

I. INTRODUCTION

On January 22, 1988, the Federal Financial Institutions Examination Council (FFIEC) issued the “Joint Statement of Guidelines on Conducting Background Checks and Change in Control Investigations.” These guidelines detail the member agencies’ agreement on when and how such investigations should be conducted. All FFIEC member agencies currently perform background investigations in accordance with these guidelines.

In line with the joint statement, the FDIC has established responsibilities and procedures for conducting background investigations in connection with certain filings submitted to the FDIC, such as applications for federal deposit insurance, notices of change in control, applications subject to Section 19 of the Federal Deposit Insurance (FDI) Act, and notices subject to Section 32 of the FDI Act.

Background investigations may be initiated before an application is accepted for processing. Applications subject to Section 19 of the FDI Act should not be accepted for processing until the results of the background investigations are received. However, other types of applications subject to background investigations may be accepted for processing while the investigation is ongoing (prior to receiving results of the background investigations) if, for instance, the individuals involved are known to the FDIC or preliminary review of the materials submitted and other available information sources indicate no concerns. In situations where the application has not been accepted for processing pending the results of the background investigation, the system record should reflect this treatment. However, no background investigations should be started or requested until a signed application and an Interagency Biographical and Financial Report (IBFR) has been received.

II. REQUESTING BACKGROUND INVESTIGATIONS

Background investigations are processed through the appropriate background investigation system, which provides each Regional Office (RO) and the Washington Office (WO) with a nationwide, real-time, automated management tool to initiate, process, and track all background investigations. Appropriate RO and WO staff should be granted access to the background investigation system. Assistant Regional Directors (ARD) are responsible for coordinating RO access to this system in accordance with appropriate security policies and procedures. The system holds personally identifiable information (PII) of the greatest sensitivity, and accessing the information requires the highest level of security within the FDIC. Temporary access to this background investigation system should be promptly terminated as soon as access is no longer needed.

Case Managers are responsible for ensuring that the required documentation for a background investigation is forwarded to the Division of Risk Management Supervision (RMS) Cyber Fraud and Financial Crimes (CFFC) Section in the WO. Case Managers should initiate background investigations in the background investigation system.

Each RO is responsible for coordinating background investigations with the other federal regulatory agencies in the case of companion or duplicate filings. However, the regulatory agencies, including the FDIC, no longer share the results of investigations due to privacy concerns associated with PII and the Right to Financial Privacy Act. As such, the FDIC will likely need to perform an independent background investigation. The CFFC Section forwards requests for background investigations received from the ROs through the appropriate system to relevant law enforcement agencies. Results of investigations are communicated back to the requestor via this internal system when received by the CFFC Section.

The FDIC requires Federal Bureau of Investigation (FBI) Fingerprint Identification Checks, FBI Name Checks, and Suspicious Activity Report (SAR) searches of the Financial Crimes Enforcement Network (FinCEN) Query System for all subject applications. Additionally, Immigration and Customs Enforcement (ICE) Name Checks are required for federal deposit insurance applications and change in control notices. However, with respect to filings under Sections 19 and 32 of the FDI Act, ICE investigations are only conducted when warranted.

III. REQUESTS PRODUCED AND ROUTED TO CFFC FOR PROCESSING

The following background investigation requests should be made using the background investigation system and routed to the CFFC Section for processing.

FBI Fingerprint Identification Checks

Parties Within the United States

The FBI requires fingerprints to establish positive identification for background investigations and has advised the FDIC that this is the best method to ensure that all potential criminal background information is obtained. Accordingly, the FDIC requires that all individuals subject to background investigations have an FBI Fingerprint Identification Check performed in connection with applications for federal deposit insurance, notices of change in control, applications subject to Section 19 of the FDI Act, and notices subject to Section 32 of the FDI Act. Completing the fingerprinting requirement is the sole responsibility of the applicant or acquiring party. ROs will use the background investigation system to document the FBI Fingerprint Identification Check requests and process.

The RO will notify applicants located in the United States, Guam, Puerto Rico, and the Virgin Islands in writing that fingerprints are required for the filing(s), and that they are required to use the FDIC's approved agent to complete this requirement. The notification will provide the applicant with the required information to complete the fingerprinting process, including appointment scheduling information, Fieldprint Code, Background Investigation (BI) Case Number, and the agent's customer service contact information. Applicants will be encouraged to complete the fingerprinting process as soon as possible. Difficulties in obtaining fingerprints should be referred to the CFFC Section.

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Parties Outside the United States

U.S. citizens and U.S. residents living outside the U.S. that are not able to complete their FBI Fingerprint Identification Check with the FDIC's approved agent will continue to submit ink fingerprint cards to the FDIC. The RO will notify the affected parties in writing that fingerprints are required for the application. The notification will include several ink fingerprint cards per applicant and encourage applicants to use a police department or local law enforcement agency to complete their ink fingerprint cards to ensure clarity of the prints. Applicants should be advised of the possibility of an FBI rejection of the ink fingerprint cards, and corresponding delays in the application process, if prints are not clear. It is also important that all information blocks on the ink fingerprint cards be completed to avoid possible rejection by the FBI. The RO will convey a reasonable period of time for the fingerprinting process to be completed. The RO will contact the CFFC Section for detailed guidance and procedures in such instances.

FBI Name Checks

The FDIC requires an FBI Name Check background investigation for all individuals subject to background

investigations in connection with applications for federal deposit insurance, notices of change in control, applications subject to Section 19 of the FDI Act, and notices subject to Section 32 of the FDI Act. When requesting FBI Name Checks for individuals, the background investigation system should be used to generate, process, and deliver these requests to the CFFC Section. The system will generate a cover letter and the required Name Check Forms detailing the request for the name checks, individuals for whom the name checks are requested, and the RO contact person(s).

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ICE Name Checks

ICE Name Check background investigations are required and should be requested for all deposit insurance filings and change in control notices. These requests are not required for filings under Sections 19 and 32 of the FDI Act, but may be requested when warranted. Like FBI Name Checks, ICE Name Checks are requested using the background investigation system to notify the CFFC Section and generate a cover letter and Name Check Forms detailing the request for the name checks, for whom the name checks are requested, and the RO contact person.

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Special Name Checks

Special Name Check background investigations may be requested for applicants under limited, specific circumstances, but are not conducted routinely and should only be used when justified. Acceptable uses of Special Name Checks may include an applicant who is a foreign national, non-resident, or a U.S. citizen who was born in a foreign country and/or lived a portion of their adult working life in any foreign country. Special Name Checks are processed through the background investigation system, which should be used to generate, process, and deliver requests to the CFFC Section. Special Name Checks require that the Foreign Nationals Section be completed prior to submitting a request. The system will generate a cover letter and required Name Check Forms detailing the request, for whom the Name Checks are requested, and the RO contact person(s). Incomplete requests cannot be processed and will be returned to the submitting RO to obtain the necessary information.

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IV. REQUESTS PRODUCED AND ROUTED TO FDIC LIBRARY FOR PROCESSING

Each of the following reports may be obtained through the FDIC Library by a request through the background investigation system. The system will generate a cover letter and required forms stating the date of the request, the names of companies or individuals for whom the reports are to be produced, the types of reports requested, the RO contact person, and the ARD who approved the request.

These reports are for FDIC's use only and cannot be disclosed to outside parties.

Company Financial Reports

Dun & Bradstreet (D&B) Business Information Reports include information regarding assets and liabilities, officer and director listings, Uniform Commercial Code (UCC) records, tax liens, and some payments data. Experian Business Profile Reports generally include detailed payment histories.

Consumer Credit Reports

Consumer credit reports may be requested to more thoroughly evaluate an individual's financial condition and ability to participate in the affairs of the financial institution. The consumer credit reporting agencies offer an independent, third-party check of the applicant's stated financial position. The information available includes, but may not be limited to, year of birth, current address, previous addresses, place of employment, credit history, and public information such as judgments, bankruptcies, tax and mechanic's liens, lawsuits, and wage assignments.

Requests require the individual's name, social security number, and current primary address including zip code. All requests must be supported by a legitimate business need for the information and must be approved by regional management (ARD or above). Requests for consumer credit reports may be appropriate for applications for federal deposit insurance, notices of acquisition of control, applications subject to Section 19 of the FDI Act, and notices subject to Section 32 of the FDI Act. The Fair Credit Reporting Act (FCRA) limits access to these reports.

LexisNexis

The FDIC Library has online access to the LexisNexis public records database, which, among other things, provides consolidated information from a variety of public records sources, as well as major regional and national newspapers and other publications. The service also offers information concerning disciplinary actions against securities dealers and brokers and limited access to other public records.

The public record reports contain sensitive PII. Under the provisions of the Gramm-Leach-Bliley Act and the terms of use agreement with LexisNexis, the requestor must have a permissible purpose to obtain the information in the report. For requestors without a permissible purpose, the report will only include unregulated information. The terms of use agreement specifies that these reports are only to be used for purposes that are not related to the FCRA, are for FDIC use only, and cannot be disclosed to outside parties.

Public Records

The FDIC Library has access to several other public records databases, which include public record filings for individuals and corporations. Among the types of records that may be available are bankruptcy filings, UCC records, tax liens, judgments, tax assessor records, and various corporate records. Records availability varies greatly by state and/or locality.

V. ADDITIONAL BACKGROUND INVESTIGATIONS THAT SHOULD BE COMPLETED

The FDIC requires that ROs complete a SAR search using the FinCEN Query System for all individuals subject to background investigations. Case Managers should also consider performing the following record searches using the FinCEN Query System:

- Currency Transaction Reports;
- Reports of International Transportation of Currency or Monetary Instruments;
- Reports of Foreign Bank Accounts; and
- Reports of Cash Payments Over \$10,000 Received in a Trade or Business (IRS Form 8300).

The results of FinCEN Query System searches should be documented under the “Other Investigations” tab within the background investigation system. Due to limited access to FinCEN Query system, the Case Manager may need to consult with the RO Case Manager – Special Activities.

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VI. RESPONSIBILITY FOR AN ADVERSE ACTION

Generally, Case Managers should not recommend adverse action with respect to a party subject to background investigations based solely on the receipt of summary scores, indicators, or similar responses to a background inquiry or investigation request. Case Managers are expected to conduct reasonable and appropriate due diligence, to the extent possible, and to consult with Legal, prior to recommending adverse action with respect to the individual in question.

In the case of information submitted directly by applicants, as well as cases in which public information is obtained by or otherwise available to the FDIC, Case Managers should generally provide the applicant a reasonable opportunity to provide explanatory or supplemental information that may mitigate FDIC concern. In the case of confidential information obtained by or otherwise available to the FDIC (such as law enforcement reports containing adverse information), Case Managers should determine the most appropriate course of action in consultation with RO management, Legal and, as appropriate, the appropriate WO review section.

Adverse Actions Under the Fair Credit Reporting Act

An adverse action has been defined under the FCRA to include, among other matters:

- The denial of employment involving the consumer;
- Any other decision for employment purposes that adversely affects any current or prospective employee;
- An action taken or a determination that is adverse to the interests of the consumer, which is made in connection with an application made by (or a transaction that was initiated by) any consumer; and
- A denial or cancellation of, an increase in any charge for, or any other adverse or unfavorable change in the terms of any license or benefit granted by a governmental instrumentality required by law to consider an applicant’s financial responsibility status.

Given the broad definition of adverse action, RMS may be required to notify the applicant orally, in writing, or by electronic notice that the FDIC has taken adverse action against them, based in whole or in part, on information contained in their consumer credit report. The notice provided to the consumer should include the following information:

- Contact information for the consumer reporting agency that provided the consumer credit report;
- A statement that the consumer reporting agency did not make the decision to take the adverse action and is unable to provide the consumer the specific reasons why the adverse action was taken;
- Information about the applicant’s right under the FCRA to obtain a free copy of his or her consumer

credit report from the consumer reporting agency if requested within 60 days of receiving the notice;
and

- The applicant's right to dispute the accuracy or completeness of any information with the consumer reporting agency.

Legal should be consulted before advising an applicant that adverse action has been taken against him or her, and should also be consulted in the drafting of any correspondence.

VII. REFERENCES

Fair Credit Reporting Act

Protecting Sensitive Information, Corporate Directive 1360.9

FDIC Statement of Policy for Section 19 of the FDI Act