penner

Address: 123 314 E 19th St. NY, NY

I represent: Urban Justice Center

Address: 123 William St. 16th Fl NY, NY

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