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Introduction 1499-2019

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Good morning Chairman Cornegy and members of the committee. My name is Casey Adams and I am the Director of City Legislative Affairs for the New York City Department of Consumer Affairs, recently renamed the Department of Consumer and Worker Protection (DCWP). I would like to thank the committee for the opportunity to testify today on behalf of DCWP Commissioner Lorelei Salas about Introduction 1499 (Intro. 1499), a bill that would prohibit charging a fee for obtaining a tenant screening report for a unit the landlord or broker should know is not available for rent, unless the parties agree otherwise in writing. Intro. 1499 would also require DCWP to conduct a feasibility study on whether the City could establish a public tenant screening report system.

Currently, DCWP enforces disclosure requirements that apply to any person who requests application information directly from prospective tenants. Requestors must disclose whether the information gathered will be used to obtain a tenant screening report and, if it will be so used, which credit reporting agencies will be consulted. Requestors must also disclose certain protections available to tenants under federal and state law, the availability of free credit reports, and the opportunity for tenants to dispute inaccurate or incorrect information directly with consumer reporting agencies. In addition to making direct disclosure to prospective tenants, requestors are also required to post a sign in any location where the principal purpose is to conduct business transactions related to the rental of residential real estate notifying prospective tenants about which consumer reporting agencies will be used to produce tenant screening reports, the availability of free credit reports, and the opportunity for tenants to dispute inaccurate or incorrect information directly with these agencies. Violations of these provisions are punishable by a civil penalty of $250-500, and first-time violations may be cured to avoid a penalty.

Since 2014, DCWP has received 17 complaints related to tenant screening reports, the majority of which were from the Bronx. In that time, DCWP conducted 812 patrol inspections of businesses covered by these provisions and issued 114 violations for either failure to disclose or failure to post required signs. These violations resulted in the issuance of an average of $3,125 in civil penalties annually, with a total of $18,750 in civil penalties issued since 2014.

DCWP supports the prohibition on charging a fee for obtaining a tenant screening report for a unit the landlord or broker should know is not available for rent, unless the parties agree otherwise in writing. Tenants should not be forced to pay a fee for a report that is meant to assist landlords in evaluating their suitability if the unit for which they are applying is not, in fact, available to rent. Knowingly charging a tenant screening report fee for an application to a unit that the landlord or agent knows is unavailable is deceptive and may already be actionable under the Consumer

Protection Law. DCWP supports clarifying our enforcement authority by explicitly prohibiting this practice.

We do not believe that the report required by Intro. 1499 would be useful at this time. First, as mentioned in testimony, DCWP's enforcement authority with respect to tenant screening reports focuses on the making of disclosures and posting of signs, both of which are core components of general consumer protection and leverage our existing capacity for patrol inspection of businesses. We do not currently inquire into the specifics of how tenant screening reports are produced and what factors are appropriate for consideration, nor are we equipped to do so. We do not think DCWP would be the right agency to conduct a study like the one required by Intro. 1499.

Second, recent changes in state law are likely to significantly change the way that landlords use tenant screening reports and what information is contained in them. Under the new state law, landlords are only permitted to charge a fee to reimburse costs associated with conducting background and credit checks. This fee is capped at the actual cost of the checks or twenty dollars, whichever is less. Landlords must waive the fee if a potential tenant provides a copy of a background or credit check conducted within the past thirty days. Fees for background and credit checks may not be collected unless the landlord provides the prospective tenant with copies of the reports and a receipt or invoice from the entity that conducted the checks.

Landlords will also now be prohibited from basing a decision not to rent on a tenant's history of involvement in housing court, a practice commonly referred to as tenant blacklisting. There will be a rebuttable presumption that a landlord has violated the law if he or she requests a tenant screening report containing that information and subsequently refuses to rent to the tenant who is the subject of the report. The new provisions are enforceable by the Attorney General. These important gains at the state level could address many of the concerns underlying the study required by Intro. 1499, but there hasn't yet been enough time to gauge the impact on tenants and landlords. We recommend monitoring the impact of new state law requirements before starting a study at the local level.

DCWP shares the Council's concern with ensuring that New Yorkers are not deceived, misled, or overcharged when they go apartment-hunting. We believe that expressly prohibiting the charging of tenant screening report fees for unavailable units is a positive step and we support that part of the bill before you today. Thank you for the opportunity to testify today, and I am now happy to answer any questions.