

Chapter 2 – Informal Actions

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Informal Actions

As noted in chapter 1, regulatory agencies may use informal procedures in a measured effort to address weak operating practices, deteriorating financial conditions, or actionable misconduct. Informal actions are voluntary commitments made by the BOD of an institution or an IAP. Informal actions are neither publicly available nor legally enforceable in a federal administrative enforcement proceeding or in a federal or state court.

Informal actions should be used when discussions with management or findings and recommendations in the ROE will not, by themselves, accomplish the FDIC's goal of attaining timely corrective action from management. However, informal actions generally are not appropriate when an institution's problems present serious concerns and risks, in which case a formal action should be pursued.

Types of Informal Actions

The informal actions most commonly used by the FDIC are BBRs and MOUs. Instructions for processing BBRs and MOUs are provided in the following pages. As noted in chapter 1, a request by the FDIC that an IDI submit a plan to conform to safety and soundness standards under Section 39 is an *informal* action. If the IDI fails to submit or materially implement an acceptable plan, the IDI will become subject to a Section 39 *formal* action under certain circumstances. Chapter 10 provides instructions for processing Section 39 actions.

When Informal Actions Are Used

Informal actions are particularly appropriate when the FDIC has communicated with institution management regarding supervisory concerns and has determined that the institution's managers and BOD are committed to and capable of addressing these concerns with some direction, but without the initiation of a formal enforcement action. These informal actions may be taken based on the findings of examinations, visitations, target reviews, offsite reviews, etc.

Informal vs. Formal Actions

The following criteria, if applicable, are designed to assist examination staff in determining whether to seek informal or formal action. ***This list is not all-inclusive.***

- The bank's condition as reflected by its supervisory composite and component ratings.
- Bank management's commitment toward complying with laws and regulations or correcting unsafe or unsound practices.
- The degree of concern regarding the institution's financial condition and the amount of time it may take to restore areas of concern to a satisfactory condition or level.
- The ability of management and the BOD to address the underlying causes for the institution's weakened financial condition.
- Whether violations or unsafe or unsound practices were willful or intentional, reckless, repetitive, substantive, or numerous.

- The institution's history of violations or unsatisfactory practices, as well as its history of instituting remedial or corrective action in a timely manner once violations or undesirable practices have been identified.
- Whether deficiencies resulted from changes in management or key personnel.
- Whether the institution has already initiated corrective action and established procedures to prevent future deficiencies or violations.
- The extent of financial or other harm caused, or likely to be caused, by the violations or unsafe or unsound practices.
- Whether deficiencies in the AML/CFT program are serious or systemic in nature, or apparent violations result from management's failure to develop and administer an effective AML/CFT program.
- Any other circumstances that, in staff's judgment, may weigh in favor of a formal or informal action.

Bank Board Resolutions

BBRs are informal commitments adopted by an institution's BOD (often at the request of the FDIC) directing the institution's personnel to take corrective action regarding specific noted deficiencies. BBRs may also be used as a tool to strengthen and monitor the institution's progress with regard to a particular component rating or activity.

Institutions that fail to respond to significant issues that require immediate attention, such as Matters Requiring Board Attention included in a ROE, or whose corrective action is insufficient to address supervisory concerns, will be subject to increased supervisory monitoring, which may warrant requesting a BBR.

A BBR may be drafted by the institution's BOD as a proactive measure to address issues noted during an examination or targeted review. However, the FDIC may review the BOD's draft BBR to ensure it accurately addresses the identified supervisory concerns and proposes effective corrective measures. In cases where the BOD's proposed BBR does not effectively address noted concerns, the FDIC may choose to pursue a MOU or other supervisory remedies.

Memoranda of Understanding

A MOU is an informal agreement between an institution and the FDIC, which is signed by both parties. The state authority may also be a party to the agreement. MOUs are designed to address and correct identified weaknesses in an institution's condition, or violations or unsafe or unsound practices at the IDI.

The FDIC generally uses MOUs instead of BBRs when there is reason to believe the deficiencies noted during an examination, visitation, or target reviews need a more structured program or specific terms to effect corrective action.

Use of a MOU does not prevent the FDIC from subsequently pursuing formal enforcement action if such formal action is required by law or if the FDIC believes the institution's management is unwilling or unable to voluntarily take necessary corrective action. A formal

enforcement action may also be pursued if efforts to comply with the informal enforcement action have not resulted in sufficient resolution of the identified concerns or improvement in the institution's condition.

Modifying Informal Actions

When subsequent events such as an examination or visitation result in the need to make minor changes to an outstanding informal action, the FDIC may suggest that an institution modify a BBR or agree to modify a MOU. Procedures and standards for modifying an informal action are similar to those for initiating a new action. The RO must coordinate modification of a MOU with the state authority if the state is a party to the action.

Terminating Informal Actions

The FDIC may consider terminating informal actions when any of the following conditions exist:

- The IDI is in significant compliance with the provisions of the action.
- The IDI's condition has improved sufficiently, or the objectionable practices or violations resulting in the informal action have been corrected, so that the action is no longer needed.
- The IDI has partially met the provisions of the action, and a new informal action has been issued to address outstanding provisions or new areas of concern.
- Deterioration or lack of compliance leads to issuance of a new informal or formal action.
- The IDI merges or is closed.

Note: The FDIC does not actually terminate BBRs since it is not a party to these actions. However, if a BBR contains requirements for reporting the IDI's progress to the RO, the RO may send a letter to the IDI's BOD stating that reporting is no longer necessary.

Standards for termination due to substantial compliance are similar to those for initiating an informal action. The outstanding action should remain in effect until the new action is issued.

The RO must coordinate termination of a MOU with the state authority if the state is a party to the action.

Documenting Informal Action Terminations

RO staff should document termination of informal action using one of the following methods:

- A letter from the RD (or designee) informing the IDI's BOD of the termination (for a MOU or other informal action) or that the BBR is considered to have served its intended purpose with the BOD being released from further reporting on the IDI's progress with the BBR. In all cases, any requirement for submitting progress reports will also end upon termination of the informal action. If the informal action is being replaced by a new action, the statement regarding termination of the previous informal action would generally be included in correspondence relating to the issuance of the new action.

- A file memorandum from the RO Reviewer stating the action has been terminated or discontinued due to the IDI's closing or merger.