

COMPTROLLER'S LICENSING MANUAL

Background Investigations



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Introduction

This booklet of the *Comptroller's Licensing Manual* summarizes the Office of the Comptroller of the Currency's (OCC) policies and procedures for investigating the backgrounds of individuals, companies, organizations, and other filers. For purposes of this booklet, a filer is any individual, group of individuals, or company or other organization involved in submitting to the OCC an application or notice seeking to enter the federal banking system by acquiring control or seeking to influence a national bank, federal savings association, or federal branch or agency of a foreign bank (collectively, banks). When it is necessary to distinguish among them, national banks, federal savings associations, and federal branches and agencies of foreign banks are referred to separately.

Generally, the OCC investigates the character, competence, experience, and integrity of those submitting filings related to changes in bank control; de novo charters; changes in directors and senior executive officers; conversions of credit unions, state banks, and other institutions to federal charters; and establishment of federal branches or agencies by foreign banks.

In conducting background investigations, the OCC requires filers to submit certain information and documents, generally including fingerprint cards and a signed "[Interagency Biographical and Financial Report](#)," as discussed in the "Procedures" section of this booklet.

Specifically, this booklet includes

- guidance on key OCC policies.
- a summary of the processes the OCC uses to conduct background investigations.
- specific filing requirements.
- a "Glossary" section of key terms.
- a "References" section with applicable laws and regulations.

The "Specific Procedures" section of this booklet explains how the OCC performs background investigations on U.S. citizens, foreign nationals, companies, and other filers. OCC background checks include

- standard background checks.
- optional background checks.
- foreign national background checks.

For more information on OCC background investigations, review other relevant booklets of the *Comptroller's Licensing Manual*. Refer to the "[General Policies and Procedures](#)" booklet.

For information on the types of filings for which the OCC routinely performs background investigations, refer to the following booklets of the *Comptroller's Licensing Manual*: "[Change in Bank Control](#)," "[Charters](#)," "[Conversions](#)," "[Director Waivers](#)," "[Changes in Directors and Senior Executive Officers](#)," and "[Federal Branches and Agencies](#)."

Key Policies

In the normal course of business, changes occur in the composition of a bank's board of directors and senior executive officers. Generally, the OCC is not directly involved in the bank's selection of directors and senior executive officers. The OCC considers the qualifications and background of proposed acquirers, directors, and senior executive officers. The OCC may conduct investigations when reviewing applications or notices filed pursuant to law, regulation, or any supervisory action initiated by the OCC. Federal laws and regulations provide that, when reviewing certain filings, the OCC must consider a filer's experience, competence, and integrity. The OCC may also consider character, financial ability, or willingness to direct or lead a bank's business in a safe, sound, and legal manner.

In reviewing a filing, the OCC may perform background investigations on organizers, senior executive officers, senior officers, directors, principal bank shareholders, and general managers of federal branches or agencies. The OCC performs background checks on filers seeking to control a bank.

The OCC closely examines the backgrounds of filers whose previous experience contributed to a failed or problem financial institution or when other facts may raise questions about competence, character, or personal or fiduciary integrity.

The OCC reviews and verifies the information in each filing. Any material misrepresentation or omission of fact may result in the OCC's disapproval of a filing. The OCC may disapprove a filing and take action against any filer, including referral for criminal action, if the agency determines that the materials submitted were misrepresented or omitted in an attempt to mislead the OCC. An approval can be rescinded if the OCC subsequently learns that the filing included material misrepresentations or omissions.

If the background investigation provides adverse information on a filer, the OCC—to the extent permissible—notifies and allows the filer to complete, correct, or challenge the information before the OCC makes a decision.

Charters and Federal Branches or Agencies

The OCC has developed guidance to assist banks in reviewing and selecting senior executive officers, described in the "Banks Selecting Senior Executive Officers Before Submitting Filings" section of this booklet. Bank directors and organizers of a de novo bank may use this publication as a guide for obtaining relevant work experience and background information about proposed senior executives and management officials.

The chief executive officer (CEO) and all senior executive officer positions (as defined in the "Glossary" section of this booklet) in a new bank charter or federal branch or agency must receive an OCC non-objection decision before commencing employment. Adverse information about the proposed CEO could reflect negatively on the filing and may cause the OCC to act unfavorably.

The organizers of a de novo bank should name the proposed CEO in the charter filing. Filers may, however, request confidential treatment of the name of the CEO or senior executive officers during the charter application review phase.

If a proposed officer requests that his or her present employer(s) not be contacted, the OCC determines whether the information is needed and whether it is available through alternative sources. The OCC notifies the proposed officer in advance if there is a need to contact the current employer(s).

Withdrawal Requests

At any time during the application process, but before a final decision, a filer may submit a written request formally withdrawing from the background investigation process.

Convicted Individuals

12 USC 1829 prohibits any individual who has been convicted of a crime involving dishonesty, breach of trust, or money laundering, or who has entered into a pretrial diversion or similar program in connection with prosecution of such offense(s), from owning, controlling, participating in the affairs of, or becoming an affiliated party of an insured depository institution without the prior written consent of the Federal Deposit Insurance Corporation (FDIC). Additionally, the law provides that if a person is convicted of certain enumerated offenses, the FDIC cannot consent to an application filed by such person for a period of 10 years.

If a bank proposes to seek the FDIC's prior written consent under 12 USC 1829, the bank must file on the individual's behalf ¹ a written waiver request with the FDIC. If the bank obtains consent from the FDIC with respect to the individual, the OCC will consider the FDIC's decision and the bank's recommendations during its background investigation. The OCC retains the authority, however, to object consistent with existing policy and applicable laws and regulations.

Privacy

The OCC maintains the privacy of personal information and the security of its computer systems. With respect to the receipt, use, and disclosure of personal information, the OCC makes every effort to comply with applicable federal law, including the Privacy Act, the Paperwork Reduction Act, and the Freedom of Information Act.

The OCC's Licensing Division shares private information with other government agencies *only* to the extent required to perform background investigations. Moreover, the OCC does not collect or create individual profiles with the information provided and does not share information with any non-government entity.

¹ The FDIC may permit the individual, rather than the bank, to request the FDIC's consent.

The OCC will

- protect personal information and data in accordance with the Privacy Act.
- protect sensitive information from disclosure to unauthorized individuals or groups.
- acquire and use sensitive information only in accordance with the performance of official duties.

Application Process

Generally, the OCC conducts background investigations on certain filers when reviewing certain applications or notices, including the following:

- New bank charters.
- Conversions of non-federal charters to a federal charter.
- Citizenship or residency waivers for directors of national banks pursuant to 12 USC 72.
- Changes in bank control.
- Establishing federal branches and agencies by foreign banks.
- Changes in directors or senior executive officers for banks subject to the filing requirements of 12 USC 1831i and 12 CFR 5.51.
- Enforcement actions.
- 12 USC 1818 approval condition.

When applicable, filers should include certain specific information and forms to authorize the OCC to conduct background investigations, and should provide enough information about the filers for the OCC to conduct a background investigation and make a decision. Such information includes

- signed consent forms authorizing third parties such as credit bureaus, law enforcement agencies, and the Internal Revenue Service (IRS), to provide information, including financial, credit, tax, immigration, and criminal investigative information, to the OCC.
- fingerprints, on a fingerprint card form provided by local law enforcement or the OCC.
- a signed “[Interagency Biographical and Financial Report](#).”

These documents are generally filed as attachments to other filings submitted to the OCC.

When the OCC completes a background investigation and issues an approval, non-objection, or notice of intent not to disapprove, but the related filing remains undecided or a decided filing does not result in a consummated transaction after an extended period, the results of the background checks may become outdated. This may happen with an application for a new charter, because the OCC allows organizers of the proposed bank 18 months from the OCC’s preliminary conditional approval to open the bank. The OCC may update, when appropriate, a background investigation if more than one year lapses between the OCC’s decision and the consummation of the related transaction.

Specific Procedures

Standard Background Checks

The OCC performs standard background checks through the following:

- Credit bureaus.
- Federal Bureau of Investigation.
- Federal and state regulators of banks or other entities.
- IRS.
- U.S. Department of Homeland Security.
- Publicly available online resources. The OCC uses online services that compile legal, news, and business information. Inconsistencies between the submitted “[Interagency Biographical and Financial Report](#)” and the online resources available to the OCC may require additional information, clarification, or an explanation and may delay the review and processing of the filing.
- FinCEN, which is a bureau of the U.S. Department of the Treasury that administers and enforces the provisions of the Bank Secrecy Act (BSA). In this capacity, it collects and maintains information filed by financial institutions under the BSA reporting obligations. This includes Suspicious Activity Reports and Currency Transaction Reports.
- Enforcement Action Report System (EARS), which is an OCC database that contains historical criminal referral information and information on individuals who have been subject to administrative enforcement actions. EARS maintains financial institution regulatory agencies’ records when the filers have been involved with financial institutions under another agency’s jurisdiction (for example, the FDIC, the Board of Governors of the Federal Reserve System, or the National Credit Union Administration).

Waivers

The OCC may waive any standard background investigation if the check would be redundant or would not serve the OCC’s purposes for background investigations. The OCC may waive or perform a limited background check for a filer who serves as a director or senior executive officer of an “eligible” depository institution.² OCC staff documents all authorized background check waivers, including the rationale for determinations made regarding waivers, whether granted or denied.

If the OCC is ready to act on a filing 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 is forthcoming from the unanswered inquiries, the OCC may act on the filing by inserting the following qualification into the decision letter:

“The OCC has not received certain background check information requested. If adverse information is received from the background checks, the OCC may act on the filing and, in

² An “eligible” depository institution is defined in 12 CFR 5.3(h).

certain circumstances, may include conditions or other language to reserve its right to take further action if adverse information is received.”

Optional Background Investigations

The OCC pursues additional background checks when deemed appropriate. Such checks may include requests for background information from the following:

- U.S. Commodity Futures Trading Commission
- State and local law enforcement agencies
- Federal Trade Commission
- Local courts
- National Association of Securities Dealers
- U.S. Securities and Exchange Commission

Foreign Nationals Background Investigations

The OCC performs additional background investigations on foreign nationals (non-U.S. citizens). The OCC determines the nature and scope of the proposed position of an affected filer and decides, on a case-by-case basis, the extent of the information required to reach a determination on the appointment. The OCC anticipates that the bank will conduct an independent review and engage in appropriate due diligence activities for foreign nationals seeking entry into the federal banking system. Typically, this initial bank review results in obtaining and submitting applicable supporting documentation in connection with the filing.

These 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 OCC’s International Bank Supervision Division.
- the Central Intelligence Agency.
- the U.S. Department of State.
- appropriate foreign government regulatory authorities.³

International Information Sharing Agreements

The OCC maintains information sharing agreements with a variety of countries and applicable foreign government financial authorities. The nature and scope of these agreements reflect cooperation with the appropriate foreign government financial regulatory authorities to ensure a safe and sound banking system. Information shared may include information with respect to cross-border bank leadership appointments within the federal banking system.

³ There are special background procedures for 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. They must obtain their own record from the National Policy Agency.

The OCC determines the nature and scope of the proposed position of an affected filer and decides, on a case-by-case basis, the extent of the information required to reach a determination. The OCC anticipates that the bank will conduct an independent review and engage in appropriate due diligence activities for foreign nationals seeking entry into the federal banking system. Typically, this initial bank review results in obtaining and submitting applicable supporting documentation in connection with the filing.

Fingerprint Cards and IRS Tax Check Waivers

Most OCC background investigations include the review of fingerprint cards and [IRS Tax Check Waiver](#) forms submitted by filers.

Filers are required to obtain OCC-encoded fingerprint cards from the appropriate OCC licensing or supervisory office. Filers must have the cards completed by a local law enforcement office or by an appropriate third-party fingerprinting service.

Filers undergoing investigation should complete the “IRS Tax Check Waiver” form when required. To the extent applicable, foreign nationals, as U.S. tax filers with U.S. tax identification numbers, are also required to submit the IRS Tax Check Waiver form.

Change in Bank Control Requirements

The Change in Bank Control Act requires the OCC and each of the other federal banking agencies to prepare and retain records of reports of any investigations that such agency conducts.

Certain entities, such as companies, partnerships, trusts, or other corporate structures, may seek to control a bank and may be required to file the appropriate prior notice with the OCC under the Change in Bank Control Act. As appropriate, the OCC conducts background investigations on these entities to the same degree as if they were individuals seeking to control a bank. These entities should file the “[Corporate Background and Financial Report](#)” (which is similar to the “Interagency Background and Financial Report” for individuals) along with appropriate consent forms. Representatives of corporate filers undergoing background investigations should consult with the appropriate OCC licensing office regarding required filing forms.

Application Procedures

Filers

1. If the filing may involve the OCC performing a background investigation, the filer should contact the appropriate OCC office for guidance on which forms should be completed and submitted with the filing. If a joint financial statement is provided, both parties must sign and date.
2. As applicable, the filer completes and submits the [“Interagency Background and Financial Report.”](#) If a field in the report does not apply, enter “not applicable” or “N/A.” Attach any supporting documentation that may be required to fully respond to the information requested. The report must be signed and dated.
3. If the subject of the background investigation is a corporation, partnership, limited liability company, trust, or other corporate entity, an authorized individual should complete and submit the [“Corporate Background and Financial Report.”](#) If a field in the report does not apply, enter “not applicable” or “N/A.” Attach any supporting documentation that may be required to fully respond to the information requested. The report must be signed and dated.
4. Complete and submit the [“IRS Tax Check Waiver”](#) form for the individual or company under investigation. This form authorizes the IRS to release information to the OCC. The form must be signed in ink and dated by hand. Complete the information as shown. If the OCC application number or the related filing is not available, the OCC will fill in that field when received.
5. Complete and submit a signed [“Authorization for Release of Information.”](#) This release provides authorization for the OCC to make background investigation inquiries to third parties. The release must be signed and dated.
6. As applicable, request fingerprint cards from the appropriate OCC licensing office or supervisory office. Anyone subject to the full background investigation process should complete two fingerprint cards. The second card helps ensure that at least one of the cards is legible. Fingerprints may be taken at a local law enforcement office or by an appropriate third party. Complete all of the information at the top of the card in ink. If a field does not apply, enter “not applicable” or “N/A.”
7. Respond to any requests from the OCC for additional information or clarification on the background investigation information. The OCC, to the extent permissible, notifies the filer if the OCC finds any adverse information during the background investigation process. The filer may correct any information previously submitted, or challenge any of the background investigation results to the extent applicable.

Banks Selecting Senior Executive Officers Before Submitting Filings

The OCC has developed guidelines to assist bank directors and proposed directors of de novo banks serving as selecting officials in their review and selection of proposed senior executives (candidates).

Before submitting filings to the OCC, selecting bank officials should do the following:

1. Require each candidate to submit the 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 (for example, positive, negative, or no comment).
4. Contact the candidate’s previous employers and summarize by name and employer the nature of comments received.
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 the following:
 - Size and type of loan portfolio supervised, record of loan portfolio performance, 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. Establish 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.
8. Assess the materials required for submission to the OCC and develop the board’s written evaluation of the proposed senior executives.

Glossary

Director: A member of a bank's board of directors. The term does not refer to a director of a foreign bank operating a federal branch or an advisory director who does not have the authority to vote on matters before the board and who solely provides general policy advice to the board or any committee.

Executive officer: An officer of a bank who participates in or has the authority to participate in (other than in the capacity of a director) the bank's major policymaking functions, whether or not the individual has an official title, is designated as an assistant, or serves without compensation. Executive officer positions normally include the board chairman, president, every vice president, cashier, secretary, treasurer, chief investment officer, and any other individual the OCC identifies as having significant influence over major policymaking decisions. (See senior executive officers.)

Federal agency: An office or place of business, licensed by the OCC and operated by a foreign banking organization in any state, which may engage in the business of banking—including maintaining credit balances, cashing checks, and lending money—but may not accept deposits or exercise fiduciary powers.

Federal branch: An office or place of business, licensed by the OCC and operated by a foreign banking organization in any state, which may engage in the business of banking, including accepting certain deposits.

Federal savings association: A federal savings association or federal savings bank chartered pursuant to section 5 of the Home Owners' Loan Act, 12 USC 1464.

Foreign national: An individual who is not a U.S. citizen.

National bank: An insured or uninsured national banking association.

Organizers: The individuals who file and sign a new charter application. The OCC may approve additional organizers and organizing directors throughout the charter process, subject to review and non-objection.

Principal shareholder: An individual or entity, other than an insured bank, who directly or indirectly, or acting through or in concert with one or more individuals, owns, controls, or has the power to vote more than 10 percent of any class of voting securities of the proposed bank, as defined in 12 USC 375b and implemented by Regulation O (12 CFR 215.2(m)).

Senior executive officers: The CEO, chief operating officer, chief financial officer, chief lending officer, chief investment officer, or other individual the OCC identifies to the national bank who exercises significant influence over, or participates in, major policymaking decisions of the bank without regard to title, salary, or compensation. The term also includes employees of entities retained by a national bank, federal savings association, or federal branch to perform such functions in lieu of directly hiring the individuals and, for a federal branch operated by a foreign bank, the individual functioning as the chief managing official of the federal branch.

References

The following references apply to both national banks and federal savings associations, except as otherwise noted.

Background Investigations

Regulations 12 CFR 5.7, 28 CFR 16.34 and 50.12

Change in Bank Control

Law 12 USC 1817(j)

Regulation 12 CFR 5.50

Changes in Directors and Senior Executive Officers

Law 12 USC 183li

Regulation 12 CFR 5.51

Civil Money Penalties

Law 12 USC 1818

Convicted Individuals

Law 12 USC 1829

Crimes and Penalties

Law 18 USC 1001

Federal Branches and Agencies

Law 12 USC 3101–3111

Regulation 12 CFR 28

Formation of a National Bank or Federal Savings Association

Law for national banks 12 USC 21

Law for federal savings associations 12 USC 1464 and 1816

Regulation 12 CFR 5.20