

Outside the Vault: FDIC Bars Directors Over Misconduct at Non-Bank Business Institutions

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Bank directors are generally aware that misconduct inside the bank, such as insider loans, falsified records, or self-dealing, can lead to removal or an industry bar. Two consent orders issued this year by the Federal Deposit Insurance Corporation (FDIC) suggest that, in some circumstances, conduct *outside* the bank may carry similar consequences. In May 2026 and again in September 2026, the FDIC issued Orders of Prohibition from Further Participation against two directors of the same Kansas bank. The second order was against the bank's former chairman. As described in each order, the FDIC's findings relate to conduct at the same organization affiliated with the bank, a labor union (the "affiliate"), rather than at the bank itself. The FDIC relied on a provision of 12 U.S.C. § 1818(e) that reaches misconduct causing loss to a "business institution," not just to an insured bank.

Facts and Findings

The first order: The first director served on the bank's board in 2024. From 2014 until 2024, she also held senior roles at the affiliate, including director of human resources. According to the FDIC, she approved unwarranted non-business expenses for affiliate officers, employees, and guests, including herself. It is also stated she approved and executed employment agreements and other financial benefits for individuals who did not qualify for them. In December 2024, she pleaded guilty to racketeering conspiracy under 18 U.S.C. § 1962(d) in connection with her conduct at the affiliate. She consented to the order on February 2, 2026, and it was issued on May 6, 2026.

The second order: The second director served on the bank's board from 2008 until he resigned in August 2024. He chaired the board for his last two years. For most of the same period, he also worked at the affiliate, eventually rising to its top leadership position.

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According to the FDIC, while at the affiliate he knew of and took part in excessive and lavish national and international travel at the affiliate's expense. He then took cash payouts for the vacation time he used on those trips. The FDIC asserted that "the trips and associated spending far exceeded any benefit" to the affiliate and its members, and that they "were contrary to law" and to the affiliate's governing documents. In March 2026, he pleaded guilty to racketeering conspiracy under 18 U.S.C. § 1962(d) and to embezzlement from a labor organization under 29 U.S.C. § 501(c). He consented to the order on May 4, 2026, and it was issued on September 9, 2026. The order includes a limited carve-out allowing him, with the FDIC's prior written consent, to divest his personally held shares of bank stock.

Importantly, neither order describes misconduct at the bank.

Legal Hook: Section 1818(e) Reaches "Business Institutions"

Under 12 U.S.C. § 1818(e), a federal banking agency may remove or prohibit an institution-affiliated party if it finds three things: First, the individual engaged in misconduct, such as a violation of law, an unsafe or unsound practice in connection with an insured depository institution or business institution, or a breach of fiduciary duty. Second, the misconduct had a qualifying effect, such as financial loss or other damage to an insured depository institution or business institution, or financial gain or other benefit to the individual. Third, the misconduct involved personal dishonesty or demonstrated a willful or continuing disregard for the safety or soundness of the insured depository institution or business institution.

The second element is what makes these orders notable. That element is satisfied if, among other things, the misconduct caused loss or other damage to an insured depository institution, *or to a "business institution,"* or if the individual received financial gain or other benefit from it. The FDIC in both orders appears to track that framework, in nearly identical language:

- The director violated the law.

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- The director's violations "caused the business institution to suffer financial loss," and the director received financial gain.
- The director's violations involved personal dishonesty.

Neither order includes a finding of harm to the bank. On these facts, the FDIC appears to have treated loss to the affiliate, together with the director's personal gain and dishonesty, as sufficient. Because both orders were entered by consent, neither theory was tested in a contested proceeding, and other matters may turn on different facts.

Sparse but Consistent History

Public FDIC actions resting solely on misconduct at a non-bank business institution appear to be relatively rare. The examples we identified, however, suggest the theory is not new.

A contested 1996 decision: The most instructive precedent we located is a 1996 decision of the FDIC Board of Directors that addressed the theory after a contested hearing and was later affirmed on appeal. The case arose from conduct in 1990 at a family-owned coin and precious metals business, where one respondent was an employee while also serving as a bank director, and the other was the business's controller who later became president and a director of a different bank. The business accepted roughly $1.09 million in cash for gold sales without filing the required IRS Form 8300 reports, and the controller later created a false, backdated Form 8300 ahead of an IRS audit.

Both respondents pleaded guilty to willful failure to file. The administrative law judge recommended against an order for the controller, but the FDIC's board disagreed, finding that his conduct contributed to the business' $742,555 forfeiture loss and that he received a benefit, including keeping his job. Although not necessary to its decision, the FDIC also held that § 1818(e) reaches "actions occurring at a non-insured business institution" and that a respondent need not have been an institution-affiliated party when the conduct occurred. In declining to exercise discretion in the controller's favor, the FDIC noted that falsifying business records has a "direct correlation to the bank examination process" and

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bears on a banker's character and integrity. The FDIC later denied the controller's request to stay the order pending judicial review, and the U.S. Court of Appeals for the Seventh Circuit affirmed.

A 2019 consent order: In 2019, the FDIC entered a consent prohibition order against an institution-affiliated party of an Ohio bank based on his conduct as treasurer of a local public library. The FDIC found that, over roughly three years, he deprived the library of $19,720 and used the funds for his personal benefit. It treated the library as the "business institution" that suffered loss and found that the conduct showed his unfitness to serve at the bank or any other insured institution. Unlike the other matters, the order does not refer to any criminal charge or plea.

The 2026 affiliate orders: The two orders discussed above follow the same template, with loss to a business institution, personal gain, and personal dishonesty. They are notable for involving two directors of the same bank and misconduct at the bank's own affiliate rather than an unrelated outside business.

Taken together, these matters suggest that the FDIC has used the business-institution theory sparingly over several decades, usually where a criminal conviction or plea establishes the underlying dishonesty. While our review of public materials was not exhaustive, and the 2026 orders may reflect the FDIC following a single criminal investigation rather than a broader enforcement trend, there are important lessons to be gleaned from both proceedings.

Takeaways for Directors and Boards

- **Outside roles of all kinds may matter.** The matters discussed above involved a family business, a public library, and a bank's own union affiliate. Directors and officers who serve as employees, officers, treasurers, or fiduciaries of any outside organization, whether affiliated with the bank or not, should be aware that dishonest conduct in those roles may, depending on the facts, support an industry-wide bar.
- **Timing and status may offer limited protection.** In the 1996 decision, the FDIC held that a respondent need not have been an institution-affiliated party when the outside conduct

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occurred. In the 2019 order, most of the misconduct predated the date on which the respondent became an institution-affiliated party. In 2026, the second order issued after the former chairman had resigned from the board. Neither joining a bank after the conduct nor leaving it afterward should be assumed to end potential exposure.

- **Banks with affiliated institutions warrant extra attention.** When several of a bank's directors also lead an affiliated institution, problems at the affiliate may have regulatory implications for the bank and may reach more than one board member, as the 2026 orders illustrate. Boards should consider how dual-role directors are screened, monitored, and asked to certify their conduct outside the bank.
- **Update director and officer (D&O) questionnaires and conflict policies.** Boards may wish to consider whether annual questionnaires call for prompt disclosure of investigations, subpoenas, and charges arising from *any* role, including civic, nonprofit, and family-business roles, not only bank-related ones.
- **Plan for the indictment scenario.** Boards may benefit from a protocol for a director who is charged with, or pleads guilty to, a crime involving dishonesty. Such a protocol could address leave or resignation, regulatory notifications, and any necessary voting or share arrangements. The share divestiture carve-out in the second 2026 order illustrates that ownership interests may require separate treatment.
- **A criminal plea may inform the regulatory case.** In the 2019 and 2026 matters involving criminal charges, the FDIC's findings closely tracked the conduct underlying the guilty pleas. In the 1996 decision, however, the FDIC went beyond the plea: the respondent pleaded guilty only to willful failure to file, and the dishonesty finding rested on uncharged conduct, namely the backdated form placed in the business's files. The FDIC also noted that falsifying outside business records bears directly on whether examiners can rely on a banker's records and statements. Early coordination between counsel handling the criminal matter and banking-regulatory counsel is

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generally advisable.

Although brief and entered by consent, the two 2026 orders, read alongside a small number of earlier matters, are a useful reminder that the FDIC's prohibition authority under § 1818(e) is not necessarily confined to conduct inside the bank. On the facts presented, two directors whose dishonest conduct caused loss to an affiliated institution and resulted in personal gain were barred from the banking industry, even without a finding of loss to the bank. Directors and boards of banks with affiliated institutions may wish to consider the orders in reviewing their governance practices.

If you have questions about the FDIC's prohibition authority under 12 U.S.C. § 1818(e), the related criminal statutes discussed above, or how these enforcement actions may affect your institution's governance practices, please contact the authors or any attorney with FBT Gibbons' Data, Digital Assets, and Technology team.

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