AMENDMENT TO THE AMENDMENT IN THE
NATURE OF A SUBSTITUTE TO H.R. 5911
OFFERED BY MRS. BEATTY OF OHIO

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 Banking Act”.

4 SEC. 2. FEDERAL DEPOSIT INSURANCE ACT.
5 Section 19 of the Federal Deposit Insurance Act (12 U.S.C. 1829) is amended—
6 (1) by inserting after subsection (b) the follow-
7 ing:
8 “(c) EXCEPTIONS.—
9 “(1) CERTAIN OLDER OFFENSES.—
10 “(A) IN GENERAL.—With respect to an in-
11 dividual, subsection (a) shall not apply to an of-
12 fense if—
13 ““(i) it has been 7 years or more since
14 the offense occurred; or
15 ““(ii) the individual was incarcerated
16 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 de-
pository 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 Ad-
ministration 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 Fed-
eral record, even if exceptions allow the
record to be considered for certain char-
acter 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 of-
fense was punishable by a term of three
years or less confined in a correctional fa-
cility, 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 re-
stricted 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 accom-
pany the application, including clear guid-
ance on evidence that may support a find-
ing of rehabilitation.

“(F) CONSIDERATION OF CRIMINAL HIS-
tory.—

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

“(I) primarily rely on the crimi-

nal history record of the Federal Bu-

reau 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 re-
quire additional information to verify the
accuracy of the criminal history record of
the Federal Bureau of Investigation.

“(G) CONSIDERATION OF REHABILITA-
tion.—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.