

The Background Screening Credentialing Council

The Background Screening Credentialing Council volunteer members drafted the following response to a question about the impact of mergers and acquisitions on companies who are accredited and the impact of accreditation on companies who are being acquired. Applies to BSAAP Standard, version 2.0, effective April 6, 2018. This letter is an informal discussion of the noted issue and does not constitute a legal opinion of the BSCC.

TITLE: Mergers and Acquisitions

Issue: The BSCC was asked about the impact of mergers and acquisitions on companies who are accredited and the impact of accreditation, if any, on accredited companies who are being acquired. The same analysis applies regardless of any scenario involving a merger, acquisition, asset purchase or change of ownership. The type of transaction is irrelevant to the notice obligations placed on the accredited company, the analysis as to the impact on the status of accreditation, or to the BSCC's focus on the impact to the operations and the ability of the accredited company to continue to demonstrate conformance with the standards.

Response: Thank you for contacting the Background Screening Credentialing Council with your questions regarding the impact of mergers and acquisitions on companies who are accredited and the impact of accreditation on companies who are being acquired. Consistent with the BSCC's interest in creating programs that help companies who are providing background screening to prepare for and maintain their accreditation, we are committed to responding to questions like yours in a manner that allows all accredited agencies and agencies seeking accreditation to view the questions and our responses. While we attempt to provide responses that offer guidance and insight to our accredited agencies, we cannot and do not issue legally binding opinions on questions which are purely hypothetical in nature. The timing of a transaction is one issue which can greatly impact the substantive positions taken. Notwithstanding, we have provided to you below some information to assist you to develop a better understanding of the impact of mergers and acquisitions on accreditation, and vice-versa.

*The Background Screening Agency Accreditation Program **Policies and Procedures** provide as follows: [BSAAP Policies and Procedures page 22-23]*

P. Circumstances Requiring Notice by Accredited Agencies

In the following situations where notice is required to be provided by an Accredited Agency, additional fees may be required to be paid by the Accredited Agency as further provided on Attachment 2, Fee Schedule, which may require a response from the Auditor, BSCC Ethics Committee and or Legal Counsel.

1. Change of Legal Name, or Ownership

In the event of a change of legal name or d/b/a filing for an Accredited Agency or change in ownership such that there is a change in controlling interests for privately held organizations, the Accredited Agency is required to provide written notice of the same to NAPBS staff within 90 days of the effective date of the change. Upon receipt of written notice, NAPBS staff will forward documentation to the Auditor for appropriate inquiry. Such written notice shall include a detailed description of the change, review and confirmation of compliance with each BSAAP Standard noting any distinctions or changes that have

occurred due to the aforementioned change. Failure to provide such notice may result in automatic suspension of the accreditation of the Agency, which may result in revocation if not resolved.

2. Change due to Merger, Acquisition, or Asset Sale

In the event of a change due to Merger, Acquisition or Asset Sale of or by an Accredited Agency, the Accredited Agency is required to provide written notice of the same to NAPBS staff within 90 days of the effective date of the change. Upon receipt of written notice, NAPBS staff will forward documentation to the Auditor for appropriate inquiry. Such written notice shall include a detailed description of the change, review and confirmation of compliance with each BSAAP Standard noting any distinctions or changes that have occurred due to the aforementioned change. Failure to provide such notice may result in automatic suspension of the accreditation of the Agency, which may result in revocation if not resolved.

Upon receipt of notice, Auditor shall review, schedule an on-site audit if appropriate and submit a written report to the Council. The final decision of the Council will be provided to the Accredited Agency which shall be required to comply with any directives made in the same. The Council has the authority to suspend, revoke or grant a continuation of the accreditation status for the original accreditation period of the Accredited Agency at any time during the proceedings. The Council has the authority to require a surveillance audit or on-site audit any time after the proceedings prescribed in this section up to one (1) year from the change.

In the event of a change of structure or control of an accredited agency, the accreditation may or may not remain valid. Accredited agencies involved in mergers or acquisitions must inform the NAPBS Staff, in writing, of the new status within 90 days of the close of the transaction. This notice to BSCC should include the following:

1. A comprehensive description of the business structure of the new entity, including clear summary of the changes from the previous structure;
2. Accreditation status of entities involved, if applicable, and intention to remain accredited; and
3. Timeline for any transitional plan, if applicable, which demonstrates continued conformity with the Standard.

The transitional plan should detail how the newly combined Agency intends to maintain or bring other facilities/entities in line with accreditation conformity. The NAPBS Staff will review the new business structure with the Auditor and how the relationship of the original accredited agency is contained within the new business entity in order to determine whether the accreditation remains valid or will require re-audit and/or re-application.

NOTE: Unaccredited agencies involved in a merger or acquisition with an accredited agency are not allowed to claim to be accredited or use the Accreditation Logo until approved in writing as being in conformity by the BSCC.

The transition plan provided should provide a detailed explanation of the transaction taking place and the anticipated impact on the Agency's ability to be able to continue to certify that all of their current operational staff, compliance staff, methods, policies, procedures and processes will remain the same and in place following the transaction. How the acquired company will "fold in" to the acquiring

company of course plays a part in what will be a very fact-specific analysis. Additional fees, desk audits or even on-site reviews may be required depending on the circumstances.

Examples of situations which might suggest that accreditation would transfer include: (a) the operations and compliance teams of the accredited company will remain intact with additional support or team members being added who are well versed in the accreditation requirements, (b) no relocation of clients or operational process will take place, and/or (c) key employees who were involved in achieving accreditation will remain intact and involved in the oversight of the operational aspects of the organization which are related to the functions impacting accreditation.

Accreditation may be: (a) continued, (b) suspended pending certification of the above, (c) suspended pending an onsite desk audit, (d) suspended pending re-submission, or (e) terminated as a result of the transaction depending on the circumstances of the transaction.

We thank you for posing your questions and we reiterate that nothing in this letter is intended to be legally binding as an opinion regarding a particular transaction which is subject to specific analysis of the facts and circumstances. Rather, this letter should be viewed as general guidance that is subject to change as the accreditation process evolves and as the BSCC encounters more facts and circumstances over time that shape its understanding of proper application of its policies and procedures.

We believe we have responded fully to your inquiry. Please let us know if you have any further questions.