

**ACCESS DENIED: ELIMINATING BARRIERS
AND INCREASING ECONOMIC OPPORTUNITY
FOR JUSTICE-INVOLVED INDIVIDUALS**

HYBRID HEARING
BEFORE THE
SUBCOMMITTEE ON DIVERSITY
AND INCLUSION
OF THE
COMMITTEE ON FINANCIAL SERVICES
U.S. HOUSE OF REPRESENTATIVES
ONE HUNDRED SEVENTEENTH CONGRESS
FIRST SESSION

—————
SEPTEMBER 28, 2021
—————

Printed for the use of the Committee on Financial Services

Serial No. 117-48



—————
U.S. GOVERNMENT PUBLISHING OFFICE

46-007 PDF

WASHINGTON : 2021

HOUSE COMMITTEE ON FINANCIAL SERVICES

MAXINE WATERS, California, *Chairwoman*

CAROLYN B. MALONEY, New York	PATRICK McHENRY, North Carolina,
NYDIA M. VELAZQUEZ, New York	<i>Ranking Member</i>
BRAD SHERMAN, California	FRANK D. LUCAS, Oklahoma
GREGORY W. MEEKS, New York	BILL POSEY, Florida
DAVID SCOTT, Georgia	BLAINE LUETKEMEYER, Missouri
AL GREEN, Texas	BILL HUIZENGA, Michigan
EMANUEL CLEAVER, Missouri	ANN WAGNER, Missouri
ED PERLMUTTER, Colorado	ANDY BARR, Kentucky
JIM A. HIMES, Connecticut	ROGER WILLIAMS, Texas
BILL FOSTER, Illinois	FRENCH HILL, Arkansas
JOYCE BEATTY, Ohio	TOM EMMER, Minnesota
JUAN VARGAS, California	LEE M. ZELDIN, New York
JOSH GOTTHEIMER, New Jersey	BARRY LOUDERMILK, Georgia
VICENTE GONZALEZ, Texas	ALEXANDER X. MOONEY, West Virginia
AL LAWSON, Florida	WARREN DAVIDSON, Ohio
MICHAEL SAN NICOLAS, Guam	TED BUDD, North Carolina
CINDY AXNE, Iowa	DAVID KUSTOFF, Tennessee
SEAN CASTEN, Illinois	TREY HOLLINGSWORTH, Indiana
AYANNA PRESSLEY, Massachusetts	ANTHONY GONZALEZ, Ohio
RITCHIE TORRES, New York	JOHN ROSE, Tennessee
STEPHEN F. LYNCH, Massachusetts	BRYAN STEIL, Wisconsin
ALMA ADAMS, North Carolina	LANCE GOODEN, Texas
RASHIDA TLAIB, Michigan	WILLIAM TIMMONS, South Carolina
MADELEINE DEAN, Pennsylvania	VAN TAYLOR, Texas
ALEXANDRIA OCASIO-CORTEZ, New York	PETE SESSIONS, Texas
JESÚS "CHUY" GARCIA, Illinois	
SYLVIA GARCIA, Texas	
NIKEMA WILLIAMS, Georgia	
JAKE AUCHINCLOSS, Massachusetts	

CHARLA OUERTATANI, *Staff Director*

SUBCOMMITTEE ON DIVERSITY AND INCLUSION

JOYCE BEATTY, Ohio, *Chairwoman*

AYANNA PRESSLEY, Massachusetts
STEPHEN F. LYNCH, Massachusetts
RASHIDA TLAIB, Michigan
MADELEINE DEAN, Pennsylvania
SYLVIA GARCIA, Texas
NIKEMA WILLIAMS, Georgia
JAKE AUCHINCLOSS, Massachusetts

ANN WAGNER, Missouri, *Ranking Member*
FRANK D. LUCAS, Oklahoma
TED BUDD, North Carolina
ANTHONY GONZALEZ, Ohio, *Vice Ranking
Member*
JOHN ROSE, Tennessee
LANCE GOODEN, Texas
WILLIAM TIMMONS, South Carolina

CONTENTS

	Page
Hearing held on:	
September 28, 2021	1
Appendix:	
September 28, 2021	35

WITNESSES

TUESDAY, SEPTEMBER 28, 2021

Cook, Sakira, Senior Director, Justice Reform Program, The Leadership Conference of Civil and Human Rights	4
Korzenik, Jeffery, author of, "Untapped Talent"	6
Martin, Dolfinette, Housing Director, Operation Restoration	8
Sorenson, Melissa, Executive Director, Professional Background Screening Association	11
Tran-Leung, Marie Claire, Director, Legal Impact Network, Shriver Center on Poverty Law	9

APPENDIX

Prepared statements:	
Cook, Sakira	36
Korzenik, Jeffery	45
Martin, Dolfinette	50
Sorenson, Melissa	52
Tran-Leung, Marie Claire	62

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

Beatty, Hon. Joyce:	
Written statement of the Alliance for Safety and Justice	72
Written statement of the Bank Policy Institute	75
Written statement of the Collateral Consequences Resource Center	77
Written statement of the First Step Alliance	84
Written statement of the National Association of Federally-Insured Credit Unions	89
Written statement of the National Employment Law Project	90
Written statement of the National Low Income Housing Coalition	107
Written statement of the Chris Wilson Foundation	111

**ACCESS DENIED: ELIMINATING BARRIERS
AND INCREASING ECONOMIC OPPORTUNITY
FOR JUSTICE-INVOLVED INDIVIDUALS**

Tuesday, September 28, 2021

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON DIVERSITY
AND INCLUSION,
COMMITTEE ON FINANCIAL SERVICES
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:05 a.m., in room 2128, Rayburn House Office Building, Hon. Joyce Beatty [chairwoman of the subcommittee] presiding.

Members present: Representatives Beatty, Pressley, Lynch, Tlaib, Dean, Garcia of Texas, Williams of Georgia, Auchincloss; Wagner, Lucas, Gonzalez of Ohio, and Timmons.

Ex officio present: Representative Waters.

Chairwoman BEATTY. The Subcommittee on Diversity and Inclusion will come to order.

Without objection, the Chair is authorized to declare a recess of the subcommittee at any time. Also, without objection, members of the full Financial Services Committee who are not members of this subcommittee are authorized to participate in today's hearing.

With the hybrid format of this hearing, we have some Members and witnesses participating in person, and others on the Webex platform.

I would like to remind all Members participating remotely to keep themselves muted when they are not being recognized by the Chair. The staff has been instructed to not mute Members, except when a Member is not being recognized by the Chair, and there is inadvertent background noise.

Members are also reminded that they may only participate in one remote proceeding at a time. If you are participating remotely today, please keep your camera on, and if you choose to attend a different remote proceeding, please turn your camera off.

Today's hearing is entitled, "Access Denied: Eliminating Barriers and Increasing Economic Opportunity for Justice-Involved Individuals."

I now recognize myself for 4 minutes to give an opening statement.

I am pleased to conduct this hearing today. The United States of America has a large population of incarcerated persons, with 2.1 million Americans in prison. One in three American adults have been arrested and 78 million Americans have a criminal record.

These are our neighbors, our friends, and our family members, and we are a nation of second chances. But today, we will learn firsthand through testimony of justice-involved individuals and their advocates about the nearly insurmountable barriers to employment and financial inclusion that justice-involved individuals face.

Let me just share this with you. There are 10.9 million job openings in the United States, 10.9, and unfortunately, justice-involved individuals are too often shut out from these opportunities.

Craig Arnold, a leading Fortune 500 executive, said, "A felony conviction may as well be a life sentence when it comes to reentering the workforce."

Employers who want to provide opportunities for justice-involved individuals face a regulatory structure that increases risk and minimizes the benefit to the individuals and the firm. Federal regulations for employment of justice-involved individuals should be simplified to maximize the benefit to potential employees and employers while maintaining the safety and soundness of these markets.

The financial services industry recognizes the need to include justice-involved individuals in their hiring efforts. JPMorgan Chase has exemplified leadership on this front with their second chance agenda, hiring individuals with arrest records and convictions.

But here is the part that makes me highlight this. They have been able to account for 10 percent of their new hires in 2019, and they even wrote an op-ed arguing that if you have paid your debt to society, you should be allowed to work, and that is what the second chance program is about.

This is also another form of diversity and inclusion, that we are family, we are friends, and we all need to be able to say we are trying to move the needle.

Most individuals returning to society from prison are released without any savings or job prospects, and often lack the funds for housing application fees, security deposits, rent, and the list goes on. This reality often leads to homelessness and prevents those individuals from building relationships with their families and support networks.

Yet, the criminal justice system demands that they walk a tight-rope in compliance to avoid violating the terms of their release, in many cases.

Justice-involved individuals also have limited access to financial education, financial products, and services. We must ban the box of isolation, financial exclusion, and biases, which often prevents justice-involved individuals from supporting their families and contributing to our economy.

So today, I am introducing the Fair Hiring in Banking Act to empower depository institutions to build pathways to opportunity and economic security for those who are seeking a second chance and a brighter future.

I now call upon my colleagues to join me in creating pathways to employment and financial access to reduce recidivism, strengthen the economy, and stabilize families and communities.

With that, the Chair now recognizes the ranking member of the subcommittee, Mrs. Wagner, for 5 minutes for an opening statement.

Mrs. WAGNER. Thank you, Madam Chairwoman, and thank you to our witnesses for joining us today to discuss the economic opportunities and barriers for individuals who have been involved with the criminal justice system.

Gainful employment is a key factor in reducing recidivism for justice-involved individuals. In the banking sector, we have seen positive steps taken by the FDIC to ensure that the hiring practices at an insured depository institution still protect the safety and soundness of financial services, while also giving those who are qualified, rehabilitated, and ready to work a fair chance at securing employment.

Over the past few years, the FDIC made notable changes to the hiring prohibitions listed in Section 19 of the Federal Deposit Insurance Act for individuals with certain minor criminal offenses, otherwise known as de minimis crimes, on their records. In 2018, the FDIC further expanded de minimis crimes to cover small-dollar simple theft, and isolated minor offenses carried out by individuals 21 years or younger.

Since then, the FDIC has continued to refine Section 19 to protect the safety and soundness of our financial institutions. FDIC Chair Jelena McWilliams has commented that Section 19 should not serve as, “a barrier to entry for individuals who have committed minor crimes in the past, paid their debt to society, reformed their conduct, and are now seeking to gain employment with a financial institution.”

In July of 2020, the FDIC adopted a rule which made several changes to Section 19. The new rule excludes crimes that have been expunged or sealed, reduces the 5-year waiting period to 3 years, changes the threshold amount for small-dollar theft from \$500 to \$1,000, and expands the exemption for use of fake identification from alcohol-related crimes to all crimes related to purchases or premises entry.

I completely agree with Chair McWilliams, and support these changes that narrow the scope of crimes subject to Section 19, to allow for more individuals looking for a second chance to work in the banking industry, and still protect the Deposit Insurance Fund.

Today’s hearing is also timely, with a record-setting 10 million job openings in the United States of America, and more than 8 million still unemployed. It is critical that we ensure that those who can work, achieve employment, so that they can provide for their families and become self-sustainable, especially as our economy recovers from the COVID-19 pandemic.

Access to employment is vital to upward economic mobility, and we should carefully examine any barriers that might exist while ensuring the integrity of our institutions and the safety of employers and employees and the security of our financial system.

Thank you, Madam Chairwoman, and I yield back the balance of my time.

Chairwoman BEATTY. Thank you so very much to our ranking member. We will now welcome the testimony of our distinguished witnesses: Ms. Sakira Cook, the senior director of the Justice Re-

form Program at the Leadership Conference of Civil and Human Rights; Mr. Jeffery Korzenik, the author of, “Untapped Talent,” and yes, I think that is the power of the hidden workforce; Ms. Dolfinette Martin, the housing director of Operation Restoration; Ms. Marie Claire Tran-Leung, the director of the Legal Impact Network at the Shriver Center on Poverty Law; and Ms. Melissa Sorenson, the executive director of the Professional Background Screening Association.

Witnesses are reminded that their oral testimony will be limited to 5 minutes. You should be able to see the timer on your screen or on the desk in front of you that will indicate how much time you have left. When you have one minute remaining, a yellow light will appear. I would ask you to be mindful of the timer, and when the red light appears to quickly wrap up your testimony, so we can be respectful both to you and the other witnesses and the subcommittee members. You will hear a slight tap, and then you will hear that your time is up.

And without objection, your written statements will be made a part of the record.

Ms. Cook, you are now recognized for 5 minutes to give an oral presentation of your testimony.

STATEMENT OF SAKIRA COOK, SENIOR DIRECTOR OF THE JUSTICE REFORM PROGRAM, THE LEADERSHIP CONFERENCE OF CIVIL AND HUMAN RIGHTS

Ms. COOK. Chairwoman Beatty, Ranking Member Wagner, and members of the subcommittee, thank you for the opportunity to testify today on the critical importance of creating new economic and social pathways for justice-involved people to thrive.

I would like to focus on two key areas of interest to the Leadership Conference: predatory lending; and fair chance hiring.

But first, in order to have a more fruitful conversation about how to expand opportunities for people exiting the criminal legal system, my written testimony touches on the factors that put so many people into the system and place them at a staggering disadvantage upon leaving it.

The U.S. incarcerates more than any other country in the world, with more than 2 million people currently incarcerated. Overcriminalization and incarceration have devastating impacts on those ensnared in the criminal legal system and their families, and disproportionately harm low-income communities and communities of color.

Yet, the criminal legal system does not produce any proportional increase in public safety. Instead, it produces a permanent underclass, with more than 70 million people with a record who are too often shut out of meaningful educational and career opportunities and exploited by predatory financial forces.

This leads to a cycle of legal and economic and social hardships carried from one generation to the next.

In 2019, the Leadership Conference released, “Vision for Justice: A New Paradigm for Public Safety.” This report, which we request be included in the record, outlines an agenda for transformation that prioritizes up-front investments in non-carceral programs and social services and keeps communities truly safe.

One of the many obstacles that justice-involved people, particularly people of color, face in successfully reentering society is accessing the mainstream financial system.

As author James Baldwin once noted, “Anyone who has ever struggled with poverty knows how expensive it is to be poor.” This is especially true for people who are facing lasting legal and financial consequences and social stigma long after they have completed their sentences.

One particular area of concern is the proliferation of payday lenders within communities of color, marketed to people with poor credit as a convenient way to handle financial emergencies.

The fees charged by payday loans can quickly equate to interest rates of 400 percent or higher for loans that are renewed over the course of a year. Payday lenders are also more likely to be located near Black borrowers than White borrowers.

We stand for a simple principle: Before making any loan, a lender should be reasonably certain that a borrower can pay it back and pay it back on time.

An important first step would be for the Consumer Financial Protection Bureau (CFPB) to reinstate its 2017 payday rule. We also urge Congress to enact the Veterans and Consumers Fair Credit Act, which would impose a 36-percent interest rate cap on consumer loans.

More directly related to today’s hearing is the extension of fair chance hiring that would allow more justice-involved people to obtain gainful employment, including in the banking industry.

Several years ago, we urged the FDIC to reform its rules under Section 19 of the Federal Deposit Insurance Act. In particular, Section 19 prohibits banks from hiring anyone who has been convicted of a criminal offence involving dishonesty or a breach of trust or money laundering, except with prior written consent of the FDIC.

The FDIC’s previous statement of policy governing Section 19 included several troubling provisions that unduly prevented justice-involved people from seeking employment in the banking industry.

Starting in 2018, the FDIC adopted several positive changes to its policy. Yet, there is still significant room for improvement.

First, the FDIC must revisit its treatment of drug-related convictions. As the failure of the war on drugs and its profoundly discriminatory impact on Black people become increasingly clear, this blanket treatment of prior drug convictions is indefensible.

Second, the statutory language should be revised. The language, “any criminal offence involving dishonesty or breach of trust, or money laundering,” isn’t defined and it doesn’t take into account what type of position the applicant is seeking. For example, it doesn’t distinguish between applicants for clerical and custodial positions and more sensitive positions.

Third, the FDIC or Congress should require the use of the Section 19 waiver process less often. For drug offenses and many others, the Section 19 waiver process is not a workable fallback. Applying for a waiver is a highly burdensome, costly process that takes far longer than prospective employees or employers are typically able to wait.

Fourth, we support further reform of Section 19 and of similar restrictions under the Federal Credit Union Act, the Truth in

Lending Act, and the the Securities Exchange Act of 1934, to limit any restrictions on justice-involved individuals.

And finally, as more and more States legalize cannabis, we call on Congress to pass the Marijuana Opportunity Reinvestment and Expungement Act, which would allow expungement of convictions that never should have happened in the first place.

We look forward to working with the subcommittee to expand opportunities for people leaving the criminal legal system and toward a new vision of justice that truly keeps communities safe.

[The prepared statement of Ms. Cook can be found on page 36 of the appendix.]

Chairwoman BEATTY. Thank you.

Mr. Korzenik, you are now recognized for 5 minutes to give an oral presentation of your testimony.

STATEMENT OF JEFFERY KORZENIK, AUTHOR, “UNTAPPED TALENT”

Mr. KORZENIK. Thank you, and good morning, Chairwoman Beatty, Ranking Member Wagner, and members of the U.S. House Financial Services Subcommittee on Diversity and Inclusion.

Thank you for this opportunity to testify before the subcommittee today, and for holding this important hearing.

I come before the subcommittee today in my private capacity as a researcher, and as the author of, “Untapped Talent,” a book that shares the business case and best practices of second chance hiring and the employment of people with criminal records.

Although I am an employee of Fifth Third Bank, my views are my own, and do not necessarily reflect the views of my employer.

The criminal justice system, as previously outlined, is estimated to have left tens of millions of Americans with criminal records that represent significant barriers to employment. Unemployment numbers actually underestimate the waste of human capital from justice involvement. Many, and possibly the majority of even those with jobs are underemployed, that is, they are unable to earn and contribute to the full extent of their capabilities.

We must also recognize that the associated burdens of the criminal justice system and its failures are not borne equally. For example, tragically, one in three Black men in America is burdened with a felony conviction.

The costs of the failure to create more effective systems of re-entry is generally thought of in social terms: poor public safety; shattered families; and stressed communities.

We, as citizens, and in particular, those of us in the business community, should also understand that this failure is of such a magnitude that it also carries a tremendous economic cost.

When the past mistakes of so many millions of Americans create barriers to employment, this slows workforce growth. Barriers to economic mobility should be understood as drags on productivity.

Even using conservative assumptions as to the work readiness of the justice-involved population, the costs of our failure to re-integrate people with criminal records into the economy should be measured in the hundreds of billions of dollars of growth that we forsake.

The challenge, of course, is in creating viable pathways to opportunity that work for the employee, the employer, and the general public. Criminal justice reforms are often perceived as offering a tradeoff between public safety and greater justice for people with criminal records. This is a false choice. We should recognize that excessive supervision and restrictions can actually reduce public safety by undermining the employment of people with records.

However, good policy should be seen as a necessary but not necessarily sufficient ingredient of better outcomes. Even with optimal regulation and policy, given the foundational role that employment plays in rehabilitation, employers ultimately must lead the way.

Fortunately, we do have the example of numerous pioneering business owners that have developed processes that work. It is important to stress that one of the hallmarks of these successful second chance employment practices is profitability.

Businesses cannot reasonably be expected to hire people who cannot contribute to the bottom line of the enterprise. Companies will write checks to charity, but only hire if it is profitable to do so. Certainly, without such hires being profitable, second chance hiring can never be scaled to a size sufficient to address our societal challenge.

The current labor shortage, where job openings exceed the number of job seekers, is prompting employers to explore hiring from this demographic. It is important, however, that these employers view these workers not as a last resort, but as a pool of true talent that must be judged on an individual basis, sourced intelligently, and supported appropriately.

Fortunately, leadership in the business community is rising to the task. Among the notable groups supporting the effort are the National Association of Manufacturers, the Society of Human Resource Management, and the newly-formed Second Chance Business Coalition.

With respect to the industry within the committee's purview, financial services, there are special considerations, largely, surrounding reputation risk. The success of a financial system relies not only upon the actual safety and soundness of the institutions but also the public perception of that stability.

However, arguments that the inclusion of workers with criminal records in financial institutions could undermine confidence in the industry appear to be unsubstantiated, given, for example, the very public second chance hiring efforts of the nation's second largest bank, JPMorgan, the company the chairwoman alluded to earlier.

Second chance hiring done right is business, not charity. Good policy can reduce barriers for these practices without compromising public safety or institutional soundness.

Second chance hiring paves the road to a more prosperous economy, stronger families, and safer communities. When wise policies are coupled with the talents of the private sector and nonprofit partners, we can move toward our national aspiration to be, truly, a land of opportunity for all.

Thank you.

[The prepared statement of Mr. Korzenik can be found on page 45 of the appendix.]

Chairwoman BEATTY. Thank you so much.

Ms. Martin, you are now recognized for 5 minutes to give an oral presentation of your testimony.

**STATEMENT OF DOLFINETTE MARTIN, HOUSING DIRECTOR,
OPERATION RESTORATION**

Ms. MARTIN. Thank you, Chairwoman Beatty, Ranking Member Wagner, and members of the U.S. House Financial Services Subcommittee on Diversity and Inclusion. Thank you for the opportunity to testify before the subcommittee today and for holding this hearing.

My name is Dolfinette Martin, and I am the housing director of Operation Restoration, a nonprofit created to help remove barriers for formerly and currently incarcerated women, to help them reach their fullest potential and discover new possibilities.

I, myself, am a formerly incarcerated woman who served a combined 12 years in prison. Upon my release on April 12, 2012, after serving 7 years, 4 months, and 28 days for shoplifting, on my first night home, I had no soap, no deodorant, or no personal items that would help me keep my dignity.

My living situation was me hiding in my elderly mother's senior living apartment because her lease required that no one live in her apartment other than her. This went on for a year after my release. At that time, I began to organize with grassroots organizations to change the current policies around public housing and criminal backgrounds at the Housing Authority of New Orleans (HANO).

We were able to successfully get those policies changed, but implementation would take another 2 years. Once implemented, I was nominated to sit on the panel as a tenant of public housing. This was important, because what was needed was someone who faced and is still facing the stigma and challenges of being safely housed in affordable housing due to a conviction.

This panel is only for people who have not been released from incarceration within the last 3 years, or their conviction isn't over 3 years. The reason this panel is so important is that it gives people the opportunity to receive public housing regardless of their past.

In the 4 years of panel review, there has only been one denial. However, oversight is greatly needed, as this is an agency that is part of a larger problem. Despite some progressive work we have been able to get HANO to do, third-party management corporations and private landlords are still using discriminatory practices, although they receive HUD funding.

These corporations and private sector landlords are using arrests as well as convictions to deny access to people. For instance, the panel could vote to allow access, but if the tenant is applying for Section 8 housing, then the landlord does yet another background review and they deny.

In my work with Operation Restoration, and the Vera Institute of Justice, we have attempted to help many women who have been denied housing solely because of a conviction, and a few who only had an arrest with no adjudication of the charge.

This type of discrimination not only affects the safety of these people, but also the financial hardship that paying \$50 application and \$25 background checks fees creates. It is astronomical.

Recently, we had a natural disaster hit our State, and evacuation efforts created yet another barrier to safe, affordable housing. Initially, those seeking hotels would have to pay out-of-pocket, and if FEMA approved the lodging, there was this barrier called, "credit card on file for incidentals."

If I have no money, job, or credit, then presenting this lifesaving piece of plastic is nonexistent. So now, I am faced with yet another barrier to housing.

My personal experience with this is still present to this day. Although I am fortunate to be gainfully employed, I have a savings and a checking account, several credit cards, and cash on hand, I am homeless. Due to the hurricane damaging my roof, and HANO's negligence to ensure that a tarp was properly placed on my unit, I am currently paying to live in an Airbnb, have received zero dollars from FEMA, and am not sure when my unit will be repaired.

This I bring up solely because I have beaten the odds. As someone with 10 felony convictions in my past, my present is a college degree since my release.

I sit on HANO's panel review. I sit on the board of commissioners of the Audubon Zoo. I sit on the advisory board for the Formerly Incarcerated Transitional Clinic.

I am a housing director at Operation Restoration. I manage a transitional home for women. I am an entrepreneur. I have a working relationship with city government. I was part of our mayor's transition team and have received numerous awards.

But with all of the access that I have to people in positions of power, I could not find housing.

[The prepared statement of Ms. Martin can be found on page 50 of the appendix.]

Chairwoman BEATTY. Thank you very much, Ms. Martin.

I now recognize Ms. Tran-Leung for 5 minutes to do an oral presentation of your testimony.

**STATEMENT OF MARIE CLAIRE TRAN-LEUNG, DIRECTOR,
LEGAL IMPACT NETWORK, SHRIVER CENTER ON POVERTY
LAW**

Ms. TRAN-LEUNG. Thank you, and good morning, Chairwoman Beatty, Ranking Member Wagner, and distinguished members of the subcommittee.

On behalf of the Shriver Center on Poverty Law, I would like to thank the subcommittee for holding this important hearing on eliminating barriers and increasing opportunities for justice-involved individuals.

And I just want to take a moment to thank my fellow panelist, Ms. Martin, for sharing her testimony with us today.

Securing safe, decent, and affordable housing often presents challenges for individuals immediately after release from the criminal justice system, as well as years after.

Incarceration and homelessness are deeply connected. Formerly-incarcerated individuals experience homelessness at 10 times the rate of the general public, and this burden of homelessness is espe-

cially acute for Black women, who are 4 times as likely as White men, and twice as likely as Black men, to experience sheltered homelessness following incarceration.

In the same way that incarceration is a risk factor for homelessness, a history of homelessness increases the risk of incarceration. Individuals in jails are 7 to 11 times more likely to experience homelessness than the population at large. Housing barriers for justice-involved individuals can also severely restrain their ability to reintegrate into their communities by exacerbating other collateral consequences.

Sustained employment and improved relationships with family, for example, are difficult to achieve in the absence of safe, decent, and affordable housing. Living with family, as Ms. Martin referred to, is one of the most affordable and stable housing options available to justice-involved individuals, and it is also one of the most commonly-used options.

Restrictions on where people with criminal records can live, however, mean that many are living in the shadows rather than out in the open, especially in federally subsidized housing, and these illicit living arrangements pose a threat to the entire family's housing because of the risk of eviction or subsidy termination, straining the family dynamic.

Rather than dampen the strong family bonds that can help people leave the criminal legal system behind them for good, it is time to find a way to reinforce those bonds by reducing unreasonable criminal records' barriers to housing.

The shortage of affordable housing, especially in cities where many formerly incarcerated individuals return to, is a significant barrier for a population whose prior interaction with the criminal legal system often limits their employment prospects.

Given this shortage, the need for federally subsidized housing is especially acute. For the past decade, HUD has encouraged public housing authorities and project owners to use their discretion to give second chances, and this encouragement has led some public housing authorities to adopt more inclusive policies, such as the Housing Authority of New Orleans.

But, as Ms. Martin referred to, that is not enough. Agency encouragement in the absence of legislative action will have a limited impact on removing housing barriers because public housing authorities and project owners do not consistently use their discretion to admit people with records.

Some engage in problematic practices like relying on arrests that never resulted in conviction, failing to place reasonable time limits on the use of criminal history, using overly broad categories of criminal activities such as felony bans, and failing to fully consider mitigating evidence that shows that a person is more than the four corners of their criminal background check.

Congress has a chance to address some of these issues through the Fair Chance at Housing Act, which does several important things, the most notable being placing more parameters on the type of criminal conduct that can form the basis of denying admission and requiring an individualized review of applicants before denial.

When it comes to housing barriers for people with criminal records, it is also not enough to regulate housing providers. Tenant

screening companies play an increasingly large role in the application process both in the federally subsidized housing market and the private rental market.

Over the last decade, the tenant-screening industry has flourished and yet it continues to be largely underregulated, especially compared to employment screening companies providing similar criminal record information to employers.

At a minimum, we would urge Congress to amend the Fair Credit Reporting Act (FCRA) to extend existing protections for employment applicants with criminal records to the tenant screening context and put employment applicants and housing applicants on the same footing.

We also urge Congress to amend the Fair Credit Reporting Act to limit the types of criminal records that can appear in consumer reports for non-law-enforcement purposes.

[The prepared statement of Ms. Tran-Leung can be found on page 62 of the appendix.]

Chairwoman BEATTY. Thank you. Your time is up, but thank you so much, Ms. Tran-Leung.

Ms. Sorenson, you are now recognized for 5 minutes for an oral presentation of your written statement.

**STATEMENT OF MELISSA SORENSON, EXECUTIVE DIRECTOR,
PROFESSIONAL BACKGROUND SCREENING ASSOCIATION**

Ms. SORENSON. Good morning, and thank you, Chairwoman Beatty, Ranking Member Wagner, and members of the U.S. House Financial Services Subcommittee on Diversity and Inclusion. Thank you for the opportunity to testify today and for holding this important hearing.

The Professional Background Screening Association (PBSA) shares the same goals as the public, industry partners, and Congress in terms of promoting pathways for individuals reentering society to secure employment and housing opportunities that help reduce recidivism and the costs borne by our society and the individuals' families when we fail to provide a path for successful reintegration.

We also recognize the importance of ensuring employers who are uniquely positioned with knowledge of their industry, the positions that they are filling, and the access to consumers and consumer information have the information and ability to hire the most qualified candidates, and that housing providers have knowledge about their tenants to help keep our communities safe.

Our mission is to advance excellence in the screening profession. The reports prepared by PBSA's background screening members are used every day by employers, volunteer organizations, and housing providers to help make our communities safe for all who use, work, and reside in them. PBSA's members, as with all consumer reporting agencies, are subject to strict regulations under the FCRA.

Additionally, under the Obama Administration, both the EEOC in 2012, and HUD in 2016, issued regulatory guidance regarding the use of background checks. In both of these instances, our Federal agencies recognized the legitimacy for background checks while offering guidance on their appropriate use.

I will refer you to my written statement that includes a discussion of the regulatory structure and protections it affords consumers today including infographics.

With respect to the topic of today's hearing, PBSA has been actively and constructively engaged with policymakers and stakeholders in the Federal, State, and other forums to help promote successful integration of justice-involved individuals, and we have welcomed the opportunity to discuss this topic today.

Specifically, we encourage Congress to take the following actions: adopt a uniform ban-the-box standard for private employers with preemption for State and local legislation; adopt carefully tailored employer negligent hiring liability protections; and expand the application of employer incentives such as the Worker Opportunity Tax Credit.

First, ban-the-box and fair chance hiring. According to the National Employment Law Project (NELP) in October of 2020, 36 States and 150 counties and local governments have adopted ban-the-box policies.

Additionally, later this year Congress will apply the Fair Chance to Compete for Jobs Act, which will prohibit most Federal agencies and contractors from requesting criminal history information before a conditional job offer.

PBSA supports the intent of ban-the-box policies to provide those with criminal histories the fairest chance possible for reintegration. However, there are challenges posed by the sheer number of the varying regulations.

Often, the laws include varied requirements such as specific wait times for adverse action letters or specific language requirements in those letters, and much more.

This patchwork has created a burdensome environment for employers and places otherwise equally positioned applicants on unequal ground based solely on the city or State they live in.

Therefore, we encourage Congress to adopt a uniform ban-the-box standard that allows for background checks after the initial employment application.

Next, employer liability. We would also encourage Congress to provide employers with liability protections with respect to negligent hiring. As discussed in greater detail in my written statement, employers can be confronted with millions of dollars of liability for hiring employees with criminal records. To help foster job opportunities for these individuals, a number of States have taken action to provide protection for employers who hire them.

While States have structured their protections in different ways, PBSA recommends immunity for employers based on the employer's use of the Green factors as outlined in EEOC's 2012 guidance.

Finally, additional employer incentives. We would encourage Congress to consider an incentive-based approach, including expansion of the Work Opportunity Tax Credit Program beyond the current construct that applies only to employment of ex-felons within one year of release, expansion of the Bonds for Jobs program by changing the definition of what the bond covers and the value of the bond, and implementation of certificates of rehabilitation.

It could be a program led by a governmental agency that includes individualized assessments and the issuance of certificates

outlining the risk if reoffense is negligible. It would be a helpful tool for both justice-involved individuals and employers alike.

Employment extended to a certificate holder could be accompanied by liability protections for the employer.

We recognize the complexity of these issues and welcome the opportunity to appear before you today to address these as well as any other approaches that can help promote racial justice and increase reentry opportunities for justice-involved individuals.

Thank you, and I look forward to discussing this with members of the subcommittee and my fellow panelists today.

[The prepared statement of Ms. Sorenson can be found on page 52 of the appendix.]

Chairwoman BEATTY. Thank you so much, Ms. Sorenson, for your testimony. I now recognize myself for 5 minutes for questions.

First, let me just say to you, Ms. Martin, thank you so much for your personal story and your personal sharing. It gives us first-hand knowledge of why we value this hearing and how we hope to move the needle so more people will have a story that is a little different than your story. But please continue to tell your story. We appreciate it.

Let me just ask you, as a returning citizen, what are some of the important resources that justice-involved individuals need to have or know about to reconnect with their families and communities?

And I am going to ask you to hold on your answer. I am going to go straight down the list.

To Mr. Korzenik, some employees face regulatory restrictions such as the 10-year look back for misdemeanors. What policies should be implemented to eliminate employment barriers and what can employers do to leverage this population in their workforce?

And to Ms. Tran-Leung, each year there are roughly 25,000 returning citizens in my district of Franklin County, Ohio. Stable housing is a critical need to achieving employment and financial success. How can we address these biases in access to housing?

And Ms. Cook, you highlighted discrimination in your testimony from payday lenders in accessing financial services. How can we ensure financial background checks for returning citizens are relevant and germane and increase financial inclusion?

We will start there, and then I will come back.

Ms. Martin?

And we have limited time so I am going to ask you for concise responses.

Ms. MARTIN. Yes, ma'am. Thank you, Chairwoman Beatty.

So initially, on the first day of release, we should have identification cards—birth certificate, Social Security card—because if we don't have those things, then housing, employment, anything that comes after that is nonexistent.

If we are faced with reporting to parole officers, we can't really keep a job because we have all of these reportings that we have to do to—for someone else to say we are deemed worthy of being free, if free is even an option.

So I would say, ID, birth certificate, Social Security card, the moment we are released. We should leave prison with those things.

Chairwoman BEATTY. Thank you so much.

Mr. Korzenik?

Mr. KORZENIK. Thank you.

With regard to the question about misdemeanors and how they might be considered in the process or what can be done to alleviate the burdens that those create, some of the most powerful policies have been various types of expungement or record sealing.

For example, the State of Michigan has one of the most comprehensive expungement bills, called the Clean Slate Initiative. These are very, very powerful because they take these off of consideration and they de facto eliminate the kind of negligent hiring liability concerns that might be associated with having a visible record.

With the broader question of, how can the business community take advantage of this population, I think it starts with a recognition of the size of this as an opportunity.

This is an opportunity to get a massive talent base that is overlooked, but it requires an intentional and well-thought-out strategy, just as any business would pursue any kind of—

Chairwoman BEATTY. Thank you.

Mr. KORZENIK. Thank you.

Chairwoman BEATTY. Ms. Tran-Leung?

Ms. TRAN-LEUNG. In Ohio, we have worked with a lot of actually very good housing providers that have been interested in providing second chances for folks.

I think uplifting those who work well, and then for those actors who don't house people with records, I think really looking at enforcement of the Fair Housing Act is really important for addressing those biases.

Chairwoman BEATTY. Thank you.

And Ms. Cook?

Ms. COOK. Yes, I am aware that there are some nonprofits that connect returning citizens to second chance banking services, and I think Congress can explore ways to leverage those partnerships and expand on them.

And then, I would also say that it would be great for Congress to look at the Fair Credit Reporting Act and see if there are any provisions around enforcement or the provisions to limit or that are limiting access to banking services and financial institutions.

So, those are the two approaches I would suggest that Congress take.

Chairwoman BEATTY. Thank you. And thank you to all of the witnesses as we move forward looking at diversity and inclusion from a criminal justice standpoint.

I now recognize the distinguished ranking member from Missouri, Mrs. Wagner, for 5 minutes for questions.

Mrs. WAGNER. Thank you, Madam Chairwoman.

First, Ms. Martin, I, too, want to acknowledge your strength and your courage in telling your story, and I would encourage you to continue to do so. We will be there to help, and the work that you are doing for Operation Restoration and Hope House is remarkable. So, I thank you.

Mr. Korzenik, you published an op-ed in the Chicago Tribune last year in which you stated that eliminating the question about arrests or conviction records on job applications, known as the ban-

the-box policy, has had mixed results and unintended negative consequences.

You also cited an alternative series of steps you called, “bridging the box.” Can you go into further detail, sir, about the negative consequences of this policy and these alternative steps?

Mr. KORZENIK. Sure. There are two challenges to ban-the-box in terms of its efficacy. I am by no means against ban-the-box but it certainly has failed to fulfill the hopes of its advocates.

Some businesses, apparently, practice avoidance strategies. For example, we did our own work that suggested that businesses who did not want to consider these applicants because of their perceived costs of tapping this pool or having to later discard people because of a criminal record, seemed to direct them to avoiding people who had long periods of unemployment on the thought that it might include prison time, and other kinds of communities would be avoided.

The other challenge with ban-the-box is it might not really support or encourage the kind of thoughtful process that might be let us give it a whirl, let us try someone kind of hire, and that doesn’t seem to be terribly effective.

Mrs. WAGNER. What about, “bridging the box?” What would that be?

Mr. KORZENIK. “Bridging the box” is my name for a couple of things, starting with recognizing that there are very low-risk hires. For someone who has been out in the workforce for 10 years, why should an employer care about a criminal history that preceded that? Those are proven good applicants.

Visiting nonprofits that can be partners in this effort, visiting employers that are already doing this, educating yourself on what these things—

Mrs. WAGNER. Thank you so much. I need to move on.

Ms. Sorenson, in your testimony, you note that there is a patchwork of State laws and even a patchwork of policies at the local level. We see this a lot. You have called for a uniform ban-the-box policy. Could you discuss what that should look like?

Ms. SORENSON. Certainly. Thank you.

As you noted, there is a patchwork of varying ban-the-box laws and regulations at the State and local level. We would be supportive of a ban-the-box policy at the Federal level that applies to all private employers alike that would delay the criminal history inquiry until after that initial employment application to get everyone situated equally.

Certainly, we recognize, as was just stated, that there are some open questions with respect to ban-the-box and some of the unintended consequences that may flow from these policies.

We do want to also recognize the intent of the policies and move forward proactively with those.

Mrs. WAGNER. Ms. Sorenson, I have read that there is some concern about employer liability. Your testimony discussed negligent hiring cases. I believe you mentioned protections for employers that hire individuals who have minor or irrelevant criminal histories.

But if an employer chooses not to conduct a background check, perhaps for the reasons we are discussing in this hearing, and it

turns out that the employee had a serious or relevant crime in their past, what kind of protections would that employer have?

Ms. SORENSON. Our recommendation is to consider employer liability protections for those that conduct criminal background investigations and consider the Green factors, evidence of rehabilitation, time since the offense, and job-related as for that.

We would be seeking employer liability protections in those cases. For employers that choose not to conduct background checks, that is kind of outside of the scope of our membership and the work that our members do.

Mrs. WAGNER. Okay. And then back on the ban-the-box, what specific policies have you seen at the State and local level that you find notable, that work well?

Ms. SORENSON. A uniform ban-the-box that would be implemented, for example at the State level, that restricts that employment application inquiry about criminal history until after the employment application has been submitted effective.

Mrs. WAGNER. Thank you. My time has expired, and I yield back.

Ms. GARCIA OF TEXAS. [presiding]. Thank you.

The Chair now recognizes the Chair of the full Financial Services Committee, the gentlewoman from California, Chairwoman Waters, for 5 minutes.

Chairwoman WATERS. Thank you very much.

I am very pleased about this subcommittee hearing. We are dealing with an issue that, of course, really points out the discrimination, the systemic racism in our society, and so I am very pleased not only that the subcommittee is holding this hearing, but I expect our committee to be in the forefront of getting rid of these discriminatory policies in not only housing and banking, but in other areas over which we have some oversight.

Ms. Cook, in June of 2020, many organizations came together, led by the American Civil Liberties Union, to file a lawsuit challenging the Small Business Administration (SBA) rule that barred individuals with certain criminal histories from receiving Paycheck Protection Program (PPP) loans. The plaintiff in the case said the criminal justice system already disproportionately impacts people of color, and destructive policies that create unnecessary barriers to much-needed resources such as the PPP serve only to simplify the structural racism in our justice system. It is long past time to eliminate rules like this.

The lawsuit was successful, and the court ruled that barring eligibility for business owners with criminal records from the SBA's PPP loan application was unlawful. Additionally, the Biden Administration worked to further broaden access, allowing thousands of firms to apply for this business-saving relief.

So, it indicates just by the work that was done dealing with the CARES program, dealing with the American Relief Program, and dealing with PPP, that if government acts, we can get rid of this systemic discrimination in so many different ways.

Ms. Cook, last year, we fought to further loosen these PPP restrictions when House Democrats passed the HEROES Act. I also worked with House Small Business Committee Chair Nydia Velazquez to set aside \$60 billion for Minority Depository Institutions (MDIs), Community Development Financial Institutions (CDFIs),

and other community financial institutions to make PPP loans. And we did this because we knew these institutions have a proven record of reaching underserved and underrepresented communities, including those that are justice-impacted.

I have also worked \$12 billion in capital investments and grants for these MDIs and CDFIs into the COVID-19 relief bill to, again, get money to the communities that need it most.

But these are only first steps. Going forward, we need to know and understand how we can structure government lending programs to limit discrimination against people of color and prevent them from amplifying racial disparities.

And so, let me ask whether or not you have taken a look at the many ways in which government discriminates, for example, in public housing, and are working, in our committee, to ensure that we undo these discriminatory policies that were created by this government to not allow those returning, say from prison, to be able to live in public housing units with their parents, their grandparents, et cetera, et cetera.

I would like to know whether or not you have taken a look at other ways that we have absolutely initiated and support discrimination, whether it is in housing or it is in banking or in other areas. Can you help me with that, and that will help us dig deeper into what we can do?

Ms. Cook?

Ms. COOK. Absolutely. As you noted, formerly incarcerated people and people who are reentering society face a myriad of barriers, not only in financial institutions but in education, in housing, and in access to social programs and services, and we are talking about health care, Medicaid access, lifetime bans on access to Supplemental Nutrition Assistance Program (SNAP) and Temporary Assistance for Needy Families (TANF) benefits, the inability to explore higher education because you can't get access to Federal grants for educational services, et cetera. And it is important for Congress to look at all of these barriers across-the-board to ensure that we are increasing access and opportunity for people in our society.

Chairwoman WATERS. Thank you very much.

And I yield back the balance of my time.

Ms. GARCIA OF TEXAS. The gentleman from Oklahoma, Mr. Lucas, is now recognized for 5 minutes.

Mr. LUCAS. Thank you, Madam Chairwoman, for holding this hearing. In particular, thanks to the witnesses for agreeing to testify.

Mr. Korzenik, you discussed in your testimony how employers should view individuals with criminal histories as a pool of talent that should be evaluated on a case-by-case basis.

Can you elaborate on some industry best practices and organizations that support this effort?

Mr. KORZENIK. Thank you very much.

Yes. In the companies that are model second chance employers that I have observed and studied, you see one of the critical points is the individualized assessment period.

Typically, in a ban-the-box State, if an offer contingent on a background check produces a background check, or earlier in the

process, there is a review of that record, the challenge here is that the committee or individual who typically reviews that record usually has career disincentives to ever say yes.

And so there is a perceived career risk, particularly to HR professionals, if they don't have executive support in the company to promote second chance hiring, it is so much easier from a career standpoint to say no.

You have offsets to this, like the excellent work being done by the Society of Human Resource Management and their Getting Talent Back to Work certification program, but you also have structural changes you see in these employers.

For example, one of the companies we studied in Michigan, Cascade Engineering, has a member of the executive team who is trying to promote second chance employment, and actually makes that final decision as to whether something in the background precludes employment.

Other companies, like JBM Packaging, an Ohio-based company, have a member of one of the lines of business that are suffering and being challenged by the workforce shortage. They will put one of those people on that committee. Others will take an HR professional and assign them the role of advocate on behalf of those persons.

So that is part of it, and then there is, of course, to the work advocated by the background check community. Designing a background check that is very specific and does not overly exclude candidates where their background is not relevant to the position would all be examples of what we have seen work very well.

Mr. LUCAS. Absolutely.

Ms. Sorenson, could you further discuss State and local policies regarding background checks during the application process that slows down hiring and often has an adverse impact on individuals with criminal histories looking for work?

Ms. SORENSON. Certainly.

Generally, State and local policies that require background screening are related to those industries that have licensing requirements. So when there are licensing requirements at play for the position, that will require specific components of a background check be conducted, which often looks for certain offenses in that background check that might prohibit that person from being employed.

Generally, that process in the employment context includes running the background check, and should something come up, an adverse action process where the consumer is notified of anything that pops up in the background check that the employer is considering taking action on, as well as a copy of the background check and an opportunity to dispute that process right there and can extend the time for the background check to be completed.

Mr. LUCAS. And continuing with you, Ms. Sorenson, could you elaborate on the ban-the-box policies and discuss how they operate differently across sectors?

Ms. SORENSON. Certainly.

Mr. LUCAS. Are there exemptions for certain types of crimes or occupations?

Ms. SORENSON. Generally, ban-the-box policies don't exempt certain types of crimes or occupations. What they have done in varying requirements is to require specific wait times for employers once they send out that initial adverse action notification, or require specific language be included or specific talking points that have to be involved in that process.

Mr. LUCAS. You discussed in your testimony the possibility of expanding the Bonds for Jobs program to include workplace violence. Could you expand on why you believe this is necessary and what this change would look like?

Ms. SORENSON. Certainly. One of the key reasons that employers conduct background checks is for the safety of consumers and their workforce. The Bonds for Jobs program provides for a \$100 cost—a bond that is extended—to up to \$5,000 for employee dishonesty.

That doesn't cover the real purpose and reason why employers are doing background checks. So, extending that bond to further coverage for the real reason that employers are doing background checks, extending that coverage limit beyond dishonesty and beyond the \$5,000 would be helpful.

Mr. LUCAS. Thank you.

And I yield back, Madam Chairwoman.

Ms. GARCIA OF TEXAS. The gentleman yields back.

The gentlewoman from Massachusetts, Ms. Pressley, who is also the Vice Chair of our Subcommittee on Consumer Protection and Financial Institutions, is now recognized for 5 minutes.

Ms. PRESSLEY. Thank you, and I want to thank Chairwoman Beatty for convening this critically important hearing.

The mass incarceration crisis disproportionately impacts Black and Brown communities and, therefore, these communities face collateral consequences of incarceration, including doors to reentry and stability slammed shut as a result of criminal background checks.

Criminal background checks too often bar our justice-involved neighbors from securing housing and employment. A recent study, in fact, found that 79 percent of formerly incarcerated people and their families were denied housing due to a past criminal conviction.

Black people are more than twice as likely to be arrested as their White counterparts, and people of color are drastically overrepresented in the population of those who are incarcerated.

That is why President Obama, under his Administration, with the Department of Housing and Urban Development, made the case that banning tenants with a criminal record can constitute de facto racial discrimination and, therefore, is a violation of the Fair Housing Act.

However, here we are more than 5 years later, and it is still legal to deny tenants in public and private housing for their involvement with the criminal legal system.

Ms. Martin, I echo the sentiments of my colleagues. I associate myself with all those and just say the work that you are doing to center the humanity and to restore others, you are owed the same, and offline, we will do whatever we can to support you.

But we thank you in the midst of your own uncertainty and trauma for coming here to advocate for the millions who stand to benefit from what we are doing here today.

Ms. Martin, one in three individuals in this country has a criminal record. This is not abstract for me. Both my husband and my father, both Black men, are survivors of mass incarceration, who have gone on to do extraordinary work in academia, in the non-profit world, and they have saved lives.

Amanda Gorman said, “We seek to be not a more perfect union but a more purposed union,” and I am so grateful that they have been able to bring to bear their contributions.

But it almost didn’t happen. You and many of the people that you work with have the lived experience of challenges returning home and needing to secure housing.

In my own district, the Massachusetts 7th, 30 percent of those who have been released from correctional facilities were released to shelters.

So, it is disingenuous to say we want you to get on the grid, make a positive contribution after you have paid your debt, when we are not giving people an ID, housing, or income, even for transit to get to a job interview.

So, again, none of this is abstract. I have seen it. I have lived it. But you know intimately what these challenges are.

Please lend your expertise, and could you share some of the specific challenges that justice-involved people face specifically around housing?

Ms. MARTIN. Thank you.

To be specific, I share this all the time, and as I talked about the paper—the ID, birth certificate, Social Security card that we need.

But as we know, over the past few years the incarceration of women has risen 800 percent. And so, as we have the conversations about incarceration, oftentimes women are left out of those conversations. But we do know that women are now becoming heads of households and we are the glue that holds these families together.

So, if there is no safe space for me to sleep or for those women to sleep with those things, then the desperation sets in. Over the past 3 weeks, the three emotions that I have visited the most are fear, desperation, and anxiety. Those very three things led me to incarceration, because the trauma that lives within each of us leads us to prison, not the crime that we commit.

I shared with you all, and I am not sure if you caught it, but I served 12 years for shoplifting. Desperation brought me there.

Ms. PRESSLEY. Yes.

Ms. MARTIN. To be released, my first night home after almost 8 years, without a change of underwear, desperation is what leads most folks to prison, trying to survive where I am and those in my community are today. When we become desperate, we do what we know.

Ms. PRESSLEY. Thank you. Thank you for centering—

Ms. MARTIN. Congress can help. And Congress can help by mandating these public housing agencies, when you get into bed with

third party corporations, if you are taking money from us, you are going to implement our policies.

Ms. PRESSLEY. Ms. Martin, thank you for that. I do want to say that my bill would tackle some of these challenges by preventing tenant screening companies from including most criminal activity in a background—

Ms. GARCIA OF TEXAS. The time has expired.

Ms. PRESSLEY. As we know, people who have been incarcerated once are 7 times more likely to experience homelessness than those—

Ms. GARCIA OF TEXAS. Your time has expired, Ms. Pressley. Thank you.

Ms. PRESSLEY. Okay. Thank you. Thank you, Ms. Martin.

Ms. MARTIN. Thank you.

Ms. GARCIA OF TEXAS. The gentleman from Ohio, Mr. Gonzalez, is now recognized for 5 minutes.

Mr. GONZALEZ OF OHIO. Thank you, Madam Chairwoman, and thank you to Chairwoman Beatty for holding this important hearing.

Earlier today, I got off the phone with somebody who is one of the most inspiring people I talk to on a regular basis. His name is Maurice Clarett. For those who are from Ohio, you may know that name.

Maurice was probably the best running back I have ever seen in my life in college, and he, ultimately, went through some challenges, and was incarcerated. He came out, and is now one of the largest podiatry providers in the State in terms of owning the practices. He has three vascular surgery centers, hundreds of affordable housing units throughout the State, and behavioral health clinics that he operates for youth who are going through trauma in various ways.

And my question to him this morning was, tell me about when you got out. Tell me about the very moment you got out, what your plan was, and how difficult it was to actually access capital.

And the one thing he said, and this will stick with me for the rest of my life, is he said, “If I could fight for one thing in your committee, it would be access to capital for people like me. Access to capital literally changed my life.”

And he talked about how he went through the traditional banking route and banks that we are familiar with, if I name them. He said, “Look, to me, it felt like I was getting blacklisted. I came in with my business plan. I had my 20 percent. I wanted to get a loan so I could get off my feet and I was completely shut out. And it took a personal relationship with a community bank in Delaware County before somebody finally said, ‘I will take a chance on you.’”

And from that, he has built an unbelievably successful set of businesses. I am so proud of him and just honored to call him a friend.

But I want to start, Mr. Korzenik, with you. In terms of the barriers that are in place for justice-involved individuals like a Maurice Clarett or others who come into Fifth Third Bank or another bank with their business plan, and they want to get on their feet, what are those barriers? How are they treated differently, if at all, from a lending standpoint when they come in the door?

Mr. KORZENIK. I have to say this is not an area of expertise to me. I do note, obviously, there are challenges with access to capital, particularly with entrepreneurship, and this is irrespective of criminal records.

Banks are in the business of lending out other people's money, and so it is, generally, entrepreneurship lending through banks comes with people who have collateral. A lot of entrepreneurs in this country build their resources initially through families and credit cards, and those are all difficult resources for this population.

Mr. GONZALEZ OF OHIO. Absolutely. And let me sort of shift them to something you might have a stronger opinion on. In terms of prison entrepreneurship programs, how effective do you think those are in providing the skills to eventually start and run a business?

Mr. KORZENIK. Because of the access to capital, because of levels of educational attainment, often coming from challenged family backgrounds, in terms of creating wildly successful entrepreneurs, it's probably not terribly successful.

But I don't think that is the appropriate measure. Many of these entrepreneurship programs offer just terrific general training, business training, business skills training. They teach participants to think like business owners, which makes them great employees, and they also very often may not provide what we would consider a wildly successful entrepreneurial result but they create, essentially, effective side hustles that allow people to manage their finances and to prosper. I think they are very important programs. It is just that how you measure their success is important.

Mr. GONZALEZ OF OHIO. Yes, and I probably should have prefaced with this. I asked Maurice that same question. He said, "Everything I learned was self-taught." He said, "I read the Economist. I read Forbes. I read about Andrew Carnegie and the Vanderbilts. I read about every successful entrepreneur in the history of our country over that period of time and that is how I learned. That is how I learned anything. And then, I just networked like crazy when I got out."

So, there is certainly a lot more that we can do.

Ms. MARTIN, I guess I will end with you. I only have 30 seconds. But how effective are prison entrepreneurship programs in providing the skills to eventually start and run a business, from your experience?

Ms. MARTIN. I don't have that experience, because most women's prisons don't have those types of training.

Mr. GONZALEZ OF OHIO. Yes. I think that is the answer right there.

Ms. MARTIN. But I do think it would add a lot if there were some.

Mr. GONZALEZ OF OHIO. Yes. So, nonexistent, right?

Ms. MARTIN. Nonexistent.

Mr. GONZALEZ OF OHIO. So, another huge gap. And, again, I want to thank the Chair for this hearing, and I yield back.

Ms. GARCIA OF TEXAS. The gentleman yields back.

The gentleman from Massachusetts, Mr. Lynch, who is also the Chair of our Task Force on Financial Technology, is now recognized for 5 minutes.

Mr. LYNCH. Thank you very much, Madam Chairwoman.

I want to thank all of our witnesses for your willingness to help this subcommittee with its work, and Ms. Martin, I want to thank you as well for the power of your example on this issue, and for your courage in reengaging and helping other women in similar situations.

I have had an opportunity during my time in Congress to visit quite a few prisons in Massachusetts and in my district, as well as houses of correction is what we call them in Massachusetts.

But to be honest with you, what I have found from my own observations is that about 90 percent of the prison population suffers from dual addiction. So, we have an underlying problem there, and I have been working on this issue for a long, long time.

But we have an underlying issue there that also creates a barrier to our neighbors who are coming out of prison, both men and women. I am involved right now. I founded a residential drug rehab program in my home community of South Boston geared towards children—believe it or not, adolescents—because they are becoming involved with drugs at such a young age.

And now my latest project, a so-called local priority for my district is to establish a home for women coming out of prison, and it is going to be run by the Cushing House, the same people that are running my adolescent program, and it will provide educational opportunity and reconnecting to the community.

But, importantly, the underpinning of that program is really on getting people sober, getting them straight, in order to provide that stability and that sense of community that might have been disconnected during their incarceration.

And I am just wondering, from your experience, and you are a very powerful example of the good that can happen, how important is that?

I don't think this is just my district that is dealing with the addiction problem. How important is that, do you think, in the overall effort to help women transition out of incarceration back into their communities?

Ms. MARTIN. I would say it is very important, because as I stated earlier, a lot of trauma is what causes us to end up in prison. The trauma leads to the drugs, which leads us to prison.

So, it is very important that you have that aspect of the transition. But if that trauma, that root cause, is not dealt with, then the cycle will continue, the recidivism will continue, and we will keep prisons running because people aren't being given the resources that they are needing, which is dealing with the trauma that is there.

And men have trauma as well, but there are no resources to deal with any of that. Prison does not deal with trauma. Prison adds to the trauma.

Mr. LYNCH. Thank you.

Ms. Tran-Leung, I know you are doing great work over at the Shriver Center. Again, on this issue of providing that support to make sure we deal with the dual addiction that—in my experience, it is, like, 90 percent of the prison population is dealing with that, and if we don't get that right, it diminishes our opportunities to do other good things.

But can you share what your perspective is from the Shriver Center side of things?

Ms. TRAN-LEUNG. Yes, thank you for the question, Representative.

From our perspective, we probably have had less experience in this space. But what I will say is that there is an increasing recognition that housing is necessary for our individuals and that housing is paramount to helping them to address some of these broader issues.

And so, there has been a lot of really good work from HUD recently to try to remove some of the drug-related restrictions from the emergency housing vouchers, noting as of the fact that addiction is often a root cause of homelessness.

Mr. LYNCH. Thank you, Madam Chairwoman. I yield back.

Ms. GARCIA OF TEXAS. Thank you. The gentleman yields back.

The gentleman from South Carolina, Mr. Timmons, is now recognized for 5 minutes.

Mr. TIMMONS. Thank you, Madam Chairwoman. And I would like to thank my colleagues across the aisle for having this hearing. This is very important, and currently in this country we have 10 million jobs that are available, and if people want to get back to work and are being prevented from doing so, we need to take steps to make sure that they have the opportunity to get back to work. That is the whole point of the criminal justice system—there are two theories of justice: retributive justice; and deterrent justice. If you have been released from prison, if you have served your time, you should be able to get back to work and pursue the American Dream just like everybody else.

We have four proposals here before us. Two of them, I think, could have bipartisan support. Two of them, I do not see getting much bipartisan support.

There is one thing that I think that is incredibly important that is not present before us here that would affect this enormously, and that is the issue of expungements. We have talked about it. I was a prosecutor for 5 years. I worked on the expungement laws of South Carolina. One of the biggest issues that is involved in the expungement conversation is the cost of the expungement.

In South Carolina, it costs \$285 to get your record expunged, if you are eligible. I just did some research—Kentucky, \$500; Louisiana, \$550; Tennessee \$450. If you don't have a job and you want to get a job, how are you going to pay \$200, \$300, \$400, \$500, \$600 to get your record expunged to then get the job? It actually doesn't really make much sense.

I think that we could find a lot of bipartisan support surrounding making expungements easier to get, payment for expungements, and I really think that is an area on which we should focus.

Mr. KORZENIK, what are your thoughts on the subject?

Mr. KORZENIK. I agree. I don't spend a lot of time focusing on policy. My focus is, let's get the employers to see this population as their future workforce, and then, I think, we will get better policy support for things.

But expungement is very powerful. Clean slate type initiatives where there is automatic expungement are particularly helpful.

You need two things for this population to access: one, money, as you have referred to if there is no automatic expungement; and two, the sophistication to know how to tap this resource. And these are all very, very helpful and would help address our labor shortage in a meaningful way.

Mr. TIMMONS. To that point, I am going to ask a question of Ms. Sorenson. A lot of these States are generating tens of millions, hundreds of millions of dollars of revenue off of expungement fees. That is why they have them. Theoretically, it does require someone to actually assess an application, make sure the person is appropriately eligible, and then process it.

Do we have any data or can you take a guess at what type of hit it would be budgetary-wise to these States if the Federal Government said, if you want this funding, you have to charge no more than \$50 for an expungement or, as Mr. Korzenik just said, an automatic expungement?

That is going to have a cost. That is actually the hardest one because not only does that remove their ability to charge the fee, so they lose the revenue, but then they have to do more work. So, that is probably the most expensive.

Ms. Sorenson, do you have any thoughts on that?

Ms. SORENSON. To your earlier question, I don't have the background or history on the cost and the income that goes to the States with respect to the expungement process. It is something that we can look at and get back to you.

But I, personally, don't know what States are collecting in terms of the funding for the expungement process.

Mr. TIMMONS. Sure. I will open it up.

Ms. Martin, do you have any thoughts on this?

Ms. MARTIN. I completely agree with what you are proposing. It would make life much easier for those of us with criminal backgrounds, but also I have no clue what the hit would be for the State. But they are raking in enough cash through the prisons not to really take too hard of a hit through the expungements.

Mr. TIMMONS. Sure. There is not a lot of agreement in Congress, but I think we could find some agreement on this subject.

Yes, Mr. Korzenik?

Mr. KORZENIK. I just wanted to mention that we should offset these lost costs with the economic benefits. There was a University of Michigan study which showed that people who went through expungement saw a pick-up of income of about 20 or 25 percent over 2 years, an extraordinary pick-up in economic benefits.

Mr. TIMMONS. And more tax revenue, because when you make more money, you pay more taxes.

I also want to point out that we talked earlier about marijuana, which is going to be a very big challenge in this country. So many States have already legalized recreational or medical marijuana, and it is going to be very difficult to unwind this.

We have to address it, and the longer we wait, it is really a disservice to the American people.

With that, I yield back. Thank you, Madam Chairwoman.

Ms. GARCIA OF TEXAS. The gentleman yields back.

The gentlewoman from Michigan, Ms. Tlaib, is now recognized for 5 minutes.

Ms. TLAI B. Thank you so much, Madam Chairwoman. I am so glad we are holding a hearing of this kind today, because too many of my colleagues don't fully understand how broken our so-called justice system is.

As we all know, it incarcerates people at a higher rate than any other nation right now and, of course, disproportionately targets our Black and Brown neighbors.

There is also this heightened level of dehumanization that happens here. So, I just want to personally thank you, Ms. Martin, for helping change that with your powerful voice.

We know that many leave prison already thousands of dollars in debt, whether from conviction-related costs, missed payments, prison charges, or child support, and often these debts leave individuals unable to obtain a driver's license. We talked about the ID required to open a bank account and so forth.

Ms. Tran-Leung, what kind of credit score do returning citizens have upon release, and do they typically have access to consumer credit?

Ms. TRAN-LEUNG. First, thank you for that question, Representative.

One of the common barriers that we have seen from justice-involved individuals, in addition to the fact of their criminal record, is also the fact that they lack credit and that they have not been able to accumulate a good credit score while incarcerated.

And so, this is something that is definitely a barrier with respect to housing, and I think one of the areas that we have been trying to push back on is the need to really conduct these type of screening requirements, especially after we have gone through a pandemic, where people will have eviction records, will have different things on their tenant screening, but where the need for housing is especially important.

So, that is a very significant barrier for people, I agree.

Ms. TLAI B. I appreciate it.

And, Ms. Tran-Leung, as a result, justice-involved individuals are 3 times as likely to use alternatives such as payday loans or check-cashing services. Has your organization looked at that impact of how that has led folks towards predatory lending?

Ms. TRAN-LEUNG. The Shriver Center itself has not, but I do, at the Shriver Center, lead our legal impact network, where we have a network of State-level law and policy organizations that have done a lot of really good work around payday lending. And so, that is something I am happy to get back to you on, Representative.

Ms. TLAI B. Yes. I have a bill that reduces debt to be reported on your credit report from 7 years down to 4 years, and I really think that could be transformative for everyone involved here, but especially around the country.

We know that a consumer credit report can determine a person's ability to own their home, get a job, and even auto insurance in my State.

In addition, prior to the COVID-19 pandemic, formerly incarcerated persons faced a 27-percent unemployment rate in the U.S., nearly 5 times higher than the national unemployment rate.

Ms. Cook, I have admired your work and your leadership for a very long time, and I appreciate you being here.

Could you talk a little bit about how poor credit can be used, intentionally or unintentionally, as a proxy for being formally—I call it a proxy to discriminate, especially those who are formerly incarcerated? Can you talk a little bit about that, and has your organization taken a dive into really understanding that impact?

Ms. COOK. Absolutely, and thank you for that question. And as I noted earlier, predatory lending and access to financial services are really difficult for people with records. They face a myriad of challenges when it comes to credit reporting, when it comes to background checks that lock them out of access to homeownership, being able to get mortgages, being able to have jobs or hold jobs because of these barriers.

And so, we have recommended that Congress look at these barriers and look at the Fair Credit Reporting Act and seeing [inaudible] exist, and look at revising those limitations and limiting any restrictions to people with records.

Ms. TLAI. How can we reform our credit reporting system? This is something you talked about, and I don't know if Marie or any others on the panel—one of the things that I have been looking at is, obviously, medical debt, because 90 percent of folks who file bankruptcy in our country is due to medical debt, and trying to prevent medically necessary debt from ever appearing on people's credit reports, again, which has been heavily used for all different areas—housing and so forth.

The University of Michigan did a study which showed the use of credit scores actually in auto insurance, and how that has kept people in the cycle of poverty, because they are paying thousands and thousands of dollars even if they don't have DUIs on their record, but somebody who has a better credit score with a DUI is actually paying less. It just doesn't make any sense.

And so I don't know, Marie or others, if you can talk about any other bills. We have been working on the one that reduced it from 7 years to 4 years, which we think would be truly transformative and a compromise. But I would love to hear if anybody has any questions, if the Chair would allow. Thank you.

Ms. GARCIA OF TEXAS. The gentlewoman yields back.

The gentlewoman from Pennsylvania, Ms. Dean, is now recognized for 5 minutes.

Ms. DEAN. Thank you, Madam Chairwoman, and I thank our chairwoman and all of you for coming to us today to testify to offer your important voices and your important experience.

Ms. Martin, I especially thank you for your eloquence in everything that you have talked about.

I will start first with education.

Mr. Korzenik, in your testimony, you describe how employment plays an important role in rehabilitation of incarcerated and formerly incarcerated people. You also describe how behind bars education programs are an important part of this investment in employment.

Last Congress, I had the privilege of working with the late Elijah Cummings to author a bill that would standardize the Federal Bureau of Prisons' education programs by creating an Office of Correctional Education focused on areas such as literacy, getting a GED, post-secondary workforce training, and more.

Would creating such an office and a set of best practices across the Federal Prison Bureau help reduce barriers to meaningful employment after release, and do you think it could be replicated both at the State and local levels as well to boost employment and, obviously, bring people back into society?

Mr. KORZENIK. First, thank you for your work on that, your important policy work. Let me speak, most broadly, to the role of education.

The RAND Corporation, the think tank, did a study of what was most consequential in getting better employment outcomes, and they found that education was the single-most critical element.

Interestingly, it was not necessarily vocational employment, vocational training, but actually hard-core education programs. So, I think anything that encourages education and makes an investment in this workforce—and it is a workforce—would be beneficial.

Ms. DEAN. I think that is really well put, and, of course, vocational training is appropriate and useful. But you are right, the key is a real education, regardless if you are behind bars or not.

Mr. KORZENIK. Some of that, if I may, is because it is particularly true because of very low levels of educational attainment in this group. So, that plays a role in making core education.

The other thing I will say in defense of vocational training is the study that RAND looked at was done at a time we were losing manufacturing jobs in this country, and it wasn't a prosperous area. I think redoing that might show some additional benefits to vocational training.

Ms. DEAN. Great points. Thank you.

I am going to shift now to housing and, particularly, housing for those who are in recovery or those who struggle with substance use disorder.

I am mindful that we are approaching the very end of National Recovery Month, and we know that many of those who are incarcerated or formerly incarcerated suffer from addiction or substance use disorder.

I am especially concerned about how these people are treated if they happen to relapse, which is a normal, sadly, and common part of long-term recovery.

Ms. Tran-Leung, in your testimony you describe instances where public housing authorities use broad discretion in screening and denying applicants based on such things as prior drug use.

For those who may be in long-term recovery and are at risk of relapse, are they also at risk of losing their housing or maybe at risk of never getting housing, based on addiction?

Ms. TRAN-LEUNG. First, thank you for your question, Representative, and this is a very significant problem that we are concerned about is some of our laws around public housing and access to housing are relics of the war on drugs, and as time has gone on, we have learned that relapse sometimes is part of recovery, and there have been some areas in housing that reflect that.

I think some States and some places take a housing-first approach, where it is necessary to house people and get them the support before we start talking about recovery, and so those are the type of policies for which we are hopeful.

But as things stand right now under the current laws, people who are using drugs and have drug-related criminal activity could be at risk of losing their housing or could be at risk of being denied housing.

And so, the Fair Chance at Housing Act that is before Congress helps to eliminate that and helps us to take a much broader view and get rid of this relic of the war on drugs.

Ms. DEAN. It is a relic.

And I thank you, Madam Chairwoman. We know that addiction is a disease. It is not a criminal state, and we have to adjust accordingly.

Thank you, and I yield back.

Ms. GARCIA OF TEXAS. The gentlewoman's time has expired.

The gentlewoman from Georgia, Ms. Williams, who is also the Vice Chair of our Subcommittee on Oversight and Investigations, is now recognized for 5 minutes.

Ms. WILLIAMS OF GEORGIA. Thank you, Madam Chairwoman, for recognizing me and for this conversation today.

Increasing economic opportunity for justice-involved individuals is such an important topic to address. This conversation must also include addressing the centuries-old loophole in the Thirteenth Amendment.

When the Thirteenth Amendment to the U.S. Constitution was passed, it outlawed slavery and indentured servitude except as a punishment for a crime. This exception also appears in State constitutions across the country.

Unfortunately, this loophole has meant that many prisoners or justice-involved individuals are still working under conditions of forced labor, getting little to no wages for their work.

We should all be able to agree that slavery and indentured servitude should not be permitted in any instance in this country. What's more, when those currently incarcerated are not fairly compensated for their work, they have an even harder time reentering as productive members of society.

Fortunately, bipartisan supermajorities are starting to eliminate this exception in their State constitutions across the country. A whopping 80 percent of Utah voters approved the change just last year. In 2020, Nebraska voters also approved the change by over 68 percent. Colorado voters approved the change by over 66 percent in 2018.

We need to learn from the successes at the State level and mirror this change at the Federal level. I have introduced the legislation to do just that with Senator Jeff Merkley.

Ms. Cook, if those currently incarcerated can work under fair conditions, how would this help them to better access capital to start their small businesses when they reenter society?

Ms. COOK. Thank you for that question.

As I noted earlier, and as many of my colleagues have noted, when someone returns from prison, they are trying to start over. We have said that they have been rehabilitated, that they have served their time. But when they come out, they face barrier after barrier to being able to access the basic necessities that each of us need to live our lives and enjoy our lives.

And so, it is extremely important that we remove those barriers to accessing employment, accessing housing, accessing Medicaid and health care and other public benefits in order for them to successfully reintegrate back into society.

And without the removal of those barriers, without removal of barriers to debt, they are saddled with mountains of debt, fines and fees that they must pay—without having access to economic opportunity in order to pay those debts, in order to access housing, in order to continue education, we will continue to have the permanent underclass.

We will continue to see a cycle of incarceration and reincarceration that Ms. Martin talked about.

So, it is extremely important that we look at this through a holistic perspective and recognize that these things intersect and work together in keeping people out of economic opportunity and pathways to social inclusion.

Ms. WILLIAMS OF GEORGIA. Ms. Cook, I want to specifically talk more about the barriers to receiving and saving income to help those currently incarcerated to become more familiar with traditional banking services that they will need to utilize when they enter society.

What is the impact of that, and what do you see our role as the Federal Government in helping?

Ms. COOK. Absolutely. The fact is, when most people come out, they don't have credit. They don't have much credit or a credit history, and there are barriers to accessing traditional financial services.

Many of them may not have ever had a bank account, may not have ever engaged with banking services in the past, and so it is important for us to support the work of nonprofit organizations that are helping to bridge this gap, that are helping to provide financial literacy and training and connect them to financial services, but also for Congress to look at its regulations and how those regulations also limit individuals with records from accessing those services.

Ms. WILLIAMS OF GEORGIA. Thank you so much, Ms. Cook. I urge all of my colleagues on this subcommittee to co-sponsor H.J.Res. 53, my legislation to eliminate the exception clause for slavery in the Thirteenth Amendment.

Madam Chairwoman, I yield back the balance of my time.

Ms. GARCIA OF TEXAS. The gentlewoman yields back.

The gentleman from Massachusetts, Mr. Auchincloss, who is also the Vice Chair of the Full Committee, is now recognized for 5 minutes.

Mr. AUCHINCLOSS. Thank you, Madam Chairwoman.

First, I just want to say this has been just a terrific hearing. I have learned more from these materials and from this hearing, I think, than I have from almost any Financial Services hearing to date, so thank you.

I wanted to zoom in on the safety versus justice paradigm, Mr. Korzenik, that you put forward. You talk about a false choice and a way of thinking that could, ultimately, undermine progress on both fronts. And you have this really nice graph here with public safety and restrictions and supervision and how it is actually—you

start to get diminishing returns by going too far on restrictions and supervision.

What I wanted to ask you about, and then I want to let Ms. Sorenson and Ms. Cook also weigh in is, as we are dialing back restrictions and supervision and getting returns actually on public safety, how are we measuring those returns on public safety in a way that addresses people's concerns about violence, especially as we are seeing gun violence actually spike by up to 20 percent in some cities across the country?

Ms. Sorenson, I know that you said that what is keeping employers up at night is not so much theft or fraud but actually the threat of workplace violence, that they feel like they owe their employees that security, which I can certainly appreciate.

So, what are the restrictions and supervision that we need to maybe actually dial up as we are dialing back others to ensure that there is not going to be interpersonal violence in the workplace or in our cities as we widen opportunity for the formerly incarcerated?

Mr. KORZENIK. One of the challenges in working in this space is the lack of good data, and this was recently highlighted—I know there is an op-ed in *The Hill*. I think it was one of the principals at Arnold Ventures who talked about this.

One of the best investments that, I think, could be made at the Federal level is better data collection and more uniform data collection. It is so complex because it is across all 50 States, sometimes even smaller jurisdictions, as well as the Federal Government.

So part of the answer is, we don't really know.

Mr. AUCHINCLOSS. And by better data and what we don't know, you mean the things that are predictive of future violence?

Mr. KORZENIK. Data collection of what is actually happening. We don't know a lot about outcomes. We don't know a lot about—we don't have standard definitions of recidivism versus rearrest, whether they are technical violations. Is it a minor parole violation or something serious?

So, there is kind of a mess of a national data network, which makes it harder. And the purpose of that graph that you saw, which I used in my book and I stole shamelessly from my own op-ed in the *Tampa Bay Times* which featured that, is to kind of point out that there is this tradeoff where you can go too far, and I think that is a political discussion where you dial it back.

But what I was really trying to get to is more restrictions, if it interferes with employment, as so many of these restrictions do, are bad for public safety.

Mr. AUCHINCLOSS. Ms. Sorenson, do you have any thoughts on what would be the criteria we would want to use to expand economic opportunity, while still addressing the public safety issues so that we do not have employers worried about workplace violence, and we can ensure the public's safety?

Ms. SORENSON. I don't know that we can ever ensure that employers will not be worried at all about workplace violence as part of that hat that they wear as an employer. Likewise, the same applies to landlords.

I think one of the key components here with respect to background checks is understanding that it depends on the particular facts and circumstances for the employer, for the industry that

they operate in, and for the positions that they are filling, whether they are filling positions that have access to vulnerable populations or consumer information and how you use that information from the background check, based on your industry, based on the positions being filled, and access to people and information.

Mr. AUCHINCLOSS. Ms. Cook?

Ms. COOK. I think it is important that we look at safety through a broader lens, and that we don't think about safety purely as enforcement but we think about safety as addressing causes of problems and how we address the underlying causes of, "violence," and trauma is an underlying cause.

So, investments in social supports and investments in social services that will help to identify the root cause of the trauma, the root causes of violence, are critical in this instance. And I also think it is important that we don't blanketly limit access to employment for a person's background. A person is better than the worst day that they have ever had, and I think we have to remember that if we truly believe in rehabilitation.

Mr. AUCHINCLOSS. Madam Chairwoman, I yield back.

Ms. GARCIA OF TEXAS. The gentleman yields back.

The Chair now recognizes herself for 5 minutes.

First, I want to thank the chairwoman for bringing together all of these witnesses to talk about such a critical, very, very important topic.

My district is 77-percent Latino. We are the fastest-growing market in the United States. The Department of Labor found that Spanish-speaking Americans are expected to account for almost 65 percent of the labor force growth through 2029, adding about 7 million new workers.

But despite this contribution to the labor market, there is a growing body of evidence that background screening products result in harmful discriminatory effects on Black and Latino Americans.

This is a disturbing trend that has a significant impact on families, access to housing, financial services, and other essential capabilities.

In a Fair Housing Act and Fair Credit Reporting case, the plaintiffs argued that a tenant-screening product, which automatically disqualifies applicants, has an adverse impact on Black and Latino applicants.

The National Consumer Law Center found that background reports can contain a variety of errors, from a mismatched name, including sealed or expunged records, and misclassification of offenses.

What is even more concerning is a growing prevalence of algorithm screening systems which take out any human consideration in the process.

My question, therefore, is for Ms. Sorenson to begin. In your testimony, you say that the Fair Credit Reporting Act binds your members to use, "reasonable procedures," to ensure accuracy. What are these procedures, and how are your members working to improve them since we, obviously, know that sometimes they don't work?

Ms. SORENSON. The Fair Credit Reporting Act does require reasonable procedures to ensure maximum possible accuracy. Often, this involves linking an individual, the applicant's information, to the information in the record that is found. Typically, that is personal identifiers like the full name and date of birth, as well as additional information like Social Security number and address if that is available.

One of the significant challenges in our space is access to personal identifiers in court records. We are seeing a trend that exists within the Federal court records system, the Public Access to Court Electronic Records (PACER), as well as in some States to redact personal identifiers, namely and particularly, date of birth. That is one of the most significant identifiers used and is necessary to link a record to an individual, and is, likewise, one of the current issues in our industry impacting accuracy and the ability to match up those records to people.

Ms. GARCIA OF TEXAS. Right. Are you able to distinguish, for example—I believe one of the other witnesses mentioned in her written testimony about the screening, the arrest screening records, that it may say, “arrest,” but it doesn't say that there was no final conviction.

Do your screening procedures include making a distinction between arrests that occurred but not having a final conviction?

Ms. SORENSON. When you pull a public record from the court system, you would generally report the current status. So if it is an arrest-only piece of information, that would be included.

It is ultimately up to the employer or property manager whether they want to receive or see that information. There are certain Federal and/or State laws and regulations that limit the reporting of arrest-only information, and then, on top of that, our PBSA members—background screening companies—can further limit that information based on their client request. Many proactively request to not see that information.

Ms. GARCIA OF TEXAS. Okay. This committee has looked at consumer access to your credit reports and we have talked about the difficulty some consumers have in correcting errors.

What is it that you all do to ensure that it is an easy process, if you will, to correct errors that may be in your screening procedures?

Ms. SORENSON. As a trade association, the Professional Background Screening Association does not have consumer reports. So, PBSA does not correct the errors.

Our members, however, are required under the FCRA to reinvestigate any dispute that comes in at no cost to the consumer. That, generally, is either a phone call, an email, or some other communication from the consumer that launches that reinvestigation dispute process.

Ms. GARCIA OF TEXAS. Okay. I will probably submit a follow-up question to that for the record, because I see that my time is expiring.

But it seems to me that you should have a process where the consumer can more readily and accessively correct any errors that may—because we are keeping people from housing, banking, and

so many other things that we need to figure out a way to make sure they make the corrections quickly.

So, thank you for your testimony, and I would like to thank all of the witnesses for their testimony today.

The Chair notes that some Members may have additional questions for these witnesses, which they may wish to submit in writing. Without objection, the hearing record will remain open for 5 legislative days for Members to submit written questions to these witnesses and to place their responses in the record. Also, without objection, Members will have 5 legislative days to submit extraneous materials to the Chair for inclusion in the record.

Also, without objection, I would like to enter statements to the record from the Bank Policy Institute, the Chris Wilson Foundation, the Collateral Consequences Resource Center, the First Step Alliance, the National Association of Federally-Insured Credit Unions, the National Employment Law Project, and the National Low Income Housing Coalition.

The hearing is now adjourned. Thank you all for being here.
[Whereupon, at 11:55 a.m., the hearing was adjourned.]

A P P E N D I X

September 28, 2021

The Leadership Conference
on Civil and Human Rights

1620 L Street, NW 202.466.3311 voice
Suite 1100 202.466.3435 fax
Washington, DC www.civilrights.org
20036



**STATEMENT OF SAKIRA COOK
SENIOR DIRECTOR, JUSTICE REFORM PROGRAM
THE LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS**

**U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON FINANCIAL SERVICES
SUBCOMMITTEE ON DIVERSITY AND INCLUSION**

**HEARING ON “ACCESS DENIED: ELIMINATING BARRIERS AND INCREASING
ECONOMIC OPPORTUNITY FOR JUSTICE-INVOLVED INDIVIDUALS”**

SEPTEMBER 28, 2021

Chairwoman Beatty, Ranking Member Wagner, and members of the subcommittee: My name is Sakira Cook, and I am the senior director of the Justice Reform program at The Leadership Conference on Civil and Human Rights. Thank you for inviting me to testify today. The Leadership Conference is a coalition charged by its diverse membership of more than 220 national organizations to promote and protect the civil and human rights of all persons in the United States.

While our coalition was founded in 1950 as the lobbying arm of the civil rights movement, our mission has since expanded so that we are meeting the new challenges of the 21st century. These challenges include guaranteeing quality education for children, ensuring economic opportunities and justice for all, protecting the freedom to vote, ensuring that new technologies protect civil rights, and transforming the criminal-legal system in America.

Reducing legal, economic, and social barriers and increasing opportunities for justice-involved individuals have long been a core part of The Leadership Conference’s work, and I want to start by commending your subcommittee for taking a closer look at the connections between our criminal-legal system and our housing and financial services systems.

I would like to focus on two key areas of interest to The Leadership Conference that are especially relevant to today’s hearing: predatory lending and fair-chance hiring. I would be remiss, however, if I did not begin with a discussion of the overarching issues within our criminal-legal system. I recognize that many of these issues lie outside of this committee’s jurisdiction, but in order to have a more fruitful conversation about how to protect and expand opportunities for people getting out of the criminal-legal system, we must address the factors that put so many people into the system in the first place and place them at such a staggering disadvantage upon exiting it.



Over the past five decades, our country's criminal-legal policies have driven an increase in incarceration rates that is unprecedented in our history and unmatched globally. The United States incarcerates more people than any other country in the world, with more than two million people currently incarcerated in U.S. prisons and jails.¹ Over-criminalization and over-incarceration have devastating impacts on those ensnared in the criminal-legal system and their families, disproportionately harm low-income communities and communities of color, and do not produce any proportional increase in public safety. What they do produce is a virtually permanent underclass that is too often shut out of meaningful educational and career opportunities and is exploited by predatory financial forces. This leads to a cycle of legal, economic, and social hardships carried from one generation to the next.

In late 2019, The Leadership Conference released "Vision for Justice 2020 and Beyond: A New Paradigm for Public Safety,"² a report that examines the full range of factors that contribute to our failed criminal-legal system and the devastating consequences faced by the millions of people who get caught up in it every year. Our report, which we request be included in the record of this hearing, outlines a transformative agenda for reform that expands our view of public safety and prioritizes upfront investments in non-carceral programs and social services. While we urge this subcommittee — and all of Congress — to look at our platform in its entirety, I would like to connect several parts of it to the topic of today's hearing:

Pretrial Detention and Cash Bond: Each year, there are 12 million admissions to jails, and each night, nearly half a million people sit in jail not because they have been convicted of a crime, but because they are detained prior to trial.³ The pretrial detention and bail system significantly impacts access to counsel, diversion, and plea bargaining,⁴ which either has a coercive effect that has been shown to induce people to plead guilty to offenses out of a desire to go home⁵ or bleeds financial resources away from families and communities that will never get them back.⁶ Between 1992 and 2006, the average bail amount increased by 118 percent, and eight in 10 people would have to pay more than a full year's wages to meet that amount.⁷

¹ "Trends in U.S. Corrections." The Sentencing Project. Last Updated May 2021. Pg. 2. <https://www.sentencingproject.org/wp-content/uploads/2021/06/Trends-in-US-Corrections.pdf>.

² <http://civilrightsdocs.info/pdf/reports/Vision-For-Justice-2020-SHORT.pdf>

³ Digard, Léon & Swavola, Elizabeth. "Justice Denied: The Harmful and Lasting Effects of Pretrial Detention." *Vera Institute of Justice*, April 2019. Pg. 1. <https://www.vera.org/publications/for-the-record-justice-denied-pretrial-detention>.

⁴ *Id.*

⁵ In Harris County, Texas, for instance, a study found that pretrial detainees were 25 percent more likely to plead guilty than similarly situated defendants who were released prior to trial. Heaton, Paul. "The Downstream Consequences of Misdemeanor Pretrial Detention." *Stanford Law Review*. 2017. Pg. 711.

⁶ Justice Policy Institute, "For Better or For Profit: How the Bail Bonding Industry Stands in the Way of Fair and Effective Pretrial Justice," September 2012. Pgs. 12-15.

http://www.justicepolicy.org/uploads/justicepolicy/documents/_for_better_or_for_profit.pdf.

⁷ "The High Price of Bail." *Justice Policy Institute*.

http://www.justicepolicy.org/uploads/justicepolicy/documents/high_price_of_bail_-_final.pdf.



Privatization of Justice: Few functions in the criminal-legal system have not, in some way or in some jurisdiction, been commercialized by private industry. Worse, the costs resulting from these exploitative practices are carried by our society's most marginalized people. These costs include incredibly high prison phone call fees, commissary markups, private probation fees, electronic monitoring device fees, and numerous others.

Criminalization of Poverty: The United States currently fills its jails with indigent people, effectively turning jail cells into debtors' prisons. As the Department of Justice found in its investigation of the Ferguson, Mo., police department in 2014, fines and fees are often used to fund law enforcement, and even a single missed, late, or partial payment can result in jail time.⁸ When people are released, they remain saddled with crippling fines and fees that amount to a regressive and unaffordable tax, as well as harsh collection tactics like suspending driver's licenses that only make it harder for people to pay them off. Moreover, to make matters worse, current federal bankruptcy laws make most of these debts nondischargeable, and there are often no statutes of limitations, meaning that many people effectively serve a life sentence of debt.

Barriers to Successful Reentry: Every year, more than 600,000 people return home from prison, and more than 9 million leave local jails.⁹ When they do, they face more than 44,000 federal, state, and local restrictions in their efforts to obtain job stability, public benefits, and services they need in order to establish and maintain financial security.¹⁰ In many states, for example, occupational licensing laws prevent justice-involved people from entering certain professions regardless of mitigating circumstances and even when their particular convictions bear no relation to their ability to perform a job.¹¹ Even when individuals are not barred from taking certain jobs, a system of unregulated background checks enable discrimination when they apply for other ones. One study showed drastic, racially disparate drops in employer callback rates when job applicants disclosed their records: callbacks fell by half for White applicants with records, and by two-thirds for Black applicants with records.¹²

Reentry Into a Two-Tiered Financial Services System

Already saddled with the above barriers, another one of the many obstacles that justice-involved people, particularly people of color, face in successfully reentering society is in accessing the mainstream

⁸ https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf; see also Mark Berman and Wesley Lowery, "The 12 Key Highlights from the DOJ's Scathing Ferguson Report," Washington Post, March 4, 2015, at <https://www.washingtonpost.com/news/post-nation/wp/2015/03/04/the-12-key-highlights-from-the-doj-s-scathing-ferguson-report/>.

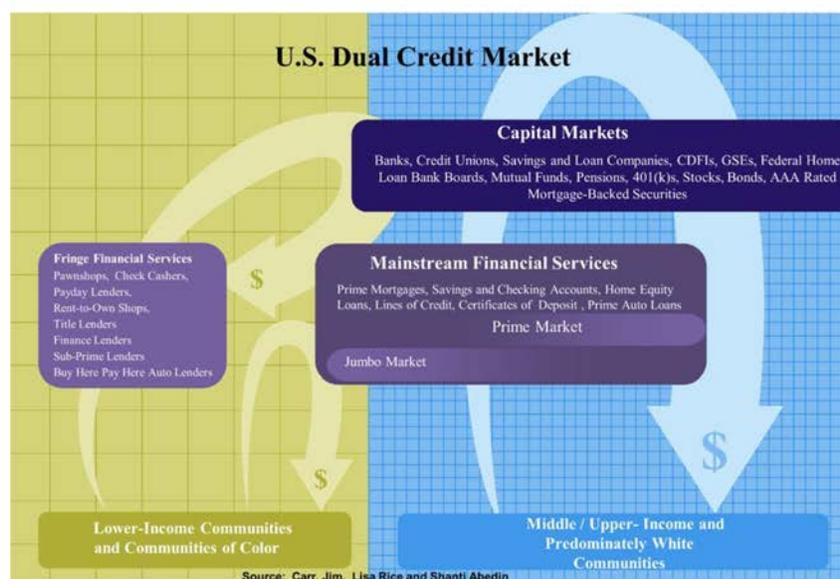
⁹ <https://aspe.hhs.gov/topics/human-services/incarceration-reentry-0>.

¹⁰ See National Reentry Resource Center, *National Inventory of Collateral Consequences of Conviction*, at <https://niccc.nationalreentryresourcecenter.org/>.

¹¹ See, e.g., Shoshana Weissman and Nila Bala, "Criminal Justice, Occupational Licensing Reforms Can go Hand in Hand," The Hill, Apr. 15, 2018, at <https://thehill.com/opinion/civil-rights/383262-criminal-justice-occupational-licensing-reforms-can-go-hand-in-hand>.

¹² Devah Pager, *The Mark of a Criminal Record*, 108 Am. J. Soc. 937, 957–58 (2003). The callback rate for White applicants halved from 34 to 17 percent when they revealed a record. The callback rate for Black applicants dropped by nearly two-thirds, from 14 to five percent, when they revealed a record. *Id.*

financial system. Over the course of decades, as a result of explicit discrimination and racial “redlining” in housing and financial services — some of it not just condoned but even required by the federal government¹³ — and, more recently, what has been referred to as “reverse redlining,” or the aggressive marketing of subprime and fringe financial services in communities of color, our country has developed a two-tiered system of financial services that all too often traps low-income people in vicious cycles of high-cost debt and deceptively high fees, and further milks them of the financial assets they are struggling to build. The infographic below, created by several partners of The Leadership Conference, provides a helpful overview of what that system looks like:¹⁴



¹³ See, e.g., Becky Little, “How a New Deal Housing Program Enforced Racial Segregation,” History.com, Oct. 20, 2020, at <https://www.history.com/news/housing-segregation-new-deal-program>; Sen. Pat Toomey, opening remarks, hearing on “Separate and Unequal: The Legacy of Racial Discrimination in Housing,” Senate Banking Committee, Apr. 13, 2021, clip available at <https://twitter.com/BankingGOP/status/1381981427043033093> (“Let me say from the outset that racial discrimination in housing is a real and sad part of our nation’s history. We can’t ignore that—it’s a fact. It’s also a fact that government policies contributed to this discrimination.”).

¹⁴ Jim Carr, Coleman A. Young Endowed Chair and Professor in Urban Affairs at Wayne State University and the National Fair Housing Alliance.



As author James Baldwin once noted, “Anyone who has ever struggled with poverty knows how extremely expensive it is to be poor.”¹⁵ This is certainly true when it comes to accessing financial services. It is even more true for people who are still facing lasting legal and financial consequences and social stigma long after they have completed their sentences.

One particular area of concern for The Leadership Conference has been the proliferation of payday lenders within communities of color. Marketed to people with poor credit as a convenient way to handle financial emergencies, the fees charged for payday loans can quickly equate to interest rates of 400 percent or higher for loans that are renewed over the course of a year. Moreover, research by the Consumer Financial Protection Bureau (CFPB) shows that cycles of borrowing and reborrowing — with additional fees each cycle — are a feature, not a bug, of payday loan products: Four out of five payday loans are rolled over or renewed, and three out of five borrowers renew their loans so many times that they pay more in fees than the amount of money they initially borrowed.¹⁶ Numerous studies have also shown that payday lenders are more likely to be located near Black borrowers than White borrowers,¹⁷ further worsening financial disparities among people of color, particularly those who are still paying a devastating financial toll for past encounters with the criminal-legal system.

For decades, when it comes to payday loans and all other forms of credit, we have called upon Congress and financial regulators to adopt a simple principle: Before making any loan, a lender should be reasonably certain that a borrower can pay it back, on time.¹⁸ In the wake of the 2008 subprime mortgage lending crisis, Congress finally called for an “ability to repay” standard with respect to mortgage lending that advanced this principle. And in 2017, the CFPB finalized a rule that applied this same common-sense standard to payday lending and other small-dollar loan products. Unfortunately, this rule was gutted the following year.

As with much of the financial services industry, the small-dollar lending industry is rapidly evolving. What remains to be seen whether the growth in “fintech” will ultimately help or hinder financial inclusion for people of color, including those who are justice-involved. In 2014, in connection with the Obama administration’s big data review and in the face of rapid technological change, The Leadership Conference, together with other major civil rights and privacy organizations, released its “Civil Rights Principles for the Era of Big Data.”¹⁹ The principles called on the U.S. government and businesses to respect and promote equal opportunity and equal justice in their development and use of new technologies. Since then, the threats technology can pose to civil rights have only grown. Recognizing

¹⁵ <https://inequality.stanford.edu/publications/quote/james-baldwin>.

¹⁶ Consumer Financial Protection Bureau, “CFPB Finds Four out of Five Payday Loans are Rolled Over or Renewed,” Mar. 25, 2014, at <https://www.consumerfinance.gov/about-us/newsroom/cfpb-finds-four-out-of-five-payday-loans-are-rolled-over-or-renewed/>.

¹⁷ See, e.g., Claire Williams, “‘It’s What We Call Reverse Redlining’: Measuring the Proximity of Payday Lenders, Pawn Shops to Black Adults,” Morning Consult, July 23, 2020, at <https://morningconsult.com/2020/07/23/black-consumers-payday-loan-banking-services/>.

¹⁸ See, e.g., Testimony of Wade Henderson, “Ending Mortgage Abuse,” Senate Banking Subcommittee on Housing, Transportation, and Urban Development, June 26, 2007, at <https://civilrights.org/resource/ending-mortgage-abuse-testimony-of-wade-henderson/#>

¹⁹ <https://www.civilrightstable.org/civil-rights-principles-for-the-era-of-big-data/>



this increased urgency, in 2020, The Leadership Conference, along with a number of advocacy and civil rights organizations, released updated principles.²⁰ Those principles include ending high-tech profiling, ensuring justice in automated decisions, preserving constitutional principles, ensuring that technology serves people historically subject to discrimination, defining responsible use of personal information and enhancing individual rights, and making systems transparent and accountable. Our principles have helped inspire a continuing dialogue, and we have worked with many technology experts and industry stakeholders in an effort to establish best practices aimed at ensuring that technological progress truly advances economic opportunities and justice. Yet keeping up with the rapid pace of evolution in the financial services sector remains an ongoing challenge for the civil rights community and one on which we welcome the opportunity to further collaborate with this committee.

At the same time, there is no substitute for adequate regulation of existing financial services products, including those that have a drastic impact on communities of color. An important first step would be for the CFPB to reinstate its 2017 payday rule. We also urge Congress to enact the Veterans and Consumer Fair Credit Act, which would impose a 36 percent interest rate cap on consumer loans. This bill would simply extend the same interest rate cap that has long existed with respect to active duty servicemembers under the Military Lending Act — a law enacted with overwhelming bipartisan support — to all consumers. While we have been troubled that this simple concept appears controversial among some members of Congress, it is certainly not controversial with the public: Over and over again, when voters get the opportunity to vote on ballot initiatives to establish interest rate caps in their states, they have passed them with overwhelming support.²¹

It is time for Congress to follow suit. We will not succeed in getting justice-involved people on the path to financial stability as long as they, their families, and their communities remain surrounded with deceptive, discriminatory financial products.

Fair-Chance Hiring in the Banking Industry

One other priority of The Leadership Conference that I would like to discuss today is the extension of fair-chance hiring principles that would allow more justice-involved people to seek and obtain gainful employment within the banking industry. This is an area where we have seen some progress, yet where there is also an important need and opportunity for further improvement.

Several years ago, through our involvement with the FDIC's Advisory Committee on Economic Inclusion, we and a number of other stakeholders, including in the banking industry, urged the FDIC to reform its rules implementing Section 19 of the Federal Deposit Insurance Act.²² Of note here, Section 19 prohibits federally insured banks from hiring any person who has been convicted of "any criminal offense involving dishonesty or a breach of trust or money laundering" except with the prior written consent of

²⁰ <https://www.civilrightstable.org/principles/>

²¹ For example, in 2016, a South Dakota ballot initiative to outlaw payday lending passed with 76 percent support, with nearly as much turnout as the vote for president. <http://electionresults.sd.gov/resultsSW.aspx?type=BQ&map=CTY&eid=178>.

²² 12 U.S.C. §1829.



the FDIC. It also imposes a 10-year post-conviction bar, one that cannot be waived by the FDIC, for people who have been convicted of specific offenses such as fraud or embezzlement.

The FDIC's previous Statement of Policy governing Section 19, adopted in 1998,²³ included several troubling key provisions that unduly prevented justice-involved people from seeking employment in the banking industry. First, it provided an upfront deterrent that likely kept many individuals from even applying for jobs, by advising banks to inquire into prior convictions in the initial employment application process. Second, it inexplicably interpreted "dishonesty or breach of trust or money laundering" under the statute to include "all convictions for offenses concerning the illegal manufacture, sale, distribution of or trafficking in controlled substances," which means that an applicant with any such conviction would automatically require a waiver from the FDIC. Third, it included only a very narrow category of *de minimis* offenses for which a waiver would not be necessary.

In 2018, the FDIC proposed and adopted²⁴ changes to this Statement of Policy that, among other things, clarified that banks could ask applicants about their prior records after a conditional offer of employment had been made, expanded the *de minimis* exceptions, and made some clarifications to how expungements would be handled and how convictions would be defined. In 2020, the FDIC codified its Statement of Policy with several additional modifications.²⁵

We were pleased to be a part of this process, and we believe that the revised Section 19 rule is a helpful step forward in expanding meaningful employment opportunities to people who are trying to move beyond their past. We were also pleased that we were not alone, as the comments from individual banks and trade groups were also largely supportive of making it easier to hire justice-involved job applicants.²⁶ Yet there is still significant room for improvement. In particular, with the exception of some minor offenses that now fall under the expanded *de minimis* exception, the FDIC did not otherwise revisit its treatment of drug-related convictions — a treatment that is not called for in the statute, and which cannot reasonably be interpreted categorically as "dishonesty or a breach of trust or money laundering." As the failures of the War on Drugs and its profoundly discriminatory impact on Black people become more and more evident,²⁷ it becomes increasingly clear that this blanket treatment of prior drug convictions is indefensible.

²³ <https://www.fdic.gov/news/financial-institution-letters/1998/98sop19.txt>.

²⁴ <https://www.federalregister.gov/documents/2018/08/03/2018-16634/modifications-to-the-statement-of-policy-pursuant-to-section-19-of-the-federal-deposit-insurance-act>.

²⁵ <https://www.govinfo.gov/content/pkg/FR-2020-08-20/pdf/2020-16464.pdf>.

²⁶ See, e.g., comments of JP Morgan Chase & Co, at <https://www.fdic.gov/resources/regulations/federal-register-publications/2019/2019-incorporation-of-existing-statement-of-policy-3064-af19-c-006.pdf>; comments of Independent Community Bankers of America, at https://www.icba.org/docs/default-source/icba/advocacy-documents/letters-to-regulators/18-03-08_fdicltr.pdf?sfvrsn=0.

²⁷ See, e.g., Jonathan Rothwell, *How the War on Drugs Damages Black Social Mobility*, Brookings Inst. (Sept. 30, 2014), <https://www.brookings.edu/blog/social-mobility-memos/2014/09/30/how-the-war-on-drugs-damages-black-social-mobility/> (citing research that shows white people are more likely to sell illegal drugs, but Black people are more likely to be convicted of drug offenses).



The FDIC would have us believe that the Section 19 waiver process provides a fair and reasonable workaround to its blanket prohibition. We strongly disagree. Applying for a Section 19 waiver is a highly burdensome, costly process that takes weeks at best and months at worst to be resolved — far longer than prospective employees or employers are typically able to wait. While bank-sponsored applications on behalf of prospective employees are more likely to be approved, and to be approved more quickly, they represent only a small percentage of overall applications. Moreover, individuals who are found ineligible to work in the banking industry under Section 19 have their names and convictions posted on the FDIC website for all the world to see, increasing the likelihood that they will be unable to obtain professional employment anywhere else.

The Section 19 statutory language is also problematic. Its blanket provision requiring a waiver to work in a bank following a conviction for “any criminal offense involving dishonesty or a breach of trust or money laundering” does not take into account what type of position a job applicant is seeking. It does not distinguish between applicants for clerical or custodial positions, for example, and applicants for positions involving access to customer funds or sensitive information. The 10-year bar on employment of people convicted of certain fraud and financial offenses does not allow for any consideration of individualized circumstances, raising the possibility that the same kinds of unfair results and absurdities that exist under mandatory minimum sentencing laws are replicated in this process.

We strongly urge Congress and the FDIC to continue the reform of both Section 19 itself and its underlying rules. Similar employment-based restrictions under the Federal Credit Union Act, Truth in Lending Act, and the Securities Exchange Act of 1934, as well as their underlying regulations, can and should be revisited. In addition, as more states move to legalize cannabis and allow for its regulated sale, after decades of misguided and discriminatory prohibition, Congress should pass the Marijuana Opportunity and Reinvestment (MORE) Act. Among other provisions, the MORE Act would provide for the expungement or resentencing of prior cannabis-related convictions, eliminating barriers to employment in the banking system and elsewhere for people who never should have been convicted in the first place.

In the meantime, banks need to do more on their part. This includes being more willing to sponsor Section 19 waiver applications. Doing so significantly speeds up the process, because the FDIC is able to assess an applicant’s fitness for a specific position, one that may or may not involve access to customer funds or sensitive information. At a bare minimum, banks need to more consistently inform prospective employees with prior records about the process for obtaining Section 19 waivers on their own — and, whenever possible, provide them enough time to undergo the process before filling vacancies. Certainly, for larger banks, this should be less of a problem.²⁸

²⁸ With respect to applicants who have either already obtained a Section 19 waiver or are not required to obtain one, banks must also be mindful of their obligations under Title VII of the Civil Rights Act of 1964 and the disparate impact that criminal background checks can have on job applicants of color. See U.S. Equal Emp’t Opportunity Comm’n, *Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions under Title VII of the Civil Rights Act* (2012), <https://www.eeoc.gov/laws/guidance/enforcement-guidance-consideration-arrest-and-conviction-records-employment-decisions#VB> (citing *Green v. Mo. Pac. R.R.*, 523 F.2d 1290, 1293 (8th Cir. 1975)).

September 28, 2021
Page 9 of 9



The Leadership Conference welcomes further discussions with this subcommittee around building on the improvements the FDIC has made. We also hope to coordinate with banks for which the ability to hire qualified individuals remains too limited.

Thank you for the opportunity to testify today. I would be pleased to answer any questions you may have.

U.S. House Committee on Financial Services

Subcommittee on Diversity and Inclusion

Access Denied: Eliminating Barriers and Increasing Economic Opportunity for Justice-Involved Individuals

September 28, 2021

Testimony of Jeffrey D. Korzenik, researcher and author, “Untapped Talent: How Second Chance Hiring Works for Your Business and the Community” (HarperCollins Leadership, April 2021)

Good morning, Chairwoman Beatty, Ranking Member Wagner and members of the U.S. House Financial Services Subcommittee on Diversity and Inclusion. Thank you for the opportunity to testify before the Subcommittee today and for holding this important hearing regarding eliminating barriers and increasing economic opportunities for justice involved individuals.

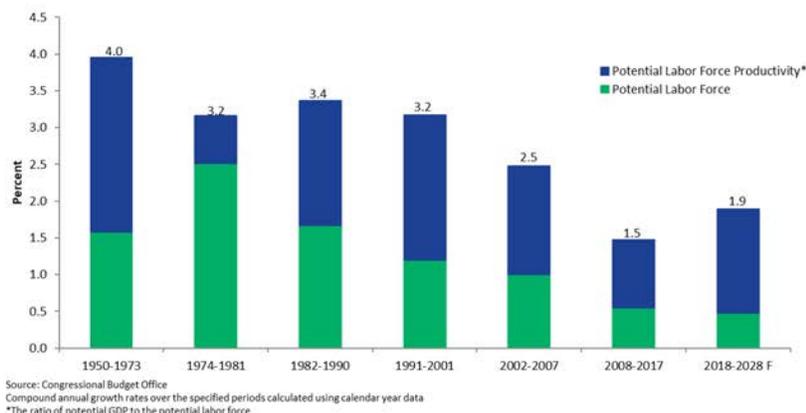
I come before the committee in my private capacity, as a researcher and the author of “Untapped Talent,” a book that shares the business case and best practices for “second chance hiring,” the employment of people with criminal records. Although I am an employee of Fifth Third Bank, my views are my own and do not necessarily reflect the views of my employer.

The criminal justice system is estimated to have left 19 million Americans with felony convictions and many millions more with misdemeanor records. These records represent significant barriers to employment. For example, the most recent calculation of the unemployment rate among those who have left prison incarceration is 27%. In the critical first year after exiting prison, returning citizens are estimated to face an unemployment rate of roughly 50%. These numbers actually underestimate the waste of human capital from justice involvement; a proper accounting of the costs must recognize that even among those employed, the barriers associated with justice involvement restrict economic mobility. Many – and possibly the majority – of even those *with* jobs are “underemployed,” i.e., unable to earn and contribute to the full extent of their capabilities.

Given that criminologists have long understood that employment is foundational to rehabilitation, it is no surprise that we also have tragically high rates of recidivism and rearrest. A widely-cited Bureau of Justice Statistics study found that roughly 68% of those leaving state prisons are rearrested within three years. We must also recognize that the associated burdens of the criminal justice system and its failures are not borne equally; for example, one in three Black men in America has a felony conviction.

The costs of the failure to create more effective systems of reentry is generally thought of in social terms: poor public safety, shattered families, and stressed communities. We, as citizens, and in particular, those of us in the business community, should also understand that this failure is of such a magnitude that it also carries a tremendous economic cost, even to those who have not had personal involvement with the justice system. Our failures in the reentry and reintegration of justice-impacted individuals is also a financial failure.

The economic growth potential of any economy is based on two factors, and two factors alone: workforce growth and productivity growth. While many considerations, including policy, will influence these factors, in the end, our economic growth potential boils down to people and their potential. When the past mistakes of so many millions of Americans create barriers to employment, this slows workforce growth. Barriers to economic mobility should be understood as drags on productivity, whether these prevent access to education, to the ability to switch employers, or to get financing to support entrepreneurial initiatives.



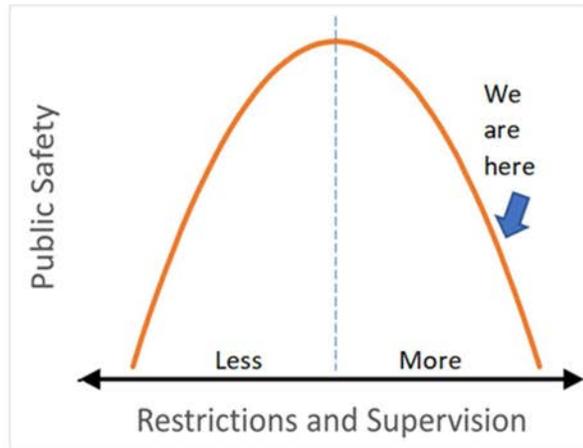
Even using conservative assumptions as to the work-readiness of this justice-involved population, the costs of our failures to reintegrate people with criminal records into the economy should be measured in the hundreds of billions of dollars of growth that we forsake. All of us will benefit economically if people with criminal records have the opportunity to participate fully in our workforce, and to contribute to our shared economy.

Safety vs Justice

The challenge, of course, is in creating viable pathways to opportunity that work for the employee, the employer and the general public. Criminal justice reforms are often perceived as offering a tradeoff between public safety and greater justice for people with criminal records. This is a false choice and a way of thinking that could ultimately undermine progress on both fronts. Understanding the important role that employment plays in rehabilitation and the barriers to such employment offers a new framework for evaluating public policies.

Many of our current criminal justice policies actually inhibit employment, most directly through professional licensing restrictions and other regulatory barriers to employment. Other practices disrupt employment — required meetings with parole officers during working hours, court appearances and driver license suspensions can render justice-involved individuals de facto unemployable. More insidious are the vast array of restrictions that affect not just employment but housing, access to credit, access to government facilities or even private facilities fulfilling

government contracts. The National Institute for Justice estimates that 44,000 such “collateral



consequences” can exist for people with criminal records; some are suitably grounded in protecting the public, but many are not.

Nationwide, movements to lower incarceration and eliminate employment barriers are translating into policies like the elimination of cash bail, early release and record expungement. Given our high recidivism rate, it might appear that this puts public safety at risk. We should balance that concern with the

Source: Jeffrey D. Korzenik, “Untapped Talent: How Second Chance Hiring Works for Your Business and the Community” (HarperCollins Leadership, April 2021)

recognition that excessive

supervision and restrictions can actually reduce public safety by undermining the employment of people with records. There is a tradeoff, where selectively reducing restrictions will actually improve public safety. Freeing those resources would also allow for more focused supervision on those who present a true danger.

None of this absolves policymakers from the responsibility of formulating prudent policy changes. Risk assessments of the type being developed through the federal First Step Act or those being employed, for example, in New Jersey in conjunction with the elimination of cash bail are important tools for lowering public safety risks. Most states offer some form of judicially-granted “certificates of rehabilitation” that create relief from professional licensing restrictions.

Policymakers must also support employer-friendly legislation, reducing negligent hiring liability risks and offering inducements for more inclusive hiring, beyond traditional tax incentives. For example, Cook County in Illinois offers a pricing advantage in contract bidding to potential vendors whose workforce is majority comprised of underemployed categories, including people with criminal records.

There is plenty of “low-hanging fruit,” programs that can improve employment outcomes without increasing safety risk; often these involve training and education behind bars. The enormous size of our justice-involved population and the “law of large numbers” guarantees that there will be mistakes made. Some of these mistakes will be tragic and innocents will be victimized. This risks a backlash to the entire criminal justice reform movement — a rollback of newly instituted reforms or a hardening of opposition to prospective reforms. Any such policy-

induced episodes should be balanced against the crimes that did not happen — reduced recidivism due to improved employment and other outcomes. Thoughtful criminal justice reform fosters not only a more just society, but a safer and more prosperous one, too.

Talent Acquisition, Talent Development, and Risk Mitigation

However, good policy should be seen as a necessary, but not necessarily sufficient, ingredient of better outcomes. Even with the optimal regulation and policy, given the foundational role that employment plays in rehabilitation, employers ultimately must lead the way. Since talent acquisition, talent development, and risk mitigation are at the core of good business practices it seems only right for business to use their skills in this area.

Many social service nonprofits already offer opportunities, but with other nonprofit sectors, with the government and with private sector firms, involvement has been more limited. The absence of private sector participation is sorely felt. Not only does this group represent the largest amount of employment in our country, the sheer volume of American companies creates the chance for experimentation and the prospect of bringing the problem-solving capabilities of this group to bear on this pressing issue.

Fortunately, we do have the example of numerous pioneering businesses owners that have developed processes that work. Through their practices, they have created gainful employment for thousands of returning citizens as well as others who had been marginalized from the workforce through criminal records, past battles with addiction, or simply deep poverty.

It is important to stress that one of the hallmarks of these successful second chance employment practices is profitability. Businesses cannot reasonably be expected to hire people who cannot contribute to the bottom line of the enterprise; companies will write checks to charity, but only hire if it is profitable to do so. Certainly, without such hires being profitable, second chance hiring can never be scaled to a size sufficient to address our societal challenges.

We live in a period of unusual opportunity for those of us who hope to see more second chance employment. The current labor shortage, where job openings exceed the number of job seekers, is prompting employers to explore hiring from this demographic. It is important however, that these employers view these workers not as a last resort, but as a pool of true talent that must be judged on an individual basis, sourced intelligently and supported appropriately. Fortunately, the leadership in the business community is rising to this task – among the notable groups supporting this effort are the National Association of Manufacturers, the Society of Human Resource Management and the newly-formed Second Chance Business Coalition.

Special Considerations for the Financial Services Industry

With respect to the industry within the committee's purview, Financial Services, there are special considerations that impact this industry. There are three major categories of objections to second chance hiring: 1) safety/liability, 2) quality of work, and 3) reputation risk. The first two concerns are universal, but the third concern is heightened in financial services. The success of our financial system relies not only upon the actual safety and soundness of the institutions, but also the public perception of that stability. However, arguments that the inclusion of workers

with criminal records in financial institutions could undermine confidence in the industry appear to be unsubstantiated given, for example, the very public second chance hiring efforts of the nation's largest bank, J.P. Morgan & Company.

Conclusion

Second chance hiring, done right, is business, not charity. Good policy can reduce barriers to these practices without compromising public safety or institutional soundness. Second chance hiring paves the road to a more prosperous economy, stronger families and safer communities. When wise policies are coupled with the talents of the private sector and nonprofit partners, we can move toward our national aspiration to be truly a land of opportunity for ALL.

I again thank the Subcommittee for the opportunity to address this important issue and I am very happy to answer any questions you may have around my research or experiences at the appropriate time.

Statement of Dolfinette Martin, Housing Director of Operation Restoration
Submitted to the U.S. House Financial Services Committee Subcommittee on Diversity and
Inclusion Hearing on
“Access Denied: Eliminating Barriers and Increasing Economic Opportunity for Justice-Involved
Individuals”
Tuesday, September 28, 2021

Chairwoman Beatty, Ranking Member Wagner, and members of the U.S. House Financial Services Subcommittee on Diversity and Inclusion, thank you for the opportunity to testify before the Subcommittee today and for holding this hearing.

My name is Dolfinette Martin, Housing Director of Operation Restoration, a nonprofit created to help remove barriers for women formerly and currently incarcerated to help them reach their fullest potential and discover new possibilities. I myself am a formerly incarcerated woman who served a combined 12 years in prison. After my release on April 12, 2012, after serving 7 years 4 months and 28 days of incarceration my first night home I had no soap, deodorant or personal items that would help me keep my dignity.

My living situation was me hiding in my elderly mother’s senior living apartment because her lease required that no one live in her apartment other than her. This went on for a year after my release. At that time, I began to organize with grassroots organizations to change the current policies around public housing and criminal backgrounds at the Housing Authority of New Orleans (HANO). We were able to successfully get those policies changed but implementation would take another 2 years. Once implemented, I was nominated to sit on the panel as a tenant of public housing. This was important because what was needed was someone who faced and is still facing the stigmas, bias and challenges around being safely housed in affordable houses due to a conviction. This panel is only for people who have not been released from incarceration within the last year or their conviction isn’t over less than 3 years old. The reason this panel is so important is that it gives people the opportunity to receive public housing regardless of their past. In the four years of panel reviews there has only been 1 denial. However, oversight is greatly needed as this is an agency that is part of a larger problem.

Despite some progressive work we have been able to get HANO to do, 3rd party management corporations and private landlords are still using discriminatory practices although they receive HUD funding. These corporations and private sector landlords are using arrests as well as convictions to deny access to people. For instance, the panel could vote to allow access but if the tenant is applying for Section 8 housing, then the landlord does yet another background review and deny. In my work with Operation Restoration and Vera Institute of Justice we have attempted to help many women who have been denied housing solely because of a conviction and a few only had arrests with no adjudication of the charge. This type of discrimination not only affects the safety of these people but also the financial hardships that paying \$50 application and \$25 background check fees create is astronomical.

Recently, we had a natural disaster hit our state and evacuation efforts created yet another barrier to safe, affordable housing. Initially, those seeking hotels would have to pay out of pocket and if FEMA approved lodging there still was this barrier called "credit card on file for incidentals". If I have no money, job or credit then presenting this life saving piece of plastic is nonexistent. So now I am faced with yet another barrier to housing. My personal experience with this is still present to this day. Though I am fortunate to be gainfully employed, have a savings and a checking account, several credit cards and cash on hand I AM HOMELESS due to the Hurricane damaging my roof and HANO negligence to ensure that tarp was properly placed on my unit. I am currently paying to live in an Airbnb, have received \$0 dollars from FEMA, and am not sure when my unit will be repaired. This I bring up solely because I have beaten the odds. As someone with ten felony convictions in my past my present is a college degree since my release, I sit on HANO panel review, I sit on the Board of Commissioner of Audubon Zoo, I sit on the Advisory Board of Formerly Incarcerated Transitional Clinic, I am Housing Director at Operation Restoration, manage a transitional home for women, am an entrepreneur, have a working relationship with city government, was on our Mayor's transition team, and have received numerous awards for the work I do in my community and state yet today I am homeless because there is no urgency around rehousing someone from the projects. With all the access that I have to the people in positions of power I can not find housing after a natural disaster of this magnitude. Imagine what those communities without this kind of access are facing!



**Statement of the
Professional Background Screening Association
(PBSA)**

Before the U.S House of Representatives Committee on
Financial Services Subcommittee on Diversity and Inclusion

September 28, 2021

Access Denied:
Eliminating Barriers and Increasing Economic Opportunity
for Justice-Involved Individuals

Introduction

Chairwoman Beatty, Ranking Member Wagner, and Members of the U.S. House Financial Services Subcommittee on Diversity and Inclusion:

Thank you for the opportunity to testify before the Subcommittee today and for holding this important hearing. My name is Melissa Sorenson, and I am the Executive Director of the Professional Background Screening Association (PBSA). PBSA is pleased to testify in today's hearing.

PBSA shares the same goals as the public, industry partners, and Congress in terms of promoting pathways for individuals re-entering society to secure employment and housing opportunities that help reduce recidivism and the costs borne by our society and individual's families when we fail to provide a path for successful reintegration. At the same time, we also recognize the importance of ensuring employers have the ability to hire the most qualified candidates and that property managers have the knowledge to keep our communities as safe as possible.

Background of the Professional Background Screening Association (PBSA)

PBSA is the trusted global authority in the screening industry. In pursuit of our mission to advance excellence in the screening profession, PBSA promotes and advocates for ethical business practices and fosters awareness of privacy rights and consumer protection issues. PBSA is an international trade association of over 700 member companies. Its members provide employment and tenant background screening and related services to virtually every industry around the globe. The reports prepared by PBSA's background screening members are used by employers, volunteer organizations, and property managers every day to help make communities safe for all to use, work, or reside in them.

PBSA members range from large background screening companies to individually owned businesses, each of which must comply with applicable law, including when and how they obtain, handle, or use public record and private data. PBSA members also include suppliers of background screening information such as court-record retrieval services and companies that provide background screeners with access to public record data.

Background Screening Is Subject to Robust Regulation

PBSA's members, as with all consumer reporting agencies, are subject to strict regulations under the Fair Credit Reporting Act (FCRA) at every stage of the background screening process. Additionally, under the Obama Administration, both the Equal Employment Opportunity Commission (EEOC) in 2012 and the Department for Housing and Urban Development (HUD) in 2016 issued regulatory guidance for employers and property managers regarding the use of background checks. If you will indulge me, I would like to share a little about the requirements under the law. First, employers must certify compliance with the FCRA's requirements, they must disclose to the employment applicant that they may obtain a background check and obtain the

applicant's authorization to conduct a background check.¹ The FCRA further protects consumers, employees, and tenants by requiring consumer reporting agencies use reasonable procedures to assure maximum possible accuracy.

Of particular relevance to the hearing today, I would like to discuss how criminal records are used in employment and tenant screening (see attached infographics outlining the regulatory requirements and consumer protections under the FCRA). First, Consumer Reporting Agencies (CRAs) generally are not able to report non-conviction data older than seven years² – and some states and cities impose additional limitations. Additionally, the FCRA provides consumers strong protections and rights in cases where an employer is considering taking adverse action based in whole or in part on the background check. Under the law, an employer must first send notice to the applicant stating that they are considering adverse action and include a copy of the report and summary of the consumer's rights.³ The applicant may dispute any aspect of the report and the CRA must reinvestigate at no cost to the applicant.⁴ Then, if the user of the report moves forward with the adverse decision they must notify the applicant of the decision and of certain rights.⁵

In addition to strict regulations throughout the screening process, the Consumer Financial Protection Bureau and Federal Trade Commission are vested with expansive regulatory, investigative, and enforcement authorities. These agencies regularly issue guidance and the CFPB has supervisory authority over the credit bureaus. Beyond the regulations imposed on the background screening industry, the Equal Employment Opportunity Commission's 2012 guidance and HUD's 2016 guidance added additional authority figures to the industry, and the agencies can and will audit organizations they believe are non-compliant with their guidance.

Again, I appreciate your willingness to indulge me as I think it is important to provide this overview of the main statutory and regulatory obligations that govern the background screening process.

I would now like to share with members of the Subcommittee our perspective on several policies that could be employed to promote successful reintegration into society. While I will discuss them in greater detail below, PBSA would encourage Congress to take the following actions:

1. Adopt a uniform ban-the-box standard for private employers with preemption for state and local legislation.
2. Adopt carefully tailored employer negligent hiring liability protections that make it easier for employers to hire justice-involved individuals.
3. Expand the application of employer incentives such as the Work Opportunity Tax Credit to employers who hire justice-involved individuals.

¹ Under Section 604(b) and Section 604(b)(2).

² Section 605(a)(2).

³ Section 604(b)(3).

⁴ Section 611.

⁵ Section 615.

Fair Chance Hiring/ Ban the Box (BTB)

According to the National Employment Law Project (NELP) in October 2020, 36 states and over 150 counties and local governments have adopted “ban the box” (BTB) policies.⁶ At the federal level, in 2015, President Barack Obama endorsed BTB by directing federal agencies to delay inquiries into job applicants’ records until later in the hiring process. In 2019, the “Fair Chance to Compete for Jobs Act of 2019” became law as part of the National Defense Authorization Act. This law, which will go into effect in December of this year, will prohibit most federal agencies and contractors from requesting information on a job applicant’s arrest and convictions records until after a conditional offer has been made. PBSA supports the original intent of BTB policies: to provide those with criminal histories a fair chance at employment by removing questions about criminal history from the initial employment application. However, there are challenges posed by varying state and local BTB policies that PBSA would like to bring to the Subcommittee’s attention.

As noted by the aforementioned regulations that govern the background screening industry under the FCRA, every stage of the screening process is highly regulated and scrutinized. In many states, counties, and localities, ban the box laws include varied requirements such as specific wait times for adverse action or specific language be used in adverse action letters. While we understand and support the intent of these laws, the current patchwork of state, county, and locality BTB laws have created a burdensome environment for employers. Furthermore, this legal patchwork treats otherwise qualified applicants differently depending on where they reside on a state-by-state basis. For example, Ohio, Massachusetts, Tennessee, Pennsylvania, Oklahoma, Michigan, Missouri, and Georgia have adopted laws or policies at the state level, while states such as Texas, South Carolina, and North Carolina have not adopted such regulations. Taken at its most basic level, two applicants who are both equally qualified will be treated differently during the hiring process in the state of Oklahoma and Texas. Taken further, the provisions included in jurisdictions that have adopted BTB laws or policies are varied. For example, according to October 2020 NELP report, the BTB law in Massachusetts applies to private employers, public employers, and vendors, while the BTB law in Ohio only applies to public employers. This varied patchwork of interstate regulations is not only unfair for applicants but also places undue strain on employers, particularly those operating in more than one state. Based on the existing patchwork of state and localized BTB rules, it is clear that employers are faced with unnecessary and burdensome compliance regulations while qualified employees are treated differently depending on the jurisdiction they reside in.

One provision of several BTB laws and policies is the requirement for an employer to provide a conditional offer or name position finalists prior to conducting a background check. This requirement, found in states such as California and Hawaii as well as certain metropolitan cities such as Los Angeles, Austin, Philadelphia, and New York City, requires employers to conduct background checks on applicants one-by-one (after each conditional offer is made), rather than permitting the employer to conduct checks on multiple applicants at the same time and then selecting the most qualified applicant for the job. The delay caused by this requirement can prove costly should an employer make a conditional offer to an applicant who subsequently may not qualify for employment due to their criminal history. The employer would then have to begin the

⁶ https://www.nelp.org/publication/ban-the-box-fair-chance-hiring-state-and-local-guide/#Chart_of_Local_Fair_Chance_Policies

employment hiring and screening process all over again with a new applicant, leaving the position unfilled for a longer period of time. In addition, applicants who receive a conditional offer may defer accepting other positions which they have applied for and may be offered (in the hopes that the conditional offer will be granted), only to find out that the conditional offer must be rescinded following the results of the background check. This would have the unintended effect of delaying justice-involved individuals (as well as other applicants) re-entry into the workforce. This requirement is particularly difficult in certain sectors, like staffing, where the agency loses the opportunity to screen earlier and have a candidate ready for multiple positions as they become available. Furthermore, this is an issue for employers looking to hire quickly, but even more so currently, in a period of an extreme labor shortage. Again, permitting employers to conduct background checks earlier in the employment process, as currently codified, preserves the ability of an applicant to build rapport with an employer while avoiding unnecessary delays in the hiring process.

As stakeholders who helped previous presidential administrations with the policy that would ultimately result in the 2019 federal “First Step Act”, PBSA understands and supports the intent of the BTB policies, to provide those with criminal histories the fairest chance possible for reintegration into society through employment and housing by reducing the emphasis on prior criminal history in the employment and housing application process.

PBSA and its members are concerned with the existing patchwork of BTB laws and insufficient federal negligent hiring protections for employers. However, we believe there is a balance to be struck between the reintegration and equal treatment of rehabilitated individuals regardless of where they reside and over-burdensome compliance and legal standards for employers. It is clear that the current patchwork and provisions found in laws across the United States inhibit employers from operating efficiently and from hiring the most qualified candidates while disadvantaging the most qualified candidates from being hired. Congress should move to adopt a uniform BTB standard that allows for background checks to be conducted after the employment application is completed.

Employer Liability for Negligent Hiring

With the inconsistent patchwork of BTB policies at varying jurisdiction levels, PBSA and its members have concerns about employer liability as it relates to negligent hiring. Employers are held liable for negligent hiring when the employer hires a job applicant and ignores the applicant’s lack of qualifications or criminal record; the employer can be held liable for any subsequent injuries caused by that employee. For example, in *Denton v. Universal Am-Can, Ltd.*,⁷ plaintiffs were awarded over \$54 million in damages due in part to negligent hiring following a vehicular accident with David Johnson, a truck driver for Universal Am-Can Ltd (UACL). During the hiring process, Nicole Perttunen a safety coordinator for UACL reviewed Johnson’s driver qualification file (including a background check) which revealed a “checkered driving record”⁸ and a felony conviction for “misdemeanor assault and battery of high and aggravated nature.” While Perttunen rejected Johnson’s application, the file was then sent to Doug Moat, the UACL’s safety director. Based on his application Moat considered Johnson to be a “marginal driver” and that UACL was

⁷ <https://www.illinoiscourts.gov/Resources/7e539cc3-f828-4be2-9f7c-f4ecda3c723d/1181525.pdf>

⁸ <https://www.mnlawoffice.com/54m-verdict-semi-crash-sets-auto-injury-record/>

forced to accept marginal drivers in order to make a profit. As such, Johnson was hired by UACL. The jury found in favor of plaintiffs on their claim for negligent hiring and retention against UACL. In addition, the jury found that UACL's conduct was willful and wanton related to its hiring and retention of Johnson and awarded James \$35 million in punitive damages.

Some states, such as Arizona, Colorado, Connecticut, Minnesota, New York, and Texas have passed laws to protect employers from liability when hiring ex-offenders. Specifically, Arizona adopted H.B. 2311 (Chapter 137) which provides protections for employers that hire individuals who have minor or irrelevant criminal histories. Under the law, if an employer is sued for negligent hiring, the plaintiff is not allowed to introduce evidence that an employee had a conviction, unless it was a violent or sexual offense, before the hire date.⁹ Furthermore, Kansas, Louisiana, Massachusetts, North Carolina, and Ohio have adopted policies that provide employers with qualified immunity from lawsuits when a criminal record is the only evidence of negligence.¹⁰ For example, in Kansas an employer who discloses information about a current or former employee to a prospective employer of the employee receives qualified immunity from civil liability.¹¹ Louisiana has a similar "shield law,"¹² but goes a step further by giving qualified immunity to an employer who "reasonably relied" on the information given by a former employer.¹³ We would encourage Congress to consider a similar approach at the federal level that would provide important protections for employers hiring justice-involved individuals. In essence, we would recommend immunity for employers based on the *Green* factors¹⁴ – a process by which the employer considers the nature of the crime, the time elapsed, and the nature of the job when conducting background checks as outlined in the EEOC's 2012 guidance to evaluate whether an applicant's criminal history has a close enough relationship to the job duties to justify a decision not to hire the applicant.

Promote and Improve Incentives

A proven and effective incentive related to the hiring of justice-involved individuals has been the Work Opportunity Tax Credit (WOTC).¹⁵ The original purpose of this credit was focused on moving people off government assistance programs and into private-sector work. While data is somewhat elusive, as precise data on WOTC-related hiring is not available from the Internal Revenue Service (IRS), studies have shown that workers in the temporary-hire space who are WOTC-certified have higher earnings in the short-term than WOTC-eligible but non-certified workers. This indicates some success in raising short-term incomes above the baseline for the groups targeted by the program. Furthermore, studies show that the "churn" of WOTC-certified workers is not any greater than workers who do not fall within the targeted groups. This indicates that employers are not merely hiring employees for the immediate tax benefits made available by the program, but rather keeping them on after the benefits expire because they provide real value

⁹ <https://apps.azleg.gov/BillStatus/BillOverview/70091>

¹⁰ <https://cookcountyrecord.com/stories/511129459-bill-that-would-limit-liability-in-employing-ex-offenders-stalls-in-illinois-house-of-representatives>

¹¹ http://www.ksrevisor.org/statutes/chapters/ch44/044_001_0019a.html

¹² <https://digitalcommons.law.lsu.edu/cgi/viewcontent.cgi?article=5737&context=jalrev>

¹³ <https://law.justia.com/codes/louisiana/2015/code-revisedstatutes/title-23/rs-23-291/>

¹⁴ *Green v. Missouri Pacific Railroad*, 549 F.2d 1158 (8th Cir. 1977)

¹⁵ <https://www.irs.gov/businesses/small-businesses-self-employed/work-opportunity-tax-credit>

to the hiring employer. Given the data that is available, there is evidence the credit has been effective in helping justice-involved individuals obtain and maintain meaningful employment.

Since its implementation, the WOTC has been expanded to other groups with difficulty transitioning into work, such as disabled veterans and the long-term unemployed. While we are supportive of these expansions, we do not have the metrics to measure exactly how many additional people have been hired in each new area.

The WOTC continues to achieve its original purpose. Whether it achieves its expanded purposes is much more difficult to determine. It is clear that it does not with respect to one targeted population: persons with criminal history re-entering the workforce. The provision providing a credit to employers who employ an ex-felon within one year of release should be comprehensively revisited. While encouraging employment of ex-felons is a positive goal, broadening the scope of the provision to include persons whose criminal history is otherwise a barrier to re-entry would go even further in breaking the cycle of unemployment and recidivism.

Another option would be to expand the Bonds for Jobs program.¹⁶ Currently, that program provides a bond at a cost of \$100 per employee to employers who hire justice-involved individuals. The bonds last six months and cover the first \$5,000 of losses with no deductible. However, they only apply to employee dishonesty such as employee theft. It does not cover the risk that really keeps employers up a night – the risk of workplace violence. To effectively apply to workplace violence, Congress would have to not only change the definition of what the bond covers, but also the value of the bond to correspond with the coverage costs of a responsible deductible on commercial insurance that covers negligent hiring.

Finally, Congress could consider implementing certificates of rehabilitation. A program lead by an appropriate governmental agency that includes individualized assessments and the issuance of a certificate of rehabilitation outlining that the risk of re-offense is negligible would be a helpful tool for justice-involved individuals and employers alike. Employment extended to a certificate holder should be accompanied by liability protections for the employer. PBSA recommends Congress consider and implement several options that would promote and incentivize employers who hire justice-involved individuals while ensuring the final hire decision is left to the employer.

If any member is interested in exploring legislative language for any of these approaches, PBSA stands ready to help.

Conclusion

PBSA and its members' goals align with that of the public, other stakeholders, and Congress: to ensure that employers, across all industries of the economy, and property managers are able to make the best placement decisions possible by ensuring they have the information and data they need to place individuals in a fair manner. In doing so, PBSA and its members work to keep our communities as safe as possible. There is a job for every person, though every job is not right for every person, and we support the policy aims of BTB. However, the current patchwork of BTB policies at varying jurisdictional levels make it more difficult for justice-involved individuals to

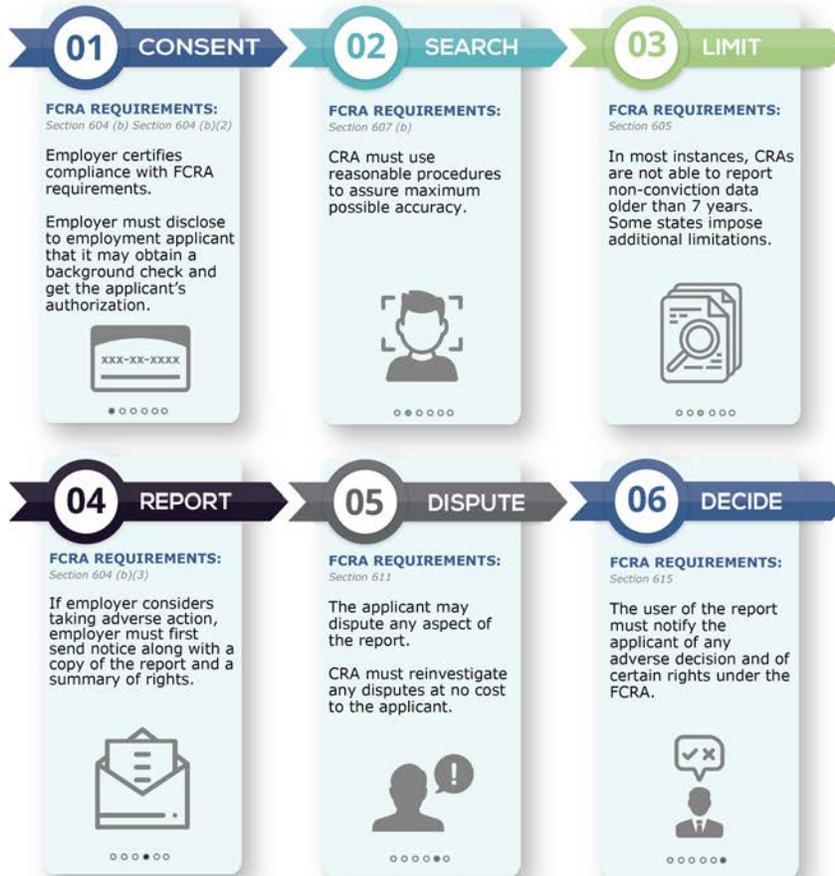
¹⁶ <https://nicic.gov/federal-bonding-program-us-department-labor-initiative>

be hired and can increase the number of negligent hiring lawsuits against employers. Towards promoting racial justice and increasing re-entry into the workforce among justice-involved individuals, Congress can act today by promoting and improving incentives like the Work Opportunity Tax Credit and Bonds for Jobs program. PBSA supports expanding, promoting, and educating employers on incentives to hire justice-involved individuals, while also ensuring employers should and have the right to make the final hiring decision. PBSA thanks you for the opportunity to testify before the Subcommittee today and I am more than happy to answer any questions you have.



A HIGHLY REGULATED INDUSTRY:

AT EVERY STAGE IN THE PROCESS, CONSUMER REPORTING AGENCIES (CRAs) MUST FOLLOW STRICT REGULATIONS UNDER THE FAIR CREDIT REPORTING ACT.



THREE PILLARS OF THE FAIR CREDIT REPORTING ACT

Originally enacted in 1970, the FCRA was the first federal privacy law. It is the primary federal regulation of consumer reports. It provides expansive regulatory and enforcement authority to the Consumer Financial Protection Bureau and the Federal Trade Commission.



EMPOWERING CONSUMERS

- The FCRA defines permissible purposes of consumer reports.
- Consumer reports for employment purposes are permitted only with disclosure to and authorization from the consumer.
- Consumers are provided transparent notification of any adverse action; consumers get a copy of employment-purpose reports before a decision.
- Consumers can request a copy of everything the CRA holds on them – in many cases for free.
- Consumers dispute incomplete or inaccurate information which must be re-investigated at no cost to the consumer.
- Consumers are repeatedly notified of their rights under the FCRA during the consumer report process.



PROMOTING ACCURACY

- The FCRA requires consumer reporting agencies to use reasonable procedure to assure maximum possible accuracy in reports.
- FTC enforcement and extensive case law over five decades has further clarified the standard.
- Employment cases have higher threshold to follow "strict procedures" to ensure that consumer reports are complete and up-to-date.
- Users of consumer reports demand accuracy, so the regulatory requirements and market incentives complement each other.



ENSURING ACCOUNTABILITY

- Consumers have a statutory private right of action to economic and statutory damages.
- The CFPB and FTC are vested with expansive regulatory, investigative and enforcement authorities. The agencies regularly issue guidance and the CFPB has supervisory authority over national consumer reporting agencies.
- Accountability and accuracy are required both both legally and due to market forces. Re-investigation of incomplete or inaccurate information, litigation, and loss of market share ensure and promote accuracy and accountability.



For economic and racial justice

67 E. Madison St., Suite 2000, Chicago, IL 60603
312.263.3830 | povertylaw.org

Written Testimony of
Marie Claire Tran-Leung
Director, Legal Impact Network
Shriver Center on Poverty Law

Before the Diversity and Inclusion Subcommittee
of the Committee on Financial Services of the U.S. House of Representatives

*Hearing on
Access Denied: Eliminating Barriers and Increasing Opportunities for Justice-Involved
Individuals*

September 28, 2021

Good morning, Chairwoman Beatty, Ranking Member Ann Wagner, and distinguished members of the Committee. On behalf of the Shriver Center on Poverty Law, I would like to thank the subcommittee for holding this important hearing on eliminating barriers and increasing opportunities for justice-involved individuals.

The Shriver Center on Poverty Law is a national nonprofit organization that fights for economic and racial justice. Over our 50-year history, we have secured hundreds of victories with and for people living in poverty across the country. Today, we litigate, shape policy, and train and convene multi-state networks of lawyers, community leaders, and activists nationwide. Together, we are building a future where all people have equal dignity, respect, and power under the law.

The Shriver Center has long understood how a person's involvement with the criminal legal system can significantly impact their subsequent attempts to access housing. In 2015, we published a report entitled *When Discretion Means Denial: A National Perspective on Criminal Records Barriers to Federally Subsidized Housing*. In that report, we reviewed the admissions policies of over 300 public housing authorities (PHAs) and other federally subsidized housing providers and identified ways in which those policies kept people with criminal records from accessing affordable housing. Later that year, the U.S. Department of Housing and Urban Development cited our report as a resource for PHAs to review to better understand the scope of these issues.¹ This report also inspired similar efforts at the local level, such as Ohio and Texas.²

In this testimony, we will start by discussing the critical role that housing plays in helping people re-join their communities after leaving the criminal legal system. We will then describe the barriers that they face in federally subsidized housing and how proposed federal legislation could address those barriers. Next, we will give an overview of the need to regulate tenant screening companies. Finally, we will end with additional recommendations for Congress to take to increase housing opportunities for people with criminal records.

I. The Importance of Housing for People with Criminal Records

Every year, more than 640,000 people leave state and federal prisons, while local jails process more than 11 million people.³ Securing safe, decent and affordable housing often presents challenges for individuals immediately after release as well as years after exiting the criminal legal system. In a 2015 survey of formerly incarcerated individuals, nearly four out of

¹ OFFICE OF PUBLIC & INDIAN HOUS., U.S. DEP'T. OF HOUS. & URBAN DEV., NOTICE PIH 2015-19, GUIDANCE FOR PUBLIC HOUSING AGENCIES (PHAS) AND OWNERS OF FEDERALLY-ASSISTED HOUSING ON EXCLUDING THE USE OF ARREST RECORDS IN HOUSING DECISIONS (2015) [hereinafter HUD NOTICE PIH 2015-19], <https://portal.hud.gov/hudportal/documents/huddoc?id=PIH2015-19.pdf>

² See e.g., AUSTIN/TRAVIS COUNTY REENTRY ROUNDTABLE, LOCKED OUT: CRIMINAL HISTORY BARRIERS TO AFFORDABLE RENTAL HOUSING IN AUSTIN & TRAVIS COUNTY, TEXAS 4 (2016), http://www.reentryroundtable.net/wp-content/uploads/2013/10/Criminal-Background-White-Paper.final_.pdf; A NEVER-ENDING SENTENCE: THE IMPACT OF CRIMINAL CONVICTION IN PROJECT-BASED SECTION 8 HOUSING TENANT SELECTION PLANS IN CUYAHOGA COUNTY (2020), <https://www.thehousingcenter.org/wp-content/uploads/2019/12/A-Never-Ending-Sentence-2020.pdf>.

³ Press Release, Peter Wagner & Bernadette Dauby, Mass Incarceration: The Whole Pie 2017 (Mar. 14, 2017), <https://www.prisonpolicy.org/reports/pic2017.html>.

five reported that, because of their criminal history, they were denied admission or deemed ineligible for housing.⁴

Incarceration and homelessness are deeply connected. Formerly incarcerated individuals experience homelessness at ten times the rate of the general public.⁵ These increased odds arise in part because of the limited employment prospects for people with criminal records and its impact on a person's ability to afford housing. Even assuming equal annual earnings, however, formerly incarcerated men remain more likely to experience housing instability than men who have never been incarcerated.⁶ The burden of homelessness for formerly incarcerated individuals is especially acute for Black women, who are four times as likely as white men and twice as likely as Black men to experience sheltered homelessness following incarceration.⁷

In the same way that incarceration is a risk factor for homelessness,⁸ a history of homelessness increases the risk of incarceration. Individuals in jails are seven to eleven times more likely to have recently experienced homelessness than the general population.⁹ And in a Georgia study, a person on parole increased his chances of arrest by 25% each time he changed his address.¹⁰

Housing barriers for justice-involved individuals can also severely restrain their ability to reintegrate back into their communities by exacerbating other collateral consequences. Sustained employment and improved relationships with family, for example, are difficult to achieve in the absence of safe, decent and affordable housing, especially for people who have been formerly incarcerated.¹¹

⁴ SANETA DE VUONO-POWELL ET AL., WHO PAYS? THE TRUE COST OF INCARCERATION ON FAMILIES 27 (Sept. 2015), <http://whopaysreport.org/who-pays-full-report/>

⁵ LUCIUS COULOUTE, NOWHERE TO GO: HOMELESSNESS AMONG FORMERLY INCARCERATED PEOPLE (2018), <https://www.prisonpolicy.org/reports/housing.html>.

⁶ Amanda Geller & Marah A. Curtis, *A Sort of Homecoming: Incarceration and the Housing Security of Urban Men*, 40 SOC. SCI. RES. 1196, 1206 (2011).

⁷ See COULOUTE, *supra* note 5.

⁸ See generally Stephen Metraux et al., *Incarceration and Homelessness*, 2007 NAT'L SYMP. ON HOMELESSNESS RES. 9-8 to 9-11, <https://www.huduser.gov/publications/pdf/p9.pdf> (2007); see also U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, REDUCING CRIMINAL JUSTICE INVOLVEMENT AMONG PEOPLE EXPERIENCING HOMELESSNESS 1 (August 2016), https://www.usich.gov/resources/uploads/asset_library/Criminal_Justice_Involvement_08_2016.pdf.

⁹ Greg A. Greenberg & Robert A. Rosenheck, *Jail Incarceration, Homelessness and Mental Health: A National Study*, 59 PSYCHIATRIC SERVS. 170, 175 (2008), <http://ps.psychiatryonline.org/doi/pdf/10.1176/ps.2008.59.2.170>.

¹⁰ Faith E. Lutz et al., *Homelessness and Reentry: A Multisite Outcome Evaluation of Washington State's Reentry Housing Program for High Risk Offenders*, 41 CRIM. JUST. & BEHAV. 471, 474 (2014), <https://wsicj.wsu.edu/wp-content/uploads/sites/436/2014/11/Criminal-Justice-and-Behavior-2014-Lutze-471-91.pdf>.

¹¹ JOCELYN FONTAINE & JENNIFER BIESS, URBAN INST., HOUSING AS A PLATFORM FOR FORMERLY INCARCERATED PERSONS 8 (2012), <http://www.urban.org/sites/default/files/publication/25321/412552-Housing-as-a-Platform-for-Formerly-Incarcerated-Persons.PDF>.

Living with family is one of the most affordable and stable housing options available to justice-involved individuals.¹² It is also one of the most commonly-used options.¹³

Restrictions on where people with criminal records can live, however, mean that many are living in the shadows rather than out in the open, especially in federally subsidized housing. These illicit living arrangements pose a threat to the entire family's housing because of the risk of eviction or subsidy termination, straining the family dynamic. A young father described his experience in this way: "I was living like I was on the run. The feeling that if I get caught there, my wife will lose her apartment, that she's taking that risk for me – that weighed so heavy on my heart."¹⁴ Rather than dampen the strong family bonds that can help people leave the criminal legal system for good, it is time to find ways to reinforce those bonds by reducing unreasonable criminal records barriers to housing.

II. Barriers to Federally Subsidized Housing for Justice-Involved Individuals

The shortage of affordable housing, especially in cities where many formerly incarcerated individuals return to, is a significant barrier for a population whose prior interaction with the criminal justice system often limits their employment prospects.¹⁵ Given this shortage, the need for federally subsidized housing is especially acute for people with criminal records.

A. Federal Law Governing Criminal Records Screening

The three major HUD-assisted programs are public housing, the Housing Choice Voucher program, and project-based Section 8. These programs are administered by public housing authorities (PHAs) and project owners. Contrary to popular belief, PHAs and project owners are required by federal law to exclude applicants who fall within only two narrow categories: (1) applicants who have been convicted of manufacturing methamphetamine on federally assisted property,¹⁶ and (2) applicants who are subject to a lifetime registration requirement because of a prior sex offense.¹⁷

¹² CLAIRE HERBERT ET. AL, NAT'L POVERTY CNTR., RESIDENTIAL INSTABILITY AMONG THE FORMERLY INCARCERATED 2-3 (2016), http://www.npc.umich.edu/publications/policy_briefs/brief42/policybrief42.pdf.

¹³ URBAN INST., UNDERSTANDING THE CHALLENGES OF PRISONER REENTRY: RESEARCH FINDINGS FROM THE URBAN INSTITUTE'S PRISONER REENTRY PORTFOLIO 8 (2006) (showing that the majority of respondents from studies in Illinois, Maryland, Ohio, and Texas reported living with families or intimate partners upon release from the criminal justice system), <http://www.urban.org/sites/default/files/publication/42981/411289-Understanding-the-Challenges-of-Prisoner-Reentry.PDF>.

¹⁴ Casey Tolan, *NYCHA Stops Discriminating Against New Yorkers with Criminal Records*, VILLAGE VOICE (Dec. 13, 2016), <http://www.villagevoice.com/news/nycha-stops-discriminating-against-new-yorkers-with-criminal-records-9453843>.

¹⁵ See FONTAINE & BIESS, *supra* note 11, at 6.

¹⁶ 42 U.S.C. § 1437n(f)(1) (2016). Federal law also requires PHAs and project owners to deny admission if, within the past three years, a person has been evicted from federally assisted housing for drug-related activity unless either (1) that person has successfully completed drug rehabilitation or (2) the circumstances that led to the prior eviction no longer exist (e.g., the death or incarceration of the person who committed the drug-related criminal activity). 42 U.S.C. § 13661(a) (2016). Also prohibited are applicants who currently use illegal drugs or abuse alcohol. *Id.* at § 13661(b)(1).

¹⁷ 42 U.S.C. § 13663(a) (2016).

Other than these two narrow categories, PHAs and project owners have discretion over their screening policies. Currently, federal law allows PHAs and project owners to deny admission to applicants who have engaged in any of the following activities within a reasonable time before applying:

1. Drug-related criminal activity,¹⁸
2. Violent criminal activity,¹⁹
3. Other criminal activity that would adversely affect the health, safety, or right to peaceful enjoyment of the premises by other residents, the owner, or public housing employees.²⁰

For the last category, HUD has advised that “there are a wide variety of other crimes that cannot be claimed to adversely affect the health, safety, or welfare of the PHA’s residents;”²¹ therefore, it should not be regarded as a catch-all provision.

It is important to note that there are two significant limits to this discretion. The first limit is time: according to federal law, criminal activity is relevant only if it occurred within a “reasonable time” before the screening process take place.²² The second limit comes from civil rights laws. In other words, a PHA or project owner’s criminal records screening policy must comply with federal civil rights laws, including the Fair Housing Act.

B. Four Types of Barriers in Federally Subsidized Housing

For the past decade, HUD has encouraged PHAs and project owners to use their discretion to give “second chances” to justice-involved individuals and to help them “gain access to one of the most fundamental building blocks of a stable life – a place of live.”²³ This encouragement has led some PHAs to adopt more inclusive policies. Agency encouragement in the absence of legislative action, however, will have a limited impact on removing housing barriers because PHAs and project owners do not consistently use their discretion to admit people with records. Indeed, some continue to engage in one of four problematic practices.

The first problematic practice is **arrest record screening**. Some housing providers use prior arrests as a basis for denying housing, even if those arrests never resulted in a conviction. Arrests, however, prove only that a person has been suspected of criminal activity, not that they

¹⁸ 42 U.S.C. § 13661(c) (2016). “Drug-related criminal activity” is defined as the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute, or use the drug. 24 C.F.R. § 5.100 (2016).

¹⁹ 42 U.S.C. § 13661(c) (2016). “Violent criminal activity” is defined as any criminal activity that has as one of its elements the use, attempted use or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage. 24 C.F.R. § 5.100 (2016).

²⁰ 42 U.S.C. § 13661(c) (2016).

²¹ U.S. DEP’T. OF HOUS. & URBAN DEV., PUBLIC HOUSING OCCUPANCY GUIDEBOOK 96-97 (2003).

²² 42 U.S.C. § 13661(c)(2) (2016)

have committed any crime.²⁴ Arrest records are also notoriously inaccurate.²⁵ Given their limited probative value, arrest records should not form the basis of a denial of housing.

The second problematic practice is the **failure to place reasonable time limits** on the use of criminal history, despite a federal requirement to do so.²⁶ Some subsidized housing providers, for example, do not indicate when a criminal record will be too old to factor into the admissions analysis, thus leaving the impression that criminal history is an insurmountable barrier.

The third major barrier facing people with criminal records is the use of **overbroad categories of criminal activity**. Some housing providers bar anyone with a past criminal conviction without regard to whether the underlying activity was minor or irrelevant to a person's ability to be a good tenant. Even where a screening policy offers a more limited universe of prohibited criminal activity, the end result can still be overbroad. Many housing providers, for example, only screen for felony convictions, but given how state legislatures have increasingly been ratcheting up the punishments for crimes, the "felony" label does not necessarily indicate the level of seriousness that would justify denying a person housing. Additionally, some housing providers use vague categories of criminal activity, such as activity that indicates a person will be a "negative influence on other residents."

The fourth and last practice of concern was the **underuse of mitigating evidence** in the criminal records screening process. In public housing, PHAs must consider the time, nature and extent of the applicant's conduct. In addition, PHAs may consider evidence of rehabilitation, such as substance abuse treatment, education, and employment, in order to mitigate the effects of a criminal record in the admissions process.²⁷ Instead, some housing providers either neglect to inform applicants of this right or refused to give due consideration to the evidence presented by the applicants, thus depriving the applicant of a meaningful opportunity to show how they were more than the four corners of their criminal background check.²⁸

C. The Fair Chance at Housing Act.

If passed, the Fair Chance at Housing Act would help curtail these problematic practices in several ways.

First, to address the problem of arrest record screening, the proposed legislation would prevent PHAs and project owners from denying housing on the basis of arrests that did not result in a conviction, as well as juvenile records and sealed/expunged records.

Second, the proposed legislation would place more parameters on the type of criminal conduct that could form the basis of denying admission. Whereas federal law refers to broad categories of criminal activity, the proposed legislation is more specific and restricts the universe of criminal conduct that PHAs and project owners can consider. Specifically, PHAs and project

²⁴ *Schwartz v. Bd. of Bar Examiners*, 353 U.S. 232, 241 (1957).

²⁵ NAT'L EMP'T LAW PROJECT, FAULTY FBI BACKGROUND CHECKS FOR EMPLOYMENT: CORRECTING FBI RECORDS IS KEY TO CRIMINAL JUSTICE REFORM 1-3 (2015), <http://www.nelp.org/content/uploads/NELP-Policy-Brief-Faulty-FBI-Background-Checks-for-Employment.pdf>.

²⁶ 42 U.S.C. § 13661(c) (2016).

²⁷ 24 C.F.R. § 960.203(d)(1) (2016).

²⁸ See MARIE CLAIRE TRAN-LEUNG, WHEN DISCRETION MEANS DENIAL 29 (2015), <https://www.povertylaw.org/article/when-discretion-means-denial/>.

owners would only be able to consider felony convictions if the underlying conduct would threaten the health or safety of other tenants, employees, or the PHA or project owner. The proposed legislation also specifically excludes drug convictions where the sentence was less than 10 years.

Third, the proposed legislation would require PHAs and project owners to conduct an individualized review before denying an applicant based on their conviction record. Whereas many PHAs and project owners currently have a policy of denying applicants first and then giving them an informal review later, the proposed legislation turns this timeline around to put applicants in a better position to access housing. The process takes place along the following timeline: (1) applicant submits application, (2) panel review of application, (3) decision by PHA to admit or deny, (4) if denial, applicant appeals, (5) applicant receives informal hearing. By adopting this timeline, applicants with conviction records are more likely to be able to present their mitigating evidence and less likely to fall through the cracks.

Finally, the proposed legislation establishes a review panel for conducting the individualized review, which must include at least one resident representative.

Because the Fair Chance at Housing Act would significantly improve the housing opportunities for people with criminal records and set the stage for additional protections in other federally-assisted programs and the private rental market, we strongly urge Congress to pass this proposed legislation.

III. The Need For Increased Regulation of Tenant Screening Companies

When it comes to housing barriers for people with criminal records, it is not enough to regulate housing providers, such as PHAs and project owners. Tenant screening companies play an increasingly larger role in the application process both in federally subsidized housing and the private rental market. While some companies simply provide landlords with criminal record information, other companies have taken a more active role in the screening process by offering algorithmic assessments of candidates and offering to improve fair housing compliance for landlords.²⁹ Over the last decade, the tenant screening industry has flourished, and yet, it continues to be largely underregulated, especially compared to employment screening companies providing similar criminal record information to employers.

Currently, FCRA provides two additional consumer protections for the use of criminal records in the employment context. First, the applicant is entitled to notice that the criminal record will be used for employment purposes. Second, the consumer reporting agency is required to use “strict procedures” (as opposed to the general FCRA standard of “reasonable procedures”) to ensure maximum possible accuracy of the reports.³⁰ Such protections do not exist for housing applicants, even though the criminal record information is the same. Congress should amend

²⁹ Colin Lecher, *Automated Background Checks are Deciding Who's Fit for a Home*, THE VERGE (Feb. 1, 2019), <https://www.theverge.com/2019/2/1/18205174/automation-background-check-criminal-records-corelogic>; see *Connecticut Fair Housing Center v. Corelogic Rental Prop.*, 369 F.Supp.3d 362 (2019) (holding that the defendant consumer reporting agency had a duty under the Fair Housing Act not to discriminate when carrying out its tenant screening activities that went beyond simply reporting criminal record information).

³⁰ 15 U.S.C. § 1681k.

FCRA to extend these protections from the employment context to the tenant screening context and thus put employment applicants and housing applicants on the same footing.³¹

Congress should also amend FCRA to limit the types of criminal records that can appear in consumer reports for non-law enforcement purposes. These limits would reflect the notion that a person's prior arrests and convictions has diminishing predictive value over time, especially outside of the context of the criminal legal system. Currently, FCRA places no time limits on how far back a consumer reporting agency can report a conviction, even though blanket bans likely violate civil rights laws governing employment and housing. At a minimum, Congress should limit the dissemination of conviction records to seven years, which is the standard time limit for most other records under FCRA. In addition, Congress should clarify that consumer reporting agencies must not report sealed and expunged records. In addition to helping people with these records access housing and employment, this clarification would help preserve the public policy of states that took affirmative steps to protect their residents against the stigma of a criminal record after a certain period of time. Although more reform is needed, these recommendations are long overdue and are good steps toward full regulation of the tenant screening industry and more robust protections of housing and employment applicants.

IV. Additional Recommendations for Congress

If passed, the Fair Chance at Housing will significantly expand housing opportunities for people with criminal records and their families. Until this legislation passes, there are legislative steps that Congress can take in the interim that would help increase housing opportunities for people with criminal records.

A. Create vouchers that give HUD the ability to waive criminal records screening requirements.

Through the American Rescue Plan (ARP), HUD created Emergency Housing Vouchers to help house individuals currently experiencing or at risk of homelessness. ARP gave HUD the authority to issue waivers necessary to expedite or facilitate the use of amounts available, and HUD used this authority to modify a PHA's ability to screen voucher applicants for criminal records.³²

Generally, PHAs have discretion to deny admission on the basis of drug-related criminal activity, violent criminal activity, and other criminal activity that threaten the health and safety of other residents. For emergency housing vouchers, however, HUD eliminated the PHA's ability to deny assistance to applicants on the basis of drug-related criminal activity, reasoning that drug addiction may often be the root cause of homelessness, among other reasons. In addition, HUD imposed a 12-month lookback period for violent criminal activity and other criminal activity that threatens the health and safety of other residents.³³ By giving HUD this type of authority, Congress puts HUD in a place to show that eliminating these types of permissive prohibitions

³¹ For a full discussion of these issues, see National Consumer Law Center, *Broken Records Redux: How Errors by Criminal Background Check Companies Continue to Harm Consumers Seeking Jobs and Housing* (2019), <https://www.nclc.org/images/pdf/criminal-justice/report-broken-records-redux.pdf>.

³² HUD, PIH Notice 2021-15 (HA), *Emergency Housing Vouchers – Operating Requirements* (May 5, 2021), <https://www.hud.gov/sites/dfiles/PIH/documents/PIH2021-15.pdf>.

³³ *Id.* at 29-31.

can help get housing assistance to people in need efficiently and without compromising public safety. As similar opportunities arise as Congress continues to address the impact of the pandemic on communities, we urge Congress to seize these moments to reduce criminal records barriers for federally subsidized housing.

B. Increase oversight of federally assisted properties under the Low Income Housing Tax Credit program.

In addition to increasing protections in HUD-assisted and USDA-assisted housing programs, Congress should increase its oversight of the Low Income Housing Tax Credit program to encourage state finance housing agencies and property owners to use their significant discretion toward increasing housing opportunities for people with criminal records. The LIHTC program is important for creating more housing opportunities for people with criminal records for two reasons. First, LIHTC provides the largest source of affordable housing financing in the country, making people with arrest and conviction records highly likely to seek housing at LIHTC properties. Second, LIHTC properties often have such more draconian criminal records policies than PHAs, in part because the policies of LIHTC properties are subject to far less public scrutiny than those of PHAs. Increased oversight will help ensure that these properties refine their criminal records policies in a way that aligns with HUD and its administration of HUD-assisted programs.

C. Strengthen fair housing protections for people with criminal records.

One final area where congressional attention is needed is around fair housing. In 2016, HUD issued guidance explaining that housing providers who use criminal records as a basis for denying or terminating housing could violate the Fair Housing Act under the disparate impact theory.³⁴ The Fair Housing Act, however, has a significant exception: there is currently no fair housing protection under the disparate impact theory if the person was convicted of manufacturing or distributing controlled substances.³⁵ In other words, a housing provider could deny housing to this person based on this conviction without violating the Fair Housing Act, even if such a denial would have an unjustified disparate racial impact. This exception is a relic of the War on Drugs and should be eliminated since it creates a significant housing barrier for individuals with these convictions on their record.

In summary, to address the significant housing barriers that people with criminal records face, Congress can take the following actions:

1. Pass the Fair Chance at Housing Act
2. Amend the Fair Credit Reporting Act to increase regulation of tenant screening companies
3. Create vouchers that give HUD the ability to waive criminal records screening requirements
4. Increase oversight of federally assisted properties under the Low Income Housing Tax Credit program

³⁴ U.S. DEP'T. OF HOUS. & URBAN DEV., OFFICE OF GENERAL COUNSEL GUIDANCE ON APPLICATION OF FAIR HOUSING ACT STANDARDS TO THE USE OF CRIMINAL RECORDS BY PROVIDERS OF HOUSING AND REAL ESTATE-RELATED TRANSACTIONS (2016), https://portal.hud.gov/hudportal/documents/huddoc?id=hud_ogcguidappfhastandcr.pdf.

³⁵ *Id.* at 8 (citing § 807(b)(4) of the Fair Housing Act).

5. Strengthen fair housing protections for people with criminal records



**Statement for the Record
The Alliance for Safety and Justice**

Before the

**Subcommittee on Diversity and Inclusion
House Financial Services Committee**

September 28, 2021

The Alliance for Safety and Justice (ASJ) submits the following statement for the record as part of the hearing in the Subcommittee on Diversity and Inclusion on September 28, 2021, entitled "Access Denied: Eliminating Barriers and Increasing Economic Opportunity for Justice-Involved Individuals."

ASJ is a multi-state organization that aims to replace over-incarceration with more effective public safety solutions rooted in crime prevention, community health, rehabilitation, and support for crime victims. Focused on the states with the largest prison populations in the country, we partner with policymakers and community advocates to achieve safety and justice reforms.

Thank you for holding this hearing and for the opportunity to submit this statement for the record. More than 70 million people in the United States are estimated to be living with some kind of criminal record.¹ Experts across the ideological spectrum agree that lifelong collateral consequences are counter-productive and require attention. In addition, the COVID-19 pandemic ushered in an economic recession that has left millions of Americans without jobs or means to support themselves and their families. A national survey commissioned by ASJ showed that 58 percent of people with an old felony record faced difficulty finding housing after sentence completion, and 69 percent said they had trouble finding a job.² The process of regaining a financial footing will be challenging for many — but for justice-involved individuals who already faced barriers to employment, housing, and other opportunities before the pandemic, it will be nearly impossible.

Passing a criminal background check is a ubiquitous requirement to securing a job or housing. Close to 94 percent of employers conduct some form of criminal history check, and close to 90 percent of landlords run background checks on prospective tenants.³ As a result, background checks have become a barrier for

¹ Alliance for safety and Justice, "Americans with Past Convictions Urge Congress to Act As House CJS Committee Supports Funding to Clear Old Criminal Records," July 2021.
<https://allianceforsafetyandjustice.org/press-release/americans-with-past-convictions-urge-congress-to-act-as-house-cjs-committee-supports-funding-to-clear-old-criminal-records/>

² Alliance for Safety and Justice, "Toward Stability and Safety," August 2021.
<https://allianceforsafetyandjustice.org/wp-content/uploads/2021/09/Convictions-Brief.pdf>

³ National Association of Professional Background Screeners (NAPBS), "How Human Resource Professionals View the Use and Effectiveness of Background Screening Methods," June 2018.
https://www.hr.com/en/resources/free_research_white_papers/napbs-background-screening-2018-Jun2018_jiexgh27.html. SmartMove/TransUnion, "Landlord Survey: Optimism In Renting Your Property," June 2017.
<https://www.mysmartmove.com/SmartMove/blog/transunion-landlord-survey-summary.page>



tens of millions of Americans with a criminal record. A vast majority of those impacted are people of color.

Employers and landlords often reject individuals with criminal records applying for a job or housing based on concerns about public safety, a perception that individuals with criminal histories are less likely to meet their obligations, or to minimize potential liabilities over negligent hiring or renting. However, research studies have shown that after a short period of time, criminal history is not a predictor of future criminality⁴. In fact, eliminating barriers to stable housing and employment reduces the likelihood of recidivism.

Fair Credit Reporting Act

The Fair Credit Reporting Act (FCRA) generally governs the use and dissemination of criminal background checks. State laws, like California's Investigative Consumer Reporting Agencies Act, also may apply. The FCRA's definitions of "consumer report" and "consumer reporting agency" (CRA) are not limited to the three main credit bureaus (Equifax, Experian, and TransUnion) — they also apply to background check and tenant screening agencies.

Under FCRA, CRAs can report on certain criminal records, including arrests or charges, for seven years or until the statute of limitations expires, whichever is longer. However, there is no time limit concerning criminal convictions. Once non-conviction criminal records are obsolete, a screener cannot even disclose its existence in a job or housing application⁵.

CRAs are also required to ensure the accuracy of the information they report on consumers. While FCRA does not mandate error-free reports, it does require CRAs to have "reasonable procedures to assure maximum possible accuracy."⁶ Despite these guardrails under FCRA, according to the National Consumer Law Center, reports being generated continue to:

- Contain information about a different person (e.g., a "mismatch" or a false positive);
- Include sealed, expunged, or obsolete records;
- Report incomplete information (e.g., omit disposition data);
- Display data in misleading ways (e.g., report a single arrest or incident multiple times); and
- Misclassify the type of offense.⁷

⁴ Alfred Blumstein and Kiminori Nakamura, "Extension of Current Estimates of Redemption Times: Robustness Testing, Out-of-State Arrests, and Racial Differences, submitted to the Nat'l Institute of Justice, November 2012. At Page 89. <https://www.ojp.gov/pdffiles1/nij/grants/240100.pdf>

⁵ 15 U.S.C. § 1681c(a)(5).

⁶ 15 U.S.C. § 1681e(b).

⁷ National Consumer Law Center, "Broken Records Redux: How Errors by Criminal Background Check Companies Continue to Harm Consumers Seeking Jobs and Housing, December 2019.



Recommendations to Reform FCRA

We commend the Committee for its work to reform our nation's consumer reporting system. Legislation like the Comprehensive Credit Reporting Enhancement, Disclosure, Innovation, and Transparency (CREDIT) Act is crucial to ensure information CRAs include on consumer credit reports are accurate and complete. In addition, Congress should amend the FCRA to ensure that consumers with old records can better access housing and employment. Specifically, it should:

- Broaden protections for prospective tenants by prohibiting the disclosure of the following:
 - An arrest for which the consumer was not subsequently charged or convicted;
 - Any juvenile adjudication or conviction;
 - Non-criminal citations by state or local law enforcement agencies;
 - A conviction for which the consumer was only sentenced to probation; and
 - An offense or offenses related to fees or back payments associated with incarceration.
- Improve protections related to the accuracy and currentness of reported criminal records, especially with regard to criminal records that have been sealed or expunged.
- Prohibit the reporting of criminal convictions older than seven years.

Thank you for the opportunity to submit this statement for the record. We look forward to further engaging the Committee to ensure there is relief for the millions of Americans with a criminal record.



Statement by the Bank Policy Institute

"Access Denied: Eliminating Barriers and Increasing Economic Opportunity for Justice-Involved Individuals"

September 27, 2021

Chairwoman Waters, Subcommittee Chairwoman Beatty, Ranking Member McHenry and Members of the Diversity and Inclusion Subcommittee:

The Bank Policy Institute¹ supports the work of this subcommittee in exploring ways to increase the economic opportunities that are available to individuals who have previously been convicted of criminal offenses, including employment opportunities. This is an issue upon which BPI and its member institutions have been acutely focused for some time. The banking sector is a significant source of employment in the U.S. economy. Banking organizations strive to attract and retain talented employees but find that some qualified individuals are prohibited from working at insured depository institutions because of the broad restrictions imposed by Section 19 of the Federal Deposit Insurance Act, which impacts an institution's ability to hire persons who have been convicted of a criminal offense.² This issue is ripe for legislative action to provide banking organizations more flexibility to provide employment opportunities to those individuals.

Section 19 prohibits, without the prior written consent of the FDIC, the participation in banking, including employment, by 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." This language is broad. So broad in fact that in some cases it may pose unnecessary and inappropriate obstacles to a bank's ability to employ individuals with criminal records who have taken effective steps to rehabilitate themselves. As the FDIC has noted in the past, the "basic underlying premise of Section 19 is to prevent risk to the safety and soundness of an insured institution or the interest of its depositors, and to prevent impairment of public confidence in the insured institution."³ However, the breadth of the statutory language captures a wide variety of criminal offenses, among which are those that would not present a risk to the safety and soundness of an FDIC-insured institution. For example, it would restrict the employment of an individual with a prior misdemeanor conviction unrelated to financial misconduct or dishonesty.

Through its 2020 rulemaking,⁴ the FDIC has expanded the provisions for "automatic" approval that existed in its previous Statement of Policy on Section 19, by providing an exemption to the requirement that FDIC consent be obtained.⁵ The exemption is available for individuals who have been convicted of no more than two crimes that

¹ The Bank Policy Institute is a nonpartisan public policy, research and advocacy group, representing the nation's leading banks and their customers. Our members include universal banks, regional banks and the major foreign banks doing business in the United States. Collectively, they employ almost two million Americans, make nearly half of the nation's small business loans, and are an engine for financial innovation and economic growth.

² 12 U.S.C. § 1829.

³ 63 Fed. Reg. 66,177, 66,181 (Dec. 1, 1998), "Statement of Policy Pursuant to Section 19 of the Federal Deposit Insurance Act Concerning Participation in the Conduct of the Affairs of an Insured Institution by Persons Who Have Been Convicted of Crimes Involving Dishonesty, Breach of Trust or Money Laundering or Who Have Entered Pretrial Diversion Programs For Such Offenses."

⁴ 85 Fed. Reg. 51312 (Aug. 20, 2020).

⁵ 83 Fed. Reg. 38143 (Aug. 3, 2018).



are deemed *de minimis* if the offenses meet a range of specified criteria. Generally, the FDIC's *de minimis* exception applies to those offenses that are considered to present low risk to the depository institution. Notwithstanding the FDIC's recent efforts, the underlying language of Section 19 poses meaningful challenges to institutions' ability to hire rehabilitated individuals who clearly would not pose any risk to the institution or its customers.

Section 19 serves an important purpose. However, achieving this purpose should not require banks to implement overly restrictive bars on employment. Rather, to fulfill Section 19's safety and soundness objectives in a manner that allows banks to prudently manage safety and soundness risk, Section 19's requirements should be appropriately calibrated to the potential and actual safety and soundness risks posed by prospective employees. The following are examples of amendments Congress may consider to accomplish this goal:

- Amend the statute to provide clarity around difficult-to-interpret terms, such as "dishonesty" and "breach of trust."
- Amend the statute to limit the individuals and positions within financial institutions to which the prohibition applies. Currently the statute captures positions for which the responsibilities will not pose a risk of more than minimal financial loss or risk to safety and soundness of the institution.
- Amend the statute to limit the universe of convictions to which the prohibition applies. Currently the statute applies to both felonies and misdemeanors. Congress could consider applying it only to felonies or to apply it only to those crimes that involved more than minimal financial loss to a banking organization.

We urge Congress to review and consider an amendment to Section 19 that preserves its original aim while providing banking organizations the flexibility to consider employment for a broader universe of qualified individuals without prior approval from the FDIC.



Access Denied: Eliminating Barriers and Increasing Economic Opportunity for Justice-Involved Individuals

House Financial Services Committee, Subcommittee on Diversity & Inclusion

Statement of the Collateral Consequences Resource Center for the Hearing Record

September 24, 2021

The Collateral Consequences Resource, founded in 2014, is a nonprofit organization promoting public engagement on the myriad issues raised by the legal restrictions and societal stigma that burden people with a criminal record long after their case is closed. Our legal experts analyze the laws and practices related to criminal record relief on a national basis, consult in support of reform efforts, produce legal and policy research, and participate in court cases challenging collateral consequences.

Our flagship resource, the Restoration of Rights Project, provides frequently updated state-by-state and federal profiles addressing: (1) limits on the consideration of criminal records in employment, occupational licensing, and housing; (2) pardon, expungement, and other forms of record relief; and (3) loss and restoration of civil rights.¹ We provide further insights into these topics through 50-state comparison charts,² annual legislative reports,³ a national survey and report card,⁴ model legislation,⁵ and a federal legislative agenda.⁶ Our recent national review of fair chance housing laws, which highlighted New Jersey's recent state-wide legislation limiting consideration of criminal record in housing decisions, documents the rise of these policies at the local and state level.⁷

We appreciate the opportunity to submit this written statement for the record. We will focus on restrictions on eligibility for federal government-sponsored small business loans based on criminal history, restrictions that represent a critical barrier to economic opportunity for justice-impacted individuals.

Starting a small business is increasingly recognized as one pathway to opportunity for individuals with arrest or conviction history—particularly given the disadvantages they face in the labor market.⁸ An estimated 4% of small businesses in the United States have an owner with a conviction (1.5% have a felony conviction).⁹ Small businesses provide “a vital opportunity for those with a criminal record to contribute to society, to earn an honest profit, and to give back to others.”¹⁰ They also frequently employ people with a record and help reduce

recidivism.¹¹ A growing number of organizations and government programs are devoted to supporting individuals with a record in developing entrepreneurial skills, obtaining business employment, and building their own businesses.¹²

Yet many structural barriers remain, among them a series of federal regulations and policies that impose broad criminal history restrictions on access to government-sponsored business loans, notably by the U.S. Small Business Administration (SBA). A recent article illustrates the steep challenges faced by business owners with a criminal record by telling the stories of several entrepreneurs who were either denied an SBA loan or were discouraged from even trying for one because of a dated felony conviction.¹³ One of those entrepreneurs comments: "You might do five years, ten years, one year, but you pay for it until you're in the grave."

Last year, the SBA blocked hundreds of thousands of small businesses from obtaining Paycheck Protection Program and COVID-19 Economic Injury Disaster Loan funds by adopting shockingly extensive criminal history restrictions not required or even suggested by statute.¹⁴ The PPP restrictions impacted at a minimum 212,655 businesses with 343,198 employees, with disproportionate impacts on Black and Latino communities.¹⁵ When we began to publish resources about these restrictions shortly after the passage of the CARES Act, our servers crashed because of the level of public interest, requiring us to update our systems. Thousands of business owners emailed us, with a wide variety of records and types of businesses, desperate for help. We developed informational material for a large bipartisan group of organizations calling on the agency to revise its criminal history restrictions.¹⁶ Congress held hearings and considered legislation to eliminate most of the restrictions.¹⁷ Individuals and organizations brought litigation, with a federal judge finding that the SBA had acted unlawfully in failing to provide an explanation for its initial criminal history exclusions.¹⁸ Successive executive branch decisions rolled back most of these restrictions on COVID-19 relief.¹⁹

In addition, the SBA continues to impose extensive criminal record-related restrictions in its general small business loan programs, frustrating lawful efforts by entrepreneurs and employees with criminal histories.²⁰ Over the years, the agency has incrementally added more and more restrictions, without a statutory directive to do so or a clear policy justification.²¹ (A notable exception is the agency's repeal of some restrictions on microloans in 2015.²²) Indeed, there is no empirical research we can identify that supports the use of criminal history as a measure of credit risk.²³ In contrast, the other major source of federal support for small business, the U.S. Department of Agriculture, imposes only narrowly defined criminal history restrictions that are specifically required by statute.²⁴ The SBA's restrictions (and similar restrictions in some state business loan programs) are often buried in forms and regulations with no accompanying justification, and typically are subject to little scrutiny or public debate.

To illuminate these barriers, our organization recently launched a “Fair Chance Lending” project. We aim to show that—rather than broadly exclude individuals with a criminal history—officials should draw record-based restrictions as narrowly as feasible, facilitate access to resources, and celebrate entrepreneurial efforts, consistent with growing national support for reintegration and fair chances in civil society. To that end, we have already identified the following concerns about the SBA’s criminal history policies:

The SBA’s criminal history restrictions are not provided by statute. The Small Business Act allows but does not require the SBA to conduct a criminal background check of loan applicants,²⁵ and no statute provides that the agency should treat criminal history as a measure of creditworthiness.²⁶ The only statutory criminal history restriction on SBA loans that we can identify is a half-century old exclusion from 7(b) disaster loans of persons convicted in the year prior to application of a felony “during and in connection with a riot or civil disorder.”²⁷

Many of the SBA’s criminal history restrictions are also not codified in regulation. For example, the SBA adopted a series of frequently changing criminal history restrictions for COVID-19 EIDL loans that were either unannounced or only disclosed through FAQs published on the agency’s website.²⁸ Another example is 7(a) and 504 loans, which are subject to a regulation with certain limited criminal history requirements, but to far more extensive criminal history restrictions through policy statements and application forms.²⁹

The SBA’s criminal history restrictions are overbroad and lack specific justification. The SBA has adopted a range of rules over time without clearly articulating their rationale, except under the general rubric of a “good character” requirement.³⁰ Many specific policies are surprising. For example, the SBA requires the disclosure and consideration of expunged and sealed records.³¹ Uncharged arrests, dismissals, acquittals, and other non-conviction records can be disqualifying.³² Diversions are often treated as if they were convictions.³³ Felony convictions can be disqualifying regardless of how old they are.³⁴ Restrictions often apply to various persons associated with a business, including owners of 20% or more equity and employees managing day-to-day operations.³⁵

The SBA’s criminal history restrictions have racially disparate impacts. Studies have already been published indicating the SBA’s criminal history restrictions on the Paycheck Protection Program disproportionately impacted Black and Latino business owners.³⁶ The SBA’s comparable criminal history restrictions in its general loan programs likely have similar effects, given the well-documented racial disparities in the instance of criminal records in general. The SBA makes little effort to justify its broad policy-based restrictions, which heightens their contrast with the

targeted statutory restrictions that apply to rural-focused lending programs administered by the USDA.³⁷

Small businesses are the backbone of the American economy and a critical pathway to opportunity, including for justice-impacted individuals. We urge Congress to conduct oversight and advance policies that facilitate access to resources for small businesses and reduce criminal history restrictions in federally sponsored small business lending.

¹ <https://restoration.ccsresourcecenter.org/>.

² See, e.g., <https://ccresourcecenter.org/state-restoration-profiles/50-state-comparisonjudicial-expungement-sealing-and-set-aside/>.

³ <https://ccresourcecenter.org/resources-2/resources-reports-and-studies/>.

⁴ <https://ccresourcecenter.org/the-many-roads-to-reintegration/>.

⁵ <https://ccresourcecenter.org/model-law-on-non-conviction-records/>.

⁶ https://ccresourcecenter.org/wp-content/uploads/2021/02/CCRC_Federal-Agenda_2021.pdf.

⁷ David Schlusel, *New Jersey puts "fair chance housing" on the national agenda*, Collateral Consequences Res. Ctr. (June 22, 2021), <https://ccresourcecenter.org/2021/06/22/new-jersey-puts-fair-chance-housing-on-the-national-agenda/>.

⁸ E.g., Jiwon Hwang & Damon J. Phillips, *Entrepreneurship as a Response to Labor Market Discrimination for Formerly Incarcerated People*, 2020 Academy of Management Proceedings 1 (July 29, 2020).

⁹ See Shawn D. Bushway, Dulani Woods, Denis Agniel, & David M. Adamson, *Small Businesses, Criminal Histories, and the Paycheck Protection Program*, RAND Corporation (2021). https://www.rand.org/pubs/research_reports/RRA1295-1.html.

¹⁰ See Letter to Senator Marco Rubio from leaders of nine religious organizations (April 20, 2020), <https://www.prisonfellowship.org/wp-content/uploads/2020/04/SBA-PPP-letter-to-Chairman-Rubio-4.21.20.pdf>.

¹¹ E.g., Joyce Klein & Lavanya Mohan, *Prison to Proprietor*, Asset Funders Network, (2016), https://www.aspeninstitute.org/wp-content/uploads/2016/09/AFN-PrisonToProprietor.pdf?_ga=2.252215178.2010148479.1543590408-982560344.1543590408.

¹² E.g., Klein, et. al., *Prison to Proprietor*, *supra* note 11 at 7 (describing Prison Entrepreneurship Program, Mercy Corp Northwest's LIFE, Defy Ventures, and Rising Tide Capital); see also J. Escamilla, J. Reichert, L. Weisner, & C. Mayer, *Entrepreneurship for the formerly incarcerated: A process evaluation of the Pathway to Enterprise for Returning Citizens (PERC) program*, Illinois Criminal Justice Information Authority (2019), <https://icjia.illinois.gov/researchhub/articles/entrepreneurship-for-the-formerly-incarcerated>.

¹³ Kira Lerner, *'Banks Won't Even Talk to Us': Business Owners with a Criminal Record Face an Abundance of Collateral Consequences*, Arnold Ventures (July 30, 2021), <https://www.arnoldventures.org/stories/banks-wont-even-talk-to-us-business-owners-with-a-criminal-record-face-an-abundance-of-collateral-consequences>.

¹⁴ See, e.g., *SBA's bumpy guidance on criminal history requirements for stimulus loans*, Collateral Consequences Res. Ctr. (April 3, 2020), <https://ccresourcecenter.org/2020/04/03/sbas-bumpy-guidance-on-criminal-history-requirements-for-stimulus-loans/>; Keith Finlay, Michael Mueller-Smith, & Brittany Street, *Criminal Disqualifications in the Paycheck Protection Program*, University of Michigan Institute for Social Research, Criminal Justice Administrative Records System (June 2020), https://cjars.isr.umich.edu/wp-content/uploads/CJARS_PPP_Statistical_Brief.pdf (also published as U.S. Census Working Paper ADEP-WP-2020-04).

¹⁵ Bushway, et al., *Small Businesses, Criminal Histories, and The Paycheck Protection Program*, *supra* note 9 at 4 (estimating the impact of one aspect of the PPP criminal history restrictions, the five-year lookback for felony convictions); *see also* Finlay, et al., *Criminal Disqualifications in the Paycheck Protection Program*, *supra* note 14.

¹⁶ *See, e.g.*, Letter to heads of the U.S. Treasury and SBA from bipartisan group of civil rights, advocacy, and business organizations (April 17, 2020), <https://ccresourcecenter.org/wp-content/uploads/2020/04/Treasury.SBA.Ltr.Restrictions-Based-on-Arrest-or-Conviction.4.17.20.FINAL-002.pdf>.

¹⁷ *See, e.g.*, Paycheck Protection Program Second Chance Act, S.3865, 116th Cong. (2019-2020); Fair Chance for Small Business Relief Act, H.R.6894, 116th Cong. (2019-2020); The Heroes Act, H.R.6800, 116th Cong. (2019-2020).

¹⁸ *See, e.g.*, *Defy Ventures, Inc. v. SBA*, 469 F. Supp. 3d 459, 475 (2020) (“The plaintiffs are likely to show that the SBA acted arbitrarily and capriciously in promulgating the April IFR and first June IFR because those rules contain no explanation for the criminal history exclusion”).

¹⁹ *See* David Schlusel, *Applying for SBA COVID-19 relief with a criminal record in 2021*, Collateral Consequences Res. Ctr. (March 8, 2021), <https://ccresourcecenter.org/2021/03/08/applying-for-an-sba-loan-with-a-criminal-record-2/>.

²⁰ The programs we are focusing on are 7(a) loans, 504 loans, 7(b) disaster loans, and the microloan program. More details about these restrictions are available on our website: <https://ccresourcecenter.org/2021/08/02/federal-policies-block-support-for-small-business-owners-with-a-record/>.

²¹ For example, the most recent regulation governing criminal history in SBA general business loans was adopted in January 1996. 13 C.F.R. § 120.110 makes a business ineligible for business loans if they have an “Associate” who is incarcerated, on probation or parole, or has been indicted for a felony or “crime of moral turpitude.” *See* Business Loan Programs, 61 FR 3226-3266. SBA regulations define an “Associate” in pertinent part as “An officer, director, owner of more than 20 percent of the equity, or key employee of the small business.” 13 C.F.R. §120.10(2). Another regulation states that “character” is a factor in determining whether an applicant is “creditworthy.” 13 C.F.R. § 120.150. The SBA has elaborated on these regulations in Standard Operating Procedures (SOP). For example, an Aug. 1, 2008, SOP governing 7(a) and 504 loans added a requirement that “an individual with a deferred prosecution is treated as if the individual is on probation or parole.” Office of Financial Assistance, U.S. Small Business Administration, SOP 50-10(5) Lender and Development Company Loan Programs (Aug. 1, 2008). Beginning in January 1, 2014, the SBA adopted more far-reaching policies in its SOP governing 7(a) and 504 loans, which are similar to the current policies described in detail below. *Compare* Office of Financial Assistance, U.S. Small Business Administration, SOP 50-10(5) (F) Lender and Development Company Loan Programs (Jan. 1, 2014) *with* Office of Financial Assistance, U.S. Small Business Administration, SOP 50-10(6) Lender and Development Company Loan Programs (Oct. 1, 2020).

The current SBA policy statement governing general business loans (7(a) and 504) provides that specified individuals associated with the business must be “of good character,” as determined by the SBA (this includes any proprietor, general partner, officer, director, managing member of a limited liability company, owner of 20% or more of the equity of the Applicant, Trustor, or any person hired to manage day-to-day operations). Each of these persons must disclose and provide documentation about: (1) any arrests in the past six months; and (2) for any criminal offense (excluding minor vehicle violations), any convictions, guilty pleas, no contest pleas, or any placements on pretrial diversion or any form of parole or probation, at any time. All expunged and sealed records must be disclosed. If any person has not satisfied all sentencing conditions (which may include payment of court debt), the applicant is not eligible for a loan. A lender may proceed with a loan (assuming all other requirements are met) if all the documented criminal records are older than six months and involve either: a non-conviction or a misdemeanor conviction not

involving a crime against a minor. However, if any person has: a prior felony conviction that was not reduced to a misdemeanor; a prior misdemeanor conviction for a crime against a minor; or, within the previous six months, either a misdemeanor conviction or charges filed, they are required to complete an FBI fingerprint background check and undergo an individualized character determination by the SBA—before a lender may process the loan. (It is not known how often lenders actually proceed with the FBI/SBA process at that point rather than simply deny the application; it is also not known how often the SBA finds that such a person meets the “good character” requirement in its policy statement). A person who receives an adverse character determination may request a reconsideration within six months of a decision and must include additional information or documentation. Factors that contribute to a favorable reconsideration include information that explains the circumstances of the offense, the passage of time during which the person has not committed additional offenses “and has generally led a responsible life and contributed to the community,” and any additional law enforcement or court documentation. See SBA SOP 50-10(6) (Oct. 1, 2020).

²² See 13 C.F.R. §120.707 (“An Intermediary may also make Microloans to businesses with an Associate who is currently on probation or parole; provided, however, that the Associate is not on probation or parole for an offense involving fraud or dishonesty or, in the case of a childcare business, is not on probation or parole for an offense against children.”).

²³ See Taja-Nia Y. Henderson, *New Frontiers in Fair Lending: Confronting Lending Discrimination Against Ex-Offenders*, 80 N.Y.U. L. Rev. 1237, 1260 (2005) (“Notably, neither the SBA nor the private banking industry has attempted to measure the relationship between criminal exposure and creditworthiness.”).

²⁴ Record-related barriers covering USDA lending programs appear to be few and targeted, rooted in statutes, and triggered by specific offenses. See, e.g., 21 U.S.C. § 889 (conviction for planting, cultivation, growing, producing, harvesting, or storing a controlled substance triggers prohibition for that crop year and four succeeding crop years on access various USDA loan, grant, payment and contract programs); 7 C.F.R. § 718.6 (same); 7 U.S.C. § 2209j (permanent or 10-year debarment from USDA programs for fraud in connection with USDA programs); 2 C.F.R. § 417.865 (same). One of the USDA’s business loan programs, for example, the Business & Industry (B&I) Loan Guarantees program, which is similar to the SBA 7(a) program but targeted to rural businesses, does not appear to contain any additional criminal history restrictions except an optional bank “character” review that is not specifically linked to criminal record. See 7 C.F.R. § 5001.202 (“When applicable, a [lender’s] evaluation [of an applicant] may include the character of persons with management control or a 20 percent or more ownership interest in the borrower.”).

²⁵ “Prior to the approval of any loan made pursuant to this subsection, or section 503 of the Small Business Investment Act of 1958 [15 U.S.C. 697], the Administrator may verify the applicant’s criminal background, or lack thereof, through the best available means, including, if possible, use of the National Crime Information Center computer system at the Federal Bureau of Investigation.” 15 U.S.C. § 636(a)(1)(B).

²⁶ Cf. 13 C.F.R. § 120.150(a) (SBA regulation stating that it will consider “character” and “reputation” in determining if an applicant is “creditworthy”).

²⁷ See Department of Housing and Urban Development (HUD) Act of 1968, P.L. 90-448 § 1106(e). In addition, the SBA, like every federal agency, is subject to government-wide provisions that can result in disqualification from federal loans and grants for a period of time based on specific types of criminal convictions.

²⁸ See Schlüssel, *Applying for SBA COVID-19 relief*, *supra* note 19.

²⁹ See note 21.

³⁰ See, e.g., SBA SOP 50-10(6), pp. 152-57 (Oct. 1, 2020) (“The Agency requires that every proprietor, general partner, officer . . . must be of good character”). The notable exception was after the SBA was sued for failing to provide a reason for its criminal history restrictions in the Paycheck

Protection Program, the SBA revised its rules and stated that the pared back rules were based on the risk that being incarcerated, facing felony charges, or having recently been placed on parole or probation could impact ability to pay or potential misuse of funds. *See Defy Ventures, Inc. v. SBA*, 469 F. Supp. 3d 459, 476 (2020) (summarizing June 24, 2020 Interim Final Rule).

³¹ See SBA SOP 50-10(6), pp. 152-57 (Oct. 1, 2020).

³² See *id.* at p. 154; see also *Is SBA denying disaster relief based only on an arrest?*, Collateral Consequences Res. Ctr. (May 6, 2020), <https://ccresourcecenter.org/2020/05/06/is-sba-denying-disaster-relief-based-only-on-an-arrest/>.

³³ See, e.g., *SBA's bumpy guidance*, *supra* note 14.

³⁴ See, e.g., SBA SOP 50-10(6), pp. 152-57 (Oct. 1, 2020).

³⁵ See, e.g., *id.*

³⁶ See Bushway, et al., *Small Businesses, Criminal Histories, and The Paycheck Protection Program*, *supra* note 9 at 8 (“Although we do not have complete data on race, we find that the original PPP restrictions differentially affected Black individuals. The nationwide data that we have in which the race of the owner is known suggest that 24 percent of the businesses affected by the original restrictions were owned by Black individuals. This percentage could be much higher if Black owners are overrepresented among owners who have a missing racial status in the records.”); Finlay, et al., *Criminal Disqualifications in the Paycheck Protection Program*, *supra* note 14 at 6 (“There is a disparate impact of [PPP] criminal justice-based disqualification criteria by race, sex, and age, with Black and Hispanic men, younger men, and Black women experiencing higher than average exclusion from PPP eligibility due to higher rates of contact with the criminal justice system in each [of the seven state[s] studied.]”).

³⁷ See note 24.



September 27, 2021

Honorable Joyce Beatty, Chairwoman
 United States House Committee on Financial Services, Subcommittee on Diversity and Inclusion
 2129 Rayburn House Office Building, Washington DC 20515

Honorable Ayanna Pressley, Ranking Member
 United States House Committee on Financial Services, Subcommittee on Diversity and Inclusion
 2129 Rayburn House Office Building, Washington DC 20515

Dear Chairwoman Beatty and Ranking Member Pressley,

First Step Alliance, a nonprofit organization committed to advancing successful reentry through improved access to financial services, would like to thank the Committee for holding a hearing on September 28, 2021, on eliminating barriers and increasing economic opportunity for justice-involved individuals. Formerly incarcerated people and their families face numerous obstacles that impair their economic wellbeing and chances of achieving sustainable financial independence. This letter discusses some of the specific issues that can affect the ability of justice-involved individuals to access and benefit from mainstream financial services.

Each year, more than 600,000 people, the majority of whom are people of color and women, are released from our prison systems and attempt to rebuild their lives. While there is increasing support from reentry and other community-based organizations for housing and employment assistance, when it comes to accessing affordable financial services, many of these individuals hit a roadblock. Formerly incarcerated individuals frequently encounter a financial system that doesn't welcome them back into the mainstream, often forcing them to use check cashers, payday lenders and other high-cost, non-bank options. They have difficulty opening a checking account, have often had their identity stolen and find it nearly impossible to get a loan; they are frequently in debt due to fines and fees owed before and during their period of incarceration.

First Step Alliance recently published a report entitled *Economic Wellbeing of U.S. Adults with Experiences with Incarceration & Unpaid Legal Costs*.¹ The information and observations included in the report were based on data obtained from the 2019 *Federal Reserve Board Survey of Household Economic Decision-making (SHED)*,² a study the Fed conducts every year to understand the range of financial challenges and opportunities facing families in the United States. The report provides quantitative evidence of some of the economic issues and outcomes for formerly incarcerated individuals when compared to the general population. According to the study, one in five (20%) of U.S. adults have had a member of their immediate family imprisoned or jailed for at least one night. Access to financial services is a significant challenge for many justice-impacted individuals, who were 2x more likely to be unbanked or underbanked (32% vs. 15%).³ Excessive account fees, a history of banking issues, certain felony convictions, and the lack of valid identification, can contribute to this outcome.

Prior banking problems and a criminal record can effectively shut many justice-involved individuals out of mainstream financial services. Specialty consumer reporting agencies, like ChexSystems and Telecheck,

¹ Spencer Watson, First Step Alliance, [Economic Wellbeing of U.S. Adults with Experiences with Incarceration & Unpaid Legal Costs](#) (July 2020)

² Federal Reserve Board, [Report on the Economic Wellbeing of U.S. Households in 2019](#) (May 2020)

³ First Step Alliance, *supra* note 1.



offer banks and credit unions a means to track and report consumers across the banking system.⁴ Negative remarks on a consumer's report indicating they are a "high risk" can lead to a checking or savings account denial by a financial institution. About 80% of banks and credit unions use ChexSystems to assess consumer risk, and so blemishes on a report can prevent many individuals with prior convictions or banking issues from opening accounts at the majority of financial institutions.⁵ Based on anecdotal information and comments on a blog post from Successful Release,⁶ previously established accounts can also be flagged at any time, triggering an account closure. This can happen for a number of reasons, including unpaid overdraft fees accumulated during incarceration.

The Bank Secrecy Act and Anti-Money Laundering regulations (BSA/AML) concerning identity verification also contribute to account opening barriers for formerly incarcerated people. Under AML requirements, financial institutions must implement a written Customer Identification Program (CIP) that minimally includes obtaining certain information from the customer to reasonably verify their identity. For an individual, this includes name, date of birth, residential address (or address of next of kin) and social security number. According to the February 2021 *Federal Financial Institutions Examination Council (FFIEC) BSA/AML Examination Manual*:

The CIP rule gives examples of the types of documents that may be used to verify a customer's identity. The rule reflects the federal banking agencies' expectations that, for most customers who are individuals, banks review an unexpired government-issued form of identification evidencing a customer's nationality or residence and bearing a photograph or similar safeguard; examples include a driver's license or passport. However, other forms of identification may be used if they enable the bank to form a reasonable belief that it knows the true identity of the customer.⁷

Obtaining or reinstating a driver's license or passport can be extremely difficult for many formerly incarcerated people. Often they are prevented from getting a driver's license under state law because of unpaid court costs and probation fees, prior traffic violations, or child support that has accrued during their incarceration. As a driver's license is the most widely accepted form of identification, justice-involved individuals are less able to open bank accounts and may also be prevented from entering into other financial or contractual obligations, such as lease agreements.

Further adding to economic barriers are the challenges justice-impacted individuals encounter in accessing credit. Traditional credit scoring metrics, such as those used in the FICO score or VantageScore, vastly reduce the likelihood of credit approval for formerly incarcerated people. According to a research study by Abhay Aneja (UC Berkeley) and Carlos F. Avenancio-Leon (Indiana Univ – Bloomington), each year of confinement leads to a drop of 32 points in a person's credit score.⁸ The researchers find that as the system is currently designed, the drop in credit score, inability to open a checking account, or access credit or other mainstream financial services have the unintended consequence of increasing recidivism by 20%. The report concludes by stating that financial inclusion and having access to mainstream financial services – checking and credit accounts – are critical for successful ex-offender reintegration and a reduction in reincarceration.

⁴ Mehrsa Baradaran, *How the Other Half Banks: Exclusion, Exploitation, and the Threat to Democracy* (Harcourt 2017)

⁵ Spencer Tierney, NerdWallet [Blacklisted by ChexSystems? What to Know](#) (December 17, 2020)

⁶ Adam Sanders, Successful Release, [Guide to Opening a Bank Account For Felons](#) (October 2015)

⁷ FFIEC BSA/AML Examination Manual, [Customer Identification Program dated February 2021](#) (accessed September 23, 2021)

⁸ Abhay P. Aneja, Carlos F. Avenancio-Le'on, [No Credit For Time Served? Incarceration and Credit-Driven Crime Cycles](#) (May 2020 Abstract)



The damage to an individual's credit has severe implications. Consider the following: nearly 1 in 6 people with personal or family experiences with prison or jail have "poor" or "very poor" credit scores, 2x more often than those without these experiences. Little to no credit, or damage to their credit while incarcerated, can prevent formerly incarcerated people from qualifying for even a small loan. More than 1 in 3 people were turned down for credit in the previous year, nearly 2x more often than for the general population.⁹ Inability to obtain credit, particularly to finance cars, businesses or homes, greatly impairs someone's capacity to rebuild their life, achieve financial security, and create long-term wealth for themselves and their families.

Bank fees and other account terms and conditions are yet another barrier to entry. According to an article published in the Berkeley Economic Review:

*...the banking system is not designed with low- and middle-class households in mind. At major banks, such as Wells Fargo, Chase, and Bank of America, 25 to 40% of checking accounts are simply not profitable and are described as "money losing." To combat this, overdraft fees, debit card swipe fees, ATM withdrawal fees, wire transfer charges, among other charges and fees are imposed. These charges that appear around every corner of the banking system create a significant burden and barrier of entry for low- and middle-income individuals.*¹⁰

Exclusion from traditional banking and credit products forces many formerly incarcerated people to rely on alternative financial services (AFS), such as payday lenders, check cashers, and pawnshops, for their financial needs. In fact, justice-impacted individuals and their family members are 2x more likely than the general population to have used one or more alternative financial services.¹¹

Alternative financial services are often predatory in nature, and do not provide individuals with opportunities to save, build credit or develop financial security. However, it should also be noted that certain bank fees can be even more costly, and, as such, may also contribute to the high use of AFS for low-income households. The Berkeley Economic Review elaborates on this issue:

*Despite the high risk that comes with these services, they are often the only financially feasible option for low- and moderate-income individuals. However, the annual percentage rates for payday loans are between 300 and 600%; if overdraft fees were treated as a payday loan that is repaid within three days, the APR would be 1700%. Considering the fact that 12 million Americans take out payday loans each year, multiple times a year, and the assumption is made that if these Americans turned to financial institutions, they would incur overdraft fees in place of payday loans, overdraft fees would become far too burdensome and costly for low-income individuals. This is the very reason that low- and moderate-income individuals tend to turn to financial alternatives for their banking needs.*¹²

The opportunity to acquire financial knowledge is also limited for justice-impacted individuals. According to the Center for Financial Inclusion/Accion, *Basic understanding of how to manage personal finances and efficiently allocate earnings are crucial components of ensuring offenders do not turn back to crime in*

⁹ First Step Alliance, *supra* note 1.

¹⁰ Berkeley Economic Review, [Banking and Poverty: Why the Poor Turn to Alternative Financial Services](#) (April 15, 2019)

¹¹ First Step Alliance, *supra* note 1; Rachel Morpeth, Center for Financial Inclusion/Accion, [Financial Literacy for Convicted Felons: A Way to Lower Recidivism?](#) (November 21, 2019)

¹² Berkeley Economic Review, *supra* note 10.



desperation.¹³ Although a number of reentry programs offer financial education workshops, their efficacy is generally limited because of their short-term nature. Financial education is needed over a longer period to be effective for those individuals who do not have any prior knowledge or managed a bank account in the past. Recognizing the critical importance of improving access to financial education prior to someone's release from prison, in 2017, the Pennsylvania Department of Corrections and Pennsylvania Department of Banking and Securities (DoBS) created an interagency collaboration to improve reentrants' financial capability. A jointly published report detailed the findings over a one-year period, and presented some compelling information on the potential connection between having a bank or credit union account and a lower rate of recidivism:

One of the many challenges faced by men and women returning to society – sometimes after decades of incarceration – is their unfamiliarity with financial concepts and tools. Opening a banking account, using a credit card, or saving money can be overwhelming and intimidating. Often, reentrants make mistakes with finances because of a lack of knowledge, thus creating problems in their personal lives that can lead to narrower ranges of choices and bad decisions. History has shown these bad decisions have led to additional criminal charges and incarceration. Corrections' research has shown that 73 percent of 'successful reentrants' (those out three or more years) had an account with a bank or credit union. Of unsuccessful reentrants (those recidivating before three years) only 39 percent had accounts.¹⁴

The mainstream banking system, as it exists today, is not very welcoming to low-income individuals, and justice-impacted people experience even greater challenges. While some financial institutions do offer second chance banking programs, these programs are not widely available: only about 3% of credit unions and less than 1% of commercial banks offer these accounts, and often the terms and conditions are less attractive and affordable than accounts available to general consumers. Most financial institutions impose high service charges and/or minimum balance requirements, as well as have other account restrictions. Furthermore, many banks and credit unions will not open accounts for individuals with certain types of felony convictions.¹⁵ Some fintech providers, such as Chime and Axos, provide "non-traditional" banking alternatives for formerly incarcerated individuals, as they appear to be more lenient in their account opening decisioning process (i.e., they do not use ChexSystems). Products available on these platforms, however, are generally limited to basic checking accounts and debit cards with relatively high usage fees. Additionally, consumers do not have access to financial guidance or to the more robust customer service banks and credit unions typically provide.

Suggestive of ways to move forward, in 2019, the Cities for Financial Empowerment Fund (CFE) created the Bank On national certification program to improve access to safe and affordable bank or credit union accounts. According to Bank On, there are now approximately 100 bank and credit union accounts certified as meeting their National Account Standards, a pricing template built around low costs and no overdraft fees.¹⁶ These developments are encouraging, but more work needs to be done that focuses on the specific banking issues formerly incarcerated individuals continue to face.

¹³ Financial Literacy for Convicted Felons, supra note 11.

¹⁴ John E. Wetzel, Pennsylvania Secretary of Corrections, Robin L. Wiessmann, Pennsylvania Secretary of Banking and Securities [Finances After Prison: A Collaborative Approach](#) (February 2018)

¹⁵ Spencer Tierney, Chanelle Bessette, NerdWallet, [Second Chance Checking Accounts Across the U.S.](#) (August 13, 2020)

¹⁶ [Bank On](#) (accessed September 24, 2021)



There are several actions financial institutions can take to help reduce entry barriers for justice-impacted individuals:

- When assessing consumer risk, in addition to the “black box” information obtained from reporting agencies, such as ChexSystems, FICO and VantageScore, financial institutions should incorporate more holistic quantitative and qualitative evaluation criteria. Current algorithms used by these agencies to calculate risk scores are primarily based on historical information; for many impacted individuals, this will result in a negative outcome. To address this issue, banks and credit unions might also consider using current and forward-looking data about the individual and their financial behavior, such as on-time bill payments, length of employment, and other metrics that point to responsible money management.
- For identity verification purposes, financial institutions should consider accepting alternatives to a driver’s license or passport, when these documents are not readily available – such as a prison or other state-issued photo id. Government regulatory guidelines permit the use of other forms of identification that enable financial institutions to form a reasonable belief they know the customer’s true identity.¹⁷
- All banks and credit unions should offer low-cost, no overdraft second chance programs to improve access to safe and affordable banking products for justice-impacted households. Credit counseling services and financial education resources should also be provided to these customers to help them create a roadmap to financial wellbeing.

In summary, justice-involved individuals experience significant issues when it comes to fair treatment in banking. As a population, they are largely unbanked, unable to obtain the financial services they need to create a path forward. With limited access to mainstream financial services, it is very difficult for formerly incarcerated people to get back on their feet, become productive members of society and achieve long-term financial health.

The financial services industry should take a more holistic, supportive approach to addressing the financial challenges of this highly marginalized community. Past mistakes may not be indicative of future behavior, and everyone deserves a second chance. We respectfully request the Committee take steps to encourage banks and credit unions to examine their existing account opening policies and procedures, incorporate additional risk assessment criteria into their decisioning processes, and offer affordable, second chance programs for formerly incarcerated individuals. Removing some of the current financial services barriers will help drive economic empowerment and can result in more positive outcomes for many justice-involved people and their families, while also helping reduce recidivism.

Sincerely,

First Step Alliance

email: info@firststepalliance.org

website: www.firststepalliance.org

CC:

Honorable Maxine Waters, Chairwoman, United States House Committee on Financial Services
 Honorable Patrick McHenry, Ranking Member, United States House Committee on Financial Services

¹⁷ FFIEC BSA/AML Examination Manual, supra note 7.



3138 10th Street North
Arlington, VA 22201-2149
703.522.4770 | 800.336.4644
f: 703.524.1082
nafcu@nafcu.org | nafcu.org

National Association of Federally-Insured Credit Unions

September 27, 2021

The Honorable Joyce Beatty
Chairwoman
Diversity and Inclusion Subcommittee
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

The Honorable Ann Wagner
Ranking Member
Diversity and Inclusion Subcommittee
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

RE: Tomorrow's Hearing Entitled "Access Denied: Eliminating Barriers and Increasing Economic Opportunity for Justice-Involved Individuals"

Dear Chairwoman Beatty and Ranking Member Wagner:

I am writing on behalf of the National Association of Federally-Insured Credit Unions (NAFCU) in conjunction with tomorrow's hearing to examine means of promoting equal treatment in housing and the financial services industry for individuals who have come into contact with the criminal justice system. As you are aware, NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 127 million consumers with personal and small business financial service products.

NAFCU supports the aim of the draft "Expanding Opportunities in Banking Act" in reducing barriers to employment on the basis of past minor offenses and hopes that this legislation is formally introduced and receives consideration from the Financial Services Committee. A similar effort to reduce barriers to employment has been a National Credit Union Administration priority under the leadership of chairmen from both parties, and NAFCU was pleased to support the agency's Second Chance Interpretive Ruling and Policy Statement in 2019. Additionally, NAFCU supports measures to increase access to financial services for all, including draft legislation before the Committee that would allow credit unions to add underserved areas to their fields of membership and H.R. 4590, the *Promoting New and Diverse Depository Institutions Act*, which would address the obstacles that impede the formation of new credit unions like the proposed Returning Citizens CU.

We thank you for the opportunity to share our thoughts on the importance of fighting discrimination in the financial services sector. Should you have any questions or require any additional information, please contact me or Clark Derrington, NAFCU's Legislative and Regulatory Assistant, at 703-842-2219 or cderrington@nafcu.org.

Sincerely,

Brad Thaler
Vice President of Legislative Affairs

cc: Members of the House Financial Services Subcommittee on Diversity and Inclusion



Rebecca Dixon
Executive Director

www.nelp.org

NELP National Office
90 Broad Street
Suite 1100
New York, NY 10004
212-285-3025

Washington, DC Office
1350 Connecticut Ave. NW
Suite 1050
Washington, DC 20036
202-640-6520

California Office
2030 Addison Street
Suite 420
Berkeley, CA 94704
510-982-5945

Washington State Office
300 Lenora Street #357
Seattle, WA 98121
206-324-4000

September 24, 2021

The Honorable Joyce Beatty
Chairwoman, Subcommittee on Diversity & Inclusion
U.S. House Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

RE: Subcommittee Hearing on "Eliminating Barriers and Increasing Economic Opportunity for Justice-Involved Individuals"

Dear Chairwoman Beatty,

On behalf of the National Employment Law Project (NELP), I write to submit the following information for the record in advance of the subcommittee's September 28, 2021 hearing, "Access Denied: Eliminating Barriers and Increasing Economic Opportunity for Justice-Involved Individuals."

Founded in 1969, NELP is a leading nonprofit advocacy organization with a mission to build a just and inclusive economy where all workers have expansive rights and thrive in good jobs. Together with local, state, and national partners, NELP advances its mission through transformative legal and policy solutions, research, capacity-building, and communications. Our primary goals are to build worker power, dismantle structural and institutional racism, and to ensure economic security for all. In conjunction with allies across the country, NELP works to eliminate the barriers to employment that people with records face and to examine connections between the labor market and carceral systems.

Thank you for the opportunity to submit the following information about improving access to financial services jobs for workers with records. Congress has the obligation and opportunity to both reform the laws that lock people with records out of financial services jobs and demand better of employers who unnecessarily screen out qualified workers with records. Thank you again for your time and attention to this important issue.

Respectfully submitted,

A handwritten signature in blue ink that reads "Beth Avery".

Beth Avery
Senior Staff Attorney

bavery@nelp.org
510-663-5708





LETTER FOR THE RECORD | SEPTEMBER 2021

Submitted for the Record by Beth Avery

National Employment Law Project

Access Denied: Eliminating Barriers and Increasing Economic Opportunity for Justice-Involved Individuals

**Hearing before the
U.S. House of Representatives**

Committee on Financial Services

Subcommittee on Diversity and Inclusion

September 28, 2021

Beth Avery
Senior Staff Attorney

National Employment Law Project
2030 Addison Street, Suite 420
Berkeley, California 94704

510-663-5708
bavery@nelp.org

Improving Access to Financial Services Jobs for Workers with Records

Introduction

Chairwoman Beatty, Ranking Member Wagner, and members of the subcommittee, thank you for your attention to this important issue. I appreciate the opportunity to submit this information for the record ahead of the subcommittee's September 28, 2021 hearing, "Access Denied: Eliminating Barriers and Increasing Economic Opportunity for Justice-Involved Individuals." I am Beth Avery, a senior staff attorney with the National Employment Law Project.

Founded in 1969, the nonprofit National Employment Law Project (NELP) is a leading advocacy organization with a mission to build a just and inclusive economy where all workers have expansive rights and thrive in good jobs. Together with local, state, and national partners, NELP advances its mission through transformative legal and policy solutions, research, capacity-building, and communications. Our primary goals are to build worker power, dismantle structural and institutional racism, and to ensure economic security for all. In conjunction with allies across the country, NELP works to eliminate the barriers to employment that people with records face and to examine connections between the labor market and carceral systems.

Workers with records need and deserve reliable access to income through employment. They deserve safe, good-paying, stable jobs. But a huge proportion of the millions of people with records are denied work because of overly broad and unnecessary barriers enacted by law or employer bias. Even when they find work, people with records can expect to earn less for the rest of their lives.

Because of massive investments in a legal system that criminalizes and incarcerates people of color, Black and Latinx people are much more likely to have a record than white people. Laws and employer policies that exclude people with records, therefore, disproportionately impact Black and Latinx workers, who already face higher unemployment and worse pay than white workers. In fact, a disproportionate share of people in underpaid, insecure, and unsafe jobs are Black and brown. But occupational segregation is not inevitable or accidental; excluding people with records from good jobs represents one set of policy choices that reinforces it.

The financial services sector is overwhelmingly white and grows even more so as you move up the corporate ladder. The exclusion of people with records contributes to the lack of Black and Latinx employees in the sector. Federal laws unnecessarily prohibit financial services employers from hiring many people with records. Legal barriers, however, are not the sole mechanism locking out people with records. Employers also respond to the stigma of a record and choose not to hire eligible and qualified workers with records. Both laws and employer practices must change if meaningful steps are to be taken toward improving access to good jobs for people with records and racially integrating the financial services workforce.

Excluding Workers with Records from Good Jobs Contributes to a Racially Segregated Workforce

A massive population of people with records, who are disproportionately Black and Latinx, are systematically locked out of good jobs and careers across the country because of unnecessary barriers erected by both lawmakers and employers. Their exclusion holds back Black and Latinx families, in particular, and contributes to racial wage and wealth gaps.

The Stigma of a Record Destroys Job Prospects, Especially for Black Workers

The United States imprisons more of its people than any other nation.¹ More than 70 million people—or nearly one in three adults—have an arrest or conviction record that can show up on an employment-related background check.² Over 600,000 people return to their communities following a term of incarceration every year.³

For a variety of reasons, ranging from over-policing and racial profiling to racist charging and sentencing decisions, the people impacted by mass criminalization are disproportionately Black and Latinx.⁴ On average in state prisons, Black people are incarcerated at over five times the rate of white people; in five states, at over 10 times the rate.⁵ Nearly one-third of adult Black men have a felony record, as compared with 8 percent of the overall adult population.⁶ These race disparities cannot be attributed to significantly different rates of offending.⁷

The stigma of a record can destroy employment prospects, having an especially unfair impact on Black workers. Not only are Black communities more impacted by mass incarceration, but Black workers are penalized in the labor market more harshly than white workers for having a record.⁸ Simply put, bias against workers with records is inseparable from anti-Black racism. Unemployment statistics make this connection especially obvious.

The unemployment rate for Black workers has remained double that of white workers throughout the past 50 years.⁹ Meanwhile, workers who have been incarcerated are four to six times more likely to be unemployed than other workers.¹⁰ In fact, pre-pandemic estimates put the unemployment rate for formerly incarcerated people higher than peak unemployment during the Great Depression (24.8 percent).¹¹ In 2008, when the general unemployment rate was just 5.8 percent, an estimated 27.3 percent of formerly incarcerated people were unemployed.¹²

The challenges faced by workers with records are compounded by issues of racial and gender justice. While someone who has been incarcerated is much more likely to be jobless, it is especially likely for Black men and women with records.¹³ White men and women face

unemployment rates 14 percent and 18 percent higher, respectively, if they have been incarcerated.¹⁴ Black men and women see much greater prison penalties: formerly incarcerated Black men and women see unemployment rates 27 percent and 37 percent higher, respectively, than their counterparts who have not been incarcerated.¹⁵

Locking workers with records out of employment is unfair not just to those workers, but also to their families, neighborhoods, and communities. Quality employment is critical to successfully rejoining one's community after incarceration: studies show that employment is the single most important influence on decreasing recidivism¹⁶ and that higher wages translate to lower recidivism.¹⁷

When people with records can't access work, their families suffer. Needlessly blocking people with records from good jobs means their children and families are less likely to receive the resources and opportunities they deserve.¹⁸ Nearly half of U.S. children have at least one parent with an arrest or conviction record.¹⁹ Black households disproportionately lose wage earners first to incarceration and then to a labor market that excludes people with records. One in nine Black children have an incarcerated parent as compared with 1 in 57 white children.²⁰ All told, mass incarceration significantly contributes to poverty and helps explain why poverty has remained high despite general economic growth in recent decades.²¹

Disadvantaging Workers with Records Exacerbates Occupational Segregation

Unemployment statistics, while important, don't tell the full story. Across the nation, working people of color are segregated into the lowest paid, least stable, and most dangerous jobs.²² After controlling for education, 87 percent of occupations in the United States can be classified as racially segregated.²³ This stratification perpetuates racial wage gaps and contributes to a growing racial wealth gap. The median Black household holds approximately 12 cents for every dollar of wealth held by the median white family.²⁴ Black women earn just 63 cents for every dollar earned by a white man—whether they both have less than a high school education or advanced degrees.

Labor market inequity is especially apparent for workers with records, who are typically expected to be grateful for even the worst job opportunities. People with records are often offered only jobs that are temporary, pay inadequate wages, and provide little or no chance for advancement.²⁵ When acceptable jobs aren't available, they don't have the luxury to wait for something better to come along. People under court surveillance, including those on parole or probation, are often forced—under threat of reincarceration—to accept underpaid, dangerous, and unstable work.²⁶

Black workers earn less than white workers at all levels of education, and the gap has only gotten worse in the past 20 years.²⁷ Having a record further reduces wages for a person's entire life. That reduction reinforces the racial wage gap because workers with records are disproportionately Black and Latinx. After incarceration, individuals can expect their wages to drop for the rest of their lives, resulting in their lifetime earnings being cut in half.²⁸ Those who have been convicted but not incarcerated also see wage decreases that last for the rest of their lives.²⁹ Even a misdemeanor conviction reduces annual earnings by an average of 16 percent.³⁰ All told, the communities of people with conviction records lose total income equal to \$372.3 billion each year.³¹

Jobs in the Overwhelmingly White Financial Services Sector Must Be Opened to People with Records

Occupational segregation is apparent throughout the economy³² and within the financial services industry. The financial services workforce is overwhelmingly white, especially in senior positions. Black and Latinx workers who make it through the door and are hired into the sector are concentrated in the most junior, lowest paid jobs. Black and Latinx representation among workers at large finance and insurance companies drops steadily and significantly as you move up the corporate ladder.³³ Nearly 9 in 10 of the highest paid, senior-most employees at such companies are white.³⁴ At that top level, Black workers represent just 2.6 percent, and Latinx workers just 3.7 percent, of employees.³⁵

Despite growing evidence that diverse companies perform better³⁶ and increasing talk across the industry about the value of racial diversity, Black representation among mid- and executive-level positions in financial services has actually *decreased* in recent years.³⁷ Financial services companies must therefore redouble their efforts toward hiring, retaining, and promoting Black and Latinx workers—and be held accountable for doing so. That endeavor will require a fresh examination of the ways employers may be locking out workers of color and inhibiting their success once hired, including the refusal to hire people with conviction records.

Sometimes laws keep people with records from accessing stable careers and good jobs.³⁸ Just as often, however, employer bias against the stigma of a record is to blame. One landmark study observed dramatic drops in employer callback rates when job applicants made their records known: callbacks halved for white applicants with records and dropped by two-thirds for Black applicants with records.³⁹ Underlining the potency of anti-Black racism, the study also found that white applicants *with* records received a higher rate of callbacks than Black applicants *without* a record.⁴⁰

Expanding employment opportunities for people with records is not a silver bullet to undo the effects of centuries of systemic racism in the labor market. And opening financial services jobs to workers with records will not alone erase the employment struggles of people with records. Nevertheless, opening good jobs in financial services to people with records can help contribute to a more racially integrated workforce. It is one strategy that legislators and financial services companies alike must undertake to address the undeniable, ongoing problem of racial segregation in the industry.

Legal Restrictions on Hiring Workers with Records in Financial Services Must Be Substantially Narrowed and Processes Streamlined

Several federal laws must be reformed to remove unnecessary restrictions against hiring people with records in financial services. Overall, the restrictions in these laws are much too broad. Exclusions apply to offenses unrelated to jobs in finance and offenses that occurred long ago. Restrictions apply to even positions that don't access sensitive information or funds. Even when exceptions to disqualification are possible via agency approval, the processes for obtaining such approval are burdensome and lengthy, creating barriers in themselves.

Because the most broadly applicable and sweeping restrictions are included in the Federal Deposit Insurance Act, I will focus my testimony on that law. But other federal laws, including the Federal Credit Union Act, Truth in Lending Act, and Securities and Exchange Act, also contain employment restrictions in need of reform. Clearly, legislators and agency personnel have been responding to the stigma of a record more than to facts and logic when creating these laws and their implementing regulations.

Federal Deposit Insurance Act

Section 19 of the Federal Deposit Insurance Act (FDI Act)⁴¹ is not appropriately tailored to its purported purpose of protecting consumer finances. In short, the restrictions are too broad. They include too many offenses over too long a period and apply to too many job positions. Moreover, the requirement for people with covered offenses to obtain pre-clearance from the Federal Deposit Insurance Corporation (FDIC) is unworkable in practice—burdening individuals and costing them the very jobs for which they need the clearance.

Overly Broad Restrictions

Section 19 imposes hiring limitations on *all* positions with a federally insured depository institution. Disqualifications are not limited to individuals whose job allows them access to funds or sensitive information. Nonsensically, the same broad exclusions apply whether an individual is applying to be a bank president or to perform clerical or custodial tasks. On their face, these exclusions are unfair, and further analysis reveals that they disproportionately hold back workers of color.

The law prohibits FDIC-insured institutions from hiring anyone convicted of a wide array of “covered offenses” without first obtaining consent from the FDIC. Covered offenses are defined as those involving “dishonesty or a breach of trust or money laundering.”⁴² Those categories should be narrowed. They are overbroad and include numerous offenses that are not related to working in financial services. For example, they include all controlled substances offenses with the sole exception of “simple possession.”⁴³ Not only are drug offenses unrelated to financial services, but these exclusions disproportionately and unfairly exclude Black workers because of the misguided and racist “war on drugs.” White people are more likely to sell illegal drugs, but Black people are far more likely to be arrested for drug offenses.⁴⁴ Section 19’s broad exclusionary categories needlessly lock out workers with unrelated offenses from working in financial services.

Any time limit on covered offenses is also missing from Section 19. A worker must proceed through the same approval process whether a conviction occurred less than one year ago or 20 years ago. Academic research demonstrates that this lifetime requirement is unnecessary and unwise. One notable study concluded that, six or seven years after release, the likelihood of committing an offense was only marginally higher for a formerly incarcerated person than for the general population.⁴⁵ More recent research concluded that, after a relatively short time, ranging from three to seven years for different offenses, the probability of a new arrest for an individual with a record fell *below* the probability for the general population.⁴⁶

Section 19 also includes various blanket bans with no possibility of exception by the FDIC. For a period of 10 years after conviction, no FDIC consent is possible for an offense listed in Section 19(a)(2).⁴⁷ As explained above, 10 years is an overly long period of exclusion that is

unsupported by data. Even if all listed offenses are finance-related, any blanket ban is wrong because it automatically disqualifies individuals without a case-by-case assessment. We only need to look at the unfair consequences of mandatory minimums or “three strikes” rules in the sentencing context to understand that the lack of any possibility for exception can lead to extreme and unfair outcomes.

Finally, Section 19 and its rules are unnecessarily confusing when it comes to determining whether an individual with any particular record must apply for FDIC consent. That determination requires at least a two-step analysis. First, the individual and bank must determine whether an offense is “covered,” and then, they must determine whether that covered offense is “de minimis.”⁴⁸ The FDIC categorizes certain insignificant covered offenses as “de minimis,” and, for those offenses, FDIC consent is automatically granted.⁴⁹ This complicated analysis makes it harder for workers to determine if they need to apply for FDIC consent and may also lead banking employers to erroneously assume that certain workers need FDIC consent.

Overly Burdensome Process for Obtaining FDIC Consent

Even when FDIC consent is possible, the process for obtaining that consent is itself a barrier. Receiving consent typically involves a burdensome application process that does not operate as designed.

The complexity and burdensome paperwork required by the application process inhibits people from even applying for FDIC consent. Overall, few Section 19 applications are submitted to the FDIC, and even fewer are pursued to completion. Between 2008 and 2018, a total of approximately 1,200 Section 19 applications were filed.⁵⁰ That translates to approximately 110 applications per year across the country. Almost half of those applications were withdrawn or otherwise abandoned before the FDIC reached a decision.⁵¹

Applicants must gather and submit much information to the FDIC. In addition to submitting the application form and fingerprints for an FBI background check, individuals are required to submit complete court records for their past offenses. Such records can be costly to obtain, and it can take applicants months to gather them. Some records, such as for very old offenses, can be impossible to obtain.

After gathering the required information and submitting their applications, individuals must wait for the FDIC to complete its review. They may not work in a bank while their application is pending. From the time an application is received until the FDIC makes a decision, applicants are required to wait an average of 106 days for the more common individual waiver applications and 52 days for bank-sponsored applications. If an individual had a job offer to work in a bank when this process began, it is likely long gone by the time the process is completed.

An application for FDIC consent must be “bank-sponsored” and filed by the employer on behalf of the individual unless the FDIC grants a waiver of that requirement for “substantial good cause” shown.⁵² By and large, however, employers decline to sponsor the applications of workers. Between 2008 and 2019, less than 14 percent of Section 19 applications were bank-sponsored.⁵³

Employer refusal to sponsor worker applications is especially unfortunate because sponsored applications require a shorter time for review and are more likely to be approved. Individual waiver applications must be reviewed by both the FDIC regional and national offices, whereas bank-sponsored applications need be reviewed only by the regional office. The average time to review a sponsored application in 2018 was less than half the time required for individual waiver applications.⁵⁴

Bank-sponsored applications are generally more successful. In 2018,⁵⁵ for example, 56 percent of bank-sponsored applications were approved as compared with 32 percent of individual waiver applications.⁵⁶ This difference may be partially explained by the fact that the FDIC assesses bank-sponsored applicants for the specific position into which they are being hired. The FDIC considers factors including (1) the position to be held, (2) the amount of influence and control the person will be able to exercise over the management or affairs of the institution, and (3) the ability of management of the insured institution to supervise and control the person's activities.⁵⁷ Thus, for a bank-sponsored applicant to be a bank teller, the FDIC would consider the nature of his or her past offense and the relationship to that specific job. However, because individual waiver applicants are not being hired by a specific bank into a specific position, they are evaluated by the FDIC as if they could work in any bank in any position, from bank teller to bank president.

Finally, the process unnecessarily punishes people who apply for and are denied FDIC consent. When the FDIC denies a Section 19 application, the person's full name, city of residence, and past conviction information is posted on the FDIC's website for anyone to find for years to come.⁵⁸ Online availability of record information is already a problem for anyone with any record; the FDIC does not need to pile on.⁵⁹ Putting this information online to be found through a basic internet search undermines "ban the box" laws across the country, which seek to defer employer access to record information. Furthermore, posting these Section 19 denials online does not help with compliance. Workers with relevant records must affirmatively show that they have obtained FDIC consent; in terms of a person's ability to work at a bank, never applying is equivalent to being denied. Posting denials online also creates a perverse incentive for individuals to withdraw their applications before receiving a determination, thus undermining the utility of FDIC data on success and denial rates.

Federal Credit Union Act, Section 205(d)

Section 205(d) of the Federal Credit Union (FCU) Act largely mirrors Section 19 of the FDI Act. Therefore, the criticisms offered above apply to the law governing credit unions and the agency regulating them, the National Credit Union Administration (NCUA).

In addition, because the NCUA generally follows the FDIC in making regulatory changes, there appears to be significant lag time between the FDIC amending its rules and the NCUA updating its rules to match.⁶⁰ This means that July 2020 improvements to the FDIC rules have not yet been extended to the NCUA rules. For example, the NCUA continues to require agency consent for simple drug possession offenses as well as sealed offenses and some expunged offenses, and its category of "de minimis" offenses remains narrower than under the FDIC.⁶¹ At the very least, NCUA rules should not be stricter than FDIC rules.

Truth in Lending Act

Like the FDI Act and FCU Act, the Truth in Lending Act (TILA) creates exclusions that are not appropriately tailored to the purpose of protecting home loan borrowers. TILA and its implementing regulations⁶² impose restrictions on who may be hired as a “loan originator in a consumer credit transaction secured by a dwelling.”⁶³ “Loan originator” is defined as a person who takes an application, offers, arranges, assists a consumer in obtaining or applying to obtain, negotiates, or otherwise obtains or makes an extension of consumer credit for another person.⁶⁴

While the TILA restrictions apply to a subset of the workers covered by Section 19 of the FDI Act, the restrictions applicable to those workers (home mortgage loan originators) impose broad, blanket bans. Institutions may not hire someone to work as a home mortgage loan originator anyone who has (a) been convicted within the preceding seven years of *any* felony, or (b) *ever* been convicted of a “felony involving an act of fraud, dishonesty, a breach of trust, or money laundering.”⁶⁵

TILA’s prohibition on workers convicted of *any* felony within seven years—even if that felony is completely unrelated to financial services—constitutes an absurdly broad blanket exclusion. Similarly, a *lifetime* exclusion for a broad (and vaguely defined) category of offenses is unfair and unwise. As explained above, old and unrelated records lack any predictive value. While the value to consumers of *any* record-based exclusions is questionable, at a minimum, exclusions should be substantially narrowed to include only those felony convictions that are both recent and directly related to the specific duties of loan originators.⁶⁶

Currently, only very limited exceptions to TILA’s broad prohibitions exist. First, expunged or pardoned convictions are not disqualifying.⁶⁷ Second, employment is not prohibited if the employee received consent from the FDIC or NCUA through the processes described above.⁶⁸ This second exception underlines the importance of improving the rules and process for obtaining FDIC or NCUA consent. Confusingly, some people may be held back by TILA even though their offenses are so insignificant that they need not obtain FDIC consent. For example, an individual with a sealed offense or conviction record for simple drug possession need not obtain FDIC consent; nevertheless, that person may be prohibited from working as a loan originator by TILA and not fall into one of the narrow exceptions.

While increased government oversight of loan originating institutions is a worthwhile goal to avoid a repeat of the 2008 financial crisis, excluding individual workers with records from employment with loan originator organizations does not address that system-wide problem. Instead, it punishes individual workers with records who deserve access to good jobs to support themselves and their families.

Securities Exchange Act of 1934

Section 3(a)(39) of the Securities Exchange Act of 1934 (Exchange Act) imposes restrictions on who may be hired by broker-dealer firms regulated by the Financial Industry Regulatory Authority (FINRA). Those restrictions apply to all employees who sell securities; regularly have access to the keeping, handling, or processing of securities, monies, or the original books and records relating to securities or monies; or supervise someone who performs those job duties.

FINRA-regulated entities are largely prohibited from employing (in the above-described positions) an individual who has been convicted within 10 years of *any* felony or certain misdemeanors.⁶⁹ For the same reasons described above, 10 years is unreasonably long and “any felony” too broad a category of exclusions. Even the list of exclusionary misdemeanors is lengthy.⁷⁰ These restrictions should be substantially narrowed to convictions that are both recent and directly relevant to the regulated jobs.

Obtaining an exception to the blanket disqualifications via consent of FINRA and the Securities and Exchange Commission (SEC) involves a costly and lengthy process.⁷¹ A FINRA-regulated entity must sponsor the association of the disqualified person via Form MC-400 and pay associated fees. The application process can take many months and involves several levels of review. Typically, both FINRA and the SEC must approve the employment of the individual.

Financial Services Employers Share Responsibility for Opening the Sector to Workers with Records

Even if legal barriers to working in financial services are removed, workers with records will continue to face employer-created barriers unless financial services companies are held accountable for increasing access to good jobs. Employers in the sector regularly go well beyond legal requirements and screen out qualified workers with records. Those employers have a responsibility to do better.

We all must play our part to reform the systems that have left 70 million people with records and compensate for the harms of decades of overcriminalization, mass incarceration, and a racially segregated workforce. That includes employers in the financial services sector. Indeed, because of its racist history—from its role in anti-Black slavery to redlining to race disparities in lending⁷²—the U.S. financial services industry owes a special debt to the crisis of anti-Black wealth inequality. Employers have a significant opportunity to change lives for the better by extending good job opportunities to people of color and people with records. We must hold them accountable and ensure that they do not shirk that important responsibility.

Section 19 of the FDI Act Should Require More of Employers

Even with existing Section 19 restrictions in place, financial services employers could implement processes that minimize the exclusionary effects of those rules. For example, banks could notify applicants that FDIC consent is possible, allow prospective employees time to obtain FDIC consent, or sponsor the Section 19 applications of selected candidates. But financial services employers largely fail to take any of these steps, demonstrating how little employers are willing to do *voluntarily* to support workers with records. We must demand more of them.

Banks Do Not Sponsor Section 19 Applications

Even though bank-sponsored applications are generally more successful and take a shorter amount of time to process, most banking employers typically refuse to sponsor the applications of individuals they would otherwise hire. In 2018,⁷³ only 7 percent of Section 19 applications were bank-sponsored.⁷⁴

Employer refusal to sponsor workers does not result from some hardship caused by the application. To the contrary, sponsoring a Section 19 application requires extremely little of an employer. In fact, the employer portion of the current application asks for five simple pieces of information: (1) name of the company, (2) date, (3) address, (4) position in which the applicant would work, and (5) a brief description of the duties and responsibilities of the position.⁷⁵

When a bank sponsors a worker's Section 19 application, the employer is not required to "vouch" for the worker. By signing the application form, the employer confirms only awareness of the individual's conviction record, desire to hire the individual, and awareness of the need to obtain a fidelity bond for the individual (as banking employers do for most employees).⁷⁶ Nevertheless, banking employers do not sponsor many applications.

Banks Fail to Even Notify Workers to Obtain FDIC Consent

Not only have banking employers refused to sponsor Section 19 applications, they have also failed to take even simpler steps. Records from litigation against Wells Fargo provide one salient example of a systematic failure to even inform applicants and current employees that FDIC consent was a possibility and would allow workers with records to begin or continue to work at the bank.

Wells Fargo implemented fingerprint background checks for its current and prospective employees in 2010. Demonstrating utter disregard for the interests of its Black and Latinx employees and job applicants, the bank elected to summarily terminate all employees with Section 19 covered offenses and withdraw conditional offers from all job applicants with such convictions. Predictably, that course of action had stark impacts along racial lines. In the bank's home mortgage division, over the course of just 16 months, Wells Fargo terminated at least 136 Black employees, 56 Latinx employees, and 28 white employees because of their records. Then, between 2013 and 2015, Wells Fargo withdrew conditional offers from at least 1,350 Black or Latinx job applicants and 354 white job applicants. The screening policy clearly impacted Black and Latinx employees much more dramatically than white employees. Nevertheless, Wells Fargo gave them no chance to save their jobs by obtaining FDIC consent. The bank cared so little for these workers that it chose not even to inform them about the possibility of getting FDIC consent, let alone allow them time to obtain that consent.⁷⁷

The refusal of Wells Fargo and other banks to voluntarily sponsor Section 19 applications for their employees and job applicants—or even provide them with adequate notice about that process—highlights another needed reform to the FDI Act. Financial services employers are better positioned than individual workers to know about the laws and agency processes relevant to employment in the sector. Section 19 should therefore require that, when an employer learns that an employee or applicant's record includes a disqualifying offense, the employer must notify job applicants and employees about the possibility of and process for obtaining FDIC consent, including the right to ask the employer to sponsor their application.

Employers Routinely Find Ways Around Legal Requirements to Fairly Consider Job Applicants with Records

Employers regularly choose to exclude workers with records, both when sorting initial applications and later in the hiring process. At the application stage, research reveals that callbacks halve for white applicants with records and drop by two-thirds for Black applicants with records.⁷⁸ For that reason, it's crucial for employers to delay background checks until later in the hiring process, ideally after extending a conditional job offer—an approach known as “ban the box.”⁷⁹

But “banning the box” is not sufficient. As demonstrated by the Wells Fargo example above, candidates with conditional offers and current employees may be treated unfairly. Financial services employers may choose to withdraw a conditional job offer from a candidate when Section 19 is not a barrier—and even when the worker’s record is unrelated to either the duties of the job sought or financial services more generally.

Located in Chicago, the Safer Foundation⁸⁰ provides workforce support for individuals with arrest and conviction records. They have helped individuals with records obtain banking jobs in Chicago with the help of Cabrini Green Legal Aid.⁸¹ The following two client stories illustrate how qualified candidates may clear legal hurdles yet ultimately face rejection because of their records—even by financial services employers that have banned the box and taken some other steps to open their hiring processes to people with records.

“Raven”⁸² is a 40-year-old mother of one. She was raised by a single mother in what she describes as a “poor community” in Chicago. In 2020, she was offered a position with a bank in Chicago. She recounts, “I was so happy, so relieved that I was actually going to have a career” and “a stable environment for me to work in.” At that time, she was nearing the end of parole for a domestic offense from several years earlier. Despite her eligibility under the FDI Act, the bank withdrew her conditional offer after learning that she remained on parole despite having been released from incarceration almost two years prior. The bank responded to the stigma of her record even though her conviction was completely unrelated to financial services or her prospective job duties. Raven was “devastated” and “discouraged” by the rejection. “I know I’m a good person. I made a mistake, and that was my past, and that’s not the person I am [today].” Like all people, Raven deserves a good job so that she can support herself and her family.

“Steven”⁸³ is a 32-year-old man who was a few credits away from earning his bachelor’s degree when he applied to work at a Chicago bank in late 2019. Growing up, he didn’t know anyone who worked at a bank, and banking jobs didn’t seem accessible in his community. Following his interview in November 2019, a bank in Chicago offered him a job as a remittance processor on the spot. As part of the background check process, Steven obtained court records and police reports and paid to have them overnighted to the bank. Steven was eligible to work at the bank under the FDI Act. Nevertheless, a few days before his start date, the bank rescinded his job offer based on the stigma of a 2016 conviction. That conviction was unrelated to financial services or the job duties of a remittance processor. It had resulted in 14 days of county jail time, and, in 2020, Steven was able to have it dismissed pursuant to California law. The rejection had “an emotional effect” on Steven, making him feel that he was “disappointing my family” by “not be[ing] able to get a decent job to provide for myself.”

These individual examples underline the importance of ensuring that workers with records are not excluded unless their past conviction is sufficiently recent and directly related to the regular duties of the job.

Title VII of the Civil Rights Act of 1964 prohibits race discrimination in employment. Because employers' use of criminal background checks can have a disparate impact on Black and Latinx people, record-based exclusions must be "job related for the position in question and consistent with business necessity."⁸⁴ Consistent with federal case law, the Equal Employment Opportunity Commission (EEOC) advises employers to consider at least three factors when determining if an offense is job related: (1) the nature and gravity of the offense, (2) the time that has passed since the offense or the completion of the sentence, and (3) the nature of the job held or sought.⁸⁵

Those factors represent the bare minimum, and employers must take them seriously and apply them in good faith. They should endeavor not to exclude a worker unless the past offense has a direct and specific negative bearing on the worker's ability to perform the duties of the job—not grasp for any articulable reason to exclude the individual because of the stigma of their record.

Conclusion

Congress has the obligation and opportunity to both reform the laws that lock people with records out of financial services jobs and demand better of employers who unnecessarily screen out qualified workers with records. Thank you for your time and attention. I am happy to answer any questions and may be contacted via email at bavery@nelp.org.

Endnotes

¹ Prison Policy Initiative, *States of Incarceration: The Global Context 2021* (2021), <https://www.prisonpolicy.org/global/2021.html>.

² Nat'l Emp't Law Project, *Research Supports Fair Chance Policies* (2016), <http://www.nelp.org/publication/research-supports-fair-chance-policies/>.

³ Nat'l Emp't Law Project, *Fair Chance Licensing Reform: Opening Pathways for People with Records to Join Licensed Professions* 30-31 (2019), <https://www.nelp.org/publication/fair-chance-licensing-reform-opening-pathways-for-people-with-records-to-join-licensed-professions/>.

⁴ The Sentencing Project, *The Color of Justice: Racial and Ethnic Disparity in State Prisons* (2016), <https://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons>; The Nat'l Judicial College, "Most Judges Believe the Criminal Justice System Suffers from Racism," July 14, 2020, <https://www.judges.org/newsand-info/most-judges-believe-the-criminal-justice-system-suffers-from-racism/>.

⁵ The Sentencing Project, *The Color of Justice: Racial and Ethnic Disparity in State Prisons* (2016), <https://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons>.

⁶ Sarah K. S. Shannon, et al., *The Growth, Scope, and Spatial Distribution of People with Felony Records in the United States, 1948-2010*, 54 *Demography* 1795 (2017) (using 2010 data).

- ⁷ Studies demonstrate that, for example, while rates of drug usage are essentially equal among white and Black populations, arrests and convictions for drug offenses are much higher in the Black community. The Sentencing Project, *The Color of Justice: Racial and Ethnic Disparity in State Prisons* (2016), <https://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons>. See also The Hamilton Project, “Chart: Rates of Drug Use and Sales, by Race; Rates of Drug Related Criminal Justice Measures, by Race” (2016), https://www.hamiltonproject.org/charts/rates_of_drug_use_and_sales_by_race_rates_of_drug_related_criminal_justice.
- ⁸ Prison Policy Initiative, *Out of Prison & Out of Work* (2018), <https://www.prisonpolicy.org/reports/outofwork.html>.
- ⁹ Janelle Jones, et al., Econ. Policy Inst., *50 Years After the Kerner Commission* 3 (2018).
- ¹⁰ Dallas Augustine, Noah Zatz & Naomi Sugie, UCLA Inst. for Research on Labor & Emp’t, *Why Do Employers Discriminate Against People with Records?* (2020), <https://irle.ucla.edu/publication/why-do-employers-discriminate-against-people-with-records-stigma-and-the-case-for-ban-the-box/>.
- ¹¹ Prison Policy Initiative, *Out of Prison & Out of Work* (2018), <https://www.prisonpolicy.org/reports/outofwork.html>.
- ¹² *Id.*
- ¹³ *Id.*
- ¹⁴ *Id.*
- ¹⁵ *Id.*
- ¹⁶ Mark T. Berg & Beth M. Huebner, *Reentry and the Ties that Bind*, 28 *Just. Q.* 382, 397–98 (2011) (finding nearly twice as many employed people with records avoided another incident as those without jobs).
- ¹⁷ Christy Visher, et al., Urban Inst., *Employment After Prison* 8 (2008), <https://www.urban.org/sites/default/files/publication/32106/411778-Employment-after-Prison-A-Longitudinal-Study-of-Releasees-in-Three-States.PDF>.
- ¹⁸ Incarceration history more than doubles the likelihood that a man in the lowest quintile of earners will remain there twenty years later. *Id.* Black children born into the lowest quintile are already nearly twice as likely to remain there as white children. Richard V. Reeves & Christopher Pulliam, *No Room at the Top: The Stark Divide in Black and White Economic Mobility*, Brookings (2019), <https://www.brookings.edu/blog/up-front/2019/02/14/no-room-at-the-top-the-stark-divide-in-black-and-white-economic-mobility/>.
- ¹⁹ Rebecca Vallas, et al., Ctr. for Am. Progress, *Removing Barriers to Opportunity for Parents with Criminal Records and Their Children* 1 (2015), <https://cdn.americanprogress.org/wp-content/uploads/2015/12/09060720/CriminalRecords-report2.pdf>.
- ²⁰ Bruce Western & Becky Pettit, Pew Charitable Trusts, *Collateral Costs: Incarceration’s Effect on Economic Mobility* 4 (2010), https://www.pewtrusts.org/-/media/legacy/uploadedfiles/pcs_assets/2010/collateralcosts1.pdf.
- ²¹ Robert H. DeFina & Lance Hannon, *The Impact of Mass Incarceration on Poverty, 59 Crime and Delinquency* 562 (2013), <https://eric.ed.gov/?id=EJ11010769>.
- ²² For example, Black, Latinx, and women workers are overrepresented in jobs paying less than \$15 an hour and in industries and occupations that have some of the highest proportions of workers earning less than \$15 an hour. Laura Huizar & Tsedeye Gebreselassie, Nat’l Emp’t Law Project, *What a \$15 Minimum Wage Means for Women and Workers of Color* (Dec. 2016), <https://www.nelp.org/wp-content/uploads/Policy-Brief-15-Minimum-Wage-Women-Workers-of-Color.pdf>. As another example, Black and Latinx workers are overrepresented in temporary staffing work. Black workers comprise 12.1 percent of the overall workforce but 25.9 percent of workers employed by temporary staffing agencies. Latinx workers comprise 16.6 percent of all workers but 25.4 percent of workers employed by temporary staffing agencies. Nat’l Emp’t Law Project, *America’s Nonstandard Workforce Faces Wage, Benefit Penalties, According to U.S. Data* (June 7, 2018), <https://www.nelp.org/news-releases/americas-nonstandard-workforce-faces-wage-benefitpenalties-according-us-data/>.
- ²³ Darrick Hamilton, et al., Econ. Pol’y Inst., *Whiter Jobs, Higher Wages: Occupational Segregation and the Lower Wages of Black Men* (2011), <https://files.epi.org/page/-/BriefingPaper288.pdf>.
- ²⁴ Natasha Hicks, et al., Insight Ctr., *Still Running Up the Down Escalator* (2021), <https://insightcced.org/still-running-up-the-down-escalator/>.
- ²⁵ Naomi F. Sugie, *Finding Work: A Smartphone Study of Job Searching, Social Contacts, and Wellbeing After Prison* (Sept. 2014), <https://www.ojp.gov/pdffiles1/nij/grants/248487.pdf>.
- ²⁶ Han Lu, et al., Nat’l Emp’t Law Project, *Local 70 Fights the Criminalization of Laborers* (Apr. 2021), <https://www.nelp.org/publication/local-70-fights-the-criminalization-of-laborers/>.
- ²⁷ Elise Gould, Econ. Pol’y Inst., *State of Working America Wages in 2019* (Feb. 20, 2020), <https://www.epi.org/publication/swa-wages-2019/>. Hispanic workers earn less than white workers at all but the lowest level of education, and the overall Hispanic-white wage gap has narrowed only slightly over the past 20 years. *Id.*
- ²⁸ Grey Gordon & Urvi Neelakantan, Fed. Rsrv. Bank of Richmond, “Incarceration’s Life-Long Impact on Earnings and Employment” (Mar. 2021), https://www.richmondfed.org/publications/research/economic_brief/2021/eb_21-07; Terry-Ann Craigie, et al., Brennan Ctr. for Justice, *Conviction, Imprisonment, and Lost Earnings* 14 (Sept. 15, 2020), https://www.brennancenter.org/sites/default/files/2020-09/EconomicImpactReport_pdf.pdf.
- ²⁹ Terry-Ann Craigie, et al., Brennan Ctr. for Just., *Conviction, Imprisonment, and Lost Earnings* 14 (Sept. 15, 2020), https://www.brennancenter.org/sites/default/files/2020-09/EconomicImpactReport_pdf.pdf.
- ³⁰ *Id.* at 15.
- ³¹ *Id.*
- ³² The more Black-dominated an occupation is or becomes, the lower the wages. For example, for every additional \$10,000 in the average annual wage, you will see a seven percent drop in the proportion of black men in that occupation. Darrick Hamilton, et al.,

Econ. Pol'y Inst., *Whiter Jobs, Higher Wages: Occupational Segregation and the Lower Wages of Black Men* (2011), <https://files.epl.org/page/-/BriefingPaper288.pdf>.

³³ Alex Hickey, *8 Charts that Explore Racial Disparities in the Banking Industry*, Morning Brew, May 18, 2021, <https://www.morningbrew.com/daily/stories/2021/05/18/8-charts-explore-racial-disparities-banking-industry> (synthesizing 2018 EEO-1 data from the EEOC).

³⁴ *Id.*

³⁵ *Id.*

³⁶ McKinsey & Company found that diverse companies perform 35 percent better than industry averages. Vivian Hunt, et al., McKinsey & Co., *Why Diversity Matters 2* (2015), <http://www.mckinsey.com/business-functions/organization/our-insights/why-diversity-matters>. In response to a Forbes survey of large firms, 85 percent opined that diversity is key to driving innovation. Jonathan Becher, *Diversity Drives Innovation*, Forbes, Oct. 10, 2012, <http://www.forbes.com/sites/sap/2012/10/10/diversity-drives-innovation/#552bc35c6f90>.

³⁷ Laura Noonan & Taylor Nicole Rogers, *Share of Black Employees in Senior US Finance Roles Falls Despite Diversity Efforts*, Financial Times, Mar. 30, 2021, <https://www.ft.com/content/887d064a-bd5e-4ce6-9671-9057e12bd5c7> (analyzing data from 2007 to 2018).

³⁸ See, e.g., Michelle Natividad Rodriguez & Beth Avery, Nat'l Emp't Law Project, *Unlicensed & Untapped: Removing Barriers to State Occupational Licenses for People with Records* (2016), <https://www.nelp.org/publication/unlicensed-untapped-removing-barriers-state-occupational-licenses/>.

³⁹ Devah Pager, *The Mark of a Criminal Record*, 108 Am. J. Soc. 937, 957–58 (2003). The callback rate for white applicants halved from 34 to 17 percent when they revealed a record. The callback rate for Black applicants dropped by nearly two-thirds, from 14 to 5 percent, when they revealed a record. *Id.*

⁴⁰ *Id.* Further study reveals gender implications as well: employers penalize women with records more severely than similarly situated men because women with records are viewed “as having committed two crimes—one against the law and one against social expectations of how women are supposed to behave.” Scott H. Decker, et al., *Criminal Stigma, Race, Gender & Employment* 56–57 (2014), <https://www.ncjrs.gov/pdffiles1/nij/grants/244756.pdf>.

⁴¹ 12 U.S.C. § 1829.

⁴² 12 U.S.C. § 1829(a)(1)(A).

⁴³ Only in 2020 did the FDIC clarify that simple possession is not a covered offense. See Incorporation of Existing Statement of Policy Regarding Requests for Participation in the Affairs of an Insured Depository Institution by Convicted Individuals, 85 Fed. Reg. 51312 (Aug. 20, 2020) (to be codified at 12 C.F.R. pt. 303, 308).

⁴⁴ Jonathan Rothwell, *How the War on Drugs Damages Black Social Mobility*, Brookings Inst. (Sept. 30, 2014), <https://www.brookings.edu/blog/social-mobility-memos/2014/09/30/how-the-war-on-drugs-damages-black-social-mobility/>.

⁴⁵ Megan C. Kurlychek, et al., *Scarlet Letters and Recidivism: Does an Old Criminal Record Predict Future Offending?*, 5 Criminology & Pub. Pol'y 483, 483 (2006).

⁴⁶ Alfred Blumstein & Kiminori Nakamura, *Extension of Current Estimates of Redemption Time* 37, 41 (2012), <https://www.ojp.gov/pdffiles1/nij/grants/240100.pdf>.

⁴⁷ 12 U.S.C. § 1829(a)(2).

⁴⁸ See 12 C.F.R. §§ 303.222, 303.227.

⁴⁹ 12 C.F.R. § 303.227.

⁵⁰ Letter from Alisa Colgrove, Gov't Info. Specialist, FOIA/Privacy Act Group, FDIC, to Lalita Clozel, Reporter, Wall Street Journal 3 (Mar. 1, 2019) (on file with NELP) (responding to Ms. Clozel's FOIA request).

⁵¹ *Id.*

⁵² FDIC Statement of Policy for Section 19 of the FDI Act (July 19, 2018).

⁵³ Letter from Alisa Colgrove, Gov't Info. Specialist, FOIA/Privacy Act Group, FDIC, to Lalita Clozel, Reporter, Wall Street Journal (Mar. 1, 2019) (on file with NELP) (responding to Ms. Clozel's FOIA request).

⁵⁴ *Id.*

⁵⁵ 2018 is the most recent year for which I have data.

⁵⁶ *Id.*

⁵⁷ FDIC Statement of Policy for Section 19 of the FDI Act (July 19, 2018).

⁵⁸ Such information appears to remain on the FDIC website for five years. Fed. Deposit Ins. Corp., “Prohibition under Section 19 of the Federal Deposit Insurance (FDI) Act,” <https://www.fdic.gov/resources/regulations/laws/section-19-of-fdi-act/index.html> (last accessed Sept. 18, 2021).

⁵⁹ See, e.g., Sarah Esther Lageson, *Digital Punishment's Tangled Web*, Contexts, Winter 2016, at 22, <https://journals.sagepub.com/doi/10.1177/1536504216628841>.

⁶⁰ For example, the NCUA does not appear to have yet updated its rules since the FDIC issued changes in July 2020. See Nat'l Credit Union Admin., “Proposed, Pending and Recently Final Regulations,” <https://www.ncua.gov/regulation-supervision/rules-regulations/proposed-pending-recently-final-regulations> (last accessed Sept. 19, 2021).

⁶¹ Exceptions to Employment Restrictions Under Section 205(d) of the Federal Credit Union Act (“Second Chance IRPS”), 84 Fed. Reg. 65907 (Dec. 2, 2019) (to be codified at 12 C.F.R. ch. VII).

⁶² 12 C.F.R. § 1026 et seq. (“Regulation Z”).

⁶³ 12 C.F.R. § 1026.36(f)(3)(ii).

⁶⁴ See 12 C.F.R. § 1026.36(a)(1)(i).

⁶⁵ 12 C.F.R. § 1026.36(f)(3)(ii)(A).

⁶⁶ When the Consumer Financial Protection Bureau (CFPB) amended the regulations implementing TILA (Regulation Z) in 2012-13, it offered no support for refusing to tailor exclusions for on old and unrelated records. Instead, the CFPB gestured to vague, undefined “risk that such individuals could present to [consumers]” and a desire for uniformity, pointing to similarly strict standards in the FDI Act and Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act, 12 U.S.C. 5102 et seq.). See Loan Originator Compensation Requirements under the Truth in Lending Act (Regulation Z), 78 Fed. Reg. 11279, 11380-81 (Feb. 15, 2013) (to be codified at 12 C.F.R. pt. 1026). To the extent TILA, the FDI Act, and the SAFE Act include similar overly punitive, ill-advised, all three laws should be amended.

⁶⁷ 12 C.F.R. § 1026.36(f)(3)(ii)(A)(2)(ii).

⁶⁸ 12 C.F.R. § 1026.36(f)(3)(ii)(A)(2)(iii).

⁶⁹ 15 U.S.C. § 78c(a)(39).

⁷⁰ 15 U.S.C. § 78o(b)(4)(B).

⁷¹ “General Information on Statutory Disqualification and FINRA’s Eligibility Proceedings,” FINRA, <https://www.finra.org/rules-guidance/guidance/eligibility-requirements> (last accessed Sept. 20, 2021) (describing the process for applying to employ a disqualified person).

⁷² Historically, the finance industry both promoted and benefited from the wealth creation that anti-Black slavery delivered throughout the nation. One particularly intolerable historical fact is that the industry recognized the ownership of human beings by white slavers as legitimate collateral for the slavers’ loans. When slavers defaulted on a loan, finance institutions (including those that became some of today’s largest banks) “took possession” of human beings. See, e.g., David Teather, *Bank Admits it Owned Slaves*, The Guardian (Jan. 21, 2005), <https://www.theguardian.com/world/2005/jan/22/usa.davidteather>. Today, the banking industry continues to reinforce anti-Black racism by disproportionately investing in white communities. For example, between 2012 and 2018, “for every \$1 banks loaned in Chicago’s white neighborhoods, they invested just 12 cents in the city’s black neighborhoods and 13 cents in Latino areas. That’s despite the fact that there are similar numbers of majority-white, black and Latino neighborhoods in the city.” Linda Lutton, et al., *Where Banks Don’t Lend*, WBEZ Chicago (June 3, 2020), <https://interactive.wbez.org/2020/banking/disparity/>.

⁷³ 2018 is the most recent year for which I possess data.

⁷⁴ Letter from Alisa Colgrove, Gov’t Info. Specialist, FOIA/Privacy Act Group, FDIC, to Lalita Clozel, Reporter, Wall Street Journal (Mar. 1, 2019) (on file with NELP) (responding to Ms. Clozel’s FOIA request).

⁷⁵ Federal Deposit Insurance Corporation Application Pursuant to Section 19 of the Federal Deposit Insurance Act (OMB No. 3064-0018) at 8, <https://www.fdic.gov/formsdocuments/6710-07.pdf> (last accessed Sept. 19, 2021).

⁷⁶ Federal Deposit Insurance Corporation Application Pursuant to Section 19 of the Federal Deposit Insurance Act (OMB No. 3064-0018) at 8, 13, <https://www.fdic.gov/formsdocuments/6710-07.pdf> (last accessed Sept. 19, 2021).

⁷⁷ These facts are taken directly from the court’s opinion in *Williams v. Wells Fargo Bank*, 901 F.3d 1036 (8th Cir. 2018).

⁷⁸ Devah Pager, *The Mark of a Criminal Record*, 108 Am. J. Soc. 937, 957-58 (2003) (observing that the callback rate for white applicants halved from 34 to 17 percent when they revealed a record, and the callback rate for Black applicants dropped by nearly two-thirds, from 14 to 5 percent, when they revealed a record).

⁷⁹ See Michelle Natividad Rodriguez, Nat’l Emp’t Law Project, *“Ban the Box” Is a Fair Chance for Workers with Records* (2017), <https://www.nelp.org/publication/ban-box-fair-chance-workers-records/>; Michelle Natividad Rodriguez & Nayantara Mehta, Nat’l Emp’t Law Project, *Fair-Chance Hiring Best Practice: Delaying Inquiries Until Conditional Offer* (2015), <https://www.nelp.org/publication/fair-chance-hiring-best-practice-delaying-inquiries-until-conditional-offer/>.

⁸⁰ More information about the Safer Foundation is available at <https://saferfoundation.org/>.

⁸¹ More information about Cabrini Green Legal Aid is available at <https://www.cgla.net/>.

⁸² Raven is a pseudonym provided by the Safer Foundation. The facts of Raven’s story, as recounted here, come from the Safer Foundation and the transcript of an interview with Raven. Safer Foundation interview with “Raven” (Jan. 27, 2021).

⁸³ Steven is a pseudonym provided by the Safer Foundation. The facts of Steven’s story, as recounted here, come from the Safer Foundation and an interview with Steven. Safer Foundation interview with “Steven” (Feb. 9, 2021).

⁸⁴ 42 U.S.C. § 2000e-2(k)(1)(A)(i).

⁸⁵ U.S. Equal Emp’t Opportunity Comm’n, *Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions under Title VII of the Civil Rights Act* (2012), <https://www.eeoc.gov/laws/guidance/enforcement-guidance-consideration-arrest-and-conviction-records-employment-decisions#VB> (citing *Green v. Mo. Pac. R.R.*, 523 F.2d 1290, 1293 (8th Cir. 1975)).

Statement for the Record
House Financial Services Committee
Subcommittee on Diversity and Inclusion
Diane Yentel
President & CEO
National Low Income Housing Coalition
September 27, 2021

On behalf of the National Low Income Housing Coalition, I would like to thank you for the opportunity to submit a statement for the record for the September 28 congressional hearing, “Access Denied: Eliminating Barriers and Increasing Economic Opportunity for Justice-Involved Individuals.”

The National Low Income Housing Coalition (NLIHC) is solely dedicated to achieving socially just public policy that ensures people with the lowest incomes in the United States have affordable, accessible, and decent homes. NLIHC members include state and local affordable housing coalitions, residents of public and assisted housing, nonprofit housing providers, homeless service providers, fair housing organizations, researchers, faith-based organizations, public housing agencies, private developers and property owners, local and state government agencies, and concerned citizens. While our members include the spectrum of housing interests, we do not represent any segment of the housing industry. Rather, we work on behalf of and with low-income people who receive and those who need federal housing assistance, especially extremely low-income people and people who are experiencing homelessness.

Safe, affordable, accessible housing is the foundation upon which we build our lives, but millions of people with a conviction history are routinely denied access to a safe place to call home because of their involvement with the criminal-legal system. Formerly incarcerated people typically return to low-income communities where resources, particularly affordable, accessible housing, are scarce. Nationally, there is a shortage of almost 7 million homes affordable and available to the lowest-income renters, and there is not a single state or congressional district in the country with enough affordable homes to meet the needs of the lowest-income people.¹

Across the country, 3,300 public housing authorities (PHAs) provide affordable public housing to approximately 1.2 million low-income households.² This stock of affordable homes is an invaluable asset for combatting housing insecurity and homelessness, but too often PHAs impose barriers to housing access that lock people with a conviction history out of the opportunity to live in federally assisted housing. The systemic bias inherent to the criminal-legal system has led Black, Latino, and Native people, as well as people with disabilities and members of the LGBTQ

¹ Aurand, A., Emmanuel, D., Threet, D., Rafi, I., and Yentel, D. 2021. *The Gap: A Shortage of Affordable Homes*. National Low Income Housing Coalition. Retrieved from: <https://reports.nlihc.org/gap>

² Department of Housing and Urban Development. “Public Housing.” Retrieved from: https://www.hud.gov/program_offices/public_indian_housing/programs/ph

community, to be disproportionately impacted by these barriers.^{3,4,5} When people with a conviction history are unable to find safe, affordable housing, they are at an increased risk of housing instability, homelessness, and ultimately recidivism.⁶

The Department of Housing and Urban Development (HUD) issued guidance in 2015 and 2016 for PHAs and owners of federally assisted housing on the use of criminal and arrest records in tenant screening. However, the guidance on evaluating current and potential tenants is advisory rather than mandatory, giving PHAs and project owners broad discretion in screening out tenants with a conviction history and leading to overly restrictive policies that unjustly screen out tenants and neighbors. Moreover, because Black, Latino, and Native people, along with people with disabilities and members of the LGBTQ community, are disproportionately represented in the criminal-legal system, overly harsh tenant screening policies may violate fair housing standards.

Congress and the Biden-Harris administration should work together to reduce the barriers tenants with a conviction history face to obtaining safe, stable housing by providing additional guidance to PHAs and housing resources to those involved with the criminal-legal system. This committee can play a key role in mitigating the collateral consequences of a conviction history and ensuring justice-impacted individuals have a real opportunity for a second chance. To this end, we urge Congress and the Biden-Harris administration to:

1. **Enact the *Fair Chance at Housing Act*.** The *Fair Chance at Housing Act*, introduced in the 116th Congress by Representative Alexandria Ocasio-Cortez and then-Senator Kamala Harris, would require PHAs and owners of HUD-assisted housing to preform an individualized review of each applicant when considering criminal history during the tenant-screening process. Housing providers would be required to consider mitigating evidence of past convictions and the totality of circumstances when presented by the applicant. PHAs, but not owners, would also be required to establish a review panel that includes at least one resident representative to conduct the individualized review.

Housing providers would also be limited to considering only convictions that may be more likely to impact the applicant's success as a tenant, such as felonies that resulted in a conviction and that threaten the health or safety of other tenants, employees, owners, or PHAs. PHAs and owners would be required to provide written notice to applicants of their screening policies and, in the event an application is denied, to provide written notice of the reasons for the denial and options for the tenant to appeal. The bill would also prohibit drug

³ The Sentencing Project. 2019. *Report to the United Nations on Racial Disparities in the US Criminal Justice System*. Retrieved from: <https://www.sentencingproject.org/publications/un-report-on-racial-disparities/>

⁴ Oberholtzer, E. 2017. "Police, courts, jails, and prisons all fail disabled people." Prison Policy Initiative. Retrieved from: <https://www.prisonpolicy.org/blog/2017/08/23/disability/>

⁵ Griffith, D. "LGBTQ youth are at greater risk of homelessness and incarceration." Prison Policy Initiative. Retrieved from: https://www.prisonpolicy.org/blog/2019/01/22/lgbtq_youth/

⁶ Cusack, M. and Montgomery, A.E. 2017. "Examining the bidirectional association between veteran homelessness and incarceration within the context of permanent supportive housing." *Psychological Services 14*(2). Retrieved from: <https://pubmed.ncbi.nlm.nih.gov/28481612/>

and alcohol testing of applicants as a condition of admission and eliminate overly harsh and disfavored “one strike” policies that allow PHAs and owners to evict families any time a household member or guest engages in criminal activity in violation of their lease.

2. **Align HUD’s Public Housing Occupancy guidebook with HUD’s 2015⁷ and 2016⁸ guidance for PHAs and owners of federally assisted housing on the use of criminal and arrest records in tenant screening.** HUD should update its Public Housing Occupancy guidebook to align policies on the use of criminal and arrest records in tenant screening with the department’s 2015 and 2016 guidance, including:
 - Explicitly barring PHAs from using arrest records alone as the basis of any adverse action against a tenant, including denial of admission.
 - Prohibiting the use of blanket admissions bans against people with a conviction history, which, per HUD’s 2016 Fair Housing Guidance, likely violate the *Fair Housing Act of 1968*.
 - Requiring PHAs to provide written notice to applicants of their tenant screening policies and, in the event an applicant is denied, requiring PHAs to provide written notice of the reasons for denial as well as the opportunity for a tenant to appeal, as established in HUD’s 2015 guidance.

3. **Update admissions policies for HUD’s Office of Public and Indian Housing (PIH) to Limit the Collateral Consequences of a Conviction History.** Mitigating the collateral consequences of a conviction history would expand housing access to millions, help break the cycle of incarceration, homelessness, and recidivism, and is supported by an overwhelming majority of voters.⁹ Congress and the Biden-Harris administration should work together to:
 - Mandate that PHAs limit and make explicit the types of convictions considered in their screening processes to only felonies more likely to have an impact on an applicant’s success as a tenant. When evaluating an applicant with a conviction history, PHAs should also consider the crime’s severity, time passed since the crime was committed, and risk of potential harm to others.
 - Limit the use of lookback periods to three years or less. Federal law instructs housing providers to look back in an applicant’s conviction history within a “reasonable time,” but neither statute nor HUD guidance explicitly define what constitutes a reasonable time. In the absence of formal guidance, many housing providers establish admissions policies that have no time limit on using a person’s conviction history to evaluate their application or set unreasonable time limits (99 years, for example).¹⁰

⁷ Department of Housing and Urban Development. 2015. *Notice PIH 2015-19/H 2015-10*. Retrieved from: <https://www.hud.gov/sites/documents/15-10HSGN.PDF>

⁸ Department of Housing and Urban Development. 2016. *Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions*. Retrieved from: https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF

⁹ University of Maryland School of Public Policy. 2021. “Limiting the Negative Consequences of Criminal Records: A National Survey of Registered Voters.” *Voice of the People*. Retrieved from: <https://vop.org/criminalrecords/>

¹⁰ *Ibid*

Such overly long lookback periods can act as a de facto ban on people with a conviction history from receiving housing assistance and conflict with HUD's long held assertion that permanent admissions bans contradict federal policy and may violate the FHA.¹¹ HUD should limit the use of lookback periods to three years or less from the date of release from incarceration or the date of conviction, whichever is more recent,¹² and encourage shorter look back periods based on the circumstances.

- Allow people on probation, parole, or completing a diversion program to live in public housing. PHAs should admit people under court supervision – who have already met the court's standards for release – using an individualized review process that takes into consideration the totality of circumstances and provides prospective tenants the opportunity to present mitigating evidence. Explicitly allowing people on probation or parole to live in public housing is also a key factor in family reunification and can help provide the support needed for successful reentry.¹³
- Ensure people exiting incarceration can be added to a household's lease. People exiting incarceration and attempting to reunite with their families living in subsidized housing are sometimes barred from doing so or not permitted to be added to the household's lease. HUD and Congress should reassert PHAs' and project owners' responsibility to perform an individualized review of prospective tenants with conviction histories and should clarify that PHAs and project owners cannot implement blanket bans on adding a family member with a conviction history to a lease.

Thank you again for the opportunity to submit a statement for the record for the September 28 congressional hearing, "Access Denied: Eliminating Barriers and Increasing Economic Opportunity for Justice-Involved Individuals." NLIHC looks forward to working with members of the Committee to ensure people with a conviction history have equitable access to safe, stable housing.

¹¹ Ibid

¹² Altamirano Marin, J., Crew, E., and diZerega, M. 2021. *Looking Beyond Criminal History: Recommendations for Public Housing Authority Admissions Policies*. Vera Institute of Justice. Retrieved from: <https://www.vera.org/downloads/publications/looking-beyond-conviction-history.pdf>

¹³ Bae, J., diZerega, M., Kang-Brown, J., Shanahan, R., & Subramanian, R. 2016. *Coming Home: An Evaluation of the New York City Housing Authority's Family Reentry Pilot Program*. Vera Institute of Justice. Retrieved from: https://www.vera.org/downloads/publications/NYCHA_report-032917.pdf



TESTIMONY OF
CHRIS WILSON, AUTHOR OF
The Master Plan: My Journey from Life in Prison to a Life of Purpose
AND FOUNDER OF THE CHRIS WILSON FOUNDATION

U.S. HOUSE COMMITTEE ON FINANCIAL SERVICES

HEARING ON “ACCESS DENIED: ELIMINATING BARRIERS AND INCREASING
ECONOMIC OPPORTUNITY FOR JUSTICE-INVOLVED INDIVIDUALS”

SEPTEMBER 28, 2021

I. Introduction

Members of the Committee, thank you for holding this hearing on an issue which I believe affects not only justice-impacted individuals and their families, but also the future of small businesses and entrepreneurial diversity in America. My name is Chris Wilson and I am a painter, author, social entrepreneur and business owner, as well as the founder and president of a charitable organization which provides funding and access to education, financial literacy programs, arts programming and microloans for those who are in prison and upon their reentry. I am also a formerly incarcerated man having served sixteen years in a Maryland prison for a felony conviction.

The issue brought forth before this hearing today is incredibly personal to me as I have seen first-hand the effects of socially and politically fabricated barriers to economic opportunity put up against communities involved in the justice system. These barriers seem to be targeted towards poor and black communities like the one I grew up in outside of Washington D.C. I have seen men and women, enthusiastic about working and eager to change their lives once they were released from their sentences, routinely denied loans, denied access to public housing, denied lines of credit and job opportunities. I have seen that these same men and women have *no choice* but to return to activities which lead them back into the carceral system because of the barriers to economic stability presented by that self-same system. In 2016, almost 170,000 people went back to prison or jail because of a “technical violation” of their parole or probation, some of

these violations including not finding employment or an inability to pay exorbitant post-carceral fees.¹ In this way, the criminal justice system punishes the individual repeatedly and continuously throughout a lifetime, never crediting successes, motivation, or the ability and willingness to change.

II. When the System Doesn't Give You an Opportunity, You Have to Make it for Yourself

I had a plan when I left prison. Unlike many 'lifers' who struggle to plan for the future because they know they might never be released, I had already developed a set of goals for myself, for my life and for the type of career I wanted to have on the outside. I called this my "Master Plan." However, I was immediately hit with barriers. It was hard to find good, meaningful employment with my record and almost no family to support me. I was lucky enough to eventually get hired by a community organization in Baltimore to assist underserved and undereducated people with workforce development and placement. However, I quickly became disillusioned with my role, as I was unable to place more than 50% of the people with criminal records who came to me wanting to work. Because of a lack of education and a resistance from employers, even the most hardworking, aspirational people could not find a job.² This often led them back to the streets, back to any profession, even dealing drugs, which could support them and their families. It frustrated me that the system demanded former inmates, like myself, find employment, make money, and stay out of trouble, but often it was the system itself which drove these people back into poverty and criminality. It started to feel like the system had a secret plan—to keep poor people stuck in poverty and eventually, in prison.

My frustration drove me to build my own company —Barclay Investment Corporation. I built this company with the desire to hire the people who I could see were denied jobs just because they had a record. We started out small, but grew quickly because we would do any job that needed doing. I had my team of 23 formerly incarcerated men doing trash removal, demolition, moving and hauling, often with contracts from the city or large companies in Baltimore. But again, I was met with obstacles. Often, those who hired us (including the city) would delay payment, sometimes for up to nine months. I have not been able to confirm, but I believe this was because I was a formerly-incarcerated business owner and did not hide the fact.

¹ "According to the Bureau of Justice Statistics report Probation and Parole in the United States, 2016, Appendix Table 3, 98,698 adults exited probation to incarceration under their current sentence; Appendix Table 7 shows 69,855 adults were returned to incarceration from parole with a revocation. The number of people incarcerated for technical violations may be much higher, however, since nearly 78,000 people exiting probation and parole to incarceration did so for "other/unknown" reasons, and some states did not report data." Published by the Prison Policy Initiative, <https://www.prisonpolicy.org/reports/pie2020.html>. March 24, 2020.

² A study from the National Employment Law Project (NELP) found that employers "regularly deny applicants who have any criminal history at all." Michelle Rodriguez et al., 65 Million 'Need Not Apply': The Case for Reforming Criminal Background Checks for Employment, Nat'l Emp't Law Project, 3 (2011).

This meant I needed new lines of credit to continue with new contracts. At one point, I realized I had been to every bank in Baltimore, and although they were initially interested in the success of my business, every single one of them denied me a loan. They later admitted that it was my record which they saw as too great a risk, despite my growing success.³ I had to downsize; my crew of 23 shrank to just 6 employees. The only thing that saved my business was a local contact who acted as my guarantor at the bank, which helped me get a loan and regrow. The business flourished and I was able to uplift my community through access to jobs and capital. Because of this, I received the Presidential Award, handed to me by President Barack Obama himself.

Through this business, and the other ventures I have built since, I learned that a successful individual can work to uplift others. Always included on my Master Plan (even as it changed and developed over time) was the mission to make a positive difference in the world by changing the lives of those around me. So many people had mentored and assisted me in my journey through prison and upon reentry and I was determined to give the same support to others who were on a similar path. This is how I came to call myself a 'social entrepreneur.' I knew that small businesses and a creative and dynamic entrepreneurship practice is not just about making money. Instead, it's about involving and connecting with your community, it's about helping others, it's about allowing every person the chance to do meaningful and purposeful work in the world, no matter their past mistakes.

III. Economic Barriers are Barriers to Full Citizenship

Small businesses like mine hold communities together. Formerly incarcerated people are often driven to create their own situations of employment because of the stigma most employers place on them. However, the process of starting any type of business contains many financial and legal hoops to jump through, and is often too difficult for someone with few networks of support and a subpar education. If we could create accessible financial literacy programs, design a network of forward-thinking banks and guarantors to support these entrepreneurs, and, of course, demolish barriers to other forms of employment, the rates of recidivism would decrease dramatically.⁴

³ In one study, most employers admitted they would "probably" and "definitely" not hire a person with a criminal background. See Harry Holzer et al., Perceived Criminality, Criminal Background Checks, and the Racial Hiring Practices of Employers," 49 J. LAW & ECON. 451, 453-54 (2006)

⁴ Recidivism rates decline rapidly with access to employment. See John H. LAUB & Robert J. SAMPSON, SHARED BEGINNINGS, DIVERGENT LIVES: DELINQUENT BOYS TO AGE 70 (2003); Joan PETERSILIA, WHEN PRISONERS COME HOME: PAROLE AND PRISONER REENTRY (2003); Robert J. SAMPSON & John H. LAUB, CRIME IN THE MAKING: PATHWAYS AND TURNING POINTS THROUGH LIFE (1993); Christopher Uggen, *Work as a Turning Point in the Life Course of Criminals: A Duration Model of Age, Employment, and Recidivism*, 67 AM. SOC. REV. 529 (2000);

My vision for the future is that we begin to see the men and women coming out of prison not as lost causes but as entrepreneurs and leaders with great potential. With the right access to resources and the permission to work hard and create their own strategic plans, these people could do meaningful work and give back to their communities. Their individual expertise would become usefully available to the wider society. I would like to see an institution which provides guarantors to people who need bank loans, to see safe and affordable public housing made available for people who are returning home and a public investment in the potential of *all* of our citizens to be productive and successful members of society.

At my Foundation, we are working on advocacy campaigns which would raise the public awareness about the long term effects of a criminal record on an individual citizen's life. Most people with little experience of the justice system don't understand that once you have served your time in prison, or even once you have been acquitted of a crime that you were found innocent of, there are often still excessive punitive measures held against you which deny basic civil rights generally afforded to all citizens in this country. Michelle Alexander, the author of *The New Jim Crow*, describes this state of being as a "second class citizenship."⁵ Over 100 million people in this country would fall within this class, having either been previously convicted of a felony, have a criminal record, or being currently incarcerated today.⁶ On top of this, 113 million people have an immediate family member who has been in a prison or jail, compounding the adverse effects of the criminal justice system on already impoverished communities across America. As we know, many of these communities are made up of black and brown people, creating a racially-divided class system which will only grow worse as more parents are locked up and locked out of the economic opportunities necessary to lift their families from poverty.⁷

IV. Conclusion

Thank you for the opportunity to send in my written testimony today. I would welcome further questions on the personal or national impact of economic barriers to formerly incarcerated people, in the hopes that both legislation and public awareness shifts in favor of

⁵ Alexander, M. (2010). *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. The New Press.

⁶ Numbers compiled by the Prison Policy Initiative from 2016 and 2017 Bureau of Justice Statistics data; Shannon, et al. (2017). *The Growth, Scope and Spatial Distribution of People with Felony Records in the United States, 1948-2010*; and FWD.us (2018) *Every Second: The Impact of the Incarceration Crisis on America's Families*.

⁷ See Abril, L. (April 2020). "The Disparate Impact of Criminal Background Checks as Hiring Criteria." FIU Law, Student News. "Minorities make up 56% of the United States' incarcerated population, yet only 30% of the entire country's population. Evidence suggests that these racial disparities are due to racial profiling and discriminatory policies, rather than differing rates of criminal activity. Still, African American men with a felony conviction are the least likely of any demographic to receive job offers."

citizens who want to build on their dreams, provide for their families and communities, and live a life of purpose in service of others.

