



August 17, 2017

Submitted via e-mail: policy@cchr.nyc.gov

Dana Sussman
Deputy Commissioner for Policy and Intergovernmental Affairs
New York City Commission on Human Rights
P.O. Box 2023
New York, NY 10272

Re: Proposed rules implementing Local Law 37, the Stop Credit Discrimination in Employment Act

Dear Ms. Sussman:

New Economy Project appreciates the opportunity to submit comments to the NYC Commission on Human Rights regarding its proposed rules implementing the Stop Credit Discrimination in Employment Act (SCDEA) of 2015. Our organization spearheaded the community-labor-civil rights coalition that successfully pressed NYC to ban employment credit checks, as a matter of racial and economic justice, and we applaud the Commission for its work to enforce SCDEA and eliminate discriminatory barriers to employment in our city.

New Economy Project works with community groups to promote economic justice, by challenging discriminatory economic practices that harm communities and perpetuate inequality and poverty, and by supporting cooperative and community-led economic development. Since our founding in 1995, we have been at the forefront of coalitions and campaigns in New York to combat predatory lending and foreclosures; promote immigrants' rights in the banking system; eliminate abusive and illegal debt collection; and keep usurious payday lending out of our state. Through our financial justice hotline, we have assisted thousands of low income New Yorkers in vindicating their rights with respect to fair lending, debt collection and credit reporting matters. And through community mapping, research and reports, we have documented the disproportionate concentration of high-cost and wealth-stripping loans in communities of color.

Credit reports reflect, and exacerbate, our unequal credit system – and their use in housing, employment and other contexts serves to perpetuate inequities in our society and economy. NYC’s passage of SCDEA – the strongest law of its kind in the country – stands as a major civil rights and economic justice victory for all New Yorkers.

We offer the following comments regarding the Commission’s proposed rules:

The Commission is correct to emphasize that any exemptions to coverage under the SCDEA are to be construed narrowly – as was the clear intent of legislators. Indeed, the broad applicability of SCDEA’s worker protections are what make the law effective and allow for meaningful oversight and enforcement. By banning the use of credit history for virtually all jobs in NYC, the SCDEA protects millions of hard working New Yorkers – including part-time workers, undocumented workers, interns, and probationary workers – from a pernicious form of employment discrimination.

The SCDEA does contain a handful of narrow exemptions that allow for credit checks for certain positions and under certain circumstances. Our coalition vehemently opposed these exemptions, which were added to the bill very late in the legislative process. We nevertheless supported the final version of the SCDEA after we were satisfied that the exemptions would only apply to a vanishingly small number of positions.

In fact, the SCDEA, as originally introduced in 2012, did not include any exemptions (except where credit checks are required under state or federal law), and for good reason. There is no evidence demonstrating a relationship between an individual’s credit history and their job performance or propensity to commit fraud—for *any* job, in *any* industry. There is no sound public policy rationale to warrant exemptions in the law, and we urge the Commission to continue to interpret the existing exemptions as narrowly as possible, as they were conceived.

We additionally urge the Commission to collect information, as provided for in the SCDEA, from employers about their use of exemptions – both to ensure that employers are complying with the SCDEA and to assess the impact of the law’s exemptions. New Economy Project and our coalition partners would be eager to contribute input regarding content and methods of data collection.

Additionally, we recommend that the Commission’s proposed rules:

- Expand the definition of “consumer credit history” to include credit-related lawsuits.
- Make clear that the exemption for positions subject to DOI investigation applies only to *appointed* positions with a “high degree of public trust” as defined by the rules (as provided for in the SCDEA).
- Make clear that “self-regulatory organizations” are those defined in section 3(a)(26) of the securities exchange act of 1934 (as provided for in the SCDEA).

- Make clear that the exemption for positions with authority over third-party assets – or authority to enter into agreements – valued at \$10,000 or more applies only to executive-level positions with financial control over a company, such as Chief Financial Officers and Chief Operations Officers (as described in the Commission’s prior legal guidance).
- Make clear that the exemption for positions allowing an employee to modify digital security systems applies only to executive-level positions, such as Chief Technology Officer or a senior information technology executive who controls access to all parts of a company’s computer system (as described in the Commission’s prior legal guidance).
- Establish record-keeping requirements for employers’ use of exemptions under the SCDEA. These requirements are currently absent in the proposed rules, and should be developed and issued for public comment.

The above recommendations will help to ensure that the SCDEA meaningfully protects millions of New Yorkers from unjust discrimination. We thank the Commission for its leadership and commitment, and we look forward to continuing to work with you.

Sincerely,

Andy Morrison
Campaigns Director

Deyanira Del Rio
Co-Director