

Statement by the Bank Policy Institute

“Access Denied: Eliminating Barriers and Increasing Economic Opportunity for Justice-Involved Individuals”

September 27, 2021

Chairwoman Waters, Subcommittee Chairwoman Beatty, Ranking Member McHenry and Members of the Diversity and Inclusion Subcommittee:

The Bank Policy Institute¹ supports the work of this subcommittee in exploring ways to increase the economic opportunities that are available to individuals who have previously been convicted of criminal offenses, including employment opportunities. This is an issue upon which BPI and its member institutions have been acutely focused for some time. The banking sector is a significant source of employment in the U.S. economy. Banking organizations strive to attract and retain talented employees but find that some qualified individuals are prohibited from working at insured depository institutions because of the broad restrictions imposed by Section 19 of the Federal Deposit Insurance Act, which impacts an institution’s ability to hire persons who have been convicted of a criminal offense.² This issue is ripe for legislative action to provide banking organizations more flexibility to provide employment opportunities to those individuals.

Section 19 prohibits, without the prior written consent of the FDIC, the participation in banking, including employment, by any person who has been convicted of “any criminal offense involving dishonesty or a breach of trust or money laundering, or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offense.” This language is broad. So broad in fact that in some cases it may pose unnecessary and inappropriate obstacles to a bank’s ability to employ individuals with criminal records who have taken effective steps to rehabilitate themselves. As the FDIC has noted in the past, the “basic underlying premise of Section 19 is to prevent risk to the safety and soundness of an insured institution or the interest of its depositors, and to prevent impairment of public confidence in the insured institution.”³ However, the breadth of the statutory language captures a wide variety of criminal offenses, among which are those that would not present a risk to the safety and soundness of an FDIC-insured institution. For example, it would restrict the employment of an individual with a prior misdemeanor conviction unrelated to financial misconduct or dishonesty.

Through its 2020 rulemaking,⁴ the FDIC has expanded the provisions for “automatic” approval that existed in its previous Statement of Policy on Section 19, by providing an exemption to the requirement that FDIC consent be obtained.⁵ The exemption is available for individuals who have been convicted of no more than two crimes that

¹ The Bank Policy Institute is a nonpartisan public policy, research and advocacy group, representing the nation’s leading banks and their customers. Our members include universal banks, regional banks and the major foreign banks doing business in the United States. Collectively, they employ almost two million Americans, make nearly half of the nation’s small business loans, and are an engine for financial innovation and economic growth.

² 12 U.S.C. § 1829.

³ 63 Fed. Reg. 66,177, 66,181 (Dec. 1, 1998), “Statement of Policy Pursuant to Section 19 of the Federal Deposit Insurance Act Concerning Participation in the Conduct of the Affairs of an Insured Institution by Persons Who Have Been Convicted of Crimes Involving Dishonesty, Breach of Trust or Money Laundering or Who Have Entered Pretrial Diversion Programs For Such Offenses.”

⁴ 85 Fed. Reg. 51312 (Aug. 20, 2020).

⁵ 83 Fed. Reg. 38143 (Aug. 3, 2018).

are deemed *de minimis* if the offenses meet a range of specified criteria. Generally, the FDIC's *de minimis* exception applies to those offenses that are considered to present low risk to the depository institution. Notwithstanding the FDIC's recent efforts, the underlying language of Section 19 poses meaningful challenges to institutions' ability to hire rehabilitated individuals who clearly would not pose any risk to the institution or its customers.

Section 19 serves an important purpose. However, achieving this purpose should not require banks to implement overly restrictive bars on employment. Rather, to fulfill Section 19's safety and soundness objectives in a manner that allows banks to prudently manage safety and soundness risk, Section 19's requirements should be appropriately calibrated to the potential and actual safety and soundness risks posed by prospective employees. The following are examples of amendments Congress may consider to accomplish this goal:

- Amend the statute to provide clarity around difficult-to-interpret terms, such as "dishonesty" and "breach of trust."
- Amend the statute to limit the individuals and positions within financial institutions to which the prohibition applies. Currently the statute captures positions for which the responsibilities will not pose a risk of more than minimal financial loss or risk to safety and soundness of the institution.
- Amend the statute to limit the universe of convictions to which the prohibition applies. Currently the statute applies to both felonies and misdemeanors. Congress could consider applying it only to felonies or to apply only to those crimes that involved more than minimal financial loss to a banking organization.

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