

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

September 23, 2021

Memorandum

To: Members, Committee on Financial Services
From: FSC Majority Staff
Subject: Tuesday, September 28, 2021, Subcommittee on Diversity & Inclusion Hearing entitled, “Access Denied: Eliminating Barriers and Increasing Economic Opportunity for Justice-Involved Individuals”

The Subcommittee on Diversity and Inclusion will hold a hybrid hearing entitled, “Access Denied: Eliminating Barriers and Increasing Economic Opportunity for Justice-Involved Individuals” on September 28, 2021, at 10:00 a.m. ET in person in room 2128 of the Rayburn House Office Building and on the virtual meeting platform Cisco Webex. There will be one panel with the following witnesses:

- **Sakira Cook**, Sr. Director of the Justice Reform Program, The Leadership Conference of Civil and Human Rights
- **Jeffery Korzenik**, Author, Untapped Talent
- **Dolfinette Martin**, Housing Director, Operation Restoration
- **Melissa Sorenson**, Executive Director of the Professional Background Screening Association
- **Marie Claire Tran-Leung**, Director of Legal Impact Network, Shriver Center on Poverty Law

Overview

Nearly one in three U.S. adults has a prior arrest or conviction record.¹ Justice-involved individuals² are often confronted with collateral consequences, including barriers to securing housing, accessing credit, and finding employment. These consequences often follow people long after their involvement with the criminal justice system. Justice-involved individuals also have trouble accessing banking services, such as bank accounts and loans, because of a lack of appropriate identification, thin credit profiles, and discrimination based on one’s criminal record. Further, justice-involved individuals are often limited from working in the financial services industry depending on the nature of and length of time since their prior convictions. The employment barriers faced by this community cost the U.S. economy between \$78 billion and \$87 billion each year.³ Lack of housing and stable employment are risk factors for recidivism.⁴ This hearing will explore the myriad of challenges faced by those who are justice-involved and how such barriers disproportionately affect persons of color.

Employment Barriers

Prior to the COVID-19 pandemic, returning citizens, or persons who were formerly incarcerated, faced a 27 percent unemployment rate in the U.S.—nearly five times higher than the unemployment rate

¹ National Employment Law Project (NELP), [Ensuring People with Convictions Have a Fair Chance to Work](#) (accessed Sept. 20, 2021).

² The term “justice-involved individual” describes persons who have been arrested; persons convicted of an offense; persons who have been incarcerated; and persons who are suspects in a crime.

³ Cherrie Bucknor and Alan Barber, Center for Economic and Policy Research, [The Price We Pay: Economic Costs of Barriers to Employment for Former Prisoners and People Convicted of Felonies](#) (Jun. 2016).

⁴ The Harvard University Institute of Politics Criminal Justice Policy Group, [Successful Reentry: A Community-Level Analysis](#) (Dec. 2019).

of the public.⁵ The unemployment rate for Black women who are returning citizens and have a high school diploma or GED is 60%, and for Latinx women it is 47%; compared to 29% for White women.⁶ Partly in recognition of these inequities, there is broad bipartisan support to improve opportunities for employment for returning citizens at the state level.⁷ Thirty-six states have passed laws to “ban the box” for public employment on initial employment applications, and fourteen states expanded ban the box to private employment.⁸ The federal government will ban the box effective December 2021 for federal employment and contracting.⁹ Additionally, large banks and employers, such as J.P. Morgan Chase¹⁰ and Bank of America, have committed to ban the box.¹¹ However, there are concerns that when employers ban the box, they then discriminate based on their perception of the likelihood that the applicant has a criminal record and therefore do not call back or hire young Black and Latinx men.¹²

Within the financial services industry, some progress has been made. The Federal Deposit Insurance Corporation (FDIC) revised their rules to better tailor background checks and open more opportunities in the banking sector.¹³ However, advocates recommend more improvements to reduce barriers while maintaining the safety and soundness of the nation’s depository institutions.¹⁴ The Financial Industry Regulatory Authority (FINRA) requires new registering brokers to disclose information about certain criminal charges and convictions, including disclosure of all felony convictions and certain misdemeanor convictions on its U-4 form, all of which can potentially cause employers to discriminate against certain applicant brokers and limit diversity within the broker industry.¹⁵ In a comment letter to FINRA’s efforts to solicit feedback on diversity and inclusion within the broker-dealer community, members of the legal community iterated that many “securities industry firms will not consider anyone for employment who has a ‘yes’ answer to the criminal charge disclosures, because of the fear that the firm will be expected to provide extra surveillance of those brokers, or that potential customers will avoid brokers with ‘yes’ disclosures.”¹⁶ The Securities Industry and Financial Markets Association (SIFMA) has recommended that FINRA eliminate registration disqualifications for non-investment-related offenses and non-convictions, as well as limit disqualifications to investment-related convictions so that these disclosures do not stop the “pipeline of young and diverse talent from building a career in the industry.”¹⁷

Access to Business Capital

Justice-involved individuals face challenges accessing business capital and are more likely to be denied loans.¹⁸ Access to capital is further impeded for formerly incarcerated individuals because they

⁵ Lucius Couloute & Daniel Kopf, Prison Policy Initiative, [Out of Prison & Out of Work: Unemployment among formerly incarcerated people](#) (Jul. 2018).

⁶ Lucius Couloute, [Getting Back on Course: Educational exclusion and attainment among formerly incarcerated people](#), (Oct. 2018).

⁷ Angela Hanks, Center for American Progress, [Ban the Box and Beyond: Ensuring Individuals with a Criminal Record Have Access to the Labor Market](#) (Jul. 2017).

⁸ Beth Avery and Han Lu, NELP, [Ban the Box: U.S. Cities, Counties, and States Adopt Fair Hiring Policies](#) (Sept. 2020).

⁹ The Fair Chance Act (P.L. 116-92, Subtitle B).

¹⁰ Jamie Dimon, NY Times, [If You Paid Your Debt to Society, You Should Be Allowed to Work](#) (Aug. 4, 2021).

¹¹ [Second Chance Business Coalition](#) (accessed Sept. 20, 2021).

¹² Christina Stacy and Mychal Cohen, Urban Institute, [Ban the Box and Racial Discrimination: A Review of the Evidence and Policy Recommendations](#) (Feb. 2017).

¹³ Federal Deposit Insurance Corporation, [FDIC Final Rule Revises and Codifies Policy to Allow Greater Employment Opportunities for Individuals with Certain Minor Criminal Offenses on Their Records](#) (Jul. 24, 2020).

¹⁴ National Employment Law Project, [Federal Deposit Insurance Act Section 19 Final Regulations Side-by-Side Comparison with Recommendations](#) (Aug. 6, 2020).

¹⁵ W. Hardy Callcott, [Response to FINRA Regulatory Notice 21-17 Diversity and Inclusion](#), (Jun. 2021).

¹⁶ *Id.*

¹⁷ Kenneth E. Bentsen, Securities Industry and Financial Markets Association, [Response to Regulatory Notice 21-17: Supporting Diversity and Inclusion in the Broker](#) (Jun. 2021).

¹⁸ Kira Lerner Arnold Ventures, [Banks Won’t Even Talk to Us’: Business Owners with a Criminal Record Face an Abundance of Collateral Consequences](#) (Jul. 2021).

often leave prison with high debt, usually “in the tens of thousands of dollars, from conviction-related costs, missed payments, prison charges, or child support. And some of those debts, particularly if they’re delinquent, can show up on a credit report. People who’ve spent years in detention are also common targets of scams and identity theft.”¹⁹

Accessing business capital has long been an issue for people of color in general and has helped to exacerbate the racial wealth gap.²⁰ These inequities are further compounded by the disproportionate impact of the justice system on people of color due to “Systemic racism [that] is evident at every stage of the system, from policing to prosecutorial decisions, pretrial release processes, sentencing, correctional discipline, and even reentry.”²¹ According to a 2020 report from the Bureau of Justice Statistics, the imprisonment rate of black males was nearly six times that of white males.²² A recent paper has linked the relationship between an individual’s FICO credit score, wealth accumulation, race, and incarceration history. It was found that “low FICO scores are connected to individuals in households with incarceration history, with blacks having the most considerable difference compared against whites with no incarceration history (more than 200 points difference)”.²³

The Coronavirus Aid, Relief, and Economic Security (CARES) Act established the Paycheck Protection Program (PPP), where the Small Business Administration (SBA), in coordination with the Treasury Department, administered \$349 billion in forgivable loans to small businesses and certain non-profit organizations through financial institutions, including banks and credit unions. Congress subsequently passed the Paycheck Protection Program and Health Care Enhancement Act (Enhancement Act) to provide an additional \$310 billion to PPP. However, in the initial rollout of PPP under President Trump, the SBA denied individuals with certain criminal histories such as “those with pending charges, those serving parole, probation, or those who have been convicted of a felony within the last five years” from applying for PPP loans. A RAND study found that under the original PPP restrictions, 343,198 businesses were disqualified as a result of criminal records.²⁴ When President Joe Biden eliminated restrictions except for those who were incarcerated, 201,174 more businesses were eligible for PPP funding as a result.²⁵

Limited Access to Affordable Financial Services

Returning citizens face barriers to entry when accessing banking opportunities with financial institutions. For example, because of debt owed for court fees, fines, and other penalties, many individuals are unable to obtain driver’s licenses— which is a common form of picture identification used to open a bank account or apply for a loan.²⁶ Banks may also conduct background checks on potential customers, and can choose to deny individuals on the basis of the results.²⁷ With few opportunities to bank with financial institutions, many returning citizens use alternative financial services. Compared to their non-justice-involved counterparts, justice-involved individuals are three times as likely to use alternatives such as payday loans, check cashing services, pawn shops, money order services and title loans.²⁸ Research from Professor Carlos Fernando Avenancio-León from Indiana University Bloomington reveals that

¹⁹ Amanda Abrams, Shelterforce, [Making Loans to Help Formerly Incarcerated People Get Back on Their Feet](#) (Apr. 2020).

²⁰ Joyce Klein, The Aspen Institute, [Bridging the Divide](#) (Jan. 2017).

²¹ Wendy Sawyer, Prison Policy Institute, [Visualizing the racial disparities in mass incarceration](#) (Jul. 27, 2020).

²² E. Ann Carson, U.S. Department of Justice, [Prisoners in 2018](#) (Apr. 2020).

²³ William Darity Jr. et al., The Washington Center for Equitable Growth, [The never-ending cycle](#) (Mar. 2020).

²⁴ Shawn Bushway et al., RAND Corporation, [Small Businesses, Criminal Histories, and the Paycheck Protection Program](#) (2021).

²⁵ *Id.*

²⁶ David Benoit, The Wall Street Journal, [Ex-Inmates Struggle in a Banking System Not Made for Them](#) (Oct. 31, 2020).

²⁷ Margarette Burnette, Bankrate, [What to do if a ban rejects you for a checking account](#) (Dec. 25, 2017).

²⁸ Spencer Watson, First Step Alliance, [Economic Wellbeing of U.S. Adults with Experiences with Incarceration & Unpaid Legal Costs](#) (accessed Sept. 21, 2021).

former “inmates are much less likely to have mortgages or auto loans than non-incarcerated individuals (14 and 24 percentage points lower, respectively), and their average credit scores are about 50 points lower.”²⁹

Out of 11,000 financial institutions in the U.S., only a small amount provide second chance banking programs.³⁰ Nonprofits have led the way in the second chance community to give justice-involved individuals access to capital and other banking resources. For example, First Step Alliance is leading a grassroots campaign to establish a second chance credit union for returning citizens and their families.³¹ Similarly, MicroFinance Institute in Colorado assists formerly incarcerated people seeking entrepreneurship opportunities by providing training and mentorship.³² These programs, along with others from different non-profit organizations, provide opportunities for returning citizens to access the financial services needed to buy a home, car or obtain employment, which all contribute to a lower recidivism rate.

Housing Barriers

Justice-involved individuals often experience barriers to safe, stable housing that perpetuate a prison-to-homelessness pipeline and exacerbate recidivism.³³ These barriers include broad landlord discretion to refuse to rent to people with criminal records and few protections and resources to ensure justice-involved individuals can access housing.³⁴ A lack of stable housing is a major roadblock to successful reintegration into the community, finding and maintaining employment, or pursuing other critical socio-economic opportunities.³⁵ Additionally, because justice-involved individuals are disproportionately Black and Latinx, overt and systemic barriers to housing access can have a disparate impact on people of color, potentially violating the Fair Housing Act of 1968.³⁶

Private Housing Market and Background Checks. Increasingly, landlords have come to rely on criminal background screenings when reviewing apartment applications and an estimated four in five landlords now use background checks on prospective tenants.³⁷ Research from the Shriver Center on Poverty Law has shown that unreasonable lookback periods on criminal background checks, the use of arrest as proof of criminal activity, and broad categories of criminal activity all contribute to the denial of justice-involved individuals from securing housing.³⁸ Additionally, the reports produced by tenant screening companies include a simplistic and limited assessment of a person’s ability to maintain housing, and often only include a “yes” or “no” recommendation to landlords.³⁹ Furthermore, research from the National Consumer Law Center found that errors in the background check process are prevalent and that “companies continue to generate inaccurate reports that have grave consequences for consumers seeking jobs and housing.”⁴⁰ Under the Obama Administration, the Department of Housing and Urban Development (HUD) issued guidance explaining how the use of criminal records history by landlords

²⁹ Carlos Avenancio-León, The Hill, [Without access to credit, ex-cons may return to lives of crime](#) (Mar. 2019).

³⁰ [First Step Alliance](#) (accessed Sept. 21, 2021).

³¹ *Id.*

³² Rocky Mountain MicroFinance Institute, [About Us](#) (last modified 2021).

³³ Marie Claire Tran-Leung, Shriver Center on Poverty Law, [When Discretion Means Denial: A National Perspective on Criminal Records Barriers to Federally Subsidized Housing](#) (2015).

³⁴ *Id.*

³⁵ Jocelyn Fontaine and Jennifer Biess, Urban Institute, [Housing as a Platform for Formerly Incarcerated Persons](#) (Apr. 2012).

³⁶ HUD, [Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions](#) (Apr. 4, 2016).

³⁷ D. Thatcher, *The Rise of Criminal Background Screening in Rental Housing*, Journal of the American Bar Foundation (Feb. 29, 2008).

³⁸ Tex Pasley et al., Shriver Center on Poverty Law, [Screened Out: How Tenant Screening Reports Deprive Tenants of Equal Access to Housing](#) (Jan. 2020).

³⁹ *Id.*

⁴⁰ Ariel Nelson, National Consumer Law Center, [Broken Records Redux How Errors by Criminal Background Check Companies Continue to Harm Consumers Seeking Jobs and Housing](#) (Dec. 2019).

could violate the Fair Housing Act.⁴¹ Additionally, a federal court ruled in 2019 that consumer reporting agencies have to comply with the Fair Housing Act when providing tenant screening services, since the companies are effectively making rental admissions decisions on behalf of the landlord through the reports they generate.⁴²

Public and Assisted Housing. While some justice-involved individuals may apply to receive federal housing assistance or to reunite with their families already receiving such assistance, current law provides public housing authorities with significant discretion to restrict admissions to their programs based on criminal records, which often leads to people being denied assistance and unable to rely on family supports.⁴³ Some public housing authorities have reformed their screening policies to improve access to housing for justice-involved individuals, after community stakeholders advocated for such changes. In March 2016, the Housing Authority of New Orleans eliminated a ban on providing housing assistance to people with criminal records and began to review each person’s case on an individual basis.⁴⁴ Individual reviews allow applicants an opportunity to present additional information that provides a more holistic overview of an individual’s profile. Other public housing authorities have piloted programs to help justice-involved individuals access federally assisted housing or rejoin their families who live in federally assisted housing, including the Housing Authority of Los Angeles, Chicago Housing Authority, and the Philadelphia Housing Authority.⁴⁵

Legislation

- H.R. ____, the "**Expanding Opportunities in Banking Act**," would expand employment opportunities at banks and credit unions for certain formerly incarcerated individuals.
- H.R. ____, the "**Fair Chance at Housing Act**," introduced by Rep. Ocasio-Cortez (NY) would reform the eviction and screening policies for federally assisted housing to remove barriers to housing, family reunification, and rehabilitation for justice involved individuals.
- H.R. ____, *to amend the Fair Credit Reporting Act to prohibit consumer reporting agencies that furnish consumer reports for tenant screening purposes from providing certain information, to establish duties of users of consumer reports for housing purposes, and for other purposes.* This bill is a discussion draft from Rep. Ayanna Pressley (MA) that would reform the Fair Credit Reporting Act to better regulate tenant screening companies when providing reports on the criminal histories of people applying for housing.
- H.R. ____, *to amend the Securities Exchange Act of 1934 to prohibit the consideration of convictions older than 5 years when making certain determinations under the securities laws, and for other purposes.* This bill would expand employment opportunities and consideration at SEC regulated entities for certain justice-involved individuals.

⁴¹ HUD, *supra* note 36.

⁴² Connecticut Fair Housing Center, [Press Release: Federal Court Holds Tenant-Screening Services Must Comply with Fair Housing Act](#) (Mar. 28, 2019).

⁴³ Tran-Leung, *supra* note 33.

⁴⁴ Richard Webster, Times-Picayune, [HANO Approves New Criminal Background Check Policy](#) (Mar. 30, 2016).

⁴⁵ National Housing Law Project, [An Affordable Home on Reentry: Federally Assisted Housing and Previously Incarcerated Individuals](#) (2018).