

CHAMBER OF COMMERCE  
OF THE  
UNITED STATES OF AMERICA

R. BRUCE JOSTEN  
EXECUTIVE VICE PRESIDENT  
GOVERNMENT AFFAIRS

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TO THE MEMBERS OF THE U.S. HOUSE OF REPRESENTATIVES:

The U.S. Chamber of Commerce, the world's largest business federation representing the interests of more than three million businesses and organizations of every size, sector, and region, supports an amendment that may be offered today by Rep. Ben Quayle to H.R. 5326, the "Commerce, Justice, Science, and Related Agencies Appropriations Act of 2013," that would limit funding for implementation of guidance recently adopted by the Equal Employment Opportunity Commission (EEOC) related to employer use of applicant and employee criminal conviction records.

The Chamber supports equal employment opportunity and appropriate guidance to help employers comply with their obligations under Title VII and the other laws that the EEOC implements and enforces. In this regard it should be emphasized that current law generally prohibits employers from utilizing selection criteria, including use of criminal conviction records, that has a disparate impact on a protected group unless the practice is related to the job in question. However, the guidance that was adopted by the agency on April 25, 2012, has created troubling confusion among employers with respect to the proper legal standard. It was also adopted through a flawed process that did not allow for stakeholders to offer comments on the draft of the guidance.

The Chamber's concern about this guidance is heightened because of increased complaints that we have heard from our members regarding EEOC's enforcement policies, which have been reflected in a number of court decisions rebuking the agency for pursuing frivolous claims against employers and awarding millions of dollars in attorney fees.<sup>1</sup> The EEOC's actions in these cases are woefully unjustified—and these represent just the few cases where employers have taken the time and resources to challenge the EEOC's overaggressive enforcement.

For these reasons, the Chamber urges you to support an amendment that may be offered by Rep. Quayle to limit the EEOC's implementation of this flawed guidance.

Sincerely,



R. Bruce Josten

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<sup>1</sup> See, e.g., *EEOC v. Argo Distribution*, 555 F.3d 462 (5<sup>th</sup> Cir. 2009); *EEOC v. Cintas Corp.*, 2011 U.S. Dist. LEXIS 86228 (E.D. Mich. 2011).