

Overview of Key Changes to Section 19

Section 19 of the Federal Deposit Insurance (“FDI”) Act (12 U.S.C. 1829) (“Section 19”), enacted by the U.S. Congress in 1950, generally prohibits individuals convicted of certain crimes from becoming employed by, or participating in the affairs of, an FDIC-insured depository institution (“IDI”). This prohibition applies to any person convicted of, or who has entered into a pretrial diversion or similar program (“program entry”) for, a criminal offense involving dishonesty, breach of trust, or money laundering. However, under certain circumstances, the law permits the FDIC to grant written consent to allow a covered individual to be employed by or participate in the affairs of an IDI. For an individual to obtain such written consent, an application must be filed with the FDIC.

On December 23, 2022, the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, which contained the Fair Hiring in Banking Act (Act), was signed into law and became immediately effective. The Act provides significant amendments to Section 19. Notably, the Act excludes from the scope of Section 19 certain categories of offenses; that is, no consent application is required.

The following is a description of prominent changes to Section 19.

Certain Older Offenses Excluded

The Act excludes from the scope of Section 19 offenses that occurred seven or more years ago. Likewise, if an individual was incarcerated with respect to the offense and it has been five years or more since the individual was released from incarceration, that offense is excluded.

If an individual committed an offense when they were 21 or younger, and if it has been more than 30 months since the sentencing for that offense occurred, the Act excludes the offense from the scope of Section 19.

Note that these exceptions for certain older offenses do not apply to the federal offenses listed under 12 U.S.C. § 1829(a)(2), which continue to be subject to at least a 10-year prohibition period.

***De Minimis* Offenses That Do Not Require an Application**

Under certain circumstances—generally involving relatively minor (*de minimis*) offenses—a person with such an offense is not required to submit an application; the FDIC’s consent is deemed automatically granted. The FDIC’s regulations (FDIC’s Filing Procedures under Part 303, Subpart L) address several categories of *de minimis* offenses.

The Act requires that any additional *de minimis* offense criteria that the FDIC may designate, by rule, must include specific criteria regarding confinement criteria and offenses involving nonsufficient funds checks.

The Act also excludes from the scope of Section 19 “designated lesser offenses,” including the use of a fake form of identification, shoplifting, trespass, fare evasion, and driving with an expired license or tag, if 1 year or more has passed since the applicable conviction or program entry. To the extent these statutory exclusions conflict with existing regulations, the statutory exclusions

apply.

Crimes Excluded from the Definition of Criminal Offenses Involving Dishonesty

The Act excludes from the definition of “criminal offense involving dishonesty” (1) misdemeanor criminal offenses committed more than one year before the date on which an individual files an application, excluding any period of incarceration, and (2) an offense involving the possession of controlled substances.

Expunged, Sealed, and Dismissed Offenses

The Act excludes from the scope of Section 19 an offense where:

- a) there is an order of expungement, sealing, or dismissal that has been issued in regard to the conviction in connection with such offense; and
- b) it is intended by the language in the order itself, or in the legislative provisions under which the order was issued, that the conviction shall be destroyed or sealed from the individual’s State, Tribal, or Federal record, even if exceptions allow the record to be considered for certain character and fitness evaluation purposes.

FDIC Review of Section 19 Applications

The Act prescribes standards for the FDIC’s review of applications submitted under Section 19. The FDIC will process new and pending applications under the provisions of the amended law. Prospective applicants may contact the appropriate regional office as instructed on the FDIC’s website for [Section 19 Applications](#).

FDIC Actions Related to the Changes

During 2023, the FDIC will update its application form, industry guidance, and its implementing regulations (FDIC’s Filing Procedures under Part 303, Subpart L) governing applications under Section 19 to comply with the changes under the Act.

Previously Issued Actions under Section 19

The FDIC currently publishes and maintains on its [Enforcement Decisions and Orders webpage](#) all previously approved or denied Section 19 applications (“Orders”) that were not sponsored by an IDI.

The FDIC also publishes on the same webpage letters (“Section 19 Letters”). The FDIC issues Section 19 letters to certain individuals who have committed crimes that are subject to Section 19. The letters inform these individuals that Section 19 prohibits their (further) employment or participation in the affairs of any IDI.

During 2023 and on an ongoing basis, the FDIC will review all previously issued Orders and Section 19 Letters to determine whether, in light of the Act, particular Orders and Section 19 Letters should be terminated (as to Orders) and removed from the webpage (as to both Orders and Section 19 Letters).