




U.S. Small Business Administration
Washington, D.C. 20416

**OFFICE OF
INSPECTOR GENERAL**

March 30, 2001

TO: Jeanne M. Sclater
Acting Associate Deputy Administrator
for Capital Access

FROM: Mary Jeanne R. Martz 
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for Inspection and Evaluation

SUBJECT: Advisory Memorandum:
Timeliness of Formal Character Determinations on Loan Applicants
(#01-03-01)

Summary

The Small Business Administration (SBA) attempts to prevent fraud and monetary loss by making any loan applicant who discloses a prior or pending criminal record subject to a formal character determination. Some district office officials are concerned that delays in this process can hinder customer service by slowing the processing of loan applications and thus placing some prospective borrowers' businesses at risk. The Office of Inspector General (OIG) believes that clarifying responsibilities and using e-mail in the notification process can improve timeliness. The Office of Capital Access (OCA) concurred that this report addresses its concerns. OCA's comments are attached.

Background

SBA requires each principal of a small business concern seeking financial assistance to be of good character. This same requirement applies to principals of Certified Development Companies seeking to participate or participating in the Agency's 504 program. Each individual principal must complete a Statement of Personal History (SBA Form 912). If he/she discloses the existence of a prior or pending criminal record, the local supervisory SBA financial assistance official must—at least temporarily—cease processing the loan application and request both a name and fingerprint check. Accordingly, the local processing office must submit the completed Form 912 and fingerprint card to the OIG Office of Security Operations (OSO). OIG/OSO then requests a name and fingerprint check from the Federal Bureau of Investigation (FBI).

There are exceptions to these procedures. The local official can permit processing of the loan if the applicant disclosed a single minor offense within the last ten years, several



minor offenses remote in time, or a prior offense cleared on a previous loan application when no subsequent offense has occurred. Nonetheless, a name check—but not a fingerprint check—must be requested.

After OIG/OSO receives the results from the FBI, it compares them with information provided by the loan applicant to determine whether to issue a clearance memorandum to the submitting SBA office or to make a Character Eligibility Referral (CER) to the Office of Financial Assistance (OFA). A clearance memorandum is issued when the FBI's information corroborates that submitted by the applicant and the criminal history does not involve a major or violent crime. Conversely, a CER is made when the applicant fails to fully disclose his/her criminal history, or the history involves a major or violent crime. In that event, OFA must subsequently make a formal character determination on the loan applicant and decide whether to permit or preclude the processing or disbursement of the loan.

Time Necessary for the Process

Minimizing the time needed for a formal character determination requires prompt action by all parties involved. First, as indicated in an August 1995 procedural notice, the SBA field office submitting the Form 912 and fingerprint card must ensure they are complete and legible. An OFA staff person involved in this process noted that sometimes there are delays in the field office's submission of Forms 912 and the fingerprint forms, thus contributing to initial delays. Moreover, incomplete documents or the use of incorrect forms, particularly by Certified Development Companies, have required that forms be sent back to the districts, further delaying the process.

Next, after receiving the completed documents, OIG/OSO usually takes no more than a week to submit them to the FBI. From SBA's perspective, the time needed by the FBI is a factor in the process that cannot be controlled. Before its conversion to an automated fingerprint identification system, the FBI sometimes needed four to six months for manual searches. Timeliness has since improved. According to an OIG official, roughly 100 names per month are sent to the FBI for fingerprint checks, with usually no more than four checks being past due, i.e., the FBI needing more than 30 days to provide results. However, from September 1999 through March 2000, the past due tally ranged from 12 to 45 names per month because of the FBI's transition to a new system.

Currently, the FBI can perform fingerprint checks in seven to 14 days. However, name checks can take up to 30 days if the FBI has to retrieve multiple paper files—a time-consuming process.

Once OIG/OSO receives the FBI results, it has seven calendar days to summarize and transmit those results to OFA. According to a 1992 OIG memorandum to OFA and other offices, OFA then has 30 calendar days to make a formal character determination on an applicant—a standard OFA still uses. The final step is to inform the submitting office and OIG/OSO of the final character determination.

OFA has sometimes needed more than 30 days. According to an OFA official, a major reason is that staffing shortages required shifting individual workloads in order to complete other high priority work. Another official noted that conflicting work priorities sometimes resulted in character determinations being completed without the formal paperwork being sent promptly to OIG/OSO and the district offices. Nonetheless, OFA officials believe that recent small increases in staffing should relieve at least some of the workload burden.

Another reason for delays is that some loan applications are simply anomalies requiring special attention. In such cases, SBA field offices may need to follow up with the loan applicants to obtain more information, thus affecting timeliness.

Improving Timeliness

There are four aspects of the character determination process over which SBA has some control:

1. The submitting office's timely and correct completion of the Form 912 and fingerprint card;
2. OIG/OSO's prompt transmission of the completed Form 912 and fingerprint card to the FBI;
3. After receipt of the FBI results, OIG/OSO's timely issuance of either a clearance memorandum to the submitting office or a CER to OFA; and
4. OFA's issuance of its formal character determination within 30 days of receiving the CER and its immediate communication of that determination to the submitting office and OIG/OSO.

Improving the timely and correct completion of documents handled by the submitting office (item #1) should require only a procedural reminder. OIG/OSO's handling of the documents and its issuance of a clearance memorandum or CER (items #2 and #3) appear to be timely. OFA's challenge (item #4) should be partially solved by the addition of new staff. However, communicating the formal character determination in a timely manner will require an additional measure. To prevent delays at the close of the process, OFA has several options, all of which involve using e-mail.

Option 1. OFA could send an advance e-mail disclosing its decision to the relevant district director, the team leader of the district office's economic development staff, and OIG/OSO. The official signed hard copy would be transmitted at a later timely date. The e-mail would alert officials regarding the forthcoming action so that the district office could, if applicable, resume processing the loan. However, the signed hard copy would still be the official confirmation with legal force. According to an

OFA official, OFA has occasionally used this “heads up” e-mail approach successfully in these situations.

This option presents two security concerns. First, unauthorized parties might alter the e-mail’s contents and clear an applicant not of good character when OFA intended otherwise. While this is possible, it is unlikely to cause irreparable harm. The time required to handle a loan should be long enough for the district office to identify any discrepancy between the original e-mail and the subsequent signed character determination before funds are disbursed. The second and more basic risk is unauthorized parties viewing the e-mail, an issue covered in the next option.

Option 2. A more conservative option would be to send an advance e-mail that does not identify the business or individual directly. The e-mail could use an alternative identifier such as a file number, or it could omit the identifier altogether and simply inform the field office that a final determination was about to be faxed. Either technique would reduce the risk of unauthorized parties obtaining confidential information from an e-mail and later using that information against the loan applicant or the Agency. Moreover, OFA would still be able to routinely communicate its decisions rapidly.

Option 3. Another option would be for an e-mail—possibly enhanced with digital signature technology—to serve as the official “paperwork.” However, because of operational and legal issues associated with proving electronic documents’ authenticity, a completely paperless option is not currently available and is unlikely to be available in the immediate future. In addition, even advanced technology is unlikely to help in the small percentage of anomalous situations that require special handling.

Regardless of the option(s) OFA chooses, improving timeliness will require clarifying participating offices’ responsibilities, timeframes, and methods of communication. As SBA’s role and technology change, the Agency likely will need to update such guidance every few years.

Recommendation

To improve the timeliness of OFA’s formal character determinations on loan applicants, OFA and OIG/OSO should jointly prepare a procedural notice outlining (1) the responsibilities of all participating offices—including the originating offices—in terms of timeframes and required documentation, and (2) how e-mail will be used to provide advance notice of OFA’s final decisions.

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U.S. SMALL BUSINESS ADMINISTRATION
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Date: March 29, 2001

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From: *Jeanne M. Sclater*
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Subject: Final Draft Advisory Memorandum

The Office of Capital Access has reviewed the final draft advisory memorandum on the Timeliness of Formal Character Determinations on Loan Applicants. We concur that the report addresses our concerns and believe that the current process will greatly improve the timeliness of our handling of those cases.

The professionalism of your staff is always appreciated. If you have any questions, please contact Greg Diercks at 205-7538.

