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United States Senate

COMMITTEE ON HEALTH, EDUCATION,
LABOR, AND PENSIONS

WASHINGTON, DC 20510-6300

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<http://help.senate.gov>

Chairman Jacqueline Berrien
U.S. Equal Employment Opportunity Commission
131 M St. NE
Washington, DC 20507

Dear Chairman Berrien,

I am aware that EEOC has conducted two public hearings on the issue of criminal background checks and credit checks in the context of employment. At those hearings, significant concerns were raised about the challenges and uncertainties that changes to the EEOC's guidance documents could raise. My understanding is that the Commission is considering moving forward and issuing new guidance on both criminal background checks and credit checks without input from stakeholders on the specific changes it intends to make to the guidance.

Knowing how important it is that the Commission strikes the right balance between preventing discrimination and preserving the rights of employers to protect the safety of people and property in their workplaces, it is imperative that all changes be made with a full understanding of their implications. That can only come from a transparent process that provides an opportunity for outside input. I urge you not to move forward unless you do so in a fair and open manner, allowing the full involvement of the stakeholders who will be most affected by your guidance.

At this historic time of extended long term unemployment, employers are already struggling to create the jobs we need to bring the nation back onto the path of job growth. We cannot afford to have agencies operating behind closed doors, particularly if making sweeping changes that will increase the risk that comes from hiring new employees. Every facet of the United States government should recognize that job creation is the most pressing need we face. At the very least, independent agencies such as yours should attempt to "do no harm" to the ability of employers to create new jobs. By acting hastily and without information about the consequences of your actions, the possibility of doing harm is far too high.

Credit checks and criminal background checks are valuable tools that allow employers to cast their hiring nets wide and hire with confidence. This is a great benefit to the economy and the grand American tradition of upward mobility. Employers are legally responsible for the safety of their employees, customers and visitors in their workplace.

They are also legally liable for breaches of trust that lead to theft of personal data, money or goods, and physical damage to their workplace and environment.

Background checks are such a helpful tool in achieving safer workplaces that they are mandated by state and federal law in many cases. In my state of Wyoming, the law specifically authorizes criminal background checks and requires them for dozens of employment positions that involve the safety of the elderly, children, mentally ill, the general public and the handling of state finances. EEOC guidance on their use which contradicts state law would create confusion and legal predicaments for employers who are just trying to do the right thing by protecting their employees, customers and workplace.

The dangers presented by imprudent action on these issues are great. Without confidence in a job applicant's trustworthiness, employers will be less likely to hire anyone, but particularly those who they do not know. Those that do hire without using background checks face shouldering the risk of devastating damage to people and property. I urge you to mitigate this risk by engaging stakeholders in discussion about your intended changes. Please respond with an explanation of your planned actions on credit checks and criminal background checks, as well as your intentions to better include stakeholders, as soon as possible. If you have any questions, please contact my Labor Policy Director, Kyle Hicks (202-224-6770, Kyle_Hicks@help.senate.gov).

Sincerely,



Senator Michael B. Enzi
Ranking Member, Committee on Health,
Education, Labor and Pensions (HELP)

cc: Mr. Stuart Ishimaru, Commissioner, U.S. Equal Employment Opportunity
Commission
Ms. Constance Barker, Commissioner, U.S. Equal Employment Opportunity
Commission
Ms. Chai Feldblum, Commissioner, U.S. Equal Employment Opportunity
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Ms. Victoria Lipnic, Commissioner, U.S. Equal Employment Opportunity
Commission