



**STATEMENT OF SAKIRA COOK
SENIOR DIRECTOR, JUSTICE REFORM PROGRAM
THE LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS**

**U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON FINANCIAL SERVICES
SUBCOMMITTEE ON DIVERSITY AND INCLUSION**

**HEARING ON “ACCESS DENIED: ELIMINATING BARRIERS AND INCREASING
ECONOMIC OPPORTUNITY FOR JUSTICE-INVOLVED INDIVIDUALS”**

SEPTEMBER 28, 2021

Chairwoman Beatty, Ranking Member Wagner, and members of the subcommittee: My name is Sakira Cook, and I am the senior director of the Justice Reform program at The Leadership Conference on Civil and Human Rights. Thank you for inviting me to testify today. The Leadership Conference is a coalition charged by its diverse membership of more than 220 national organizations to promote and protect the civil and human rights of all persons in the United States.

While our coalition was founded in 1950 as the lobbying arm of the civil rights movement, our mission has since expanded so that we are meeting the new challenges of the 21st century. These challenges include guaranteeing quality education for children, ensuring economic opportunities and justice for all, protecting the freedom to vote, ensuring that new technologies protect civil rights, and transforming the criminal-legal system in America.

Reducing legal, economic, and social barriers and increasing opportunities for justice-involved individuals have long been a core part of The Leadership Conference’s work, and I want to start by commending your subcommittee for taking a closer look at the connections between our criminal-legal system and our housing and financial services systems.

I would like to focus on two key areas of interest to The Leadership Conference that are especially relevant to today’s hearing: predatory lending and fair-chance hiring. I would be remiss, however, if I did not begin with a discussion of the overarching issues within our criminal-legal system. I recognize that many of these issues lie outside of this committee’s jurisdiction, but in order to have a more fruitful conversation about how to protect and expand opportunities for people getting out of the criminal-legal system, we must address the factors that put so many people into the system in the first place and place them at such a staggering disadvantage upon exiting it.

Over the past five decades, our country’s criminal-legal policies have driven an increase in incarceration rates that is unprecedented in our history and unmatched globally. The United States incarcerates more people than any other country in the world, with more than two million people currently incarcerated in U.S. prisons and jails.¹ Over-criminalization and over-incarceration have devastating impacts on those ensnared in the criminal-legal system and their families, disproportionately harm low-income communities and communities of color, and do not produce any proportional increase in public safety. What they do produce is a virtually permanent underclass that is too often shut out of meaningful educational and career opportunities and is exploited by predatory financial forces. This leads to a cycle of legal, economic, and social hardships carried from one generation to the next.

In late 2019, The Leadership Conference released “Vision for Justice 2020 and Beyond: A New Paradigm for Public Safety,”² a report that examines the full range of factors that contribute to our failed criminal-legal system and the devastating consequences faced by the millions of people who get caught up in it every year. Our report, which we request be included in the record of this hearing, outlines a transformative agenda for reform that expands our view of public safety and prioritizes upfront investments in non-carceral programs and social services. While we urge this subcommittee — and all of Congress — to look at our platform in its entirety, I would like to connect several parts of it to the topic of today’s hearing:

Pretrial Detention and Cash Bond: Each year, there are 12 million admissions to jails, and each night, nearly half a million people sit in jail not because they have been convicted of a crime, but because they are detained prior to trial.³ The pretrial detention and bail system significantly impacts access to counsel, diversion, and plea bargaining,⁴ which either has a coercive effect that has been shown to induce people to plead guilty to offenses out of a desire to go home⁵ or bleeds financial resources away from families and communities that will never get them back.⁶ Between 1992 and 2006, the average bail amount increased by 118 percent, and eight in 10 people would have to pay more than a full year’s wages to meet that amount.⁷

¹ “Trends in U.S. Corrections.” The Sentencing Project. Last Updated May 2021. Pg. 2.
<https://www.sentencingproject.org/wp-content/uploads/2021/06/Trends-in-US-Corrections.pdf>.

² <http://civilrightsdocs.info/pdf/reports/Vision-For-Justice-2020-SHORT.pdf>

³ Digard, Léon & Swavola, Elizabeth. “Justice Denied: The Harmful and Lasting Effects of Pretrial Detention.” *Vera Institute of Justice*, April 2019. Pg. 1. <https://www.vera.org/publications/for-the-record-justice-denied-pretrial-detention>.

⁴ *Id.*

⁵ In Harris County, Texas, for instance, a study found that pretrial detainees were 25 percent more likely to plead guilty than similarly situated defendants who were released prior to trial. Heaton, Paul. “The Downstream Consequences of Misdemeanor Pretrial Detention.” *Stanford Law Review*. 2017. Pg. 711.

⁶ Justice Policy Institute, “For Better or For Profit: How the Bail Bonding Industry Stands in the Way of Fair and Effective Pretrial Justice.” September 2012. Pgs. 12-15.

http://www.justicepolicy.org/uploads/justicepolicy/documents/for_better_or_for_profit_.pdf.

⁷ “The High Price of Bail.” *Justice Policy Institute*.

http://www.justicepolicy.org/uploads/justicepolicy/documents/high_price_of_bail_-_final.pdf.

Privatization of Justice: Few functions in the criminal-legal system have not, in some way or in some jurisdiction, been commercialized by private industry. Worse, the costs resulting from these exploitative practices are carried by our society's most marginalized people. These costs include incredibly high prison phone call fees, commissary markups, private probation fees, electronic monitoring device fees, and numerous others.

Criminalization of Poverty: The United States currently fills its jails with indigent people, effectively turning jail cells into debtors' prisons. As the Department of Justice found in its investigation of the Ferguson, Mo., police department in 2014, fines and fees are often used to fund law enforcement, and even a single missed, late, or partial payment can result in jail time.⁸ When people are released, they remain saddled with crippling fines and fees that amount to a regressive and unaffordable tax, as well as harsh collection tactics like suspending driver's licenses that only make it harder for people to pay them off. Moreover, to make matters worse, current federal bankruptcy laws make most of these debts nondischargeable, and there are often no statutes of limitations, meaning that many people effectively serve a life sentence of debt.

Barriers to Successful Reentry: Every year, more than 600,000 people return home from prison, and more than 9 million leave local jails.⁹ When they do, they face more than 44,000 federal, state, and local restrictions in their efforts to obtain job stability, public benefits, and services they need in order to establish and maintain financial security.¹⁰ In many states, for example, occupational licensing laws prevent justice-involved people from entering certain professions regardless of mitigating circumstances and even when their particular convictions bear no relation to their ability to perform a job.¹¹ Even when individuals are not barred from taking certain jobs, a system of unregulated background checks enable discrimination when they apply for other ones. One study showed drastic, racially disparate drops in employer callback rates when job applicants disclosed their records: callbacks fell by half for White applicants with records, and by two-thirds for Black applicants with records.¹²

Reentry Into a Two-Tiered Financial Services System

Already saddled with the above barriers, another one of the many obstacles that justice-involved people, particularly people of color, face in successfully reentering society is in accessing the mainstream

⁸ https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf; see also Mark Berman and Wesley Lowery, "The 12 Key Highlights from the DOJ's Scathing Ferguson Report," Washington Post, March 4, 2015, at <https://www.washingtonpost.com/news/post-nation/wp/2015/03/04/the-12-key-highlights-from-the-dojs-scathing-ferguson-report/>.

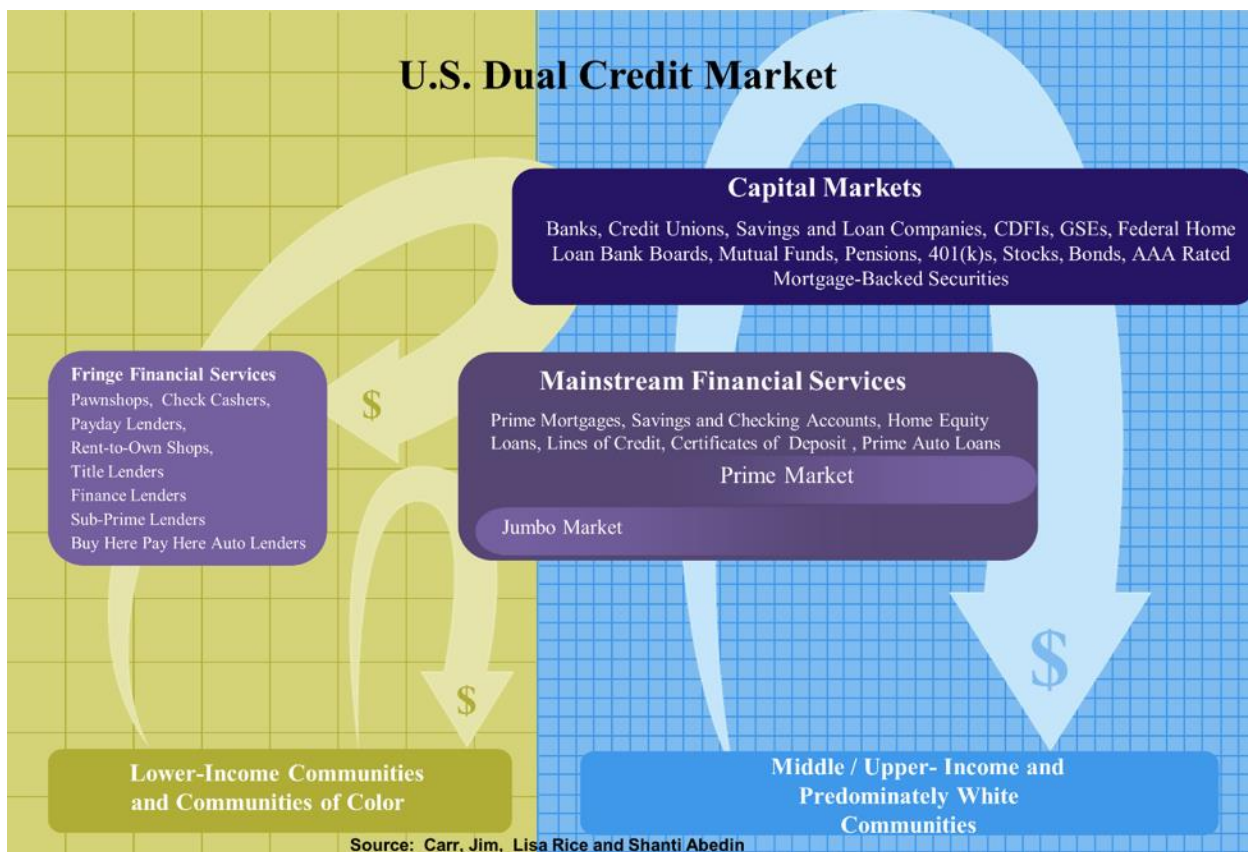
⁹ <https://aspe.hhs.gov/topics/human-services/incarceration-reentry-0>.

¹⁰ See National Reentry Resource Center, *National Inventory of Collateral Consequences of Conviction*, at <https://niccc.nationalreentryresourcecenter.org/>.

¹¹ See, e.g., Shoshana Weissman and Nila Bala, "Criminal Justice, Occupational Licensing Reforms Can go Hand in Hand," The Hill, Apr. 15, 2018, at <https://thehill.com/opinion/civil-rights/383262-criminal-justice-occupational-licensing-reforms-can-go-hand-in-hand>

¹² Devah Pager, *The Mark of a Criminal Record*, 108 Am. J. Soc. 937, 957–58 (2003). The callback rate for White applicants halved from 34 to 17 percent when they revealed a record. The callback rate for Black applicants dropped by nearly two-thirds, from 14 to five percent, when they revealed a record. *Id.*

financial system. Over the course of decades, as a result of explicit discrimination and racial “redlining” in housing and financial services — some of it not just condoned but even required by the federal government¹³ — and, more recently, what has been referred to as “reverse redlining,” or the aggressive marketing of subprime and fringe financial services in communities of color, our country has developed a two-tiered system of financial services that all too often traps low-income people in vicious cycles of high-cost debt and deceptively high fees, and further milks them of the financial assets they are struggling to build. The infographic below, created by several partners of The Leadership Conference, provides a helpful overview of what that system looks like.¹⁴



¹³ See, e.g., Becky Little, “How a New Deal Housing Program Enforced Racial Segregation,” History.com, Oct. 20, 2020, at <https://www.history.com/news/housing-segregation-new-deal-program>; Sen. Pat Toomey, opening remarks, hearing on “Separate and Unequal: The Legacy of Racial Discrimination in Housing,” Senate Banking Committee, Apr. 13, 2021, clip available at <https://twitter.com/BankingGOP/status/1381981427043033093> (“Let me say from the outset that racial discrimination in housing is a real and sad part of our nation’s history. We can’t ignore that—it’s a fact. It’s also a fact that government policies contributed to this discrimination.”).

¹⁴ Jim Carr, Coleman A. Young Endowed Chair and Professor in Urban Affairs at Wayne State University and the National Fair Housing Alliance.

As author James Baldwin once noted, “Anyone who has ever struggled with poverty knows how extremely expensive it is to be poor.”¹⁵ This is certainly true when it comes to accessing financial services. It is even more true for people who are still facing lasting legal and financial consequences and social stigma long after they have completed their sentences.

One particular area of concern for The Leadership Conference has been the proliferation of payday lenders within communities of color. Marketed to people with poor credit as a convenient way to handle financial emergencies, the fees charged for payday loans can quickly equate to interest rates of 400 percent or higher for loans that are renewed over the course of a year. Moreover, research by the Consumer Financial Protection Bureau (CFPB) shows that cycles of borrowing and reborrowing — with additional fees each cycle — are a feature, not a bug, of payday loan products: Four out of five payday loans are rolled over or renewed, and three out of five borrowers renew their loans so many times that they pay more in fees than the amount of money they initially borrowed.¹⁶ Numerous studies have also shown that payday lenders are more likely to be located near Black borrowers than White borrowers,¹⁷ further worsening financial disparities among people of color, particularly those who are still paying a devastating financial toll for past encounters with the criminal-legal system.

For decades, when it comes to payday loans and all other forms of credit, we have called upon Congress and financial regulators to adopt a simple principle: Before making any loan, a lender should be reasonably certain that a borrower can pay it back, on time.¹⁸ In the wake of the 2008 subprime mortgage lending crisis, Congress finally called for an “ability to repay” standard with respect to mortgage lending that advanced this principle. And in 2017, the CFPB finalized a rule that applied this same common-sense standard to payday lending and other small-dollar loan products. Unfortunately, this rule was gutted the following year.

As with much of the financial services industry, the small-dollar lending industry is rapidly evolving. What remains to be seen whether the growth in “fintech” will ultimately help or hinder financial inclusion for people of color, including those who are justice-involved. In 2014, in connection with the Obama administration’s big data review and in the face of rapid technological change, The Leadership Conference, together with other major civil rights and privacy organizations, released its “Civil Rights Principles for the Era of Big Data.”¹⁹ The principles called on the U.S. government and businesses to respect and promote equal opportunity and equal justice in their development and use of new technologies. Since then, the threats technology can pose to civil rights have only grown. Recognizing

¹⁵ <https://inequality.stanford.edu/publications/quote/james-baldwin>.

¹⁶ Consumer Financial Protection Bureau, “CFPB Finds Four out of Five Payday Loans are Rolled Over or Renewed,” Mar. 25, 2014, at <https://www.consumerfinance.gov/about-us/newsroom/cfpb-finds-four-out-of-five-payday-loans-are-rolled-over-or-renewed/>.

¹⁷ See, e.g., Claire Williams, “‘It’s What We Call Reverse Redlining’: Measuring the Proximity of Payday Lenders, Pawn Shops to Black Adults,” Morning Consult, July 23, 2020, at <https://morningconsult.com/2020/07/23/black-consumers-payday-loan-banking-services/>.

¹⁸ See, e.g., Testimony of Wade Henderson, “Ending Mortgage Abuse,” Senate Banking Subcommittee on Housing, Transportation, and Urban Development, June 26, 2007, at <https://civilrights.org/resource/ending-mortgage-abuse-testimony-of-wade-henderson/#>

¹⁹ <https://www.civilrightstable.org/civil-rights-principles-for-the-era-of-big-data/>

this increased urgency, in 2020, The Leadership Conference, along with a number of advocacy and civil rights organizations, released updated principles.²⁰ Those principles include ending high-tech profiling, ensuring justice in automated decisions, preserving constitutional principles, ensuring that technology serves people historically subject to discrimination, defining responsible use of personal information and enhancing individual rights, and making systems transparent and accountable. Our principles have helped inspire a continuing dialogue, and we have worked with many technology experts and industry stakeholders in an effort to establish best practices aimed at ensuring that technological progress truly advances economic opportunities and justice. Yet keeping up with the rapid pace of evolution in the financial services sector remains an ongoing challenge for the civil rights community and one on which we welcome the opportunity to further collaborate with this committee.

At the same time, there is no substitute for adequate regulation of existing financial services products, including those that have a drastic impact on communities of color. An important first step would be for the CFPB to reinstate its 2017 payday rule. We also urge Congress to enact the Veterans and Consumer Fair Credit Act, which would impose a 36 percent interest rate cap on consumer loans. This bill would simply extend the same interest rate cap that has long existed with respect to active duty servicemembers under the Military Lending Act — a law enacted with overwhelming bipartisan support — to all consumers. While we have been troubled that this simple concept appears controversial among some members of Congress, it is certainly not controversial with the public: Over and over again, when voters get the opportunity to vote on ballot initiatives to establish interest rate caps in their states, they have passed them with overwhelming support.²¹

It is time for Congress to follow suit. We will not succeed in getting justice-involved people on the path to financial stability as long as they, their families, and their communities remain surrounded with deceptive, discriminatory financial products.

Fair-Chance Hiring in the Banking Industry

One other priority of The Leadership Conference that I would like to discuss today is the extension of fair-chance hiring principles that would allow more justice-involved people to seek and obtain gainful employment within the banking industry. This is an area where we have seen some progress, yet where there is also an important need and opportunity for further improvement.

Several years ago, through our involvement with the FDIC's Advisory Committee on Economic Inclusion, we and a number of other stakeholders, including in the banking industry, urged the FDIC to reform its rules implementing Section 19 of the Federal Deposit Insurance Act.²² Of note here, Section 19 prohibits federally insured banks from hiring any person who has been convicted of "any criminal offense involving dishonesty or a breach of trust or money laundering" except with the prior written consent of

²⁰ <https://www.civilrightstable.org/principles/>

²¹ For example, in 2016, a South Dakota ballot initiative to outlaw payday lending passed with 76 percent support, with nearly as much turnout as the vote for president.

<http://electionresults.sd.gov/resultsSW.aspx?type=BQ&map=CTY&eid=178>.

²² 12 U.S.C. §1829.

the FDIC. It also imposes a 10-year post-conviction bar, one that cannot be waived by the FDIC, for people who have been convicted of specific offenses such as fraud or embezzlement.

The FDIC's previous Statement of Policy governing Section 19, adopted in 1998,²³ included several troubling key provisions that unduly prevented justice-involved people from seeking employment in the banking industry. First, it provided an upfront deterrent that likely kept many individuals from even applying for jobs, by advising banks to inquire into prior convictions in the initial employment application process. Second, it inexplicably interpreted "dishonesty or breach of trust or money laundering" under the statute to include "all convictions for offenses concerning the illegal manufacture, sale, distribution of or trafficking in controlled substances," which means that an applicant with any such conviction would automatically require a waiver from the FDIC. Third, it included only a very narrow category of *de minimis* offenses for which a waiver would not be necessary.

In 2018, the FDIC proposed and adopted²⁴ changes to this Statement of Policy that, among other things, clarified that banks could ask applicants about their prior records after a conditional offer of employment had been made, expanded the *de minimis* exceptions, and made some clarifications to how expungements would be handled and how convictions would be defined. In 2020, the FDIC codified its Statement of Policy with several additional modifications.²⁵

We were pleased to be a part of this process, and we believe that the revised Section 19 rule is a helpful step forward in expanding meaningful employment opportunities to people who are trying to move beyond their past. We were also pleased that we were not alone, as the comments from individual banks and trade groups were also largely supportive of making it easier to hire justice-involved job applicants.²⁶ Yet there is still significant room for improvement. In particular, with the exception of some minor offenses that now fall under the expanded *de minimis* exception, the FDIC did not otherwise revisit its treatment of drug-related convictions — a treatment that is not called for in the statute, and which cannot reasonably be interpreted categorically as "dishonesty or a breach of trust or money laundering." As the failures of the War on Drugs and its profoundly discriminatory impact on Black people become more and more evident,²⁷ it becomes increasingly clear that this blanket treatment of prior drug convictions is indefensible.

²³ <https://www.fdic.gov/news/financial-institution-letters/1998/98sop19.txt>.

²⁴ <https://www.federalregister.gov/documents/2018/08/03/2018-16634/modifications-to-the-statement-of-policy-pursuant-to-section-19-of-the-federal-deposit-insurance-act>.

²⁵ <https://www.govinfo.gov/content/pkg/FR-2020-08-20/pdf/2020-16464.pdf>.

²⁶ See, e.g., comments of JP Morgan Chase & Co, at <https://www.fdic.gov/resources/regulations/federal-register-publications/2019/2019-incorporation-of-existing-statement-of-policy-3064-af19-c-006.pdf>; comments of Independent Community Bankers of America, at https://www.icba.org/docs/default-source/icba/advocacy-documents/letters-to-regulators/18-03-08_fdicltr.pdf?sfvrsn=0.

²⁷ See, e.g., Jonathan Rothwell, *How the War on Drugs Damages Black Social Mobility*, Brookings Inst. (Sept. 30, 2014), <https://www.brookings.edu/blog/social-mobility-memos/2014/09/30/how-the-war-on-drugs-damages-black-social-mobility/> (citing research that shows white people are more likely to sell illegal drugs, but Black people are more likely to be convicted of drug offenses).

The FDIC would have us believe that the Section 19 waiver process provides a fair and reasonable workaround to its blanket prohibition. We strongly disagree. Applying for a Section 19 waiver is a highly burdensome, costly process that takes weeks at best and months at worst to be resolved — far longer than prospective employees or employers are typically able to wait. While bank-sponsored applications on behalf of prospective employees are more likely to be approved, and to be approved more quickly, they represent only a small percentage of overall applications. Moreover, individuals who are found ineligible to work in the banking industry under Section 19 have their names and convictions posted on the FDIC website for all the world to see, increasing the likelihood that they will be unable to obtain professional employment anywhere else.

The Section 19 statutory language is also problematic. Its blanket provision requiring a waiver to work in a bank following a conviction for “any criminal offense involving dishonesty or a breach of trust or money laundering” does not take into account what type of position a job applicant is seeking. It does not distinguish between applicants for clerical or custodial positions, for example, and applicants for positions involving access to customer funds or sensitive information. The 10-year bar on employment of people convicted of certain fraud and financial offenses does not allow for any consideration of individualized circumstances, raising the possibility that the same kinds of unfair results and absurdities that exist under mandatory minimum sentencing laws are replicated in this process.

We strongly urge Congress and the FDIC to continue the reform of both Section 19 itself and its underlying rules. Similar employment-based restrictions under the Federal Credit Union Act, Truth in Lending Act, and the Securities Exchange Act of 1934, as well as their underlying regulations, can and should be revisited. In addition, as more states move to legalize cannabis and allow for its regulated sale, after decades of misguided and discriminatory prohibition, Congress should pass the Marijuana Opportunity and Reinvestment (MORE) Act. Among other provisions, the MORE Act would provide for the expungement or resentencing of prior cannabis-related convictions, eliminating barriers to employment in the banking system and elsewhere for people who never should have been convicted in the first place.

In the meantime, banks need to do more on their part. This includes being more willing to sponsor Section 19 waiver applications. Doing so significantly speeds up the process, because the FDIC is able to assess an applicant’s fitness for a specific position, one that may or may not involve access to customer funds or sensitive information. At a bare minimum, banks need to more consistently inform prospective employees with prior records about the process for obtaining Section 19 waivers on their own — and, whenever possible, provide them enough time to undergo the process before filling vacancies. Certainly, for larger banks, this should be less of a problem.²⁸

²⁸ With respect to applicants who have either already obtained a Section 19 waiver or are not required to obtain one, banks must also be mindful of their obligations under Title VII of the Civil Rights Act of 1964 and the disparate impact that criminal background checks can have on job applicants of color. See U.S. Equal Emp’t Opportunity Comm’n, *Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions under Title VII of the Civil Rights Act* (2012), <https://www.eeoc.gov/laws/guidance/enforcement-guidance-consideration-arrest-and-conviction-records-employment-decisions#VB> (citing *Green v. Mo. Pac. R.R.*, 523 F.2d 1290, 1293 (8th Cir. 1975)).



The Leadership Conference welcomes further discussions with this subcommittee around building on the improvements the FDIC has made. We also hope to coordinate with banks for which the ability to hire qualified individuals remains too limited.

Thank you for the opportunity to testify today. I would be pleased to answer any questions you may have.