Regulatory Bulletin

Handbooks: Thrift Activities (TA); Application Processing (AP)
Subjects: Management Assessment; Fraud/Insider Abuse (TA) Change in Control; Rebuttals; De Novo/Permission to Organize; Holding Company Acquisition; Hiring of Convicted Persons (AP)

Sections: 130; 135 (TA) 310; 320; 430; 440; 610; 830 (AP)

RB 20
November 20, 1989

Proper Investigation of Applicants and Increased Communications Between the Office of Thrift Supervision and Other Financial Institution Regulatory Agencies

Summary: This Bulletin reminds Office of Thrift Supervision (OTS) personnel of the need to pursue every reasonable source of information in determining the integrity and competence of persons or entities making application to obtain control of thrift institutions, engage in new activities, or obtain waiver of regulatory limitations. SP-51a, dated March 16, 1988, is hereby rescinded with the issuance of this Bulletin. Securities certifications are no longer required and will no longer be requested from the applicants.

For Further Information Contact:
OTS for the District in which you are located, or the Thrift Programs Division of the Office of Thrift Supervision, Washington, DC, (202) 785-5407.

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Introduction

There have been occasions where individuals who were owners, managers, or major borrowers of failed financial institutions have subsequently obtained approval to acquire control of thrift institutions. In other cases, individuals responsible for failed FDIC-insured banks and who also controlled insured thrift institutions were able to obtain approvals to open new thrift branches in the communities where their commercial banks had failed. Also, there have been instances where directors or managers unsatisfactorily operated a thrift that subsequently failed in one district, and later were approved to start or gain control of another institution in a different district.

One of the reasons for approval of unqualified applicants has been the lack of consistent communications between the financial institution regulatory agencies and between District Offices. Some Districts have established procedures for performing comprehensive background searches including the exchange of information with bank regulators regarding persons who are involved in both banks and savings institutions, and have been involved in failed or poorly run institutions, or are suspected of questionable or fraudulent activities. However, the lack of national consistency of such procedures suggests the need to adopt a national policy.

To meet this need, the OTS has begun to develop a program of nationally consistent policies and procedures for obtaining and appropriately exchanging information on individuals and entities of dubious character or ability. We will call upon the OTS District Offices, the Office of Chief Counsel, and the IG to participate in this effort. The results will appear in the next scheduled update of the various pertinent Regulatory Handbooks.

The purpose of this memorandum is to provide immediate guidance for OTS personnel to investigate applicants and exchange information with other financial institution regulatory agencies, pending completion of the national program mentioned above.

Policy Statement

OTS personnel who are responsible for reviewing applications of persons (or entities) applying for control of thrift institutions, board of director or management positions (under certain circumstances such as the provisions of Section 914 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989), or other critical applications are expected to make every reasonable effort to investigate the background and integrity of those individuals. In essence, OTS personnel should leave no stone unturned in determining the integrity and competence of applicants. It cannot be overemphasized that the people involved in a thrift are equal in importance to the economics and viability of the institution's operations.

The District Office should start background investigations immediately upon the occurrence of a triggering event—receipt of the application, in most cases—and should gather information from appropriate sources, which may include:

- Application forms and attachments (biographical and financial disclosures)
- Resumes of officers and affiliates
- Applicant certification (Appendix A) and Form 1393s
- FBI name check
- FBI fingerprint check
- Interpol check
- Credit bureau reports
- Independent audit reports of affiliated institutions and firms
- SEC filings
- LEXIS/NEXIS search
- CIIS search
- U.S. Department of Justice Criminal Division (Criminal Referral Database)
- United States Customs Service namecheck
- Examination reports of affiliated, or formerly affiliated thrift institutions
- State examination reports
- Discussions with personnel at affiliated or former institutions
- Discussions with independent auditors
- Discussions with SAs or Criminal Referral Unit managers at other District Banks
- Discussions with examiners and field managers
- Discussions with supervisory personnel at other regulatory agencies

Depth of Review

The depth of the review of the application and the individuals involved will depend on the circumstances. Questions to consider when evaluating an application may include:

- What are the applicant's qualifications and experience?
- Does the applicant have any affiliations with other financial institutions?
- Are there any conflicting outside business interests?
- Does the applicant have any loans with the subject and other financial institutions?
- Does the applicant have a criminal or arrest record?
- Has the applicant ever filed bankruptcy?
- Does the applicant have the ability to meet present and any anticipated future financial obligations?

A risk based approach should be followed with limited background checks for persons considered to pose minimal risks to the institution, and expanded background checks for persons who have previously been or are likely to become involved with other financial institutions or who have conflicting business interests. Thus, a more thorough background check would be performed on a real estate developer seeking controlling interest in an institution, than would be performed on a local physician or businessman with no outside business interest seeking board membership.

Communication with Other Regulatory Agencies

When affiliated persons within a savings association are or have been affiliated with other financial institutions, the OTS personnel considering the application or other matter should contact the regulators of the other institution(s) to determine if the institution has experienced significant problems, and if the person's involvement was the basis for any regulatory concerns. In such cases, additional research should be undertaken to determine what role the insividual played in those problems. Conversely, when OTS personnel are aware of individuals involved in insured institutions regulated by other agencies, information concerning problems with the thrift institutions controlled by those individuals should be made available to the appropriate regulatory agencies. Thus, it is desirable to establish and maintain an open line of communication between the OTS and other financial regulatory agencies.

Information relating to (1) the transfer of low quality assets among institutions, (2) changes in control, and (3) enforcement actions must also be communicated to other financial institution regulatory agencies in accordance with SP-42. SP-42 provides specific guidance on the information that must be provided to other District Offices, state regulatory agencies, and appropriate Federal regulatory agency regional offices.

Applicant Certification

The attached certificate must be obtained from all applicants for the following: Change in Control Notice and Rebuttals, Permission to Organize, and Holding Company Acquisition applications. This certification must be obtained in order to thoroughly evaluate the applications against the relevant statutory criteria. It should be obtained upon receipt of the application or notice or, at a minimum, as part of the first request for additional information from the applicant or organizers. In

any case where applicants are unable or unwilling to execute the certification, the supervisory agent should allow them an opportunity to explain the circumstances that prevent such execution and submit a modified certification. The modified certification should clearly indicate that it has been modified and the reasons for such modification. The supervisory agent may then consider the explanation in making recommendations with respect to the application.

The failure to execute certifications without adequate explanation or unwarranted delays in submitting executed certifications reflects unfavorably on applications and may be symptomatic of underlying problems. While it may not be appropriate to set rigid rules concerning the approval or disapproval of applications, adverse information discovered during an investigation should be appropriately weighed in the decision process. Since it is not desirable to have individuals who are considered a proximate cause of problems of other institutions or those who have had a history of association with problem thrift institutions, approval of their applications is generally inappropriate.

Obtaining certifications from all parties is a requirement that cannot be waived by the District Office. Therefore, when circumstances such as adverse information, failure of some of the parties to execute the required certifications, or complex legal issues warrant special consideration of applications or notices, and the District Office is inclined toward approval, the application must be submitted to Washington for a decision.

Confidential Individual Information System (CIIS)

Whenever District Office personnel become aware of, or suspect, that an individual is involved in questionable activities and is affiliated with a thrift under their supervision, OTS personnel should make a CIIS inquiry about the individual. If no information is available on CIIS, relevant information that is subsequently obtained through investigation should be recorded in the CIIS.[1] Furthermore, when such individuals are known to be involved in thrift institutions within other districts or commercial banks regulated by the banking agencies, OTS District personnel should contact the appropriate persons at such district or agency to request and communicate relevant information concerning those individual(s). Once obtained, relevant information must be entered into the CIIS System and updated as necessary.

References

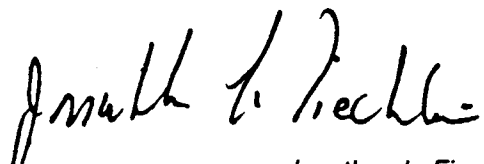
OTS (former FHLBB) Form 1364: Confidential Individual Information System

CIIS User Guide (Issued by the Office of Regulatory Activities MIS Department in February 1989)

(12 CFR Section 574.3(b))

Attachments
- Applicant Certification
- Joint Statement of Guidelines on Conducting Background Checks and Change in Control Investigations

1 OTS Personnel must be aware of the requirements of the Privacy Act of 1974, 5 U.S.C. Section 552a when accessing or entering data into the CIIS or transferring information from CIIS to another agency. Please refer to the CIIS User Guide for a discussion of how to use the system and the requirements of the Privacy Act that relate to entering data into the CIIS.



— Jonathan L. Fiechter
Senior Deputy Director, Supervision Policy

Applicant Certification

Instructions

The following certification is specifically requested in connection with your pending appplication. For the purposes of this certification, the term "Applicant" includes the party submitting the application; all controlling persons of the Applicant, as defined in 12 CFR § 561.28, and persons who otherwise directly or indirectly exercise a controlling influence over the management or policies of the Applicant; affiliates and companies controlled by the Applicant; and affiliates or companies controlled by controlling persons of the Applicant. Each entity or person so defined as "Applicant" should complete a certification; either separately or jointly with other entities or persons defined as an Applicant.

1. Applicant hereby certifies that it/he has not been the subject of any criminal, civil or administrative judgments, consents, undertakings or orders, or any past or ongoing indictments, formal investigations, examinations, or administrative proceedings (excluding routine or customary audits, inspections and investigations) issued by any federal or state court, any department, agency, or commission of the U.S. Government, any state or municipality, any self-regulatory trade or professional organization, or any foreign government or governmental entity, which involve:

   (i) commission of a felony, fraud, moral turpitude, dishonesty or breach of trust;

   (ii) violation of securities or commodities laws or regulations;

   (iii) violation of depository institution laws or regulations;

   (iv) violation of housing authority laws or regulations;

   (v) violation of the rules, regulations, codes of conduct or ethics of a self-regulatory trade or professional organization;

   (vi) adjudication of bankruptcy or insolvency or appointment of a receiver, conservator, trustee, referee, or guardian.

   With respect to an Applicant that is not a natural person, the time period covered by this paragraph is the period of time during which any person currently a controlling person of the Applicant, if any, was a controlling person, and during which any person currently a member of the Board of Directors or executive management of the Applicant was a member of the Board of Directors or executive management of the applicant. With respect to natural persons, the time period covered is the period of time beginning with such person's majority.

2. Applicant has never filed:

   (i) any application relating to the organization of or obtaining insurance of accounts for a bank, savings bank, or savings and loan association;

(ii) an application to acquire any of the foregoing under the Savings and Loan Holding Company Act or the Bank Holding Company Act;

(iii) a notice relating to a change in control of any of the foregoing under the Change in Savings and Loan Control Act or the Change in Bank Control Act; or

(iv) an application to acquire a foreign bank or parent thereof;

which was denied, or was withdrawn by the Applicant after receipt of formal or informal notice of a recommendation of denial.

3. If Applicant is filing a holding company application, Applicant does not own any equity securities of an insured institution or holding company thereof, other than the institution or company that is the subject of the application.

4. Applicant has no investments in other savings and loan associations in excess of the levels permitted under Section 10(e)(1)(A)(iii) of the Homeowners' Loan Act.

5. Applicant in its notice or application has disclosed the debts of all companies, partnerships, and joint ventures in which the Applicant has a controlling interest of 25 percent or more.

I hereby certify that the statements I have made herein are true, complete, and correct to the best of my knowledge and belief.

Date	Applicant
_____	_____
_____	_____
_____	_____
_____	_____

Federal Financial Institutions Examination Council

1776 G Street, NW, Suite 701 • Washington, DC 20006

Date: January 22, 1988

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

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 data bases 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

Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Federal Home Loan Bank Board, National Credit Union Administration, Office of the Comptroller of the Currency

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 is 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 U.S.C. 1817(j)) and the Change in Savings and Loan Control Act (12 U.S.C. 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; and

- 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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