

Suspend the Rules and Pass the Bill, H.R. 5911, With an Amendment

(The amendment strikes all after the enacting clause and inserts a new text)

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”.

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

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

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

6 “(c) EXCEPTIONS.—

7 “(1) CERTAIN OLDER OFFENSES.—

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

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

13 “(ii) the individual was incarcerated
14 with respect to the offense and it has been
15 5 years or more since the individual was
16 released from incarceration.

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

23 “(C) LIMITATION.—This paragraph shall
24 not apply to an offense described under sub-
25 section (a)(2).

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

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

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

16 “(3) DE MINIMIS EXEMPTION.—

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

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

1 “(i) is calculated based on the time an
2 individual spent incarcerated as a punish-
3 ment or a sanction, not as pretrial deten-
4 tion; and

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

10 “(C) BAD CHECK CRITERIA.—In setting
11 the criteria for de minimis offenses under sub-
12 paragraph (A), if the Corporation establishes
13 criteria with respect to insufficient funds
14 checks, the Corporation shall require that the
15 aggregate total face value of all insufficient
16 funds checks across all convictions or program
17 entries related to insufficient funds checks is
18 \$2,000 or less.

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

1 year or more has passed since the applicable
2 conviction or program entry.”; and

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

4 “(f) CONSENT APPLICATIONS.—

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

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

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

17 “(B) may be approved or denied by such
18 office, if such authority has been delegated to
19 such office by the Corporation; and

20 “(C) may only be denied by such office if
21 the general counsel of the Corporation (or a
22 designee) certifies that the denial is consistent
23 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-

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

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

17 “(g) DEFINITIONS.—In this section:

18 “(1) CONSENT APPLICATION.—The term ‘con-
19 sent application’ means an application filed with
20 Corporation by an individual (or by an insured de-
21 pository institution or depository institution holding
22 company on behalf of an individual) seeking the
23 written consent of the Corporation under subsection
24 (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-

1 individual's offense to the responsibilities of
2 the applicable position;

3 “(ii) consider the individual's employ-
4 ment history, letters of recommendation,
5 certificates documenting participation in
6 substance abuse programs, successful par-
7 ticipating in job preparation and edu-
8 cational programs, and other relevant miti-
9 gating evidence; and

10 “(iii) consider any additional informa-
11 tion the Board determines necessary for
12 safety and soundness.

13 “(H) SCOPE OF EMPLOYMENT.—With re-
14 spect to an approved consent application filed
15 by an insured credit union on behalf of an indi-
16 vidual, if the Board determines it appropriate,
17 such approved consent application shall allow
18 the individual to work for the same employer
19 (without restrictions on the location) and across
20 positions, except that the prior consent of the
21 Board (which may require a new application)
22 shall be required for any proposed significant
23 changes in the individual's security-related du-
24 ties or responsibilities, such as promotion to an
25 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 individual
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.