

**DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION**

**DIVISION OF BANKING**

**BUREAU OF BANKS AND TRUST COMPANIES**

**GUIDANCE CONCERNING THE EMPLOYMENT PRACTICES  
OF REGULATED INSTITUTIONS**

The Illinois Banking Act, the Corporate Fiduciary Act, and the Foreign Banking Office Act prohibit, without the prior written consent of the Department of Financial and Professional Regulation ("Department"), a state bank, corporate fiduciary, and foreign bank office (collectively referred to as "institutions"), respectively, from knowingly employing or otherwise permitting an individual to serve as an officer, director, employee, or agent if the individual has been convicted of a felony or of any criminal offense relating to dishonesty or breach of trust.

These statutory employment restrictions impose a duty upon each institution to make a reasonable inquiry into an applicant's background. The Division of Banking, Bureau of Banks and Trust Companies ("Bureau") believes that at a minimum, each institution should establish formal background investigation procedures for all employment situations. The purpose of these procedures should be to provide the institution with information concerning any convictions pertaining to a job applicant. At a minimum, an institution's background investigation procedures should require each applicant to complete a written employment application that requires a listing of all convictions.

In determining whether an institution has made a reasonable inquiry into an applicant's background, the Bureau will review the circumstances of each employment situation. For example, the Bureau would consider the establishment of a more thorough background investigation for those positions that have the ability to influence and or control the management or affairs of the institution to be reasonable, which, for example, may include the use of a competent background investigation firm. Similarly, the Bureau would also consider the establishment of a more thorough background investigation for persons not presently employed by the institution, as compared to existing employees, to be reasonable.

Upon notice of a conviction, the institution must not allow such person to serve the institution in any capacity prior to (1) filing an application with the Department and (2) receiving notification of the Department's approval. The application must be filed by the institution on behalf of the applicant. The purpose of the application is to provide the institution an opportunity to demonstrate that the person is fit to participate in the affairs of the institution and will not present any undue risk to the institution or the interests of

the institution's account holders. The burden is upon the institution to demonstrate that the application warrants approval.

## **Guidance for Determining Whether an Application is Required**

### Convictions

There must be present a conviction of record. The above statutory requirements do not cover arrests, pending cases not brought to trial, acquittals, or any conviction that has been reversed on appeal. A conviction for which a pardon has been granted requires an application. A conviction that has been completely expunged is not considered a conviction of record and does not require an application.

An adjudgement by a court against a person as a "youthful offender" under any youth offender law, or any adjudgement as a "juvenile delinquent" by any court having jurisdiction over minors as defined by state law does not require an application. Such adjudications are not considered convictions.

### Dishonesty or Breach of Trust

Whether a conviction involves dishonesty or breach of trust will be determined from the statutory elements of the criminal offense, either misdemeanor or felony. "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. "Breach of trust" means a wrongful act, use, misappropriation or omission with respect to any property or fund which 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.

When considering whether a conviction for a criminal offense involves dishonesty or breach of trust, an institution is encouraged to seek assistance from the Bureau when making the determination.

## **Procedures for Filing an Application**

When an application is required, an institution can obtain the requisite forms and instructions from the Bureau. Should the institution also be required to file a related application with its appropriate federal regulatory authority, the Bureau will accept a copy of the federal application in lieu of its own forms.

## **Evaluation of Applications**

The criteria in assessing an application are whether the person is fit to participate in the affairs of the institution and whether such participation presents any undue risk to the institution or the interests of its account holders. In making these determinations, the Bureau will consider:

1. The conviction and the specific nature and circumstances of the criminal offense;
2. Evidence of rehabilitation including the person's reputation since the conviction, the person's age at the time of conviction, and the time that has elapsed since the conviction.
3. The position to be held or the level of participation by the person at the institution;
4. The amount of influence and control the person will be able to exercise over the management and affairs of the institution;
5. The ability of management of the institution to supervise and control the person's activities;
6. The degree of ownership the person will have of the institution;
7. The applicability of the institution's fidelity bond coverage to the person;
8. The opinion or position of the primary federal regulator of the institution, if applicable; and
9. Any additional factors that are considered relevant by the Bureau.

### De Minimis Offenses

Approval is automatically granted, although an application must still be filed, where the offense is considered *De minimis*, because it meets all of the following criteria:

1. There is only one conviction of a criminal offense;
2. The offense was punishable by imprisonment for a term of less than one year and/or a fine of less than \$1,000, and the individual did not serve time in jail;
3. The conviction was entered at least five years prior to the date of the application; and
4. The offense did not involve a federally insured depository institution or an institution regulated by the Bureau.

### **Conditional Approvals**

When deemed appropriate, the Department may subject an approval to the condition that prior written consent of the Department be obtained prior to a change in the person's duties and/or responsibilities and/or that the person be covered by a fidelity bond to the same extent as others in similar positions. Furthermore, the Department's approval for a person to participate in the affairs of an institution does not automatically follow to another institution. In such cases, another application must be submitted by the other institution.

*[Adopted: February 9, 2001]*

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