

Background Investigations

Comptroller's Licensing Manual

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Background Investigations

Table of Contents

Introduction.....	1
Applicability	1
Key Policies	1
Summary of Process	1
Specific Requirements.....	2
Standard Background Checks	2
Foreign Nationals' Background Checks.....	3
Background Information Checks on Japanese Nationals.....	3
Optional Background Checks	4
Fingerprint Cards/IRS Tax Check Waiver.....	4
Waivers.....	4
Adverse Information	5
Change in Bank Control	5
Charters and Federal Branches or Agencies.....	5
Depository Institution Management Interlocks Act (DIMIA).....	6
Convicted Persons	7
Procedures	8
Appendix A: Management Review Guidelines.....	10
Appendix B: Joint Statement	12
References.....	15

Introduction

This booklet should be used together with other booklets of the *Comptroller's Licensing Manual*. Users of this booklet also should refer to the "General Policies and Procedures" (GPP) booklet for discussion of general filing instructions and procedures. Background investigations are performed routinely on filings discussed in the following booklets: "Change in Bank Control," "Changes in Directors and Senior Executive Officers," "Charters," "Conversions," "Director Waivers," "Failure Acquisitions," and "Federal Branches and Agencies."

Applicability

This booklet incorporates policies and procedures used by the Comptroller of the Currency (OCC) to review the background of persons and certain companies (filers) interested in entering the national banking system, acquiring control of a national bank, and/or influencing its operations. This booklet details the standard mandatory checks required for U.S. citizens and foreign nationals; discusses additional standard mandatory checks for foreign nationals; and describes other optional background checks for certain applications, notices, and notices required by Section 914 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) or 12 CFR 5.51.

Key Policies

For certain corporate filings, the OCC performs background investigations on persons proposed as organizers, senior executive officers, directors, and principal shareholders of national banks, or as managers of federal branches or agencies. Those investigations are conducted to determine if those proposed have the experience, competence, integrity, character, financial ability, and willingness to direct and/or lead a bank's affairs in a safe, sound, and legal manner. The OCC will scrutinize closely a filer whose previous experience is tied to a failed or problem financial institution or other situation that may raise questions about personal or fiduciary integrity.

Summary of Process

Whenever a filer seeks entry into the national banking system as an organizer, senior executive officer, director, or principal shareholder (for example, proposing to acquire 10 percent or more of the stock) of a proposed new national bank, or as a manager of a federal branch or agency, the OCC generally requires that person to submit an *Interagency Biographical and Financial Report* with the appropriate filing. The OCC also generally requires submitting those reports with the following types of filings: changes in bank

control, changes in directors or senior executive officers when required under Section 914 of FIRREA or 12 CFR 5.51, conversions, director waivers, and failure acquisitions. The Interagency Biographical and Financial Report never is filed as a stand alone document; rather, it is an attachment to other filings submitted to the OCC.

For charter applications, the standard background checks, except for FBI fingerprint and IRS tax check waivers, are updated whenever one year lapses between preliminary conditional and final approval of a filing.

All information in each corporate filing is reviewed and may be verified. Any material misrepresentation or omission of fact generally will result in disapproval. The OCC may disapprove a corporate filing and take action against any filer, including referral for criminal action, if it determines that the materials submitted were misrepresented or omitted in an attempt to mislead the OCC.

Specific Requirements

Standard Background Checks

The OCC performs standard background checks through the:

- Credit bureaus.
- Drug Enforcement Administration.
- Federal Bureau of Investigation (FBI) (fingerprint check requests).
- Federal and state regulators of banks or other entities.
- Internal Revenue Service (IRS) Tax Check Program.
- United States Customs Service.
- LEXIS-NEXIS.

LEXIS-NEXIS is an on-line service that contains a compilation of data on legal, news, and business information. A number of databases on LEXIS are checked in a background investigation, including the docket library which shows sanctions by banking and securities agencies. Other areas reviewed include Liens, Assets, and Insolvency.

- Financial Crimes Enforcement Network (FinCEN)/SARS Report.

The FinCEN is an interagency database of persons named in Suspicious Activity Reports (SARS). Those persons are believed to have participated in known or suspected criminal violations, or suspicious transactions related to potential money laundering offenses or Bank Secrecy Act violations.

- Enforcement Action Report System (EARS).

The EARS is an OCC system that contains historical criminal referral information, and information on persons who have been subject to administrative enforcement actions (for example, civil money penalties and removals), change in bank control, and notice of new director and senior executive officer declinations by the federal banking regulatory agencies.

EARS maintains financial institution regulatory agencies' records when the filers have been involved with financial institutions under another agency's jurisdiction (for example, the Federal Deposit Insurance Corporation (FDIC), the Federal Reserve Board (FRB), the Office of Thrift Supervision (OTS), or the National Credit Union Administration (NCUA)).

Foreign Nationals' Background Checks

The OCC performs additional background checks on foreign nationals seeking entry into the national banking system. Those standard foreign national background checks are performed to obtain information similar to that compiled on U.S. citizens and are conducted in cooperation with the:

- Central Intelligence Agency (CIA).
- Interpol.
- U.S. Department of State.
- U.S. Immigration and Naturalization Service.

Background Information Checks on Japanese Nationals

The OCC and the Banking Inspection Department at the Ministry of Finance of Japan have agreed to certain procedures for background information checks (or police certificates) on Japanese nationals entering the U.S. banking market. The procedures require each person seeking entry into the national banking system to obtain his or her own record. Licensing staff should provide the background check request letter to each involved person. In turn, those people will present this letter to the National Police Agency,

which will provide a written response to the person in a sealed envelope. The Japanese national will forward the sealed envelope to the OCC.

Optional Background Checks

The OCC will pursue additional background checks when deemed appropriate. Such checks may include, but are not limited to, requests for background information from the:

- CIA.
- Commodity Futures Trading Commission (CFTC).
- Federal, state, and local law enforcement agencies.
- FBI (name check requests).
- Federal Trade Commission.
- Interpol.
- Local court records.
- National Association of Securities Dealers (NASD).
- Newspapers and periodicals.
- Securities Exchange Commission (SEC).
- U.S. Immigration and Naturalization Service.
- U.S. Department of State.

Fingerprint Cards/IRS Tax Check Waiver

To proceed with background checks, persons seeking entry into the national banking system must complete certain forms. Fingerprint cards and IRS Tax Check Waiver forms should be obtained from the appropriate OCC district office and completed. The fingerprint cards can be completed at the local police or law enforcement office where fingerprinting services are available.

Waivers

The OCC, in individual cases, may waive the standard background checks, if the performance of the check would be redundant or would not serve the OCC's purposes for background investigations. However, Licensing staff will document all background check waivers, including the rationale for the waiver.

The OCC routinely may waive background checks for filers, if the filer is serving as a director or a senior (or executive) officer of an "eligible" depository institution,¹ the institution's current regulatory agency reports no adverse information, and a search on EARS and the FinCEN databases reveal no derogatory information.

If the OCC is ready to approve an application for which it has not received responses on all of its background check inquiries and there is no reason to believe that any detrimental information will be forthcoming from the unanswered inquiries, the OCC may approve the application by inserting the following reminder into the approval letter:

Background checks requested by the OCC have not been received yet from (insert appropriate number) source(s). While we have decided not to delay action pending receipt of these responses, continued service of the affected individual(s) will be dependent on satisfactory completion of the background investigation process.

Adverse Information

If the background investigation provides adverse information on a filer, the OCC must notify and allow the filer to complete, correct, or challenge the information prior to the OCC making a decision. The filer will be instructed to refer to 28 CFR 16.34 for specific guidance and to provide the OCC with a written response within 15 days of receipt of the OCC's notification.

Change in Bank Control

The Change in Bank Control Act requires federal banking agencies to prepare and to retain, as a record of the agency, a report of any investigations it conducts. Licensing staff uses the Background Investigation Checklist for this purpose and attaches it to each confidential memorandum.

Charters and Federal Branches or Agencies

The selection of competent senior executive officers reflects favorably upon applications. The OCC has developed a tool to assist banks in selecting management officials (see Appendix A -- Management Review Guidelines). Directors may use this tool as a guideline for obtaining relevant work

¹An "eligible" depository institution includes national banks, state banks, or federal or state savings associations that: 1) are well capitalized as defined in 12 CFR 6.4(b)(1); 2) have composite ratings of 1 or 2 under the Uniform Financial Institutions Rating System; 3) have Community Reinvestment Act, 12 USC 2901 et seq., ratings of "Outstanding" or "Satisfactory"; and 4) are not subject to a cease and desist order, consent order, formal written agreement, or Prompt Corrective Action directive (see 12 CFR 6, subpart B) or, if subject to any such order, agreement, or directive, is informed in writing by the OCC that the bank still may be treated as an "eligible bank" for a corporate transaction. The third (CRA) factor does not apply to an uninsured bank or branch or a special purpose bank covered by 12 CFR 25.11(c)(3).

experience about proposed management officials. When an organizing group for a new bank charter elects not to disclose the proposed CEO's name at the time the charter application is filed, the proposed CEO still must complete and submit the Interagency Biographical and Financial Report. All questions should be answered, except those that disclose identifying information.

Identifying information generally is considered to include the person's name, address, social security number, the name(s) of the financial institution(s) where the person is employed, other organizations where the person is affiliated as an officer, and information which, by its nature, would readily identify the proposed CEO.

When the name of a proposed CEO is treated as confidential in a filing or is not disclosed at the time of the filing, the background check is performed after the preliminary approval.

The CEO and all executive officer positions, in a new bank charter or federal branch or agency, must receive OCC approval prior to employment. Adverse information about the proposed CEO could reflect negatively on the filing and cause the OCC to reconsider its preliminary approval.

If a proposed officer requests that his/her present employer(s) not be contacted, the OCC will determine whether the information is needed and would be available through alternative sources. The OCC will notify the proposed officer in advance, if it needs to contact the current employer(s).

Depository Institution Management Interlocks Act (DIMIA)

The OCC may approve an otherwise prohibited interlocking management relationship, if the interlock would:

- Improve the provision of credit to low- and moderate-income areas.
- Increase the competitive position of a minority- or women-owned institution.
- Strengthen the management of an institution that has been chartered for less than two years or one that is in an unsafe or unsound condition.

Banks requesting an exemption should provide information to the OCC to support the proposed interlock. They should also submit the qualifications of the proposed management official.

Convicted Persons

Persons convicted of a crime involving dishonesty, breach of trust, or money laundering are prohibited, under 12 USC 1829, from participating in the affairs of an insured depository institution without prior consent of the FDIC. Additionally, this section provides that conviction for certain enumerated violations pertaining to financial institution-related crimes precludes the FDIC for 10 years from considering or consenting to an application filed by a person convicted of such offense. The OCC consults with the FDIC when a filer would be subject to 12 USC 1829.

Procedures

Filing the Request

Licensing Staff

1. Refers filer, if appropriate, to this booklet.
2. Provides information to the filer about additional forms and information required to conduct background investigations and:
 - Distributes to each candidate background investigation forms and fingerprint cards, as appropriate.
 - Instructs the filer, in writing, that the provision of legible fingerprints is his/her responsibility and is required by the OCC to investigate the party's background thoroughly.
 - Suggests having fingerprints taken at the local police or law enforcement office or certain post offices where fingerprinting services are available.
 - Instructs filer to return fingerprint cards to the Licensing staff with the corporate filing.

Filer

3. Files appropriate background investigation forms together with the filing and any applicable filing fees to the OCC.

Licensing Staff

4. Reviews the background investigation information and forms for accuracy and completeness.
5. Performs standard background checks unless waived.
6. If standard background checks are waived, documents the reasons for the waiver in the official file.
7. Forwards completed fingerprint cards, Request for Background Checks (OCC Form 9020-01), and, if appropriate, other background investigation requests to HQ Licensing (HQ LIC) for processing.
8. Conducts EARS and FinCEN searches, if appropriate, and determines if:

- A regulatory agency has taken any enforcement action or made criminal referrals against the filer.
 - The filer has been involved in insider abuse.
 - FinCEN.
 - EARS.
9. If applicable, forwards the following information to HQ LIC on any foreign national:
 - Name and any known aliases.
 - Date and place of birth (country).
 - Current address.
 - Current title/position.
 - Name of employer.
 - Full name of both parents.
 - Passport number.
 - National identification number (if applicable).
 - List of countries that should be checked.
 - Relatives working in the home country local government.
 10. Performs optional background checks appropriate to the particular circumstances.
 11. Notifies by registered/certified mail, any filer for whom adverse information is received and allows the filer to complete, correct, or challenge the information prior to the OCC making a decision and makes appropriate Corporate Activities Information System (CAIS) entries.
 12. If a specific person in the related filing is denied or objected to, because of information received in the background investigation, provides this information to the appropriate portfolio manager of the bank with which the applicant is affiliated and submits EARS and FinCEN Entry Request Form to district counsel and makes appropriate CAIS entries.
 13. Refers to the appropriate booklet for processing of application or notice.
 14. For charter applications, updates the standard checks, except for FBI fingerprint and IRS tax check waivers, if one year lapses between preliminary conditional and final approval; or, if the opening period extends beyond 30 days, obtains the concurrence of the LP&S Director that a second set of background investigation checks need not be conducted.

Appendix A: Management Review Guidelines

The OCC has developed these guidelines to assist national bank directors and organizing national bank directors (board of directors) in their selection of proposed management officials.

The selecting officials should:

1. Require each proposed executive officer (candidate) to submit information requested in the Interagency Biographical and Financial Report, if necessary, to the board of directors for review.
2. Perform a credit check of the candidate, identifying the credit bureaus or other sources used.
3. Contact the candidate's references and summarize by name the comments received.
4. Contact the candidate's previous employers and summarize by name and employer the nature of comments provided (for example, positive, negative, no comment).
5. Prepare or obtain a summary of the candidate's duties in previous positions and discuss how that experience relates to the job description under consideration. Discuss relevant information, such as:
 - Size and type of loan portfolio supervised, loss/earnings record, and amount of loan approval authority.
 - Personnel administration record, including the number and type of employees supervised and the candidate's performance record.
 - Policy development and implementation experience.
 - Asset/liability management strategies employed.
 - Investment strategies employed.
 - Internal control, audit, and management information systems developed.
6. Describe all terms of employment, including proposed salary, methods used to determine the amount of salary, employment contract, and other compensation.

7. Describe the major duties and responsibilities of the position (if necessary).
8. If applicable, evaluate and prepare documentation to support an exemption under the Depository Institution Management Interlocks Act (DIMIA).
9. If OCC approval is required, submit the following information with the appropriate request:
 - Board's written evaluation, reflecting its assessment of the proposed management official (results from steps 2 through 8).
 - *Interagency Biographical and Financial Report* (if necessary).
 - If applicable, request for DIMIA exemption.

Appendix B: Joint Statement

Joint Statement of Guidelines on Conducting Background Checks and Change in Control Investigations

Date: January 22, 1988

This guideline is issued jointly by the Board of Governors of the Federal Reserve System, Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, and the National Credit Union Administration, hereinafter referred to, collectively, as "the agencies."

The agencies routinely perform Federal Bureau of Investigation (FBI) and other background checks on individuals seeking to enter the depository institution business through establishment of new depository institutions or depository institution holding companies, or through changes in control. The agencies agree on the following guidelines regarding such background investigations on individuals.

Standard Background Checks

The agencies will perform as necessary the following standard background checks on all individuals subject to background investigations:

- FBI General Index Namecheck;
- United States Custom Service Namecheck;
- Drug Enforcement Administration Namecheck;
- Search of internal agency records and of databases to which the agencies have access;
- Check records on an interagency basis when an individual has been involved with institutions under another agency's regulatory jurisdiction; and
- Check with state depository institution regulatory agencies when an individual has been involved with institutions under a state's regulatory jurisdiction.

The agencies may not perform some of the standard background checks if, in individual circumstances, it is apparent that performance of the check is

redundant, does not serve the agency's purpose for the background investigation, or other reasons.

Discretionary Background Checks

The agencies will pursue any additional background checks they believe are appropriate to individual circumstances. Such checks may include, but are not limited to, requests for background information from the Internal Revenue Service, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the National Association of Securities Dealers, Interpol, the Central Intelligence Agency, the U.S. State Department, and state and local law enforcement agencies.

Background Investigations Requiring Fingerprints

The agencies may obtain fingerprints from individuals if fingerprints are required to access information necessary for a background investigation. Fingerprints will be obtained at the discretion of the agencies, and particularly, if information obtained from the standard and discretionary checks suggest that further investigation of an individual are warranted.

Documentation of Scope of Background Checks

The agencies will establish procedures for documenting the scope and results of background investigations in case files.

Background Investigations for Change in Control and/or Holding Company Notices

The Change in Bank Control Act (12 USC 1817(j)) and the Change in Savings and Loan Control Act (12 USC 1730(q)) require the agencies to conduct an investigation of the competence, experience, integrity, and financial ability of a proposed acquirer, and to make an independent determination of the accuracy and completeness of any information submitted in a change in control notice. Accordingly, the agencies will:

- Investigate the backgrounds of all change in control notice filers in accordance with the guidelines on background checks contained herein.
- Require public notice of a change in control filing and solicit public comment except in supervisory cases.
- Obtain copies of all pertinent purchase and sale agreements and related documents describing the terms and conditions of a proposed acquisition.

- Obtain copies of any loan agreements and commitment letters relating to funds borrowed to make a proposed acquisition.
- Obtain copies of any invitations or tenders or advertisements making a tender offer to stockholders for purchase of their stock to be used in connection with a proposed acquisition.
- Obtain a signed financial statement from a proposed acquirer that includes detailed information on all significant assets and liabilities and on current and projected cash flow.

The agencies may require any additional information deemed necessary to make an independent determination of the accuracy and completeness of any information contained in a change in control notice.

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/s/ William Taylor
Director, Division of Banking Supervision and Regulation
Board of Governors of the Federal Reserve System

/s/ Paul G. Fritts
Director, Division of Bank Supervision
Federal Deposit Insurance Corporation

/s/ Darrell Dochow
Executive Director, Office of Regulatory Policy, Oversight, and Supervision
Federal Home Loan Bank System

/s/ Nicholas Veghts
Director, Department of Supervision, Office of Examination and Insurance
National Credit Union Administration

References

Background Investigations

Law 12 USC 1817(j)(2)(B)
Regulations 28 CFR 16.34, 20.33, 50.12

Change in Bank Control

Law 12 USC 1817(j)
Regulation 12 CFR 5.50

Changes in Directors and Senior Executive Officers

Law 18 USC 1831i
Regulation 12 CFR 5.51

Civil Money Penalties

Laws 12 USC 504, 1818(l); 18 USC 1001, 1007
Issuance PPM-5000-7 (Rev.)

Crimes and Penalties

Law 18 USC 1001

Depository Institutions Management Interlocks Act

Laws 12 USC 3201-3208
Regulation 12 CFR 26

Federal Branches and Agencies

Laws 12 USC 35, 3101-3111
Regulation 12 CFR 28

Organization of a National Bank

Law 12 USC 21
Regulation 12 CFR 5.20

Penalty for Unauthorized Participation by Convicted Individual

Law 12 USC 1829