

## **21. GUIDELINES AND PROCEDURES FOR COMPLETING AN INDIVIDUAL BACKGROUND SCREENING USING FORM CD-346, APPLICANT FOR FUNDING ASSISTANCE**

**A. Purpose** This chapter provides guidance for the initiation of the background screening process and review, evaluation, and management of an individual's information by program and grants administrative officials throughout DOC. The Department's policy seeks to protect both Federal funds and the integrity of its financial assistance programs by making and maintaining awards only to/with those applicants/recipients that are responsible, competently managed and committed to achieving the award objectives. The background screening process is a tool designed to assist program and grants administration officials in determining the responsibility, financial integrity and management principles of an organization proposed for funding, i.e., whether DOC should risk providing its funds to the entity, or continue providing funds after an award is made when a recipient's responsibility becomes an issue. Through the process, the Grants Officer obtains background information on the key individuals associated with applicants or current financial assistance recipient organizations. The Grants Officer determines whether those principals have a criminal record (criminal background investigation) or other adverse information exists, which significantly reflects on the principal's business integrity or responsibility. The background screening process may also include an inquiry into the financial status and affiliations of the key individuals and/or the organizations. The Grants Officer may accomplish the financial analyses by reviewing information and/or a credit report, when necessary.

**B. Authority and Background** This Chapter is issued pursuant to the authorities cited in Section B of Chapter 2. Prior to this issuance, the OIG performed individual background screenings for the Department. However, pursuant to the memorandum from the Assistant Inspector General for Auditing and Evaluation and the Assistant Inspector General for Inspections dated January 27, 2009, the DOC was informed that individual background screenings would no longer be performed on a regular basis by the OIG. Based on this decision, the DOC has determined that individual background screenings will be the responsibility of the Grants Officer and be required for certain organizations and individuals as stipulated in Section D of this chapter. Moreover, individual background screenings may be initiated by the Grants Officer at any time during the course of the award administration process when, in the judgment of the Grants Officer, adverse information has been received concerning the responsibility or integrity of the applicant/recipient organization and/or its key officials as identified in Section D, that reasonably warrants a background screening. For example, such screenings may be performed if the applicant/recipient has a history of submitting false claims to the government or other conduct that would suggest the need for closer scrutiny of the recipient and its key officials.

### **C. Responsibilities**

1. The Grants Officer is responsible for initiating the background screening process in accordance with this chapter, and for ensuring that the results of the background screening are considered in determining whether adverse action is necessary. When significant adverse information is revealed as a result of the background screening, the Grants Officer shall consult with the Program Officer, OGC/FALD, and the OIG prior to making a final determination.
2. The costs incurred for performance of the individual background screening process shall be the responsibility of the program office.

### **D. Applicability**

1. The applicant's/recipient's organizational structure determines which individuals within the organization may be required to have their backgrounds screened. In general, if the Grants Officer determines that individual background screenings are necessary, such screening may be performed on key officers having management responsibility for the recipient organization who have authority to legally bind the organization in its relationship with the government, including individuals who have the authority to speak for and/or commit the recipient in the management of the award and/or expend funds, or other individuals who hold key positions in or have financial interests in the organization.
2. All awards made to individuals shall be subject to a mandatory individual background screening.
3. All awards made to recipients that are receiving awards for the first time from the Department of Commerce shall be subject to a mandatory individual background screening.
4. Accordingly, the following individuals may be required to submit Form CD-346, "Applicant for Funding Assistance," under this section:
  - a. Sole proprietorship - the proprietor;
  - b. Partnership - each partner (general and limited) (for certified public accounting firms, only those individuals who have authority to speak for and/or commit the recipient in the management of the award and/or expend funds are subject to the background screening);
  - c. Corporation - each officer; each individual owning or controlling at least 20 percent of the enterprise; the chief financial manager; the project manager; and any other person or entity who has authority to speak for and/or commit the recipient in the management of the award and/or expend funds;

- d. Joint venture - each officer of each company in the joint venture; each individual owning or controlling at least 20 percent of each company in the joint venture; the chief financial manager of each company in the joint venture; the project manager; and any other person or entity who has authority to speak for and/or commit the recipient in the management of the award and/or expend funds; and
- e. Non-profit organization - executive director, project manager, chief financial manager and any other person or entity who has authority to speak for and/or commit the recipient in the management of the award and/or expend funds.
- f. Individual – the individual.
- g. Colleges and universities – the principal investigator or any other person who has authority to speak for and/or commit the recipient in the management of the award and/or expend funds.
- h. State or local government – any individuals who have the authority to speak for and/or commit the recipient in the management of the award and/or expend funds.
- i. Economic development districts - any individuals who have the authority to speak for and/or commit the recipient in the management of the award and/or expend funds.

## **E. Exemptions**

1. Except for the awards identified in Section D.2 and 3, a Grants Officer may exercise his or her discretion to exempt key individuals associated with an application or award for the following categories from undergoing an individual background screening, unless the Grants Officer has received adverse information concerning the responsibility or integrity of the applicant/recipient organization and/or its key officials that reasonably warrants a background screening:
  - a. Proposed award amounts are \$500,000 or less;
  - b. Applicants are accredited colleges and universities;
  - c. Applicants are units of a state or local government;
  - d. Applicants are economic development districts designated by EDA, including those entities whose designations are pending, and councils of governments.
  - e. Applicants are elected officials of state and local governments who are serving in capacities other than their elected capacities when applying for assistance.
2. The Grants Office shall document for the award file the decision to exempt key individuals from individual background screening.

**F. DOC Financial Assistance Standard Terms and Conditions**

The individual background screening can be initiated anytime during the course of the award administration process, including after the Grants Officer's approval/signature of an award offer. Therefore, to ensure that the applicant/recipient fully understands the Department's authority to take action should significant adverse information be revealed as a result of the individual background screening, information about the background screening is included in the *Federal Register* notice announcing the DOC pre-award notification requirements and the appropriate language is contained in the DOC ST&Cs and incorporated in all awards.

**G. The Process**

If the Grants Officer determines that a background screening is necessary in accordance with this chapter, the procedures for the initiation, review and evaluation of background screening information are as follows:

<u>STEP</u>	<u>OFFICIAL</u>	<u>ACTION</u>
1.	Grants Officer	Initiates the background screening as necessary, and ensures the award terms and conditions notify applicant/recipients that key individuals may need to complete the Form CD-346, "Applicant for Funding Assistance." Ensures that all applicable awards incorporate the DOC ST&Cs and the Operating Unit-specific special award conditions which include the possibility of background screening.
2.	Key Individuals	Each key individual for the recipient or applicant organization completes Form CD-346, as directed by the Grants Officer, including adding the award number at the top of the form and returns it to the Grants Officer.
3.	Grants Officer	Sends Form CD-346 to OAM which will coordinate the transmission of the document to the Federal Bureau of Investigation (FBI) and return the results to the bureau. The requesting bureau will include a memorandum requesting a background screening and retain a copy of the CD-346 and the memorandum for the official award file.  Maintains the resulting individual background screening information in the official award file, including the CD-346, as well as copies of financial reports and Federal Bureau of Investigation reports (criminal background checks) and/or other related reports, which shall be

available for review at the request of the OIG or FALD.

4. Grants Officer
  - a. Shall ensure that the information is complete, i.e., that sufficient information has been provided upon which to make a determination from an administrative responsibility perspective. The Grants Officer may consult the OIG for advice and recommendations regarding investigative issues, including when the results indicated are inconclusive (e.g. there is an arrest record but there is no record of conviction). When information is complete but other questions arise, the Grants Officer may also contact the Program Officer, the recipient, or the key individual for clarification or assistance.
  - b. For those background screenings which involve significant adverse findings and formal action by the Grants Officer, the results of the background screening will be retained in the official award file along with a copy of the "Background Screening Decision Memorandum."

#### **H. Evaluation of Background Screening Results**

Because reviewing and interpreting background material, comprehending its impact, and determining an appropriate course of action are judgment calls, only experience, maturity, and a common sense approach will provide the proper foundation for an appropriate and sensible evaluation of background screening documents. The program office, the OIG and FALD should be consulted as necessary. As it is not always possible to predict whether an award would be directly affected by adverse background information, the following factors will assist in evaluating the applicant's/recipient's and/or key official's competency, management honesty, and financial integrity:

1. Indications of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
2. Any other offense indicating a lack of business integrity, dishonesty, mismanagement, or abuse;
3. Indications of financial instability, i.e., insolvency, threat of insolvency, bankruptcies, suits, judgments, tax liens, poor credit rating, inadequate internal financial controls, chronic delinquency in payments to the Internal Revenue Service, etc.;
4. Other adverse situations of a serious nature which provide doubt about the entity's ability to perform satisfactorily;

5. Consideration should be given to the seriousness of findings relative to the role of the involved individual in the organization or the proposed project;
6. For currently funded projects, the stage in the award cycle should be considered. Is the recipient performing satisfactorily? Do progress or financial reports reflect any areas of concern? Are the required reports submitted according to schedule?
7. In addition, any information which could be potentially embarrassing to the Department should be carefully weighed.

#### **I. Background Screening Categories**

The following categories will assist in determining an appropriate course of action:

1. No adverse findings: For those background screenings where there are no adverse findings, the Grants Officer will note in the file that no action was taken.
2. Adverse findings: When the background screening process reveals adverse information, a Background Screening Decision Memorandum will be prepared. The Grants Officer shall evaluate, in collaboration with FALD, the OIG, and the Program Officer, the material from an administrative responsibility perspective. Although the background screening may reveal adverse information, the Grants Officer may determine that the information has no impact on or relevancy to the funding decision and make the award or take no further action. The Background Screening Decision Memorandum will be prepared by the Grants Officer for the official award file which will indicate the date on which the background screening was completed and the action taken in accordance with Section J below, if any, by the Grants Officer.
3. Significant Adverse findings: When the background screening reveals significant adverse information, which reflects on the business integrity or responsibility to such an extent that an applicant/recipient or key individual is deemed to be disqualified for the award, the Grants Officer will prepare the Background Screening Decision Memorandum for the official award file, taking action as described in Section J below. In addition to various program comments, the Grants Officer should request that FALD review the material and provide comments. The Grants Officer shall make the final determination upon reviewing the comments and/or recommendations by FALD and the Program Officer. A copy of the decision memorandum will be provided to the Program Officer.

#### **J. Grants Officer's Action on Adverse Findings**

1. If adverse background results are identified, depending on the significance or severity of the information, the Grants Officer may consider one of the following actions for currently funded recipients or applicants, as applicable:
  - a. Terminating or suspending the award immediately for cause or until corrective action has been taken;

- b. Requiring the removal of personnel from association with the management of and/or implementation of the project and require Grants Officer approval of personnel replacements;
- c. Requiring the recipient or applicant to make other changes as appropriate;
- d. Designating the recipient/applicant as high risk and inserting special award conditions when the award is made, or amending the award to assign special award conditions, as appropriate, including making changes with respect to method of payment and/or financial reporting requirements; or
- e. Taking no action (where information has no significant impact on the award).
- f. Taking debarment and/or suspension action under 2 CFR 1326, when the Grants Officer determines that a long-term plan to disqualify the applicant/recipient or key individual is appropriate.

2. Upon making a final determination concerning a recipient, the Grants Officer will notify the applicant/recipient of any action to be taken. See Chapter 9, Section G.3. For all background investigations involving the review of significant adverse information and action by the Grants Officer, complete documentation (i.e., results of the background screening and the rationale for taking action under this section or not taking action) will be retained in the official award file. A copy of the Background Screening Decision Memorandum will be provided to the Program Officer.

3. Since the CD-346 and other background screening information contain personally identifiable information (PII), the award file shall be maintained in a locked file cabinet or room. Electronic files shall be protected by user ID names and passwords. Access to the award file (paper or electronic) will be authorized and monitored by the Grants Officer.