



**Testimony of Amy Traub
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Re: Proposed rules to amend Local Law No. 37 of 2015, the Stop Credit Discrimination in Employment Act

**Submitted electronically to the
New York City Commission on Human Rights
policy@cchr.nyc.gov**

August 17, 2017

Dear Deputy Commissioner Sussman,

Demos appreciates the opportunity to offer comments on proposed rules to amend New York City's Stop Credit Discrimination in Employment Act (Local Law 37 of 2015). We are a non-partisan 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 a national organization proud to be based here in New York City.

Demos is a founding member of the NYC Coalition to Stop Credit Checks in Employment, a coalition of over 80 community, labor, civil rights and student organizations that led the grassroots campaign to ban employment credit checks. Demos and other members of the coalition worked closely with the City Council to shape the law. Drawing on this experience, as well as more than a decade of research into consumer debt and the experiences that contribute to poor credit, **we urge the Commission to be mindful of the purpose of this legislation and to interpret all exemptions to the law as narrowly as possible.**

The purpose of the Act: New York City enacted the Stop Credit Discrimination in Employment Act in 2015 to address a serious human rights concern. Although peer-reviewed social science research has found little evidence that credit history is relevant to employment performance in any way, employment credit checks create barriers to opportunity and upward mobility and can exacerbate racial discrimination.¹ Demos research finds that credit checks bar qualified workers from jobs because poor credit is associated with unemployment, medical debt and lack of health

¹ Amy Traub, "Credit Reports and Employment: Findings from the 2012 National Survey on Credit Card Debt of Low- and Middle-Income Households," *Suffolk University Law Review*, Vol. XLVI:983-995.

coverage, which tell very little about personal job performance, but rather reveal systemic injustice, individual bad luck, and the growth of economic inequality.²

At the same time, a persistent legacy of discriminatory lending, hiring, and housing policies has left people of color with worse credit, on average, than white households.³ In recent years, historic disparities have been compounded by predatory lending schemes that targeted low-income communities and communities of color, putting them at greater risk of foreclosure and default on loans, further damaging their credit.⁴ By evaluating prospective employees based on credit, employment credit checks can further extend this injustice. When New York City enacted the nation's strongest ban on employment credit checks, it was a bold action to prevent this discrimination.

All exemptions to the law must be interpreted narrowly: When the Stop Credit Discrimination in Employment Act was introduced it contained a single exemption permitting the use of employment credit checks only in cases where they were mandated by state or federal law.⁵ This exemption was a practical measure intended to prevent the local law from being pre-empted by state or federal statutes. Late in the legislative process, a series of additional exemptions were added to the law: for example, provisions exempting police officers, positions requiring bonding, and positions with signatory authority over third-party funds valued at \$10,000 or more. Demos and other members of the NYC Coalition to Stop Credit Checks in Employment **strongly objected to these unjustified exemptions and worked with the city council and mayor's office to minimize them and ensure that they would be interpreted as narrowly as possible, exempting a small number of positions.**

The exemptions in the Stop Credit Discrimination in Employment Act are predicated on the incorrect idea that a flawed personal credit history is an indicator that a job applicant or employee is less likely to be honest and trustworthy – and is more likely to engage in theft, fraud, or corrupt practices – than a job applicant or employee with an unblemished personal credit

² Amy Traub, *Discredited: How Employment Credit Checks Keep Qualified Workers out of a Job*, Demos, 2013.

³ 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; 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.

⁴ Jacob S. Rugh and Douglas S. Massey. "Racial Segregation and the American Foreclosure Crisis." *American Sociological Review* 75.5 (2010): 629–651.

⁵ New York City Int. No. 261 of April 10, 2014.

history. For a detailed discussion of why each of these exemptions is not justified by empirical research, please see the attached Dēmos memorandum on employment credit checks.⁶

In a study of state laws on employment credit checks, Dēmos found that sweeping exemptions were rampant and severely undermined the effectiveness of the laws, allowing discrimination to persist.⁷ New York City’s law on employment credit checks contains narrower exemptions than any of the state laws evaluated by the study, making it the strongest legislation in the country. It is vital that rules do not interpret the law in a way that broadens exemptions and weakens the law.

Recommendations on specific provisions of the proposed rules:

- **Clarify the definition of a “self-regulatory organization.”** Section 2-05(c)(1) provides an exemption to the law, permitting credit checks for positions where a credit check is required by rules or regulations promulgated by self-regulatory organizations. This exemption could provide a dangerous and unintended loophole if the definition of a self-regulatory organization is not clearly specified under the rules. The exemption for self-regulatory organizations was narrowly crafted to address concerns by the Financial Industry Regulatory Authority, Inc. (FINRA) about its internal regulations. To reflect the original intent of the law and avoid opening a loophole in which any group of employers could call themselves a “self-regulatory organization” and exempt themselves from the Stop Credit Discrimination in Employment Act, the proposed rules should be modified to clarify that “self-regulatory organizations” are only those that meets the definitions in section 3(a)(26) of the Securities Exchange Act of 1934.
- **Clarify which positions have signatory authority over funds.** Section 2-05(c)(3)(vii) permits credit checks for positions with signatory authority over third party funds. NYCCHR’s legal enforcement guidance offered a helpful clarification of specific types of positions where this exemption could be applied, noting that “this exemption includes only executive-level positions with financial control over a company, including, but not limited to, Chief Financial Officers and Chief Operations Officers. This exemption does not include all staff in a finance department.”⁸ Similar language should be included to help to narrow the exemption in the rules. Note Demos’ position that the underlying exemption is still

⁶ Amy Traub, *Memorandum Regarding Unjustified Exemptions that Weaken and Undermine Legislation on Employment Credit Checks*, Demos, 2014.

⁷ Amy Traub and Sean McElwee, *Bad Credit Shouldn't Block Employment: How to Make State Bans on Employment Credit Checks More Effective*, Demos, 2016.

⁸ *Legal Enforcement Guidance on the Stop Credit Discrimination in Employment Act*, NYC Commission on Human Rights, 2015.

problematic as there remains no evidence that reviewing a job applicant's personal credit history is a valid tool for making employment decisions for the exempted positions.

- **Clarify which positions have the authority to modify digital security systems.** Section 2-05(c)(3)(viii) permits credit checks for positions with "regular duties that allow the employee to modify digital security systems." As written, this provision could be subject to an overly-broad interpretation, potentially encompassing all staff in an information technology department. The rule should be modified to specify that it applies only to senior-level executive positions and positions that are not only able to modify digital security systems but are authorized to do so. Note Demos' position that the underlying exemption is still problematic as there remains no evidence that reviewing a job applicant's personal credit history is a valid tool for making employment decisions for the exempted positions.

Appreciation for constructive provisions of the proposed rules:

- **Positions with a high degree of public trust.** Dēmos appreciates the proposed definition in Section 2-01 of city agency positions with a "high degree of public trust," which enumerates specific titles for exempted positions. The listing of specific job titles is helpful for preventing an overly-broad interpretation of "positions of public trust." Nevertheless, the underlying exemption is still problematic as there remains no evidence that reviewing a job applicant's personal credit history is a valid tool for making employment decisions for the exempted positions.
- **Prohibiting credit check waivers.** Dēmos welcomes the provision in Section 2-05(a)(4) clarifying that "employers are prohibited from requesting or requiring waivers authorizing credit checks or using consumer credit history for the purpose of evaluating applicants for employment or in making determinations regarding the terms and conditions of employment." This is a particularly vital rule as the Stop Credit Discrimination in Employment Act would provide little protection from credit discrimination if employees and job applicants could be asked or required to waive their rights under the act.
- **Record-keeping.** Dēmos applauds the establishment of record-keeping requirements for employers use of exemptions under the Stop Credit Discrimination in Employment Act, a measure which will be valuable for documenting any abuse of exemptions under the law.

New York City should be proud to have enacted the nation's strongest law protecting employees and job applicants from discrimination on the basis of their personal credit history. Nevertheless, a number of unjustified exemptions added to the Act late in the legislative process threaten to weaken the law, providing loopholes so that credit discrimination can continue. By interpreting all exemptions as narrowly as possible, the New York City Commission on Human Rights can ensure the strength of the law and aid in preventing an insidious form of discrimination.

Dēmos is eager to answer any questions and offer assistance in any way possible.

Sincerely,

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Dēmos

Attachment: “Memorandum regarding unjustified exemptions that weaken and undermine legislation on employment credit checks” available at <http://www.demos.org/sites/default/files/publications/Memorandum.pdf>