

SCHWARTZ & BALLEN LLP

1990 M STREET, N.W. • SUITE 500
WASHINGTON, DC 20036-3465

(202) 776-0700

FACSIMILE
(202) 776-0720

www.schwartzandballen.com

MEMORANDUM

June 2, 2005

To Our Clients and Friends

Re: FDIC Pre-Employment Background Screening Guidance

The Federal Deposit Insurance Act prohibits any person who has been convicted of any criminal offense involving dishonesty, breach of trust or money laundering from participating in the conduct of the affairs of an insured institution without the consent of the Federal Deposit Insurance Corporation (“FDIC”). The FDIC has issued guidance for depository institutions on developing a pre-employment background screening process to ensure that a potential employee with a criminal record is not employed by the bank.

SCREENING PROCESS

Depository institutions should develop a risk-focused approach to determining when pre-employment background screening is considered appropriate or when the level of screening should be increased, based upon the position and responsibilities associated with a particular position. Institutions should establish a pre-employment background screening process to uncover applicants’ criminal history. The applicant’s name should be checked against each federal banking agency’s listing of individuals who were assessed civil penalties or who are prohibited from working in the banking industry. Institutions should also review agency cease and desist orders and the FBI Fingerprint Service. The screening should verify references, experience, professional qualifications and the applicant’s identity. Additionally, subsequent screening processes should be developed for particularly sensitive positions.

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SELECTING SERVICE PROVIDERS

Depository institutions should use due diligence in choosing a third-party service provider to conduct background screening of potential employees. Institutions should review audited financial statements and review contracts to determine whether they contain language protecting the confidentiality of information obtained from applicants, including safeguards to prevent identity theft.

DISCLOSURE REQUIREMENTS

The pre-screening process must comply with the Fair Credit Reporting Act. If an institution intends to obtain a consumer credit report concerning the applicant, it must obtain the applicant's prior written consent. If employment is denied based upon the information in the consumer report, appropriate notification must be given.

A copy of the FDIC's guidance can be found on our website at http://www.schwartzandballen.com/whats_new.html.

If you have any questions, please call Gilbert Schwartz, Robert Ballen or Tom Fox at (202) 776-0700.