

SUPPORTING STATEMENT  
APPLICATION PURSUANT TO SECTION 19 OF  
THE FEDERAL DEPOSIT INSURANCE ACT  
(OMB Control No. 3064-0018)

INTRODUCTION

This submission is being made in connection with a notice of proposed rulemaking (NPR) published in the *Federal Register* by the Federal Deposit Insurance Corporation (FDIC). Section 19 of the Federal Deposit Insurance Act, 12 U.S.C. § 1829, (FDI Act) prohibits, without the prior written consent of the FDIC, an individual convicted of any criminal offense involving dishonesty or breach of trust or money laundering (covered offenses), or who has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offense (covered person), from becoming or continuing as an institution-affiliated party (IAP), owning or controlling, directly or indirectly an insured depository institution (insured institution), or otherwise participating, directly or indirectly, in the conduct of the affairs of the insured institution. In addition, the law forbids an insured institution from permitting such an individual to engage in any conduct or to continue any relationship prohibited by Section 19. Section 19 provides a criminal penalty for the knowing violation of its provisions of a fine of not more than \$1,000,000 for each day of the violation or imprisonment for not more than five years.

There are two methods by which a covered person can apply to the FDIC for written permission to become an IAP or participate in the affairs of an insured institution. The first method involves an insured institution filing a Section 19 application on behalf of a prospective director, officer, or employee (Sponsorship). When an insured institution will not file a Section 19 application on behalf of a covered person, a second method allows an individual to seek a waiver of the requirement that an insured institution file a Section 19 application on their behalf (Individual Waiver). Sponsorship and Individual Waivers are each made by filing FDIC Form 6710/07 with the FDIC.

The information collection associated with the NPR is entitled, “Application Pursuant to Section 19 of the Federal Deposit Insurance Act” (3064-0018) and expires on December 31, 2024.

A. JUSTIFICATION

1. Circumstances that make the collection necessary:

Section 19 of the FDI Act prohibits, without the prior written consent of the FDIC, a covered person from becoming or continuing as an IAP, owning or controlling, directly or indirectly an insured institution, or otherwise participating, directly or indirectly, in the conduct of the affairs of the insured institution. In addition, the law forbids an insured institution from permitting such a person to engage in any conduct or to continue any relationship prohibited by Section 19. Section 19 provides a criminal penalty for the knowing violation of its provisions of a fine of not more than \$1,000,000 for each day of the violation or imprisonment for not more than five

years. A request for FDIC written consent is made, either through Sponsorship or Individual Waiver, by filing FDIC Form 6710/07 with the FDIC.

## NPR

On December 23, 2022, the President signed into law the Fair Hiring in Banking Act (FHBA),<sup>1</sup> 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.<sup>2</sup>

*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.

*“Designated lesser offenses,”* including 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,<sup>3</sup> excluding any period of incarceration.

*A criminal offense involving dishonesty that also “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.

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<sup>1</sup> The FHBA appears at section 5705 of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, Public Law 117–263, 136 Stat. 2395, 3411.

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

<sup>3</sup> 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).

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 evidence, and any additional information the FDIC determines necessary for safety and soundness shall also be considered.

2. Use of information collected:

Form 6710/07 contains information about covered persons seeking to participate in the conduct of the affairs of an insured institution. Such information is necessary for the FDIC to carry out its statutory responsibility to provide or withhold its consent to the participation by a covered person in the affairs of an insured institution.

3. Consideration of the use of improved information technology:

Because section 19 applications are unique to each applicant and require certification by the prospective director, officer, or employee and by an appropriate bank official as to the accuracy of the information provided, the capability for electronic submission is currently unavailable. However, applicants may use technology to the extent feasible and appropriate in completing the application.

4. Efforts to identify duplication:

There is no duplication of information. Each application is a unique submission of the insured institution or an individual to the FDIC. Similar information is not available from any other source. An insured institution or individual prepares the application only when it seeks FDIC consent to the participation by a covered person in the affairs of the insured institution.

5. Methods used to minimize burden if the collection has a significant impact on a substantial number of small entities:

This collection does not have a significant impact on a substantial number of small entities. All insured institutions, regardless of size, are subject to the application requirements of section 19 of the FDI Act. The information requested on the application form is considered the minimum needed by the FDIC to evaluate the application. The applicant is requested to give brief responses. Responses to this

information collection (IC) are not mandatory, but are required to obtain or retain a professional relationship with an IDI of the type previously described. Potential respondents to this IC include individuals who meet the definition of a covered person and who wish to affiliate with, own, control, or participate in the affairs of an IDI.

As of June 30, 2023, there are 4,654 FDIC-insured institutions.<sup>4</sup> Of these institutions, 3,373 are considered small for the purposes of the Regulatory Flexibility Act (RFA).<sup>5</sup> The majority of respondents to this IC are individuals, which are not considered to be small entities. This information collection does not have a significant impact on a substantial number of small entities as the number of applications received on an annual basis is less than 70 and a substantial portion of those applications are from individuals.

6. Consequences to the Federal program if the collection were conducted less frequently:

The information requested is not collected on a periodic basis. An insured institution or individual prepares the application only when it seeks FDIC consent to the participation by a covered person in the affairs of the insured institution.

7. Special circumstances necessitating collection inconsistent with 5 CFR Part 1320.5(d)(2):

None. The information is collected in a manner consistent with 5 CFR Part 1320.5(d)(2).

8. Efforts to consult with persons outside the agency:

The FDIC published the NPR in the *Federal Register* (88 FR 77906, November 14, 2023). The comment period on the NPR in connection with the PRA closes on January 16, 2024.

9. Payment or gift to respondents:

None.

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<sup>4</sup> FDIC Call Report data, June 30, 2023.

<sup>5</sup> 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.

10. Any assurance of confidentiality:

The application Form FDIC 6710/07 advises the applicant of the use and possible disclosure of the information provided. The applicant institutions are advised that some of the information, including the social security number, may be provided to any appropriate Federal or State insured institution regulatory agency and law enforcement or other governmental agencies for identity verification. Should the information indicate a violation of law, the application may be referred to any agency responsible for investigating or prosecuting such a violation. In addition, in the event of litigation, the application may be presented to the appropriate court as evidence and to counsel in the course of discovery. In addition, any information deemed to be of a confidential nature would be exempt from public disclosure in accordance with the provisions of the Freedom of Information Act (5 U.S.C. 552).

11. Justification for questions of a sensitive nature:

The application requires sensitive information pertaining to a person's conviction of criminal offenses involving dishonesty or a breach of trust. This information includes Personally Identifiable Information ("PII")<sup>6</sup>, including name, address, telephone number, date of birth and social security number. This information is necessary to assist the FDIC in assessing the merits of the application as required by Section 19 of the FDI Act.

The Systems of Records Notice associated with this collection may be viewed at the following link: <https://www.fdic.gov/policies/privacy/documents/fdic-02-financial-institutions-investigative-and-enforcement-records.pdf>. The applicable Privacy Impact Assessment is available at <https://www.fdic.gov/policies/privacy/documents/fdic-the-division-of-risk-management-supervision-background-investigation-process-pia.pdf>.

12. Estimate of hour burden including annualized hourly costs:

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	76	1	16	1,216
Total Annual Burden Hours:						1,216
Source: FDIC.						

<sup>6</sup> The term "Personally Identifiable Information" refers to information which can be used to distinguish or trace an individual's identity, such as their name, social security number, biometric records, etc. alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc.

Total estimated annual burden: 1,216 hours

The total estimated annual cost is:

1,216 hours x \$89.08 = \$108,321.28

<b>Summary of Hourly Burden Cost Estimate (OMB No. 3064-0018)</b>		
Category of Personnel Responsible for Complying with the PRA Burden	Total Estimated Hourly Compensation	Allocated Weights - Non-material
Executives and Managers	\$133.82	10%
Lawyers	\$165.76	20%
Compliance Officers	\$64.61	60%
IT Specialists	\$102.64	0%
Financial Analysts	\$101.15	0%
Clerical	\$37.83	10%
Weighted average:	\$89.08	100%
Source: Bureau of Labor Statistics: 'National Industry-Specific Occupational Employment and Wage Estimates: Industry: Credit Intermediation and Related Activities (5221 And 5223 only)' (May 2021), Employer Cost of Employee Compensation (March 2021), and Employment Cost Index (March 2021 and December 2022). Standard Occupational Classification (SOC) Codes: Exec. And Mgr = 11-0000 Management Occupations; Lawyer = 23-0000 Legal Occupations; Compl. Ofc. = 13-1040 Compliance Officers; IT = 15-0000 Computer and Mathematical Occupations; Fin. Anlst. = 13-2051 Financial and Investment Analysts; Clerical = 43-0000 Office and Administrative Support Occupations.		

13. Estimate of start-up cost to respondents:

None.

14. Estimates of annualized cost to the federal government:

None.

15. Analysis of change in burden:

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 expanding the supply of labor available. However, these changes were created by the FHBA and were effective immediately upon passage, and the NPR aligns the FDIC's regulations with these elements of the FHBA; therefore, the associated changes in the NPR will have no direct effect on individuals or IDIs. The 48-hour change in the annual hourly burden is the result of updated data available to the FDIC and not the result of the NPR.

16. Publication:

The information is not published.

17. Exceptions to expiration date display:

The OMB number and expiration date are displayed on the application.

18. Exceptions to certification:

None.

B. STATISTICAL METHODS

Not applicable.