

August 10, 2011

Commission Meeting
EEOC Executive Officer
131 M Street, NE
Washington, D.C. 20507

Re: Statement for the Record – EEOC Meeting to Examine Arrest and Conviction Records as a Hiring Barrier, July 26, 2011

Dear Sir or Madam:

In response to the July 26, 2011 meeting of the Equal Employment Opportunity Commission (EEOC) regarding the use of criminal background checks as part of the application/hiring process, the American Bankers Association¹ (ABA) appreciates this opportunity to provide to the EEOC information concerning an important statutory requirement with which all federally insured depository institutions (including community banks and credit unions) must comply in connection with their employment practices. To help maintain the critical need for integrity, confidence and safety in the nation's banking system, Congress enacted Section 19 of the Federal Deposit Insurance Act² (Section 19) which prohibits an insured depository institution from hiring any person convicted of certain crimes.

Specifically, Section 19 prohibits an insured depository institution from hiring any person who has been convicted of, or has entered into a pre-trial diversion or similar program for, a crime concerning (1) dishonesty, (2) breach of trust, (3) money laundering, or (4) distribution or sale of controlled substances, unless the FDIC gives prior written consent. The FDIC automatically grants statutory consent to the employment of an otherwise disqualified applicant if certain “*de minimis*” criteria are met.³ A covered offense is considered *de minimis* if it meets all of the following criteria:

- Only one conviction or program entry;
- The offense was punishable by imprisonment of one year or less and/or a fine of \$1,000 or less, and the individual did not serve time in jail;
- The conviction or program entry occurred at least five years prior to the application; and
- The offense did not involve an insured depository institution or insured credit union.

¹ The American Bankers Association represents banks of all sizes and charters and is the voice for the nation's \$13 trillion banking industry and its 2 million employees. ABA's extensive resources enhance the success of the nation's banks and strengthen America's economy and communities. Learn more at www.aba.com.

² 12 U.S.C. § 1829.

³ See, [FDIC Statement of Policy for Section 19 of the FDI Act](#).

There is a separate *de minimis* standard for convictions based on writing a “bad” or insufficient funds check as follows:

- All other requirements of the *de minimis* offense criteria are met;
- The aggregate total face value of the bad or insufficient funds checks(s) cited in the conviction was \$1000 or less; and
- No insured depository institution or insured credit union was a payee on any of the bad or insufficient funds checks that were the basis of the conviction.

The FDIC recently clarified the "de minimis" criteria, noting that the clarification is expected to reduce the number of applications to the FDIC for waiver of Section 19's prohibitions and regulatory burden.⁴

An institution’s violation of Section 19 can result in a fine of up to \$1,000,000 (one million dollars) per day, imprisonment for up to five years, or both.

In summary, Section 19 mandates that federally insured depository institutions inquire into an applicant's background to ensure that no disqualifying criminal history exists, or face serious penalties. In doing so, Section 19 advances the important purpose of maintaining the integrity, confidence and safety in the nation's banking system.

ABA and our members remain completely opposed to unfair discrimination against any persons, and we are fully committed to compliance with all of our legal obligations. As the EEOC continues to consider the need for employers to balance business concerns with employment practices that are fair, ABA believes it is critical that the EEOC be mindful of the obligations of federally insured depository institutions to comply with Section 19 by screening out employment candidates with disqualifying charges of record. Please contact the undersigned if you have any questions about these issues.

Sincerely,



Cristeena G. Naser
Senior Counsel

⁴ See, <http://www.fdic.gov/news/news/financial/2011/fil11057.html>.