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Equal Employment Opportunity Commission  
131 M St., NE  
Washington, DC 20507

Via Electronic Submission

**RE: Comments for the Record by the Retail Industry Leaders Association for Hearing on Employer Use of Criminal Histories to Mitigate Risk and Promote Safety**

Dear Chair, Vice Chair and Commissioners:

On behalf of the Retail Industry Leaders Association (RILA), we respectfully submit these comments in response to the recent hearing held on criminal background checks. As an industry that employs over six million individuals in the United States alone, we strongly support equal employment opportunities and put forth our greatest effort to serve the best interests of our employees in order to have a productive and prosperous workforce.

By way of background, RILA is the trade association of the world's largest and most innovative retail companies. RILA members include more than 200 retailers, product manufacturers, and service suppliers, which together account for more than \$1.5 trillion in annual sales, millions of American jobs and more than 100,000 stores, manufacturing facilities and distribution centers domestically and abroad.

**RILA Members Value Equal Employment Opportunities**

RILA member companies take pride in their business models and strive to provide equal employment opportunities for all people. Retailers want their employees to have a safe and stable workplace with ample opportunities to learn and grow. In order to have a thriving workplace, it is imperative to have a trustworthy workforce and the ability to position employees appropriately in jobs that fit their strengths and skills.

Retailers also need to ensure that their customers have a safe place to shop for products and services. Moreover, retailers have an obligation to protect their assets and to take reasonable steps to ensure that company employees do not engage in illegal or unethical behavior.

Lawful and appropriate criminal background checks on employees and applicants are an important tool in achieving these objectives. Such checks can be crucial in creating a secure environment for employees and customers alike. The focus is to ensure that hiring decisions do

not deny other employees and customers a safe environment in which to work and shop, and do not subject the general public to illegal or unethical business activity. Employers strive to balance the factors that the Equal Employment Opportunity Commission (EEOC) has deemed relevant under the current guidance and take into account the nature of a job, the nature of an offense and the time that has elapsed. Retailers support the current EEOC guidance on criminal background checks and urge the EEOC to uphold the current guidelines.

### **The Need for Background Checks**

There are multiple real life scenarios in which background checks are essential in protecting employees, customers and the general public. For example, it is vital that retail employees have the ability to work with people and children from various backgrounds. Retailers strive to provide family friendly environments and work to accommodate customers who shop with children. In addition, many retailers offer educational classes and family programs which employees facilitate. For obvious reasons, when dealing with children, it is extremely important that screening tests are performed.

Similarly, in small retail environments, distribution centers or evening jobs, it is quite often that a minimal amount of employees work at certain non-peak hours, particularly when a store is opening or closing. At times like these, it is imperative that the customers and employees are safe and that assets are protected when there is limited supervision.

In addition, retail store managers who often hold the keys to the store, have access to a multitude of company resources as well as employee and customer information. Hiring someone with a criminal record involving theft or crimes against property poses a clear threat to customers, other employees and the company.

Background screening is also crucial for home deliveries, as many retail stores offer at home services. These services often require a customer to be present. Quite frequently, the customer is waiting for the service alone, and in some cases, the customer has a child at home without supervision to receive the delivery. When a customer allows an employee into their home, it is of the utmost importance to all stakeholders that the customer is guaranteed a safe and comfortable experience.

Another important issue to consider is employees with access to cash and customer information. A cashier, for example, would handle large sums of cash and have access to customers' checks, credit and debit card numbers, and other personal information. It would be irresponsible to hire someone for such a position if that applicant had a history of larceny, embezzlement or other financial crimes.

Background checks are also particularly relevant for hiring temporary and seasonal employees. Many of these temporary employees are hired to work for a short period of time to perform specific tasks. These individuals are often hired to work in jobs that require a small number of

persons in a closed space with limited supervision. Because these employees have temporary status, they don't necessarily have the same investment in the company as a full-time employee. For these reasons, it is essential to use background checks to ensure a secure environment within the workplace.

An additional example is when a company is in the process of hiring a professional truck driver. Many of our retail member companies have their own truck fleets and it is of paramount importance to hire safe drivers to operate their vehicles. To ensure safety of our workforce and the general public, a company needs to evaluate the person's driving record, including driving under the influence (DUI) transgressions.

When looking through these examples, it is extremely important to note that even though certain records would prohibit a person from being selected for a particular position, it does not necessarily mean that they will not be selected for a different position. Employers strive to balance the factors that the EEOC has deemed relevant under the current guidance and take into account the nature of a job, the nature of an offense and the time that has elapsed. Just as described in the example about truck drivers, if a person has a record of multiple DUI's they would not be a suitable candidate to drive a truck. However, this would not necessarily take a person out of consideration for a sales or stocking position. It is against an employer's interest to disqualify a group of candidates if those candidates otherwise would be satisfactory or qualified for the job.

### **Economic Uncertainty**

If the EEOC decides to rewrite the guidance on employer background checks, we strongly encourage the Commissioners to look at the effects the changes could have on a business, its employees and customers. We encourage the EEOC to examine a number of issues, such as identity theft, workplace violence and workplace theft. The EEOC should also consider the liability (with resulting hundreds of millions of dollars in defense and judgment costs) that employers face for failing to adequately screen and appropriately place employees, including negligent hiring litigation.

One important issue we may be able to help you examine is shrink rates, or the loss of products, and the opportunity cost of limiting the use of background checks when drafting new guidance. Our members have found a positive correlation between the use of background checks and reductions in shrink rates. If a business is precluded from obtaining background checks and shrink rates increase, the company will need to increase prices to compensate for the increased shrink costs, and the ability to grow the business and increase employment will be hindered.

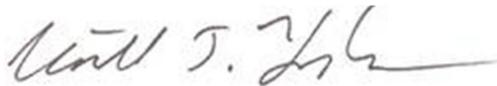
### **In Conclusion**

In sum, we do not see a need for new guidance from the EEOC on the use of background checks. We believe disrupting this area of the law and creating greater uncertainty at this time would

only further impose burdens on businesses whose primary focus should be creating jobs and investing in their workforce. Issuing new guidance would only further stifle job growth given that the current guidance already operates in an appropriate and functional manner and, as such, would run counter to President Obama's recent Executive Orders on regulatory reform. However, if the EEOC decides to issue new guidance, we strongly urge the Commission to first release it in draft form, so that the public could have an opportunity to comment on the specific guidance in accordance with the President's Executive Order encouraging regulatory reform at independent agencies like the EEOC.

Thank you for this opportunity to submit comments. Our retail members strive to be good corporate citizens to their employees, customers and the public. To do so, we must ensure that our workforce is safe and secure for our customers, the public and their co-workers. Background checks play an important role in meeting this objective. Our industry is fully committed to providing equal employment opportunities and looks forward to working with the EEOC to advance our shared goals.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Hughes", with a long horizontal flourish extending to the right.

Bill Hughes  
Senior Vice President, Government Affairs