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To: House Judiciary Committee

From: The Attorney General's Office, prepared by David Scherr, Assistant Attorney General

Re: The Expungement Bill, S.7, Will Have No Legal Impact On Bank Obligations Under Section 19 of the Federal Deposit Insurance Act

This memo responds to the written testimony of the Vermont Banker's Association, posted on the House Judiciary Website on April 22, 2021, discussing Section 19 of the Federal Deposit Insurance Act. The Association's testimony incorrectly states that S.7 implicates Section 19, which prohibits banks from employing some people who have been convicted of crimes involving dishonesty or breach of trust.

To the contrary:

- Expunged and sealed offenses are explicitly excepted from the Section 19 prohibition under the Code of Federal Regulations (CFR).
- For this reason, S.7 will have no legal impact on bank obligations under Section 19.

Expunged and sealed offenses are simply not considered convictions for the purposes of Section 19 and therefore have no relevance to the Section 19 prohibitions on employment and requirement for background checks. This is codified at [CFR 303.223\(c\)](#) (page 10 of the linked pdf, noted as 51321, upper left of the page. A full copy is attached to this memo).

CFR 303.223(c) states:

Expungements. If an order of expungement or an order to seal has been issued in regard to a conviction, or if a record has been otherwise expunged by operation of law, then the conviction shall not be considered a conviction of record

Id.

The Federal Deposit Insurance Corporation's recent [Final Rule](#), issued in 2020, further discusses the policy behind the expungement exception on pages 51313-14 (pages 2 and 3 of the linked pdf). It has been the case for years that some expunged offenses are not considered convictions for the purposes of Section 19. The new [Final Rule](#) (issued in accordance with the federal Administrative Procedures Act and carrying the full authority of federal administrative law) expanded the Section 19 expungement exemption from some expunged offenses to any expunged and sealed offense.

The new rule makes it explicitly clear that any expunged and sealed offenses that would otherwise be prohibited by Section 19 are not considered convictions for the purposes of the Section.

The full text of the 2020 FDIC Final Rule can be found at this link on the FDIC website: <https://www.fdic.gov/news/board/2020/2020-07-24-notational-fr-a.pdf>. The key paragraph is on page 51321 (the 10th page of the linked document), in the upper left-hand column.