

**I. INTRODUCTION**

On January 22, 1988, the Federal Financial Institution 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 FDI Act, and notices subject to Section 32 of the FDI Act.

Applications subject to Section 19 of the FDI Act should not be accepted for processing until the results of the background investigations are received. Other types of applications subject to background investigations may be accepted for processing 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.

**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 database in accordance with appropriate security policies and procedures. The database 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 database 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 RMS Cyber Fraud & Financial Crimes (CFFC) Section in the WO. Case Managers should initiate background investigations in the internal 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 database to relevant law enforcement agencies. Results of investigations are communicated back to the requestor via this internal database when received by the CFFC Section.

The FDIC continues to require FBI Fingerprint Identification Checks and FBI Name Checks for all applicable filings. Immigration and Customs Enforcement (ICE) investigations are only

conducted for filings under Sections 19 and 32 of the FDI Act in cases where there is reason to do so. The requirements for background checks with respect to deposit insurance applications and change in control notices continue to include ICE in all instances.

### **III. REQUESTS PRODUCED & 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.

The reports generated from requests are for the FDIC's use only and cannot be disclosed to outside parties.

##### *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 for the ink fingerprint cards to be returned to the RO. The RO will forward the completed ink fingerprint cards to the CFFC Section along with the cover letter generated by the background investigation system detailing the request for the FBI Fingerprint Identification Checks, for whom the FBI Fingerprint Identification Checks are

requested, and the RO contact person(s). Difficulties in obtaining fingerprints should be referred to the CFFC Section.

### 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 database 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 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 appropriate internal system to notify the CFFC Section.

The reports generated from requests are for the FDIC's use only and cannot be disclosed to outside parties.

### 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.

The reports generated from requests are for the FDIC's use only and cannot be disclosed to outside parties.

## **IV. REQUESTS PRODUCED & ROUTED TO FDIC LIBRARY FOR PROCESSING**

Each of the following reports may be obtained through the FDIC Library by a request through the appropriate internal 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.

The reports generated from requests are for the 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 Reports

Consumer 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 reporting agencies offer an independent, third-party check, and are useful in verifying 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. When a Case Manager makes a request for a copy of a consumer report, the request for the information must be supported by a legitimate business need (i.e., initial information included in the Interagency Biographical and Financial Report contains judgments, defaults, and/or multiple or continued delinquencies) and must be approved by RO management (ARD or above).

Requests for consumer reports by the FDIC are governed by the Fair Credit Reporting Act (FCRA) for 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. The FCRA limits access to the reports, which cannot be disclosed to outside parties.

### Lexis/Nexis

ROs and the FDIC Library have online access to the Lexis/Nexis 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 Lexis/Nexis, 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 REQUESTS DOCUMENTED IN THE BACKGROUND INVESTIGATION SYSTEM**

Case Managers should also consider performing other record searches, such as those available through the Currency and Banking Retrieval System (CBRS) maintained by the Internal Revenue Service Detroit Data Center. Due to limited access to that system, the Case Manager should consult with the RO Case Manager – Special Activities. The CBRS includes information concerning the following Financial Crimes Enforcement Network (FinCEN) reports:

- Suspicious Activity Report;
- Currency Transaction Report;
- Report of International Transportation of Currency or Monetary Instruments; and
- Foreign Bank Account Report.

**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 RMAS 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 that is made in connection with an application that was 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 him or her, based in whole or in part, on information contained in his or her 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 and Accurate Credit Transactions Act Effective Dates, FIL 130-2004, dated December 13, 2004*

*Protecting Sensitive Information, Corporate Directive 1360.9, dated April 30, 2007*

*FDIC Statement of Policy for Section 19 of the FDI Act*