

## **Submitted for the Record by Beth Avery**

National Employment Law Project

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

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## **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

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**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

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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**

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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.<sup>1</sup> 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.<sup>2</sup> Over 600,000 people return to their communities following a term of incarceration every year.<sup>3</sup>

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.<sup>4</sup> 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.<sup>5</sup> Nearly one-third of adult Black men have a felony record, as compared with 8 percent of the overall adult population.<sup>6</sup> These race disparities cannot be attributed to significantly different rates of offending.<sup>7</sup>

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.<sup>8</sup> 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.<sup>9</sup> Meanwhile, workers who have been incarcerated are four to six times more likely to be unemployed than other workers.<sup>10</sup> In fact, pre-pandemic estimates put the unemployment rate for formerly incarcerated people higher than peak unemployment during the Great Depression (24.8 percent).<sup>11</sup> In 2008, when the general unemployment rate was just 5.8 percent, an estimated 27.3 percent of formerly incarcerated people were unemployed.<sup>12</sup>

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.<sup>13</sup> White men and women face

unemployment rates 14 percent and 18 percent higher, respectively, if they have been incarcerated.<sup>14</sup> 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.<sup>15</sup>

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 recidivism<sup>16</sup> and that higher wages translate to lower recidivism.<sup>17</sup>

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.<sup>18</sup> Nearly half of U.S. children have at least one parent with an arrest or conviction record.<sup>19</sup> 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.<sup>20</sup> All told, mass incarceration significantly contributes to poverty and helps explain why poverty has remained high despite general economic growth in recent decades.<sup>21</sup>

### **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.<sup>22</sup> After controlling for education, 87 percent of occupations in the United States can be classified as racially segregated.<sup>23</sup> 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.<sup>24</sup> 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.<sup>25</sup> 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.<sup>26</sup>

Black workers earn less than white workers at all levels of education, and the gap has only gotten worse in the past 20 years.<sup>27</sup> 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.<sup>28</sup> Those who have been convicted but not incarcerated also see wage decreases that last for the rest of their lives.<sup>29</sup> Even a misdemeanor conviction reduces annual earnings by an average of 16 percent.<sup>30</sup> All told, the communities of people with conviction records lose total income equal to \$372.3 billion each year.<sup>31</sup>

## **Jobs in the Overwhelmingly White Financial Services Sector Must Be Opened to People with Records**

Occupational segregation is apparent throughout the economy<sup>32</sup> 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.<sup>33</sup> Nearly 9 in 10 of the highest paid, senior-most employees at such companies are white.<sup>34</sup> At that top level, Black workers represent just 2.6 percent, and Latinx workers just 3.7 percent, of employees.<sup>35</sup>

Despite growing evidence that diverse companies perform better<sup>36</sup> 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.<sup>37</sup> 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.<sup>38</sup> 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.<sup>39</sup> 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.<sup>40</sup>

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**

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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)<sup>41</sup> 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.”<sup>42</sup> 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.”<sup>43</sup> 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.<sup>44</sup> 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.<sup>45</sup> 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.<sup>46</sup>

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).<sup>47</sup> 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.”<sup>48</sup> The FDIC categorizes certain insignificant covered offenses as “de minimis,” and, for those offenses, FDIC consent is automatically granted.<sup>49</sup> 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.<sup>50</sup> 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.<sup>51</sup>

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.<sup>52</sup> 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.<sup>53</sup>

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.<sup>54</sup>

Bank-sponsored applications are generally more successful. In 2018,<sup>55</sup> for example, 56 percent of bank-sponsored applications were approved as compared with 32 percent of individual waiver applications.<sup>56</sup> 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.<sup>57</sup> 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.<sup>58</sup> Online availability of record information is already a problem for anyone with any record; the FDIC does not need to pile on.<sup>59</sup> 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.<sup>60</sup> 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.<sup>61</sup> 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 regulations<sup>62</sup> impose restrictions on who may be hired as a “loan originator in a consumer credit transaction secured by a dwelling.”<sup>63</sup> “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.<sup>64</sup>

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.”<sup>65</sup>

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.<sup>66</sup>

Currently, only very limited exceptions to TILA’s broad prohibitions exist. First, expunged or pardoned convictions are not disqualifying.<sup>67</sup> Second, employment is not prohibited if the employee received consent from the FDIC or NCUA through the processes described above.<sup>68</sup> 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.<sup>69</sup> 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.<sup>70</sup> 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.<sup>71</sup> 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**

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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 lending<sup>72</sup>—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,<sup>73</sup> only 7 percent of Section 19 applications were bank-sponsored.<sup>74</sup>

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.<sup>75</sup>

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).<sup>76</sup> 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.<sup>77</sup>

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.<sup>78</sup> 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.”<sup>79</sup>

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 Foundation<sup>80</sup> 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.<sup>81</sup> 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”<sup>82</sup> 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”<sup>83</sup> 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."<sup>84</sup> 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.<sup>85</sup>

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

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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](mailto:bavery@nelp.org).

## Endnotes

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<sup>1</sup> Prison Policy Initiative, *States of Incarceration: The Global Context 2021* (2021), <https://www.prisonpolicy.org/global/2021.html>.

<sup>2</sup> Nat'l Emp't Law Project, *Research Supports Fair Chance Policies* (2016), <http://www.nelp.org/publication/research-supports-fair-chance-policies/>.

<sup>3</sup> 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/>.

<sup>4</sup> 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/>.

<sup>5</sup> 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>.

<sup>6</sup> 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).

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<sup>7</sup> 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](https://www.hamiltonproject.org/charts/rates_of_drug_use_and_sales_by_race_rates_of_drug_related_criminal_justice).

<sup>8</sup> Prison Policy Initiative, *Out of Prison & Out of Work* (2018), <https://www.prisonpolicy.org/reports/outofwork.html>.

<sup>9</sup> Janelle Jones, et al., Econ. Policy Inst., *50 Years After the Kerner Commission* 3 (2018).

<sup>10</sup> 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/>.

<sup>11</sup> Prison Policy Initiative, *Out of Prison & Out of Work* (2018), <https://www.prisonpolicy.org/reports/outofwork.html>.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> 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).

<sup>17</sup> Christy Visser, 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-Releesees-in-Three-States.PDF>.

<sup>18</sup> 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/>.

<sup>19</sup> 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>.

<sup>20</sup> 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.pdf](https://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs_assets/2010/collateralcosts1.pdf.pdf).

<sup>21</sup> Robert H. DeFina & Lance Hannon, *The Impact of Mass Incarceration on Poverty*, 59 *Crime and Delinquency* 562 (2013), <https://eric.ed.gov/?id=EJ1010769>.

<sup>22</sup> 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/>.

<sup>23</sup> 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>.

<sup>24</sup> Natasha Hicks, et al., Insight Ctr., *Still Running Up the Down Escalator* (2021), <https://insightcced.org/still-running-up-the-down-escalator/>.

<sup>25</sup> 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>.

<sup>26</sup> 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-79-fights-the-criminalization-of-laborers/>.

<sup>27</sup> 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.*

<sup>28</sup> 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](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>.

<sup>29</sup> 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>.

<sup>30</sup> *Id.* at 15.

<sup>31</sup> *Id.*

<sup>32</sup> 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.

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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>.

<sup>33</sup> 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).

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> 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>.

<sup>37</sup> 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).

<sup>38</sup> 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/>.

<sup>39</sup> 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.*

<sup>40</sup> *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>.

<sup>41</sup> 12 U.S.C. § 1829.

<sup>42</sup> 12 U.S.C. § 1829(a)(1)(A).

<sup>43</sup> 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).

<sup>44</sup> 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/>.

<sup>45</sup> 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).

<sup>46</sup> Alfred Blumstein & Kiminori Nakamura, *Extension of Current Estimates of Redemption Time* 37, 41 (2012), <https://www.ojp.gov/pdffiles1/nij/grants/240100.pdf>.

<sup>47</sup> 12 U.S.C. § 1829(a)(2).

<sup>48</sup> See 12 C.F.R. §§ 303.222, 303.227.

<sup>49</sup> 12 C.F.R. § 303.227.

<sup>50</sup> 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).

<sup>51</sup> *Id.*

<sup>52</sup> FDIC Statement of Policy for Section 19 of the FDI Act (July 19, 2018).

<sup>53</sup> 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).

<sup>54</sup> *Id.*

<sup>55</sup> 2018 is the most recent year for which I have data.

<sup>56</sup> *Id.*

<sup>57</sup> FDIC Statement of Policy for Section 19 of the FDI Act (July 19, 2018).

<sup>58</sup> 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).

<sup>59</sup> See, e.g., Sarah Esther Lageson, *Digital Punishment’s Tangled Web*, Contexts, Winter 2016, at 22, <https://journals.sagepub.com/doi/10.1177/1536504216628841>.

<sup>60</sup> 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).

<sup>61</sup> 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).

<sup>62</sup> 12 C.F.R. § 1026 et seq. (“Regulation Z”).

<sup>63</sup> 12 C.F.R. § 1026.36(f)(3)(ii).

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<sup>64</sup> See 12 C.F.R. § 1026.36(a)(1)(i).

<sup>65</sup> 12 C.F.R. § 1026.36(f)(3)(ii)(A).

<sup>66</sup> 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.

<sup>67</sup> 12 C.F.R. § 1026.36(f)(3)(ii)(A)(2)(ii).

<sup>68</sup> 12 C.F.R. § 1026.36(f)(3)(ii)(A)(2)(iii).

<sup>69</sup> 15 U.S.C. § 78c(a)(39).

<sup>70</sup> 15 U.S.C. § 78o(b)(4)(B).

<sup>71</sup> “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).

<sup>72</sup> 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/>.

<sup>73</sup> 2018 is the most recent year for which I possess data.

<sup>74</sup> 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).

<sup>75</sup> 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).

<sup>76</sup> 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).

<sup>77</sup> These facts are taken directly from the court’s opinion in *Williams v. Wells Fargo Bank*, 901 F.3d 1036 (8th Cir. 2018).

<sup>78</sup> 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).

<sup>79</sup> 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/>.

<sup>80</sup> More information about the Safer Foundation is available at <https://saferfoundation.org/>.

<sup>81</sup> More information about Cabrini Green Legal Aid is available at <https://www.cgla.net/>.

<sup>82</sup> 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).

<sup>83</sup> 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).

<sup>84</sup> 42 U.S.C. § 2000e-2(k)(1)(A)(i).

<sup>85</sup> 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)).