



FEDERAL DEPOSIT INSURANCE CORPORATION

# DIRECTIVE SYSTEM

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**TO:** All Divisions and Offices

**FROM:** Michael E. Bartell  
Chief Privacy Officer

Douglas H. Jones  
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**SUBJECT:** Administration of the Privacy Act

**1. Purpose** To update procedures and provide guidance for the appropriate collection, maintenance, use and/or dissemination of records subject to the Privacy Act of 1974 (Pub. L. No. 93-579, 88 Stat. 1896, codified as amended at 5 U.S.C. § 552a).

**2. Revision** FDIC Circular 1031.1, The Privacy Act of 1974: Employee Rights and Responsibilities, dated March 29, 1989, is hereby revised and superseded.

**3. Scope** The provisions of this circular apply to all FDIC personnel and contractors with access to records subject to the Privacy Act.

**4. Background** The Privacy Act was passed by Congress to address concerns about the collection and use of information about individuals by the Federal Government. The Privacy Act seeks to balance the need of Federal agencies to collect and maintain information with the right of individuals to be protected against unwarranted invasions of their privacy. In general, the Privacy Act allows individuals to learn how Federal agencies collect, maintain, use, and disseminate agency records containing their personal information, and it helps to protect confidentiality by restricting agency disclosure of the records. The Privacy Act also allows individuals to gain access to their personal nonexempt records, to request an accounting of disclosures made to others, and to seek correction or amendment of records that are inaccurate or incomplete.

**5. Policy**

It is the policy of the FDIC that all FDIC personnel and contractors comply with the Privacy Act, FDIC Privacy Act Regulations at 12 C.F.R § 310, and FDIC Privacy Program Policies found at [www.fdic.gov/about/privacy](http://www.fdic.gov/about/privacy).

**6. Definitions**

- a. **Individual.** A person who is either a U.S. citizen or an alien lawfully admitted for permanent residence.
  
- b. **Record.** Any item, collection, or grouping of information about an Individual that is maintained by the FDIC in a System of Records, including, but not limited to, his/her education, financial transactions, medical history, and criminal or employment history and that contains his/her name, or the identifying number (such as a social security number), symbol, or other identifying particular assigned to the Individual, such as a finger or voice print, or a photograph.
  
- c. **System of Records.** A group of any Records under the control of the FDIC from which information is retrieved by the name or by some identifying number, symbol, or other identifying particular assigned to an Individual.
  
- d. **System of Records Notice (SORN).** A notice published in the Federal Register that describes an FDIC System of Records.
  
- e. **System Manager.** The FDIC official identified in the SORN who is responsible for the operation and management of the System of Records.
  
- f. **Routine Use.** The use of a Record for a purpose compatible with the purpose for which the Record was collected.

**7. Administration of Records**

The following guidelines shall be used for the Administration of Records:

- a. Records shall be collected, used, disseminated, and/or maintained in a manner so as to ensure information integrity, security, and confidentiality.
  
- b. Records shall contain only such information about an Individual as is relevant and necessary to accomplish a purpose of the FDIC.
  
- c. No Records shall be maintained describing how an Individual exercises rights guaranteed by the First Amendment.
  
- d. Information which may be used in making determinations about an Individual's rights, benefits, and privileges under

## Administration of Records (cont'd)

Federal programs will, to the extent practicable, be collected directly from that Individual.

e. Each Individual who is asked to supply personal information which will be added to a System of Records will be provided a Privacy Act Statement stating the authority for the solicitation, the principal purposes for which the information will be used, whether supplying the information is mandatory or voluntary, and the Routine Uses which may be made of the information.

f. A SORN shall be published in the Federal Register prior to the establishment of a new or changed System of Records.

g. An accurate accounting of the name, address, date, nature, and purpose of all Record disclosures will be kept for the greater of five years or the life of the Record, except for disclosures made under subparagraphs 8.b.(1) and (2), below. The accounting shall be provided to the Individual named in the Record at his/her request, except for disclosures made under subparagraph 8.b.(7), below.

h. Individuals may have access to review and copy Records pertaining to themselves and to request that such Records be amended as appropriate.

i. Contracts that affect the maintenance or operation of a System of Records will comply with the Privacy Act.

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## 8. Nondisclosure of Records

a. No Record may be disclosed to any person (including FDIC personnel) or to another Federal agency without either a request from or the written consent of the Individual to whom the Record pertains.

b. **Exceptions.** A Record may be disclosed without either a request from or the written consent of the Individual to whom the Record pertains pursuant to one or more of the following exceptions:

(1) **Need to Know.** To FDIC personnel who have a need to know the information in the performance of their duties;

(2) **FOIA.** When required under the Freedom of Information Act;

(3) **Routine Use.** Pursuant to a published Routine Use for the particular System of Records at issue;

## **Nondisclosure of Records (cont'd)**

(4) **Bureau of the Census.** To the Bureau of the Census for purposes of planning or carrying out a census, survey, or related activity;

(5) **Statistical Research.** To a recipient who has provided adequate, advance written assurance that the Record will be used solely for statistical research, provided that the Record is to be transferred in a form that is not individually identifiable;

(6) **National Archives.** To the National Archives and Records Administration as a Record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the Record has such value;

(7) **Law Enforcement.** To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the FDIC specifying the particular portion desired and the law enforcement activity for which the Record is sought;

(8) **Emergency Circumstances.** In an emergency when the Individual's health or safety is at risk;

(9) **Congress.** To either House of Congress, or, to the extent of matters within its jurisdiction, any committee, subcommittee, joint committee, or joint subcommittee of Congress;

(10) **Government Accountability Office.** To the Comptroller General or authorized representative in the course of the performance of the duties of the Government Accountability Office;

(11) **Court Order.** Pursuant to the order of a court of competent jurisdiction; and

(12) **Consumer Reporting Agencies.** To a consumer reporting agency in accordance with section 3711(f) of Title 31 United States Code.

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## **9. Access to Records by Individuals**

a. An Individual may gain access to review and copy all or any portion of his/her Records contained in a System of Records upon written request to the FDIC Legal Division FOIA/Privacy Act Group together with appropriate proof of identity and payment of any applicable copying fees. A denial of an Individual's request

**Access to Records  
by Individuals  
(cont'd)**

for access to his/her Records may be appealed in writing to the FDIC General Counsel within 30 business days of the denial.

b. **Exemptions.** An Individual may not gain access to the following exempt Records:

(1) Information compiled in reasonable anticipation of a civil action or proceeding;

(2) Investigatory material compiled for law enforcement purposes (exceptions apply in certain non-criminal matters where benefits are denied the Individual);

(3) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for FDIC employment, to the extent that such disclosure would reveal the identity of a source who furnished information under an express promise of confidentiality; and

(4) Testing or examination material used solely to determine or assess Individual qualifications for appointment, the disclosure of which would compromise the objectivity or fairness of the testing or examination process.

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**10. Amendment of  
Records by  
Individuals**

An Individual may request the amendment of his/her Records alleged to be inaccurate, irrelevant, untimely or incomplete by written request to the FDIC Legal Division FOIA/Privacy Act Group together with appropriate proof of identity. Requests for amendment of Records will be referred to the System Manager of the System of Records in which the Record is contained for determination within 10 business days following receipt of such request. A denial of an Individual's request for amendment of his/her Records may be appealed in writing to the FDIC General Counsel within 30 business days of the denial. If the System Manager's denial of the requested amendment is upheld by the FDIC General Counsel, the Individual may file a statement of disagreement which must be included with any subsequent disclosure of the disputed Record.

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**11. Violations**

Failure to comply with the Privacy Act may result in a civil lawsuit for money damages against the FDIC. A willful violation of the Privacy Act may result in a criminal misdemeanor conviction and fines of up to \$5,000 against the responsible FDIC or contractor personnel. Examples of activities that could subject personnel to criminal sanctions include the knowing maintenance of a System of Records without a SORN or the willful disclosure of a Record absent one of the twelve access exceptions set forth in subparagraphs 8.b. (1) through (12), above.

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**12. Effective Date**

The provisions outlined in this circular are effective immediately.