

Federal Deposit Insurance Corporation

§ 308.158

of the record to the Board of Directors or its designee, the Board of Directors or its designee shall notify the affected individual whether the denial of the notice will be continued, terminated, or otherwise modified. The notification shall state the basis for any decision of the Board of Directors or its designee that is adverse to the petitioner. The Board of Directors or its designee shall promptly rescind or modify the denial where the decision is favorable to the petitioner.

[56 FR 37975, Aug. 9, 1991, as amended at 64 FR 62101, Nov. 16, 1999; 86 FR 2249, Jan. 12, 2021]

Subpart M—Procedures Applicable to the Request for and Conduct of a Hearing after Denial of an Application under Section 19 of the FDI Act

SOURCE: 85 FR 51323, Aug. 20, 2020, unless otherwise noted.

§ 308.156 Scope.

The rules and procedures set forth in this subpart shall 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) or an individual, which 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, to seek the prior written consent of the FDIC for the individual to become or continue as an institution-affiliated party (IAP) with respect to an IDI; to own or control directly or indirectly an IDI; or to participate directly or indirectly in any manner in the conduct of the affairs of an IDI; and shall apply only after such application has been denied under part 12 CFR part 303, subpart L.

§ 308.157 Denial of applications.

If an application is denied under 12 CFR part 303, subpart L, then the applicant may request 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 shall 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.

[86 FR 2250, Jan. 12, 2021]

§ 308.158 Hearings.

(a) *Hearing dates.* The Administrative Officer shall order a hearing to be commenced within 60 days after receipt of a request for hearing on an application filed under § 308.157. Upon the request of the applicant or FDIC enforcement counsel, the presiding officer or the Administrative Officer may order a later hearing date.

(b) *Burden of proof.* The burden of going forward with a *prima facie* case shall be upon the FDIC. The ultimate burden of proof shall be upon the person proposing to become or continue as an IAP with respect to an IDI; to own or control directly or indirectly an IDI; or to participate directly or indirectly in any manner in the conduct of the affairs of an IDI.

(c) *Hearing procedure.* (1) The hearing shall be held in Washington, DC, or at another designated place, before a presiding officer designated by the Administrative Officer.

(2) The provisions of §§ 308.6 through 308.12, 308.16, and 308.21 of the Uniform Rules (subpart A of this part) and §§ 308.101, 308.102, and 308.104 through 308.106 the Local Rules (subpart B of this part) shall apply to hearings held under this subpart.

(3) The applicant may appear at the hearing and shall have the right to introduce relevant and material documents and oral argument. Members of the FDIC enforcement staff may attend the hearing and participate as a party.

(4) There shall be no discovery in proceedings under this subpart.

(5) At the discretion of the presiding officer, witnesses may be presented within specified time limits, provided that a list of witnesses is furnished to the presiding officer and to all other parties prior to the hearing. Witnesses shall be sworn, unless otherwise directed by the presiding officer. The presiding officer may ask questions of any

witness. Each party shall have the opportunity to cross-examine any witness presented by an opposing party. The transcript of the proceedings shall be furnished, upon request and payment of the cost thereof, to the applicant afforded the hearing.

(6) In the course of or in connection with any hearing under this paragraph, the presiding officer shall have the power to administer oaths and affirmations; to take or cause to be taken depositions of unavailable witnesses; and to issue, revoke, quash, or modify subpoenas and subpoenas *duces tecum*. Where the presentation of witnesses is permitted, the presiding officer may require the attendance of witnesses from any state, territory, or other place subject to the jurisdiction of the United States at any location where the proceeding is being conducted. Witness fees shall be paid in accordance with §308.14 of the Uniform Rules (subpart A of this part).

(7) Upon the request of the applicant afforded the hearing, or FDIC enforcement staff, the record shall remain open for five business days following the hearing for the parties to make additional submissions to the record.

(8) The presiding officer shall make recommendations to the Board of Directors, where possible, within 20 days after the last day for the parties to submit additions to the record.

(9) The presiding officer shall forward his or her recommendation to the Administrative Officer who shall promptly certify the entire record, including the recommendation to the Board of Directors or its designee. The Administrative Officer certification shall close the record.

(d) *Written submissions in lieu of hearing.* The applicant or the IDI 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 shall constitute a waiver of the opportunity for a hearing. Failure to appear at a hearing in person or through an authorized representative shall constitute a waiver of a hearing. If a hearing is waived, the person shall remain barred 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 shall notify the affected person whether the person shall remain barred under section 19. The notification shall state the basis for any decision of the Board of Directors or its designee that is adverse to the applicant.

[85 FR 51323, Aug. 20, 2020, as amended at 86 FR 2250, Jan. 12, 2021]

§§ 308.159–308.160 [Reserved]

Subpart N—Rules and Procedures Applicable to Proceedings Relating to Suspension, Removal, and Prohibition Where a Felony Is Charged

SOURCE: 72 FR 67235, Nov. 28, 2007, unless otherwise noted.

§ 308.161 Scope.

The rules and procedures set forth in this subpart shall apply to the following:

(a) Proceedings to suspend an institution-affiliated party of an insured State nonmember bank, or an insured State savings association, or to prohibit such party from further participation in the conduct of the affairs of any depository institution, if continued service or participation by such party posed, poses, or may pose a threat to the interests of the depositors of, or threatened, threatens, or may threaten to impair public confidence in, any relevant depository institution (as defined at section 1818(g)(1)(E) of Title 12), where the individual is the subject of any state or federal information, indictment, or complaint, involving the commission of, or participation in:

(1) A crime involving dishonesty or breach of trust punishable by imprisonment exceeding one year under state or federal law; or

(2) A criminal violation of section 1956, 1957, or 1960 of title 18 or section 5322 or 5324 of title 31.

(b) Proceedings to remove from office or to prohibit an institution-affiliated