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September 20, 2011

Redacted

Program Manager

Redacted

Dear Ms. Redacted,

I am writing in representation of The Greenlining Institute and the below-  
signed organizations to express our deep concern over your criminal  
background check policy under the Energy Upgrade California program.  
This policy forces companies participating in the Energy Upgrade  
California program to unfairly discriminate against their prospective and  
current employees, without regard to their performance on the job or the  
relevance of prior convictions to the specific responsibilities of the job.

As stated to Energy Upgrade California participating contractors:

*Company principals and staff entering customers homes will be  
screened with a 7 year background check for prior convictions  
including: arson, assault, battery, burglary, driving under the  
influence, domestic violence, larceny, manslaughter, murder, theft  
(including identity theft), and any crimes against children.  
Additionally the company principles will also have their credit  
report pulled to ensure that there are no liens.*

This blanket policy forces employers to exclude both current and potential  
employees, regardless of their qualifications, from becoming productive  
members of installation teams. Such a policy is problematic for several  
reasons:

- According to Equal Employment Opportunity Commission  
(EEOC) guidelines implementing Title VII of the Civil Rights Act,  
because criminal background checks for employment have a  
significant “disparate impact” on people of color, an employer’s  
criminal record restrictions must be directly related to the job.  
As stated by the EEOC, “With respect to exclusions based on  
criminal records, employers should assess the risk that a person  
with a criminal record may pose if employed, by relating the nature  
of the crime to the nature of the position.”<sup>1</sup> Specifically, the

<sup>1</sup> EEOC Policy Guidance No: N-915-061, “Policy Guidance on the Consideration of Arrest Records in  
Employment Decisions Under Title VII,” September 7, 1990.

employer must take into account the gravity of the offense, the time that has passed since the conviction, and the nature of the job held or sought.<sup>2</sup>

- The new PG&E restrictions on employment of people with a criminal record far exceed the reasonable limitations set forth by the EEOC. Of special significance, the policy broadly disqualifies anyone from employment, even current workers, if they have any of several minor misdemeanor offenses that do not pose a safety or security threat on the job. That includes many theft-related offenses or minor runs in with the law that may result in an assault charge. In addition, among the disqualifying crimes listed, neither domestic violence nor driving under the influence directly relate to the individual's ability to perform energy efficiency installations safely in customers' homes.
- In its policy, PG&E states that it will use a third party agency to generate criminal background reports. However, there is no guarantee that the information contained in these reports are current and correct. According to the National Employment Law Project, there are many common inaccuracies in criminal background reports, including mix-ups where individuals have similar names, multiple reports relating to the same incident, uncorrected identity theft, arrests dropped for innocence, and expunged records that still appear in background check reports.<sup>3</sup> While your policy includes a process for challenging claims listed on a background report, the process to make this challenge is lengthy and may result in disrupted employment.

Energy Upgrade California is an important program that will generate significant demand for trained installers and other energy efficiency professionals. Many training programs are working to meet this demand by preparing dislocated workers and adults with barriers to employment learn the skills they need to enter careers in the Building Performance industry.

For some participants, these programs represent an opportunity for a new beginning that results in productive employment. Training programs work hard with employers to connect them with candidates based on their skills, qualifications, and the quality of their work, without regard to mistakes they may have made in the past. By forcing employers to adhere to an extremely broad criminal background check policy such as this, you are limiting their ability to decide who they can hire and keep on staff, while also limiting the ability of individuals with a criminal background to rebuild their lives.

We support you in implementing Energy Upgrade California as a way to promote energy efficiency and create jobs for California residents. We urge you to ensure that those jobs are accessible to all Californians, without exclusions based on a criminal background that fails to properly take into account the strict mandates of the EEOC to protect against discrimination of people of color.

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<sup>2</sup> EEOC Policy Statement on the Issue of Conviction Records Under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000 et seq. (1982), Feb. 4, 1987..

<sup>3</sup> *Presentation: Criminal Background Checks: Do's and Don'ts for Employers*, National Employment Law Project (Oakland Conference Center; May 31, 2011)

Thank you for your consideration.

Sincerely,

Stephanie Chen  
Senior Legal Counsel  
The Greenlining Institute

Jodi Pincus  
Executive Director  
Rising Sun Energy Center

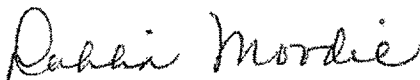
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