

117TH CONGRESS
1ST SESSION

H. R. 5911

To amend the Federal Deposit Insurance Act and the Federal Credit Union Act to expand employment opportunities for those with a previous minor criminal offense, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 9, 2021

Mrs. BEATTY (for herself and Mr. AUCHINCLOSS) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To amend the Federal Deposit Insurance Act and the Federal Credit Union Act to expand employment opportunities for those with a previous minor criminal offense, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fair Hiring in Bank-
5 ing Act”.

6 **SEC. 2. FEDERAL DEPOSIT INSURANCE ACT.**

7 Section 19 of the Federal Deposit Insurance Act (12
8 U.S.C. 1829) is amended—

1 (1) by inserting after subsection (b) the fol-
2 lowing:

3 “(c) EXCEPTIONS.—

4 “(1) CERTAIN OLDER OFFENSES.—

5 “(A) IN GENERAL.—With respect to an in-
6 dividual, subsection (a) shall not apply to an of-
7 fense if—

8 “(i) it has been 7 years or more since
9 the offense occurred; or

10 “(ii) the individual was incarcerated
11 with respect to the offense and it has been
12 5 years or more since the individual was
13 released from incarceration.

14 “(B) OFFENSES COMMITTED BY INDIVID-
15 UALS 21 OR YOUNGER.—For individuals who
16 committed an offense when they were 21 years
17 of age or younger, subsection (a) shall not
18 apply to the offense if it has been more than 30
19 months since the sentencing occurred.

20 “(C) LIMITATION.—This paragraph shall
21 not apply to an offense described under sub-
22 section (a)(2).

23 “(2) EXPUNGEMENT AND SEALING.—With re-
24 spect to an individual, subsection (a) shall not apply
25 to an offense if—

1 “(A) there is an order of expungement,
2 sealing, or dismissal that has been issued in re-
3 gard to the conviction in connection with such
4 offense; and

5 “(B) it is intended by the language in the
6 order itself, or in the legislative provisions
7 under which the order was issued, that the con-
8 viction shall be destroyed or sealed from the in-
9 dividual’s State or Federal record, even if ex-
10 ceptions allow the record to be considered for
11 certain character and fitness evaluation pur-
12 poses.

13 “(3) DE MINIMIS EXEMPTION.—

14 “(A) IN GENERAL.—Subsection (a) shall
15 not apply to such de minimis offenses as the
16 Corporation determines, by rule.

17 “(B) CONFINEMENT CRITERIA.—In issuing
18 rules under subparagraph (A), the Corporation
19 shall include a requirement that the offense was
20 punishable by a term of three years or less con-
21 fined in a correctional facility, where such con-
22 finement—

23 “(i) is calculated based on the time an
24 individual spent incarcerated as a punish-

1 ment or a sanction, not as pretrial deten-
2 tion; and

3 “(ii) does not include probation or pa-
4 role where an individual was restricted to
5 a particular jurisdiction or was required to
6 report occasionally to an individual or a
7 specific location.

8 “(C) BAD CHECK CRITERIA.—In setting
9 the criteria for de minimis offenses under sub-
10 paragraph (A), if the Corporation establishes
11 criteria with respect to insufficient funds
12 checks, the Corporation shall require that the
13 aggregate total face value of all insufficient
14 funds checks across all convictions or program
15 entries related to insufficient funds checks is
16 \$2,000 or less.

17 “(D) DESIGNATED LESSER OFFENSES.—
18 Subsection (a) shall not apply to certain lesser
19 offenses (including the use of a fake ID, shop-
20 lifting, trespass, fare evasion, driving with an
21 expired license or tag, and such other low-risk
22 offenses as the Corporation may designate) if 1
23 year or more has passed since the applicable
24 conviction or program entry.”; and

25 (2) by adding at the end the following:

1 “(f) CONSENT APPLICATIONS.—

2 “(1) IN GENERAL.—The Corporation shall ac-
3 cept consent applications from an individual and
4 from an insured depository institution or depository
5 institution holding company on behalf of an indi-
6 vidual that are filed separately or contemporaneously
7 with a regional office of the Corporation.

8 “(2) SPONSORED APPLICATIONS FILED WITH
9 REGIONAL OFFICES.—Consent applications filed at a
10 regional office of the Corporation by an insured de-
11 pository institution or depository institution holding
12 company on behalf of an individual—

13 “(A) shall be reviewed by such office;

14 “(B) may be approved or denied by such
15 office, if such authority has been delegated to
16 such office by the Corporation; and

17 “(C) may only be denied by such office if
18 the general counsel of the Corporation (or a
19 designee) certifies that the denial is consistent
20 with this section.

21 “(3) INDIVIDUAL APPLICATIONS FILED WITH
22 REGIONAL OFFICES.—Consent applications filed at a
23 regional office by an individual—

24 “(A) shall be reviewed by such office; and

1 “(B) may be approved or denied by such
2 office, if such authority has been delegated to
3 such office by the Corporation, except with re-
4 spect to—

5 “(i) cases involving an offense de-
6 scribed under subsection (a)(2); and

7 “(ii) such other high-level security
8 cases as may be designated by the Cor-
9 poration.

10 “(4) NATIONAL OFFICE REVIEW.—The national
11 office of the Corporation shall—

12 “(A) review any consent application with
13 respect to which a regional office is not author-
14 ized to approve or deny the application; and

15 “(B) review any consent application that is
16 denied by a regional office, if the individual re-
17 quests a review by the national office.

18 “(5) FORMS AND INSTRUCTIONS.—

19 “(A) AVAILABILITY.—The Corporation
20 shall make all forms and instructions related to
21 consent applications available to the public, in-
22 cluding on the website of the Corporation.

23 “(B) CONTENTS.—The forms and instruc-
24 tions described under subparagraph (A) shall
25 provide a sample cover letter and a comprehen-

sive list of items that may accompany the application, including clear guidance on evidence that may support a finding of rehabilitation.

“(6) CONSIDERATION OF CRIMINAL HISTORY.—

“(A) REGIONAL OFFICE CONSIDERATION.—In reviewing a consent application, a regional office shall—

“(i) primarily rely on the criminal history record of the Federal Bureau of Investigation; and

“(ii) provide such record to the applicant to review for accuracy.

“(B) CERTIFIED COPIES.—The Corporation may not require an applicant to provide certified copies of criminal history records unless the Corporation determines that there is a clear and compelling justification to require additional information to verify the accuracy of the criminal history record of the Federal Bureau of Investigation.

“(7) CONSIDERATION OF REHABILITATION.—

Consistent with title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.), the Corporation shall—

1 “(A) conduct an individualized assessment
2 when evaluating consent applications that takes
3 into account evidence of rehabilitation, the ap-
4 plicant’s age at the time of the conviction or
5 program entry, the time that has elapsed since
6 conviction or program entry, and the relation-
7 ship of individual’s offense to the responsibil-
8 ities of the applicable position;

9 “(B) presume that the individual is reha-
10 bilitated if four years have passed since the in-
11 dividual’s offense and the individual has no sub-
12 sequent convictions; and

13 “(C) consider the individual’s employment
14 history, letters of recommendation, certificates
15 documenting participation in substance abuse
16 programs, successful participating in job prepa-
17 ration and educational programs, and other rel-
18 evant mitigating evidence.

19 “(8) SCOPE OF EMPLOYMENT.—With respect to
20 an approved consent application filed by an insured
21 depository institution or depository institution hold-
22 ing company on behalf of an individual, if the Cor-
23 poration determines it appropriate, such approved
24 consent application shall allow the individual to work
25 for the same employer (without restrictions on the

1 location) and across positions, except that the prior
2 consent of the Corporation (which may require a
3 new application) shall be required for any proposed
4 significant changes in the individual's security-re-
5 lated duties or responsibilities, such as promotion to
6 an officer or other positions that the employer deter-
7 mines will require higher security screening creden-
8 tials.

9 “(g) DEFINITIONS.—In this section:

10 “(1) CONSENT APPLICATION.—The term ‘con-
11 sent application’ means an application filed with
12 Corporation by an individual (or by an insured de-
13 pository institution or depository institution holding
14 company on behalf of an individual) seeking the
15 written consent of the Corporation under subsection
16 (a)(1).

17 “(2) CRIMINAL OFFENSE INVOLVING DISHON-
18 ESTY.—The term ‘criminal offense involving dishon-
19 esty’—

20 “(A) means an offense under which an in-
21 dividual, directly or indirectly—

22 “(i) cheats or defrauds; or

23 “(ii) wrongfully takes property belong-
24 ing to another in violation of a criminal
25 statute;

1 “(B) includes an offense that Federal,
 2 State, or local law defines as dishonest, or for
 3 which dishonestly is an element of the offense;
 4 and

5 “(C) does not include—

6 “(i) a misdemeanor criminal offense
 7 committed more than one year before the
 8 date on which an individual files a consent
 9 application, excluding any period of incar-
 10 ceration; or

11 “(ii) an offense involving the posses-
 12 sion, sale, manufacturing, or distribution
 13 of controlled substances.

14 “(3) PRETRIAL DIVERSION OR SIMILAR PRO-
 15 GRAM.—The term ‘pretrial diversion or similar pro-
 16 gram’ means a program characterized by a suspen-
 17 sion or eventual dismissal or reversal of charges or
 18 criminal prosecution upon agreement by the accused
 19 to restitution, drug or alcohol rehabilitation, anger
 20 management, or community service.”.

21 **SEC. 3. FEDERAL CREDIT UNION ACT.**

22 Section 205(d) of the Federal Credit Union Act (12
 23 U.S.C. 1785(d)) is amended by adding at the end the fol-
 24 lowing:

25 “(4) EXCEPTIONS.—

1 “(A) CERTAIN OLDER OFFENSES.—

2 “(i) IN GENERAL.—With respect to an
3 individual, paragraph (1) shall not apply to
4 an offense if—

5 “(I) it has been 7 years or more
6 since the offense occurred; or

7 “(II) the individual was incarcer-
8 ated with respect to the offense and it
9 has been 5 years or more since the in-
10 dividual was released from incarcer-
11 ation.

12 “(ii) OFFENSES COMMITTED BY INDIVIDUALS 21 OR YOUNGER.—For individuals
13 who committed an offense when they were
14 21 years of age or younger, paragraph (1)
15 shall not apply to the offense if it has been
16 more than 30 months since the sentencing
17 occurred.

18
19 “(iii) LIMITATION.—This subpara-
20 graph shall not apply to an offense de-
21 scribed under paragraph (1)(B).

22 “(B) EXPUNGEMENT AND SEALING.—With
23 respect to an individual, paragraph (1) shall not
24 apply to an offense if—

1 “(i) there is an order of expungement,
2 sealing, or dismissal that has been issued
3 in regard to the conviction in connection
4 with such offense; and

5 “(ii) it is intended by the language in
6 the order itself, or in the legislative provi-
7 sions under which the order was issued,
8 that the conviction shall be destroyed or
9 sealed from the individual’s State or Fed-
10 eral record, even if exceptions allow the
11 record to be considered for certain char-
12 acter and fitness evaluation purposes.

13 “(C) DE MINIMIS EXEMPTION.—

14 “(i) IN GENERAL.—Paragraph (1)
15 shall not apply to such de minimis offenses
16 as the Board determines, by rule.

17 “(ii) CONFINEMENT CRITERIA.—In
18 issuing rules under clause (i), the Board
19 shall include a requirement that the of-
20 fense was punishable by a term of three
21 years or less confined in a correctional fa-
22 cility, where such confinement—

23 “(I) is calculated based on the
24 time an individual spent incarcerated

1 as a punishment or a sanction, not as
2 pretrial detention; and

3 “(II) does not include probation
4 or parole where an individual was re-
5 stricted to a particular jurisdiction or
6 was required to report occasionally to
7 an individual or a specific location.

8 “(iii) BAD CHECK CRITERIA.—In set-
9 ting the criteria for de minimis offenses
10 under clause (i), if the Board establishes
11 criteria with respect to insufficient funds
12 checks, the Board shall require that the
13 aggregate total face value of all insufficient
14 funds checks across all convictions or pro-
15 gram entries related to insufficient funds
16 checks is \$2,000 or less.

17 “(iv) DESIGNATED LESSER OF-
18 FENSES.—Paragraph (1) shall not apply to
19 certain lesser offenses (including the use of
20 a fake ID, shoplifting, trespass, fare eva-
21 sion, driving with an expired license or tag,
22 and such other low-risk offenses as the
23 Board may designate) if 1 year or more
24 has passed since the applicable conviction
25 or program entry.

1 “(5) CONSENT APPLICATIONS.—

2 “(A) IN GENERAL.—The Board shall ac-
3 cept consent applications from an individual
4 and from an insured credit union on behalf of
5 an individual that are filed separately or con-
6 temporaneously with a regional office of the
7 Board.

8 “(B) SPONSORED APPLICATIONS FILED
9 WITH REGIONAL OFFICES.—Consent applica-
10 tions filed at a regional office of the Board by
11 an insured credit union on behalf of an indi-
12 vidual—

13 “(i) shall be reviewed by such office;

14 “(ii) may be approved or denied by
15 such office, if such authority has been dele-
16 gated to such office by the Board; and

17 “(iii) may only be denied by such of-
18 fice if the general counsel of the Board (or
19 a designee) certifies that the denial is con-
20 sistent with this section.

21 “(C) INDIVIDUAL APPLICATIONS FILED
22 WITH REGIONAL OFFICES.—Consent applica-
23 tions filed at a regional office by an indi-
24 vidual—

1 “(i) shall be reviewed by such office;
2 and

3 “(ii) may be approved or denied by
4 such office, if such authority has been dele-
5 gated to such office by the Board, except
6 with respect to—

7 “(I) cases involving an offense
8 described under paragraph (1)(B);
9 and

10 “(II) such other high-level secu-
11 rity cases as may be designated by the
12 Board.

13 “(D) NATIONAL OFFICE REVIEW.—The
14 national office of the Board shall—

15 “(i) review any consent application
16 with respect to which a regional office is
17 not authorized to approve or deny the ap-
18 plication; and

19 “(ii) review any consent application
20 that is denied by a regional office, if the
21 individual requests a review by the national
22 office.

23 “(E) FORMS AND INSTRUCTIONS.—

24 “(i) AVAILABILITY.—The Board shall
25 make all forms and instructions related to

1 consent applications available to the public,
2 including on the website of the Board.

3 “(ii) CONTENTS.—The forms and in-
4 structions described under clause (i) shall
5 provide a sample cover letter and a com-
6 prehensive list of items that may accom-
7 pany the application, including clear guid-
8 ance on evidence that may support a find-
9 ing of rehabilitation.

10 “(F) CONSIDERATION OF CRIMINAL HIS-
11 TORY.—

12 “(i) REGIONAL OFFICE CONSIDER-
13 ATION.—In reviewing a consent applica-
14 tion, a regional office shall—

15 “(I) primarily rely on the crimi-
16 nal history record of the Federal Bu-
17 reau of Investigation; and

18 “(II) provide such record to the
19 applicant to review for accuracy.

20 “(ii) CERTIFIED COPIES.—The Board
21 may not require an applicant to provide
22 certified copies of criminal history records
23 unless the Board determines that there is
24 a clear and compelling justification to re-
25 quire additional information to verify the

1 accuracy of the criminal history record of
2 the Federal Bureau of Investigation.

3 “(G) CONSIDERATION OF REHABILITA-
4 TION.—Consistent with title VII of the Civil
5 Rights Act of 1964 (42 U.S.C. 2000e et seq.),
6 the Board shall—

7 “(i) conduct an individualized assess-
8 ment when evaluating consent applications
9 that takes into account evidence of reha-
10 bilitation, the applicant’s age at the time
11 of the conviction or program entry, the
12 time that has elapsed since conviction or
13 program entry, and the relationship of in-
14 dividual’s offense to the responsibilities of
15 the applicable position;

16 “(ii) presume that the individual is re-
17 habilitated if four years have passed since
18 the individual’s offense and the individual
19 has no subsequent convictions; and

20 “(iii) consider the individual’s employ-
21 ment history, letters of recommendation,
22 certificates documenting participation in
23 substance abuse programs, successful par-
24 ticipating in job preparation and edu-

1 cational programs, and other relevant miti-
2 gating evidence.

3 “(H) SCOPE OF EMPLOYMENT.—With re-
4 spect to an approved consent application filed
5 by an insured credit union on behalf of an indi-
6 vidual, if the Board determines it appropriate,
7 such approved consent application shall allow
8 the individual to work for the same employer
9 (without restrictions on the location) and across
10 positions, except that the prior consent of the
11 Board (which may require a new application)
12 shall be required for any proposed significant
13 changes in the individual’s security-related du-
14 ties or responsibilities, such as promotion to an
15 officer or other positions that the employer de-
16 termines will require higher security screening
17 credentials.

18 “(6) DEFINITIONS.—In this subsection:

19 “(A) CONSENT APPLICATION.—The term
20 ‘consent application’ means an application filed
21 with the Board by an individual (or by an in-
22 sured credit union on behalf of an individual)
23 seeking the written consent of the Board under
24 paragraph (1)(A).

1 “(B) CRIMINAL OFFENSE INVOLVING DIS-
2 HONESTY.—The term ‘criminal offense involv-
3 ing dishonesty’—

4 “(i) means an offense under which an
5 individual, directly or indirectly—

6 “(I) cheats or defrauds; or

7 “(II) wrongfully takes property
8 belonging to another in violation of a
9 criminal statute;

10 “(ii) includes an offense that Federal,
11 State, or local law defines as dishonest, or
12 for which dishonestly is an element of the
13 offense; and

14 “(iii) does not include—

15 “(I) a misdemeanor criminal of-
16 fense committed more than one year
17 before the date on which an individual
18 files a consent application, excluding
19 any period of incarceration; or

20 “(II) an offense involving the
21 possession, sale, manufacturing, or
22 distribution of controlled substances.

23 “(C) PRETRIAL DIVERSION OR SIMILAR
24 PROGRAM.—The term ‘pretrial diversion or
25 similar program’ means a program character-

1 ized by a suspension or eventual dismissal or
2 reversal of charges or criminal prosecution upon
3 agreement by the accused to restitution, drug
4 or alcohol rehabilitation, anger management, or
5 community service.”.

6 **SEC. 4. REVIEW AND REPORT TO CONGRESS.**

7 Not later than the end of the 2-year period beginning
8 on the date of enactment of this Act, the Federal Deposit
9 Insurance Corporation and the National Credit Union Ad-
10 ministration shall—

11 (1) review the rules issued to carry out this Act
12 and the amendments made by this Act on—

13 (A) the application of section 19 of the
14 Federal Deposit Insurance Act (12 U.S.C.
15 1829) and section 205(d) of the Federal Credit
16 Union Act (12 U.S.C. 1785(d)); and

17 (B) the rates of approval and denial for
18 consent applications under such sections;

19 (2) make the results of the review required
20 under paragraph (1) available to the public; and

21 (3) issue a report to Congress containing any
22 legislative or regulatory recommendations for ex-
23 panding employment opportunities for those with a
24 previous minor criminal offense.

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