
Your Complete Guide to **Section 19**



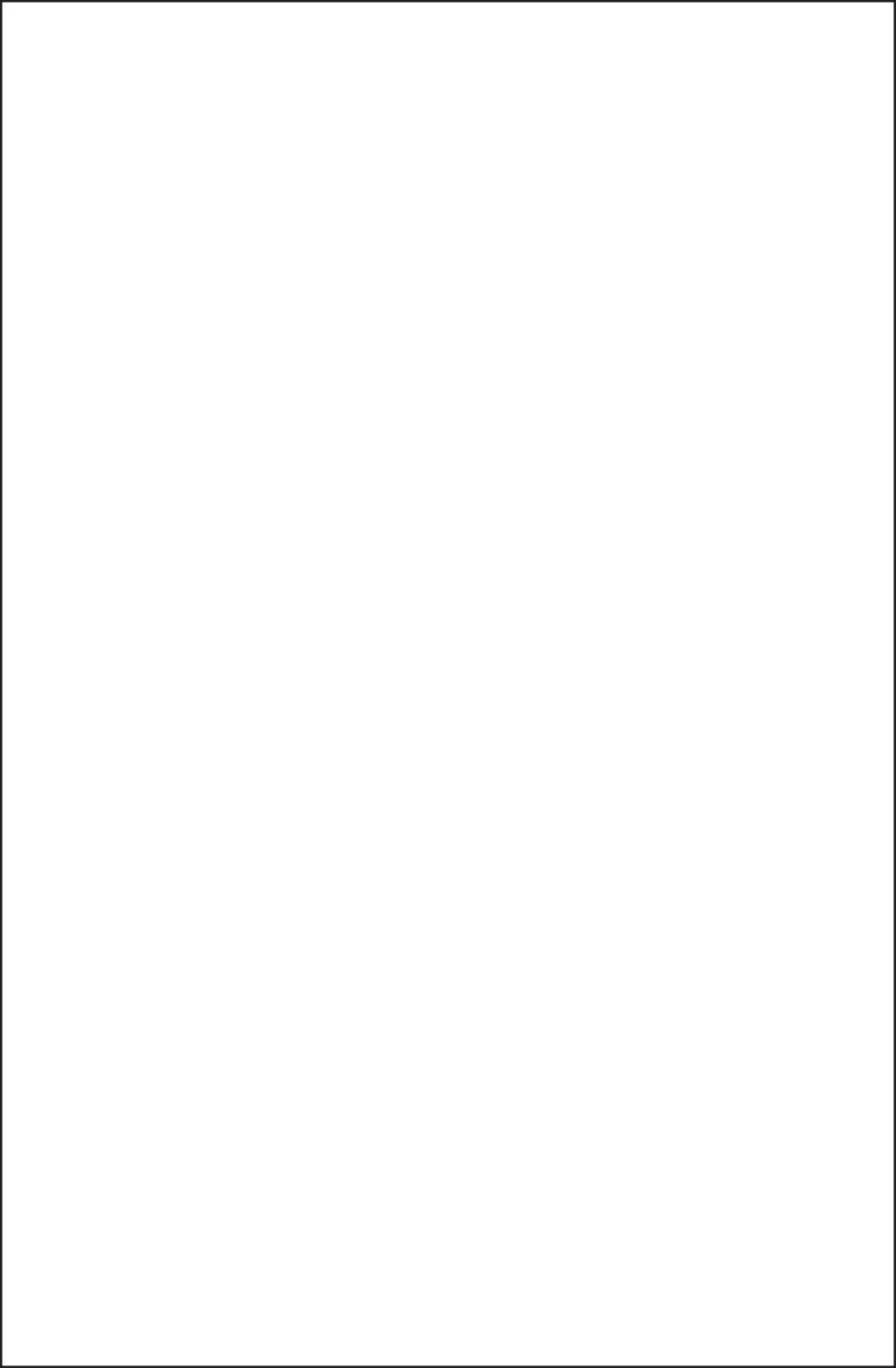
Federal Deposit Insurance Corporation

Section 19 Helpful Links

Prospective applicants and interested parties should read this brochure, the FDIC's *Statement of Policy on Section 19*, and the Section 19 application form and instructions. These documents are located on the FDIC website at www.fdic.gov and at the following web address

www.fdic.gov/regulations/applications/resources/section19.html

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Pretrial Diversion or Similar Program (Program Entry)

A program entered into by a defendant where suspension or eventual dismissal of criminal charges or prosecution upon completion by the defendant of specified conditions such as treatment, rehabilitation, restitution, or other noncriminal or non-punitive alternatives. These programs go by several different names, but they generally remove the defendant from the ordinary channels of prosecution so that the defendant may complete program conditions. Once the defendant meets the conditions, either the prosecutor or the court will dismiss the charges. Section 19 treats Program Entries the same as convictions.

Covered Offense

A criminal offense involving dishonesty, breach of trust, or money laundering. Some examples include, but are not limited to, theft, misappropriation, embezzlement, forgery, false identification, false report to law enforcement, tax evasion, drug possession with intent to distribute, and writing of a bad check.

Covered Individual

A person who has a criminal record that includes a conviction or Program Entry for a covered offense.

Fidelity Bond

A form of insurance protection that covers policyholders for losses that they incur as a result of fraudulent acts by specified individuals. It usually insures a company for losses caused by the dishonest acts of its employees.

***De Minimis* Offense**

A covered offense considered minor for which the FDIC's approval is automatically granted, and no application is required. Criteria are defined under the *De Minimis Offenses Do Not Require an Application* section.

"Complete" Expungement

The result of a legal process by which a record of conviction or Program Entry is removed, sealed, or erased from an individual's criminal record, and the jurisdiction does not reserve authority to allow the record to be used for any subsequent purpose. For an expungement to be "complete," for Section 19 purposes, no one, including law enforcement, can access the record of a conviction or Program Entry not even by court order. However, if the records are not destroyed or sealed, the FDIC will look to the intent of the order or the statute in effect when the expungement was granted to determine if it is "complete" for Section 19 purposes.

Does Section 19 Apply to You?

Section 19 applies to any **individual convicted** or who has entered into a pretrial diversion or similar program (Program Entry) for a **crime involving dishonesty, breach of trust, or money laundering**, which would prohibit them from participating in the affairs of an FDIC-insured depository institution (IDI) **without the written consent from the FDIC**. An application must be filed with the FDIC to obtain written consent, and there are two ways to file. An application can be filed (1) by an individual, or (2) by an IDI that wants to hire a covered individual and sponsors the application. The FDIC's Statement of Policy on Section 19 (SOP) establishes criteria where certain minor or "*de minimis*" convictions or Program Entries are deemed automatically approved and would not require an application. This brochure further describes Section 19, the SOP, and the application process to receive consent from the FDIC to participate in the affairs of an IDI.

What is Section 19?

Section 19 of the Federal Deposit Insurance (FDI) Act (12 U.S.C. 1829), enacted by the U.S. Congress in 1950, generally prohibits individuals convicted of certain crimes from becoming employed by, or participating in the affairs of, an IDI. This life-time prohibition applies to any person convicted of, or who has entered into a Program Entry for, a criminal offense involving dishonesty, breach of trust, or money laundering. However, under certain circumstances, the law permits the FDIC to grant written consent to allow a covered individual to be employed by or participate in the affairs of an IDI.

Individuals with covered convictions often are not aware they are subject to the prohibitions of Section 19 until they have applied for employment at an IDI. The FDIC has published this brochure to promote transparency and awareness of the law, educate those impacted by the law, and explain the requirements of and the process for filing a Section 19 application. Prospective applicants and interested parties should read this brochure, the FDIC's Statement of Policy on Section 19, and the Section 19 application form and instructions. These documents are located on the FDIC website at www.fdic.gov.

Statement of Policy on Section 19

The FDIC's SOP sets forth the FDIC's standards for implementing Section 19, defines key terms, establishes when an application is required, specifies which factors the FDIC will evaluate when considering an application, and describes the *de minimis* rules for granting automatic consent. The *de minimis* rules are on the following page.

***De Minimis* Offenses Do Not Require an Application**

Under certain circumstances, generally involving relatively minor covered offenses, a person with a *de minimis* covered offense is not required to submit an application, and the FDIC's consent is automatically granted. The FDIC has established criteria where a covered offense may qualify as *de minimis*.

(a) *De minimis* Offenses – In General

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

- There is only one conviction or Program Entry of record based on a covered offense; **and**
- The maximum sentence that could have been imposed for the crime at the time was imprisonment for a term of one year or less or a fine of \$2,500 or less, and the individual served three (3) days or less of jail time. Note: **This criterion refers to the maximum sentence provided by the law at the time of the offense and not the actual sentence imposed by the court; and**
- The conviction or program was entered at least five years before an application would otherwise be required; **and**
- The offense did not involve an IDI or insured credit union.

In July 2018, the FDIC Board of Directors approved revisions to the SOP that establish additional criteria where specific covered offenses are considered *de minimis* under certain circumstances. The additional criteria are outlined below.

(b) *De Minimis* Offenses – Specific Crimes and Circumstances

Age When Offense Was Committed

- An offense on which a conviction or Program Entry is based occurred when the individual was age 21 or younger; **and**
- The conviction or Program Entry meets the general *de minimis* criteria listed above under (a); **and**
- At least 30 months has passed since the date of the conviction or Program Entry (not since the date of the offense); **and**
- All sentencing or program requirements have been completed.

Bad Checks

- An offense involving the writing of a “bad” check (i.e., an insufficient funds check), where the aggregate face value of all “bad” checks cited within all convictions or Program Entries is \$1,000 or less; **and**
- None of the payees on any of the checks involved was an IDI or insured credit union; **and**
- Other than for bad checks, there is no other conviction or Program Entry subject to Section 19.

Small-Dollar, Simple Theft

- An offense involving theft, but excluding burglary, forgery, robbery, identity theft, and fraud, where the aggregate value of the currency, goods, or services taken was \$500 or less; **and**
- At least five years has passed since the conviction or Program Entry (30 months in the case of a person 21 or younger as described above); **and**
- The theft did not involve an IDI or insured credit union; **and**
- There is no other conviction or Program Entry subject to Section 19.

Fake Identification

- An offense involving the use of a fake, false, or altered form of identification for the purpose of purchasing alcohol or gaining admittance into an establishment where alcohol is served; **and**
- There is no other conviction or Program Entry subject to Section 19.

Pardons, Expungements, and Conviction Appeals and Reversals

A criminal offense is covered by Section 19 only if the individual has either a conviction or Program Entry for a covered offense. A pardoned conviction or Program Entry remains subject to Section 19 and always requires an application. A conviction or Program Entry that has been completely expunged is not subject to Section 19 and will not require an application. However, only a few states and jurisdictions have expungement processes that result in a “complete” expungement under the standards set forth in the SOP. For this reason, covered individuals who have been granted an expungement for a covered offense should consult with the FDIC before concluding that an expunged record qualifies as

“complete” for the purposes of the SOP. Convictions that are set aside or reversed after an individual has completed sentencing are equivalent to a pretrial diversion program and require an application. Convictions or Program Entries that are reversed or set aside by the court based on the court’s finding that the conviction was wrongful are not subject to Section 19 and do not require an application.

Applying for Consent

There are two types of applications that can be filed with the FDIC to seek written consent for a covered individual to participate in the affairs of an IDI.

The Sponsorship application involves an IDI filing a Section 19 application on behalf of a prospective director, officer, or employee. In this case, the IDI is the applicant, sponsors the covered individual, and requests the FDIC’s consent to the covered individual’s participation or employment exclusively at the sponsoring institution. The other application is the Individual Waiver application, which requires the covered individual to file a Section 19 application on his or her behalf. Sponsorship and Individual Waiver applicants are required to complete **Form 6710/07**. Before an application is filed, prospective applicants are encouraged to take these steps:

1. Contact the appropriate FDIC Regional or Area Office. The table on the following page indicates the appropriate office based on an applicant’s home address (for an Individual Waiver) or the location of the sponsoring institution’s home office (for a Sponsorship).
2. Provide the FDIC point-of-contact with a description of the offense the applicant believes requires an application. With assistance from the FDIC point-of-contact, determine whether (i) the individual’s criminal offense is covered by Section 19 and, if so, if an application is required, or (ii) the offense qualifies as *de minimis*.
3. Confirm that all conditions of sentencing arising from the covered offense have been satisfactorily completed. The FDIC will not process an application if the conditions of sentencing are not complete.
4. Complete the application form, attach supplemental documentation, and submit the application package to the appropriate FDIC office.
5. Ensure the FDIC has your contact information while the application is being processed.

Individual Waiver –**Applicant's Home Address Located in:****Sponsorship –****Institution's Home Office Located in:****FDIC Regional
or Area Office****Telephone
Number**Alabama, Florida, Georgia, North Carolina,
South Carolina, Virginia, West VirginiaAtlanta
Regional Office

800.765.3342

Connecticut, Maine, Massachusetts, New Hampshire,
Rhode Island, Vermont, Puerto Rico, U.S. Virgin IslandsBoston
Area Office

866.728.9953

Illinois, Indiana, Kentucky, Michigan, Ohio, Wisconsin

Chicago
Regional Office

800.944.5343

Colorado, New Mexico, Oklahoma, Texas

Dallas
Regional Office

800.568.9161

Iowa, Kansas, Minnesota, Missouri, Nebraska,
North Dakota, South DakotaKansas City
Regional Office

800.209.7459

Arkansas, Louisiana, Mississippi, Tennessee

Memphis
Area Office

800.210.6354

Delaware, District of Columbia, Maryland, New Jersey,
New York, PennsylvaniaNew York
Regional Office

800.334.9593

Alaska, Arizona, California, Hawaii, Idaho, Montana,
Nevada, Oregon, Utah, Washington, Wyoming,
American Samoa, Guam, Federated States of MicronesiaSan Francisco
Regional Office

800.756.3558

Section 19 Application Process

In considering an application, the FDIC must assess whether the covered individual has demonstrated his or her fitness to participate in the conduct of the affairs of an IDI. The FDIC considers whether participation by the covered individual may constitute a threat to the public confidence in, or the safety and soundness of, an IDI or the interests of depositors. Because the bar to meet this standard is high, the FDIC requires certain information be provided. The FDIC considers certain factors when assessing a Section 19 application. These factors are:

- The conviction or Program Entry and the specific nature and circumstances of the covered offense;
- Evidence of rehabilitation, including the person's age at the time of conviction or Program Entry and the time that has elapsed since the conviction or Program Entry;

- The position to be held by covered individual;
- The amount of influence and control the covered individual will exercise over the management or affairs of the IDI;
- The ability of the IDI's management to supervise and control the person's activities;
- The degree of ownership the person will have of the IDI;
- The IDI's fidelity bond coverage of the person;
- The opinion or position of the primary federal and/or state regulator; and
- Any additional factors in the specific case that appear relevant.

Sponsorship Applications

The above factors are important considerations in determining the risk to IDIs. However, Sponsorship applications differ from Individual Waiver applications in several areas. In a Sponsorship application, an IDI seeks the FDIC's consent for the covered individual to participate only in a specific role at the sponsoring institution. The sponsoring IDI is aware of the covered individual's conviction and rehabilitation history and is willing to sponsor that individual. The IDI, in applying on behalf of a covered individual, has agreed to supervise the covered individual for a specific duty or job range and must ensure the person is covered by the institution's fidelity bond to the same extent as others in similar positions. Therefore, the record of rehabilitation for a covered individual who is sponsored may not be as critical, given the IDI's commitment to supervise that person, versus rehabilitation thresholds for Individual Waiver applications. When the FDIC grants or denies a Sponsorship application, the sponsoring IDI is notified by letter. The FDIC's decision is specific to the role requested by the sponsoring institution and is not transferable.

Individual Waiver Applications

An Individual Waiver applicant may apply on his or her behalf. When evaluating Individual Waiver applications, the FDIC must consider that, upon issuance of an order granting approval of a waiver, the covered individual will not be barred by Section 19 from holding any position or participating to any extent in the ownership, affairs, or influence over management of any IDI. The FDIC is unable to assess the degree of supervision and controls that may prospectively exist over the covered individual's activities at any IDI. Accordingly, approval is granted only in cases where the

applicant has demonstrated a record of rehabilitation sufficient to mitigate the seriousness of the offense. The record of rehabilitation must be detailed, commensurate with the seriousness of the offense, and demonstrate the individual is fit to participate in the affairs of an IDI in any capacity. Information on how to document an adequate record of rehabilitation is included in the *Evidence of Rehabilitation* section.

When the FDIC grants or denies an Individual Waiver application, it issues a formal order with the decision that is publicly available on the FDIC's website in a searchable database that discloses the covered offense(s). If the FDIC determines an application should be denied, the applicant will be given the opportunity to withdraw the application, in which case a formal order of denial will not be publicly issued. Approved Individual Waiver orders are generally subject to conditions. The conditions typically require the covered individual to provide a copy of the FDIC's order to all IDIs in the affairs of which he or she intends to participate, and that the individual be covered by the institution's fidelity insurance to the same extent as those who hold similar positions.

Subsequent Covered Offenses

In Sponsorship and Individual Waiver applications, approval applies only to the covered offense(s) included in the application. If a covered individual is convicted or enters into a pretrial diversion or similar program for a subsequent covered offense, the covered individual will become subject to the prohibition of Section 19 immediately and must reapply to the FDIC via the Sponsorship or Individual Waiver process, unless the offense is otherwise considered *de minimis*. A person who has a subsequent covered offense under Section 19 cannot continue to be an employee or participate in the affairs of an IDI until the FDIC approves a new application.

Details of the Crime, Conviction or Program Entry, and Sentencing

In addition to basic biographical and identifying information, the applicant must provide a description of the offense on which the application is based, the nature and circumstances surrounding it, the date of the offense and subsequent conviction or Program Entry, and name and address of the court involved. Applicants are encouraged to include a detailed narrative that describes the situation that led to the commission of the crime and any relevant information that may aid the FDIC to understand the circumstances and motivations involved at the time the offense occurred.

Applicants should disclose the specific charge that was entered into the record of conviction or Program Entry. It is not uncommon for a person to initially be charged with a crime and ultimately be convicted of or stipulate to a distinctly different, but related, crime (e.g., in a plea agreement, an individual may stipulate to a lesser crime than initially charged with). Applicants should submit court documentation that indicates the disposition of the criminal proceeding, the conditions imposed at sentencing or a Program Entry, and any documentation showing that sentencing requirements, such as fines, probationary terms, or community service, have been satisfactorily completed. Court documents may include the indictment or complaint and final decree of judgment, documentation to support the successful completion of conditions of a Program Entry, and any pertinent facts or documentation relative to the crime, which are not disclosed in the court documents.

Evidence of Rehabilitation

The covered individual's rehabilitation is a critical factor in assessing his or her fitness to participate in the conduct of the affairs of an IDI. Evidence taken into consideration includes the individual'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 offenses and arrests.

Evaluation of an individual's record of rehabilitation that adequately offsets the seriousness of the crime depends on the nature and facts underlying the offense and the evidence of rehabilitation presented. A record clear of any subsequent convictions or arrests of any nature, in and of itself, does not prove rehabilitation. Applicants are encouraged to provide documentation or other evidence that supports their rehabilitation. Examples may include the covered individual's resume or details of employment history since the occurrence of the covered offense (fiduciary roles should be highlighted), educational achievements subsequent to the covered offense, and record of community service or volunteer work.

Although not required, Individual Waiver applicants are encouraged to submit letters of recommendation in support of the covered individual. A recommendation letter wherein the author states that he or she has knowledge of the individual's covered offense will be given substantial weight. Letters from a current or former employer or supervisor, persons influential in a community or a community service organization, an assigned parole officer, or a college or school official (if attendance is current or recent), for example, are more persuasive than letters from friends or family members.

Investigation and Application Processing

The application process involves a thorough investigation and verification of the information provided. The investigation includes comprehensive checks into the covered individual's background, experience, and rehabilitation. The FDIC will research and follow-up on inconsistencies in the application materials. An omission or failure to provide sufficient information may result in processing delays or return of the application. Inaccuracies, misrepresentation, or falsification may be grounds for denial of an application. Additionally, covered individuals are required to complete an FBI fingerprint identification check. Once an application has been submitted, the Regional or Area Office point-of-contact will provide the applicant with instructions and a unique authorization to complete the electronic fingerprinting process at a local site.

FDIC Regional or Area Offices are the primary points-of-contact for all applicants, and those offices process Sponsorship and Individual Waiver applications. The Regional and Area Offices are authorized to act on Sponsorship applications. The FDIC strives to act on Sponsorship applications within 30 days after receipt of a substantially complete application. However, the FDIC's acknowledgement of receipt of an application does not indicate the application is substantially complete and has been accepted for processing. An application is deemed substantially complete only when the FDIC has received all necessary documentation to support the application, including the results of the fingerprint check and all relevant law enforcement background investigations. The FDIC Regional or Area Office is expected to notify the applicant of the date the application is considered substantially complete and accepted for processing.

Individual Waiver applications require an additional level of review at the FDIC's Washington, DC Office and, for this reason, require more time to process. The FDIC strives to act on Individual Waivers within 45 days after receiving the Regional or Area Office recommendation.

The FDIC recognizes the challenges to individuals subject to Section 19 and is committed to a transparent process and to provide assistance to applicants.



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