

Bank employees have access to confidential personal information about customers and their accounts. They also have access to cash, securities, and tools that allow them to move money between bank accounts and both into and out of the bank. While banks have strong controls in place to prevent fraudulent activities by both internal and external forces, bank employees are uniquely positioned to perpetrate fraud and defalcation if they are inclined to do so.

It is imperative the industry hire people of the utmost integrity and honesty to reduce the possibility of fraud and theft. It is critical that we be able to have some assurance that our new hires are not predisposed to committing financial crimes. Therefore we need to be able to run accurate criminal background checks on potential employees to ensure that we do not bring those previously convicted of financial crimes into the financial services industry. While the bill does not prohibit the industry from running a background check, it does potentially limit the full scope of information that would be included in the applicant's background.

FDIC regulation Section 19 addresses the issue of employment:

SEC. 19. PENALTY FOR UNAUTHORIZED PARTICIPATION BY CONVICTED INDIVIDUAL.

(a) PROHIBITION.--

(1) IN GENERAL.--Except with the prior written consent of the Corporation--

(A) any person who has been convicted of any criminal offense involving dishonesty or a breach of trust or money laundering, or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offense, may not--

(i) become, or continue as, an institution-affiliated party with respect to any insured depository institution;

(ii) own or control, directly or indirectly, any insured depository institution; or

(iii) otherwise participate, directly or indirectly, in the conduct of the affairs of any insured depository institution; and

(B) any insured depository institution may not permit any person referred to in subparagraph (A) to engage in any conduct or continue any relationship prohibited under such subparagraph.

Except with the written consent of the Corporation no person shall serve as a director, officer, or employee of an insured bank who has been *convicted*, or who is hereafter convicted of any *criminal offense involving dishonesty or breach of trust*. For each willful violation of this prohibition, the bank involved shall be subject to a penalty of not more than \$100 for each day this prohibition is violated, which the Corporation may recover for its use.

In 2020, the FDIC issued new guidance on Section 19 addressing the issue of expungement, but made it clear the underlying provisions of the Section are still enforce. The intent of the FDIC was to focus on de minimis criminal offenses with the new expungement language, not financial crimes. The FDIC acknowledged in my conversation with them today, expungement statutes being considered around the country are creating a growing conflict with the new guidance.

If a person can expunge or seal their criminal record, then a bank will not have all the information necessary to comply with the federal regulation. A bank would never know if the person sitting in front of them seeking employment has a criminal history. Having a criminal history doesn't necessarily rule the applicant out, but a bank has to apply to the FDIC to get approval.

If the Senate version of S.7 were to pass, it would create a significant problem for the banking industry and our ability to comply with the FDIC regulation, but perhaps more importantly put our customer's finances and personal information at risk. We recommend either removing any reference to financial crimes in the bill, or give the industry and the Department of Financial Regulation time over the summer and fall to come up with a solution. I mention DFR because we are not only talking about banking, but other entities under their jurisdiction.

Christopher D'Elia, President
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