

FDIC Revises Federal Deposit Insurance Act Section 19 Regulations

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Federal Deposit Insurance Corporation (FDIC) changes to its interpretation of Section 19 of the Federal Deposit Insurance Act will affect the hiring practices and affirmative action obligations of the financial institutions it regulates.

The agency's [Final Rule](#) on the treatment of applicants and employees with certain criminal convictions adopts long-standing Statements of Policy (SOPs), clarifies procedural ambiguities, and establishes new rules for expungements and *de minimis* offenses. The changes take effect on September 21, 2020.

Background

Originally signed into law in 1950, Section 19 prohibits anyone who has been convicted of a criminal offense involving dishonesty, a breach of trust, or money laundering, or who has entered into a pretrial diversion program for such an offense, from:

1. Becoming, or continuing as, a director, officer, employee, or controlling stockholder, or agent, of an insurance depository institution;
2. Owning or controlling any insured depository institution; or
3. Participating, directly or indirectly, with the affairs of any insured depository institution, without the prior written consent of the FDIC.

Between 1998 and 2018, the FDIC issued, but never formally adopted, numerous SOPs regarding procedures for obtaining FDIC consent, the criteria for FDIC approval for low-risk crimes, and FDIC waiver of such procedures for those convicted of *de minimis* crimes, as well as other SOPs on "complete expungement," conditional offers of employment, and how the FDIC would consider an application during a pending criminal action. Despite the breadth of the SOPs, the FDIC never formally adopted the SOPs until now.

Final Rule

On July 24, 2020, after a Notice of Proposed Rulemaking and comment period, the FDIC adopted the Final Rule addressing who is covered, the types of offenses covered, the effect of completing sentencing or pretrial-diversion programs, and the FDIC's procedures for reviewing applications filed under Section 19, among other topics.

While largely mirroring previous SOP guidance, the Final Rule also adopted several significant changes. Among other items, the Final Rule:

- Excludes all covered offenses expunged or sealed by a court of competent jurisdiction or by operation of law;
- Increases the small-dollar theft threshold of \$500 to \$1,000 for purposes of determining whether theft charges or convictions are considered *de minimis* offenses;
- Expands the *de minimis* exception to include fake or false identification charges or conviction by a person under age 21;
- Increases the allowed number of *de minimis* offenses for qualifying for the *de minimis* exception and decreases the time period that must elapse before the covered offenses

could be considered *de minimis*; and

- Eliminates the waiting period for persons with only one covered *de minimis* offense.

Observers have noted that, by narrowing the scope of disqualifying offenses, these changes likely will lead to an increase in the pool of potential candidates. They say that this, in turn, could affect affirmative action efforts and compliance.

In addition to these changes, the Final Rule also clarified how and when a Section 19 application must be filed, the types of applications available, how the FDIC will evaluate applications, and the denial process.

Financial institutions are encouraged to consult with their legal support teams to further understand how the regulations could affect hiring processes as a whole, but especially as it relates to affirmative action efforts and compliance.

Please contact a Jackson Lewis attorney with any questions about the Final Rule or other workplace developments.

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