

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 303 and 308

RIN 3064-AF92

Fair Hiring in Banking Act

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is revising its regulations to conform with the Fair Hiring in Banking Act (FHBA)—which was enacted on and immediately effective as of December 23, 2022. Among other provisions, the FHBA excluded or exempted categories of otherwise-covered offenses from the scope of statutory prohibitions on participation in banking. These categories pertain to certain older offenses, offenses committed by individuals 21 or younger, and relatively minor offenses. The FHBA also clarified several definitions in section 19 and provided application-processing procedures. The FDIC considers most of the revisions to its regulations to be required by the FHBA. Most other revisions reflect the FDIC’s interpretation of statutory prohibitions in light of the FHBA.

DATES: This rule will be effective on October 1, 2024.

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SUPPLEMENTARY INFORMATION:

I. Policy Objective

The policy objective of the rule is to revise the FDIC’s regulations concerning section 19 of the Federal Deposit Insurance Act (section 19)¹ to conform with the FHBA.² These regulations provide, among other things, the application process for insured depository institutions (IDIs) and individuals who seek relief from section 19 as well as information about section 19 and the FDIC’s interpretation of the statute.

II. Background and Public Comments

Section 19 prohibits, without the prior written consent of the FDIC (the FDIC refers to applications for such consent as “consent applications”³), the participation in an IDI by any person who has been convicted of a crime involving dishonesty or breach of trust or money laundering or who has agreed to enter into a pretrial diversion or similar program in connection with the prosecution for such an offense (collectively, covered offenses). Further, this law forbids an IDI from permitting such a person to engage in any such conduct or to continue any relationship prohibited by section 19. Section 19 also imposes a separate ten-year minimum for the automatic prohibition of a person convicted of certain crimes enumerated in Title 18 of the United States Code although an exception may be granted upon a motion by the FDIC and approval by the sentencing court.

From 1998 until 2020, the FDIC had a Statement of Policy that was issued related to section 19, occasionally revised, and published in the *Federal Register*.⁴ The purpose

¹ 12 U.S.C. 1829.

² The FHBA appears at section 5705 of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, Pub. L. No. 117-263, 136 Stat. 2395, 3411.

³ Under the FHBA, a “consent application” “means an application filed with [the FDIC] by an individual (or by an insured depository institution or depository institution holding company on behalf of an individual) seeking the written consent of the [FDIC] under [12 U.S.C. 1829(a)(1)].” 12 U.S.C. 1829(g)(1).

⁴ See 63 FR 66177 (Dec. 1, 1998); 72 FR 73823 (Dec. 28, 2007) with correction issued at 73 FR 5270 (Jan. 29, 2008); 76 FR 28031 (May 13, 2011); 77 FR 74847 (Dec. 18, 2012); 83 FR 38143 (Aug. 3, 2018).

of the Statement of Policy, as amended through the years, was “to provide the public with guidance relating to section 19 and the FDIC’s application thereof.”⁵ In 2020, following notice and comment, the FDIC revised and codified the Statement of Policy into the FDIC’s Filing Procedures under 12 CFR part 303, subpart L, and Rules of Practice and Procedure under part 308, subpart M.⁶

On December 23, 2022, the President signed into law the FHBA, which significantly revised section 19 and was effective immediately. The FHBA created several categories of exceptions or exemptions to the prohibition on participating in banking, including the following:

- *Certain older offenses*: (1) if it has been 7 years or more since the offense occurred; (2) if the individual was incarcerated with respect to the offense and it has been 5 years or more since the individual was released from incarceration; or (3) for individuals who committed an offense when they were 21 years of age or younger, if it has been more than 30 months since the sentencing occurred.⁷
- *Offenses for which an order of expungement, sealing, or dismissal has been issued* in regard to the conviction in connection with such offense and it is intended by the language in the order itself, or in the legislative provisions under which the order was issued, that the conviction shall be destroyed or sealed from the individual’s State, Tribal, or Federal record even if exceptions allow the record to be considered for certain character and fitness evaluation purposes.
- *De minimis offenses*: a category of relatively minor offenses that are either specified by the FHBA or by the FDIC through regulations. In the FHBA, a subcategory

⁵ See 84 FR 68353 (Dec. 16, 2019).

⁶ See 85 FR 51312 (Aug. 20, 2020).

⁷ These exceptions do not apply to the offenses described under 12 U.S.C. 1829(a)(2).

of *de minimis* offenses is called “*designated lesser offenses*,” which offenses include the use of fake identification, shoplifting, trespass, fare evasion, driving with an expired license or tag (and such other low-risk offenses as the FDIC may designate), if 1 year or more has passed since the applicable conviction or program entry.

- *Misdemeanor criminal offenses involving dishonesty*, if the offense was committed more than one year before the date on which an individual files a consent application, excluding any period of incarceration.
- *A criminal offense involving dishonesty that “involv[es] the possession of controlled substances.”*

The FHBA clarifies several terms in section 19, including “criminal offense involving dishonesty” and “pretrial diversion or similar program.” It also provides conditions regarding *de minimis* offenses, to the extent the FDIC provides *de minimis* exemptions by rule.

The FHBA codifies procedures for consent applications filed with the FDIC. It requires the FDIC to make all forms and instructions related to consent applications available to the public, including on the FDIC’s website. It requires the FDIC to primarily rely on the criminal history record of the Federal Bureau of Investigation when evaluating consent applications and to provide such records to the applicant to review for accuracy. Further, it requires the FDIC to assess evidence of an individual’s rehabilitation including: the applicant’s age at the time of the conviction or program entry; the time that has elapsed since conviction or program entry; and the relationship of an individual’s offense to the responsibilities of the applicable position. Other information, including an individual’s employment history, letters of recommendation, certificates documenting participation in substance abuse programs, successful

participation in job preparation and educational programs, other relevant mitigating evidence, and any additional information the FDIC determines necessary for safety and soundness shall also be considered.

On November 14, 2023, the FDIC published a notice of proposed rulemaking (proposal) to conform the FDIC’s section 19 regulations with the FHBA.⁸ The FDIC issued the proposal following consultation and coordination with the National Credit Union Administration (NCUA), the Board of Governors of the Federal Reserve System (FRB), and the Office of the Comptroller of the Currency (OCC) “to promote consistent implementation [of the FHBA] where appropriate.”⁹ The FDIC proposed to revise its rules and procedures in order to conform them to the FHBA and to clarify certain provisions of that statute. For example, the FDIC proposed to revise 12 CFR part 303, subpart L to reflect the FHBA’s exclusion of certain older offenses from the scope of section 19. The FDIC requested comments on all aspects of its approach to section 19 and, specifically, the following topics of interpretation:

- the date on which a criminal offense “occurred” or was “committed;”
- the date on which “sentencing occurred;”
- whether section 19 encompasses foreign convictions and pretrial diversions;
- the standard for expungements, sealings, and dismissals;
- “offenses involving controlled substances;” and
- *de minimis* offenses.

⁸ See 88 FR 77906 (Nov. 14, 2023).

⁹ See 12 U.S.C. 1829(f)(9) (“In carrying out this section, the [FDIC] shall consult and coordinate with the National Credit Union Administration as needed to promote consistent implementation where appropriate”).

The comment period closed on January 16, 2024. The FDIC received five comments from six different commenters, consisting of two individuals and four advocacy groups (two advocacy groups provided a joint comment). All of the comments generally supported the proposal. The comment received from one advocacy group did not offer specific changes to the proposal but urged the FDIC and other financial regulators to strengthen their enforcement practices. The other commenters suggested a variety of changes. The comments and the FDIC’s responses are discussed below in Sections III and V.

III. Description of the Final Rule

The primary purpose of the final rule is to align the FDIC’s section 19 regulations with the FHBA. The amendments address, among other topics, the types of offenses covered by section 19, the effect of the completion of sentencing or pretrial-diversion program requirements in the context of section 19, and the FDIC’s procedures for reviewing applications filed under section 19. Significant revisions to the FDIC’s current regulations¹⁰ include the following:

A. Revised provisions of 12 CFR part 303, subpart L

1. Section 303.220 What is section 19 of the Federal Deposit Insurance Act?

Paragraph (b) of this section clarifies that each IDI must make a “reasonable, documented inquiry” to verify an applicant’s history to ensure that a person who has a covered offense on the person’s record is not hired or permitted to participate in its affairs without the written consent of the FDIC. In the FDIC’s 2020 Final Rule concerning

¹⁰ The rule would also make a number of technical or clarifying edits to the section 19 regulations that are not discussed in this section.

revisions to its section 19 regulations, the FDIC stated, “The procedures that constitute a reasonable inquiry will vary from bank to bank, and the FDIC believes that this determination is best left to the business judgments of these institutions.”¹¹ The FDIC reaffirms this position (with the added requirement since 2020 that the inquiry be documented), in response to one commenter’s suggestion.

One commenter recommended that the FDIC clarify that a “reasonable, documented inquiry” would include verifying that the date of any conviction or program entry occurred at least one year or seven years prior, as applicable. (This commenter did not take into consideration the offenses enumerated in 12 U.S.C. 1829(a)(2) that are not affected by the FHBA’s time-based exclusions.) As discussed in greater detail later in this Preamble, the FDIC interprets the terms “offense occurred” and “offense committed” in the FHBA to mean the last date of the underlying misconduct rather than the date of conviction or program entry. But since the date of conviction or program entry necessarily follows the last date on which the underlying misconduct occurred, there may be circumstances in which the date of conviction or program entry may provide sufficient information to an IDI that an offense is excluded from the scope of section 19. For example, if a state felony conviction occurred 10 years ago, it would be clear from the criminal record that the conviction is not subject to section 19’s prohibitions, and the use of the conviction date could be used by the IDI to establish a reasonable, documented inquiry. On the other hand, if an IDI cannot ascertain whether an offense is subject to section 19 based on the date of conviction or program entry, it may be necessary for the IDI to perform additional research to determine the last date of the underlying misconduct. The FDIC is not, however, prescribing the exact procedures that IDIs should

¹¹ 85 FR at 51317.

follow in conducting a reasonable, documented inquiry.

2. Section 303.221 Who is covered by section 19?

Paragraph (d) of this section more closely aligns its restrictions with the analogous FRB regulations under 12 CFR 225.41 and 238.31 and the FDIC's regulations under 12 CFR part 303, subpart E, concerning Change in Bank Control applications. A person will be deemed to exercise "control" if that person: (1) has the ability to direct the management or policies of an IDI; (2) has the power to vote 25 percent or more of the voting shares of an IDI; or (3) has the power to vote 10 percent of the voting shares of an IDI if: (a) no other person owns, controls, or has the power to vote more shares; or (b) the institution has registered securities under section 12 of the Securities Exchange Act of 1934.¹² Under the same standards, a person will be deemed to "own" an IDI if that person owns: (1) 25 percent or more of the institution's voting stock; or (2) 10 percent of the voting shares if: (a) no other person owns more; or (b) the institution has registered securities under section 12 of the Securities Exchange Act of 1934. Paragraph (d) retains language concerning individuals acting in concert with others so as to have such ownership or control. The FDIC has clarified in paragraph (a), however, that the term "acting in concert" has the meaning given to that term in 12 CFR 303, subpart E (including the rebuttable presumption of "acting in concert" stated in that subpart).

3. Section 303.222 Which offenses qualify as "Covered Offenses" under section 19?

Paragraph (a) of this section reflects the statutory definition of "criminal offense involving dishonesty."¹³ The FHBA excludes from the scope of such offenses "an

¹² 15 U.S.C. 781.

¹³ See 12 U.S.C. 1829(g)(2).

offense involving the possession of controlled substances.”¹⁴ The FDIC interprets this phrase concerning controlled substances to exclude, at a minimum, criminal offenses involving the simple possession of controlled substances and possession with intent to distribute a controlled substance. This exclusion may also apply to other drug-related offenses depending on the statutory elements of the offenses or from court determinations that the statutory provisions of the offenses do not involve dishonesty, breach of trust, or money laundering. Potential applicants may contact their appropriate FDIC Regional Office if they have questions about whether their offenses are covered under section 19. This revised regulatory language marks a shift from the FDIC’s current section 19 regulations, which require an application for all convictions and pretrial diversions concerning the illegal manufacture, sale, distribution of, or trafficking in controlled substances.

One commenter specifically supported the FDIC’s proposal concerning controlled substances. Another commenter said that the FDIC’s proposed language was overly broad and contrary to congressional intent and that the proposed exclusion should be limited to the offense of simple possession of controlled substances. This commenter added that banks would face reputational risks if they hired individuals who had been convicted of the crime of possession with the intent to distribute controlled substances. This commenter also recommended that the FDIC retain its regulatory text concerning the illegal manufacture, sale, distribution of, or trafficking in controlled substances.

The FDIC believes that the proposed language is consistent with the text and purposes of the FHBA and would align the FDIC’s interpretation of section 19 as to offenses involving controlled substances more closely with other Federal banking

¹⁴ 12 U.S.C. 1829(g)(2)(C)(ii).

regulators. The FHBA explicitly excludes from the category of “criminal offense involving dishonesty” “an offense *involving* the possession of controlled substances,” not just the offense of “possession of controlled substances.”¹⁵ The modifier “involving,” in the FDIC’s view, expands that exclusion beyond simple-possession offenses. The revised regulatory language, however, will recognize that a drug-related offense *could* potentially involve dishonesty, breach of trust, or money laundering. Moreover, while section 19 provides statutory barriers to the employment of certain individuals due to their criminal history, IDIs otherwise retain the discretion, under that statute, as to which applicants they want to hire. The FDIC also notes that this revision to its section 19 regulations will *not* affect the FDIC’s ability to consider drug-related offenses, as they pertain to the suitability of an individual, under other statutory provisions, including the Change in Bank Control Act and section 32 of the FDI Act.

The FHBA also states that the term “criminal offense involving dishonesty” does not include “a misdemeanor criminal offense committed more than one year before the date on which an individual files a consent application, excluding any period of incarceration.”¹⁶ The FDIC interprets the term “offense committed” to mean the “last date of the underlying misconduct,” based on the plain text of the statute. In instances with multiple offenses, “offense committed” means the last date of any of the underlying offenses.

Revised paragraph (c) includes new language reflecting the statute’s exception of certain older offenses from the scope of section 19.¹⁷ Among other exceptions, the

¹⁵ See 12 U.S.C. 1829(g)(2)(C)(ii) (emphasis added).

¹⁶ 12 U.S.C. 1829(g)(2)(C)(i).

¹⁷ See 12 U.S.C. 1829(c)(1).

FHBA states that section 19’s restrictions will not apply to an offense if “it has been 7 years or more since the offense occurred.”¹⁸ The FDIC considers the phrases “offense committed”—noted above—and “offense occurred” to be substantially similar.

Accordingly, the FDIC interprets the term “offense occurred” to mean the “last date of the underlying misconduct.” In instances with multiple offenses, “offense occurred” means the last date of any of the underlying offenses.

Two commenters disagreed with the FDIC’s proposal and stated that “offense occurred” or “offense committed” should mean the date of the plea, conviction, or program entry. In the FDIC’s view, however, the plain meaning of the terms “committed” and “occurred” mean when the underlying misconduct happened. This interpretation is buttressed by Congress’s use of the date of conviction or program entry elsewhere in the statute; that is, the statute distinguishes between when misconduct was “committed” or “occurred” and the date of a “conviction” or “program entry.”¹⁹

Two commenters expressed concerns that IDIs would have difficulty with ascertaining the underlying date(s) of misconduct for job applicants, as part of background inquiries. The commenters noted that background-check reports that are commercially or otherwise available tend to list the date of arrest, conviction, or release from incarceration but not necessarily the date of the underlying misconduct. The FDIC believes that, for many applicants, an IDI will be able to determine whether an offense is covered by section 19 using the background-check reports noted by the commenters. And as stated earlier in the Preamble, an IDI may conduct a reasonable, documented

¹⁸ 12 U.S.C. 1829(c)(1)(A)(i).

¹⁹ *See, e.g.*, 12 U.S.C. 1829(c)(3)(D) (“Subsection (a) shall not apply to certain lesser offenses (including the use of a fake ID, shoplifting, trespass, fare evasion, driving with an expired license or tag, and such other low-risk offenses as the Corporation may designate) if 1 year or more has passed *since the applicable conviction or program entry*” (emphasis added).)

inquiry by using the date of conviction or program entry if it is clear from that information that an applicant's offense is not subject to section 19 due to the amount of time that has elapsed. On the other hand, if an IDI cannot ascertain whether an offense is subject to section 19 based on the date of conviction or program entry, it may be necessary for the IDI to perform additional research to determine the last date of the underlying misconduct.

Revised paragraph (c) contains another FHBA exception: section 19's restrictions would not apply to an offense if "the individual was incarcerated with respect to the offense and it has been 5 years or more since the individual was released from incarceration."²⁰ While the language of the statute is clear, the FDIC notes that there could be situations in which an individual who was incarcerated with respect to an offense would be permitted to work at an IDI before a similarly situated individual who was not incarcerated in connection with an offense. This difference is due to the FHBA's use of a shorter time period for individuals who were incarcerated for an offense than for individuals who did not serve jail time. Revised paragraph (c) also tracks the FHBA's language concerning offenses committed by individuals 21 years of age or younger. The FHBA states that, for individuals who committed an offense when the individual was 21 years of age or younger, section 19 "shall not apply to the offense if it has been more than 30 months since the sentencing occurred."²¹ The FDIC interprets "sentencing occurred" to mean the date on which a court imposed the sentence (as indicated by the date on the court's sentencing order), not the date on which all conditions of sentencing were completed. Moreover, revised paragraph (c) notes that its exclusions—which are derived

²⁰ 12 U.S.C. 1829(c)(1)(A)(ii).

²¹ 12 U.S.C. 1829(c)(1)(B).

from the FHBA—do not apply to the enumerated offenses described under 12 U.S.C. 1829(a)(2).²²

One commenter agreed with the FDIC that the term “sentencing occurred” should mean the date when sentence was imposed by the court. Another commenter—to the NCUA’s parallel notice of proposed rulemaking under the FHBA²³—suggested that the term “sentencing occurred” should mean the date that appears on the sentencing order, instead of the date the court’s clerk entered the order on the docket. The FDIC agrees with this suggestion, as indicated above.

Revised paragraph (d) adds language to codify the FDIC’s long-held position that individuals who are convicted of or enter into a pretrial diversion program for a criminal offense involving dishonesty, breach of trust, or money laundering in foreign jurisdictions are subject to section 19, unless the offense is otherwise excluded by 12 CFR part 303, subpart L.

One commenter stated that foreign convictions and pretrial diversions should be excluded from the scope of section 19. This commenter cited the difficulty of investigating criminal matters in foreign jurisdictions in which an applicant may have worked or resided, noted that banks might not have operations in such jurisdictions, and expressed concern that banks could expose themselves to liability in foreign jurisdictions through conducting background checks. Moreover, this commenter said that certain applicants for bank employment may already have completed a background check for the visa process; therefore, there would be a risk of duplication with a bank’s investigation.

The FDIC has retained its proposed language as to foreign offenses due to the

²² See 12 U.S.C. 1829(c)(1)(C).

²³ See 88 FR 76702 (Nov. 7, 2023).

importance of ensuring that individuals with covered offenses do not participate in the affairs of IDIs without the FDIC's consent. Employers may be unaware of an applicant's foreign offenses without conducting their own inquiry, and many countries have their own application processes to conduct criminal background checks. The FDIC reiterates several non-exhaustive ways in which banks could comply with this requirement. For IDI operations outside the United States, the IDI could conduct a reasonable, documented inquiry to verify an applicant's history, in accordance with 12 CFR 303.220, by inquiring about potential covered offenses that may have occurred in that foreign country (or countries) in which the IDI conducts operations, as well as in the United States. As another example of such an inquiry, if an IDI plans to hire someone in the United States who is from a foreign country, the IDI could inquire about potential covered offenses that may have occurred in the United States and in that foreign country. And if a foreign jurisdiction forbade background investigations by an IDI, the IDI could note this restriction as part of its reasonable, documented inquiry.

4. Section 303.223 What constitutes a conviction under section 19?

Paragraph (c) of this section has been revised to reflect statutory language related to the treatment of orders of expungement, sealing, or dismissal of criminal records.²⁴ The FHBA provides a two-pronged test to determine whether a covered offense should be considered expunged, dismissed, or sealed and therefore excluded from the scope of section 19. First, there must be an "order of expungement, sealing, or dismissal that has been issued in regard to the conviction in connection with such offense"; second, it must be "intended by the language in the order itself, or in the legislative provisions under which the order was issued, that the conviction shall be destroyed or sealed from the

²⁴ See 12 U.S.C. 1829(c)(2).

individual’s State, Tribal, or Federal record, even if exceptions allow the record to be considered for certain character and fitness evaluation purposes.”²⁵ The statute does not address expungements, sealings, or dismissals by operation of law, and the FDIC has sought to harmonize its current regulations concerning expunged and sealed records with the statutory language to provide a more comprehensive framework as to such records. The FDIC has also added language to the second (intent) prong of the expungement framework to encompass the language in the expungement order itself, the legislative provisions under which the order was issued, *and other legislative provisions*. This revision also seeks to harmonize the FDIC’s current regulations concerning expungements with the FHBA’s provisions. The FDIC believes that all of the additional language is consistent with the purposes of the statute.

Revised paragraph (d) clarifies that it encompasses the terms “youthful offender” and “juvenile delinquent” *and similar terms*, since a court does not have to specifically use these terms in an adjudication in order for paragraph (d)’s provisions to apply.

5. Section 303.224 What constitutes a pretrial diversion or similar program (program entry) under section 19?

This section has been revised to reflect the statutory definition of “pretrial diversion or similar program.”²⁶

6. Section 303.225 What are the types of applications that can be filed?

This section has been revised to reflect the updated statutory filing procedures. The statute removes the FDIC’s former policy that an institution sponsor a consent

²⁵ 12 U.S.C. 1829(c)(2).

²⁶ See 12 U.S.C. 1829(g)(3).

application or that an individual seek a waiver of the institution filing requirement. Moreover, the statute enables a depository institution holding company to file an application on behalf of an individual (previously, only IDIs could file such sponsored applications).²⁷ In order to avoid duplication of applications filed with the FRB and the FDIC, revised paragraph (a) states that the FDIC will accept applications from: an individual; an IDI applying on behalf of an individual; a depository institution holding company applying on behalf of an individual with respect to a depository institution subsidiary of the holding company; and a depository institution holding company applying on behalf of an individual who will work at the holding company but also participate in the affairs of the IDI or who would be in a position to influence or control the management or affairs of the IDI, in accordance with 12 CFR 303.221(a).

Revised paragraph (b), consistent with the FHBA, states that an individual or an institution may file applications at separate times. Under either approach, the application(s) must be filed with the appropriate FDIC Regional Office.²⁸

7. Section 303.226 When may an application be filed?

This revised section notes that, before an application may be filed, “all of the sentencing requirements associated with a conviction, or conditions imposed by the program entry, including but not limited to, imprisonment, fines, condition of rehabilitation, and probation requirements, must be completed, and the case must be considered final by the procedures of the applicable jurisdiction.” The FDIC includes this revised language to accord with several of the FHBA’s exclusions from section 19 that are not tied to the completion of sentencing requirements.

²⁷ See 12 U.S.C. 1829(f)(1).

²⁸ See 12 U.S.C. 1829(f)(1).

Furthermore, the FHBA requires the FDIC to “make all forms and instructions related to consent applications available to the public, including on the website of the Corporation.”²⁹ These forms and instructions “shall provide a sample cover letter and a comprehensive list of items that may accompany the application, including clear guidance on evidence that may support a finding of rehabilitation.”³⁰ While the FDIC has not explicitly mentioned these requirements in its regulations, the agency will comply with them. One commenter agreed with the FDIC’s proposal concerning this provision of forms and instructions.

8. Section 303.227 *De minimis* exemption

The FDIC has made a number of changes to this section based on the statutory revisions and helpful comments received. Two commenters asked for additional clarity on what constitutes a *de minimis* offense. Another commenter requested that the FDIC revise this section to exempt *de minimis* offenses from the scope of section 19’s prohibition, to align with the FHBA. In agreement, the FDIC has revised this section to treat *de minimis* offenses—a category that includes the sub-category “designated lesser offenses”—as offenses that are excluded from the prohibitions of 12 U.S.C. 1829(a) (assuming certain conditions are met) and for which offenses no application is required. This is a substantive departure from the FDIC’s longstanding treatment of *de minimis* offenses, in which potential applicants with such offenses on their records did not need to file an application with the FDIC because the FDIC deemed their (potential) application automatically approved. In other words, the FDIC considered such offenses covered under section 19 while the FHBA exempts those offenses entirely from section 19.

²⁹ 12 U.S.C. 1829(f)(5)(A).

³⁰ 12 U.S.C. 1829(f)(5)(B).

The FHBA removed the use of fake identification from the scope of section 19, and revised paragraphs (a)(1) and (b)(4) reflect this exclusion.³¹ Revised paragraph (a)(2) reflects the FHBA’s confinement criteria as to the FDIC’s determination of *de minimis* offenses.³² Revised paragraph (a)(5) requires that, in order for an offense or offenses to qualify under the general *de minimis* framework, each offense must not have been committed against an IDI or insured credit union. This language aligns with the current FDIC regulations.

Revised paragraph (b)(1) (Age of person at time of Covered Offense) clarifies that, for a reduced waiting period to apply before an individual may qualify for the *de minimis* exemption, the underlying convictions or program entries must meet the other *de minimis* criteria in paragraph (a) of section 303.227. This clarification reflects the FDIC’s existing interpretation of this paragraph.

The FDIC has revised the *de minimis* requirement related to the aggregate total face value of all “bad” or insufficient funds checks in paragraph (b)(2)(i) from \$1,000 to \$2,000 to conform with the statute.³³ Revised paragraph (b)(4) excludes from the scope of covered offenses “designated lesser offenses” (for example, using fake identification), as specified in 12 U.S.C. 1829(c)(3)(D), if one year or more has passed since the applicable conviction or program entry. One commenter requested that the FDIC should explain which offenses are considered “designated lesser offenses” that do not require FDIC consent. The FDIC believes that the revised regulations adequately define such offenses.

The FDIC has deleted former section 303.227(c) concerning fidelity bond

³¹ See 12 U.S.C. 1829(c)(3)(D).

³² See 12 U.S.C. 1829(c)(3)(B).

³³ See 12 U.S.C. 1829(c)(3)(C).

coverage and disclosure of *de minimis* offenses to IDIs. This now-deleted paragraph had required that, “Any person who meets the criteria under this section shall be covered by a fidelity bond to the same extent as others in similar positions, and must disclose the presence of the conviction(s) or program entry(ies) to all IDIs in the affairs of which that person intends to participate.” Since the FHBA has excluded *de minimis* offenses from the scope of section 19, however, the FDIC believes that these requirements should no longer attach to individuals who have committed such offenses. This change is in response to one commenter’s request that the FDIC clarify its position concerning *de minimis* offenses and is related to another commenter’s suggestion that the FDIC treat *de minimis* offenses the same way as “designated lesser offenses” by excluding both types of offenses from the scope of section 19.

9. Section 303.228 How to file an application.

This revised section eliminates the institution filing requirement and waiver process and indicates that an “institution”—an IDI or a depository institution holding company—may file an application on behalf of an individual, rather than just an IDI. The individual may also file an application. These revisions are due to the updated statutory language.³⁴ This revised section also clarifies that the appropriate FDIC Regional Office for an institution-sponsored application is the office covering the state where the institution’s home office is located and that the appropriate FDIC Regional Office for an application filed by an individual is the office covering the state where the person resides.

10. Section 303.229 How an application is evaluated.

Revised paragraph (a) reflects new statutory requirements related to the FDIC’s

³⁴ See 12 U.S.C. 1829(f)(1).

review process, including the requirement that the FDIC primarily rely on the criminal history record provided by the Federal Bureau of Investigation in the FDIC's review and provide such record to the applicant to review for accuracy.³⁵ The FDIC interprets the term "criminal history record" to mean "identity history summary checks," which are commonly known as "rap sheets." Under revised paragraph (a)—and in accordance with the FHBA—the FDIC, in reviewing a consent application, will provide a copy of the rap sheet to the individual who is the subject of the application to review for accuracy.³⁶

One commenter requested that the FDIC establish a deadline to evaluate the application once received and a deadline of five days to return the copy of the criminal history record once received from the Federal Bureau of Investigation. FDIC adopts this recommendation in part. Under revised paragraph (a)(2), the FDIC will make reasonable efforts to communicate with the subject of the application within 15 calendar days of receipt of this record from the Federal Bureau of Investigation to inform the individual that the FDIC will be providing them with a copy of the report and to verify the individual's contact information. The FDIC will also make reasonable efforts to send the report to the individual within 5 business days of successful verification of the individual's contact information. If the individual believes that there are any inaccuracies in the report, the FDIC will direct the individual to an appropriate contact at the Federal Bureau of Investigation where the individual can seek corrections to the report.

Revised paragraph (b) states that the FDIC will not require an individual to provide certified copies of criminal history records unless the FDIC determines that there is a clear and compelling justification to require additional information to verify the

³⁵ See 12 U.S.C. 1829(f)(6)(A)(i).

³⁶ See 12 U.S.C. 1829(f)(6)(A)(ii).

accuracy of the criminal history record provided by the Federal Bureau of Investigation (that is, the rap sheet).³⁷

Revised paragraph (d) clarifies how the FDIC will evaluate evidence of rehabilitation and other evidence, as required by the FHBA.³⁸

Revised paragraph (g) eliminates references to the former application-waiver requirement.

Finally, revised paragraph (h) incorporates statutory language explaining when a new institution-sponsored application would be necessary due to changes in the scope of an applicant's employment.³⁹

11. Section 303.230 What will the FDIC do if the application is denied?

Revised paragraph (b) clarifies that, for institution-sponsored applications, either the institution or the subject individual (or both, as a consolidated request) may file a written request for a hearing (or a request for written submission in lieu of a hearing) under 12 CFR part 308, subpart M.

12. Section 303.231 Waiting time for a subsequent application if an application is denied.

This revised section, among other provisions, requires a one-year waiting period to file a consent application, following the issuance of a decision denying such an application. This general requirement is substantially unchanged from existing regulations, but the FDIC has made several technical amendments to align this section

³⁷ 12 U.S.C. 1829(f)(6)(B).

³⁸ 12 U.S.C. 1829(f)(7). While the statute uses the terms “rehabilitation” and “mitigating” as separate categories of evidence, the terms appear to be substantially similar, in the context of section 19 applications, and the use of both terms in these regulations may create confusion. Therefore, the rule uses the term rehabilitation not mitigating.

³⁹ See 12 U.S.C. 1829(f)(8).

with the FHBA. Revised paragraph (a) acknowledges that the passage of time may remove an offense from the scope of section 19. And the final rule creates a new paragraph (b)—which notes that an institution-sponsored application is not subject to the one-year waiting period if the application (1) follows the denial of an individual application, or (2) follows the denial of an institution-sponsored application and the subsequent application is sponsored by a different institution or is for a different position.

B. Revised provisions of 12 CFR part 308, subpart M

The rule makes several technical amendments to subpart M. The rule revises the subpart's title to reflect that, following a denial of an application under 12 C.F.R. part 303, subpart L, an applicant may request either a hearing or written submissions in lieu of a hearing. The rule also amends §§ 308.156, 308.157, and 308.158 to do the following: (1) encompass applications that are sponsored by depository institution holding companies; (2) explain that, if an application has been denied under 12 C.F.R. part 303, subpart L, an applicant may request either a hearing or written submissions in lieu of a hearing; (3) clarify several sentences concerning hearing procedures; and (4) use more consistent terminology.

IV. Expected Effects

As previously discussed, the rule aligns the FDIC's regulations with the FHBA's provisions, makes additional changes to further clarify the FDIC's regulations related to section 19, more closely aligns the FDIC's section 19 regulations with those of other Federal financial regulators, and makes a number of non-substantive, technical edits. As of the quarter ending March 31, 2024, there were 4,577 FDIC-insured depository institutions, all of which are covered by the rule and therefore could be affected.⁴⁰

⁴⁰ FDIC Call Report data, March 31, 2024.

Additionally, the rule applies to persons covered by the provisions of section 19, including those who are or wish to become employees, officers, directors, or controlling shareholders of an IDI or who otherwise are or wish to become an institution-affiliated party (IAP) of an IDI.

To estimate the number of institutions and individuals affected by the rule, the FDIC counted the number of section 19 applications it has received between 2021 and 2023. Over this period, the FDIC received 16 bank-sponsored section 19 applications, an average of 5 per year. Additionally, the FDIC received 115 individual section 19 applications during the same period, an average of approximately 38 per year.⁴¹ Therefore, the FDIC estimates that the rule could affect at least 5 FDIC-insured depository institutions and 38 individuals per year. Assuming that each application involves a different institution, approximately 1 percent of insured institutions, or 43, could be affected per year on average.⁴²

As previously described, the rule aligns the FDIC's regulations with the FHBA's provisions. In particular, the FHBA created several categories of exceptions or exemptions to the prohibition on participating in banking. The rule incorporates these categories of exemptions and exceptions. The FDIC believes that the additional categories for exceptions or exemptions to the prohibition on participating in banking established by the FHBA could benefit certain individuals and IDIs by reducing the number of applications they would otherwise be required to file under section 19. Additionally, the categories of exceptions or exemptions to the prohibition on participating in banking established by the FHBA could benefit IDIs by marginally

⁴¹ FDIC Application Tracking System.

⁴² $(43/4,577) * 100 = 0.9$ percent.

expanding the supply of labor available. However, these changes were created by the FHBA and were effective immediately upon passage, and the rule aligns the FDIC's regulations with these elements of the FHBA; therefore, the associated changes in the rule will have no direct effect on individuals or IDIs.

The rule amends the FDIC's existing section 19 application-procedure regulations to incorporate the FHBA's provisions. The FDIC's current section 19 regulations contain references to existing application procedures that are similar in substance to those established by FHBA. However, the FHBA, among other requirements, compels the FDIC to primarily rely on the criminal history record of the Federal Bureau of Investigation when reviewing consent applications. It is the current practice of the FDIC to consider all relevant information when evaluating a section 19 application. However, the establishment of a common source of criminal history, together with only requiring certified copies of criminal history records if there exists clear and compelling justification for doing so, could benefit certain individuals and IDIs by marginally reducing the volume of information they need to supply to the FDIC. The FDIC believes that, while these changes to the application procedures will directly affect certain individuals and institutions that file section 19 applications, they may not have a substantial effect on potential applicants. These changes, moreover, were created by the FHBA and were effective immediately upon passage, and the rule aligns the FDIC's regulations with these elements of the FHBA; therefore, the associated changes in the rule will have no direct effect on individuals or IDIs.

Finally, in seeking to align its section 19 regulations with the provisions of the FHBA, the FDIC used its discretion to marginally increase the scope of certain terms so as to better reflect the purposes of the FHBA and adopt certain deadlines to facilitate

processing. In particular, the FDIC has provided broader language as to the scope of expunged, sealed, or dismissed offenses. This aspect of the rule could potentially benefit persons covered by the provisions of section 19, including individuals who are or wish to become employees, officers, directors, or controlling shareholders of an IDI, or who otherwise are or wish to become an IAP of an IDI. Further, the FDIC has established certain deadlines to further clarify the evaluation process for future applicants and facilitate processing. However, given that most of the amendments are focused on aligning the FDIC's regulations with the FHBA, the marginal effect of these aspects of the rule are likely to be small.

V. Other Alternatives Considered

As discussed above, almost all of the significant changes to the FDIC's section 19 regulations stem from the FHBA's revisions to section 19. The FDIC had limited discretion in adopting alternatives to those statutory revisions. The FDIC considered other proposals that were submitted by the commenters but believes that the final amendments represent the most appropriate option for covered entities and individuals. This section discusses those other proposals.

A. More Aggressive Enforcement

One commenter said that federal financial regulators should increase the number of enforcement actions against and the severity of the punishments for executives of large banks who harm consumers and threaten the country's financial stability. This comment, in the FDIC's view, is outside the scope of this rulemaking.

B. Data Collection, and Consider Effects on Criminal Justice System

One commenter suggested that the FDIC should collect information on instances of criminal recidivism among bank employees, in light of the FHBA's exclusion of

previously covered offenses from the scope of section 19. The FDIC declines to adopt this proposal because it would be administratively impracticable for the FDIC to obtain this information from the thousands of IDIs subject to section 19, and this proposal would impose significant compliance burdens on those institutions.

One commenter suggested that the FDIC consider how the rule might affect the federal criminal justice system and public safety. This commenter noted that some individuals may be released from prison early or receive shorter sentences due to the First Step Act of 2018.⁴³ In response, the FDIC notes that it is finalizing this rulemaking in accordance with the policy choices of Congress and the President.

C. *Proposals Received by the NCUA*

On November 7, 2023, the NCUA issued a notice of proposed rulemaking to implement the FHBA as to the NCUA's regulations,⁴⁴ and the NCUA received several comments addressing the following topics. (Earlier in this Preamble, the FDIC addressed a suggestion from an NCUA commenter that concerned the date on which a court imposed a sentence.) The FDIC considered these other proposals—as part of its statutory obligation to consult and coordinate with the NCUA to promote consistent implementation of the FHBA⁴⁵—and has decided not to incorporate them into the final rule. These commenters made the following recommendations, among others.

Several commenters suggested that the *de minimis* exclusion should not be available for offenses committed against *any* depository institution or credit union—not just insured depository institutions and insured credit unions. The FDIC's position is that the primary purpose of section 19 is to protect IDIs and, by extension, the Deposit

⁴³ Pub. L. No. 115-391, 132 Stat. 5194.

⁴⁴ See 88 FR 76702.

⁴⁵ See 12 U.S.C. 1829(f)(9).

Insurance Fund. Accordingly, the FDIC's *de minimis* framework focuses on offenses that have been committed against such institutions (and insured credit unions) rather than against non-federally insured institutions. For this reason, the FDIC declines to implement this suggestion.

One commenter recommended excluding pardoned offenses from the scope of section 19 and suggested that pardoned offenses should be treated the same as expunged offenses. The FDIC disagrees with this recommendation and notes its longstanding position that covered offenses that have been pardoned—and which are not otherwise excluded from the scope of section 19—will still require an application. A pardon typically cancels the punishment for a criminal offense, not the underlying finding of guilt. In contrast, an expungement or sealing is significantly more likely to result—by applicable statute or court order—in the removal of the finding of guilt or otherwise result in a legal determination that the offense should not be used against an individual for employment purposes. Accordingly, in the FDIC's view, a person with such an expunged or sealed offense tends to present less of a risk to the banking system than a person whose same offense has been pardoned.

One commenter suggested that the FDIC should increase the maximum potential penalty threshold from \$2,500 to \$5,000 under the general *de minimis* framework, in keeping with a certain federal criminal statute. The FDIC declines to expand the *de minimis* framework as proposed because the FDIC considers the current threshold appropriate. The \$2,500 amount is comparable to the \$2,000 *de minimis* threshold for insufficient-fund offenses under the FHBA.⁴⁶

VI. Regulatory Analysis

⁴⁶ See 12 U.S.C. 1829(c)(3)(C).

A. The Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act (PRA),⁴⁷ the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The FDIC received one comment that appears to relate to the PRA. The commenter suggested that the FDIC should collect information on instances of criminal recidivism among bank employees, in light of the FHBA's exclusion of previously covered offenses from the scope of section 19. The FDIC declines to adopt this proposal because it would be administratively impracticable for the FDIC to obtain this information from the thousands of IDIs subject to section 19, and this proposal would impose significant compliance burdens on those institutions. In other words, the compliance burden associated with collecting this information would outweigh the benefits and practical utility of collecting this information.

The FDIC will revise its section 19 application form to conform with the changes to section 19 under the FHBA. These changes amend the FDIC's existing information collection associated with this rule, entitled "Application Pursuant to Section 19 of the Federal Deposit Insurance Act" (3064-0018). For this reason, the information-collection requirements contained in this final rule will be submitted by the FDIC to OMB for review and approval under section 3507(d) of the PRA (44 U.S.C. 3507(d)) and section 1320.11 of the OMB's implementing regulations (5 CFR part 1320). Based on available data, the number of respondents and the estimated annual burden associated with the information collection will decrease.

⁴⁷ 44 U.S.C. 3501 *et seq.*

Information Collection

Title: “Application Pursuant to Section 19 of the Federal Deposit Insurance Act”.

OMB Number: 3064-0018.

Affected Public: Insured depository institutions and individuals.

Summary of Estimated Annual Burdens (OMB No. 3064-0018)						
IC Description	Type of Burden (Obligation to Respond)	Frequency of Response	Number of Respondents	Number of Responses / Respondent	Hours per Response	Annual Burden (Hours)
Application Pursuant to Section 19 of the Federal Deposit Insurance Act	Reporting (Required to obtain or retain benefits)	On occasion	43	1	16	688
Total Annual Burden Hours:						688
Source: FDIC						

B. The Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency, in connection with a final rule, to prepare and make available for public comment a final regulatory flexibility analysis that describes the impact of the final rule on small entities.⁴⁸

However, a final regulatory flexibility analysis is not required if the agency certifies that the final rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) has defined “small entities” to include banking organizations with total assets of less than or equal to \$850 million.⁴⁹ Generally, the FDIC considers a significant economic impact to be a quantified effect in excess of 5 percent of total annual salaries and benefits or 2.5 percent

⁴⁸ 5 U.S.C. 601 *et seq.*

⁴⁹ The SBA defines a small banking organization as having \$850 million or less in assets, where an organization’s “assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.” *See* 13 CFR 121.201 (as amended by 87 FR 69118, effective December 19, 2022). In its determination, the “SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.” *See* 13 CFR 121.103. Following these regulations, the FDIC uses an IDI’s affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the insured depository institution is “small” for the purposes of the RFA.

of total noninterest expenses. The FDIC believes that effects in excess of one or more of these thresholds typically represent significant economic impacts for FDIC-supervised institutions.

As discussed further below, the FDIC certifies that the final rule will not have a significant economic impact on a substantial number of FDIC-supervised small entities.

As of the quarter ending March 31, 2024, the FDIC insured 4,577 depository institutions, of which 3,259 are defined as small banking organizations for the purposes of the RFA.⁵⁰ In the period from 2021 through 2023, the FDIC received 5 bank-sponsored section 19 applications from small, FDIC-insured institutions, an average of 2 per year. Additionally, the FDIC received 115 section 19 applications from individuals during the same period, an average of about 38 per year.⁵¹ To determine the maximum number of small, FDIC-insured institutions that could be affected by the final rule, this analysis assumes that each applicant is seeking employment at a different bank and that each bank is a small, FDIC-insured institution. Based on these assumptions, 40 (1.2 percent of) small, FDIC-insured institutions, on average, annually, could be affected by the final rule.⁵² Section 19 applications from individuals are compelled by the applicant's intent to seek employment at FDIC-insured institutions, many of which are not small. Therefore, the FDIC believes that the number of small, FDIC-insured institutions affected by the final rule is likely to be less than 40.

As discussed in the **SUPPLEMENTARY INFORMATION** section, the final rule would align the FDIC's regulations with the FHBA's provisions, make additional changes to further clarify the FDIC's regulations related to section 19, more closely align

⁵⁰ FDIC Call Report, March 31, 2024.

⁵¹ FDIC Application Tracking System.

⁵² $(40 / 3,259) * 100 = 1.23$ percent.

the FDIC's section 19 regulations with those of other Federal financial regulators, and make a number of non-substantive, technical edits. Most of the amendments were precipitated by the FHBA—which was effective immediately upon passage—and the final rule aligns the FDIC's regulations with these elements of the FHBA; therefore, most of the associated changes in the final rule will have no direct effect on individuals or IDIs. Further, since the FDIC estimates that a maximum of 40 small, FDIC-insured institutions could be affected by the final rule, on average, annually, any direct affects realized as a result of the final rule are likely to be small and affect a relatively small number of entities.

In light of the foregoing, the FDIC certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

C. Plain Language

Section 722 of the Gramm-Leach Bliley Act⁵³ requires the Federal banking agencies to use plain language in all proposed and final rulemakings published in the Federal Register after January 1, 2000. FDIC staff believes the final rule is presented in a simple and straightforward manner. The FDIC invited comments regarding the use of plain language in the proposed rule but did not receive any comments on this topic.

D. Riegle Community Development and Regulatory Improvement Act of 1994

Under section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),⁵⁴ in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on IDIs, each Federal banking agency must consider, consistent

⁵³ Pub. L. 106-102, sec. 722, 113 Stat. 1338, 1471 (1999), *codified at* 12 U.S.C. 4809.

⁵⁴ 12 U.S.C. 4802(a).

with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.⁵⁵ The FDIC has determined that the final rule would impose additional reporting, disclosure, or other new requirements on IDIs, and is making this final rule effective in accordance with the requirements of the RCDRIA.

E. Congressional Review Act

For purposes of the Congressional Review Act (5 U.S.C. 801 *et seq.*), the OMB makes a determination as to whether a final rule constitutes a “major rule.” If a rule is deemed a “major rule” by the OMB, the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.⁵⁶ The Congressional Review Act defines a “major rule” as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in—(1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic

⁵⁵ *Id.* at 4802(b).

⁵⁶ *See* 5 U.S.C. 801.

and export markets.⁵⁷ The OMB has determined that the final rule is [not] a major rule for purposes of the Congressional Review Act and the FDIC will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

List of Subjects

12 CFR Part 303

Administrative practice and procedure, Bank deposit insurance, Banks, banking, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 308

Administrative practice and procedure, Bank deposit insurance, Banks, banking, Claims, Crime, Equal access to justice, Fraud, Investigations, Lawyers, Penalties, Savings associations.

Authority and Issuance

For the reasons stated in the preamble and under the authority of 12 U.S.C. 1819 (Seventh and Tenth), the FDIC amends 12 CFR parts 303 and 308 as follows:

PART 303—FILING PROCEDURES

1. The authority citation for part 303 is revised to read as follows:

Authority: 12 U.S.C. 378, 1464, 1813, 1815, 1817, 1818, 1819(a) (Seventh and Tenth), 1820, 1823, 1828, 1829, 1831a, 1831e, 1831o, 1831p-1, 1831w, 1835a, 1843(l), 3104, 3105, 3108, 3207, 5414, 5415, and 15 U.S.C. 1601–1607.

2. Revise subpart L, consisting of §§ 303.220 through 303.231, to read as follows:

Subpart L—Section 19 of the Federal Deposit Insurance Act (Consent to Service of Persons Convicted of, or Who Have Program Entries for, Certain Criminal

⁵⁷ See 5 U.S.C. 804(2).

Offenses)

Sec.

303.220 What is section 19 of the Federal Deposit Insurance Act?

303.221 Who is covered by section 19?

303.222 Which offenses qualify as “Covered Offenses” under section 19?

303.223 What constitutes a conviction under section 19?

303.224 What constitutes a pretrial diversion or similar program under section 19?

303.225 What are the types of applications that can be filed?

303.226 When may an application be filed?

303.227 *De minimis* exemption.

303.228 How to file an application.

303.229 How an application is evaluated.

303.230 What will the FDIC do if the application is denied?

303.231 Waiting time for a subsequent application if an application is denied.

§ 303.220 What is section 19 of the Federal Deposit Insurance Act?

(a) This subpart covers applications under section 19 of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1829. The FDIC refers to such applications as “consent applications.” Under section 19, any person who has been convicted of any criminal offense involving dishonesty, breach of trust, or money laundering, or has agreed to enter into a pretrial diversion or similar program (program entry) in connection with a prosecution for such offense (collectively, Covered Offenses), may not become, or continue as, an institution-affiliated party (IAP) of an insured depository institution (IDI); own or control, directly or indirectly, any IDI; or otherwise participate, directly or indirectly, in the conduct of the affairs of

any IDI without the prior written consent of the FDIC.

(b) In addition, the law prohibits an IDI from permitting such a person to engage in any conduct or to continue any relationship prohibited by section 19. IDIs must therefore make a reasonable, documented inquiry to verify an applicant's history to ensure that a person who has a Covered Offense under section 19 is not hired or permitted to participate in its affairs without the written consent of the FDIC issued under this subpart. FDIC-supervised IDIs may extend a conditional offer of employment contingent on the completion of a background check satisfactory to the institution to determine if the applicant is prohibited under section 19, but the applicant may not work for, be employed by, or otherwise participate in the affairs of the IDI until the IDI has determined that the applicant is not prohibited under section 19 (including persons who have had a consent application approved).

(c) If there is a conviction or program entry covered by the prohibitions of section 19, an application under this subpart must be filed seeking the FDIC's consent in order to become, or to continue as, an IAP; to own or control, directly or indirectly, an IDI; or to otherwise participate, directly or indirectly, in the affairs of the IDI. The application must be filed, and consented to, prior to serving in any of the foregoing capacities unless such application is not required under the subsequent provisions of this subpart. The purpose of an application is to provide the applicant an opportunity to demonstrate that, notwithstanding the prohibition, a person is fit to participate in the conduct of the affairs of an IDI without posing a risk to its safety and soundness or impairing public confidence in that institution. The burden is upon the applicant to establish that the application

warrants approval.

§ 303.221 Who is covered by section 19?

(a) Persons covered by section 19 include IAPs, as defined by 12 U.S.C. 1813(u), and others who are participants in the conduct of the affairs of an IDI. Therefore, all directors, officers, and employees of an IDI who fall within the scope of section 19, including *de facto* employees, as determined by the FDIC based upon generally applicable standards of employment law, will also be subject to section 19. Whether other persons are covered by section 19 depends upon their degree of influence or control over the management or affairs of an IDI. For example, section 19 would apply to directors and officers of affiliates, subsidiaries, or joint ventures of an IDI if they participate in the affairs of the IDI or are in a position to influence or control the management or affairs of the IDI. Typically, an independent contractor does not have a relationship with the IDI other than the activity for which the institution has contracted. However, an independent contractor who also influences or controls the management or affairs of the IDI would be covered by section 19.

(b) The term *person*, for purposes of section 19, means an individual and does not include a corporation, firm, or other business entity.

(c) Individuals who file an application with the FDIC under the provisions of section 19 who also seek to participate in the affairs of a bank holding company or savings and loan holding company may have to comply with any filing requirements of the Board of the Governors of the Federal Reserve System under 12 U.S.C. 1829(d) and (e). Conversely, an individual who works at a bank holding company or savings and loan holding company who would like to

participate in the affairs of an IDI or be in a position to influence or control the management or affairs of an IDI must file an application with the FDIC under this subpart.

(d) Section 19 specifically prohibits a person subject to its provisions from owning or controlling, directly or indirectly, an IDI. The terms *control*, *ownership*, and *acting in concert* under section 19 have the meaning given to those terms in subpart E of this part (including the rebuttable presumptions stated in subpart E).

(1) A person will be deemed to exercise “control” if that person—

(i) Has the ability to direct the management or policies of an IDI;

(ii) Has the power to vote 25 percent or more of the voting shares of an IDI; or

(iii) Has the power to vote 10 percent of the voting shares of an IDI if—

(A) No other person owns, controls, or has the power to vote more shares; or

(B) The institution has registered securities under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l).

(2) Under this paragraph (d), a person will be deemed to “own” an IDI if that person owns—

(i) 25 percent or more of the institution’s voting stock; or

(ii) 10 percent of the voting shares if—

(A) No other person owns more; or

(B) The institution has registered securities under section

12 of the Securities Exchange Act of 1934 (15 U.S.C. 78I).

(3) The standards in this paragraph (d) would also apply to an individual acting in concert with others so as to have such ownership or control.

Absent the FDIC's consent, persons subject to the prohibitions of section 19 must divest their control or ownership of shares above the foregoing limits.

§ 303.222 Which offenses qualify as “Covered Offenses” under section 19?

(a) *Categories of Covered Offenses.* The conviction or program entry must be for a criminal offense involving dishonesty, breach of trust, or money laundering.

(1) The term *criminal offense involving dishonesty*—

(i) Means an offense under which an individual, directly or indirectly—

(A) Cheats or defrauds; or

(B) Wrongfully takes property belonging to another in violation of a criminal statute;

(ii) Includes an offense that Federal, State, or local law defines as dishonest, or for which dishonesty is an element of the offense; and

(iii) Does not include—

(A) A misdemeanor criminal offense committed more than one year before the date on which an individual files a consent application, excluding any period of incarceration; or

(B) An offense involving the possession of controlled substances. At a minimum, this exclusion applies to

criminal offenses involving the simple possession of a controlled substance and possession with intent to distribute a controlled substance. This exclusion may also apply to other drug-related offenses depending on the statutory elements of the offenses or from court determinations that the statutory provisions of the offenses do not involve dishonesty, breach of trust, or money laundering, as noted in paragraph (b) of this section. Potential applicants may contact their appropriate FDIC Regional Office if they have questions about whether their offenses are covered under section 19.

(iv) The term *offense committed* in paragraph (a)(1)(iii)(A) of this section means the last date of the underlying misconduct. In instances with multiple offenses, *offense committed* means the last date of any of the underlying offenses.

(2) The term *breach of trust* means 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 wrongful act, use, misappropriation, or omission.

(b) *Elements of the offense.* Whether a crime involves dishonesty, breach of trust, or money laundering will be determined from the statutory elements of the offense itself or from court determinations that the statutory provisions of the offense involve dishonesty, breach of trust, or money laundering.

(c) *Certain older offenses excluded—(1) Exclusions for certain older offenses.*

Section 19 does not apply to an offense if—

- (i) It has been 7 years or more since the offense occurred; or
- (ii) The individual was incarcerated with respect to the offense and it has been 5 years or more since the individual was released from incarceration.
- (iii) The term *offense occurred* means the last date of the underlying misconduct. In instances with multiple Covered Offenses, *offense occurred* means the last date of any of the underlying offenses.

(2) *Offenses committed by individuals 21 years of age or younger.* For individuals who committed an offense when they were 21 years of age or younger, section 19 does not apply to the offense if it has been more than 30 months since the sentencing occurred. The term *sentencing occurred* means the date on which a court imposed the sentence (as indicated by the date on the court's sentencing order), not the date on which all conditions of sentencing were completed.

(3) *Limitation.* This paragraph (c) does not apply to an offense described under 12 U.S.C. 1829(a)(2).

(d) *Foreign convictions.* Individuals who are convicted of or enter into a pretrial diversion program for a criminal offense involving dishonesty, breach of trust, or money laundering in any foreign jurisdiction are subject to section 19, unless the offense is otherwise excluded by this subpart.

§ 303.223 What constitutes a conviction under section 19?

(a) *Convictions requiring an application.* There must be a conviction of record. Section 19 does not cover arrests or pending cases not brought to trial, unless the person has a program entry as set out in § 303.224. Section 19 does not cover acquittals or any conviction that has been reversed on appeal, unless the reversal was for the purpose of re-sentencing. A conviction with regard to which an appeal is pending requires an application. A conviction for which a pardon has been granted requires an application.

(b) *Convictions not requiring an application.* When an individual is charged with a Covered Offense and, in the absence of a program entry as set out in § 303.224, is subsequently convicted of an offense that is not a Covered Offense, the conviction is not subject to section 19.

(c) *Expungement, dismissal, and sealing.* A conviction is not considered a conviction of record and does not require an application if—

(1) There is an order of expungement, sealing, or dismissal that has been issued in regard to the conviction in connection with such offense, or if a conviction has been otherwise expunged, sealed, or dismissed by operation of law; and

(2) It is intended by the language in the order itself, or in the legislative provisions under which the order was issued, or in other legislative provisions, that the conviction shall be destroyed or sealed from the individual's State, Tribal, or Federal record, even if exceptions allow the conviction to be considered for certain character and fitness evaluation purposes.

(d) *Youthful offenders.* An adjudication by a court against a person as a “youthful

offender” (or similar term) under any youth-offender law applicable to minors as defined by state law, or any judgment as a “juvenile delinquent” (or similar term) by any court having jurisdiction over minors as defined by State law, does not require an application. Such an adjudication does not constitute a matter covered under section 19 and is not a conviction or program entry for determining the applicability of § 303.227.

§ 303.224 What constitutes a pretrial diversion or similar program under section 19?

(a) The term *pretrial diversion or similar program* (program entry) means a program characterized by a suspension or eventual dismissal or reversal of charges or criminal prosecution upon agreement by the accused to restitution, drug or alcohol rehabilitation, anger management, or community service. Whether the outcome of a case constitutes a program entry is determined by relevant Federal, State, or local law, and, if not so designated under applicable law, then the determination of whether a disposition is a program entry will be made by the FDIC on a case-by-case basis. Program entries prior to November 29, 1990, are not covered by section 19.

(b) When a Covered Offense either is reduced by a program entry to an offense that would otherwise not be covered by section 19 or is dismissed upon successful completion of a program entry, the offense remains a Covered Offense for purposes of section 19. The Covered Offense will require an application unless it is *de minimis* as provided by § 303.227.

(c) Expungements, dismissals, or sealings of program entries will be treated the same as those for convictions.

§ 303.225 What are the types of applications that can be filed?

- (a) The FDIC will accept applications from—
- (1) An individual;
 - (2) An IDI applying on behalf of an individual;
 - (3) A depository institution holding company applying on behalf of an individual with respect to an IDI subsidiary of the holding company; and
 - (4) A depository institution holding company applying on behalf of an individual who will work at the holding company but also participate in the affairs of the IDI or who would be in a position to influence or control the management or affairs of the IDI, in accordance with § 303.221(a).
- (b) An individual or an institution may file applications at separate times. Under either approach, the application(s) must be filed with the appropriate FDIC Regional Office, as required by this subpart.

§ 303.226 When may an application be filed?

Except for situations in which no application is required under section 19 and this subpart, an application must be filed when there is a conviction by a court of competent jurisdiction for a Covered Offense by any adult or minor treated as an adult or when such person has a program entry regarding that offense. Before an application may be filed, all of the sentencing requirements associated with a conviction, or conditions imposed by the program entry, including but not limited to, imprisonment, fines, conditions of rehabilitation, and probation requirements, must be completed, and the case must be considered final by the procedures of the applicable jurisdiction. The FDIC's application forms as well as additional information concerning section 19 can be accessed from the FDIC's Regional Offices or on the FDIC's website.

§ 303.227 *De minimis* exemption.

(a) *In general.* The prohibitions of 12 U.S.C. 1829(a) will not apply, and an application will therefore not be required, where all of the following *de minimis* criteria are met. (Paragraph (b)(4) of this section contains separate exemption criteria from paragraphs (a)-(b)(3), and an offense that qualifies for exemption under paragraph (b)(4) is excluded from consideration in the criteria of paragraphs (a)-(b)(3).)

(1) The individual has been convicted of, or has program entries for, no more than two Covered Offenses, including those subject to paragraphs (b)(1)-(b)(3) of this section; and for each Covered Offense, all of the sentencing requirements associated with the conviction, or conditions imposed by the program entry, have been completed (the sentence- or program-completion requirement does not apply under paragraph (b)(2) of this section).

(2) For each Covered Offense, the individual could have been sentenced to a term of confinement in a correctional facility of three years or less and/or a fine of \$2,500 or less, and the individual actually served three days or less of jail time for each Covered Offense.

(3) Jail time under paragraph (a)(2) of this section is calculated based on the time an individual spent incarcerated as a punishment or a sanction—not as pretrial detention—and does not include probation or parole where an individual was restricted to a particular jurisdiction or was required to report occasionally to an individual or a specific location. Jail time includes confinement to a psychiatric treatment center in lieu of a jail,

prison, or house of correction on mental-competency grounds. The definition is not intended to include either of the following: persons who are restricted to a substance-abuse treatment program facility for part or all of the day; or persons who are ordered to attend outpatient psychiatric treatment.

(4) If there are two convictions or program entries for a Covered Offense, each conviction or program entry was entered at least three years prior to the date an application would otherwise be required, except as provided in paragraph (b)(1) of this section.

(5) Each Covered Offense must not have been committed against an IDI or insured credit union.

(b) Other types of offenses for which the de minimis exemption applies and no application is required—(1) Age of person at time of Covered Offense. If there are two convictions or program entries for a Covered Offense, and the actions that resulted in both convictions or program entries all occurred when the individual was 21 years of age or younger, then the *de minimis* criteria in paragraph (a)(4) of this section will be met if the convictions or program entries were entered at least 18 months prior to the date an application would otherwise be required. For this reduction in waiting time to apply, the convictions or program entries must meet the other *de minimis* criteria in paragraph (a).

(2) Convictions or program entries for insufficient funds checks. The prohibitions of 12 U.S.C. 1829(a) will not apply, and an application will therefore not be required, as to convictions or program entries of record based on the writing of “bad” or insufficient funds check(s) if the

following conditions apply:

- (i) The aggregate total face value of all “bad” or insufficient funds check(s) cited across all the conviction(s) or program entry(ies) for “bad” or insufficient funds checks is \$2,000 or less;
- (ii) No IDI or insured credit union was a payee on any of the “bad” or insufficient funds checks that were the basis of the conviction(s) or program entry(ies); and
- (iii) The individual has no more than one other *de minimis* offense under this section.

(3) *Convictions or program entries for small-dollar, simple theft.* The prohibitions of 12 U.S.C. 1829(a) will not apply, and an application will therefore not be required, as to convictions or program entries based on the simple theft of goods, services, or currency (or other monetary instrument) if the following conditions apply:

- (i) The value of the currency, goods, or services taken was \$1,000 or less;
- (ii) The theft was not committed against an IDI or insured credit union;
- (iii) The individual has no more than one other offense that is considered exempt under this section; and
- (iv) If there are two offenses—each of which, by itself, is considered exempt under this section—each conviction or program entry was entered at least three years prior to the date an application would otherwise be required, or at least 18 months

prior to the date an application would otherwise be required if the actions that resulted in the conviction or program entry all occurred when the individual was 21 years of age or younger.

(v) Simple theft excludes burglary, forgery, robbery, identity theft, and fraud.

(4) *Convictions or program entries for using fake identification, shoplifting, trespassing, fare evasion, or driving with an expired license or tag.* The prohibitions of 12 U.S.C. 1829(a) will not apply, and an application will therefore not be required, as to the following offenses, if one year or more has passed since the applicable conviction or program entry: using fake identification; shoplifting; trespassing; fare evasion; and driving with an expired license or tag.

(c) *Non-qualifying convictions or program entries.* No conviction or program entry for a violation of the Title 18 sections set out in 12 U.S.C. 1829(a)(2) can qualify under any of the *de minimis* exemptions set out in this section.

§ 303.228 How to file an application.

Forms and instructions should be obtained from the FDIC's Regional Offices or on the FDIC's website (www.fdic.gov), and the application(s) must be filed with the appropriate FDIC Regional Office. An application may be filed by an individual or by an IDI or depository institution holding company on behalf of an individual, or by both. The appropriate Regional Office for an institution-sponsored application is the office covering the state where the institution's home office is located. The appropriate Regional Office for an application filed by an individual is the office covering the state where the person resides. States covered by each FDIC Regional Office can be located on the FDIC's

website.

§ 303.229 How an application is evaluated.

(a) *Criminal-history records.* In reviewing an application, the FDIC will—

(1) Primarily rely on the criminal history record provided by the Federal Bureau of Investigation (rap sheet); and

(2) Provide such record to the subject of the application to review for accuracy. The FDIC will make reasonable efforts to communicate with the subject of the application within 15 calendar days of receipt of this record from the Federal Bureau of Investigation to inform the individual that the FDIC will be providing them with a copy of the report and to verify the individual's contact information. The FDIC will make reasonable efforts to send the report to the individual within 5 business days of successful verification of the individual's contact information. If the individual believes that there are any inaccuracies in the report, the FDIC will direct the individual to an appropriate contact at the Federal Bureau of Investigation where the individual can seek corrections to the report.

(b) *Certified copies.* The FDIC will not require an applicant to provide certified copies of criminal history records unless the FDIC determines that there is a clear and compelling justification to require additional information to verify the accuracy of the criminal history record provided by the Federal Bureau of Investigation.

(c) *Ultimate determinations.* The ultimate determinations in assessing an application are whether the person has demonstrated their fitness to participate in the conduct of the affairs of an IDI, and whether the affiliation, ownership,

control, or participation by the person in the conduct of the affairs of the institution may constitute a threat to the safety and soundness of the institution or the interests of its depositors or threaten to impair public confidence in the institution.

(d) *Individualized assessment.* When evaluating applications, the FDIC will conduct an individualized assessment that will consider:

- (1) Whether the conviction or program entry is subject to section 19, and the specific nature and circumstances of the offense;
- (2) Whether the participation directly or indirectly by the person in any manner in the conduct of the affairs of the IDI constitutes a threat to the safety and soundness of the institution or the interests of its depositors or threatens to impair public confidence in the institution;
- (3) Evidence of rehabilitation, including the person's age at the time of the conviction or program entry, the time that has elapsed since the conviction or program entry, and the relationship of the individual's offense to the responsibilities of the applicable position;
- (4) The individual's employment history, letters of recommendation, certificates documenting participation in substance-abuse programs, successful participation in job preparation and educational programs, and other relevant evidence;
- (5) The ability of management of the IDI to supervise and control the person's activities;
- (6) The level of ownership or control the person will have of an IDI;
- (7) The applicability of the IDI's fidelity bond coverage to the person; and

(8) Any additional factors in the specific case that appear relevant to the application or the individual including, but not limited to, the opinion or position of the primary Federal or State regulator.

(e) *No re-consideration of guilt.* The question of whether a person, who was convicted of a crime or who agreed to a program entry, was guilty of that crime will not be at issue in a proceeding under this subpart or under 12 CFR part 308, subpart M.

(f) *Factors considered for enumerated offenses.* The foregoing factors will also be applied by the FDIC to determine whether the interests of justice are served in seeking an exception in the appropriate court when an application is made to terminate the ten-year ban prior to its expiration date under 12 U.S.C. 1829(a)(2) for certain Federal offenses.

(g) *Mandatory conditions of approval.* All approvals and orders will be subject to the condition that the person be covered by a fidelity bond to the same extent as others in similar positions. If the FDIC has approved an application filed by an individual and has issued a consent order, the individual must disclose the presence of the conviction(s) or program entry(ies) to all IDIs in the affairs of which they wish to participate.

(h) *Institution-sponsored applications: work at same employer.* When deemed appropriate by the FDIC, institution-sponsored applications are to allow the individual to work for the same employer (without restrictions on the location) and across positions, except that the prior consent of the FDIC (which may require a new application) will be required for any proposed significant changes in the individual's security-related duties or responsibilities, such as promotion to

an officer or other positions that the employer determines will require higher security screening credentials.

(i) *Work at a different employer after certain approvals.* In situations in which an approval has been granted for a person to participate in the affairs of a particular IDI and the person subsequently seeks to participate at another IDI, another application must be submitted and approved by the FDIC prior to the person participating in the affairs of the other IDI.

§ 303.230 What will the FDIC do if the application is denied?

(a) The FDIC will inform the applicant in writing that the application has been denied and summarize or cite the relevant considerations specified in § 303.229.

(b) The denial will also notify the applicant that a written request for a hearing (or a request for written submissions in lieu of a hearing) under 12 CFR part 308, subpart M, may be filed with the FDIC Executive Secretary within 60 days after the denial. For institution-sponsored applications, either the institution or the subject individual (or both, as a consolidated request) may file such a written request. A request must include the relief desired, the grounds supporting the request for relief, and any supporting evidence.

§ 303.231 Waiting time for a subsequent application if an application is denied.

(a) An application under section 19 must be made in writing and may not be made less than one year following the issuance of a decision denying an application under section 19. If the original denial is subject to a request for a hearing or written submissions in lieu of a hearing, then the subsequent application may be filed at any time more than one year after the decision of the FDIC Board of Directors, or its designee, denying the application. Unless with the passage of time the individual is no longer

subject to section 19, the prohibition against participating in the affairs of an IDI under section 19 will continue until the individual has been granted consent in writing to participate in the affairs of an IDI by the Board of Directors or its designee.

(b) An institution-sponsored application is not subject to the one-year waiting period if the application—

(1) Follows the denial of an individual application; or

(2) Follows the denial of an institution-sponsored application and the subsequent application is sponsored by a different institution or is for a different position.

PART 308—RULES OF PRACTICE AND PROCEDURE

3. The authority citation for part 308 continues to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 93(b), 164, 505, 1464, 1467(d), 1467a, 1468, 1815(e), 1817, 1818, 1819, 1820, 1828, 1829, 1829(b), 1831i, 1831m(g)(4), 1831o, 1831p–1, 1832(c), 1884(b), 1972, 3102, 3108(a), 3349, 3909, 4717, 5412(b)(2)(C), 5414(b)(3); 15 U.S.C. 78(h) and (i), 78o(c)(4), 78o–4(c), 78o–5, 78q–1, 78s, 78u, 78u–2, 78u–3, 78w, 6801(b), 6805(b)(1); 28 U.S.C. 2461 note; 31 U.S.C. 330, 5321; 42 U.S.C. 4012a; Pub. L. 104–134, sec. 31001(s), 110 Stat. 1321; Pub. L. 109–351, 120 Stat. 1966; Pub. L. 111–203, 124 Stat. 1376; Pub. L. 114–74, sec. 701, 129 Stat. 584.

4. Revise the title of part 308, subpart M to read as follows:

Subpart M—Procedures Applicable to the Request for and Conduct of a Hearing (or the Request for Written Submissions in Lieu of a Hearing) after Denial of an Application under Section 19 of the Federal Deposit Insurance Act

5. Revise § 308.156 to read as follows:

§ 308.156 Scope.

The rules and procedures set forth in this subpart will apply to an application filed under section 19 of the FDI Act, 12 U.S.C. 1829 (section 19), and 12 CFR part 303, subpart L, by an insured depository institution (IDI), depository institution holding company, or an individual (any of which could be termed an applicant). Section 19 states that if an individual has been convicted of any criminal offense involving dishonesty, a breach of trust, or money laundering, or who has agreed to enter into a pretrial diversion or similar program in connection with the prosecution of such offense, the individual must seek the prior written consent of the FDIC to: become or continue as an institution-affiliated party (IAP) with respect to an IDI; own or control directly or indirectly an IDI; or participate directly or indirectly in any manner in the conduct of the affairs of an IDI. This subpart will apply only after such application has been denied under 12 CFR part 303, subpart L.

6. Revise § 308.157 to read as follows:

§ 308.157 Denial of applications.

If an application is denied under 12 CFR part 303, subpart L, then the applicant may request a hearing (or request a written submission in lieu of a hearing) under this subpart. The applicant will have 60 days after the date of the denial to file a written request with the Administrative Officer. In the request, the applicant must state the relief desired, the grounds supporting the request for relief, and provide any supporting evidence that the applicant believes is responsive to the grounds for the denial.

7. Amend § 308.158 by revising paragraphs (b) and (d) through (f) to read as follows:

§ 308.158 Hearings and written submissions in lieu of a hearing.

* * * * *

(b) *Burden of proof.* The burden of going forward with a *prima facie* case will be upon the FDIC. The ultimate burden of proof will be upon the applicant seeking the FDIC's consent for an individual to: become or continue as an IAP with respect to an IDI; own or control directly or indirectly an IDI; or otherwise participate directly or indirectly in any manner in the conduct of the affairs of an IDI.

* * * * *

(d) *Written submissions in lieu of hearing.* The applicant may in writing waive a hearing and elect to have the matter determined on the basis of written submissions.

(e) *Failure to request or appear at hearing.* Failure to request a hearing will constitute a waiver of the opportunity for a hearing. Failure to appear at a hearing in person or through an authorized representative will constitute a waiver of a hearing. If a hearing is waived, and if there has not been a written submission in lieu of a hearing, the individual will remain prohibited under section 19.

(f) *Decision by Board of Directors or its designee.* Within 60 days following the Administrative Officer's certification of the record to the Board of Directors or its designee, the Board of Directors or its designee will notify the applicant whether the individual will remain prohibited under section 19. The notification will state the basis for any decision of the Board of Directors or its designee that is adverse to the applicant.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on [date].

James P. Sheesley,

Assistant Executive Secretary.

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