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Robert E. Feldman  
Executive Secretary  
Federal Deposit Insurance Corporation  
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RE: RIN 2017-28222

Karen Cacace  
*Director*  
Employment Law Unit

Dear Mr. Feldman,

The Legal Aid Society is pleased to submit comments on the Proposed Statement of Policy for Participation in the Conduct of the Affairs of an Insured Depository Institution by Persons Who Have Been Convicted or Have Entered a Pretrial Diversion or Similar Program for Certain Offenses Pursuant to Section 19 of the Federal Deposit Insurance Act (“Proposed Statement of Policy”). We applaud the Federal Deposit Insurance Corporation (“FDIC”) for many aspects of its proposal. However, we urge the FDIC to revise the Proposed Statement of Policy to state explicitly that defendants whose New York State criminal cases have been “adjourned in contemplation of dismissal” have not entered a “pretrial diversion or similar program” for the purposes of Section 19 of the Federal Deposit Insurance Act (“Section 19”).

Since 1876, The Legal Aid Society has been committed to providing quality legal representation to low-income New Yorkers. We are dedicated to ensuring that no New Yorker is denied access to justice because of poverty. The Criminal Defense Practice of The Legal Aid Society (“The Society”) is the largest defender organization in New York City, representing a very substantial proportion of the persons charged with crimes in New York City. The Civil Practice of The Society provides legal representation to vulnerable families and individuals to assist them in obtaining and maintaining the basic necessities of life — housing, employment, health care, food and subsistence-level income or self-sufficiency. Our advocacy includes both litigation and working for legislative and policy reforms that improve educational, vocational, housing and programming needs of our clients, many of whom have arrest or conviction records.

A substantial number of the clients whom The Society’s Criminal Defense Practice represents agree to have their criminal case “adjourned in contemplation of dismissal” pursuant to New York Criminal Procedure Law §§ 170.55 and 170.56. An adjournment in contemplation of dismissal (“ACD”) never involves an admission of guilt. Many times, the criminal case is simply adjourned for a certain amount of time and then dismissed, without any requirement of restitution or programming. A criminal case that is dismissed following an ACD is considered by New York State law to have been terminated in the client’s favor. See N.Y. Criminal Procedure Law § 160.50. As such, New York State law deems the arrest and prosecution a “nullity” and prohibits the arrest and prosecution from “operating as a disqualification of any person so accused to pursue or engage in any lawful activity, occupation, profession, or calling.” See N.Y. Criminal Procedure Law § 160.60.

Unfortunately, clients whose criminal cases have been dismissed following an ACD are unfairly denied employment in FDIC-insured institutions due to those institutions’ interpretation of Section 19. By way of example, in 2017 a client of The Society was arrested for a crime he did not commit. On his second

court date, the criminal court case was adjourned in contemplation of dismissal. The client was not required to complete programming or pay restitution, and the criminal case was subsequently dismissed. When the client advised a prospective FDIC-insured employer of the dismissed case, the employer withdrew its offer of employment, citing to Section 19. The Society contacted the FDIC's New York Regional Office, which provided our client with a letter stating that Section 19 was inapplicable because no conditions were imposed in connection with the ACD. Fortunately, the employer had not yet filled the position for which our client had been hired and agreed to reinstate his employment offer following receipt of the FDIC's letter. Other clients, however, may not be so lucky.


Tens of thousands of criminal cases are adjourned in contemplation of dismissal in New York City every year. ACDs are, in effect, a safety valve to allow quick dismissal of cases in a court system that is mired by extensive delays.<sup>1</sup> The ambiguity of the FDIC's current Statement of Policy inverts the purpose of New York's ACD statute: a client whose case is dismissed and terminated in their favor is treated worse than someone who pleads guilty to a non-criminal offense in order to resolve the criminal matter. We respectfully request that the FDIC resolve this ambiguity and injustice by explicitly excluding New York State ACDs from the definition of "pretrial diversion or similar program" in its Proposed Statement of Policy.

Thank you for your consideration.

Sincerely,



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<sup>1</sup> See, e.g., William Glaberson, *Justice Denied: Inside the Bronx's Dysfunctional Court System*, N.Y. TIMES (Apr. 14, 2013), available at <http://www.nytimes.com/2013/04/14/nyregion/justice-denied-bronx-court-system-mired-in-delays.html?pagewanted=all>.