

117TH CONGRESS 2D SESSION

### H.R.5911

#### AN ACT

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,

#### 1 SECTION 1. SHORT TITLE.

2	This Act may be cited as the "Fair Hiring in Bank-
3	ing Act".
4	SEC. 2. FEDERAL DEPOSIT INSURANCE ACT.
5	Section 19 of the Federal Deposit Insurance Act (12
6	U.S.C. 1829) is amended—
7	(1) by inserting after subsection (b) the fol-
8	lowing:
9	"(c) Exceptions.—
10	"(1) Certain older offenses.—
11	"(A) IN GENERAL.—With respect to an in-
12	dividual, subsection (a) shall not apply to an of-
13	fense if—
14	"(i) it has been 7 years or more since
15	the offense occurred; or
16	"(ii) the individual was incarcerated
17	with respect to the offense and it has been
18	5 years or more since the individual was
19	released from incarceration.
20	"(B) Offenses committed by individ-
21	UALS 21 OR YOUNGER.—For individuals who
22	committed an offense when they were 21 years
23	of age or younger, subsection (a) shall not
24	apply to the offense if it has been more than 30
25	months since the sentencing occurred.

1	"(C) Limitation.—This paragraph shall
2	not apply to an offense described under sub-
3	section $(a)(2)$ .
4	"(2) Expungement and sealing.—With re-
5	spect to an individual, subsection (a) shall not apply
6	to an offense if—
7	"(A) there is an order of expungement,
8	sealing, or dismissal that has been issued in re-
9	gard to the conviction in connection with such
10	offense; and
11	"(B) it is intended by the language in the
12	order itself, or in the legislative provisions
13	under which the order was issued, that the con-
14	viction shall be destroyed or sealed from the in-
15	dividual's State or Federal record, even if ex-
16	ceptions allow the record to be considered for
17	certain character and fitness evaluation pur-
18	poses.
19	"(3) De minimis exemption.—
20	"(A) In general.—Subsection (a) shall
21	not apply to such de minimis offenses as the
22	Corporation determines, by rule.
23	"(B) Confinement Criteria.—In issuing
24	rules under subparagraph (A), the Corporation
25	shall include a requirement that the offense was

1	punishable by a term of three years or less con-
2	fined in a correctional facility, where such con-
3	finement—
4	"(i) is calculated based on the time an
5	individual spent incarcerated as a punish-
6	ment or a sanction, not as pretrial deten-
7	tion; and
8	"(ii) does not include probation or pa-
9	role where an individual was restricted to
10	a particular jurisdiction or was required to
11	report occasionally to an individual or a
12	specific location.
13	"(C) Bad Check Criteria.—In setting
14	the criteria for de minimis offenses under sub-
15	paragraph (A), if the Corporation establishes
16	criteria with respect to insufficient funds
17	checks, the Corporation shall require that the
18	aggregate total face value of all insufficient
19	funds checks across all convictions or program
20	entries related to insufficient funds checks is
21	\$2,000 or less.
22	"(D) Designated lesser offenses.—
23	Subsection (a) shall not apply to certain lesser
24	offenses (including the use of a fake ID, shop-
25	lifting, trespass, fare evasion, driving with an

1	expired license or tag, and such other low-risk
2	offenses as the Corporation may designate) if 1
3	year or more has passed since the applicable
4	conviction or program entry."; and
5	(2) by adding at the end the following:
6	"(f) Consent Applications.—
7	"(1) In General.—The Corporation shall ac-
8	cept consent applications from an individual and
9	from an insured depository institution or depository
10	institution holding company on behalf of an indi-
11	vidual that are filed separately or contemporaneously
12	with a regional office of the Corporation.
13	"(2) Sponsored applications filed with
14	REGIONAL OFFICES.—Consent applications filed at a
15	regional office of the Corporation by an insured de-
16	pository institution or depository institution holding
17	company on behalf of an individual—
18	"(A) shall be reviewed by such office;
19	"(B) may be approved or denied by such
20	office, if such authority has been delegated to
21	such office by the Corporation; and
22	"(C) may only be denied by such office if
23	the general counsel of the Corporation (or a
24	designee) certifies that the denial is consistent
25	with this section.

1	"(3) Individual applications filed with
2	REGIONAL OFFICES.—Consent applications filed at a
3	regional office by an individual—
4	"(A) shall be reviewed by such office; and
5	"(B) may be approved or denied by such
6	office, if such authority has been delegated to
7	such office by the Corporation, except with re-
8	spect to—
9	"(i) cases involving an offense de-
10	scribed under subsection (a)(2); and
11	"(ii) such other high-level security
12	cases as may be designated by the Cor-
13	poration.
14	"(4) National office review.—The national
15	office of the Corporation shall—
16	"(A) review any consent application with
17	respect to which a regional office is not author-
18	ized to approve or deny the application; and
19	"(B) review any consent application that is
20	denied by a regional office, if the individual re-
21	quests a review by the national office.
22	"(5) Forms and instructions.—
23	"(A) AVAILABILITY.—The Corporation
24	shall make all forms and instructions related to

1	consent applications available to the public, in-
2	cluding on the website of the Corporation.
3	"(B) Contents.—The forms and instruc-
4	tions described under subparagraph (A) shall
5	provide a sample cover letter and a comprehen-
6	sive list of items that may accompany the appli-
7	cation, including clear guidance on evidence
8	that may support a finding of rehabilitation.
9	"(6) Consideration of Criminal History.—
10	"(A) REGIONAL OFFICE CONSIDER-
11	ATION.—In reviewing a consent application, a
12	regional office shall—
13	"(i) primarily rely on the criminal his-
14	tory record of the Federal Bureau of In-
15	vestigation; and
16	"(ii) provide such record to the appli-
17	cant to review for accuracy.
18	"(B) CERTIFIED COPIES.—The Corpora-
19	tion may not require an applicant to provide
20	certified copies of criminal history records un-
21	less the Corporation determines that there is a
22	clear and compelling justification to require ad-
23	ditional information to verify the accuracy of
24	the criminal history record of the Federal Bu-
25	reau of Investigation.

1	"(7) Consideration of Rehabilitation.—
2	Consistent with title VII of the Civil Rights Act of
3	1964 (42 U.S.C. 2000e et seq.), the Corporation
4	shall—
5	"(A) conduct an individualized assessment
6	when evaluating consent applications that takes
7	into account evidence of rehabilitation, the ap-
8	plicant's age at the time of the conviction or
9	program entry, the time that has elapsed since
10	conviction or program entry, and the relation-
11	ship of individual's offense to the responsibil-
12	ities of the applicable position;
13	"(B) 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; and
19	"(C) consider any additional information
20	the Corporation determines necessary for safety
21	and soundness.
22	"(8) Scope of employment.—With respect to
23	an approved consent application filed by an insured
24	depository institution or depository institution hold-
25	ing company on behalf of an individual, if the Cor-

poration determines it appropriate, such approved consent application shall allow the individual to work for the same employer (without restrictions on the location) and across positions, except that the prior consent of the Corporation (which may require a new application) shall be required for any proposed significant changes in the individual's security-related duties or responsibilities, such as promotion to an officer or other positions that the employer determines will require higher security screening credentials.

"(9) COORDINATION WITH THE NCUA.—In carrying out this section, the Corporation shall consult and coordinate with the National Credit Union Administration as needed to promote consistent implementation where appropriate.

#### "(g) Definitions.—In this section:

"(1) Consent application.—The term 'consent application' means an application filed with Corporation by an individual (or by an insured depository institution or depository institution holding company on behalf of an individual) seeking the written consent of the Corporation under subsection (a)(1).

1	"(2) Criminal offense involving dishon-
2	ESTY.—The term 'criminal offense involving dishon-
3	esty'—
4	"(A) means an offense under which an in-
5	dividual, directly or indirectly—
6	"(i) cheats or defrauds; or
7	"(ii) wrongfully takes property belong-
8	ing to another in violation of a criminal
9	statute;
10	"(B) includes an offense that Federal,
11	State, or local law defines as dishonest, or for
12	which dishonesty is an element of the offense;
13	and
14	"(C) does not include—
15	"(i) a misdemeanor criminal offense
16	committed more than one year before the
17	date on which an individual files a consent
18	application, excluding any period of incar-
19	ceration; or
20	"(ii) an offense involving the posses-
21	sion of controlled substances.
22	"(3) Pretrial diversion or similar pro-
23	GRAM.—The term 'pretrial diversion or similar pro-
24	gram' means a program characterized by a suspen-
25	sion or eventual dismissal or reversal of charges or

1	criminal prosecution upon agreement by the accused
2	to restitution, drug or alcohol rehabilitation, anger
3	management, or community service.".
4	SEC. 3. FEDERAL CREDIT UNION ACT.
5	Section 205(d) of the Federal Credit Union Act (12
6	U.S.C. 1785(d)) is amended by adding at the end the fol-
7	lowing:
8	"(4) Exceptions.—
9	"(A) CERTAIN OLDER OFFENSES.—
10	"(i) IN GENERAL.—With respect to an
11	individual, paragraph (1) shall not apply to
12	an offense if—
13	"(I) it has been 7 years or more
14	since the offense occurred; or
15	"(II) the individual was incarcer-
16	ated with respect to the offense and it
17	has been 5 years or more since the in-
18	dividual was released from incarcer-
19	ation.
20	"(ii) Offenses committed by indi-
21	VIDUALS 21 OR YOUNGER.—For individuals
22	who committed an offense when they were
23	21 years of age or younger, paragraph (1)
24	shall not apply to the offense if it has been

1	more than 30 months since the sentencing
2	occurred.
3	"(iii) Limitation.—This subpara-
4	graph shall not apply to an offense de-
5	scribed under paragraph (1)(B).
6	"(B) Expungement and sealing.—With
7	respect to an individual, paragraph (1) shall not
8	apply to an offense if—
9	"(i) there is an order of expungement,
10	sealing, or dismissal that has been issued
11	in regard to the conviction in connection
12	with such offense; and
13	"(ii) it is intended by the language in
14	the order itself, or in the legislative provi-
15	sions under which the order was issued,
16	that the conviction shall be destroyed or
17	sealed from the individual's State or Fed-
18	eral record, even if exceptions allow the
19	record to be considered for certain char-
20	acter and fitness evaluation purposes.
21	"(C) DE MINIMIS EXEMPTION.—
22	"(i) In General.—Paragraph (1)
23	shall not apply to such de minimis offenses
24	as the Board determines, by rule.

1	"(ii) Confinement Criteria.—In
2	issuing rules under clause (i), the Board
3	shall include a requirement that the of-
4	fense was punishable by a term of three
5	years or less confined in a correctional fa-
6	cility, where such confinement—
7	"(I) is calculated based on the
8	time an individual spent incarcerated
9	as a punishment or a sanction, not as
10	pretrial detention; and
11	"(II) does not include probation
12	or parole where an individual was re-
13	stricted to a particular jurisdiction or
14	was required to report occasionally to
15	an individual or a specific location.
16	"(iii) Bad check criteria.—In set-
17	ting the criteria for de minimis offenses
18	under clause (i), if the Board establishes
19	criteria with respect to insufficient funds
20	checks, the Board shall require that the
21	aggregate total face value of all insufficient
22	funds checks across all convictions or pro-
23	gram entries related to insufficient funds
24	checks is \$2,000 or less.

1	"(iv) Designated Lesser of-
2	FENSES.—Paragraph (1) shall not apply to
3	certain lesser offenses (including the use of
4	a fake ID, shoplifting, trespass, fare eva-
5	sion, driving with an expired license or tag,
6	and such other low-risk offenses as the
7	Board may designate) if 1 year or more
8	has passed since the applicable conviction
9	or program entry.
10	"(5) Consent applications.—
11	"(A) IN GENERAL.—The Board shall ac-
12	cept consent applications from an individual
13	and from an insured credit union on behalf of
14	an individual that are filed separately or con-
15	temporaneously with a regional office of the
16	Board.
17	"(B) SPONSORED APPLICATIONS FILED
18	WITH REGIONAL OFFICES.—Consent applica-
19	tions filed at a regional office of the Board by
20	an insured credit union on behalf of an indi-
21	vidual—
22	"(i) shall be reviewed by such office;
23	"(ii) may be approved or denied by
24	such office, if such authority has been dele-
25	gated to such office by the Board; and

1	"(iii) may only be denied by such of-
2	fice if the general counsel of the Board (or
3	a designee) certifies that the denial is con-
4	sistent with this section.
5	"(C) Individual applications filed
6	WITH REGIONAL OFFICES.—Consent applica-
7	tions filed at a regional office by an indi-
8	vidual—
9	"(i) shall be reviewed by such office;
10	and
11	"(ii) may be approved or denied by
12	such office, if such authority has been dele-
13	gated to such office by the Board, except
14	with respect to—
15	"(I) cases involving an offense
16	described under paragraph (1)(B);
17	and
18	"(II) such other high-level secu-
19	rity cases as may be designated by the
20	Board.
21	"(D) NATIONAL OFFICE REVIEW.—The
22	national office of the Board shall—
23	"(i) review any consent application
24	with respect to which a regional office is

1	not authorized to approve or deny the ap-
2	plication; and
3	"(ii) review any consent application
4	that is denied by a regional office, if the
5	individual requests a review by the national
6	office.
7	"(E) Forms and instructions.—
8	"(i) Availability.—The Board shall
9	make all forms and instructions related to
10	consent applications available to the public
11	including on the website of the Board.
12	"(ii) Contents.—The forms and in-
13	structions described under clause (i) shall
14	provide a sample cover letter and a com-
15	prehensive list of items that may accom-
16	pany the application, including clear guid-
17	ance on evidence that may support a find-
18	ing of rehabilitation.
19	"(F) Consideration of Criminal His-
20	TORY.—
21	"(i) Regional office consider-
22	ATION.—In reviewing a consent applica-
23	tion, a regional office shall—

1	"(I) primarily rely on the crimi-
2	nal history record of the Federal Bu-
3	reau of Investigation; and
4	"(II) provide such record to the
5	applicant to review for accuracy.
6	"(ii) Certified copies.—The Board
7	may not require an applicant to provide
8	certified copies of criminal history records
9	unless the Board determines that there is
10	a clear and compelling justification to re-
11	quire additional information to verify the
12	accuracy of the criminal history record of
13	the Federal Bureau of Investigation.
14	"(G) Consideration of Rehabilita-
15	TION.—Consistent with title VII of the Civil
16	Rights Act of 1964 (42 U.S.C. 2000e et seq.),
17	the Board shall—
18	"(i) conduct an individualized assess-
19	ment when evaluating consent applications
20	that takes into account evidence of reha-
21	bilitation, the applicant's age at the time
22	of the conviction or program entry, the
23	time that has elapsed since conviction or
24	program entry, and the relationship of in-

dividual's offense to the responsibilities of the applicable position;

> "(ii) consider the individual's employment history, letters of recommendation, certificates documenting participation in substance abuse programs, successful participating in job preparation and educational programs, and other relevant mitigating evidence; and

> "(iii) consider any additional information the Board determines necessary for safety and soundness.

"(H) Scope of employment.—With respect to an approved consent application filed by an insured credit union on behalf of an individual, if the Board determines it appropriate, such approved consent application shall allow the individual to work for the same employer (without restrictions on the location) and across positions, except that the prior consent of the Board (which may require a new application) shall be required for any proposed significant changes in the individual's security-related duties or responsibilities, such as promotion to an officer or other positions that the employer de-

1	termines will require higher security screening						
2	credentials.						
3	"(I) Coordination with fdic.—In car-						
4	rying out this subsection, the Board shall con-						
5	sult and coordinate with the Federal Deposit						
6	Insurance Corporation as needed to promote						
7	consistent implementation where appropriate.						
8	"(6) Definitions.—In this subsection:						
9	"(A) CONSENT APPLICATION.—The term						
10	'consent application' means an application filed						
11	with Board by an individual (or by an insured						
12	credit union on behalf of an individual) seeking						
13	the written consent of the Board under para-						
14	graph(1)(A).						
15	"(B) Criminal offense involving dis-						
16	HONESTY.—The term 'criminal offense involv-						
17	ing dishonesty'—						
18	"(i) means an offense under which an						
19	individual, directly or indirectly—						
20	"(I) cheats or defrauds; or						
21	"(II) wrongfully takes property						
22	belonging to another in violation of a						
23	criminal statute;						
24	"(ii) includes an offense that Federal,						
25	State, or local law defines as dishonest, or						

1	for which dishonesty is an element of the					
2	offense; and					
3	"(iii) does not include—					
4	"(I) a misdemeanor criminal of-					
5	fense committed more than one year					
6	before the date on which an individu					
7	files a consent application, excluding					
8	any period of incarceration; or					
9	"(II) an offense involving the					
10	possession of controlled substances.					
11	"(C) Pretrial diversion or similar					
12	PROGRAM.—The term 'pretrial diversion or					
13	similar program' means a program character-					
14	ized by a suspension or eventual dismissal or					
15	reversal of charges or criminal prosecution upon					
16	agreement by the accused to restitution, drug					
17	or alcohol rehabilitation, anger management, or					
18	community service.".					
19	SEC. 4. REVIEW AND REPORT TO CONGRESS.					
20	Not later than the end of the 2-year period beginning					
21	on the date of enactment of this Act, the Federal Deposit					
22	Insurance Corporation and the National Credit Union Ad-					
23	ministration shall—					
24	(1) review the rules issued to carry out this Act					
25	and the amendments made by this Act on—					

1	(A) the application of section 19 of the					
2	Federal Deposit Insurance Act (12 U.S.C.					
3	1829) and section 205(d) of the Federal Credit					
4	Union Act (12 U.S.C. 1785(d));					
5	(B) the number of applications for consent					
6	applications under such sections; and					
7	(C) the rates of approval and denial for					
8	consent applications under such sections;					
9	(2) make the results of the review required					
10	under paragraph (1) available to the public; and					
11	(3) issue a report to Congress containing any					
12	legislative or regulatory recommendations for ex-					
13	panding employment opportunities for those with a					
14	previous minor criminal offense.					
15	SEC. 5. DETERMINATION OF BUDGETARY EFFECTS.					
16	The budgetary effects of this Act, for the purpose of					
17	complying with the Statutory Pay-As-You-Go Act of 2010,					
18	shall be determined by reference to the latest statement					
19	titled "Budgetary Effects of PAYGO Legislation" for this					
20	Act, submitted for printing in the Congressional Record					
21	by the Chairman of the House Budget Committee, pro-					

- 1 vided that such statement has been submitted prior to the
- 2 vote on passage.

Passed the House of Representatives May 11, 2022. Attest:

Clerk.

# 117th CONGRESS H. R. 5911

## AN ACT

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.