

March 16, 2020

The Honorable Jelena McWilliams
Chairman
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429

Re: Incorporation of Existing Statement of Policy Regarding Requests for Participation in the Affairs of an Insured Depository Institution by Convicted Individuals

Chairman McWilliams:

Bank of America appreciates the opportunity to comment on the Federal Deposit Insurance Corporation's ("FDIC") proposal to codify the existing Statement of Policy regarding its interpretation of Section 19 of the Federal Deposit Insurance Act.

At Bank of America, our purpose is to make financial lives better through the power of every connection. We deliver on that purpose by driving Responsible Growth: We have to grow by focusing on serving our clients; we have to manage our risk well; and our growth has to be sustainable, meaning we share our success, we focus on operational excellence, and we strive to be a great place to work for our teammates.

We take seriously the position we hold in helping serve as an engine of growth and success for millions of individuals, households, families, and businesses. We are committed to the communities we serve, and support the stability that comes with full employment. Consistent with that commitment, we employ nearly 170,000 teammates in the United States and hire thousands of individuals each year. We focus on being a great place to work, creating opportunities for growth and development, recognizing and rewarding performance, and supporting the physical, emotional, and financial wellness of our colleagues. At Bank of America, we understand the importance of economic mobility in our communities and the role that we can play in local economies as an employer.

Since the inception of the FDIC, and the first issuance of the Statement of Policy for Section 19 in 1998, the nation's approach to incarceration and rehabilitation has shifted. Federal and state governments – and prosecutors – have established measures to address incarceration rates as our societal approach to criminal justice has evolved. For example, in December 2018 President Trump signed into law the First Step Act, which was the culmination of a bi-partisan effort to improve criminal justice outcomes, as well as to reduce the size of the Federal prison population while also creating mechanisms to maintain public safety. Bank of America appreciates the FDIC's efforts, consistent with this evolution, to contemporize and expand *de minimis* offenses in its existing Statement of Policy. With bipartisan Federal, state, and local legislative efforts aimed at addressing the impact of incarceration on individuals and communities; we believe the FDIC could responsibly go further than its current proposal to ease hiring restrictions.

We support the recommendations proffered by the Bank Policy Institute in its March 2, 2020 comment letter:

- Expand the current scope of *de minimis* criteria to increase the maximum number of days of jail time that an individual may serve from three days to thirty to reduce the impact on individuals who remain in jail because of inability to pay bail;
- Align the maximum simple theft value with the maximum bad or insufficient funds check value;
- Clarify what constitutes a “reasonable inquiry” for determining whether an individual meets the *de minimis* criteria;
- Modify and clarify the definition of “complete expungement;” and
- Streamline FDIC practices to make the waiver application process more straightforward so that more individuals are encouraged to submit waiver applications.

Additionally, we recommend that the FDIC continue to work collaboratively with Congress to reduce barriers to employment. As such, we support the following:

- **Treatment of successful completion of pre-trial diversion or a similar program as complete expungement.** The purpose of pre-trial diversion programs is to assist an individual in a coordinated alternative to prosecution. Diversion programs are often offered in situations involving first time offenders where prosecutors and the judicial system determine the investment is worthwhile. Participants often receive coordinated assistance in personal and group counseling, drug and alcohol rehabilitation, and other community agency support appropriate to their needs. As law enforcement and correctional institutions are looking at ways to reduce incarceration, address the issues that lead the crime, and create opportunity, the FDIC could advance those objectives by adjusting its Statement of Policy to support these broad based efforts to provide rehabilitation and support services.
- **Reduce the time period encompassed by Section 19 to offenses in which sentencing requirements were met over seven years ago.** Currently, with the exception of the *de minimis* criteria, Section 19 has no time restriction. As a result, an individual with a decades old crime is still prohibited from being employed by a depository institution, without regard to subsequent rehabilitation efforts, work history, etc. Given the country’s focus on rehabilitation and job creation, the FDIC and Congress should explore creating parameters which would enable a qualified individual who is rehabilitated and has a track record of success to be eligible for employment with a depository institution.

Bank of America remains steadfast in its commitment to the communities we serve and hiring individuals who will help us to fulfill our purpose and appreciates the opportunity to comment on the FDIC’s proposal to codify the existing Statement of Policy regarding its interpretation and application of Section 19 of the Federal Deposit Insurance Act.

Sincerely,



Andrew Plepler
Global Environmental, Social, Governance Executive