

AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 5911
OFFERED BY Mrs. Beatty

Strike all after the enacting clause and insert the following:

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Fair Hiring in Bank-
3 ing Act”.

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

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

7 (1) by inserting after subsection (b) the fol-
8 lowing:

9 “(c) EXCEPTIONS.—

10 “(1) CERTAIN OLDER OFFENSES.—

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

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

16 “(ii) the individual was incarcerated
17 with respect to the offense and it has been

1 5 years or more since the individual was
2 released from incarceration.

3 “(B) OFFENCES COMMITTED BY INDIVID-
4 UALS 21 OR YOUNGER.—For individuals who
5 committed an offense when they were 21 years
6 of age or younger, subsection (a) shall not
7 apply to the offense if it has been more than 30
8 months since the sentencing occurred.

9 “(C) LIMITATION.—This paragraph shall
10 not apply to an offense described under sub-
11 section (a)(2).

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

15 “(A) there is an order of expungement,
16 sealing, or dismissal that has been issued in re-
17 gard to the conviction in connection with such
18 offense; and

19 “(B) it is intended by the language in the
20 order itself, or in the legislative provisions
21 under which the order was issued, that the con-
22 viction shall be destroyed or sealed from the in-
23 dividual’s State or Federal record, even if ex-
24 ceptions allow the record to be considered for

1 certain character and fitness evaluation pur-
2 poses.

3 “(3) DE MINIMIS EXEMPTION.—

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

7 “(B) CONFINEMENT CRITERIA.—In issuing
8 rules under subparagraph (A), the Corporation
9 shall include a requirement that the offense was
10 punishable by a term of three years or less con-
11 fined in a correctional facility, where such con-
12 finement—

13 “(i) is calculated based on the time an
14 individual spent incarcerated as a punish-
15 ment or a sanction, not as pretrial deten-
16 tion; and

17 “(ii) does not include probation or pa-
18 role where an individual was restricted to
19 a particular jurisdiction or was required to
20 report occasionally to an individual or a
21 specific location.

22 “(C) BAD CHECK CRITERIA.—In setting
23 the criteria for de minimis offenses under sub-
24 paragraph (A), if the Corporation establishes
25 criteria with respect to insufficient funds

1 checks, the Corporation shall require that the
2 aggregate total face value of all insufficient
3 funds checks across all convictions or program
4 entries related to insufficient funds checks is
5 \$2,000 or less.

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

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

15 “(f) CONSENT APPLICATIONS.—

16 “(1) IN GENERAL.—The Corporation shall ac-
17 cept consent applications from an individual and
18 from an insured depository institution or depository
19 institution holding company on behalf of an indi-
20 vidual that are filed separately or contemporaneously
21 with a regional office of the Corporation.

22 “(2) SPONSORED APPLICATIONS FILED WITH
23 REGIONAL OFFICES.—Consent applications filed at a
24 regional office of the Corporation by an insured de-

1 pository institution or depository institution holding
2 company on behalf of an individual—

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

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

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

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

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

15 “(B) may be approved or denied by such
16 office, if such authority has been delegated to
17 such office by the Corporation, except with re-
18 spect to—

19 “(i) cases involving an offense de-
20 scribed under subsection (a)(2); and

21 “(ii) such other high-level security
22 cases as may be designated by the Cor-
23 poration.

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

1 “(A) review any consent application with
2 respect to which a regional office is not author-
3 ized to approve or deny the application; and

4 “(B) review any consent application that is
5 denied by a regional office, if the individual re-
6 quests a review by the national office.

7 “(5) FORMS AND INSTRUCTIONS.—

8 “(A) AVAILABILITY.—The Corporation
9 shall make all forms and instructions related to
10 consent applications available to the public, in-
11 cluding on the website of the Corporation.

12 “(B) CONTENTS.—The forms and instruc-
13 tions described under subparagraph (A) shall
14 provide a sample cover letter and a comprehen-
15 sive list of items that may accompany the appli-
16 cation, including clear guidance on evidence
17 that may support a finding of rehabilitation.

18 “(6) CONSIDERATION OF CRIMINAL HISTORY.—

19 “(A) REGIONAL OFFICE CONSIDER-
20 ATION.—In reviewing a consent application, a
21 regional office shall—

22 “(i) primarily rely on the criminal his-
23 tory record of the Federal Bureau of In-
24 vestigation; and

1 “(ii) provide such record to the appli-
2 cant to review for accuracy.

3 “(B) CERTIFIED COPIES.—The Corpora-
4 tion may not require an applicant to provide
5 certified copies of criminal history records un-
6 less the Corporation determines that there is a
7 clear and compelling justification to require ad-
8 ditional information to verify the accuracy of
9 the criminal history record of the Federal Bu-
10 reau of Investigation.

11 “(7) CONSIDERATION OF REHABILITATION.—
12 Consistent with title VII of the Civil Rights Act of
13 1964 (42 U.S.C. 2000e et seq.), the Corporation
14 shall—

15 “(A) conduct an individualized assessment
16 when evaluating consent applications that takes
17 into account evidence of rehabilitation, the ap-
18 plicant’s age at the time of the conviction or
19 program entry, the time that has elapsed since
20 conviction or program entry, and the relation-
21 ship of individual’s offense to the responsibil-
22 ities of the applicable position;

23 “(B) presume that the individual is reha-
24 bilitated if four years have passed since the in-

1 individual's offense and the individual has no sub-
2 sequent convictions; and

3 “(C) consider the individual's employment
4 history, letters of recommendation, certificates
5 documenting participation in substance abuse
6 programs, successful participating in job prepa-
7 ration and educational programs, and other rel-
8 evant mitigating evidence.

9 “(8) SCOPE OF EMPLOYMENT.—With respect to
10 an approved consent application filed by an insured
11 depository institution or depository institution hold-
12 ing company on behalf of an individual, if the Cor-
13 poration determines it appropriate, such approved
14 consent application shall allow the individual to work
15 for the same employer (without restrictions on the
16 location) and across positions, except that the prior
17 consent of the Corporation (which may require a
18 new application) shall be required for any proposed
19 significant changes in the individual's security-re-
20 lated duties or responsibilities, such as promotion to
21 an officer or other positions that the employer deter-
22 mines will require higher security screening creden-
23 tials.

24 “(g) DEFINITIONS.—In this section:

1 “(1) CONSENT APPLICATION.—The term ‘con-
2 sent application’ means an application filed with
3 Corporation by an individual (or by an insured de-
4 pository institution or depository institution holding
5 company on behalf of an individual) seeking the
6 written consent of the Corporation under subsection
7 (a)(1).

8 “(2) CRIMINAL OFFENSE INVOLVING DISHON-
9 ESTY.—The term ‘criminal offense involving dishon-
10 esty’—

11 “(A) means an offense under which an in-
12 dividual, directly or indirectly—

13 “(i) cheats or defrauds; or

14 “(ii) wrongfully takes property belong-
15 ing to another in violation of a criminal
16 statute;

17 “(B) includes an offense that Federal,
18 State, or local law defines as dishonest, or for
19 which dishonestly is an element of the offense;
20 and

21 “(C) does not include—

22 “(i) a misdemeanor criminal offense
23 committed more than one year before the
24 date on which an individual files a consent

1 application, excluding any period of incar-
2 ceration; or

3 “(ii) an offense involving the posses-
4 sion, sale, manufacturing, or distribution
5 of controlled substances.

6 “(3) PRETRIAL DIVERSION OR SIMILAR PRO-
7 GRAM.—The term ‘pretrial diversion or similar pro-
8 gram’ means a program characterized by a suspen-
9 sion or eventual dismissal or reversal of charges or
10 criminal prosecution upon agreement by the accused
11 to restitution, drug or alcohol rehabilitation, anger
12 management, or community service.”.

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

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

17 “(4) EXCEPTIONS.—

18 “(A) CERTAIN OLDER OFFENSES.—

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

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

24 “(II) the individual was incarcerated
25 ated with respect to the offense and it

1 has been 5 years or more since the in-
2 dividual was released from incarcer-
3 ation.

4 “(ii) OFFENCES COMMITTED BY INDI-
5 VIDUALS 21 OR YOUNGER.—For individuals
6 who committed an offense when they were
7 21 years of age or younger, paragraph (1)
8 shall not apply to the offense if it has been
9 more than 30 months since the sentencing
10 occurred.

11 “(iii) LIMITATION.—This subpara-
12 graph shall not apply to an offense de-
13 scribed under paragraph (1)(B).

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

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

21 “(ii) it is intended by the language in
22 the order itself, or in the legislative provi-
23 sions under which the order was issued,
24 that the conviction shall be destroyed or
25 sealed from the individual’s State or Fed-

1 eral record, even if exceptions allow the
2 record to be considered for certain char-
3 acter and fitness evaluation purposes.

4 “(C) DE MINIMIS EXEMPTION.—

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

8 “(ii) CONFINEMENT CRITERIA.—In
9 issuing rules under clause (i), the Board
10 shall include a requirement that the of-
11 fense was punishable by a term of three
12 years or less confined in a correctional fa-
13 cility, where such confinement—

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

18 “(II) does not include probation
19 or parole where an individual was re-
20 stricted to a particular jurisdiction or
21 was required to report occasionally to
22 an individual or a specific location.

23 “(iii) BAD CHECK CRITERIA.—In set-
24 ting the criteria for de minimis offenses
25 under clause (i), if the Board establishes

1 criteria with respect to insufficient funds
2 checks, the Board shall require that the
3 aggregate total face value of all insufficient
4 funds checks across all convictions or pro-
5 gram entries related to insufficient funds
6 checks is \$2,000 or less.

7 “(iv) DESIGNATED LESSER OF-
8 FENSES.—Paragraph (1) shall not apply to
9 certain lesser offenses (including the use of
10 a fake ID, shoplifting, trespass, fare eva-
11 sion, driving with an expired license or tag,
12 and such other low-risk offenses as the
13 Board may designate) if 1 year or more
14 has passed since the applicable conviction
15 or program entry.

16 “(5) CONSENT APPLICATIONS.—

17 “(A) IN GENERAL.—The Board shall ac-
18 cept consent applications from an individual
19 and from an insured credit union on behalf of
20 an individual that are filed separately or con-
21 temporaneously with a regional office of the
22 Board.

23 “(B) SPONSORED APPLICATIONS FILED
24 WITH REGIONAL OFFICES.—Consent applica-
25 tions filed at a regional office of the Board by

1 an insured credit union on behalf of an indi-
2 vidual—

3 “(i) shall be reviewed by such office;

4 “(ii) may be approved or denied by
5 such office, if such authority has been dele-
6 gated to such office by the Board; and

7 “(iii) may only be denied by such of-
8 fice if the general counsel of the Board (or
9 a designee) certifies that the denial is con-
10 sistent with this section.

11 “(C) INDIVIDUAL APPLICATIONS FILED
12 WITH REGIONAL OFFICES.—Consent applica-
13 tions filed at a regional office by an indi-
14 vidual—

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

17 “(ii) may be approved or denied by
18 such office, if such authority has been dele-
19 gated to such office by the Board, except
20 with respect to—

21 “(I) cases involving an offense
22 described under paragraph (1)(B);
23 and

1 “(II) such other high-level secu-
2 rity cases as may be designated by the
3 Board.

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

6 “(i) review any consent application
7 with respect to which a regional office is
8 not authorized to approve or deny the ap-
9 plication; and

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

14 “(E) FORMS AND INSTRUCTIONS.—

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

19 “(ii) CONTENTS.—The forms and in-
20 structions described under clause (i) shall
21 provide a sample cover letter and a com-
22 prehensive list of items that may accom-
23 pany the application, including clear guid-
24 ance on evidence that may support a find-
25 ing of rehabilitation.

1 “(F) CONSIDERATION OF CRIMINAL HIS-
2 TORY.—

3 “(i) REGIONAL OFFICE CONSIDER-
4 ATION.—In reviewing a consent applica-
5 tion, a regional office shall—

6 “(I) primarily rely on the crimi-
7 nal history record of the Federal Bu-
8 reau of Investigation; and

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

11 “(ii) CERTIFIED COPIES.—The Board
12 may not require an applicant to provide
13 certified copies of criminal history records
14 unless the Board determines that there is
15 a clear and compelling justification to re-
16 quire additional information to verify the
17 accuracy of the criminal history record of
18 the Federal Bureau of Investigation.

19 “(G) CONSIDERATION OF REHABILITA-
20 TION.—Consistent with title VII of the Civil
21 Rights Act of 1964 (42 U.S.C. 2000e et seq.),
22 the Board shall—

23 “(i) conduct an individualized assess-
24 ment when evaluating consent applications
25 that takes into account evidence of reha-

1 bilitation, the applicant’s age at the time
2 of the conviction or program entry, the
3 time that has elapsed since conviction or
4 program entry, and the relationship of in-
5 dividual’s offense to the responsibilities of
6 the applicable position;

7 “(ii) presume that the individual is re-
8 habilitated if four years have passed since
9 the individual’s offense and the individual
10 has no subsequent convictions; and

11 “(iii) consider the individual’s employ-
12 ment history, letters of recommendation,
13 certificates documenting participation in
14 substance abuse programs, successful par-
15 ticipating in job preparation and edu-
16 cational programs, and other relevant miti-
17 gating evidence.

18 “(H) SCOPE OF EMPLOYMENT.—With re-
19 spect to an approved consent application filed
20 by an insured credit union on behalf of an indi-
21 vidual, if the Board determines it appropriate,
22 such approved consent application shall allow
23 the individual to work for the same employer
24 (without restrictions on the location) and across
25 positions, except that the prior consent of the

1 Board (which may require a new application)
2 shall be required for any proposed significant
3 changes in the individual's security-related du-
4 ties or responsibilities, such as promotion to an
5 officer or other positions that the employer de-
6 termines will require higher security screening
7 credentials.

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 dishonestly 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, sale, manufacturing, or
11 distribution of controlled substances.

12 “(C) PRETRIAL DIVERSION OR SIMILAR
13 PROGRAM.—The term ‘pretrial diversion or
14 similar program’ means a program character-
15 ized by a suspension or eventual dismissal or
16 reversal of charges or criminal prosecution upon
17 agreement by the accused to restitution, drug
18 or alcohol rehabilitation, anger management, or
19 community service.”.

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

21 Not later than the end of the 2-year period beginning
22 on the date of enactment of this Act, the Federal Deposit
23 Insurance Corporation and the National Credit Union Ad-
24 ministration shall—

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

3 (A) the application of section 19 of the
4 Federal Deposit Insurance Act (12 U.S.C.
5 1829) and section 205(d) of the Federal Credit
6 Union Act (12 U.S.C. 1785(d));

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

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

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

13 (3) issue a report to Congress containing any
14 legislative or regulatory recommendations for ex-
15 panding employment opportunities for those with a
16 previous minor criminal offense.

