

# 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 **[ Date of Publication ]**. 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:** Administrative and Personnel Action Records, FDIC-30-64-0003.

**SECURITY CLASSIFICATION:** Unclassified.

**SYSTEM LOCATION:** Legal Division, Executive Secretary Section, FDIC, 550 17th Street, NW, Washington, DC 20429.

**SYSTEM MANAGER(S):** Legal Division, Executive Secretary Section, FDIC, 550 17th Street, NW, Washington, DC 20429.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:** Sections 8, 9, and 19 of the Federal Deposit Insurance Act (12 U.S.C. 1818, 1819, 1829).

**PURPOSE(S) OF THE SYSTEM:** The system is maintained to record the administrative and personnel actions taken by the FDIC Board of Directors, standing committees, or other officials.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:** Individuals who have been the subject of administrative enforcement actions or other personnel actions by the FDIC Board of Directors or by standing committees of the FDIC and individuals who have been the subject of administrative actions by FDIC officials under delegated authority.

**CATEGORIES OF RECORDS IN THE SYSTEM:** Minutes of the meetings of the FDIC Board of Directors or standing committees and orders of the Board of Directors, standing committees, or other officials as well as annotations of entries into the minutes and orders.

**RECORD SOURCE CATEGORIES:** Intra-agency records.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE 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 appropriate Federal, State, local and foreign authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, 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, or other administrative body 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, when the FDIC is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;
- (3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;
- (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 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;
- (7) 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, or if needed in the performance of other authorized duties;
- (8) To appropriate Federal agencies and other public authorities for use in records management inspections;
- (9) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the FDIC, the Office of Inspector General, or the Federal Government for use in carrying out their obligations under such contract, grant, agreement or project;
- (10) To officials of a labor organization when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions; and
- (11) To the U.S. Office of Personnel Management, General Accounting Office, the Office of Government Ethics, the Merit Systems Protection Board, the Office of Special Counsel, the Equal Employment Opportunity Commission, or the Federal Labor Relations Authority or its General Counsel 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 the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract or issuance of 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.

**POLICIES AND PRACTICES FOR STORAGE OF RECORDS:** Records are stored in electronic media, microfilm, and paper format within individual file folders, minute book ledgers and index cards.

**POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:** Records are retrieved by name.

**POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:** Permanent.

**ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:** Electronic records are password-protected and accessible only by authorized personnel. Paper records are maintained in lockable metal file cabinets accessible only to authorized personnel. A security copy of certain microfilmed portions of the records is retained at another location.

**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.

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