



Federal Deposit Insurance Corporation
550 17th Street NW, Washington, D.C. 20429-9990

Financial Institution Letter
FIL-57-2023
October 24, 2023

Notice of Proposed Rulemaking to Revise FDIC Regulations Concerning Section 19 of the Federal Deposit Insurance Act

Summary: The Federal Deposit Insurance Corporation (FDIC) issued a proposal that would revise 12 C.F.R. part 303, subpart L, and part 308, subpart M, thereby updating the FDIC's regulations concerning section 19 of the Federal Deposit Insurance Act to conform with the Fair Hiring in Banking Act (Act).

On December 23, 2022, the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (NDAA), which contained the Act, was signed into law and became immediately effective. The Act made significant changes to Section 19 of the Federal Deposit Insurance Act (12 U.S.C. § 1829) (Section 19), including to its scope of application by adding a number of exclusions.

Section 19 prohibits a person from participating in the affairs of an FDIC-insured institution if he or she has been convicted of an offense involving dishonesty, breach of trust, or money laundering, or has entered into a pretrial diversion or similar program in connection with a prosecution for such an offense, without the prior written consent of the FDIC, among other provisions.

Statement of Applicability: The contents of, and material referenced in, this FIL apply to all FDIC-insured financial institutions.

Suggested Distribution:

Suggested Routing:

Chief Executive Officer
Chief Financial Officer
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Related Topics:

Applications and Notices

Attachments:

[Section 19 of the FDI Act](#)

[FIL-09-2023 - Fair Hiring in Banking Act Amends Section 19 of the Federal Deposit Insurance Act](#)

[Memorandum to the Board of Directors](#)

[Proposed Amendments to the FDIC's Section 19 Regulations](#)

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Highlights:

- The proposed rule would incorporate statutory changes to Section 19, including the following:
 - **Certain older offenses**. The Act excludes certain offenses from the scope of Section 19 based on the amount of time that has passed since the offense occurred or since the individual was released from incarceration.
 - **Designated lesser offenses**. Under the Act, Section 19 does not apply to the following offenses, if one year or more has passed since the applicable conviction or program entry: using fake identification; shoplifting; trespassing; fare evasion; and driving with an expired license or tag.
 - **Criminal offenses involving dishonesty**. The Act excludes certain offenses from the definition of “criminal offenses involving dishonesty,” including “an offense involving the possession of controlled substances.” Historically, the FDIC has required an application as to drug-related offenses—aside from simple-possession offenses. In light of the Act, however, the FDIC believes that Congress intended to exclude, at least, the offenses of simple possession and possession with intent to distribute from the “involving dishonesty” category because of the

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statute's use of the phrase "involving the possession of controlled substances." Additionally, the FDIC believes it should shift from the presumption that other drug-related offenses are subject to Section 19 as crimes involving dishonesty, breach of trust, or money laundering. This revised approach would treat drug offenses the same as all other types of crimes, which do not automatically trigger the need for an application, but which may require an application depending on the elements of the underlying criminal offense.

- **Expunged, sealed, and dismissed criminal records** . The Act excludes certain convictions from the scope of Section 19 that have been expunged, sealed, or dismissed. The existing FDIC regulations already exclude most of those offenses. The proposed rule would modestly broaden the statutory language concerning such offenses to harmonize the FDIC's current regulations concerning expunged and sealed records with the statutory language.
- **Standards for FDIC review of Section 19 applications** . The Act prescribes standards for the FDIC's review of applications submitted under Section 19.
- The proposed rule also provides interpretive language that addresses, among other topics, when an offense "occurs" under the Act, whether otherwise-covered offenses that occurred in foreign jurisdictions are covered by Section 19, and offenses that involve controlled substances.
- Comments will be accepted for 60 days after publication in the *Federal Register* .