

# One Minute Memo®



## Revisions Planned For The FDIC's Statement of Policy For Section 19 of The Federal Deposit Insurance Act

By Pamela Q. Devata and Stacey L. Blecher

**Seyfarth Synopsis:** The FDIC is accepting comments until March 9, 2018 on the proposed revisions to the Statement of Policy for Section 19 of the Federal Deposit Insurance Act; the FDIC is seeking, among other things, to reduce the number of low risk criminal offenses that result in preclusion of individuals who wish to work for or be engaged by an FDIC-insured financial institution that require an application for written consent of the FDIC.

### Section 19

Section 19 of the Federal Deposit Insurance Act ([12 U.S.C. Section 1829](#)) ("Section 19") prohibits, without the prior written consent of the Federal Deposit Insurance Corporation (the "FDIC"), a person convicted of any criminal offense involving dishonesty or breach of trust or money laundering (covered offenses), or who has agreed to enter into a pretrial diversion or similar program (program entry) in connection with a prosecution for such offense, from becoming or continuing as an institution-affiliated party, owning or controlling, directly or indirectly an insured depository institution (insured institution), or otherwise participating, directly or indirectly, in the conduct of the affairs of the insured institution. In addition, the law forbids an insured institution from permitting such a person to engage in any conduct or to continue any relationship prohibited by Section 19.

Section 19 applies, by operation of law, as a statutory bar to participation absent the written consent of the FDIC. Approval is automatically granted and an application will not be required where the covered offense is considered *de minimis*, because it meets all of the following criteria: (i) There is only one conviction or program entry of record for a covered offense; (ii) 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 served three (3) days or less of jail time; (iii) The conviction or program was entered at least five years prior to the date an application would otherwise be required; and; (iv) The offense did not involve an insured depository institution or insured credit union.

### Proposed Revisions to the Statement of Policy

The FDIC has proposed a [revised Statement of Policy](#) ("SOP") for Section 19. In addition to minor format, technical changes, and clarification, the FDIC is proposing to expand the *de minimis* exception to include insufficient funds checks of aggregate moderate value (less than \$1,000); small dollar, simple theft (where the aggregate value of goods, services and/or currency taken is \$500 or less); and isolated, minor offenses committed by young adults (21 years old or younger).

The FDIC also is attempting to clarify that:

- FDIC-insured institutions may extend conditional offers of employment contingent upon successful background checks and Section 19 screening;
- Applications for Section 19 waivers will not be considered by the FDIC until all sentencing requirements imposed by either a conviction or program entry are satisfied and the disposition is final; and
- For purposes of satisfying *de minimus* criteria, jail time includes any significant restraint on an individual's freedom of movement which includes, as part of the restriction, confinement where the person may leave temporarily only to perform specific functions or during specified times periods or both.

The SOP also provides guidance relating to expungements and convictions that are set aside or reversed and adds an additional item for consideration when the FDIC evaluates application for waivers.

## Comments on the Proposed SOP

The FDIC will accept comments through March 9, 2018, via:

- **Agency Website:** <https://www.fdic.gov/regulations/laws/federal/>. Email: [Comments@fdic.gov](mailto:Comments@fdic.gov). Include Section 19 on the subject line of the message.
- **Mail:** Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- **Hand Delivery:** Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.

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Seyfarth Shaw LLP One Minute Memo® | March 5, 2018

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