

JPMORGAN CHASE & CO.

Heather A. Higginbottom
President
PolicyCenter

March 13, 2020

Via Electronic Mail

Robert E. Feldman, Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Re: Comments on the FDIC's Proposed Rule re "Incorporation of Existing Statement of Policy Regarding Requests for Participation in the Affairs of an Insured Depository Institution by Convicted Individuals" (RIN 3064-AF19)

Dear Secretary Feldman:

JPMorgan Chase & Co. ("JPMC") appreciates the opportunity to comment on the Federal Deposit Insurance Corporation's ("FDIC") proposed changes to Section 19 of the Federal Deposit Insurance Act ("FDI Act"). The FDIC proposes to codify its existing Statement of Policy (the "SOP") into the FDIC's formal regulations and seeks comment on the scope of the *de minimis* offense exceptions. JPMC takes no position on the codification of the SOP but is providing recommendations to the *de minimis* exceptions that could expand the scope of relief available for minor offenses and provide greater access to employment for individuals who do not pose undue risk. At JPMC, it is a firmwide strategic priority to attract, train, develop and retain the best diverse talent for today and the future. But some highly qualified individuals are prohibited from working at an insured depository institution because of Section 19's broad restrictions on an insured institution's ability to hire individuals with minor criminal records.

1. Background

Section 19 of the FDI Act prohibits, without the prior written consent of the FDIC, any person from participating in the affairs of an FDIC-insured depository institution who has been convicted of a crime of dishonesty or breach of trust or money laundering, or who has entered a pretrial diversion or similar program in connection with the prosecution for such an offense. The SOP, which was first adopted in 1998 and has been amended several times since, provides

guidance concerning the application of Section 19. The SOP sets forth specific criteria for providing relief for individuals with convictions for certain low-risk crimes that constitute *de minimis* crimes, forgoing the need for an application for waiver of Section 19. While JPMC believes that the adoption and subsequent amendments of the SOP have improved the application of Section 19, we also believe that the FDIC could and should do more to ease the regulatory restrictions on hiring individuals involved in low-risk crimes or individuals who pose minimal risk to the safety and soundness of the banking industry.

At JPMC, attracting the best diverse talent includes giving people with criminal backgrounds a second chance by supporting their reentry into the workforce, community and local economies. JPMC is actively advancing a public policy agenda, investing in community organizations, collaborating with other businesses and enhancing the firm's hiring strategy to reduce obstacles to employment. Policy makers and businesses increasingly recognize that providing education, skills training and employment opportunities to people with arrest or conviction histories helps reduce recidivism, increase public safety, and build stronger communities – all without impacting the safety and soundness of the financial systems. Easing the FDIC's restrictions to allow individuals who pose minimal risk and/or committed low-risk crimes to receive automatic waivers, will help JPMC and other institutions hire the best, diverse talent and strengthen the economy by providing economic opportunity for more people.

Below are JPMC's recommendations on the scope and application of certain of the SOP's *de minimis* exceptions.

2. The FDIC Should Expand its De Minimis Exceptions

JPMC believes that the FDIC can go further without introducing risk by expanding and/or eliminating certain criteria.

a. Crimes Committed at Age 21 or Younger

The FDIC should expand the scope of its automatic approval for individuals who committed a crime when they were age 21 or younger by eliminating certain restrictions to (i) allow for an automatic waiver of additional crimes and (or in the alternative) (ii) allow for an automatic waiver for repeat low-level offenses. Section 19 already recognizes a difference between a conviction or program entry occurring when an individual is age 21 or younger as compared to those occurring when an individual is older and more mature. Embedded in this is a recognition that a crime committed at age 21 or younger is not necessarily indicative of an individual's character or fitness and inherent risk to an institution. Expanding the scope of this age-based exception would meaningfully expand employment opportunities for this population of individuals while maintaining appropriate safeguards to mitigate risk.

i. Automatic Waiver Should Include Additional Crimes

Currently, the SOP's age-based exception provides that covered convictions or program entries will qualify for *de minimis* treatment where (i) the individual was 21 or younger at the time of the conviction or program entry, (ii) at least 30 months has passed since the date of the conviction or program entry, (iii) all sentencing or programing requirements have been completed and (iv) the conviction or program entry meets the general *de minimis* criteria. The general *de minimis* criteria require that (i) there is only one conviction or program entry of record for a covered offense; (ii) the maximum sentence that could have been imposed for the crime at the time was imprisonment for a term of one year or less or a fine of \$2500 or less, and the individual served 3 days or less of jail time, and (iii) the offense did not involve an insured depository institution or insured credit union. JPMC believes that the FDIC should reduce the regulatory restriction for this population by excluding, as a requirement, the second prong of the general *de minimis* criteria, which requires that the maximum sentence that could have been imposed for the crime at the time was imprisonment for a term of one year or less or a fine of \$2500 or less, and the individual served 3 days or less of jail time.

Eliminating the second prong of the general *de minimis* criteria for this population would allow institutions to consider individuals who committed a potentially more serious crime when they were 21 or younger but who paid their debt to society. By keeping the first and second prongs of the general *de minimis* criteria, crimes that pose the most immediate potential risk (*i.e.*, crimes against an insured institution or repeat crimes) would continue to be excluded. Similarly, the prongs of the age-based exception would continue to apply so the individual would only be considered if 30 months had passed since the conviction or program entry and all sentencing or program requirements have been satisfied. Expanding the age-based exception in this way would increase employment opportunities for this population while continuing to mitigate risk.

ii. Automatic Waiver Should Include Repeat Low-Level Offenses

The FDIC should also (or in the alternative) expand the scope of the age-based exception to include automatic waivers for repeat low-level offenses. The FDIC should allow for more than one conviction or program entry of record for a covered offense that would otherwise meet a *de minimis* exception. This would provide employment opportunities for individuals with repeat low-level offenses (e.g., shoplifting) committed at age 21 or younger. The FDIC could cap the number of offenses at 2 or 3 so that potentially significant patterns of behavior would still have to be evaluated by the FDIC. Given the other requirements that would still need to be met, including that the offense did not include a depository institution, that 30 months have passed since the date of the conviction or program entry and all sentencing requirements have been met, there would continue to be appropriate safeguards in place to mitigate risk.

b. Small Dollar Simple Theft

The FDIC should expand the scope of its automatic approval under this exception by excluding certain crimes entirely or after a certain period of time has passed and increasing the monetary threshold for others. Under the SOP's Small-Dollar, Simple Theft exception, an offense involving theft, but excluding burglary, forgery, robbery, identity theft, and fraud, will qualify for *de minimis* treatment where (i) the aggregate value of the currency, goods, or services taken was \$500 or less, (ii) at least five years (or 30 months for individuals 21 or younger) has passed since the conviction or program entry, (iii) the theft did not involve an insured depository institution or insured credit union; and (iv) there is no other conviction or program entry subject to Section 19. JPMC believes that the FDIC can go further and broaden the scope of this exception without increasing risk.

First, the FDIC should consider excluding from coverage certain minor crimes of dishonesty entirely and grant them automatic approval. These could include, for example, convictions for small dollar theft/shoplifting, small dollar theft of services (*e.g.*, transportation fare evasion), and false record of insurance. As an alternative, the FDIC could exclude such convictions from regulatory coverage after a limited time period (*e.g.*, 30 months).

Second, the FDIC should increase the maximum simple theft value (\$500) to align with the bad checks *de minimis* exception value (\$1000). Because theft thresholds differ in each state, this minor change will expand the application of the exception to more individuals.

JPMC believes these minimal changes would increase access to employment opportunities without creating undue risk.

c. Expungements

The FDIC should expand the definition of "complete expungement" to include all expungements that make a conviction or program entry inaccessible to the general public. The FDIC should remove the language that invalidates an expungement if it can be used for a subsequent purpose. Currently, the SOP provides that "[i]f an order of expungement has been issued in regard to a conviction or program entry and is intended by the language in the order itself, or in the legislative provisions under which the order was issued, to be a complete expungement, then the jurisdiction, either in the order or the underlying legislative provisions, cannot allow the conviction or program entry to be used for any subsequent purpose including, but not limited to, an evaluation of a person's fitness or character." The language "for any subsequent purpose" is too restrictive. Many state expungement statutes seal the records, making them inaccessible, but provide limited exceptions, usually for law enforcement or another government entity, to obtain access. As a result, many expungements do not qualify as "complete expungements" under the SOP. The FDIC's definition of complete expungement

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should be clarified and expanded because it unnecessarily bars qualified individuals from employment opportunities.

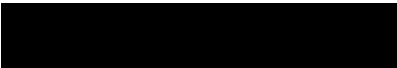
3. The FDIC Should Impose a Time Limit on the Application of Section 19

Section 19's coverage should be limited in time to those convictions and program entries occurring within the last 7-10 years. Currently, Section 19's application and coverage is unlimited. Therefore, decades-old covered offenses are disqualifying. Section 19's purpose is to protect the safety and soundness of institutions, the interests of its depositors and to protect public confidence in the institution. Individuals who committed offenses over ten years ago, have paid their debt to society and have demonstrated rehabilitation do not pose the type of risk Section 19 is intended to cover.

To the extent the FDIC believes it does not have the authority to impose a time limit, the FDIC should take proactive steps to recommend changes to Congress that would more appropriately align the application of Section 19 with its intended goal.

JPMC supports the underlying goal of Section 19 and appreciates the FDIC's engagement and effort to seek public comment on the scope of Section 19's application. JPMC's comments are intended to balance the underlying premise of Section 19 with application that allows institutions to attract, develop and retain the best diverse talent for today and the future. JPMC appreciates the opportunity to provide comments.

Respectfully,


Heather A. Higginbottom
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