

Modifications to the Statement of Policy for Section 19 of the Federal Deposit Insurance Act

Section 19 of the Federal Deposit Insurance (FDI) Act ([12 U.S.C. 1829](#)) prohibits, without the prior written consent of the Federal Deposit Insurance Corporation (FDIC), a person convicted of certain criminal offenses (covered offenses), or who has agreed to a pretrial diversion or similar program in connection with a prosecution for such offense, from participating in the affairs of an FDIC-insured institution (insured institution), a bank holding company, or a savings and loan holding company. In matters related to Section 19, federal law pre-empts applicable state law(s). The FDIC has jurisdiction over Section 19 matters for insured institutions, while the Board of Governors of the Federal Reserve System has jurisdiction over Section 19 matters for bank holding companies and savings and loan holding companies.

Since it was enacted in 1950, Section 19 has been revised primarily to consider money laundering and other statutory regulatory changes such as the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and the Dodd-Frank Wall Street Reform and Consumer Protection Act. In implementing Section 19, the FDIC is guided by the Statement of Policy for Section 19 of the FDI Act (SOP), and *de minimis* factors discussed therein to determine the need for a Section 19 application.

An individual subject to Section 19 cannot be affiliated with, or employed by, an insured institution while a Section 19 application is pending. Two methods are available for obtaining regulatory approval for Section 19 applications: an institution can sponsor the application or an individual can seek a waiver of the sponsorship requirements. The FDIC must consider an individual's lifetime legal record and rehabilitation when processing a Section 19 application.

Historically, the FDIC has received a number of applications for Section 19 individual waivers for minor infractions that did not meet the *de minimis* factors regarding the maximum potential fine or the jail time served. Experience has shown that, under most state potential sentencing guidelines, fines for minor infractions can be up to \$2,500. Additionally, there have been numerous cases where minimal actual jail time was included as part of the sentence; however, such minimal jail time has not been a significant factor in the FDIC's consideration of the Section 19 application. Adjusting the *de minimis* exceptions to increase the potential fine to \$2,500 and allow a limited number days of actual jail time served for minor infractions appears just and reasonable.

Therefore, the FDIC Board of Directors has modified the *de minimis* language of the SOP regarding the potential fine and imprisonment to reflect the following:

"The offense was punishable by imprisonment for a term of one year or less and/or a fine of \$2,500 or less, and the individual did not serve more than three (3) days of actual jail time."

Insured institutions should become familiar with the SOP and refer to it when reviewing the applicability of Section 19 to current and potential institution-affiliated parties (IAP). An IAP includes, but is not limited to employees, board members, and consultants. An individual with a covered offense or program entry cannot participate in the affairs of an insured institution without prior regulatory approval.

Industry applications for employment, background check programs, and hiring practices must comply with Section 19. Offenses covered by Section 19 have no statute of limitations. Therefore, institutions must consider a job applicant's entire legal history. Further, the industry should ensure that its employment due diligence, including Section 19 compliance, is completed prior to an employee's start date.

Insured institutions that knowingly employ an individual with a covered offense or program entry contrary to Section 19 can be subject to criminal penalties. Whoever knowingly violates Section 19 can be fined not more than \$1,000,000 for each day such prohibition is violated or imprisoned for not more than five (5) years, or both.

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