

Union Calendar No. 234

117TH CONGRESS
2^D SESSION

H. R. 5911

[Report No. 117-314]

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

MAY 10, 2022

Additional sponsor: Mr. SESSIONS

MAY 10, 2022

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italie*]

[For text of introduced bill, see copy of bill as introduced on November 9, 2021]

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 Banking*
5 *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—*

9 *(1) by inserting after subsection (b) the fol-*
10 *lowing:*

11 “(c) *EXCEPTIONS.—*

12 “(1) *CERTAIN OLDER OFFENSES.—*

13 “(A) *IN GENERAL.—With respect to an in-*
14 *dividual, subsection (a) shall not apply to an of-*
15 *fense if—*

16 “(i) *it has been 7 years or more since*
17 *the offense occurred; or*

18 “(ii) *the individual was incarcerated*
19 *with respect to the offense and it has been*
20 *5 years or more since the individual was re-*
21 *leased from incarceration.*

22 “(B) *OFFENSES COMMITTED BY INDIVID-*
23 *UALS 21 OR YOUNGER.—For individuals who*
24 *committed an offense when they were 21 years of*
25 *age or younger, subsection (a) shall not apply to*

1 *the offense if it has been more than 30 months*
2 *since the sentencing occurred.*

3 “(C) *LIMITATION.*—*This paragraph shall*
4 *not apply to an offense described under sub-*
5 *section (a)(2).*

6 “(2) *EXPUNGEMENT AND SEALING.*—*With respect*
7 *to an individual, subsection (a) shall not apply to an*
8 *offense if—*

9 “(A) *there is an order of expungement, seal-*
10 *ing, or dismissal that has been issued in regard*
11 *to the conviction in connection with such offense;*
12 *and*

13 “(B) *it is intended by the language in the*
14 *order itself, or in the legislative provisions under*
15 *which the order was issued, that the conviction*
16 *shall be destroyed or sealed from the individual’s*
17 *State or Federal record, even if exceptions allow*
18 *the record to be considered for certain character*
19 *and fitness evaluation purposes.*

20 “(3) *DE MINIMIS EXEMPTION.*—

21 “(A) *IN GENERAL.*—*Subsection (a) shall not*
22 *apply to such de minimis offenses as the Cor-*
23 *poration determines, by rule.*

24 “(B) *CONFINEMENT CRITERIA.*—*In issuing*
25 *rules under subparagraph (A), the Corporation*

1 *shall include a requirement that the offense was*
2 *punishable by a term of three years or less con-*
3 *finied in a correctional facility, where such con-*
4 *finement—*

5 *“(i) is calculated based on the time an*
6 *individual spent incarcerated as a punish-*
7 *ment or a sanction, not as pretrial deten-*
8 *tion; and*

9 *“(ii) does not include probation or pa-*
10 *role where an individual was restricted to a*
11 *particular jurisdiction or was required to*
12 *report occasionally to an individual or a*
13 *specific location.*

14 *“(C) BAD CHECK CRITERIA.—In setting the*
15 *criteria for de minimis offenses under subpara-*
16 *graph (A), if the Corporation establishes criteria*
17 *with respect to insufficient funds checks, the Cor-*
18 *poration shall require that the aggregate total*
19 *face value of all insufficient funds checks across*
20 *all convictions or program entries related to in-*
21 *sufficient funds checks is \$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 of-*
2 *fenses as the Corporation may designate) if 1*
3 *year or more has passed since the applicable con-*
4 *viction or program entry.”; and*

5 *(2) by adding at the end the following:*

6 “(f) *CONSENT APPLICATIONS.—*

7 “(1) *IN GENERAL.—The Corporation shall accept*
8 *consent applications from an individual and from an*
9 *insured depository institution or depository institu-*
10 *tion holding company on behalf of an individual that*
11 *are filed separately or contemporaneously with a re-*
12 *gional office of the Corporation.*

13 “(2) *SPONSORED APPLICATIONS FILED WITH RE-*
14 *GIONAL OFFICES.—Consent applications filed at a re-*
15 *gional office of the Corporation by an insured deposi-*
16 *tory 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 of-*
20 *fice, if such authority has been delegated to such*
21 *office by the Corporation; and*

22 “(C) *may only be denied by such office if*
23 *the general counsel of the Corporation (or a des-*
24 *ignee) certifies that the denial is consistent with*
25 *this section.*

1 “(3) *INDIVIDUAL APPLICATIONS FILED WITH RE-*
2 *REGIONAL OFFICES.—Consent applications filed at a re-*
3 *gional office by an individual—*

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

5 “(B) *may be approved or denied by such of-*
6 *fice, if such authority has been delegated to such*
7 *office by the Corporation, except with respect*
8 *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 Corpora-*
13 *tion.*

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 shall*
24 *make all forms and instructions related to con-*

1 *sent applications available to the public, includ-*
2 *ing 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 that*
8 *may support a finding of rehabilitation.*

9 “(6) *CONSIDERATION OF CRIMINAL HISTORY.*—

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

13 “(i) *primarily rely on the criminal*
14 *history 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 Corporation*
19 *may not require an applicant to provide cer-*
20 *tified copies of criminal history records unless*
21 *the Corporation determines that there is a clear*
22 *and compelling justification to require addi-*
23 *tional information to verify the accuracy of the*
24 *criminal history record of the Federal Bureau of*
25 *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 pro-*
9 *gram entry, the time that has elapsed since con-*
10 *viction or program entry, and the relationship of*
11 *individual’s offense to the responsibilities of the*
12 *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-*

1 *poration determines it appropriate, such approved*
2 *consent application shall allow the individual to work*
3 *for the same employer (without restrictions on the lo-*
4 *cation) and across positions, except that the prior*
5 *consent of the Corporation (which may require a new*
6 *application) shall be required for any proposed sig-*
7 *nificant changes in the individual’s security-related*
8 *duties or responsibilities, such as promotion to an of-*
9 *ficer or other positions that the employer determines*
10 *will require higher security screening credentials.*

11 *“(9) COORDINATION WITH THE NCUA.—In car-*
12 *rying out this section, the Corporation shall consult*
13 *and coordinate with the National Credit Union Ad-*
14 *ministration as needed to promote consistent imple-*
15 *mentation where appropriate.*

16 *“(g) DEFINITIONS.—In this section:*

17 *“(1) CONSENT APPLICATION.—The term ‘consent*
18 *application’ means an application filed with Cor-*
19 *poration by an individual (or by an insured deposi-*
20 *tory institution or depository institution holding*
21 *company on behalf of an individual) seeking the writ-*
22 *ten consent of the Corporation under subsection*
23 *(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 indi-*
5 *vidual, 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, State,*
11 *or local law defines as dishonest, or for which*
12 *dishonesty is an element of the offense; and*

13 “(C) *does not include—*

14 “(i) *a misdemeanor criminal offense*
15 *committed more than one year before the*
16 *date on which an individual files a consent*
17 *application, excluding any period of incar-*
18 *ceration; or*

19 “(ii) *an offense involving the posses-*
20 *sion of controlled substances.*

21 “(3) *PRETRIAL DIVERSION OR SIMILAR PRO-*
22 *GRAM.—The term ‘pretrial diversion or similar pro-*
23 *gram’ means a program characterized by a suspen-*
24 *sion or eventual dismissal or reversal of charges or*
25 *criminal prosecution upon agreement by the accused*

1 to restitution, drug or alcohol rehabilitation, anger
2 management, or community service.”.

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

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

7 “(4) EXCEPTIONS.—

8 “(A) CERTAIN OLDER OFFENSES.—

9 “(i) IN GENERAL.—With respect to an
10 individual, paragraph (1) shall not apply
11 to an offense if—

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

14 “(II) the individual was incarcer-
15 ated with respect to the offense and it
16 has been 5 years or more since the in-
17 dividual was released from incarcer-
18 ation.

19 “(ii) OFFENSES COMMITTED BY INDI-
20 VIDUALS 21 OR YOUNGER.—For individuals
21 who committed an offense when they were
22 21 years of age or younger, paragraph (1)
23 shall not apply to the offense if it has been
24 more than 30 months since the sentencing
25 occurred.

1 “(iii) *LIMITATION.*—*This subpara-*
2 *graph shall not apply to an offense de-*
3 *scribed under paragraph (1)(B).*

4 “(B) *EXPUNGEMENT AND SEALING.*—*With*
5 *respect to an individual, paragraph (1) shall not*
6 *apply to an offense if—*

7 “(i) *there is an order of expungement,*
8 *sealing, or dismissal that has been issued in*
9 *regard to the conviction in connection with*
10 *such offense; and*

11 “(ii) *it is intended by the language in*
12 *the order itself, or in the legislative provi-*
13 *sions under which the order was issued, that*
14 *the conviction shall be destroyed or sealed*
15 *from the individual’s State or Federal*
16 *record, even if exceptions allow the record to*
17 *be considered for certain character and fit-*
18 *ness evaluation purposes.*

19 “(C) *DE MINIMIS EXEMPTION.*—

20 “(i) *IN GENERAL.*—*Paragraph (1)*
21 *shall not apply to such de minimis offenses*
22 *as the Board determines, by rule.*

23 “(ii) *CONFINEMENT CRITERIA.*—*In*
24 *issuing rules under clause (i), the Board*
25 *shall include a requirement that the offense*

1 *was punishable by a term of three years or*
2 *less confined in a correctional facility,*
3 *where such confinement—*

4 “(I) *is calculated based on the*
5 *time an individual spent incarcerated*
6 *as a punishment or a sanction, not as*
7 *pretrial detention; and*

8 “(II) *does not include probation*
9 *or parole where an individual was re-*
10 *stricted to a particular jurisdiction or*
11 *was required to report occasionally to*
12 *an individual or a specific location.*

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

22 “(iv) *DESIGNATED LESSER OF-*
23 *FENSES.—Paragraph (1) shall not apply to*
24 *certain lesser offenses (including the use of*
25 *a fake ID, shoplifting, trespass, fare eva-*

1 *sion, driving with an expired license or tag,*
2 *and such other low-risk offenses as the*
3 *Board may designate) if 1 year or more has*
4 *passed since the applicable conviction or*
5 *program entry.*

6 “(5) *CONSENT APPLICATIONS.—*

7 “(A) *IN GENERAL.—The Board shall accept*
8 *consent applications from an individual and*
9 *from an insured credit union on behalf of an in-*
10 *dividual that are filed separately or contempora-*
11 *neously with a regional office of the Board.*

12 “(B) *SPONSORED APPLICATIONS FILED*
13 *WITH REGIONAL OFFICES.—Consent applications*
14 *filed at a regional office of the Board by an in-*
15 *sured credit union on behalf of an individual—*

16 “(i) *shall be reviewed by such office;*

17 “(ii) *may be approved or denied by*
18 *such office, if such authority has been dele-*
19 *gated to such office by the Board; and*

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

1 “(C) *INDIVIDUAL APPLICATIONS FILED*
2 *WITH REGIONAL OFFICES.*—*Consent applications*
3 *filed at a regional office by an individual—*

4 “(i) *shall be reviewed by such office;*

5 *and*

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

10 “(I) *cases involving an offense de-*
11 *scribed under paragraph (1)(B); and*

12 “(II) *such other high-level security*
13 *cases as may be designated by the*
14 *Board.*

15 “(D) *NATIONAL OFFICE REVIEW.*—*The na-*
16 *tional office of the Board shall—*

17 “(i) *review any consent application*
18 *with respect to which a regional office is not*
19 *authorized to approve or deny the applica-*
20 *tion; and*

21 “(ii) *review any consent application*
22 *that is denied by a regional office, if the in-*
23 *dividual requests a review by the national*
24 *office.*

25 “(E) *FORMS AND INSTRUCTIONS.*—

1 “(i) *AVAILABILITY.*—*The Board shall*
2 *make all forms and instructions related to*
3 *consent applications available to the public,*
4 *including on the website of the Board.*

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

12 “(F) *CONSIDERATION OF CRIMINAL HIS-*
13 *TORY.*—

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

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

20 “(II) *provide such record to the*
21 *applicant to review for accuracy.*

22 “(ii) *CERTIFIED COPIES.*—*The Board*
23 *may not require an applicant to provide*
24 *certified copies of criminal history records*
25 *unless the Board determines that there is a*

1 *clear and compelling justification to require*
2 *additional information to verify the accu-*
3 *racy of the criminal history record of the*
4 *Federal Bureau of Investigation.*

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

9 “(i) *conduct an individualized assess-*
10 *ment when evaluating consent applications*
11 *that takes into account evidence of rehabili-*
12 *tation, the applicant’s age at the time of the*
13 *conviction or program entry, the time that*
14 *has elapsed since conviction or program*
15 *entry, and the relationship of individual’s*
16 *offense to the responsibilities of the applica-*
17 *ble position;*

18 “(ii) *consider the individual’s employ-*
19 *ment history, letters of recommendation,*
20 *certificates documenting participation in*
21 *substance abuse programs, successful par-*
22 *ticipating in job preparation and edu-*
23 *cational programs, and other relevant miti-*
24 *gating evidence; and*

1 “(iii) consider any additional informa-
2 tion the Board determines necessary for
3 safety and soundness.

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

19 “(I) COORDINATION WITH FDIC.—In car-
20 rying out this subsection, the Board shall consult
21 and coordinate with the Federal Deposit Insur-
22 ance Corporation as needed to promote consistent
23 implementation where appropriate.

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

1 “(A) *CONSENT APPLICATION.*—*The term*
2 *‘consent application’ means an application filed*
3 *with Board by an individual (or by an insured*
4 *credit union on behalf of an individual) seeking*
5 *the written consent of the Board under para-*
6 *graph (1)(A).*

7 “(B) *CRIMINAL OFFENSE INVOLVING DIS-*
8 *HONESTY.*—*The term ‘criminal offense involving*
9 *dishonesty’—*

10 “(i) *means an offense under which an*
11 *individual, directly or indirectly—*

12 “(I) *cheats or defrauds; or*

13 “(II) *wrongfully takes property*
14 *belonging to another in violation of a*
15 *criminal statute;*

16 “(ii) *includes an offense that Federal,*
17 *State, or local law defines as dishonest, or*
18 *for which dishonesty is an element of the of-*
19 *fense; and*

20 “(iii) *does not include—*

21 “(I) *a misdemeanor criminal of-*
22 *fense committed more than one year*
23 *before the date on which an individual*
24 *files a consent application, excluding*
25 *any period of incarceration; or*

1 “(II) an offense involving the pos-
2 sion of controlled substances.

3 “(C) *PRETRIAL DIVERSION OR SIMILAR*
4 *PROGRAM.—The term ‘pretrial diversion or simi-*
5 *lar program’ means a program characterized by*
6 *a suspension or eventual dismissal or reversal of*
7 *charges or criminal prosecution upon agreement*
8 *by the accused to restitution, drug or alcohol re-*
9 *habilitation, anger management, or community*
10 *service.”.*

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

12 *Not later than the end of the 2-year period beginning*
13 *on the date of enactment of this Act, the Federal Deposit*
14 *Insurance Corporation and the National Credit Union Ad-*
15 *ministration shall—*

16 (1) *review the rules issued to carry out this Act*
17 *and the amendments made by this Act on—*

18 (A) *the application of section 19 of the Fed-*
19 *eral Deposit Insurance Act (12 U.S.C. 1829) and*
20 *section 205(d) of the Federal Credit Union Act*
21 *(12 U.S.C. 1785(d));*

22 (B) *the number of applications for consent*
23 *applications under such sections; and*

24 (C) *the rates of approval and denial for*
25 *consent applications under such sections;*

- 1 (2) *make the results of the review required under*
2 *paragraph (1) available to the public; and*
- 3 (3) *issue a report to Congress containing any*
4 *legislative or regulatory recommendations for expand-*
5 *ing employment opportunities for those with a pre-*
6 *vious minor criminal offense.*

Union Calendar No. 234

117TH CONGRESS
2^D SESSION

H. R. 5911

[Report No. 117-314]

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.

MAY 10, 2022

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed