



People with Criminal Records Working in Financial Institutions: The Rules on FDIC Waivers

The rules regarding the employment of people with criminal records in banking institutions are set out by federal laws and administrative policies. In particular, Section 19 of the Federal Deposit Insurance Act prohibits any person who has been convicted of a crime of dishonesty, breach of trust, or money laundering from working in, owning, or controlling an insured depository institution (i.e., a bank), unless he or she has received written consent from the Federal Deposit Insurance Corporation (FDIC). For purposes of this law, pre-trial diversion or similar programs are considered to be convictions. (See 12 U.S.C. § 1829.) Banks that violate this provision are subject to severe penalties.

In addition, individuals convicted of certain financial crimes are subject to an outright prohibition on working in (or owning or controlling) a bank for 10 years. Individuals convicted of these crimes cannot have the bar lifted through FDIC approval. These crimes include: receipt of commissions or gifts for procuring loans; theft, embezzlement, or misapplication by bank officer or employee; filing or making false/misleading bank entries, reports and transactions; filing or making false/misleading federal credit institution entries, reports and transactions; concealment of assets from conservator, receiver, or liquidating agent of financial institution; bank fraud; obstructing examination of financial institution; laundering of monetary instruments; engaging in monetary transactions in property derived from specified unlawful activity; frauds and swindles; and fraud by wire, radio, or television. (See 12 U.S.C. § 1829(2).)

In 1998, the FDIC issued an updated Statement of Policy (SOP) about the application of this federal law. The relevant portions of the SOP include the following:

All convictions for illegal manufacture, sale, distribution of, or trafficking in controlled substances require a waiver from the FDIC.

Pre-trial diversion programs are considered on a case-by-case basis, except for those that occurred prior to November 29, 1990 which do not require a waiver from the FDIC.

Youthful offender adjudications do not require a waiver from the FDIC.

Convictions that have been completely expunged do not require a waiver from the FDIC.

De minimis crimes do not require a waiver from the FDIC. A crime is considered to be de minimis if it meets all of the following criteria: (1) there is only one conviction or program entry for the covered offense; (2) the offense was punishable by imprisonment for less than a year and or a fine of less than \$1000, and no time was spent in jail, (3) the conviction or program was entered at least five years before the application; and (4) the offense did not involve a federal depository institution or insured credit union. In comments about the final SOP, the FDIC notes that this definition generally encompasses offenses that are less than felonies and represents the FDIC's view that an individual should

generally not be prohibited from participating in banking because of a singular offense of lesser consequence. (See SOP, Section B.)

Arrests that did not lead to a conviction do not require a waiver from the FDIC.

These rules apply to any person who is or wants to be an institution-affiliated party of an FDIC insured institution; any person who owns or control such an institution; and any person who otherwise participate, directly or indirectly, in the conduct of the affairs of any insured depository institution. (See 12 U.S.C. § 1829(a)(1)(A).) The SOP makes clear that employees or de facto employees are included in this definition. This means that anyone who works in a bank, no matter what his or her duties, is subject to these standards.

The FDIC generally requires the institution to submit the request for FDIC approval on behalf of the job applicant. The institution rarely seeks a waiver, except for higher level positions when the candidate is someone the institution really wants to hire. Individuals can only seek FDIC approval themselves if they ask the FDIC to waive the usual requirement. Most individuals probably have no idea that they have this right. Rather, the bank simply informs them that their conviction bars their employment at the bank.

In determining whether to grant an applicant a waiver, the FDIC will consider the following factors: (1) the conviction and nature and circumstances of the offense; (2) evidence of rehabilitation, including age at conviction, and time elapsed; (3) the position to be held; (4) amount of influence and control over the management of the institution; (5) management's ability to supervise and control the person's activities; (6) degree of ownership over the institution; (7) applicability of the institution's fidelity bond coverage to the individual; (8) opinion of primary Federal and/or state regulator; and (9) any additional relevant factors. (See SOP, Section D.)

A copy of the full FDIC Statement of Policy is available at:
<http://www.fdic.gov/regulations/laws/rules/5000-1300.html>