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117TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPORT
117–314

FAIR HIRING IN BANKING ACT

MAY 10, 2022.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Ms. WATERS, from the Committee on Financial Services, submitted the following

R E P O R T

[To accompany H.R. 5911]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (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, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Fair Hiring in Banking Act".

SEC. 2. FEDERAL DEPOSIT INSURANCE ACT.

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

(1) by inserting after subsection (b) the following:

"(c) EXCEPTIONS.—

"(1) CERTAIN OLDER OFFENSES.—

"(A) IN GENERAL.—With respect to an individual, subsection (a) shall not apply to an offense if—

"(i) it has been 7 years or more since the offense occurred; or

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

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

"(C) LIMITATION.—This paragraph shall not apply to an offense described under subsection (a)(2).

"(2) EXPUNGEMENT AND SEALING.—With respect to an individual, subsection (a) shall not apply to an offense if—

"(A) there is an order of expungement, sealing, or dismissal that has been issued in regard to the conviction in connection with such offense; and

"(B) it is intended by the language in the order itself, or in the legislative provisions under which the order was issued, that the conviction shall be destroyed or sealed from the individual's State or Federal record, even if exceptions allow the record to be considered for certain character and fitness evaluation purposes.

"(3) DE MINIMIS EXEMPTION.—

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

"(B) CONFINEMENT CRITERIA.—In issuing rules under subparagraph (A), the Corporation shall include a requirement that the offense was punishable by a term of three years or less confined in a correctional facility, where such confinement—

"(i) is calculated based on the time an individual spent incarcerated as a punishment or a sanction, not as pretrial detention; and

"(ii) does not include probation or parole where an individual was restricted to a particular jurisdiction or was required to report occasionally to an individual or a specific location.

"(C) BAD CHECK CRITERIA.—In setting the criteria for de minimis offenses under subparagraph (A), if the Corporation establishes criteria with respect to insufficient funds checks, the Corporation shall require that the aggregate total face value of all insufficient funds checks across all convictions or program entries related to insufficient funds checks is $2,000 or less.

"(D) DESIGNATED LESSER OFFENSES.—Subsection (a) shall not apply to certain lesser offenses (including the use of a fake ID, shoplifting, trespass, fare evasion, driving with an expired license or tag, and such other low-risk offenses as the Corporation may designate) if 1 year or more has passed since the applicable conviction or program entry."; and

(2) by adding at the end the following:

"(f) CONSENT APPLICATIONS.—

"(1) IN GENERAL.—The Corporation shall accept consent applications from an individual and from an insured depository institution or depository institution holding company on behalf of an individual that are filed separately or contemporaneously with a regional office of the Corporation.

"(2) SPONSORED APPLICATIONS FILED WITH REGIONAL OFFICES.—Consent applications filed at a regional office of the Corporation by an insured depository institution or depository institution holding company on behalf of an individual—

"(A) shall be reviewed by such office;

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

"(C) may only be denied by such office if the general counsel of the Corporation (or a designee) certifies that the denial is consistent with this section.

"(3) INDIVIDUAL APPLICATIONS FILED WITH REGIONAL OFFICES.—Consent applications filed at a regional office by an individual—

"(A) shall be reviewed by such office; and

"(B) may be approved or denied by such office, if such authority has been delegated to such office by the Corporation, except with respect to—

"(i) cases involving an offense described under subsection (a)(2); and

"(ii) such other high-level security cases as may be designated by the Corporation.

"(4) NATIONAL OFFICE REVIEW.—The national office of the Corporation shall—

"(A) review any consent application with respect to which a regional office is not authorized to approve or deny the application; and

"(B) review any consent application that is denied by a regional office, if the individual requests a review by the national office.

"(5) FORMS AND INSTRUCTIONS.—

"(A) AVAILABILITY.—The Corporation shall make all forms and instructions related to consent applications available to the public, including on the website of the Corporation.

"(B) CONTENTS.—The forms and instructions described under subparagraph (A) shall provide a sample cover letter and a comprehensive list of items that may accompany the application, including clear guidance on evidence that may support a finding of rehabilitation.

"(6) CONSIDERATION OF CRIMINAL HISTORY.—

"(A) REGIONAL OFFICE CONSIDERATION.—In reviewing a consent application, a regional office shall—

"(i) primarily rely on the criminal history record of the Federal Bureau of Investigation; and

"(ii) provide such record to the applicant to review for accuracy.

"(B) CERTIFIED COPIES.—The Corporation may not require an applicant to provide certified copies of criminal history records unless the Corporation determines that there is a clear and compelling justification to require additional information to verify the accuracy of the criminal history record of the Federal Bureau of Investigation.

"(7) CONSIDERATION OF REHABILITATION.—Consistent with title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.), the Corporation shall—

"(A) conduct an individualized assessment when evaluating consent applications that takes into account evidence of rehabilitation, the applicant's age at the time of the conviction or program entry, the time that has elapsed since conviction or program entry, and the relationship of individual's offense to the responsibilities of the applicable position;

"(B) 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

"(C) consider any additional information the Corporation determines necessary for safety and soundness.

"(8) SCOPE OF EMPLOYMENT.—With respect to an approved consent application filed by an insured depository institution or depository institution holding company on behalf of an individual, if the Corporation 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).

"(2) CRIMINAL OFFENSE INVOLVING DISHONESTY.—The term 'criminal offense involving dishonesty'—

"(A) means an offense under which an individual, directly or indirectly—

"(i) cheats or defrauds; or

"(ii) wrongfully takes property belonging to another in violation of a criminal statute;

"(B) includes an offense that Federal, State, or local law defines as dishonest, or for which dishonesty is an element of the offense; and

"(C) does not include—

"(i) a misdemeanor criminal offense committed more than one year before the date on which an individual files a consent application, excluding any period of incarceration; or

"(ii) an offense involving the possession of controlled substances.

"(3) PRETRIAL DIVERSION OR SIMILAR PROGRAM.—The term 'pretrial diversion or similar program' means a program characterized by a suspension or eventual dismissal or reversal of charges or criminal prosecution upon agreement by the accused to restitution, drug or alcohol rehabilitation, anger management, or community service.".

SEC. 3. FEDERAL CREDIT UNION ACT.

Section 205(d) of the Federal Credit Union Act (12 U.S.C. 1785(d)) is amended by adding at the end the following:

"(4) EXCEPTIONS.—

"(A) CERTAIN OLDER OFFENSES.—

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

"(I) it has been 7 years or more since the offense occurred; or

"(II) the individual was incarcerated with respect to the offense and it has been 5 years or more since the individual was released from incarceration.

"(ii) OFFENSES COMMITTED BY INDIVIDUALS 21 OR YOUNGER.—For individuals who committed an offense when they were 21 years of age or younger, paragraph (1) shall not apply to the offense if it has been more than 30 months since the sentencing occurred.

"(iii) LIMITATION.—This subparagraph shall not apply to an offense described under paragraph (1)(B).

"(B) EXPUNGEMENT AND SEALING.—With respect to an individual, paragraph (1) shall not apply to an offense if—

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

"(ii) it is intended by the language in the order itself, or in the legislative provisions under which the order was issued, that the conviction shall be destroyed or sealed from the individual's State or Federal record, even if exceptions allow the record to be considered for certain character and fitness evaluation purposes.

"(C) DE MINIMIS EXEMPTION.—

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

"(ii) CONFINEMENT CRITERIA.—In issuing rules under clause (i), the Board shall include a requirement that the offense was punishable by a term of three years or less confined in a correctional facility, where such confinement—

"(I) is calculated based on the time an individual spent incarcerated as a punishment or a sanction, not as pretrial detention; and

"(II) does not include probation or parole where an individual was restricted to a particular jurisdiction or was required to report occasionally to an individual or a specific location.

"(iii) BAD CHECK CRITERIA.—In setting the criteria for de minimis offenses under clause (i), if the Board establishes criteria with respect to insufficient funds checks, the Board shall require that the aggregate total face value of all insufficient funds checks across all convictions or program entries related to insufficient funds checks is $2,000 or less.

"(iv) DESIGNATED LESSER OFFENSES.—Paragraph (1) shall not apply to certain lesser offenses (including the use of a fake ID, shoplifting, trespass, fare evasion, driving with an expired license or tag, and such other low-risk offenses as the Board may designate) if 1 year or more has passed since the applicable conviction or program entry.

"(5) CONSENT APPLICATIONS.—

"(A) IN GENERAL.—The Board shall accept consent applications from an individual and from an insured credit union on behalf of an individual that are filed separately or contemporaneously with a regional office of the Board.

"(B) SPONSORED APPLICATIONS FILED WITH REGIONAL OFFICES.—Consent applications filed at a regional office of the Board by an insured credit union on behalf of an individual—

"(i) shall be reviewed by such office;

"(ii) may be approved or denied by such office, if such authority has been delegated to such office by the Board; and

"(iii) may only be denied by such office if the general counsel of the Board (or a designee) certifies that the denial is consistent with this section.

"(C) INDIVIDUAL APPLICATIONS FILED WITH REGIONAL OFFICES.—Consent applications filed at a regional office by an individual—

"(i) shall be reviewed by such office; and

"(ii) may be approved or denied by such office, if such authority has been delegated to such office by the Board, except with respect to—

"(I) cases involving an offense described under paragraph (1)(B); and

"(II) such other high-level security cases as may be designated by the Board.

"(D) NATIONAL OFFICE REVIEW.—The national office of the Board shall—

"(i) review any consent application with respect to which a regional office is not authorized to approve or deny the application; and

"(ii) review any consent application that is denied by a regional office, if the individual requests a review by the national office.

"(E) FORMS AND INSTRUCTIONS.—

"(i) AVAILABILITY.—The Board shall make all forms and instructions related to consent applications available to the public, including on the website of the Board.

"(ii) CONTENTS.—The forms and instructions described under clause (i) shall provide a sample cover letter and a comprehensive list of items that may accompany the application, including clear guidance on evidence that may support a finding of rehabilitation.

"(F) CONSIDERATION OF CRIMINAL HISTORY.—

"(i) REGIONAL OFFICE CONSIDERATION.—In reviewing a consent application, a regional office shall—

"(I) primarily rely on the criminal history record of the Federal Bureau of Investigation; and

"(II) provide such record to the applicant to review for accuracy.

"(ii) CERTIFIED COPIES.—The Board may not require an applicant to provide certified copies of criminal history records unless the Board determines that there is a clear and compelling justification to require additional information to verify the accuracy of the criminal history record of the Federal Bureau of Investigation.

"(G) CONSIDERATION OF REHABILITATION.—Consistent with title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.), the Board shall—

"(i) conduct an individualized assessment when evaluating consent applications that takes into account evidence of rehabilitation, the applicant's age at the time of the conviction or program entry, the time that has elapsed since conviction or program entry, and the relationship of individual'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 determines will require higher security screening credentials.

"(I) COORDINATION WITH FDIC.—In carrying out this subsection, the Board shall consult and coordinate with the Federal Deposit Insurance Corporation as needed to promote consistent implementation where appropriate.

"(6) DEFINITIONS.—In this subsection:

"(A) CONSENT APPLICATION.—The term 'consent application' means an application filed with Board by an individual (or by an insured credit union on behalf of an individual) seeking the written consent of the Board under paragraph (1)(A).

"(B) CRIMINAL OFFENSE INVOLVING DISHONESTY.—The term 'criminal offense involving dishonesty'—

"(i) means an offense under which an individual, directly or indirectly—

"(I) cheats or defrauds; or

"(II) wrongfully takes property belonging to another in violation of a criminal statute;

"(ii) includes an offense that Federal, State, or local law defines as dishonest, or for which dishonesty is an element of the offense; and

"(iii) does not include—

"(I) a misdemeanor criminal offense committed more than one year before the date on which an individual files a consent application, excluding any period of incarceration; or

"(II) an offense involving the possession of controlled substances.

"(C) PRETRIAL DIVERSION OR SIMILAR PROGRAM.—The term 'pretrial diversion or similar program' means a program characterized by a suspension or eventual dismissal or reversal of charges or criminal prosecution upon agreement by the accused to restitution, drug or alcohol rehabilitation, anger management, or community service.".

SEC. 4. REVIEW AND REPORT TO CONGRESS.

Not later than the end of the 2-year period beginning on the date of enactment of this Act, the Federal Deposit Insurance Corporation and the National Credit Union Administration shall—

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

(A) the application of section 19 of the Federal Deposit Insurance Act (12 U.S.C. 1829) and section 205(d) of the Federal Credit Union Act (12 U.S.C. 1785(d));

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

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

(2) make the results of the review required under paragraph (1) available to the public; and

(3) issue a report to Congress containing any legislative or regulatory recommendations for expanding employment opportunities for those with a previous minor criminal offense.

PURPOSE AND SUMMARY

On November 9, 2021, Representative Beatty introduced H.R. 5911, the "Fair Hiring in Banking Act", which would expand employment opportunities at banks and credit unions by reducing barriers based on past criminal offenses. Currently, the FDIC and NCUA require banks and credit unions to obtain waivers in order to hire persons convicted of certain criminal offenses, including offenses involving dishonesty. This bill would provide an exception from needing such a waiver for certain criminal charges in which the offense occurred over 7 years ago or where incarceration ended over 5 years ago. It would also provide a clear definition of "criminal offense involving dishonesty." Lastly, it would clarify that criminal offenses that have been expunged, sealed, or dismissed are not included in the FDIC or NCUA review of eligibility to work.

BACKGROUND AND NEED FOR LEGISLATION

This bill codifies and builds on recent reforms the Federal Deposit Insurance Corporation (FDIC) and National Credit Union Administration (NCUA) implemented to promote economic opportunities for justice-involved individuals. In July 2020, the FDIC approved a final rule to revise and incorporate into the agency's regulations a longstanding Statement of Policy (SOP) related to Section 1 which expanded the de minimis exceptions, clarified how to handle expungements, defined some convictions, and clarified that banks should ask about an applicant's prior record only after they

have received a conditional offer of employment. In 2019, the National Credit Union Administration (NCUA) Board approved a final interpretive ruling and policy statement allowing people convicted of certain minor offenses to return to work in the credit union industry without applying for the Board's approval. However, the actions of the FDIC and board of the NCUA did not address the treatment of drug-related offenses, consideration of a person's role (there is currently no distinction made between a bank president and a custodial position), the length of time since the offense occurred, and the process of gaining consent from the FDIC and NCUA when a waiver is sought.

The limits on "lookback" periods and clear definitions in this bill are commonsense reforms to reduce unnecessary barriers to employment in America's banks and credit unions and to prevent discrimination against justice-involved individuals from persisting long after potential employees have served their time. One in three Americans is justice-involved and these individuals often struggle to obtain employment because of their criminal record. Moreover, longstanding racial discrimination in the justice system has been well documented with people of color being incarcerated at five times the rate as White offenders. This bill would help justice-involved individuals reintegrate into society by eliminating unjustified barriers to employment opportunities in the financial industry. It would also help address racial inequities in the criminal justice and financial services industry.

This bill is supported by the following organizations: Bank Policy Institute, Credit Union National Association (CUNA), JPMorgan Chase, National Association of Federally Insured Credit Unions (NAFCU), National Bankers Association (NBA), American Financial Services Association (AFSA) and Public Citizen.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section establishes the short title of the bill as "Fair Hiring in Banking Act".

Section 2. Federal Deposit Insurance Act

- Amends Section 19(a) of the Federal Deposit Insurance Act, which establishes the criminal background lookback periods for depository institutions insured by the Federal Depositor Insurance Corporation (FDIC).
- Reduces the look back period to 7 years since the offense occurred or 5 years since the individual was released from supervision. It reduces the criminal look back period to 30 months for individuals who were under the age of 21 years old when the offense was committed. This section also prevents the examining of offenses that have been pardoned, sealed, or expunged.
- Requires the board to accept consent applications from insured credit unions on behalf of individuals.
- Requires that companies use FBI criminal background checks in their reviews and allow applicants to review for accuracy; and not require individuals to provide copies of criminal records unless there is a clear and compelling justification.

• Provides the opportunity for contextual evaluation, companies should factor in evidence of rehabilitation, age during time of conviction or probation, and relevance of offense to the position. Companies should also assume that an individual is rehabilitated if four years has passed since the offense and there are no other convictions.

• Requires companies to consider an individual's employment history, letters of recommendation, participation in substance abuse programs, successful participation in job preparation and educational programs, and other relevant information.

• Requires prior consent of the board is required for changes in the individual's securityrelated duties or responsibilities, such as promotions or additional credentials.

• Defines criminal offenses involving dishonesty.

Section 3. Federal Credit Union Act

• Amends Section 205(3) of the Federal Credit Union Act, which establishes the lookback period for credit unions insured by the National Credit Union Administration (NCUA).

• Reduces the look back period to 7 years since the offense occurred or 5 years since the individual was released from supervision. It reduces the criminal look back period to 30 months for individuals who were under the age of 21 years old when the offense was committed. This section also prevents the examining of offenses that have been pardoned, sealed, or expunged.

• Requires the board to accept consent applications from insured credit unions on behalf of individuals.

• Requires that companies use FBI criminal background checks in their reviews and allow applicants to review for accuracy; and not require individuals to provide copies of criminal records unless there is a clear and compelling justification.

• Provides the opportunity for contextual evaluation, companies should factor in evidence of rehabilitation, age during time of conviction or probation, and relevance of offense to the position. Companies should also assume that an individual is rehabilitated if four years has passed since the offense and there are no other convictions.

• Requires companies to consider an individual's employment history, letters of recommendation, participation in substance abuse programs, successful participation in job preparation and educational programs, and other relevant information.

• Requires prior consent of the board is required for changes in the individual's security-related duties or responsibilities, such as promotions or additional credentials.

• Defines criminal offenses involving dishonesty.

Section 4. Review and report to Congress

• Requires the FDIC and the NCUA to review the rates and approval and denial for consent application; this information must be made available to the public.

• Requires a report to congress involving recommendations for expanding employment opportunities for those with past minor criminal offenses.

HEARINGS

For the purposes of section 3(c)(6) of House rule XIII, the Committee on Financial Services' Full Committee held a hearing on May 19, 2021 to consider H.R. 5911 entitled, "Oversight of Prudential Regulators: Ensuring the Safety, Soundness, Diversity, and Accountability of Depository Institutions," and the Committee's Subcommittee on Diversity and Inclusion held a hearing on September 28, 2021 to consider H.R. 5911 entitled, "Access Denied: Eliminating Barriers and Increasing Economic Opportunity for Justice-Involved Individuals."

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on November 16, 2021 and ordered H.R. 5911 to be reported favorably to the House with an amendment in the nature of a substitute by a voice vote, a quorum being present.

COMMITTEE VOTES AND ROLL CALL VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following roll call votes occurred during the Committee's consideration of H.R. 5911: An amendment in the nature of a substitute, no. 4, offered by Mrs. Beatty was AGREED TO by voice vote.

Present	Representatives	Ayes	Nays	Present	Not Recorded
		0	0	0	0
	Passed on Voice Vote				
	Ms. Waters, *Chairwoman*				
	Mrs. Maloney				
	Ms. Velázquez				
	Mr. Sherman				
	Mr. Meeks				
	Mr. Scott				
	Mr. Green				
	Mr. Cleaver				
	Mr. Perlmutter				
	Mr. Himes				
	Mr. Foster				
	Mrs. Beatty				
	Mr. Vargas				
	Mr. Gottheimer				
	Mr. Gonzalez (TX)				
	Mr. Lawson				
	Mr. San Nicolas				
	Ms. Axne				
	Mr. Casten				
	Ms. Pressley				
	Mr. Torres				
	Mr. Lynch				
	Ms. Adams				
	Ms. Tlaib				
	Ms. Dean				
	Ms. Ocasio-Cortez				
	Mr. Garcia (IL)				
	Ms. Garcia (TX)				
	Ms. Williams				
	Mr. Auchincloss				
	Democratic Totals	0	0	0	0
	Mr. McHenry, *Ranking Member*				
	Mrs. Wagner				
	Mr. Lucas				
	Mr. Sessions				
	Mr. Posey				
	Mr. Luetkemeyer				
	Mr. Huizenga				
	Mr. Barr				
	Mr. Williams				
	Mr. Hill				
	Mr. Emmer				
	Mr. Zeldin				
	Mr. Loudermilk				
	Mr. Mooney				
	Mr. Davidson				
	Mr. Budd				
	Mr. Kustoff				
	Mr. Hollingsworth				
	Mr. Gonzalez (OH)				
	Mr. Rose				
	Mr. Steil				
	Mr. Gooden				
	Mr. Timmons				
	Mr. Taylor				
	Republican Totals	0	0	0	0
	Committee Totals	0	0	0	0

Committee on Financial Services

Full Committee - 117th Congress (1st Session)

Date:	11/16/2021
Measure:	H.R. 5911
Amendment No:	4
Offered by:	Beatty

	Yes/Aye	No/Nay	Prsnt
Agreed To:	0	0	0
Voice Vote:	X		
Record Vote:			

Votes Cast	Missed	Total
0	30	30

Votes Cast	Missed	Total
0	23	23
0	53	53

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause (3)(c) of rule XIII of the Rules of the House of Representatives, the goals of H.R. 5911 are to reduce employment barriers for applicants with minor criminal histories at banks and credit unions.

NEW BUDGET AUTHORITY AND CBO COST ESTIMATE

Pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the *Congressional Budget Act of 1974*, and pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the *Congressional Budget Act of 1974*, the Committee has received the following estimate for H.R. 5911 from the Director of the Congressional Budget Office:

H.R. 5911, Fair Hiring in Banking Act
As ordered reported by the House Committee on Financial Services on November 16, 2021

By Fiscal Year, Millions of Dollars	2022	2022-2026	2022-2031
Direct Spending (Outlays)	*	1	1
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	*	1	1
Spending Subject to Appropriation (Outlays)	0	0	0

Statutory pay-as-you-go procedures apply?	Yes	**Mandate Effects**	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2032?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	Yes, Under Threshold

* = between zero and $500,000.

H.R. 5911 would amend statutory prohibitions and limitations that restrict the hiring of certain individuals convicted of criminal offenses by insured depository institutions and insured credit unions. Under current law, some convictions prohibit a person from being employed by such institutions without prior consent of the National Credit Union Administration (NCUA) or the Federal Deposit Insurance Corporation (FDIC). Under H.R. 5911, both agencies would be required to issue a rule to provide additional exemptions from consent requirements. The bill also would direct the FDIC and NCUA to establish new procedures governing the review of consent applications and further define what offenses require agency consent. Lastly, each agency would be required to report to the Congress on the outcomes of those changes.

The operating costs for the FDIC and NCUA are classified as direct spending. Using information from both of those agencies, CBO estimates that each agency would require about two employees to complete the bill's requirements over a three-year period, increasing gross direct spending by about $2 million over the 2022–2031 period. However, the NCUA collects fees from credit unions to offset its operating costs; those fees are treated as reductions in direct spending. Thus, on net, CBO estimates that enacting the bill would increase direct spending by $1 million over the same period.

If the NCUA increased annual fee collections to offset the costs associated with implementing the bill, H.R. 5911 would increase the cost of an existing private-sector mandate on entities required to pay those fees. CBO estimates that the incremental cost of the mandate would be small and would fall below the thresholds established in the Unfunded Mandates Reform Act (UMRA) for private-sector mandates ($170 million in 2021, adjusted annually for inflation).

H.R. 5911 contains no intergovernmental mandates as defined in UMRA.

The CBO staff contact for this estimate is Stephen Rabent (for federal costs) and Rachel Austin (for mandates). The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

COMMITTEE COST ESTIMATE

Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison of the costs that would be incurred in carrying out H.R. 5911. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the *Congressional Budget Act*.

UNFUNDED MANDATE STATEMENT

Pursuant to Section 423 of the *Congressional Budget and Impoundment Control Act* (as amended by Section 101(a)(2) of the *Unfunded Mandates Reform Act*, Pub. L. 104–4), the Committee adopts as its own the estimate of federal mandates regarding H.R. 5911, as amended, prepared by the Director of the Congressional Budget Office.

ADVISORY COMMITTEE

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Pursuant to section 102(b)(3) of the *Congressional Accountability Act*, Pub. L. No. 104–1, H.R. 5911, as amended, does not apply to terms and conditions of employment or to access to public services or accommodations within the legislative branch.

EARMARK STATEMENT

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 5911 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as described in clauses 9(e), 9(f), and 9(g) of rule XXI.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of H.R. 5911 establishes or reauthorizes a program of the Federal Government known to be duplicative of another federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

CHANGES TO EXISTING LAW

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, H.R. 5911, as reported, are shown as follows:

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

FEDERAL DEPOSIT INSURANCE ACT

* * * * * * *

SEC. 19. PENALTY FOR UNAUTHORIZED PARTICIPATION BY CONVICTED INDIVIDUAL.

(a) PROHIBITION.—

(1) IN GENERAL.—Except with the prior written consent of the Corporation—

(A) any person who has been convicted of any criminal offense involving dishonesty or a breach of trust or money laundering, or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offense, may not—

(i) become, or continue as, an institution-affiliated party with respect to any insured depository institution;

(ii) own or control, directly or indirectly, any insured depository institution; or

(iii) otherwise participate, directly or indirectly, in the conduct of the affairs of any insured depository institution; and

(B) any insured depository institution may not permit any person referred to in subparagraph (A) to engage in any conduct or continue any relationship prohibited under such subparagraph.

(2) MINIMUM 10-YEAR PROHIBITION PERIOD FOR CERTAIN OFFENSES.—

(A) IN GENERAL.—If the offense referred to in paragraph (1)(A) in connection with any person referred to in such paragraph is—

(i) an offense under—

(I) section 215, 656, 657, 1005, 1006, 1007, 1008, 1014, 1032, 1344, 1517, 1956, or 1957 of title 18, United States Code; or

(II) section 1341 or 1343 of such title which affects any financial institution (as defined in section 20 of such title); or

(ii) the offense of conspiring to commit any such offense,

the Corporation may not consent to any exception to the application of paragraph (1) to such person during the 10-year period beginning on the date the conviction or the agreement of the person becomes final.

(B) EXCEPTION BY ORDER OF SENTENCING COURT.—

(i) IN GENERAL.—On motion of the Corporation, the court in which the conviction or the agreement of a person referred to in subparagraph (A) has been entered may grant an exception to the application of paragraph (1) to such person if granting the exception is in the interest of justice.

(ii) PERIOD FOR FILING.—A motion may be filed under clause (i) at any time during the 10-year period described in subparagraph (A) with regard to the person on whose behalf such motion is made.

(b) PENALTY.—Whoever knowingly violates subsection (a) shall be fined not more than $1,000,000 for each day such prohibition is violated or imprisoned for not more than 5 years, or both.

(c) EXCEPTIONS.—

(1) CERTAIN OLDER OFFENSES.—

(A) IN GENERAL.—With respect to an individual, subsection (a) shall not apply to an offense if—

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

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

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

(C) LIMITATION.—This paragraph shall not apply to an offense described under subsection (a)(2).

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

(A) there is an order of expungement, sealing, or dismissal that has been issued in regard to the conviction in connection with such offense; and

(B) it is intended by the language in the order itself, or in the legislative provisions under which the order was

issued, that the conviction shall be destroyed or sealed from the individual's State or Federal record, even if exceptions allow the record to be considered for certain character and fitness evaluation purposes.

(3) DE MINIMIS EXEMPTION.—

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

(B) CONFINEMENT CRITERIA.—In issuing rules under subparagraph (A), the Corporation shall include a requirement that the offense was punishable by a term of three years or less confined in a correctional facility, where such confinement—

(i) is calculated based on the time an individual spent incarcerated as a punishment or a sanction, not as pretrial detention; and

(ii) does not include probation or parole where an individual was restricted to a particular jurisdiction or was required to report occasionally to an individual or a specific location.

(C) BAD CHECK CRITERIA.—In setting the criteria for de minimis offenses under subparagraph (A), if the Corporation establishes criteria with respect to insufficient funds checks, the Corporation shall require that the aggregate total face value of all insufficient funds checks across all convictions or program entries related to insufficient funds checks is $2,000 or less.

(D) DESIGNATED LESSER OFFENSES.—Subsection (a) shall not apply to certain lesser offenses (including the use of a fake ID, shoplifting, trespass, fare evasion, driving with an expired license or tag, and such other low-risk offenses as the Corporation may designate) if 1 year or more has passed since the applicable conviction or program entry.

(d) BANK HOLDING COMPANIES.—

(1) IN GENERAL.—Subsections (a) and (b) shall apply to any company (other than a foreign bank) that is a bank holding company and any organization organized and operated under section 25A of the Federal Reserve Act or operating under section 25 of the Federal Reserve Act, as if such bank holding company or organization were an insured depository institution, except that such subsections shall be applied for purposes of this subsection by substituting "Board of Governors of the Federal Reserve System" for "Corporation" each place that term appears in such subsections.

(2) AUTHORITY OF BOARD.—The Board of Governors of the Federal Reserve System may provide exemptions, by regulation or order, from the application of paragraph (1) if the exemption is consistent with the purposes of this subsection.

(e) SAVINGS AND LOAN HOLDING COMPANIES.—

(1) IN GENERAL.—Subsections (a) and (b) shall apply to any savings and loan holding company as if such savings and loan holding company were an insured depository institution, except that such subsections shall be applied for purposes of this subsection by substituting "Board of Governors of the Federal Reserve System" for "Corporation" each place that term appears in such subsections.

(2) AUTHORITY OF DIRECTOR.—The Board of Governors of the Federal Reserve System may provide exemptions, by regulation or order, from the application of paragraph (1) if the exemption is consistent with the purposes of this subsection.

(f) CONSENT APPLICATIONS.—

(1) IN GENERAL.—The Corporation shall accept consent applications from an individual and from an insured depository institution or depository institution holding company on behalf of an individual that are filed separately or contemporaneously with a regional office of the Corporation.

(2) SPONSORED APPLICATIONS FILED WITH REGIONAL OFFICES.—Consent applications filed at a regional office of the Corporation by an insured depository institution or depository institution holding company on behalf of an individual—

(A) shall be reviewed by such office;

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

(C) may only be denied by such office if the general counsel of the Corporation (or a designee) certifies that the denial is consistent with this section.

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

(A) shall be reviewed by such office; and

(B) may be approved or denied by such office, if such authority has been delegated to such office by the Corporation, except with respect to—

(i) cases involving an offense described under subsection (a)(2); and

(ii) such other high-level security cases as may be designated by the Corporation.

(4) NATIONAL OFFICE REVIEW.—The national office of the Corporation shall—

(A) review any consent application with respect to which a regional office is not authorized to approve or deny the application; and

(B) review any consent application that is denied by a regional office, if the individual requests a review by the national office.

(5) FORMS AND INSTRUCTIONS.—

(A) AVAILABILITY.—The Corporation shall make all forms and instructions related to consent applications available to the public, including on the website of the Corporation.

(B) CONTENTS.—The forms and instructions described under subparagraph (A) shall provide a sample cover letter and a comprehensive list of items that may accompany the application, including clear guidance on evidence that may support a finding of rehabilitation.

(6) CONSIDERATION OF CRIMINAL HISTORY.—

(A) REGIONAL OFFICE CONSIDERATION.—In reviewing a consent application, a regional office shall—

(i) primarily rely on the criminal history record of the Federal Bureau of Investigation; and

(ii) provide such record to the applicant to review for accuracy.

(B) CERTIFIED COPIES.—The Corporation may not require an applicant to provide certified copies of criminal history records unless the Corporation determines that there is a clear and compelling justification to require additional information to verify the accuracy of the criminal history record of the Federal Bureau of Investigation.

(7) CONSIDERATION OF REHABILITATION.—Consistent with title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.), the Corporation shall—

(A) conduct an individualized assessment when evaluating consent applications that takes into account evidence of rehabilitation, the applicant's age at the time of the conviction or program entry, the time that has elapsed since conviction or program entry, and the relationship of individual's offense to the responsibilities of the applicable position;

(B) 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

(C) consider any additional information the Corporation determines necessary for safety and soundness.

(8) SCOPE OF EMPLOYMENT.—With respect to an approved consent application filed by an insured depository institution or depository institution holding company on behalf of an individual, if the Corporation 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).

(2) CRIMINAL OFFENSE INVOLVING DISHONESTY.—The term "criminal offense involving dishonesty"—

(A) means an offense under which an individual, directly or indirectly—

(i) cheats or defrauds; or

(ii) wrongfully takes property belonging to another in violation of a criminal statute;

(B) includes an offense that Federal, State, or local law defines as dishonest, or for which dishonesty is an element of the offense; and

(C) does not include—

(i) a misdemeanor criminal offense committed more than one year before the date on which an individual files a consent application, excluding any period of incarceration; or

(ii) an offense involving the possession of controlled substances.

(3) PRETRIAL DIVERSION OR SIMILAR PROGRAM.—The term "pretrial diversion or similar program" means a program characterized by a suspension or eventual dismissal or reversal of charges or criminal prosecution upon agreement by the accused to restitution, drug or alcohol rehabilitation, anger management, or community service.

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FEDERAL CREDIT UNION ACT

* * * * * * *

TITLE II—SHARE INSURANCE

* * * * * * *

REQUIREMENTS GOVERNING INSURED CREDIT UNIONS

SEC. 205. (a) INSURANCE LOGO.—

(1) INSURED CREDIT UNIONS.—

(A) IN GENERAL.—Each insured credit union shall display at each place of business maintained by that credit union a sign or signs relating to the insurance of the share accounts of the institution, in accordance with regulations to be prescribed by the Board.

(B) STATEMENT TO BE INCLUDED.—Each sign required under subparagraph (A) shall include a statement that insured share accounts are backed by the full faith and credit of the United States Government.

(2) REGULATIONS.—The Board shall prescribe regulations to carry out this subsection, including regulations governing the substance of signs required by paragraph (1) and the manner of display or use of such signs.

(3) PENALTIES.—For each day that an insured credit union continues to violate this subsection or any regulation issued under this subsection, it shall be subject to a penalty of not more than $100, which the Board may recover for its use.

(b)(1) Except as provided in paragraph (2), no insured credit union shall, without the prior approval of the Board—

(A) merge or consolidate with any noninsured credit union or institution;

(B) assume liability to pay any member accounts in, or similar liabilities of, any noninsured credit union or institution;

(C) transfer assets to any noninsured credit union or institution in consideration of the assumption of liabilities for any

portion of the member accounts in such insured credit union; or

(D) convert into a noninsured credit union or institution.

(2) CONVERSION OF INSURED CREDIT UNIONS TO MUTUAL SAVINGS BANKS.—

(A) IN GENERAL.—Notwithstanding paragraph (1), an insured credit union may convert to a mutual savings bank or savings association (if the savings association is in mutual form), as those terms are defined in section 3 of the Federal Deposit Insurance Act, without the prior approval of the Board, subject to the requirements and procedures set forth in the laws and regulations governing mutual savings banks and savings associations.

(B) CONVERSION PROPOSAL.—A proposal for a conversion described in subparagraph (A) shall first be approved, and a date set for a vote thereon by the members (either at a meeting to be held on that date or by written ballot to be filed on or before that date), by a majority of the directors of the insured credit union. Approval of the proposal for conversion shall be by the affirmative vote of a majority of the members of the insured credit union who vote on the proposal.

(C) NOTICE OF PROPOSAL TO MEMBERS.—An insured credit union that proposes to convert to a mutual savings bank or savings association under subparagraph (A) shall submit notice to each of its members who is eligible to vote on the matter of its intent to convert—

(i) 90 days before the date of the member vote on the conversion;

(ii) 60 days before the date of the member vote on the conversion; and

(iii) 30 days before the date of the member vote on the conversion.

(D) NOTICE OF PROPOSAL TO BOARD.—The Board may require an insured credit union that proposes to convert to a mutual savings bank or savings association under subparagraph (A) to submit a notice to the Board of its intent to convert during the 90-day period preceding the date of the completion of the conversion.

(E) INAPPLICABILITY OF ACT UPON CONVERSION.—Upon completion of a conversion described in subparagraph (A), the credit union shall no longer be subject to any of the provisions of this Act.

(F) LIMIT ON COMPENSATION OF OFFICIALS.—

(i) IN GENERAL.—No director or senior management official of an insured credit union may receive any economic benefit in connection with a conversion of the credit union as described in subparagraph (A), other than—

(I) director fees; and

(II) compensation and other benefits paid to directors or senior management officials of the converted institution in the ordinary course of business.

(ii) SENIOR MANAGEMENT OFFICIAL.—For purposes of this subparagraph, the term "senior management official" means a chief executive officer, an assistant chief executive officer, a chief financial officer, and any other senior executive officer (as defined by the appropriate Federal banking agency pursuant to section 32 (f) of the Federal Deposit Insurance Act).

(G) CONSISTENT RULES.—

(i) IN GENERAL.—Not later than 6 months after the date of enactment of the Credit Union Membership Access Act, the Administration shall promulgate final rules applicable to charter conversions described in this paragraph that are consistent with rules promulgated by other financial regulators, including the Office of the Comptroller of the Currency. The rules required by this clause shall provide that charter conversion by an insured credit union shall be subject to regulation that is no more or less restrictive than that applicable to charter conversions by other financial institutions.

(ii) OVERSIGHT OF MEMBER VOTE.—The member vote concerning charter conversion under this paragraph shall be administered by the Administration, and shall be verified by the Federal or State regulatory agency that would have jurisdiction over the institution after the conversion. If either the Administration or that regulatory agency disapproves of the methods by which the member vote was taken or procedures applicable to the member vote, the member vote shall be taken again, as directed by the Administration or the agency.

(3) Except with the prior written approval of the Board, no insured credit union shall merge or consolidate with any other insured credit union or, either directly or indirectly, acquire the assets of, or assume liability to pay any member accounts in, any other insured credit union.

(c) In granting or withholding approval or consent under subsection (b) of this section, the Board shall consider—

(1) the history, financial condition, and management policies of the credit union;

(2) the adequacy of the credit union's reserves;

(3) the economic advisability of the transaction;

(4) the general character and fitness of the credit union's management;

(5) the convenience and needs of the members to be served by the credit union; and

(6) whether the credit union is a cooperative association organized for the purpose of promoting thrift among its members and creating a source of credit for provident or productive purposes.

(d) PROHIBITION.—

(1) IN GENERAL.—Except with prior written consent of the Board—

(A) any person who has been convicted of any criminal offense involving dishonesty or a breach of trust, or has

agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offense, may not—

(i) become, or continue as, an institution-affiliated party with respect to any insured credit union; or

(ii) otherwise participate, directly or indirectly, in the conduct of the affairs of any insured credit union; and

(B) any insured credit union may not permit any person referred to in subparagraph (A) to engage in any conduct or continue any relationship prohibited under such subparagraph.

(2) MINIMUM 10-YEAR PROHIBITION PERIOD FOR CERTAIN OFFENSES.—

(A) IN GENERAL.—If the offense referred to in paragraph (1)(A) in connection with any person referred to in such paragraph is—

(i) an offense under—

(I) section 215, 656, 657, 1005, 1006, 1007, 1008, 1014, 1032, 1344, 1517, 1956, or 1957 of title 18, United States Code; or

(II) section 1341 or 1343 of such title which affects any financial institution (as defined in section 20 of such title); or

(ii) the offense of conspiring to commit any such offense,

the Board may not consent to any exception to the application of paragraph (1) to such person during the 10-year period beginning on the date the conviction or the agreement of the person becomes final.

(B) EXCEPTION BY ORDER OF SENTENCING COURT.—

(i) IN GENERAL.—On motion of the Board, the court in which the conviction or the agreement of a person referred to in subparagraph (A) has been entered may grant an exception to the application of paragraph (1) to such person if granting the exception is in the interest of justice.

(ii) PERIOD FOR FILING.—A motion may be filed under clause (i) at any time during the 10-year period described in subparagraph (A) with regard to the person on whose behalf such motion is made.

(3) PENALTY.—Whoever knowingly violates paragraph (1) or (2) shall be fined not more than $1,000,000 for each day such prohibition is violated or imprisoned for not more than 5 years, or both.

(4) EXCEPTIONS.—

(A) CERTAIN OLDER OFFENSES.—

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

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

(II) the individual was incarcerated with respect to the offense and it has been 5 years or more since the individual was released from incarceration.

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

(iii) LIMITATION.—This subparagraph shall not apply to an offense described under paragraph (1)(B).

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

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

(ii) it is intended by the language in the order itself, or in the legislative provisions under which the order was issued, that the conviction shall be destroyed or sealed from the individual's State or Federal record, even if exceptions allow the record to be considered for certain character and fitness evaluation purposes.

(C) DE MINIMIS EXEMPTION.—

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

(ii) CONFINEMENT CRITERIA.—In issuing rules under clause (i), the Board shall include a requirement that the offense was punishable by a term of three years or less confined in a correctional facility, where such confinement—

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

(II) does not include probation or parole where an individual was restricted to a particular jurisdiction or was required to report occasionally to an individual or a specific location.

(iii) BAD CHECK CRITERIA.—In setting the criteria for de minimis offenses under clause (i), if the Board establishes criteria with respect to insufficient funds checks, the Board shall require that the aggregate total face value of all insufficient funds checks across all convictions or program entries related to insufficient funds checks is $2,000 or less.

(iv) DESIGNATED LESSER OFFENSES.—Paragraph (1) shall not apply to certain lesser offenses (including the use of a fake ID, shoplifting, trespass, fare evasion, driving with an expired license or tag, and such other low-risk offenses as the Board may designate) if 1 year or more has passed since the applicable conviction or program entry.

(5) CONSENT APPLICATIONS.—

(A) IN GENERAL.—The Board shall accept consent applications from an individual and from an insured credit union on behalf of an individual that are filed separately or contemporaneously with a regional office of the Board.

(B) SPONSORED APPLICATIONS FILED WITH REGIONAL OFFICES.—Consent applications filed at a regional office of the

Board by an insured credit union on behalf of an individual—

(i) shall be reviewed by such office;

(ii) may be approved or denied by such office, if such authority has been delegated to such office by the Board; and

(iii) may only be denied by such office if the general counsel of the Board (or a designee) certifies that the denial is consistent with this section.

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

(i) shall be reviewed by such office; and

(ii) may be approved or denied by such office, if such authority has been delegated to such office by the Board, except with respect to—

(I) cases involving an offense described under paragraph (1)(B); and

(II) such other high-level security cases as may be designated by the Board.

(D) NATIONAL OFFICE REVIEW.—The national office of the Board shall—

(i) review any consent application with respect to which a regional office is not authorized to approve or deny the application; and

(ii) review any consent application that is denied by a regional office, if the individual requests a review by the national office.

(E) FORMS AND INSTRUCTIONS.—

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

(ii) CONTENTS.—The forms and instructions described under clause (i) shall provide a sample cover letter and a comprehensive list of items that may accompany the application, including clear guidance on evidence that may support a finding of rehabilitation.

(F) CONSIDERATION OF CRIMINAL HISTORY.—

(i) REGIONAL OFFICE CONSIDERATION.—In reviewing a consent application, a regional office shall—

(I) primarily rely on the criminal history record of the Federal Bureau of Investigation; and

(II) provide such record to the applicant to review for accuracy.

(ii) CERTIFIED COPIES.—The Board may not require an applicant to provide certified copies of criminal history records unless the Board determines that there is a clear and compelling justification to require additional information to verify the accuracy of the criminal history record of the Federal Bureau of Investigation.

(G) CONSIDERATION OF REHABILITATION.—Consistent with title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.), the Board shall—

(i) conduct an individualized assessment when evaluating consent applications that takes into account evidence of rehabilitation, the applicant's age at the time of the conviction or program entry, the time that has elapsed since conviction or program entry, and the relationship of individual'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 determines will require higher security screening credentials.

(I) COORDINATION WITH FDIC.—In carrying out this subsection, the Board shall consult and coordinate with the Federal Deposit Insurance Corporation as needed to promote consistent implementation where appropriate.

(6) DEFINITIONS.—In this subsection:

(A) CONSENT APPLICATION.—The term "consent application" means an application filed with Board by an individual (or by an insured credit union on behalf of an individual) seeking the written consent of the Board under paragraph (1)(A).

(B) CRIMINAL OFFENSE INVOLVING DISHONESTY.—The term "criminal offense involving dishonesty"—

(i) means an offense under which an individual, directly or indirectly—

(I) cheats or defrauds; or

(II) wrongfully takes property belonging to another in violation of a criminal statute;

(ii) includes an offense that Federal, State, or local law defines as dishonest, or for which dishonesty is an element of the offense; and

(iii) does not include—

(I) a misdemeanor criminal offense committed more than one year before the date on which an individual files a consent application, excluding any period of incarceration; or

(II) an offense involving the possession of controlled substances.

(C) PRETRIAL DIVERSION OR SIMILAR PROGRAM.—The term "pretrial diversion or similar program" means a pro-

gram characterized by a suspension or eventual dismissal or reversal of charges or criminal prosecution upon agreement by the accused to restitution, drug or alcohol rehabilitation, anger management, or community service.

(e)(1) The Board shall promulgate rules establishing minimum standards with which each insured credit union must comply with respect to the installation, maintenance, and operation of security devices and procedures, reasonable in cost, to discourage robberies, burglaries, and larcenies and to assist in the identification and apprehension of persons who commit such acts.

(2) The rules shall establish the time limits within which insured credit unions shall comply with the standards and shall require the submission of periodic reports with respect to the installation, maintenance, and operation of security devices and procedures.

(3) An insured credit union which violates a rule promulgated pursuant to this subsection shall be subject to a civil penalty which shall not exceed $100 for each day of the violation.

(f)(1) Every insured credit union is authorized to maintain, and make loans with respect to, share draft accounts in accordance with rules and regulations prescribed by the Board. Except as provided in paragraph (2), an insured credit union may pay dividends on share draft accounts and may permit the owners of such share draft accounts to make withdrawals by negotiable or transferable instruments or other orders for the purpose of making transfers to third parties.

(2) Paragraph (1) shall apply only with respect to share draft accounts in which the entire beneficial interest is held by one or more individuals or members or by an organization which is operated primarily for religious, philanthropic, charitable, educational, or other similar purposes and which is not operated for profit, and with respect to deposits of public funds by an officer, employee, or agent of the United States, any State, county, municipality, or political subdivision thereof, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, any territory or possession of the United States, or any political subdivision thereof.

(g)(1) If the applicable rate prescribed in this subsection exceeds the rate an insured credit union would be permitted to charge in the absence of this subsection, such credit union may, notwithstanding any State constitution or statute which is hereby preempted for the purposes of this subsection, take, receive, reserve, and charge on any loan, interest at a rate of not more than 1 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where such insured credit union is located or at the rate allowed by the laws of the State, territory, or district where such credit union is located, whichever may be greater.

(2) If the rate prescribed in paragraph (1) exceeds the rate such credit union would be permitted to charge in the absence of this subsection, and such State fixed rate is thereby preempted by the rate described in paragraph (1), the taking, receiving, reserving, or charging a greater rate than is allowed by paragraph (1), when knowingly done, shall be deemed a forfeiture of the entire interest which the loan carries with it, or which has been agreed to be paid thereon. If such greater rate of interest has been paid, the person who paid it may recover, in a civil action commenced in a court of

appropriate jurisdiction not later than two years after the date of such payment, an amount equal to twice the amount of interest paid from the credit union taking or receiving such interest.

(h) Notwithstanding any other provision of law, the Board may authorize a merger or consolidation of an insured credit union which is insolvent or is in danger of insolvency with any other insured credit union or may authorize an insured credit union to purchase any of the assets of, or assume any of the liabilities of, any other insured credit union which is insolvent or in danger of insolvency if the Board is satisfied that—

(1) an emergency requiring expeditious action exists with respect to such other insured credit union;

(2) other alternatives are not reasonably available; and

(3) the public interest would best be served by approval of such merger, consolidation, purchase, or assumption.

(i)(1) Notwithstanding any other provision of this Act or of State law, the Board may authorize an institution whose deposits or accounts are insured by the Federal Deposit Insurance Corporation to purchase any of the assets of or assume any of the liabilities of an insured credit union which is insolvent or in danger of insolvency, except that prior to exercising this authority the Board must attempt to effect the merger or consolidation of an insured credit union which is insolvent or in danger of insolvency with another insured credit union, as provided in subsection (h).

(2) For purposes of the authority contained in paragraph (1), insured accounts of the credit union may upon consummation of the purchase and assumption be converted to insured deposits or other comparable accounts in the acquiring institution, and the Board and the National Credit Union Share Insurance Fund shall be absolved of any liability to the credit union's members with respect to those accounts.

(j) PRIVILEGES NOT AFFECTED BY DISCLOSURE TO BANKING AGENCY OR SUPERVISOR.—

(1) IN GENERAL.—The submission by any person of any information to the Administration, any State credit union supervisor, or foreign banking authority for any purpose in the course of any supervisory or regulatory process of such Board, supervisor, or authority shall not be construed as waiving, destroying, or otherwise affecting any privilege such person may claim with respect to such information under Federal or State law as to any person or entity other than such Board, supervisor, or authority.

(2) RULE OF CONSTRUCTION.—No provision of paragraph (1) may be construed as implying or establishing that—

(A) any person waives any privilege applicable to information that is submitted or transferred under any circumstance to which paragraph (1) does not apply; or

(B) any person would waive any privilege applicable to any information by submitting the information to the Administration, any State credit union supervisor, or foreign banking authority, but for this subsection.

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