

**From:** Matthew [REDACTED]  
**Sent:** Monday, November 20, 2023 1:25 PM  
**To:** Comments  
**Subject:** [EXTERNAL MESSAGE] November 14, 2023 - Fair Hiring in Banking Act; Comment Request (RIN 3064-AF92)

## Introduction

This comment is in response to the proposed rule “Fair Hiring in Banking Act,” FRN 2023-23853, promulgated by the Federal Deposit Insurance Corporation (FDIC).<sup>1</sup> The FDIC is proposing a revision in its regulation to conform to the recently enacted Fair Hiring in Banking Act (FHBA). The FDIC must interpret the language in the statute that creates exceptions to classes of convicted criminals prohibited from working in banking. FDIC has sought comment on the rule to answer the following question: Is the FDIC's interpretation of “offense[s] involving the possession of controlled substances” as applying, at a minimum, to simple possession and possession with intent to distribute appropriate?<sup>2</sup>

I am a current law student with an interest in administrative law, criminal law, and drug policy. I have prior work experience with criminal defendants struggling with substance use and have witnessed the legal and social barriers that prohibit them from participating in their communities. I am generally in favor of ending punitive and stigmatizing drug policies in favor of models of harm reduction.

I am in support of FDIC's proposed interpretation of the FHBA language: “offense[s] involving the possession of controlled substances” to include not only simple possession but also possession with intent to distribute.

## Background

FDIC maintains regulations under Section 19 of the Federal Deposit Insurance Act that prohibits the participation in banking by any person who has been convicted of a crime involving “dishonesty or breach of trust or money laundering.” In 2022, FHBA was passed and created several categories of exceptions to this prohibition, including a criminal offense involving dishonesty that also “involv[es] the possession of controlled substances.” FDIC believes that, at minimum, this language is meant to exclude criminal offenses that involve simple possession of a controlled substance and possession with intent to distribute a controlled substance. FDIC has previously included simple possession as an exception to the prohibition, but the new definition would expand the exception to include possession with intent to distribute.

## Analysis

To begin, FDIC regulations under Section 19 have a logical rationale to bar dishonest people from working in banking. There is certainly a strong incentive to hold bankers, people who have large control over personal, family, and corporate finances, to a high standard of honesty. FDIC has an interest in both protecting consumers from dishonest bankers and protecting federal finances from the fallout that dishonest banking practices may create. It makes sense, then, that the regulation specifically targets money laundering warranting prohibition from participation in banking.

However, I believe that the broad inclusion of drug crimes under the umbrella term of crimes involving “dishonesty” is incorrect and stigmatizing. In the NPR, FDIC states that “a drug-related offense could potentially involve dishonesty, breach of trust, or money laundering.”<sup>3</sup> This is certainly true to the extent that any behavior, criminal or non-criminal, could involve dishonesty. However, the identification of substance use or possession of substances as a particularly dishonest behavior rests on the assumption that substance use is inherently dishonest. This creates a stigma against substance use and reinforces the misconception that substance users are inherently dishonest or untrustworthy because they use substances. Ironically, the stigma itself is what strongly encourages dishonest behavior, as people are therefore incentivized to hide and lie about their substance use to avoid social and legal consequences. The FHBA is a step in the right direction toward dismantling stigma around substance use.

Looking at the legislation itself, the broad reading to include simple possession and possession with intent to distribute is warranted. The plain reading of the statute necessarily includes all possession of controlled substances that also involve some offense of dishonesty. The statute itself contains no caveats or exceptions in creating its exception for possession, and therefore the language should be interpreted broadly.

#### Conclusion

I am in support of FDIC’s proposed interpretation of the statute to create an exception to banking prohibition applicable to not only simple possession of controlled substances but also possession with intent to distribute a controlled substance. I urge FDIC to further evaluate its regulations prohibiting people with convictions involving dishonesty and breach of trust to further define these terms and avoid creating stigma.

Best,  
Matthew Alexion  
Cardozo School of Law Class of 2025