March 24, 2015

Dear Chairman Walberg, Ranking Member Wilson and Members of the U.S. House of Representatives Subcommittee on Workforce Protections:

The undersigned organizations write to thank the Subcommittee for holding today’s hearing on the Equal Employment Opportunity Commission (EEOC or Commission) Transparency and Accountability Act (H.R. 550), the Litigation Oversight Act of 2015 (H.R. 549), and the Certainty in Enforcement Act of 2015 (H.R. 548). Our organizations and members, who represent millions of employers that provide tens of millions of jobs, are committed to ensuring equal employment opportunities in the workplace. While we have no tolerance for unlawful discrimination, we are very troubled by the EEOC’s current litigation tactics. We strongly support all three bills, which will provide much needed transparency and oversight of the Commission’s litigation efforts.

Over the past several years, the EEOC has pursued a litigation strategy that has wasted government resources and subjected businesses to unnecessary, costly and time consuming court battles. The Commission has aggressively pursued cases that clearly lack merit, refused to share vital information with parties, neglected its duty to engage in meaningful conciliation and frequently subjected businesses to overly burdensome requests for information or overreaching subpoenas.¹ The EEOC’s strategy has been widely criticized by federal courts and has cost taxpayers millions of dollars in legal fees as courts have ordered the Commission to reimburse to defendants because of the EEOC’s litigation of clearly unmeritorious claims and inadequate conciliation efforts.²

H.R. 548, H.R. 549 and H.R. 550 will help ensure the EEOC better directs its resources towards its mission of ending unlawful discrimination. H.R. 550 will require the EEOC to publish on its website each case it has brought to court, the fees or costs the Commission has been ordered to pay in the case, and whether the litigation was approved by the Commission. It also will strengthen the requirement that the EEOC must conciliate in good faith prior to bringing a case to court and ensure that those conciliation efforts are subject to judicial review. H.R. 548 protects employers that are engaging in employment practices required by Federal, state, or local laws from EEOC prosecution.³ H.R. 549 will require the Commission to vote on whether or not the EEOC will commence or intervene in litigation involving multiple plaintiffs or where the agency

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¹ A detailed analysis of the Commission’s litigation tactics and the costs to taxpayers and businesses is contained in a June 2014 report by the U.S. Chamber of Commerce, which can be found at https://www.uschamber.com/sites/default/files/documents/files/EEOC%20Enforcement%20Paper%20June%202014.pdf.
² Id.; see also EEOC V. Freeman (U.S. Court of Appeals for the Fourth Circuit, February 20, 2015), which can be found at http://www.ca4.uscourts.gov/Opinions/Published/132365_P.pdf.
³ The EEOC’s recent guidance on Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights of 1964 states employers complying with state or local background check laws may nonetheless be subject to suits under Title VII, including suits by the EEOC.
is alleging systemic discrimination. All of these bills will provide more transparency, accountability and certainty for employers and employees alike.

For aforementioned reasons, the undersigned organizations strongly support H.R. 548, H.R. 549 and H.R. 550. Thank you for your consideration of this important issue, and we look forward to working with you.

Sincerely,

American Hotel & Lodging Association

Associated Builders and Contractors

Associated General Contractors

College and University Professional Association for Human Resources

Consumer Data Industry Association

HR Policy Association

Independent Electrical Contractors

International Foodservice Distributors Association

International Franchise Association

International Public Management Association for Human Resources

National Association of Manufacturers

National Association of Professional Background Screeners

National Association of Wholesaler-Distributors

National Council of Chain Restaurants

National Federation of Independent Business

National Grocers Association

National Public Employer Labor Relations Association
National Restaurant Association

National Retail Federation

Retail Industry Leaders Association

Society for Human Resource Management

U.S. Chamber of Commerce