



**L E G A L
S E R V I C E S**

INCORPORATED

**TESTIMONY
ON
THE ACCURACY AND USE OF CONSUMER CREDIT
REPORTS**

PRESENTED BEFORE:

**NEW YORK STATE ASSEMBLY STANDING COMMITTEE ON
CONSUMER AFFAIRS AND PROTECTION**

AND

**NEW YORK STATE ASSEMBLY STANDING COMMITTEE ON
BANKS**

PRESENTED BY:

**EVAN DENERSTEIN
MFY LEGAL SERVICES, INC.**

APRIL 19, 2013

MFY Legal Services, Inc. (MFY) submits this testimony to the Assembly Standing Committee on Consumer Affairs and Protection and the Assembly Standing Committee on Banks to address the accuracy and use of consumer credit reports, and to express our support for the passage of the Credit Privacy in Employment Act.

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 Assembly Standing Committee on Consumer Affairs and Protection and the Assembly Standing Committee on Banks for holding this hearing about this important issue. The prevalence of errors in consumer credit reports and the difficulty of correcting these errors are problems that MFY clients deal with regularly. Inaccurate credit reports affect our clients' ability to access credit, obtain housing, and, increasingly, to procure employment. For this last reason, we support enacting the Credit Privacy in Employment Act, which 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.

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.¹ That same study found that 13 percent of consumers had errors that were damaging enough to lower their credit scores, and that 5% had errors serious enough to cause denial of or more costly credit.² 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 federal

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

² See *id.*

Fair Credit Reporting Act (FCRA) 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 frequently takes a very long time. Often by the time consumers are able to correct mistakes on credit reports, if they are able to do so at all, they have already been denied a loan, an apartment, or a job.

One example of both the prevalence of credit report errors, and the difficulty of removing them, is the story of one of our clients, Mr. D, a Chinese-born immigrant who fell into trouble when all of the “big three” credit reporting agencies merged the credit profiles of Mr. D. with his similarly named brother, who had since left the country. This was extremely problematic for Mr. D. because, while Mr. D. had an excellent credit history, his brother’s history was less than exemplary. As a result of the identity merger, the credit reports literally had dozens of errors. They included the name of Mr. D’s brother as an alias of Mr. D., as well as the brother’s social security number. The reports also listed addresses at which Mr. D. never lived, employers for whom he never worked, numerous defaulted credit card accounts that he never applied for, and judgments on credit cards that he never owned. When we realized that all of the mistakes on Mr. D.’s credit report were the result of mistaken identity, we wrote letters on his behalf to the credit reporting agencies, as well as to the brother’s creditors, explaining the mix-up. Along with the letters, we enclosed copies of:

- Mr. D’s New York State Driver’s License;
- his Chinese passport;
- documentation of his asylum status from the Department of Homeland Security;
- his social security card;
- a recent bank account statement;
- a recent paystub; and
- recent credit card statements.

All of these documents demonstrated Mr. D.’s proper name and address. After two rounds of letters with each of the credit reporting agencies, Mr. D, with MFY’s help, was able to remove all of the erroneous information from the reports.

This nominal success, however, was short-lived. One month later Mr. D. received a letter from one of his creditors informing him that because of information on his credit report, it was closing his credit card account. Along with the letter, the bank included a copy of one of Mr. D’s credit reports displaying the same information MFY had managed to remove only a month earlier. Over time, the erroneous information reappeared on his other credit reports, too. In the end, MFY had to send three to five rounds of letters to each of the credit reporting agencies over the course of more than a year before we were able to finally clean up Mr. D.’s credit history.

Errors on Credit Reports are Often Extremely Difficult to Remove

The fact that it required experienced consumer advocates over a year to fix Mr. D’s credit reports is indicative of the broken credit reporting dispute system currently in place. The Consumer Financial Protection Bureau released a report in December 2012, in which it described

an automated dispute system used by the credit bureaus known as e-Oscar.³ Through e-Oscar, the credit bureaus often do little more than assign one- or two-digit codes to the disputes and send those codes to the creditors.⁴ In a minority of cases (26%), they add two or three lines of explanatory text.⁵ The credit bureaus do not examine documents, contact consumers by telephone or email, or exercise any form of human discretion in resolving a dispute.⁶ Furthermore, the credit bureaus “generally do not forward documentation that consumers submit with mailed disputes or provide a mechanism for consumers to forward supporting documents when filing disputes online or via phone.”⁷ In fact, in a recent report on CBS’ “60 Minutes,” in which a CBS reporter spoke to three former employees of Experian, one of the employees said that documentation sent in by consumers is “not seen by anyone who considers it in determining whether or not information will be removed from a credit report . . . It is never forwarded on, never forwarded on to the creditor.”⁸ The employees also confirmed that if there is a difference of opinion between the creditor and the consumer about the accuracy of any credit information, it is the creditor that is always right.⁹ For this reason, consumer advocates have long argued that the credit bureaus have a systemic bias in favor of the creditors when determining whether or not disputed information is accurate.¹⁰

Because of the severe limitations of the e-Oscar system, it is highly questionable whether any of the major credit bureaus are complying with the federal Fair Credit Reporting Act (FCRA). When a consumer disputes an item on his or her credit report, the FCRA requires credit bureaus to send creditors a notice that includes “all relevant information regarding the dispute that the agency has received from the consumer.”¹¹ While credit bureaus argue that most disputes can be adequately summarized by the e-Oscar notation system, the fact that the system does not permit documents provided by consumers, such as billing statements or correspondence from creditors, to be forwarded to creditors, clearly contradicts that argument.

Despite Their Lack of Reliability, Credit Reports are Being Used in an Ever-Widening Range of Circumstances

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

³ Consumer Financial Protection Bureau, *Key Dimensions and Processes in the U.S. Credit Reporting System* 31 (Dec. 2012).

⁴ *Id.* at 32.

⁵ *Id.*

⁶ *See id.* at 31-35.

⁷ *Id.* at 4.

⁸ *60 Minutes: 40 Million Mistakes: Is Your Credit Report Accurate?* (CBS television broadcast Feb. 10, 2013), available at http://www.cbsnews.com/8301-18560_162-57567957/40-million-mistakes-is-your-credit-report-accurate/.

⁹ *Id.*

¹⁰ National Consumer Law Center, *Automated Injustice: How a mechanized dispute system frustrates consumers seeking to fix errors in their credit report* 23 (Jan. 2009).

¹¹ 15 U.S.C. § 1681i (a)(2)(B) .

reports to areas of our lives where they have no place – affecting the ability to obtain insurance,¹² receive medical care,¹³ 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 U.S. adults.¹⁴ Equifax profits off this database – which contains weekly paystub information, people’s health care providers, whether someone has dental insurance, and if they have 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.

Banning the Use of Employment Credit Checks is the Best Way for New York State to Protect Consumers from Errors in Credit Reports

The use of credit checks presents a significant barrier to employment, especially for low-income New Yorkers, who are less likely to be aware of, as well as to exercise, their rights under the Fair Credit Reporting Act. MFY has found that only a small percentage of our low-income clients are aware that they are entitled to a free annual credit report from each of the big three credit reporting agencies. Many also do not have Internet access or printing-capability necessary to obtain a credit report over the Internet, which is by far the most convenient way to obtain one. In addition, they do not have the ability to write numerous dispute letters to each credit reporting agency, nor the finances to send each letter via certified mail with a return-receipt requested, as one should. Because of these barriers to monitoring their credit and resolving problems, low-income New Yorkers are more likely to have errors remain on their reports than their better educated, higher skilled and more established neighbors.

This tendency of poor, working poor, and immigrant New Yorkers to have more credit reporting errors can be the cause of a downward spiral as more employers use credit checks in making employment decisions. According to a recent survey of human resources professionals, almost 50% of all employers check an employee’s credit history when hiring.¹⁵ And employers are not only checking credit histories for executive and managerial positions. According to surveys of low-income households conducted by Dēmos, as many as 25% of unemployed workers from these households said that a prospective employer had requested a credit check as part of a job application.¹⁶ 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.¹⁷

¹² 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>.

¹³ Sarah Rubenstein, *Why Hospitals Want Your Credit Report*, THE WALL STREET JOURNAL, Mar. 18, 2008, available at <http://online.wsj.com/article/SB120580305267343947.html>.

¹⁴ NBC News: *EXCLUSIVE: Your employer may share your salary, and Equifax might sell that data* (NBC television broadcast 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.

¹⁵ 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>.

¹⁶ 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>.

¹⁷ 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 who are the victims of credit reporting errors -- 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.

New York Should Require Police Stations to Take Reports from All Local Identity Theft Victims

One common source of errors in credit reports is identity theft. In our experience, one of the greatest obstacles identity theft victims face in clearing up their credit history is convincing a local police station to make a police report on the identity theft. Identity theft victims need a police report to exercise the right under federal law to require businesses to give them copies of records of transactions that the identity thief has performed while impersonating the victim.¹⁸ A police report also can be used to trigger the extended fraud alert and the blocking of theft-related information from a credit file.¹⁹ Without a police report, it can be very difficult, or even impossible, to remove false information from one's credit report. Unfortunately, all too often, police precincts do not write police reports for identity theft victims. To alleviate this problem, California requires local police departments to take police reports from all local identity theft

¹⁸ FCRA § 609(e); FACT § 151(a)(1).

¹⁹ FCRA §§ 605B, 603(q)(4); FACT § 152, 111(q)(4).

victims.²⁰ We recommend that New York enact a similar law to protect identity theft victims and reduce the harm that errors in credit reports can cause.

Conclusion

Credit reports are beset with errors and inaccuracies, and it is often the most vulnerable among us who bear the brunt of this harm. While errors and inaccuracies may in some instances be unavoidable, the near-impossibility of removing them is not. Until the credit reporting industry does a better job of ensuring the accuracy of credit reports and facilitating an effective dispute resolution system, the use of credit reports should be limited in scope, so that these errors can inflict less harm on the lives of New Yorkers. For that reason, the Assembly should act quickly to pass the Credit Privacy in Employment Act in order to prevent unemployed New Yorkers from being thrown into downward spirals because of a flawed and overreaching credit reporting system.

MFY applauds the Assembly Standing Committee on Consumer Affairs and Protection and the Assembly Standing Committee on Banks for holding this hearing, and urges the Assembly to pass the Credit Privacy in Employment Act 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) 417-3760 or edenerstein@mfy.org.

²⁰ California Penal Code § 530.6 (a) (“A person who has learned or reasonably suspects that his or her personal identifying information has been unlawfully used by another, as described in subdivision (a) of Section 530.5, may initiate a law enforcement investigation by contacting the local law enforcement agency that has jurisdiction over his or her actual residence or place of business, which shall take a police report of the matter, provide the complainant with a copy of that report, and begin an investigation of the facts. If the suspected crime was committed in a different jurisdiction, the local law enforcement agency may refer the matter to the law enforcement agency where the suspected crime was committed for further investigation of the facts.”).