



April 8, 2019

The Honorable Maxine Waters
Chairwoman, House Financial Services Committee
U.S. House of Representatives
2221 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Patrick McHenry
Ranking Member, House Financial Services Committee
U.S. House of Representatives
2004 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Mike Crapo
Chairman, Senate Committee on Banking,
Housing, and Urban Affairs
U.S. Senate
239 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Sherrod Brown
Ranking Member, Senate Committee on Banking,
Housing, and Urban Affairs
U.S. Senate
503 Hart Senate Office Building
Washington, D.C. 20510

Chairwoman Waters, Ranking Member McHenry, Chairman Crapo, and Ranking Member Brown:

I am writing on behalf of the Bank Policy Institute (BPI) to urge Congress to review and consider amending section 19 of the Federal Deposit Insurance Act (12 U.S.C. § 1829) to remove existing unnecessary impediments to banks' ability to hire individuals who, notwithstanding some prior criminal record, have rehabilitated themselves and pose no risk to the safety and soundness of their employer.¹

As you know, section 19 prohibits any person convicted of any criminal offense involving dishonesty, breach of trust, money laundering, or who has entered into a pretrial diversion or similar program in connection with a prosecution for such offense, from participating in the affairs of an FDIC-insured institution without the prior written consent of the FDIC. Section 19 also applies similar restrictions to employment at bank holding companies and savings and loan holding companies.

We are concerned the breadth of the statutory language can, in some cases, pose unnecessary and inappropriate obstacles to banks' ability to employ qualified individuals with limited criminal records (e.g., a prior misdemeanor conviction unrelated to financial misconduct or dishonesty) and who have taken effective steps to rehabilitate themselves. In such cases, employment clearly would not present any risk to the safety and soundness of an FDIC-insured institution. Indeed, the FDIC itself has highlighted the difficulty inherent in the applicability of the statute in these types of cases in its Statement of Policy (SOP) for section 19.

¹ BPI is a nonpartisan public policy, research and advocacy group, representing the nation's leading banks. Our members include universal banks, regional banks and major foreign banks doing business in the United States. Collectively, they employ nearly 2 million Americans, make 72 percent of all loans and nearly half of the nation's small business loans and serve as an engine for financial innovation and economic growth.

In its SOP, the agency has provided “automatic” approval (via an exemption to the application requirement) for individuals who have been convicted of a single crime that is deemed *de minimis* if it meets a range of specified criteria. Generally, the FDIC’s *de minimis* exception applies to those crimes that are “considered to be of such a minimal nature and of such low risk that the affected person may be employed at any institution, in any position”² because such individuals would neither pose a threat to the safety and soundness of an insured institution or the interests of its depositors nor impair public confidence in the insured institution. Yet notwithstanding the FDIC’s recent efforts to modestly expand the scope of that *de minimis* exemption, the relatively narrow scope of that exemption and the underlying language of section 19 continue to pose meaningful challenges to institutions’ ability to hire rehabilitated individuals who clearly would not pose any risk to the institution or its customers.³

We therefore strongly urge Congress to review and consider an amendment to section 19 that preserves its original aim while providing banking organizations flexibility to consider employment for a broader universe of qualified individuals without prior approval.

Sincerely,



Gregory A. Baer
President & Chief Executive Officer
Bank Policy Institute

² 63 Fed. Reg. at 66,181.

³ For example, the FDIC’s *de minimis* exemption is only applicable where (i) there is only a single conviction, (ii) that occurred at least five years in the past, and (iii) involved no more than 3 days of jail time.