

# JPMORGAN CHASE & CO.

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

Attention: Comments, Statement of Policy (SOP) issued pursuant to Section 19 of the Federal Deposit Insurance Act (FDI Act)

Dear Secretary Feldman:

JPMorgan Chase ("JPMC" or the "Firm") is pleased to support the proposed changes to the Statement of Policy for Section 19 of the Federal Deposit Insurance Act ("Section 19"), and we appreciate the opportunity to submit comments on the FDIC's proposed changes. JPMC employs over 240,000 people worldwide, and hires thousands more every year. 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 historically broad restrictions on insured institutions' ability to hire individuals with minor criminal records.

Section 19 appropriately seeks to protect the public and the banking industry by prohibiting the employment of individuals convicted of certain covered offenses and requiring institutions to screen for these covered offenses. The proposed Statement of Policy continues this practice, but adjusts the need for a formal application in light of the historical adjudication of *de minimis* and low risk exceptions formally granted by the FDIC. JPMC supports these efforts. While we believe that the FDIC could go further to ease Section 19's hiring restrictions without introducing risk, the proposed changes are a good first step. They are good for business, they are good for employees, and they are good for our communities, and will improve and simplify the regulatory requirements of Section 19 by making it more effective.

These proposed changes will allow insured institutions like JPMC to hire the best diverse talent, without undue regulatory restriction, and without undue risk. Below are our comments on the proposed changes together with suggestions on how the FDIC can go further to safely improve regulatory restrictions on hiring. Where we have not commented specifically, JPMC supports the proposed changes.

## 1) Small Dollar Simple Theft

The FDIC proposes a new *de minimis* exception for convictions or program entries for small dollar simple theft, where the aggregate value of the goods, services and/or currency stolen was \$500 or less at the time of the conviction or program entry. As before, the individual must have only one conviction or program entry under Section 19, and five years must have passed since the conviction or program entry (or 30 months in the case of a person 21 or younger at the time of the conviction or program entry); however, the current requirements that the offense was punishable by imprisonment for a term of one year or

less and/or a fine of \$2,500 or less, that the individual served three days or less of actual jail time, and that the offense did not involve an insured depository institution or insured credit union will not apply. Burglary, forgery, robbery, embezzlement, identity theft and/or fraud will not be subject to this exception to the normal *de minimis* standard.

JPMC supports the FDIC's proposed change because it would simplify the Firm's adjudication of applicants with small dollar theft convictions. Under the new SOP, the Firm would no longer have to determine the maximum penalty for the crime, how much jail time was served, and if a depository institution or insured credit union was involved. It is unlikely, though, that this change would dramatically increase the number of individuals who clear the Firm's screening. As a practical matter, simple theft convictions where the aggregate value of the goods, services and/or currency stolen was \$500 or less are unlikely to be punishable by imprisonment for a term of more than one year or a fine of more than \$2,500, and the individual is unlikely to have served more than three days in jail. Such convictions rarely involve an insured depository institution or insured credit union.

Thus, while JPMC supports the proposed change, we believe that the FDIC can go further without introducing risk, by excluding from regulatory coverage certain minor crimes of dishonesty entirely. These could include, for example, convictions for use of a fake ID for non-financial purposes, small dollar theft/shoplifting, small dollar theft of services (e.g., transportation fare evasion), and false record of insurance – all of which will currently disqualify an applicant from employment. As an alternative, the FDIC could exclude such convictions from regulatory coverage after a limited time period (e.g., 30 months).

## 2) **Crimes Committed Prior to Age 21**

The FDIC proposes to create an age-based exception to the filing requirement whereby an individual with a covered conviction or program entry that occurred when the individual was age 21 or younger at the time of the conviction or program entry, who also satisfies the "general *de minimis* criteria,"<sup>1</sup> and who has completed all sentencing or program requirements, will qualify for *de minimis* treatment if at least 30 months (rather than the standard 5 years) have passed prior to the date an application would otherwise be required.

JPMC supports this proposed change because it would allow the Firm to hire qualified candidates who would otherwise be prohibited from employment. JPMC believes that the FDIC should reduce the regulatory restriction further by excluding from regulatory coverage additional crimes committed prior to age 21, provided the conviction occurred at least 30 months prior to employment.

## 3) **Treatment of Expungements**

Currently, the SOP states that "for an expungement to be considered complete, no one, including law enforcement, can be permitted access to the record even by a court order under the state or federal law that was the basis of the expungement." The FDIC has proposed adding language to the SOP indicating that if the expungement is intended to be complete under the law of the jurisdiction that issues the expungement, and the jurisdiction intends that no governmental body or court can use the prior conviction or program entry

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<sup>1</sup> One satisfies the "general *de minimis* criteria" if:

- There is only one conviction or program entry of record for a covered offense;
- The offense was punishable by imprisonment for a term of one year or less and/or a fine of \$2,500 or less, and the individual served 3 days or less of actual jail time; and
- The offense did not involve an insured depository institution or insured credit union.

for any subsequent purpose, then “the fact that the records have not been timely destroyed, or that there exist copies of the records that are not covered by the order sealing or destroying them, will not prevent the expungement from being considered complete for the purposes of Section 19.”

JPMC supports this proposed change because there are numerous instances where court records indicate what would otherwise be a complete expungement, but the record still appears on the individual’s RAP sheet, leading to uncertainty as to whether the expungement should be deemed “complete.”

It appears, though, that the actual language the FDIC proposes to add to the SOP does not make any change to the expungement standard or provide the intended clarification. The proposed language simply adds: “Further, the jurisdiction issuing the expungement cannot permit the use of the expunged conviction in any subsequent proceeding or review of the person’s character or fitness.” In order to effectuate its stated purpose, the FDIC should explicitly state in the SOP:

If the expungement is intended to be complete under the law of the jurisdiction that issues the expungement, and the jurisdiction intends that no governmental body or court can use the prior conviction or program entry for any subsequent purpose, then the fact that the records have not been timely destroyed, or that there exist copies of the records that are not covered by the order sealing or destroying them, will not prevent the expungement from being considered complete for the purposes of Section 19.

Notwithstanding the above, the Firm believes that the FDIC can go further, and supports easing Section 19’s hiring restrictions such that all expungements are treated as “complete expungements,” regardless of whether law enforcement or other government entity retains access to the records.

#### 4) **Other Proposals**

In addition to the above, JPMC proposes the following changes to the SOP, which would further decrease the regulatory burden of the law and increase the Firm’s ability to hire qualified candidates.

a. **Treat successful completion of a pre-trial diversion or similar program as a complete expungement.**

Currently, Section 19 treats completion of a pre-trial diversion or similar program as a conviction, and as such, JPMC is prohibited from hiring qualified applicants who have minor criminal records, have paid their debt to society, and pose no risk to the Firm. The banking industry should be allowed to treat individuals similar to how they are now treated by the justice system.

b. **Exclude from regulatory coverage all convictions that have been sealed.**

Currently, JPMC is prohibited from hiring applicants with covered offenses on their records, even if those records have been sealed.

c. **Reduce the time period encompassed by Section 19 to 7 to 10 years.**

Currently, Section 19 has no time limit, meaning that an applicant with a minor, decades-old disqualifying conviction is prohibited from working for a covered institution. Other self-regulatory organizations have recognized that a sustained period of time free

from any crimes appropriately balances risks, and depository institutions should be allowed to do the same.

To be sure, we fully support the underlying goal of Section 19 to protect the public and the banking system by holding those working in the industry to high standards. Confidence and trust are the foundation of our banking system. We should take actions to mitigate potential risks around employees in ways that allows firms like JPMC to attract the best and brightest talent from the largest and diverse pool available. The proposed changes to Section 19 helps to accomplish this goal with common sense solutions. We appreciate the opportunity to comment on the FDIC's proposed changes to the SOP and would be pleased to discuss any or all of the above at the FDIC's convenience.

Very truly yours,



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