

The Banking Law Journal

Established 1889

An A.S. Pratt™ PUBLICATION

FEBRUARY 2025

Editor's Note: A Regulatory Cornucopia
Victoria Prussen Spears

Financial Crimes Enforcement Network Issues Final Rule Requiring Anti-Money Laundering Reporting for Real Estate Sector

Betty Santangelo, Melissa Goldstein, Julian Wise, Kyle Hendrix and Gordon VanWieren III

The Consumer Financial Protection Bureau's New "Open Banking" Rule: Key Takeaways, Scope, Compliance Obligations – and Potential Rescission

Timothy Crisp and Tony Arias

Federal Deposit Insurance Corporation's New Regulations Align With Fair Hiring in Banking Act's Amendments to Section 19 of Federal Deposit Insurance Act

Jennifer L. Mora

Federal Deposit Insurance Corporation Proposes Significant Revisions to Brokered Deposit Regulations

Jeffrey D. Haas, Shawn M. Turner, Paul M. Aguggia and Rolland A. Hampton

Lenders Beware: The Ponzi Scheme Presumption Can Trap an Unwitting Lender

Jonathan Doolittle

COVID-19 Relief Lending Faces Scrutiny

Denise M. Barnes and Brian Irving

The Challenge Organizations Face to Become DORA Compliant Is Not to Be Underestimated

Lee Rubin and Johanna Lipponen



LexisNexis

THE BANKING LAW JOURNAL

VOLUME 142

NUMBER 2

February 2025

Editor’s Note: A Regulatory Cornucopia Victoria Prussen Spears	61
Financial Crimes Enforcement Network Issues Final Rule Requiring Anti-Money Laundering Reporting for Real Estate Sector Betty Santangelo, Melissa Goldstein, Julian Wise, Kyle Hendrix and Gordon VanWieren III	64
The Consumer Financial Protection Bureau’s New “Open Banking” Rule: Key Takeaways, Scope, Compliance Obligations – and Potential Rescission Timothy Crisp and Tony Arias	77
Federal Deposit Insurance Corporation’s New Regulations Align With Fair Hiring in Banking Act’s Amendments to Section 19 of Federal Deposit Insurance Act Jennifer L. Mora	83
Federal Deposit Insurance Corporation Proposes Significant Revisions to Brokered Deposit Regulations Jeffrey D. Haas, Shawn M. Turner, Paul M. Aguggia and Rolland A. Hampton	87
Lenders Beware: The Ponzi Scheme Presumption Can Trap an Unwitting Lender Jonathan Doolittle	96
COVID-19 Relief Lending Faces Scrutiny Denise M. Barnes and Brian Irving	100
The Challenge Organizations Face to Become DORA Compliant Is Not to Be Underestimated Lee Rubin and Johanna Lipponen	106

QUESTIONS ABOUT THIS PUBLICATION?

For questions about the **Editorial Content** appearing in these volumes or reprint permission, please call or email:

Matthew T. Burke at (800) 252-9257
Email: matthew.t.burke@lexisnexis.com

For assistance with replacement pages, shipments, billing or other customer service matters, please call or email:

Customer Services Department at (800) 833-9844
Outside the United States and Canada, please call (518) 487-3385
Fax Number (800) 828-8341
Customer Service Website <http://www.lexisnexis.com/custserv/>

For information on other Matthew Bender publications, please call

Your account manager or (800) 223-1940
Outside the United States and Canada, please call (937) 247-0293

ISBN: 978-0-7698-7878-2 (print)

ISSN: 0005-5506 (Print)

Cite this publication as:

The Banking Law Journal (LexisNexis A.S. Pratt)

Because the section you are citing may be revised in a later release, you may wish to photocopy or print out the section for convenient future reference.

This publication is designed to provide authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional services. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

LexisNexis and the Knowledge Burst logo are registered trademarks of RELX Inc. Matthew Bender, the Matthew Bender Flame Design, and A.S. Pratt are registered trademarks of Matthew Bender Properties Inc.

Copyright © 2025 Matthew Bender & Company, Inc., a member of LexisNexis. All Rights Reserved.

No copyright is claimed by LexisNexis or Matthew Bender & Company, Inc., in the text of statutes, regulations, and excerpts from court opinions quoted within this work. Permission to copy material may be licensed for a fee from the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, telephone (978) 750-8400.

Editorial Office
230 Park Ave., 7th Floor, New York, NY 10169 (800) 543-6862
www.lexisnexis.com

MATTHEW  BENDER

Editor-in-Chief, Editor & Board of Editors

EDITOR-IN-CHIEF

STEVEN A. MEYEROWITZ

President, Meyerowitz Communications Inc.

EDITOR

VICTORIA PRUSSEN SPEARS

Senior Vice President, Meyerowitz Communications Inc.

BOARD OF EDITORS

CARLETON GOSS

Partner, Hunton Andrews Kurth LLP

DOUGLAS LANDY

White & Case LLP

PAUL L. LEE

Of Counsel, Debevoise & Plimpton LLP

MICHAEL D. LEWIS

Partner, Sidley Austin LLP

TIMOTHY D. NAEGELE

Partner, Timothy D. Naegele & Associates

STEPHEN J. NEWMAN

Partner, Steptoe & Johnson LLP

ANDREW OLMEM

Partner, Mayer Brown LLP

THE BANKING LAW JOURNAL (ISBN 978-0-76987-878-2) (USPS 003-160) is published ten times a year by Matthew Bender & Company, Inc. Periodicals Postage Paid at Washington, D.C., and at additional mailing offices. Copyright 2025 Reed Elsevier Properties SA., used under license by Matthew Bender & Company, Inc. No part of this journal may be reproduced in any form—by microfilm, xerography, or otherwise—or incorporated into any information retrieval system without the written permission of the copyright owner. For customer support, please contact LexisNexis Matthew Bender, 1275 Broadway, Albany, NY 12204 or e-mail Customer.Support@lexisnexis.com. Direct any editorial inquiries and send any material for publication to Steven A. Meyerowitz, Editor-in-Chief, Meyerowitz Communications Inc., 26910 Grand Central Parkway, #18R, Floral Park, NY 11005, smeyerowitz@meyerowitzcommunications.com, 631.291.5541. Material for publication is welcomed—articles, decisions, or other items of interest to bankers, officers of financial institutions, and their attorneys. This publication is designed to be accurate and authoritative, but neither the publisher nor the authors are rendering legal, accounting, or other professional services in this publication. If legal or other expert advice is desired, retain the services of an appropriate professional. The articles and columns reflect only the present considerations and views of the authors and do not necessarily reflect those of the firms or organizations with which they are affiliated, any of the former or present clients of the authors or their firms or organizations, or the editors or publisher.

POSTMASTER: Send address changes to THE BANKING LAW JOURNAL, LexisNexis Matthew Bender, 230 Park Ave, 7th Floor, New York, NY 10169.

POSTMASTER: Send address changes to THE BANKING LAW JOURNAL, A.S. Pratt & Sons, 805 Fifteenth Street, NW, Third Floor, Washington, DC 20005-2207.

Federal Deposit Insurance Corporation's New Regulations Align With Fair Hiring in Banking Act's Amendments to Section 19 of Federal Deposit Insurance Act

*By Jennifer L. Mora**

In this article, the author discusses federal efforts to reduce hiring barriers across the financial services sector.

On December 23, 2022, President Joe Biden signed the “James M. Inhofe National Defense Authorization Act for Fiscal Year 2023.” Among many other things, the law amended Section 19 of the Federal Deposit Insurance Act (FDIA)¹ to reduce hiring barriers across the financial services sector. As a result of this “Fair Hiring in Banking Act,” the category of crimes for which a financial institution can outright reject a job applicant or terminate an employee has been significantly narrowed.

More recently, and as expected, the Federal Deposit Insurance Corporation (FDIC) approved a final rule (2024 Final Rule), effective October 1, 2024, to update its Section 19 regulations to conform to the Fair Hiring in Banking Act's amendments.

SECTION 19 IN A NUTSHELL

Section 19 prohibits, absent prior written consent of the FDIC, a person convicted of a crime involving dishonesty, breach of trust, or money laundering from (broadly speaking) working for or otherwise participating, directly or indirectly, in the conduct of the affairs of a FDIC-covered financial institution. Section 19's prohibition also covers anyone who has agreed to enter a pretrial diversion or similar program in connection with the prosecution of a crime involving dishonesty, breach of trust, or money laundering.

To ensure that a financial institution does not violate Section 19, it must engage in a “reasonable” inquiry of a person's criminal history to determine whether they have a disqualifying offense. The 2024 Final Rule now requires that financial institutions document that inquiry. What that looks like, however, is left to the discretion of the financial institution, although most order a criminal history background check or require the person to submit to a fingerprint check (or both).

* The author, senior counsel in the San Francisco office of Seyfarth Shaw LLP, may be contacted at jmora@seyfarth.com.

¹ 12 U.S.C. Section 1829.

THE AMENDMENTS TO SECTION 19 AND THE 2024 FINAL RULE

What follows explains how the 2024 Final Rule relates to the recent amendments to Section 19.

What Is a Crime of “Dishonesty” or “Breach Of Trust”?

The amendment to Section 19 provides guidance to institutions in determining whether an offense is one of “dishonesty” by including a helpful definition of the term. Specifically, a “criminal offense involving dishonesty” means an offense where the person, directly or indirectly, cheats or defrauds, or wrongfully takes property belonging to another in violation of a criminal statute. It also includes an offense that federal, state, or local law defines as “dishonest,” or for which dishonesty is an element of the offense. The term does not, however, include a misdemeanor criminal offense committed more than one year before the date on which a person files a waiver application, excluding any period of incarceration, or an offense involving the possession of controlled substances. According to the 2024 Final Rule, the one-year period runs from the date of the offense, not the date of disposition of the conviction or program entry. If there are multiple offenses, then the one-year period runs from the “last date of any of the underlying offenses.”

Although the amendment to Section 19 does not include a definition of “breach of trust,” the 2024 Final Rule does, stating that the term refers to “a wrongful act, use, misappropriation, or omission with respect to any property or fund that has been committed to a person in a fiduciary or official capacity, or the misuse of one’s official or fiduciary position to engage in a wrong act, use, misappropriation, or omission.”

Which Older Offenses No Longer Require an Application?

The Section 19 amendment states that unless the conviction or program entry relates to an offense subject to the “minimum 10-year prohibition period” for certain offenses in 12 U.S.C. 1829(a)(2), an applicant or employee no longer needs a waiver application if:

- It has been seven years or more since the offense occurred (measured from the date of offense, not the date of disposition); or
- The person was incarcerated, and it has been five years or more since the person was released from incarceration; or
- The person committed the offense before age 21 and it has been more than 30 months since the sentencing occurred (which means the date the court imposed the sentence).

Did the 2024 Final Rule Update the Types of Offenses That Qualify for the De Minimis Exemption?

On July 24, 2020, the FDIC issued a Final Rule which, among other things, expanded the de minimis exemption in a number of ways (2020 Final Rule):

- It increased the number of minor de minimis offenses on a criminal record to qualify for the de minimis exception from one to two;
- It eliminated the five-year waiting period following a first de minimis offense and established a three-year waiting period following a second de minimis offense (or 18 months if the offense occurred when the person was 21 years of age or younger);
- It increased the threshold for small-dollar, simple theft from \$500 to \$1,000 (the same dollar threshold for bad or insufficient funds check offenses); and
- It expanded the de minimis exemption for crimes involving the use of fake identification to circumvent age-based restrictions from only alcohol-related crimes to any such crimes related to purchases, activities, or premises entry.

Amended Section 19 permitted the FDIC to engage in rulemaking to expand the types of offenses that qualify as de minimis, and the 2024 Final Rule did so by:

- Increasing the requirement that the offense be punishable by a term of one year or less (excluding periods of pre-trial detention and restrictions on location during probation and parole) to three years or less.
- For “bad check criteria,” increasing the aggregate total face value of all insufficient funds checks across all convictions or program entries related to insufficient funds checks from \$1,000 or less to \$2,000 or less.
- Excluding a new category of lesser offenses, including the use of a fake identification, shoplifting, trespassing, fare evasion, driving with an expired license or tag, if one year or more has passed since the applicable conviction or program entry.

What Has Not Changed?

Section 19 still requires that there be a conviction of record or a pretrial diversion or similar program. It does not cover arrests or pending cases not brought to trial, unless there is a program entry. Section 19 does not cover acquittals or convictions that have been reversed on appeal, but does cover convictions that are currently being appealed or convictions that have been pardoned.

In addition, an application is not required for expunged, dismissed, or sealed records or for youthful offender adjudications.

Finally, convictions or program entries for a violation of 12 U.S.C. 1829(a)(2) (which relate to certain federal offenses) can never qualify as de minimis.

NEXT STEPS FOR FINANCIAL INSTITUTIONS

As the penalties for non-compliance are substantial (including fines of \$1,000,000 per day), FDIC-insured institutions should review their policies and practices to ensure consideration of Section 19 when assessing candidates' conviction and program entry history. Convictions and program entries that are no longer automatically disqualifying under Section 19 should be evaluated under other state and local so-called "fair chance" or "ban the box" laws and ordinances, along with the Equal Employment Opportunity Commission's "Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions under Title VII of the Civil Rights Act."