

**Testimony of James Hurst
New York City Department of Consumer Affairs**

**Before the
New York City Council Committee on Consumer Affairs**

**Hearing on
Introduction 1406, regarding Nonbank ATMs**

January 12, 2017

Good morning, my name is James Hurst and I am the Director of Enforcement for the New York City Department of Consumer Affairs (“DCA”). I am joined today by my colleagues, Alba Pico, Mary Cooley, and Casey Adams. I would like to thank the committee for the opportunity to testify on Introduction 1406 (“Intro. 1406”), which would mandate certain security measures and other practices for owners and operators of Automated Teller Machines (“ATMs”) that are not affiliated with banking institutions. DCA shares the Council’s goal of making nonbank ATMs safer and more secure, as well as improving the options available for low income New Yorkers to access their hard earned assets. We look forward to discussing the best way to achieve those goals with the committee.

DCA’s new mission is to protect and enhance the daily economic lives of New Yorkers to create thriving communities. We serve New York City’s consumers, businesses, and working families, enforcing laws and providing services that address the needs of New Yorkers, from their wallets to their workplaces. DCA also operates the Office of Financial Empowerment (“OFE”), the first local government initiative in the country with the mission to educate, empower, and protect New Yorkers and neighborhoods with low incomes, so they can build assets and make the most of their financial resources. OFE conducts research to better understand the issues facing low-income New Yorkers and potential barriers to accessing safe and affordable financial services.

Since they first appeared in 1996, nonbank ATMs have become a common sight in New York City’s corner bodegas, bars, and restaurants. Indeed, many of the types of businesses that host ATMs, like bodegas and gas stations, are already regulated and inspected by DCA. New Yorkers rely on these machines for fast access to their cash and are willing to pay a premium, in the form of “out-of-network” fees, for the service. However the fees associated with this convenience may be more burdensome to lower-income New Yorkers, who also tend to have fewer options for accessing their own money. In a recent study, DCA found that there are currently 360,000 households in New York City who do not have a bank or credit union account.¹ Moreover, there are an additional 780,000 households who are underbanked, meaning they have a bank account but continue to use check cashers, nonbank money orders and prepaid cards.² For many

¹ Caroline Ratcliffe et al., *Where Are The Unbanked And Underbanked In New York City?* (Urban Institute Sept. 2015), <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/2000430-Where-Are-the-Unbanked-and-Underbanked-in-New-York-City.pdf>.

² *Id.*

unbanked New Yorkers, like those with only a prepaid or payroll card, and underbanked New Yorkers, access to cash is extremely important. Many of these New Yorkers must rely on the type of nonbank ATMs this bill addresses.

Most banks allow customers to access their cash at affiliated ATMs without added fees. Under current law, ATMs owned or operated by financial institutions must provide security measures similar to those that would be required for nonbank ATMs by Intro. 1406. For example, bank ATMs must be monitored by security cameras and be adequately lit for consumers during both daytime and nighttime hours. Because there are no similar requirements for nonbank ATMs, unbanked or underbanked consumers face a situation where they may be charged more than a banked individual to use an ATM that is less safe and secure.

In addition, the variety and decentralization of nonbank ATM deployment may make them particularly attractive targets for those who seek to steal personal and banking information using “skimmer” devices. These devices, which vary widely in terms of physical appearance, technical sophistication, and ease of identification, are attached to ATMs in order to harvest sensitive information from unsuspecting consumers. Some of these devices can be identified simply by jiggling the card receiver slot to see if any foreign objects are attached, while others are so well concealed that only an expert would be able to spot them. In a recent report, FICO found that the number of ATMs compromised by criminals rose dramatically in 2015 and that nonbank ATMs were the main targets.³ Intro. 1406 would combat this problem by putting the burden of regularly inspecting ATMs and reporting any suspicious devices on the merchants who host the machines and the distributors who provide them.

DCA supports the intent of Intro. 1406, which is to make nonbank ATMs safer and more secure and protect consumers from skimming and identity theft. At this time, the Law Department is still conducting its review of the bill and all relevant legal issues. We look forward to discussing the specifics of how this legislation would operate, the type of inspection and enforcement actions DCA could take, and how the requirements of Intro. 1406 would interact with existing state and local laws. We also seek to continue the conversation about how DCA and the Council can work together to expand the options available to low income New Yorkers who want to improve their financial health and plan for successful futures. My colleagues and I will be happy to answer any questions you may have.

³ *ATM Compromises in US Jumped Six-Fold in 2015, FICO Reports*, FICO (Apr. 8, 2016), <http://www.fico.com/en/newsroom/atm-compromises-in-us-jumped-six-fold-in-2015-fico-reports-04-08-2016>.