

Testimony by ReNika C. Moore  
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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.<sup>1</sup> 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

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<sup>1</sup> 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.<sup>2</sup>

**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.<sup>3</sup> 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."<sup>4</sup> 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

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<sup>2</sup> 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).

<sup>3</sup> 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>.

<sup>4</sup> *Id.* at 14.

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

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

Researchers have found that negative credit history is most often the result of hardships faced by the consumer rather than overconsumption or irresponsible spending habits. Specifically, negative credit history often indicates that a consumer has faced high medical cost, unemployment, and divorce<sup>6</sup> -- hardships that African Americans are more likely to face than whites.<sup>7</sup> 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.<sup>8</sup> 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

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<sup>5</sup> 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](http://www.demos.org/sites/default/files/publications/whopays_Demos.pdf).

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

<sup>7</sup> 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)).

<sup>8</sup> 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](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.<sup>9</sup> 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%.<sup>10</sup> At 14% the unemployment rate for all African Americans in New York City was more than twice the rate of white unemployment.<sup>11</sup> 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

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<sup>9</sup> 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.

<sup>10</sup> 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>.

<sup>11</sup> <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.