

**Assembly Standing Committee on Consumer Affairs And Protection
Assembly Standing Committee on Banks**

**Public Hearing Examining the Accuracy and Effectiveness of the Consumer
Credit Reporting System**

**Testimony of Charles Bell, Programs Director
Consumer Reports
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Good morning, and thank you very much for the opportunity to testify.

The COVID-19 pandemic has affected almost every aspect of the U.S. economy, fundamentally reshaping the lives of millions of consumers. Many remain out of work or struggle to make ends meet, forcing some to turn to family, friends, state and federal governments, banks, and creditors to stay afloat and find financial relief. Now, as the U.S. economy emerges from the financial impacts of COVID-19, consumers need the most critical pillars of the economy to work in their favor.

One of those pillars is the credit reporting system, which is used not only by financial institutions as the basis for credit and lending decisions—its original purpose—but also by companies making employment decisions, landlords considering prospective tenants, and insurance companies pricing their policies.

Unfortunately, several aspects of the credit reporting system appear to be fundamentally broken. Our research, as well as previous research on the topic, suggests that credit report errors remain all too common. The credit reporting system was originally designed to serve the interests of financial institutions and continues to function in much the same way—despite its massive and growing effects on the economic welfare of ordinary consumers. The credit reporting system, in short, treats consumers primarily as its product, not as its customer.

During February and March 2021, CR asked Americans to check their credit reports and let us know about their experience, in a project we called Credit Checkup. Nearly 6,000 people responded to our survey and provided valuable feedback. The information they provided highlights how the current system fails to serve consumers, and points to several reasonable reforms needed to address and rectify these problems.

Key Findings

Consumers are finding errors on their credit reports. More than one-third (34 percent) of consumers who participated in CR's Credit Checkup survey reported that they found at least one error on their report, with 29 percent saying that they found errors in personal information and 11 percent finding account information errors.

Consumers, through no fault of their own, are struggling to access their credit reports. One in 10 consumers who completed the survey found accessing their credit reports to be "difficult" or "very difficult." Many consumers gave accounts of being locked out of their credit reports because of identity verification questions that they could not answer.

Credit bureaus sometimes push consumers to purchase products and services that should be available free through AnnualCreditReport.com. Consumers are legally entitled to access their credit reports free once per year, which they can do at the websites of credit reporting agencies (CRAs) and at AnnualCreditReport.com.¹

Multiple consumers report being asked for their credit card information before seeing their reports, and later being charged. The credit reporting system is confusing to navigate and to understand. Some consumers are confused about why their credit scores are not included with their credit reports and why they are being shown advertisements for paid credit monitoring services while checking their free credit reports.



Marketplace and Policy Recommendations

The credit reporting system simply does not work for consumers. They do not have access to or control over their own information, and even the first step of checking a credit report for accuracy can be difficult to accomplish.

In our report, we made four key marketplace and policy recommendations.

1. *Strengthen accuracy requirements for credit reports and improve enforcement of existing laws.*

¹ For our research project, CR took advantage of the fact that the three big consumer reporting agencies have expanded free access to reports. During the pandemic, they have made free reports available weekly: <https://www.cdiaonline.org/wp-content/uploads/2021/03/CDIA-Release-FINAL.pdf> The free weekly reports have now been extended through December 2023. <https://consumer.ftc.gov/consumer-alerts/2021/03/free-weekly-credit-reports-during-covid-extended-through-december-2023>

Consumer reporting agencies, lenders, and debt collectors must be required to abide by stronger standards to ensure that the information contained in credit reports is accurate and that all consumer disputes are properly investigated. The Consumer Financial Protection Bureau and the Federal Trade Commission should use their full authority to establish stronger accuracy regulations and penalize companies for any violation of the Fair Credit Reporting Act (FCRA).

2. *Provide consumers control over their own credit information. Consumers should have control over their credit information.*

Access to reports and scores should be free at any time; credit reports should be “frozen” by default, meaning that an individual’s credit information cannot be used to open new accounts without the consumer first unfreezing their credit. And consumers should be able to directly compare their reports, freeze and unfreeze their credit, easily file disputes, and correct errors.

3. *Redesign the identity verification system used by Equifax, Experian, and TransUnion.*

Consumers should not be locked out of their reports because of bad or very old information being used to verify their identity. They should not be blindsided by questions they cannot answer when trying to access their credit reports.

4. *Rein in the role of credit reports in consumers’ lives.*

Credit reports should be used for the purpose for which they were developed—to assess creditworthiness. They should not be used for any other decisions about a consumer, such as insurance pricing. Credit reports should not be used in decisions regarding anything other than a consumer’s creditworthiness.

CFPB Issues Guidance Clarifying State Authority to Protect Consumers Against Unfair Credit Reporting Practices

On June 28, the Consumer Financial Protection Bureau (CFPB) issued an interpretive rule affirming states’ abilities to protect their residents through their own fair credit reporting laws. With limited preemption exceptions, states have the flexibility to preserve fair and competitive credit reporting markets by enacting state-level laws that are stricter than the federal Fair Credit Reporting Act (FCRA).²

Insurance Company Use of Credit Reports

With respect to insurance use of credit report data, three states – California, Massachusetts and Hawaii – have banned the unfair use of credit reports for insurance pricing.

² Consumer Financial Protection Bureau, 6/28/22 available at: <https://www.consumerfinance.gov/about-us/newsroom/cfpb-affirms-ability-for-states-to-police-credit-reporting-markets/>

Consumer Reports and New Yorkers for Responsible Lending strongly oppose the use of credit history for insurance pricing for auto and homeowners insurance. Please see our attached testimony, PPT and memo of support for A.3082 (Peoples-Stokes) and S.5904 (Parker).

Employer Use of Credit Reports

New York state should ban the use of credit reports for employment purposes, as proposed in one recent bill introduced by A1161A (Dinowitz) and S2631A (Sanders). First, employment credit checks can have a disparate impact on employees of color in violation of Title VII of the Civil Rights Act. Second, employees' credit reports may not even be an accurate predictor of creditworthiness, due in part to the likelihood that they can contain significant errors. Third, employment credit checks are already banned or restricted in at least eleven other states, according to the National Conference of State Legislators.³

I. Employment credit checks may violate Title VII of the Civil Rights Act

The framework for analyzing whether an employment practice has a disparate impact on a protected group (such as race) was first articulated by the Supreme Court in *Griggs v. Duke Power*, and was later codified into Title VII of the Civil Rights Act.⁴ According to the Court in *Griggs*, “[i]f an employment practice which operates to exclude [members of a race] cannot be shown to be related to job performance, the practice is prohibited.”⁵ It is irrelevant whether the employer actually intends to exclude employees of a particular race; “good intent or absence of discriminatory intent does not redeem employment procedures or testing mechanisms that operate as ‘built-in headwinds’ for minority groups and are unrelated to measuring job capability.”⁶ Thus, in determining whether employment practices amount to racial discrimination in violation of the Civil Rights Act, one looks at (1) “the *consequences* of employment practices, not simply the motivation,”⁷ and (2) whether the practices “are demonstrably a reasonable measure of job performance.”⁸

The Equal Employment Opportunity Commission has held a series of hearings in the last several years to assess the potential adverse impact of employment credit checks on protected groups.

Employment Credit Checks Have a Disparate Impact on Job Applicants of Color

Employment credit checks can have a disparate impact on job applicants of color, because they are more likely to have impaired credit – and thus more likely to experience negative consequences if an employer uses credit checks in making

³ National Conference of State Legislators, *Use of Credit Information in Employment 2015*, available at: <https://www.ncsl.org/research/financial-services-and-commerce/use-of-credit-information-in-employment-2015-legislation.aspx>

⁴ 42 U.S.C. § 2000e et seq. (2006 & Supp. V).

⁵ *Griggs v. Duke Power Co.*, 401 US 424, 431 (1971).

⁶ *Id.* at 432.

⁷ *Id.*

⁸ *Id.* at 436.

employment decisions. According to Chi Chi Wu of the National Consumer Law Center, employment credit checks have a discriminatory impact on African American and Latino job applicants in particular.⁹ These groups are disproportionately affected by predatory lending practices, have suffered higher foreclosure rates, and have lower credit scores than white job applicants. A 2007 study from Fannie Mae found that African Americans were 21% more likely to have what could be considered “bad” credit scores than their white counterparts.¹⁰ According to this same study, race was a greater predictor of credit score than income. Two studies from the Federal Reserve System in 2003 and Freddie Mac in 2000 also concluded that Asians and Whites have higher credit scores than Hispanics and African Americans.¹¹

Employment Credit Checks are Not Substantially Job-Related or Consistent with Business Necessity

An employer can justify the use of an employment practice that has a disparate impact if it can show that the practice is job-related for the position in question and is consistent with business necessity.¹² In *Albemarle Paper Co. Moody*, the Supreme Court revisited the *Griggs* framework and clarified what makes a practice “job related” and therefore justified: “Job relatedness cannot be proved through vague and unsubstantiated hearsay,” but instead must be shown by a study “validating” the use of the job requirement as a criterion for the specific job in question.¹³ An employer would have to prove that it undertook a “meaningful study” that “validates” that a credit history bears a demonstrable relationship to successful job performance. Courts have applied this standard strictly against employers.¹⁴

Employment credit checks are arguably not job-related or consistent with business necessity, because they do not appear to be an accurate predictor of job performance. The most significant study on the relationship between employee credit history and job performance, presented to the American Psychological Association in 2003, concluded that there was no correlation between credit history and job performance.¹⁵

Despite the lack of empirical evidence showing a correlation that would justify the practice, a common rationale for using credit checks in employment decisions is that if a person has bad credit, then he or she may be prone to irresponsibility, theft or financial fraud. However, such reasoning is problematic because many people end up with

⁹ Statement of Chi Chi Wu, Esq., National Consumer Law Center, before the Equal Employment Opportunity Commission, Meeting of October 20, 2010 on Employer Use of Credit History as a Screening Tool, available at <http://www.eeoc.gov/eeoc/meetings/10-20-10/wu.cfm>.

¹⁰ Statement of Dr. Avis Jones-DeWeever, Executive Director, National Council of Negro Women, before the Equal Employment Opportunity Commission, Meeting of October 20, 2010 on Employer Use of Credit History as a Screening Tool, available at <http://www.eeoc.gov/eeoc/meetings/10-20-10/deweever.cfm>.

¹¹ See Statement of Michael Aamodt, Ph.D, DCI Consulting Group, before the Equal Employment Opportunity Commission, Meeting of October 20, 2010 on Employer Use of Credit History as a Screening Tool, available at <http://www.eeoc.gov/eeoc/meetings/10-20-10/aamodt.cfm>.

¹² 42 U.S.C. § 2000e-2(k)(1)(A)(i) (2006 & Supp. V).

¹³ 422 U.S. 405, 428 (1975).

¹⁴ Statement of Adam T. Klein, Esq., before the Equal Employment Opportunity Commission, Meeting of May 16, 2007 on Employment Testing and Screening, available at <http://www.eeoc.gov/eeoc/meetings/archive/5-16-07/klein.html>.

¹⁵ See Jerry K. Palmer and Laura L. Koppes, *Further Investigation of Credit History as a Predictor of Employee Turnover*. Presentation to the American Psychological Society, 2003.

impaired credit for reasons beyond their control, particularly in a time of economic downturn. A person's financial problems reflected in a credit report may stem from layoffs, divorce, identity theft, medical bills, or other events for which the person should not be penalized. According to the Commonwealth Fund, medical debt plagued nearly 72 million working-age adults in 2007.¹⁶ Of those 72 million, 28 million were contacted by a debt collector for unpaid medical bills.¹⁷ Medical debts may be sent to debt collectors for reasons out of the consumer's control, such as disputes between insurance companies and providers or a provider's failure to properly bill an insurer.

Because employment credit checks have a disparate impact on employees of color and credit history has not been demonstrated to substantially relate to an employee's likely job performance, using credit checks in employment decisions may amount to discrimination that violates Title VII of the Civil Rights Act.

II. Even if employment credit checks do not violate Title VII, credit reports can be rife with inaccuracies, making them an imperfect predictor of creditworthiness

Credit reports suffer from unacceptable rates of inaccuracy. A U.S. PIRG study found that 79% of the consumer credit reports surveyed contained some kind of error or mistake with 25% containing serious errors that could result in the denial of credit, such as false delinquencies or accounts that did not belong to the consumer, 54% containing inaccurate personal demographic information, 22% listing the same mortgage or loan twice, and almost 8% missing major credit, loan, mortgage, or other consumer accounts that demonstrate the creditworthiness of the consumer.¹⁸ Another report by the Government Accountability Office found that some creditors only reported negative information, some accounts showed balances that were not current, and public records inconsistently reported bankruptcy and collections actions.¹⁹ Poor credit can lead not only to the denial of credit, but to extension of higher priced credit.²⁰ Once consumers discover inaccuracies in their credit reports, correcting errors can be extremely difficult. Consumers who dispute items in credit reports face a dispute resolution system that leaves out critical consumer submitted information, barely investigates consumer claims, and yields poor results.²¹

In light of these facts, credit histories are an imperfect predictor not just of job performance, but of creditworthiness as well.

¹⁶ MICHELLE M. DOTY ET AL., THE COMMONWEALTH FUND, SEEING RED: THE GROWING BURDEN OF MEDICAL BILLS AND DEBT FACED BY U.S. FAMILIES 1 (2008), available at http://www.commonwealthfund.org/usr_doc/Doty_seeingred_1164_ib.pdf?section=4039.

¹⁷ *Id.*

¹⁸ U.S. PIRG, MISTAKES DO HAPPEN: A LOOK AT ERRORS IN CONSUMER CREDIT REPORTS 4 (2004), available at <http://cdn.publicinterestnetwork.org/assets/BEevuv19a3KzsATRbZMZlw/MistakesDoHappen2004.pdf>.

¹⁹ See U.S. GEN. ACCOUNTING OFFICE, CONSUMER CREDIT: LIMITED INFORMATION EXISTS ON EXTENT OF CREDIT REPORT ERRORS AND THEIR IMPLICATIONS FOR CONSUMERS 6-8 (2003), available at <http://www.gao.gov/new.items/d031036t.pdf>.

²⁰ See CHI CHI WU, NAT'L CONSUMER LAW CTR., AUTOMATED INJUSTICE: HOW A MECHANIZED DISPUTE SYSTEM FRUSTRATES CONSUMERS SEEKING TO FIX ERRORS IN THEIR CREDIT REPORTS 3 (2009), available at http://www.nclc.org/images/pdf/credit_reports/credit_reports_automated_injustice_report.pdf.

²¹ *Id.* at 14-15.

III. Other states have moved to ban or restrict the use of employment credit checks

Some states already have laws that restrict the practice of conducting credit checks on current or prospective employees. In 2015, the National Conference of State Legislators reported that the use of employer credit checks had been banned or restricted in at least 11 states.²² Connecticut, Hawaii, Illinois, Maryland, Oregon and Washington all have laws banning this practice in most contexts.²³ For example, Connecticut bans the use of employment credit checks, with a narrow exception for financial institutions and for situations where a credit report is “substantially related to the employee’s current or potential job.” Hawaii only allows employers to consider credit history when such information relates directly to a “bona fide occupational qualification.” Maryland’s law prohibits employers from using an applicant’s or employee’s credit report in determining whether to “deny employment,” “discharge the employee,” or “determine compensation or the terms, conditions, or privileges of employment.”

IV. Conclusion

Credit checks create a Catch-22 for job applicants. Workers with impaired credit continue to struggle financially and have difficulty building assets. They need jobs to rebuild their credit histories, but are simultaneously being asked to have good credit histories in order to obtain jobs. These workers may fall further and further behind while others with good credit histories get the best jobs, the best credit products, and the best insurance rates. The use of employment credit checks could contribute to the widening gap between the haves and the have-nots. Credit history can too easily be used as an arbitrary deciding factor when faced with two or more applicants with equal qualifications, and there is no guarantee that a decisionmaker will take into account all of the circumstances that contributed to a person’s financial situation.

In light of the above, we urge New York state to move ahead with banning the use of credit checks for employment, and to make the provisions of any statewide bill consistent with those adopted in the Stop Credit Discrimination In Employment Act passed in 2015 in New York City, to protect and strengthen existing protections for NYC workers.²⁴ There are often changes to employment-related legislation requested by employers, and for this issue is critical to prevent as many exceptions as possible, to keep the scope of the protections as broad as possible and to prevent loopholes that could allow discrimination against particular segments of workers.

²² National Conference of State Legislators, *Use of Credit Information in Employment 2015*, available at: <https://www.ncsl.org/research/financial-services-and-commerce/use-of-credit-information-in-employment-2015-legislation.aspx>

²³ 2011 Conn. Pub. Acts 11-223 (Reg. Sess.); HAW. REV. STAT. § 378-2 (2010); 820 ILL. COMP. STAT. 70/1-30 (2010); Md. Laws ch. 29 (2011); 2010 Or. Laws Spec. Sess. Ch. 102; WASH. REV. CODE § 19.182.20 (2010).

²⁴ Stop Credit Discrimination in Employment Act, available at: <https://www.nyc.gov/site/cchr/media/credit-check-law.page> See also: <https://www.nyc.gov/site/cchr/law/stop-credit-discrimination-employment-act.page>

Consider Restricting Reporting of Debt Collection Items

According to Chi Chi Wu of the National Consumer Law Center, states can potentially restrict how debt collection items are reported and portrayed in credit reports, to help protect the financial status of consumers.

Debt collection items are some of the most problematic items on credit reports, for many reasons. A 2012 report found that debt collection items constitute 13% of accounts on credit reports but are responsible for 40% of disputes. Debt collectors have different incentives than lenders, since consumers are not their customers and they do not need to maintain good customer relations.

Any restriction on debt collection items would cover medical debts, rental debt and more. It could also be limited to all paid collection items.

Improving Credit Report Accuracy

Also according to Ms. Wu of National Consumer Law Center, states can strengthen their laws to help aid with credit report disputes relating to errors and inaccurate information reported by creditors.

A big problem for consumers trying to dispute inaccurate items in their credit reports is caselaw that says a Consumer Reporting Agency (CRA) and/or information furnisher need not investigate a dispute involving a legal issue. State laws could state that CRAs must reasonably investigate disputes under state law version of [15 US Code Section 1681i\(a\)](#) whether or not they involve legal questions.

Coerced Debt

According to the public interest group Texas Appleseed:

Survivors of domestic violence face numerous obstacle to becoming safe and rebuilding their lives. Even after personal safety challenges are addressed, recent studies have found that economic abuse, in the form of coerced debt, lingers—through bad credit caused by the abuser. *Coerced debt is debt incurred by an abuser, in the name of a victim of domestic violence, through threat, force or fraud. It is a form of coercive control, identity theft, and economic abuse.*²⁵

Maine²⁶ and Texas now have laws on Coerced Debt, which could be used as models for New York. Assembly Member Linda Rosenthal has introduced A.10667, which would prohibit creditors from enforcing a consumer debt incurred as a result of fraud, duress, intimidation, threat, force, identity theft, exploitation of the debtor's personal information or similar economic abuse perpetrated against a debtor; and establish a right of action by the debtor for declaratory and injunctive relief against creditors for violations.

²⁵ Texas Appleseed, Coerced Debt, describing new law HB 3529, available at: <https://www.texasappleseed.org/coerced-debt>

²⁶ https://legislature.maine.gov/legis/bills/bills_129th/chapters/PUBLIC407.asp

Prohibit or Restrict Reporting of Unpaid Medical Bills and Medical Debts

Consumer Reports and National Consumer Law Center believe that states have substantial legal authority to restrict and prevent the unfair reporting of unpaid medical bills and medical debt, and to also create greater opportunities for eligible consumers to receive nonprofit hospital financial assistance to reduce or prevent such debts. We will submit additional testimony relating to this item. Some potential protections are spelled out in the NCLC model law regarding medical debt.²⁷

Conclusion

Thank you very much for the opportunity to testify on these issues. We look forward to working with you to help strengthen New York laws relating to credit reporting.

²⁷ National Consumer Law Center, *Model Medical Debt Protection Act*, September 2019, available at: <https://www.nclc.org/wp-content/uploads/2022/08/model-medical-debt-protection-act-082017.pdf>