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March 8, 2018

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

Re: 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

Dear Mr. Feldman:

The Independent Community Bankers of America (ICBA)¹ appreciates the opportunity to comment on the FDIC's proposal to update its Statement of Policy (SOP), which is issued pursuant to Section 19 of the Federal Deposit Insurance Act (FDI Act). Section 19 prohibits, without the prior written consent of the FDIC, any person from participating in banking who has been convicted of a crime of dishonesty or breach of trust or money laundering, or who has entered a pretrial diversion or similar program in connection with the prosecution for such an offense.

ICBA's Comments

In general, ICBA approves of the FDIC's proposed amendments to the SOP that would expand the Policy's *de minimis* exceptions so that a community bank would have more flexibility with hiring prospective employees and finding persons to serve

¹ The Independent Community Bankers of America®, the nation's voice for nearly 5,700 community banks of all sizes and charter types, is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education and high-quality products and services. With nearly 52,000 locations nationwide, community banks employ 760,000 Americans, hold \$4.9 trillion in assets, \$3.9 trillion in deposits, and \$3.3 trillion in loans to consumers, small businesses, and the agricultural community. For more information, visit ICBA's website at www.icba.org.

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as directors and would not have to file for FDIC approval under Section 19 just because the prospective employee or director was convicted of a minor offense.

Specifically, the FDIC is proposing to expand its current *de minimis* exceptions to encompass insufficient funds checks of aggregate moderate value, small dollar simple theft, and isolated, minor offenses committed by young adults. We agree that these carefully measured changes will reduce regulatory burden by decreasing the number of covered offenses that will require an application, while ensuring that insured depository institutions are not subject to risk by convicted persons.

For instance, the FDIC is proposing a new *de minimis* exception to filing for convictions for small-dollar theft. The exception applies if the conviction is based on a small dollar theft of goods, services, and/or currency and the aggregate value of the goods, services and/or currency was \$500 or less at the time of the conviction. Additionally, the individual must have only one conviction, and five years must have passed since the conviction. Simple theft for the purposes of this exception to filing does not include burglary, forgery, robbery, embezzlement, identity theft or fraud. If the conviction occurred when the individual was 21 or younger, then the proposal reduces the five-year period to 30 months.

Similarly for convictions involving insufficient funds checks, provided the individual meets the other requirements in the SOP for the *de minimis* exception (i.e., only one conviction, aggregate value of all “bad” checks does not exceed \$1,000, and no bank was the payee on any “bad” check), the conviction will be considered *de minimis* if it occurred more than 30 months ago and the individual was 21 years or younger at the time of the conviction.

The FDIC proposal also makes clear that an FDIC-supervised community bank can make a conditional offer of employment to a prospective employee, contingent on the completion of a background check satisfactory to the institution and a determination that the person is not barred by the provisions of Section 19. In such a case, the SOP makes clear that the prospective employee will not be permitted to work at or participate in the affairs of, the institution unless the applicant’s background check is completed to the satisfaction of the institution and a determination is made that the applicant’s employment or participation at the institution is not barred by Section 19. This option serves as an alternative to the bank having to perform the Section 19 screening process prior to making an offer to the prospective employee.

Conclusion

ICBA generally endorses the FDIC proposal to expand the current *de minimis* exceptions to the Section 19 Statement of Policy. These measured changes to the SOP will reduce

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regulatory burden on community banks without putting them in any risk of hiring persons convicted of serious crimes of dishonesty or breach of trust or money laundering.

ICBA appreciates the opportunity to comment on the FDIC's proposal to update its Section 19 Statement of Policy. If you have any questions or would like additional information, please do not hesitate to contact me by email at Chris.Cole@icba.org.

Sincerely,
/c/ Christopher Cole

Christopher Cole
Executive Vice President and Senior Regulatory Counsel

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