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NEW YORK CITY COMMISSION ON HUMAN RIGHTS  
PUBLIC HEARING  
Thursday, August 17, 2017.  
11:08 A.M.  
22 Reade Street, 2nd Floor  
New York, New York 10007

DANA SUSSMAN, ESQ.,  
Deputy Commissioner For Policy and  
Intergovernmental Affairs  
LAUREN ELFANT, ESQ., Chief of Staff  
ZOEY S. CHENITZ, ESQ., Policy Counsel  
EDWIN TABLADA, Policy Analyst

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2

3 DEPUTY COMMISSIONER SUSSMAN: I  
4 am Dana Sussman, Deputy Commissioner  
5 for Intergovernmental Affairs and  
6 Policy at the New York City  
7 Commission on Human Rights. I'm here  
8 with Lauren Elfant, Assistant Chief  
9 of Staff; Zoey Chenitz, Policy  
10 Counsel; Edwin Tablada, Policy  
11 Analyst at the New York City  
12 Commission on Human Rights.

13 It is now 11:08 and we are  
14 commencing the hearing on the Stop  
15 Credit Discrimination and Employment  
16 Act proposed rules. There is no one  
17 present to testify currently, so we  
18 will go off the record and return  
19 when individuals are prepared to  
20 testify.

21 (Whereupon, a short recess was  
22 taken.)

23 DEPUTY COMMISSIONER SUSSMAN:  
24 We're back on the record. It  
25 is now 11:20. Again my name is Dana

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2 Sussman. I'm Deputy Commissioner for  
3 Intergovernmental Affairs and Policy  
4 on the New York City Commission on  
5 Human Rights and here with me are  
6 Lauren Elfant, Chief of Staff; Zoey  
7 Chenitz, Policy Counsel; Edwin  
8 Tablada, Policy Analyst.

9 I have been designated as a  
10 hearing officer for the public  
11 hearing on the proposed rules on the  
12 Stop Credit Employment Discrimination  
13 Act.

14 I have authority through the  
15 City Commission on Human Rights.  
16 This hearing is being held in Spector  
17 Hall at 22 Reade Street. It is now  
18 11:20 on Thursday, August 17, 2017,  
19 and I am hereby convening the public  
20 hearing on these proposed rules.

21 The proposed rules were  
22 published in the City Record on July  
23 10, 2017. Copies of the proposed  
24 notice and rules are available on the  
25 Commission on Human Rights website,

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2 nyc.gov/humanrights on the New York  
3 City Rules website, and we have  
4 additional copies at the table just  
5 outside if anyone needs them.

6 Sections 905 and 1043 of the  
7 New York City Charter authorize the  
8 Commission to adopt these proposed  
9 rules after notice on comment, if  
10 any, in a public hearing.

11 This hearing affords the public  
12 the opportunity to comment on all  
13 aspects of the rules the Commission  
14 has proposed. The Commission will  
15 carefully review all testimony and  
16 written comments received at this  
17 hearing, and will give due weight and  
18 consideration to all adequately  
19 substantiated proposals and  
20 recommendations that are submitted  
21 for the record at this hearing.

22 To ensure that everyone seeking  
23 to testify will have an opportunity  
24 to do so, I will follow these simple  
25 ground rules. Signing in order of

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2 appearance. Anyone seeking to  
3 testify must complete a registration  
4 card so they can be correctly  
5 identified in the hearing record. The  
6 cards or the sheets are just outside  
7 the door.

8 Witnesses will be called to  
9 testify in the order that they have  
10 signed in. Anyone who does not appear  
11 when his or her name is called will  
12 be deemed to have passed over the  
13 opportunity to testify. The persons  
14 who are passed will be called at the  
15 end of the hour. Persons who do not  
16 appear, who still do not appear, must  
17 then sign in again if they wish to  
18 testify.

19 Each witness will have a  
20 maximum of three minutes to testify.  
21 We will be keeping time and will  
22 adhere to the three-minute limit to  
23 every speaker. If your comments take  
24 longer we ask that you summarize the  
25 remaining testimony and leave a

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2 written copy for the record.

3 Unlike the limit on the time  
4 for oral testimony, there is no limit  
5 on the number of pages you may submit  
6 as written comments or as documents  
7 for the record. The written  
8 submission will be made part of the  
9 record as exhibits presented with  
10 your testimony, and we will publish  
11 all written testimony in the  
12 transcript of this hearing on the New  
13 York City Commission on Human Rights  
14 website.

15 Emergency exits are located  
16 right outside our one main door here.  
17 Restroom facilities are out this door  
18 to the left through the Commission  
19 lobby. Please turn off your  
20 cellphones during the hearing.

21 Thank you for coming and for  
22 testifying today, and we will now  
23 start calling witnesses.

24 Edwin, would you grab the  
25 sign-in sheet? And I will also note

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2 that we have written testimony that's  
3 been submitted that we just want to  
4 acknowledge we won't read it into the  
5 record but it will be part of the  
6 hearing record as written testimony,  
7 and that was submitted by Eric Elman  
8 from the Consumer Data Industry  
9 Association, and Brent Smoyer from  
10 the National Association of  
11 Professional Background Screeners.

12 So we'll start with Evan  
13 Denerstein from Mobilization For  
14 Justice.

15 MR. DENERSTEIN: Hello. My  
16 name is Evan Denerstein. I'm a  
17 Senior Staff Attorney at Mobilization  
18 for Justice, formerly MFY Legal  
19 Services.

20 We are grateful to the  
21 Commission for the opportunity to  
22 comment on these proposed rules. We  
23 are a member of the New York City  
24 Coalition to Stop Credit Checks in  
25 Employment, a coalition of nearly 80

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2 organizations which work closely with  
3 Councilmember Brad Lander in the  
4 drafting and passage of the  
5 legislation these rules are  
6 addressing.

7 The Coalition conceived, helped  
8 draft, and support the legislation  
9 based on the principle that using  
10 credit checks in employment decisions  
11 is always arbitrary, baseless, unfair  
12 and discriminatory.

13 For this reason we strongly  
14 oppose and continue to oppose any  
15 exemptions from the law. All  
16 exemptions not mandated by state or  
17 federal law were added late in the  
18 legislative process without public  
19 discussion or input.

20 The Coalition continues to  
21 support the bill despite these  
22 concessions in order to pass the law  
23 that would protect tens of thousands  
24 of New Yorkers from discrimination.  
25 However, it is always our

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2 understanding and the intent of the  
3 City Council that the exemptions  
4 would be interpreted as narrowly as  
5 possible so as not to defeat the  
6 purpose of the law.

7 Despite these reasons, despite  
8 specific concerns addressed in our  
9 written testimony, some of which I'll  
10 address right now, we applaud the  
11 Commission for clarifying that (1)  
12 the exemptions are to be construed  
13 narrowly, (2) making all usage of  
14 exemptions in affirmative defense,  
15 and (3) providing details and narrow  
16 possible interpretations of the  
17 exemptions.

18 One of our main concerns is the  
19 rule regarding the exemption  
20 concerning authority over funds of  
21 assets of \$10,000 or more. This  
22 exemption rests on the fallacy that  
23 poor credit can predict a propensity  
24 to steal or commit fraud. There's  
25 simply no research to support this

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2 assumption.

3 We support the Commission's  
4 original guidance that the exemption  
5 should have only applied to  
6 high-level positions such as chief  
7 financial officers and chief  
8 operations officers. It should not  
9 apply to all staff in the finance  
10 department.

11 We believe that clarification  
12 must also be included in the rules,  
13 because otherwise too many positions  
14 that this law was specifically  
15 designed to protect may fall within  
16 this exemption. We have similar  
17 concerns about the exemptions for  
18 positions involved in digital  
19 security systems.

20 We support the Commission's  
21 original guidance this exemption  
22 should not apply to all staff in the  
23 IT department. To the extent this  
24 exemption should apply at all, it  
25 should apply only to those who have

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2 authority to modify digital security  
3 systems, not just the ability to do  
4 so, that is, high-level positions.  
5 Again we are concerned that a broad  
6 interpretation of this exemption will  
7 harm the very people this law was  
8 meant to protect.

9 We are also concerned that no  
10 recordkeeping requirements were  
11 included in the rules. At a minimum  
12 the rules should require employers to  
13 maintain records of any timely  
14 requests for use of consumer credit  
15 history as well as the employer's  
16 policies on the use of credit  
17 history.

18 In closing we also recommend  
19 the Commission require employers to  
20 report anytime it uses credit  
21 information for employment purposes.  
22 This will allow the Commission to  
23 better gather data on the  
24 discriminatory impact these  
25 exemptions have particularly in

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2 communities of color. I think that  
3 concludes my oral testimony and I  
4 thank you for the opportunity to  
5 comment.

6 DEPUTY COMMISSIONER SUSSMAN:  
7 Thank you. Next to testify, Deyanira  
8 Del Rio from New Economy.

9 MS. DEL RIO: Good morning.

10 DEPUTY COMMISSIONER SUSSMAN:  
11 Good morning.

12 MS. DEL RIO: I'm Deyanira Del  
13 Rio. I'm a co-director of New  
14 Economy Project, formally NEDAP, and  
15 we led the Coalition that MFJ and  
16 others in the community-labor-civil  
17 rights-immigrant and even more  
18 organizations we're a part of that  
19 pressed for passage of the Stop  
20 Credit Discrimination in Employment  
21 Act of 2015. We also have worked for  
22 (inaudible) in New York City to  
23 promote economic justice working with  
24 community groups in neighborhoods of  
25 color primarily to organize and fight

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2 against discriminatory lending, debt  
3 collection, many other abusive  
4 practices that not only harm  
5 communities and strip wealth out of  
6 New York City's neighborhoods and  
7 economy, but also for individuals  
8 that get reflected back in their  
9 credit reports. And this was one of  
10 the reasons why we pressed so hard  
11 for New York City to ban the use of  
12 the credit information in employment  
13 decisions, because it's a way that --  
14 it's a practice that perpetuates  
15 discrimination particularly regarding  
16 discriminate impact on people of  
17 color who continue to face unequal  
18 opportunities in our credit system in  
19 housing and beyond. So thanks for an  
20 opportunity to testify on these  
21 proposed rules.

22 We just want to say that we're  
23 extremely pleased again that New York  
24 City decided to pass this law that's  
25 been enforcing this really important

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2 law to prevent qualified jobseekers  
3 from facing these unfair and  
4 discriminatory barriers to jobs.

5 We will be submitting detailed  
6 comments as well, but just a couple  
7 of points. As Evan also had noted,  
8 what we think is really key to the  
9 rules and to all the enforcement is  
10 what was the intent of the law which  
11 was that any exemptions to this law  
12 be construed as narrowly as possible.  
13 This for us is really key to the  
14 law's effectiveness and the City's  
15 ability to enforce it.

16 As the Coalition pressed for  
17 this law between 2013 to 2015 we did  
18 a lot of research and had lots of  
19 conversations with others around the  
20 country that had passed similar laws  
21 restricting the use but left really  
22 gaping loopholes, as I'm sure you're  
23 aware and will recall, that really  
24 made it ineffective, did not protect  
25 workers adequately, and made it

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2 difficult actually for responsible  
3 employers to understand how they can  
4 comply made enforcement challenging.

5 The original bill had no  
6 exemptions, and rightfully so, since  
7 there's been no sound research to  
8 show that information from someone's  
9 credit history reflects or sort of  
10 predicts someone's ability to do a  
11 job well or their propensity to steal  
12 or commit fraud or otherwise harm an  
13 employer.

14 This is worth noting again.  
15 We're reminding everybody that this  
16 is an invention, this notion that  
17 credit history is a valid way to  
18 measure someone's job worthiness. It  
19 is an invention of the credit  
20 reporting agencies, and this is a  
21 multibillion dollar industry that it  
22 wants to expand its markets and its  
23 profits by selling people's personal  
24 information to as many people and  
25 entities as possible, so not just

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2 creditors but landlords, insurance  
3 companies, employers, on and on.

4 When we began this campaign,  
5 national industry studies showed that  
6 half of all employers were using  
7 credit information to screen  
8 applicants again with major  
9 discriminatory impact on immigrants,  
10 people of color, victims of identity  
11 theft, and many others.

12 The final bill as noted did  
13 include some narrow limited  
14 exemptions which our coalition did  
15 vigorously oppose and, as you heard,  
16 these exemptions did not receive  
17 proper public scrutiny before being  
18 implemented.

19 We continue to oppose these  
20 exemptions and believe there's no  
21 sound public policy rationale to  
22 exempt these categories of employment  
23 and we hope that that's something  
24 that the Commission will look more  
25 into to evaluate what the impact of

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2 employers' use of exemption has been  
3 so that the City can evaluate whether  
4 there has been a discriminatory  
5 impact and may wish to remove those  
6 exemptions from the statute and close  
7 those loopholes.

8 We also noted the recordkeeping  
9 requirements and hope that there's a  
10 proposal that we can also -- that  
11 will be up for public comment and for  
12 public input.

13 And I believe that that is all.  
14 I'm happy to continue to work with  
15 the Commission and others as you  
16 evaluate and implement these new  
17 rules and to get the word out to the  
18 employers and workers alike, so thank  
19 you so much.

20 DEPUTY COMMISSIONER SUSSMAN:

21 Thank you.

22 MS. ELFANT: Thank you.

23 DEPUTY COMMISSIONER SUSSMAN:

24 I'll just also note that the deadline  
25 to submit written comments is today,

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2 so close of business today. If any  
3 written comments have not been  
4 submitted today you can email  
5 policy@cchr.nyc.gov.

6 Is there anyone else present to  
7 testify?

8 (Silence.)

9 DEPUTY COMMISSION SUSSMAN: So  
10 if not, at this moment we will go off  
11 the record, and we will get back on  
12 the record if anyone else appears to  
13 testify. We will stay in the hearing  
14 room for the next half an hour or so.

15 (Whereupon, a short recess was  
16 taken.)

17 DEPUTY COMMISSIONER SUSSMAN:  
18 It is now 11:52. There have been no  
19 other further requests to provide  
20 oral testimony in the Stop Credit  
21 Discrimination Employment Act  
22 proposed rules hearing, so we are  
23 concluding the hearing now at 11:52.

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(Whereupon, at 11:52 A.M., the  
above matter concluded.)

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PUBLIC HEARING  
C E R T I F I C A T E

STATE OF NEW YORK            )  
  :   SS.:  
COUNTY OF NEW YORK        )

I, NORAH COLTON, CM, a Notary Public  
for and within the State of New York, do  
hereby certify:

That the above is a correct  
transcription of my stenographic notes.

I further certify that I am not  
related to any of the parties to this  
action by blood or by marriage and that I  
am in no way interested in the outcome of  
this matter.

IN WITNESS WHEREOF, I have hereunto  
set my hand this 30th day of September  
2017.

*Norah Colton, CM*

\_\_\_\_\_  
NORAH COLTON, CM

|   |   |  |  |
|---|---|--|--|
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