

**Statement by Congressman Luis V. Gutierrez, Chairman,  
House Financial Services Subcommittee on Financial  
Institutions and Consumer Credit**

**Legislative Hearing on H.R. 3149,  
the “Equal Employment for All Act”**

**September 23, 2010**

The “*Equal Employment for All Act*” was introduced by Representative Steve Cohen on July 9, 2009 and currently has 55 co-sponsors. I am proud to be an original co-sponsor of this bill and to have discussed its importance at hearings, briefings and town hall meetings. This legislation, if enacted, would be a significant step forward in eliminating unfair hiring practices and open up more good jobs to those unemployed Americans who, aside from a poor credit report, are otherwise qualified to do these jobs.

H.R. 3149 would amend the Fair Credit Reporting Act (FCRA) to prohibit an employer from using a consumer report for either employment purposes or for making an adverse action -including promotions, transfers and terminations- if the report contains information that bears upon the consumer’s

creditworthiness, credit standing, or credit capacity. This prohibition applies even if the consumer consents to the use or procurement of a consumer report for employment purposes or in connection with an adverse action concerning employment.

The bill provides certain exemptions to this prohibition that we feel are proper, including jobs that require a national security or FDIC clearance, jobs with a state or local governmental agency that specifically require a credit check, or employment that is at a supervisory, managerial, professional or executive level at a financial institution or is otherwise specifically required by law. This legislation does not prohibit the use of background screening for a criminal background, even when it is not required by law.

This subcommittee has held two hearings this year -on March 24th and May 12th- in which we reviewed the methodology, impact of and the use of consumer reports under the Fair Credit Reporting Act (FCRA) and discussed the potential impact of H.R. 3149, along with other reform proposals. We heard from various industry representatives, consumer advocates and others. More recently, on August 30<sup>th</sup>,

I held a town hall meeting in Chicago that was attended by hundreds who came from Detroit, Boston, L.A. and elsewhere to express their concerns about the increasingly widespread use of credit checks for employment purposes. This practice unfairly hurts the chances of otherwise qualified candidates to get a job.

Credit reports are simply inappropriate for use in most hiring decisions. An individual's credit history is often marred by circumstances beyond their control, such as income loss, medical problems and the breakup of families which often leads to bankruptcy. The Consumer Bankruptcy Project has estimated that 85% of bankruptcies are caused by these issues and a bankruptcy can have a strongly negative impact on your credit report. The industry's own studies indicate that bankruptcy, when noted in a credit report, is something that potential employers take into account when making employment decisions.

Along with many others in Congress, I am concerned that relying upon credit reports will continue to have a harmful impact on many, especially on communities of color as minorities have disproportionately worse credit reports even

when income is taken into consideration. No fewer than 8 separate studies in the past 15 years conducted by the Federal Reserve, the Federal Trade Commission, the Brookings Institution and Fair Isaac itself have documented the disproportionately lower report quality of minorities. The Equal Employment Opportunity Commission has repeatedly expressed their concern that the use of credit reports for employment purposes might violate Title VII of the Civil Rights Act.

Even if there is no overt bias on the part of an employer against an applicant based on their credit report, there is the potential for a subconscious bias against those who have more negative data on their reports versus those who do not.

You simply cannot tell a person's character, integrity or how well they will perform their job by looking at their credit report. A credit report should not be one of the determining factors of whether someone gets hired. The fact that someone has a credit report that is not superior to another job candidate does not make them less able to do the work at an office or a factory nor does it make them more or less likely to steal from their employer.

Four states, including my own state of Illinois, have already passed legislation at the state level that will ban the widespread use of credit reports for employment purposes. Seventeen other states have legislation on this topic pending before them as well. Congress should act to make these sensible protections available to all Americans, not just those lucky enough to live in a state that is willing to protect them from this practice.

We have heard testimony from the Consumer Data Industry Association (CDIA), from Experian, TransUnion and Equifax, from FICO and VantageScore and others about how credit reports are prepared and used. Among other witnesses, today we will hear from the National Association of Professional Background Screeners (NAPBS) about how its members use, prepare and provide background checks and consumer reports to employers. We will also hear from the Society for Human Resource Management (SHRM) about how its members use a current or prospective employee's consumer or credit report to make employment related decisions.

I welcome and thank these and the other witnesses who are appearing with us today.