



**Written Testimony of
Judy Gootkind, Member, Board of Directors,
on behalf of the National Association of Professional
Background Screeners (NAPBS)
Before the Committee on Financial Services
Subcommittee on Financial Institutions & Consumer Credit
U.S. House of Representatives
on
Legislative Hearing on “H.R. 3149, the Equal Employment for
All Act”
September 23, 2010**

Chairman Gutierrez, Ranking Member Hensarling and members of the committee, thank you for this opportunity to testify. My name is Judy Gootkind and I appear here today on behalf of the National Association of Professional Background Screeners -- NAPBS. I am a member of the NAPBS Board of Directors. My company, Creative Services, Inc., located in Mansfield, MA, is a member company of NAPBS and I am Vice President of Finance & Administration. Creative Services, Inc. is located in the Fourth Congressional District of Massachusetts, Chairman Frank's district.

NAPBS is a trade association founded in 2003 which represents over 700 companies engaged in employment and tenant background screening across the country. Of this figure, approximately 360 member companies are Regular Members, meaning that they are primarily engaged in the business of providing employment and/or resident background screening services directly to end-users, such as employers, landlords and businesses. The majority of those Regular Members are small businesses, with 12 or less employees. Having said this, our membership does include a range of companies, from Fortune 100 companies to small local businesses. Collectively we conduct millions of employment and tenant screening checks each year.

In the employment context we provide background checks for private employers, volunteer organizations, non-profits, government, public utilities, healthcare, higher education and publicly held corporations. NAPBS seeks to promote ethical business practices, promote compliance with the Fair Credit Reporting Act and State law analogs and foster awareness of issues related to consumer protection and privacy rights within the background screening industry.

Our industry is highly regulated, both by the Federal Trade Commission and the newly created Bureau of Consumer Financial Protection.¹ Our ability to provide our employer end-users with consumer reports is driven by consumers' consent for such reports to be generated when they apply for employment or seek a promotion.

Before responding to the Committee's questions provided to NAPBS, I would like to point out our concerns with H.R. 3149, "The Equal Employment for All Act". We believe this legislation, as drafted, too narrowly restricts the use of credit reports for employment purposes, and all but prohibits them in the private employment space. As drafted, the legislation would limit the use of credit reports for those jobs requiring national security or FDIC clearance, state or local government agency employment, supervisory, managerial, professional, or executive positions at a financial institution, or when otherwise required by law. Our specific concerns are as follows:

- The legislation would limit the use of credit reports in private employment to certain positions at financial institutions, a narrowly defined term under current law. The term "financial institution" is defined in the Fair Credit Reporting Act

¹ The Bureau of Consumer Financial Protection was created by the Consumer Financial Protection Act of 2010 (Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203).

to mean, "...a State or National bank, a State or Federal savings and loan association, a mutual savings bank, a State or Federal credit union, or any other person that, directly or indirectly, holds a transaction account (as defined in section 19(b) of the Federal Reserve Act) belonging to a consumer."²

- The legislation as written would prohibit the requesting of credit reports for the following types of positions, all of which are examples of actual job applicants for which NAPBS member companies provide credit reports: lawyers, mortgage lenders, property managers, cashiers, pharmaceutical representatives, pharmacists, asset management and financial planners, public safety officers, jewelers, health providers, NBA referees, executives in non-financial institution employers, accounting employees, finance employees, Information Technology employees, procurement employees, academic financial aid employees, Human Resources employees and other positions where employees have access to large amount of cash spending or personal information of other employees or customers.

Some would say that credit reports are reputation collateral and for many consumers, their credit history may be a good thing rather than the negative light in which they are being cast. NAPBS feels that there are instances beyond those which H.R. 3149 would allow in which it would be important and/or necessary to our employer end users to request a credit report. While NAPBS understands that this legislation seeks to limit the use of credit reports so that the credit history has some bearing on a person's job responsibilities and duties, as written, it eliminates many other positions where credit could be at least a potential sign of someone's judgment.

In your letter of invitation, you have asked NAPBS to address particular issues and questions regarding credit reports and employment background checks.

Committee Question -- Please explain the process of developing the reports that you provide to employers, including what types of information is used and how it is filtered. For example, do you alter or modify the information that you receive from the credit bureaus? If so, why and how?

Some background on how we operate is necessary to answer this question. Each Company who provides consumer reports to a third party is defined under the Fair Credit Reporting Act ("FCRA" or "Act") as a "consumer reporting agency". We provide "consumer reports" to third party end-users, for a variety of "permissible purposes" under the Act, including for employment purposes. The FCRA specifically lists those "permissible purposes" for the use of such reports in section 604 which is entitled "Permissible purposes of consumer reports". One such permissible purpose is for employment purposes, which is defined in the law as, "...a report used for the purpose of evaluating a consumer for employment, promotion, reassignment or retention as an employee."³

² Section 603(t), FCRA.

³ Section 603(h), FCRA.

A consumer report could include information from a variety of sources, including a credit report/credit history, public record information such as a criminal report, or employment or education verification. It is important to mention that in the context of employment checks, a credit *score* is never included. The three major credit bureaus do not sell credit scores for employment purposes nor are consumer reporting agencies able to report such scores if the purpose of the consumer report is for employment purposes. In fact, contractual agreements are in place which prohibit our access to, or use of credit scores, in the employment context. Moreover, the bureaus audit end users as well as resellers of credit information for compliance with their agreements. As such, technical measures are in place to ensure that an end user identifies its permissible purpose upon ordering the report, leaving little room for an end user to receive an actual credit score by accident or otherwise.

Important steps in the background screening or consumer report preparation process. Prior to requesting a consumer report, an employer must provide to the prospective employee a written notice stating what information will be requested, the source of the information and the purpose for which it will be used. An employer must also provide a copy of the consumer report, including the credit report, to the consumer upon request, and prior to taking an adverse action in whole or in part based on the credit report. With the report, an employer must also provide a copy of the Federal Trade Commission's document entitled "A Summary of Rights Under the Fair Credit Reporting Act." The employer must then wait a reasonable period of time before making the ultimate decision thereby allowing the consumer the opportunity to dispute any inaccurate information in the report.⁴ If an adverse employment action is taken against a prospective employee based on any information contained in a consumer credit report, for instance, the end user must provide the name and contact information for the consumer reporting agency to the consumer. Consumers can also request and obtain all the information about themselves in the files of a consumer reporting agency and they have the right to dispute incomplete or inaccurate information⁵. Furthermore, consumer reporting agencies must correct or delete inaccurate, incomplete or unverifiable information.

Committee Question -- Has the use of credit reports/checks for employment purposes increased over the past decade?

This question is better addressed to the end users of such reports as we do not have such statistical data on hand at NAPBS.

Committee Question -- Do you add any information to the reports you receive from credit bureaus? If so, please explain what, why and how.

Generally, No. As a reseller of credit reports, most consumer reporting agencies merely pass through the credit reports they receive from the credit bureau(s).

⁴ Section 604(b)(3), FCRA.

⁵ Section 609(a), FCRA.

Committee Question -- What kind of information is included in the reports you provide to employers?

A credit report includes information about a consumer and their credit experiences, such as name, addresses, employers, social security number, trade accounts, credit limits, balances, payment history, collection accounts, bankruptcies and tax liens. It may also provide additional verification and/or identify discrepancies with regard to the applicant's name, address, social security number and employment history.

Committee Question -- Do you have any proof that a credit record is an indicator of someone's propensity to commit a crime or their ability to successfully perform the duties of the job for which they might be considered? Please explain your views on this particular issue.

As consumer reporting agencies, we are the providers of information to end users when they are requesting background information, be it education or employment references/verification, credit history or criminal history. We believe the Committee is better served by facts rather than our personal views.

One study that may be of interest to the Committee is that conducted by the Association of Certified Fraud Examiners entitled "2008 Report to the Nation on Occupational Fraud & Abuse" which states that "...credit checks were by far the least common form of background check performed by victim organizations. Past research indicates that financial pressures are one of the key motivating factors of occupational fraud, and indeed, in [their] survey [they] found that the two most commonly cited behavioral red flags among fraudsters were 'financial difficulties' and 'living beyond one's means'".⁶

Committee Question -- Please provide the subcommittee a standard, sample credit report for employment purposes that would normally be purchased by your clients. You may redact any personal or confidential information.

A sample credit report is included with this statement.

⁶ Association of Certified Fraud Examiners, "2008 Report to the Nation on Occupational Fraud & Abuse" found at <http://www.acfe.com/documents/2008-rttn.pdf>

BACKGROUND SCREENING REPORT

Address of CRA

City State ZIP CODE

Local: (555) 555-5555 Fax(555) 555-5555

Toll Free: (555) 555-5555

<http://www.crawebaddress.com>

SUBJECT NAME: Consumer, Jonathan Q
SOCIAL SECURITY #: *-**-9990**
REQUESTED BY: Requestor Name
LOCATION: Account Location
CLIENT ID: S0000-00-0000
REQUEST DATE: 09/20/2010
REFERENCE CODE: n/a
PHONE: (555) 555-5555

Confidential Information Enclosed

CRA Confidentiality Statement Here.

State Disclosures

CRA State Disclosures Here

Credit Report

NAME	DOB
JONATHAN QUINCY CONSUMER	1951
JACK CONSUMER	
JOHN SMITH	
JONATHAN SMITH JONES JR	

ADDRESSES	First Reported	Last Reported	Times Reported	Type
BURBANK CA 91502-1234	6/95	1/98	3	Single-family
SANTA ANA CA 92708-5678	Unknown	2/95	1	Apartment Complex
LOS ANGELES CA 90017-9876	Unknown	9/93		Apartment Complex

EMPLOYERS	First Reported	Last Reported
AJAX HARDWARE 2035 BROADWAY SUITE 300 LOS ANGELES CA 90019	Unknown	Unknown
BELL AUTOMOTIVE 111 MAIN STREET BURBANK CA 91503	5/91	5/91

SOCIAL	VARIATION
***-**-9990	
***-**-7891	*
***-**-6789	*

FRAUD SHIELD SUMMARY

INQ: PHONE ANSWERING SERVICE: ABC ANSWER-ALL 10655 N BIRCH ST BURBANK CA 91502 818.555.1212
 FROM 03/01/96 INQ COUNT FOR SSN = 8
 FROM 03/01/96 INQ COUNT FOR ADDRESS = 15
 SSN issued 1965 - 1966
 FILE: COMMERCIAL BUSINESS ADDRESS: J&J INVESTMENTS 2600 BOWSER ST #312 LOS ANGELES CA 90017 213.111.2
 CKPT: INPUT SSN RECORDED AS DECEASED
 DOB: 01/10/1951 DOD: 03/30/1996

PROFILE SUMMARY

Public Records:	3	Inquiries:	3	Tradelines:	10
Install Balance:	\$45,037	Inquiries 6 mo:	0	Satisfactory Accounts:	6
Real Estate Balance:	\$234,000	Paid Accounts:	2	Disputed Accounts:	1
Total Rev Balance:	\$14,657	30 day DEL:	0	Now DEL/DRG:	3
Past Due Amount:	\$1,421	60 day DEL:	0	Was DEL/DRG:	0
Sch/Est Pay:	\$1,865	90+ day DEL:	0	DRG Months:	0
Real Estate Pay:	\$3,128	Total Rev Available:	27%	Old Trade:	1/68

Credit Report

PUBLIC RECORDS	Filing Date	Status Date	Court Code	Amount	Legal Status
SO CALIF DISTRICT COURT	06/20/1994	07/01/1995	1111	\$12,450	CO LIEN REL
COUNTY SPR CT SANTA ANA		09/19/1993	9999	\$1,200	CIV CL JUDG
U S BANKRUPTCY COURT		02/10/1993	9999	\$100,000	BK 13-PETIT

TRADELINES: 10

Account	Status Date	Balance	Past Due	Account Condition	Payment Status	Chargeoff
CREDIT AND COLLECTION ACCOUNT INFORMATION DISPUTED BY CONSUMER	9/94	\$250	\$0	COLLACCT	COLLACCT	
ISLAND SAVINGS ACCOUNT CLOSED AT CONSUMER'S REQUEST	5/96	\$0	\$0	CLOSED	CURR ACCT	
HEMLOCKS	2/95	\$1,000	\$0	OPEN	CURR ACCT	
CENTRAL BANK	6/96	\$11,050	\$465	OPEN	30 DAY DEL	
MOUNTAIN BK	12/96	\$19,330	\$956	OPEN	30 3 TIMES	
BAY COMPANY ACCOUNT PREVIOUSLY IN DISPUTE - NOW RESOLVED - REPORTED BY SUBSCRIBER	5/96	\$0	\$0	BKADJPLN	DELINQ 180	
EMPLOYEES CREDIT UNION	2/85	\$6,029	\$0	OPEN	CURR ACCT	
HOME FINANCIAL	5/90	\$234,000	\$0	OPEN	CURR ACCT	
STATE BANK	1/90	\$8,628	\$0	OPEN	CURR ACCT	
TRAVEL CHARGE USA	12/97	\$0	\$0	PAID	CURR ACCT	

6 03/30/2002 **#HK# ID SECURITY ALERT: FRAUDULENT APPLICATIONS MAY BE SUBMITTED IN MY NAME OR MY IDENTITY MAY HAVE BEEN USED WITHOUT MY CONSENT TO FRAUDULENTLY OBTAIN GOODS OR SERVICES. DO NOT EXTEND CREDIT WITHOUT FIRST CONTACTING ME PERSONALLY AND VERIFYIN ALL APPLICANT INFORMATION. THIS SECURITY ALERT WILL BE MAINTAINED FOR 90 DAYS BEGINNING 05-01-02.