

# FEDERAL DEPOSIT INSURANCE CORPORATION

## Privacy Act of 1974; System of Records

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Notice of Modified Systems of Records.

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**SUMMARY:** Pursuant to the provisions of the Privacy Act of 1974, as amended, the FDIC proposes the following changes to its Privacy Act system of records notices: (1) Revise one existing routine use and add one new routine use in all system notices to conform with Office of Management and Budget (OMB) guidance to federal agencies regarding response and remedial efforts in the event of a data breach; (2) Add one new routine use to permit disclosure of Freedom of Information Act (FOIA) request records to the Office of Government Information Services (OGIS) so that it may fulfill its statutory responsibilities; and (3) Make non-substantive editorial and formatting changes to all system notices for clarity and to conform to the updated system notice template prescribed in OMB Circular A-108. We hereby publish this notice for comment on the proposed actions.

**DATES:** This action will become effective on July 22, 2019. The routine uses in this action will become effective 30 days after publication, unless the FDIC makes changes based on comments received. Written comments should be submitted on or before the effective date.

**ADDRESSES:** Interested parties are invited to submit written comments identified by *Privacy Act Systems of Records* by any of the following methods:

- *Federal eRulemaking Portal:* <http://regulations.gov>. Follow the instructions for submitting comments.
- *Agency Website:* <https://www.FDIC.gov/regulations/laws/federal>. Follow the instructions for submitting comments on the FDIC website.
- *Email:* [Comments@fdic.gov](mailto:Comments@fdic.gov).
- *Mail:* Gary Jackson, Counsel, Federal Deposit Insurance Corporation, 550 17<sup>th</sup> Street NW, Virginia Square D-8012, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17<sup>th</sup> Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** Shannon Dahn, Chief, Privacy Section, Phone (703) 516-1162, Email [sdahn@fdic.gov](mailto:sdahn@fdic.gov); or Gary Jackson, Counsel, Phone (703) 562-2677, Email, [gjackson@fdic.gov](mailto:gjackson@fdic.gov).

**SUPPLEMENTARY INFORMATION:** The Privacy Act, 5 U.S.C. 552a, at subsection (b)(3), requires each agency to publish, for public notice and comment, routine uses describing any disclosures of information about an individual that the agency intends to make from a Privacy Act system of records without the individual's prior written consent, other than those which are authorized directly in the Privacy Act at subsections (b)(1)-(2) and (b)(4)-(12). The Privacy Act

defines “routine use” at subsection (a)(7) to mean a disclosure for a purpose compatible with the purpose for which the record was collected.

In accordance with OMB Memorandum M-17-12, issued January 3, 2017, titled “*Preparing for and Responding to a Breach of Personally Identifiable Information*,” the FDIC is modifying its current general routine use number (4) and adding a new general routine use number (5) to each system notice to authorize the FDIC to disclose information when necessary to obtain assistance with a suspected or confirmed data breach or to assist another agency in its response to a breach. The first routine use presented below is a revised version of current general routine use number (4) prescribed in former OMB Memorandum M-07-16 and first published in the *Federal Register* by the FDIC on October 29, 2007 (72 FR 61131). The second new general routine use presented below is being added to each the FDIC system notice as number (5) and all routine uses have been renumbered to account for this addition.

(4) To appropriate agencies, entities, and persons when (a) the FDIC suspects or has confirmed that there has been a breach of the system of records; (b) the FDIC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the FDIC (including its information systems, programs, and operations), the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the FDIC’s efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

(5) To another Federal agency or Federal entity, when the FDIC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (a) responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

The FDIC is also adding a new routine use to the FDIC 30-64-0022, Freedom of Information Act and Privacy Act Request Records, as presented below. This new routine use will permit records to be provided to the National Archives and Records Administration, Office of Government Information Services (OGIS) for purposes set forth under 5 U.S.C. 552(h), including to review agency compliance with FOIA, provide mediation services to resolve FOIA disputes, and identify policies and procedures for improving FOIA compliance.

(9) To the National Archives and Records Administration, Office of Government Information Services (OGIS) to the extent necessary to fulfill its responsibilities in 5 U.S.C. 552(h), to review administrative agency policies, procedures, and compliance with the Freedom of Information Act (FOIA), and to facilitate OGIS’s offering of mediation services to resolve disputes between persons making FOIA requests and administrative agencies.

In addition, this notice makes non-substantive editorial and formatting changes to all system notices for clarity and to conform to the updated system notice template prescribed in

OMB Circular A-108. More detailed information on the revised systems of records may be viewed in the complete text below.

The report of modified systems of records has been submitted to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to OMB Circular A-108, "Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act" and the Privacy Act, 5 U.S.C. 552a(r).

The FDIC last published a complete list of its system notices in the *Federal Register* on October 30, 2015 (80 FR 66981). This publication may be viewed on the FDIC's Privacy Program web page at [www.fdic.gov/about/privacy](http://www.fdic.gov/about/privacy).

**SYSTEM NAME AND NUMBER:** Office of Inspector General Inquiry Records, FDIC-30-64-0034.

**SECURITY CLASSIFICATION:** Unclassified.

**SYSTEM LOCATION:** FDIC Office of Inspector General (OIG), 3501 Fairfax Drive, Arlington, VA 22226.

**SYSTEM MANAGER(S):** FDIC Inspector General, 3501 Fairfax Drive, Arlington, VA 22226.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:** Section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819); the Inspector General Act of 1978, as amended (5 U.S.C. App.).

**PURPOSE(S) OF THE SYSTEM:** This system of records is used to document and respond to correspondence addressed or directed to the FDIC OIG; to track the receipt and disposition of correspondence; and to act as a means of referring allegations of illegality, fraud and abuse to the OIG investigative function.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:** Individuals—including, but not limited to, members of the public, the media, contractors and subcontractors, Congressional sources, and employees of the FDIC or of other governmental agencies—who communicate with the Office of Inspector General (OIG) through written or electronic correspondence or telephonically including the OIG Hotline. The system also includes individuals who receive correspondence from OIG and those who are the subject of correspondence to or from OIG.

**CATEGORIES OF RECORDS IN THE SYSTEM:** Contains communications such as correspondence, memoranda, email records, call records, voicemail, faxes, other electronic or digital communications, and additional documentation supplied by the source of the records to include other FDIC, congressional, and other executive branch sources. Information from the communications may be recorded in an electronic tracking system. Records provided by the source may include personally identifiable information including name, addresses, e-mail addresses, telephone numbers, and any other information voluntarily submitted such as Social

Security Number, as well as information developed by OIG, such as the date the matter was received by OIG, the date the matter was closed, and the manner of disposition. Records that involve law enforcement matters are transferred to the OIG investigative function, whose applicable system of records is covered by FDIC-30-64-0010, Investigative Files of the Office of Inspector General.

**RECORD SOURCE CATEGORIES:** Official records of the FDIC; current and former employees of the FDIC, other government employees, private individuals, vendors, contractors, subcontractors, witnesses and informants.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:** In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FDIC as a routine use as follows:

- (1) To the appropriate Federal, State, local, foreign or international agency or authority which has responsibility for investigating or prosecuting a violation of or for enforcing or implementing a statute, rule, regulation, or order to assist such agency or authority in fulfilling these responsibilities when the record, either by itself or in combination with other information, indicates a violation or potential violation of law, or contract, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;
- (2) To a court, magistrate, alternative dispute resolution mediator or administrative tribunal (collectively referred to as the adjudicative bodies) in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings (collectively, the litigative proceedings) when the FDIC or OIG is a party to the proceeding or has a significant interest in the proceeding and the information is determined to be relevant and necessary in order for the adjudicatory bodies, or any of them, to perform their official functions in connection with the presentation of evidence relative to the litigative proceedings;
- (3) To a congressional office in response to a written inquiry made by the congressional office at the request of the individual to whom the records pertain;
- (4) To appropriate agencies, entities, and persons when (a) the FDIC suspects or has confirmed that there has been a breach of the system of records; (b) the FDIC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the FDIC (including its information systems, programs, and operations), the Federal Government, or national security; the FDIC and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the FDIC's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm;
- (5) To another Federal agency or Federal entity, when the FDIC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (a) responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its

information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

- (6) To the FDIC's or another Federal agency's legal representative, including the U.S. Department of Justice or other retained counsel, when the FDIC, OIG or any employee thereof is a party to litigation or administrative proceeding or has a significant interest in the litigation or proceeding to assist those representatives by providing them with information or evidence for use in connection with such litigation or proceedings;
- (7) To appropriate Federal, State, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit;
- (8) To appropriate Federal, State, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or appeals if needed in the performance of these or other authorized duties;
- (9) To appropriate Federal agencies and other public authorities for use in records management inspections;
- (10) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the OIG, FDIC or Federal Government in order to assist those entities or individuals in carrying out their obligations under the related contract, grant, agreement or project;
- (11) To a financial institution (whether or not FDIC-insured, but subject to the FDIC's examination, supervision and/or resolution authority) which is the subject of an inquiry or complaint when necessary to investigate or resolve the inquiry or complaint;
- (12) To the primary Federal or State financial regulator of a financial institution (whether or not FDIC-insured, but subject to the FDIC's examination, supervision and/or resolution authority) that is the subject of an inquiry or complaint in order to resolve the inquiry or complaint;
- (13) To third-party sources, as authorized by OIG or the FDIC, during the course of the investigation in order to resolve the inquiry or complaint. Information that may be disclosed under this routine use is limited to the name of the inquirer or complainant and the nature of the inquiry or complaint and such additional information necessary to investigate the inquiry or complaint;
- (14) To the U.S. Office of Personnel Management, Government Accountability Office, Office of Government Ethics, Merit Systems Protection Board, Office of Special Counsel, Equal Employment Opportunity Commission, Department of Justice, Office of Management and Budget or the Federal Labor Relations Authority of records or portions thereof determined to be relevant and necessary to carrying out their authorized functions, including but not limited to a request made in connection with hiring or retaining an employee, rendering advice requested by OIG, issuing a security clearance, reporting an investigation of an employee, reporting an investigation of prohibited personnel practices, letting a contract or issuing a grant, license, or other benefit by the requesting agency, but only to the extent that the information disclosed is necessary and relevant to the requesting agency's decision on the matter;
- (15) To other Federal Offices of Inspector General or other entities for the purpose of conducting quality assessments or peer reviews of the OIG, or its investigative components, or for statistical purposes; and

- (16) To a Federal agency responsible for considering suspension or debarment action where such a record is determined to be necessary and relevant.

Note: In addition to the foregoing: (1) a record which is contained in this system and derived from another FDIC system of records may be disclosed as a routine use as specified in the published notice of the system of records from which the record is derived; and (2) records contained in this system that are subsequently transferred to OIG's investigative function may be disclosed as a routine use as specified in FDIC-30-64-0010, Investigative Files of the Office of Inspector General.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:** Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

**POLICIES AND PRACTICES FOR STORAGE OF RECORDS:** Records are stored in electronic media and in paper format within individual file folders.

**POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:** Records are indexed and retrieved by name, date received or closed, and/or subject.

**POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:** Records are maintained five years. Disposal is by shredding or other appropriate disposal methods. For records transferred from this system to OIG investigative function, the retention period and manner of destruction will be governed by the applicable investigative-records retention schedule.

**ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:** The electronic system files are accessible only by authorized personnel on a need-to-know basis. File folders are maintained in lockable metal file cabinets and lockable offices accessible only by authorized personnel. Employees authorized to have access to this system include certain employees of the Inspector General's immediate office, OIG's Office of General Counsel, the audit and/or investigative function.

**RECORD ACCESS PROCEDURES:** Individuals wishing to request access to records about them in this system of records must submit their request in writing to the FDIC FOIA & Privacy Act Group, 550 17th Street, NW, Washington, DC 20429, or email [efoia@fdic.gov](mailto:efoia@fdic.gov). Requests must include full name, address, and verification of identity in accordance with FDIC regulations at 12 CFR part 310.

**CONTESTING RECORD PROCEDURES:** Individuals wishing to contest or request an amendment to their records in this system of records must submit their request in writing to the FDIC FOIA & Privacy Act Group, 550 17th Street, NW, Washington, DC 20429, or email [efoia@fdic.gov](mailto:efoia@fdic.gov). Requests must specify the information being contested, the reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR part 310.

**NOTIFICATION PROCEDURES:** Individuals wishing to know whether this system contains information about them must submit their request in writing to the FDIC FOIA & Privacy Act Group, 550 17th Street, NW, Washington, DC 20429, or email [efoia@fdic.gov](mailto:efoia@fdic.gov). Requests must include full name, address, and verification of identity in accordance with FDIC regulations at 12 CFR part 310.

**EXEMPTIONS PROMULGATED FOR THE SYSTEM:** None. Records transferred from this system to the OIG investigative function are subject to the exemptions claimed under FDIC-30-64-0010, Investigative Files of the Office of Inspector General.

**HISTORY:** 80 FR 66981 (October 30, 2015).