

## I. INTRODUCTION

Section 19 of the Federal Deposit Insurance (FDI) Act applies to all FDIC-insured depository institutions. Section 19 provides that, except with the prior written consent of the FDIC, any person who has been convicted of any criminal offense involving dishonesty or a breach of trust, or money laundering (in aggregate, “covered offenses”), or has agreed to enter into a pretrial diversion or similar program (program entry) in connection with a prosecution for any such offense, may not<sup>1</sup>:

1. Become, or continue as, an institution-affiliated party (as defined in Section 3(u) of the FDI Act) with respect to any insured depository institution (IDI);
2. Own or control, directly or indirectly, any IDI; or,
3. Otherwise participate, directly or indirectly, in the conduct of the affairs of any IDI.

Further, Section 19 provides that for certain enumerated violations of Title 18 of the U.S.C. pertaining to financial institution-related crimes, the FDIC is precluded from approving an application filed by a person, or by an IDI on behalf of such a person, convicted of such an offense or program entry for ten years from the date of the offense or program entry. However, the FDIC may motion a court of jurisdiction for an exception to the prohibition period when the interest of justice would be served. Refer to *Requests to File Motions For Exceptions to 10-Year Prohibition*, Part VIII of this Section, and to Section 19(a)(2)(B) of the FDI Act for more information.

Section 19 also applies to any company (other than a foreign bank) that is a bank holding company or a savings and loan holding company as if such holding company were an IDI, except that the authority for granting exceptions is reserved to the Board of Governors of the Federal Reserve System instead of the FDIC.

### Definitions of Covered Offenses

**Dishonesty** means directly or indirectly to cheat or defraud; to cheat or defraud for monetary gain or its equivalent; or wrongfully to take property belonging to another in violation of any criminal statute. Dishonesty includes acts involving want of integrity, lack of probity, or a disposition to distort, cheat, or act deceitfully or fraudulently, and may include crimes which federal, state or local laws define as dishonest.

**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. Whether a crime involves dishonesty or a breach of trust will be determined from the statutory elements of the crime itself.

**Money laundering** means a financial transaction designed in whole or in part to conceal or disguise the nature, location, source, ownership, or control of the proceeds of unlawful activity or to avoid a transaction reporting requirement under state or federal law. Money laundering includes the knowing use of property in a financial transaction that represents the proceeds of some form of unlawful activity, if the intent is to promote the carrying on of specified unlawful

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<sup>1</sup> Any IDI may not permit any person to engage in any conduct or continue any relationship prohibited under this section.

activity. For federal law, see Title 18 U.S.C. Section 1956, “Laundering of Monetary Instruments” and 18 U.S.C. Section 1957 “Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity.” The Case Manager should consult with Regional Legal counsel if there is uncertainty as to whether a particular offense should be considered a crime of money laundering under federal or state law.

## II. PARTIES SUBJECT TO SECTION 19

For purposes of Section 19, “person” means an individual and does not include a corporation, firm, or other business entity. Refer to the FDIC Statement of Policy for Section 19 of the FDI Act (SOP) for additional information. In summary, the following persons fall within the scope of Section 19:

**Institution-Affiliated Party (IAP)**, as defined in Section 3(u) of the FDI Act, includes any director, officer, employee, controlling stockholder (other than a bank holding company or savings and loan holding company) of, or agent for, an IDI; any other person who has filed or is required to file a change-in-control notice with the appropriate Federal banking agency under section 7(j); any shareholder, consultant, joint venture partner, and any other person as determined by the appropriate PFR who participates in the conduct of the affairs of an IDI; and, independent contractors under certain circumstances, as described below.

The FDIC may determine any other person to be an IAP or to be a person who participates, directly or indirectly, in the conduct of the affairs of any IDI. In making such a determination, the FDIC will consider the person’s degree of influence over the management or affairs of the IDI. Those who exercise major policymaking functions or have the power to define and direct the management or affairs of an IDI would be deemed participants in the affairs of that IDI and covered by Section 19. For example, it may include directors or officers of affiliates, subsidiaries, or joint ventures of an IDI or its holding company.

**Independent Contractors**, including any attorney, appraiser, or accountant, would be covered by Section 19 if they influence or control the management or affairs of the IDI.

**Controlling Shareholder or Control Group Member.** For the purposes of defining control and ownership under Section 19, the FDIC has adopted the definition of control set forth in the Change in Bank Control Act of 1978 (CBC Act). A person will be deemed to exercise control if that person has the power, directly or indirectly, to direct the management or policies of a covered institution or to vote 25 percent or more of the voting shares of an IDI (or 10 percent of the voting shares if no other person has more shares). Under the same standards, a person will be deemed to own an IDI if that person owns 25 percent or more of the IDI’s voting stock, or 10 percent of the voting shares if no other person owns more. These standards also apply to an individual acting in concert with others in order to have such ownership or control. Section 19 also specifically applies to persons with indirect control over any IDI. Absent the FDIC’s consent, persons subject to the prohibitions of Section 19 will be required to divest their ownership of shares above the aforementioned limits.

## III. APPLICATION TYPES

The SOP clarifies that the application must be filed by an IDI on behalf of a person (Sponsorship) unless the FDIC grants a waiver of that requirement (Individual Waiver). Such waivers will be considered on a case-by-case basis where substantial good cause for granting a waiver is shown.

The requirements of each application type are described in further detail below.

### Sponsorship

Sponsorship approvals are not transferable. If an individual completed the Sponsorship process at one IDI, the approval is not valid for any other IDI. If an individual seeks to be employed or affiliated with another IDI, a new Section 19 application must be processed, unless an exception is specifically granted in writing by the FDIC. If, while at the IDI where a Sponsorship was previously approved, the sponsored individual's duties and responsibilities change and/or the level of oversight by the IDI over the individual changes, a new review from the IDI is necessary to consider the impact of these changes. This review may result in the requirement to file a new Section 19 application if it is determined that the individual's job duties, areas of responsibility, and the level of oversight of that individual have materially changed. Similarly, if an application was approved for an IDI that is subsequently merged into another IDI, a new application is required because there is no assurance that the sponsored individual's job duties, areas of responsibility, and the level of oversight remained the same as those approved under the original bank-sponsored application.

### Individual Waiver

For individual waivers, the FDIC's approval results in the issuance of a public order and allows an individual to participate in the affairs of any IDI in any capacity, subject to the FDIC's conditions of approval. The covered individual need not reapply to the FDIC to participate in the affairs of an IDI, unless specifically required to do so. However, if a covered individual is convicted of a subsequent crime subject to Section 19, he or she would again be prohibited from participating in the affairs of an IDI.

### Other Situations

If an individual is working for an IDI at the time the IDI becomes aware that the individual is covered by Section 19, the individual's continued participation in the affairs of the IDI violates Section 19. Under Section 19, an individual in this situation cannot remain as an employee, or otherwise be an IAP of the IDI, and the relationship must be terminated.

The FDIC may take action under its authority in Section 8 of the FDI Act, including assessing civil monetary penalties, against an FDIC-supervised IDI or an individual who is subject to FDIC jurisdiction for violations of Section 19. The FDIC should refer such violations to the FDIC Office of Inspector General and the Department of Justice. If the FDIC becomes aware of a potential violation of Section 19 in an IDI not supervised by the FDIC, such potential violation should be referred to the appropriate PFR.

## **IV. DETERMINING WHETHER AN APPLICATION FOR CONSENT IS REQUIRED**

There are certain situations that require a Section 19 application and others that do not, including those that meet the *de minimis* criteria and may qualify for automatic approval. Refer to the *De Minimis* Convictions subsection below for additional information. The Case Manager should consult with Regional Legal if it is unclear as to whether the statutory elements of dishonesty or breach of trust are present in the crime, or if it is unclear whether a Section 19 application is necessary.

### Situations Requiring a Section 19 Application

- A conviction by a court of competent jurisdiction for a covered offense by any adult or minor treated as an adult, or where such person has entered a pretrial diversion or similar program regarding that offense.
- A covered offense that is being appealed will require an application until or unless it is reversed.
- A conviction for a covered offense for which a pardon has been granted requires an application.
- A program entry for a covered offense, which is often characterized by a suspension or eventual dismissal of charges or criminal prosecution upon agreement by the accused to treatment, rehabilitation, restitution or other noncriminal or non-punitive alternatives, is subject to Section 19. Such programs may be formal or informal in nature and federal, state, or local law determines entry into such programs. Program entries prior to the enactment of the Crime Control Act of 1990 (November 29, 1990) are not covered by Section 19.
- All convictions or program entries for offenses concerning the illegal manufacture, sale, distribution of or trafficking in controlled substances (covered drug offenses) shall require an application and are subject to the same provisions of criminal offenses involving dishonesty and breach of trust unless they fall within the provisions for de minimis offenses. An application is not required if the individual can qualify under the de minimis exceptions to filing.

### Situations Not Requiring a Section 19 Application

- Arrests, pending cases not brought to trial, acquittals, or any conviction that has been reversed on appeal are not offenses covered by Section 19, unless it is determined that the individual has a program entry for the offense.
- A conviction that has been completely expunged is not considered a conviction of record and will not require an application. If an order of expungement has been issued in regard to a conviction or program entry and is intended by the language in the order itself, or in the legislative provisions under which the order was issued, to be a complete expungement, then the jurisdiction, either in the order or the underlying legislative provisions, will not allow the conviction or program entry to be used for any subsequent purpose including, but not limited to, an evaluation of a person's fitness or character. The failure to destroy or seal the records will not prevent the expungement from being considered complete for the purposes of Section 19 in such a case. Expungements of pretrial diversion or similar program entries will be treated the same as those for convictions. Most states do not offer "full expungement" or provide for a variation thereof. To ascertain the nature of an expungement and the resultant Section 19 coverage, the Case Manager should seek an opinion from Regional Legal counsel.
- A judgment by a court against a person as a youthful offender under any youth offender law or a matter adjudged as a juvenile delinquent by any court having jurisdiction over minors as defined by state law does not require an application. Such adjudication is not considered a conviction for a criminal offense.
- Convictions or program entries for possession of a controlled substance do not require an application.

### De Minimis Convictions

Approval is automatically granted and an application will not be required where the covered offense is considered de minimis, because it meets all of the following criteria:

- There is only one conviction or program entry of record for a covered offense;

- The offense was punishable by imprisonment for a term of one year or less and/or a fine of \$2,500 or less, and the individual served three (3) days or less of jail time. The FDIC considers jail time to include any significant restraint on an individual's freedom of movement which includes, as part of the restriction, confinement to a specific facility or building on a continuous basis where the person may leave temporarily only to perform specific functions or during specified times periods or both. The definition is not intended to include those on probation or parole who may be restricted to a particular jurisdiction, or who must report occasionally to an individual or to a specified location.
- The conviction or program was entered at least five years prior to the date an application would otherwise be required; and
- The offense did not involve an insured depository institution or insured credit union.

*Additional Applications of the De Minimis Offenses Exception to Filing*

- Age at time of covered offense
  - If the actions that resulted in a covered conviction or program entry of record all occur when the individual was 21 years of age or younger, then the subsequent conviction or program entry, that otherwise meets the general de minimis criteria, will be considered de minimis if the conviction or program entry was entered at least 30 months prior to the date an application would otherwise be required and all sentencing or program requirements have been met.
- Convictions or program entries for insufficient funds checks
  - Convictions or program entries of record based on the writing of "bad" or insufficient funds check(s) shall be considered a de minimis offense and will not be considered as having involved an insured depository institution if the following applies:
    - There is no other conviction or program entry subject to Section 19, and 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 \$1,000 or less; and
    - No insured depository institution 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).
- Convictions or program entries for small-dollar, simple theft
  - A conviction or program entry based on a simple theft of goods, services and/or currency (or other monetary instrument) where the aggregate value of the currency, goods and/or services taken was \$500 or less at the time of conviction or program entry, where the person has no other conviction or program entry under Section 19, where it has been five years since the conviction or program entry (30 months in the case of a person 21 or younger as described above) and which does not involve an insured financial institution or insured credit union is considered de minimis. Simple theft excludes burglary, forgery, robbery, identity theft, and fraud.
- Convictions or program entries for the use of a fake, false or altered identification card
  - The use of a fake, false or altered identification card used by person under the legal age for the purpose of obtaining or purchasing alcohol, or used for the purpose of entering a premise where alcohol is served but for which age appropriate identification is required,

provided that there is no other conviction or program entry for a covered offense, will be considered de minimis.

Any person who meets the de minimis criteria above shall be covered by a fidelity bond to the same extent as others in similar positions, and shall disclose the presence of the conviction or program entry to all insured institutions in the affairs of which he or she intends to participate. Further, 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 exceptions.

## V. FORM OF APPLICATION

Sections 303.221 and 308.158 of the FDIC Rules and Regulations directs a potential applicant to submit the Section 19 application to the appropriate Regional Office (RO). A request for an Individual Waiver should be made to the appropriate Regional Director that coincides with the individual's residence. The *FDIC Application Pursuant to Section 19 of the Federal Deposit Insurance Act* (FDIC Form 6710/07) is used for all Section 19 applications. The form is available at: <https://www.fdic.gov/regulations/applications/resources/section19.html>. The RO responsible for processing the Section 19 application will send the applicant the application form along with other forms that will need to be completed and submitted and a list of any additional information that the applicant will need to submit. In addition to the completed application form, required information may include a Consent for Release of Information Form.

## VI. ACCEPTING AND PROCESSING THE APPLICATION

Case Managers should process all Section 19 applications using the steps below. Refer to *Applications Overview*, Section 1.1 of these Procedures, for general guidelines regarding applications.<sup>2</sup>

1. Establish the system record under SEC19 – Section 19 or SEC19I – Section 19 (Individual), as applicable. All applications are to be entered into the appropriate system of record within three business days of receipt. In all cases, dates and comments in the record should be updated regularly to reflect the current status of the application.
2. Consult with RO Legal and follow the RO's procedures for coordinating the Section 19 review.
3. Prepare and submit the applicable requests to the WO by creating a record and entering the required information into the appropriate internal database. Background checks should be performed in accordance with *Background Investigations*, Section 1.5 of these Procedures. The FDIC routinely requests FBI fingerprint identification and name check background investigations for Section 19 applications. However, ICE background checks should only be requested when there is reason to do so. For example, an ICE background check will be required if the individual was not born in the United States or its territories. Similarly, a credit bureau report will only be obtained when there is a need to confirm information relevant to the application. Special Background Investigations are also only requested if a clear reason is presented, such as foreign citizenship or work history.

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<sup>2</sup> Case Managers are to follow the general guidance and expectations for applications regarding receipt and acceptance, recordkeeping responsibilities, WO action or input, delegations, and other applicable instructions in *Applications Overview*, Section 1.1 of these Procedures. Case Managers can send acknowledgement letters for these applications.

Contact the appropriate WO officials to discuss any additional law enforcement or credit checks that are deemed necessary.

4. Initially review all materials for completeness, and request additional information if necessary.

Note: The RO cannot accept a Section 19 application as substantially complete prior to receipt and review of the background investigation results from the applicable law enforcement agencies.

5. Request written comments from the appropriate federal and/or state regulatory authorities.
6. Thoroughly analyze the application, background check results and any other relevant information. As necessary, communicate any follow-up questions, issues, and information requests to the applicant. Refer to *Evaluating the Application*, Part VII of this Section, for specific guidance.
7. Complete the appropriate Summary of Investigation (SOI) form.<sup>3</sup> Refer to *Evaluating the Application*, Part VII of this Section, for specific guidance.
8. **Sponsorship Applications** – Prepare the approval or denial letter. The approval letter should include all applicable standard conditions and any recommended non-standard conditions. The Case Manager should obtain the applicant's written commitment to adhere to any non-standard conditions prior to submitting the approval documents for signature. Refer to *Standard and Non-standard Conditions*, Section 1.11 of these Procedures, for further instruction.

For requests that are denied, the denial letter should: inform the applicant that a written request for a hearing may be filed with the Executive Secretary within 60 days after the denial and summarize or cite the relevant considerations specified in Part 308, Subpart M, of the FDIC Rules and Regulations, which are discussed further in *Appeal and Requests for Hearing*, Part IX of this Section.

If the Regional Director has delegated authority, distribute the letter to the applicant. If the primary federal regulator (PFR) objects to approval of the application, the SOI and the draft letter should be forwarded to the WO for final action.

9. **Individual Waiver Applications** - Prepare a draft approval or denial letter. The Regional Director does not have delegated authority to act on Individual Waiver applications. The draft letter and the SOI should be forwarded to the WO for final action. The WO will review the application package and the SOI, and will prepare and distribute the final documents.

For requests that are denied, the draft denial letter should inform the applicant that a written request for a hearing may be filed with the Executive Secretary within 60 days after the denial and summarize or cite the relevant considerations specified in Part 308, Subpart M, of the FDIC Rules and Regulations, which are discussed further in *Appeal and Requests for Hearing*, Part IX of this Section.

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<sup>3</sup> Case Managers are to follow the general instructions and SOI requirements for all types of applications located in *Summary of Investigation*, Section 1.2 of these Procedures, as well as the specific instructions in this Section.

Approval action on Individual Waivers will result in the issuance of one of two possible Orders: an Order Granting Permission to File Application and Approving Application for Consent to Participate in the Affairs of Any Insured Depository Institution; or, an Order Denying Application for a Waiver of the Depository Institution Filing Requirement. The Order will also be published on the FDIC's external website.

An Order that approves an Individual Waiver application will include non-standard conditions requiring the individual applicant to be covered by fidelity bond to the same extent as others in similar positions at an IDI and to disclose the FDIC's approval of the Individual Waiver to all IDIs in whose affairs the applicant seeks to participate. The Case Manager should obtain the applicant's written commitment to adhere to these and any other non-standard conditions, agreed upon in consultation with the WO, prior to submitting the approval documents for signature. Refer to *Standard and Non-standard Conditions*, Section 1.11 of these Procedures, for further instruction.

10. Update the appropriate internal database to reflect the date forwarded to the WO, if applicable, the final action, the date of the action, hours devoted to the application, and any other required information.

## VII. EVALUATING THE APPLICATION

When evaluating any Section 19 application, Section 308.157(a) of the FDIC Rules and Regulations requires the FDIC to consider the following:

1. Whether the conviction or program entry is for a covered offense;
2. Whether 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 IDI or the interests of its depositors, or threatens to impair public confidence in the IDI;
3. Evidence of the person's rehabilitation;
4. The position to be held by the person;
5. The amount of influence and control the person will be able to exercise over the affairs and operations of the IDI;
6. The ability of the management at the IDI to supervise and control the activities of the applicant;
7. The level of ownership the applicant will have at the IDI;
8. Applicable fidelity bond coverage for applicant; and,
9. Any additional factors in the specific case that appear relevant.

Note: The question of whether a person who was convicted of a crime or who entered a pretrial diversion, or similar, program was guilty of that crime is not an issue in the evaluation process. In addition to the considerations required by regulation, the Case Manager should consider the

following when evaluating Sponsorship and Individual Waiver applications, respectively:

### Sponsorship

Sponsorship applications differ from Individual Waiver applications in several areas. First, the sponsoring IDI is aware of the covered person's conviction and rehabilitation history and is willing to sponsor that individual for participation in its affairs. Second, the IDI, in applying on behalf of a covered person, has agreed to manage the covered person for a specific duty or job range, and must ensure that the person is covered by a fidelity bond to the same extent as others in similar positions. Therefore, the rehabilitation threshold for a sponsored covered person may not be as critical, given the IDI's commitment to manage that person, versus rehabilitation thresholds for Individual Waivers.

The degree of scrutiny accorded a Section 19 application should be directly proportional to the individual's proposed position. For instance, applications involving proposed senior officers and directors should receive closer scrutiny than clerical employees. The focus when assessing these applications is to determine whether the person has demonstrated his or her fitness to participate in the conduct of the affairs of an IDI, and whether the affiliation, employment, ownership, control or participation by the person in the conduct of the affairs of the IDI may constitute a threat to the safety and soundness of the IDI or the interests of its depositors or threaten to impair public confidence in the IDI. If such risk is not evident, FDIC policy is to approve the application.

The SOI narrative should include a summary of why the application is needed, the nature and circumstances of the covered offense, employment history, and qualifications for the position being sought. The SOI should note the court of conviction (federal or state), include any comments from federal and/or state authorities, and discuss the results of the federal law enforcement background investigation(s). Comments should also summarize the IDI's condition, if this has an impact on the application. The SOI should include the opinion of the IDI's PFR and/or state regulatory authority as to the person's fitness to participate in the affairs of the IDI, and a closing summary with the RO recommendation of approval or denial. In the event of a denial recommendation, the narrative should fully cover why the individual is considered to pose a threat to the safety or soundness of the IDI or the interests of its depositors, or may threaten to impair public confidence in the IDI.

**Note:** Documentation of fidelity bond coverage on the covered person should be obtained prior to approval, otherwise, the Case Manager should include the requirement to obtain such coverage as a non-standard condition in the approval letter.

### Individual Waiver

Individual Waiver applicants are seeking a waiver of the depository institution filing requirement of Section 19, and generally are requesting approval to participate in the affairs of any IDI in any capacity. Granting or denying an Individual Waiver application results in the issuance of an Order. Therefore, during the application process, the RO should advise the applicant of the public nature of the FDIC's final action. Furthermore, the Case Manager should consult with the WO (RMAS, LBS, CISR) and RO Legal throughout this process.

The key criteria in assessing an Individual Waiver application are whether the person has demonstrated his or her fitness to participate in the conduct of the affairs of an IDI in any capacity, and whether the affiliation, ownership, control or participation by the person in the conduct of the affairs of any IDI may constitute a threat to the safety and soundness of the IDI or the interests of

its depositors or threaten to impair public confidence in the IDI.

Evidence of rehabilitation, including the person's activities since the occurrence of the covered offense, must be provided to support approval of a Section 19 Individual Waiver application. What constitutes an adequate record of rehabilitation is subjective. However, for meritorious consideration, the record of rehabilitation must offset the covered offense. A record clear of any subsequent convictions or arrests of any nature, in and of itself, does not prove rehabilitation. For more serious convictions, the record of rehabilitation must be detailed and demonstrate that the individual is fit to participate in the conduct of the affairs of any IDI in any capacity. While not all inclusive, the following list can assist in determining the record of rehabilitation for the individual.

- Legal record since the covered offense, including non-covered offenses.
- Resume or other information that details the individual's employment history since the occurrence of the covered offense. Jobs in which the individual has demonstrated fiduciary responsibility should be highlighted.
- Details of any community service.
- Letter(s) of recommendation. A recommendation letter wherein the author states that he or she has knowledge of the individual's covered offense should be given substantial weight. The need to obtain recommendation letters should be gauged by the individual's circumstances (e.g., nature of covered offense, length of time since the occurrence of the covered offense). Such letters may be obtained from:
  - An employer (recent ones should be given more weight);
  - If the applicant attended or is attending college or adult education program(s), a professor, dean, or school official;
  - An influential person in his or her community; or,
  - An assigned parole officer.

Given that these applications are for a blanket approval to participate in the affairs of any IDI in any capacity, the SOI narrative should thoroughly discuss the nature and circumstances of the covered offense and the applicant's subsequent rehabilitation. The SOI should describe the evidence of rehabilitation provided, the person's reputation since the occurrence of the covered offense, the person's age at the time of the covered offense, the amount of time that has elapsed since the occurrence of the covered offense, and the person's full legal history including non-Section 19 covered arrests and offenses. The SOI should describe the individual's qualifications as well as types of positions currently being sought. The SOI should note the court of conviction (federal or state), discuss the results of the federal law enforcement background investigation(s), and include any comments from federal and/or state law enforcement or regulatory authorities. The SOI should include a closing summary and disclose the RO recommendation of approval or denial. In the event of a denial recommendation, the narrative should fully cover why the individual is considered to pose a threat to the safety or soundness of any IDI or the interests of its depositors, or may threaten to impair public confidence in any IDI.

## VIII. REQUESTS TO FILE MOTIONS FOR EXCEPTIONS TO 10-YEAR PROHIBITION

Section 19(a)(2)(A) of the FDI Act imposes upon the FDIC a general prohibition for 10 years against approving the direct or indirect participation in the affairs of an IDI of any individual who has been convicted of, or has a program entry for, certain enumerated crimes of Title 18 U.S.C. pertaining to financial institution-related crimes. In instances where the interest of justice would be served, Section 19(a)(2)(B) of the FDI Act provides that the FDIC may motion the court in which the conviction or the agreement was entered to grant an exception to the restriction. A

person convicted of, or who has a program entry for, one of the relevant offenses seeking an exception to the 10-year prohibition period should be advised to present his or her position in writing along with supporting evidence and the application forms described above in *Form of Application*, Part V of this Section. Such person will be offered an opportunity to meet with the appropriate RO officials to present his or her position orally. This process allows the applicant sufficient opportunity to show that the interest of justice would be served by filing a motion for an exception to the 10-year prohibition, and provide information for the FDIC to determine whether a Section 19 application would likely be approved if the 10-year prohibition were not in place. Refer to the considerations required by Section 308.157(a) described under *Evaluating the Application*, Part VII of this Section, in evaluating such a request. It is generally assumed that the FDIC would file such a motion only if approval of a subsequent Section 19 application would be likely.

Appropriate RO RMS and Legal staff should attend all meetings held with individuals and their representatives who implore the FDIC to file a motion for an exception of the 10-year prohibition on the individual's behalf.

If it is determined that a motion for an exception is warranted, a draft response letter should be prepared in consultation with RO Legal counsel and forwarded to the WO for final action. If the RO determines that such a motion is not warranted, the Case Manager should draft a denial letter in consultation with RO Legal counsel. The Regional Director may act on denials of such requests consistent with delegated authority.

#### **IX. APPEAL AND REQUESTS FOR HEARING**

Appeal procedures, the hearing process, and timeframes regarding denial of an application pursuant to Section 19 of the FDI Act are contained in Part 308, Subpart M, of the FDIC Rules and Regulations. A denial of an application pursuant to Section 19 shall inform the applicant that a written request for a hearing, stating the relief desired and the grounds therefore and any supporting evidence, may be filed with the Executive Secretary within 60 days after the denial and shall summarize or cite the relevant considerations specified in Section 308.157 of the FDIC Rules and Regulations.

The Executive Secretary will order a hearing to be commenced within 60 days after receipt of a request for hearing. The burden of going forward with a *prima facie* case shall be upon the FDIC, which means the FDIC must go first and provide sufficient evidence to support the denial. The ultimate burden of proof that a denial is not warranted is on the person proposing to serve as an IAP.

#### **X. TIME FRAME FOR PROCESSING**

Statutory: None.

RO Processing Guidelines:

Sponsorship: 30 days after receipt of a substantially complete application, including receipt of all required background investigation results. The processing timeframe will be affected by receipt of background investigation results from federal law enforcement agencies.

Individual Waiver: The SOI and draft letter should be forwarded to the WO within 30 days of receipt of a substantially complete application, including receipt of all required background investigation results.

#### **XI. PUBLICATION REQUIREMENT**

None.

#### **XII. DELEGATED AUTHORITY**

Delegations of authority regarding applications, notices, and other filings are discussed in *Applications Overview*, Section 1.1 of these Procedures. In general, Regional Directors have delegated authority to act on Sponsorship applications, unless objected to by the PFR, but do not have delegated authority to act on Individual Waiver applications. RMS should seek an opinion and/or concurrence from RO Legal counsel when processing any Section 19 application.

#### **XIII. REFERENCES**

*Section 19 of the FDI Act*

*FDIC Statement of Policy for Section 19 of the FDI Act*

*Part 303 (Subpart L) and Part 308 (Subpart M) of the FDIC Rules and Regulations*

*Modifications to the Statement of Policy for Section 19 of the Federal Deposit Insurance Act, FIL 3-2013, dated February 8, 2013 and FIL-68-2018, dated November 1, 2018.*

*Clarifications to the FDIC's Statement of Policy for Section 19 of the FDI Act, FIL 57-2011, dated August 8, 2011*