

Chapter 1 – Overview and Administrative Matters

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Abbreviations

The following abbreviations will be used throughout this manual.

AML	Anti-Money Laundering
AUSA	Assistant United States Attorney
BBR	Bank Board Resolution
BOD	Board of Directors
BSA	Bank Secrecy Act
CFPB	Consumer Financial Protection Bureau
C.F.R.	Code of Federal Regulations
CM	Case Manager
CRA	Community Reinvestment Act
CRC	Case Review Committee
CMP	Civil Money Penalty
CMS	Compliance Management System
CFT	Countering the Financing of Terrorism
DIF	Deposit Insurance Fund
DCP	Division of Depositor and Consumer Protection
DRR	Division of Resolutions and Receiverships
ECOA	Equal Credit Opportunity Act
FBA	Federal Banking Agency
FHFA	Federal Housing Finance Agency
FDI Act	Federal Deposit Insurance Act
FDIC	Federal Deposit Insurance Corporation
FFIEC	Federal Financial Institutions Examination Council
FinCEN	Financial Crimes Enforcement Network
FIL	Financial Institution Letter
Flood Act	Flood Disaster Protection Act of 1973
FO	Field Office
FRB	Federal Reserve Board
IAP	Institution-Affiliated Party
IDI	Insured Depository Institution
MOU	Memorandum of Understanding
MSA	Metropolitan Statistical Area
NCUA	National Credit Union Administration
NOC	Notice of Charges
NOI	Notice of Intent
NPR	Notice to Primary Regulator
OCC	Office of the Comptroller of the Currency
PCA	Prompt Corrective Action
PC&D	Personal Cease-and-Desist
RC	Regional Counsel
RD	Regional Director
RE	Review Examiner
RMS	Division of Risk Management Supervision
RO	Regional Office
ROE	Report of Examination
RO Reviewer	Regional Reviewer – Any Regional staff member assigned the task
TILA	Truth In Lending Act

UDAP	Unfair or Deceptive Acts or Practices
U.S.	United States
U.S.C.	United States Code
WO	Washington Office
WO Reviewer	Washington Reviewer – Any Washington staff member assigned the task

Introduction

The Formal and Informal Enforcement Actions Manual provides instructions related to the work necessary to develop and process formal and informal enforcement actions. Developed by the Divisions of RMS and DCP, the manual is intended to support the work of FO, RO, and WO staff involved in processing and monitoring enforcement actions. The manual provides instructions for processing both formal and informal actions against IDIs and IAPs.

This manual is designed to promote consistency in the development and processing of FDIC enforcement actions. A consistent approach toward determining the appropriate action against IDIs and IAPs will allow the FDIC to fairly address violations, unsafe or unsound practices, and other actionable misconduct (as defined below) exhibited by IDIs and IAPs. This manual is intended to serve primarily as an instructional guide and resource for RMS and DCP staff. This manual should not be interpreted as an independent source of rights of or obligations to parties in any formal actions described herein. In addition, this manual does not interpret any law or regulation; rather it operationalizes the application of relevant laws and regulations and the development of enforcement matters in response to violations and other actionable misconduct.

About the Formal and Informal Enforcement Actions Manual

The Overview and Administrative Matters chapter provides basic information about formal and informal corrective actions, instructions for notifying other agencies, FDIC delegations of authority, and the agencies' requirements for publishing certain formal actions.

Chapters 2 through 7 and chapters 9 and 10 describe the following types of enforcement actions used by the FDIC:

- Informal actions;
- Cease-and-desist orders, consent orders, and personal cease-and-desist orders;
- Prompt corrective action directives and provisions;
- Removal, prohibition, and suspension actions;
- Insurance terminations;
- Restitution and civil money penalties; and
- Safety and soundness actions under Section 39 of the FDI Act.

In addition to the chapters devoted to specific types of enforcement actions, chapter 8 provides a comparison of prompt corrective action directives to Section 8 actions, and chapter 11 addresses the FDIC's authority to initiate formal investigations. Each chapter includes information and instructions applicable to RMS and DCP FO, RO, and WO staffs.

Definitions

The following defined terms are used throughout this manual.

Actionable Misconduct

Actionable misconduct is **generally**: (1) any action (alone or with another or others) that results in, causes, or brings about any violation of any law or regulation, any cease and desist order which has become final, any condition imposed in writing by the FDIC in connection with any action or any application, notice, or request, or any written agreement between the IDI and the FDIC; (2) any participation, counseling, aiding, or abetting in the commission of such a violation; (3) the engagement in any unsafe or unsound practice; or (4) any breach of a fiduciary duty.

Fiduciary Duty

A fiduciary duty is the obligation of an IDI's directors, officers, and certain employees to act in the best interests of their financial institution. This obligation includes the duties of loyalty and care. Loyalty requires the individual to administer the affairs of the IDI with candor, personal honesty, and integrity. Care requires the individual to act prudently and diligently in conducting the affairs of the IDI. For example, institution officers and directors have a fiduciary duty to protect the IDI's assets, further the best interests of the IDI, and not place their interests above those of the IDI.

Formal Actions

Formal actions are notices or orders issued by the FDIC against IDIs or IAPs. Formal actions are legally enforceable. Most notices and final orders are published after issuance, as required by law.

Informal Actions

Informal actions are voluntary commitments made by an IDI's BOD or an IAP. Informal actions are not legally enforceable and are not publicly disclosed or published.

Institution-Affiliated Party

An IAP is (1) any director, officer, employee, or controlling shareholder (other than a bank holding company or savings and loan holding company) of, or agent for, an IDI; (2) any other person who has filed or is required to file a change-in-control notice; (3) any shareholder (other than a bank holding company or savings and loan holding company), consultant, joint venture partner; or any other person who participates in the conduct of the affairs of an IDI; or (4) any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in violations, breaches of fiduciary duty, or unsafe or unsound practices, which caused or are likely to cause more than a minimal financial loss to, or a significant adverse effect on, the IDI.

Provisions

Provisions are specific corrective measures an IDI or IAP is required to take or abide by under an enforcement action.

Statute of Limitations

Except where an alternative period is expressly provided for, the FDIC's formal enforcement actions are generally subject to the five-year statute of limitations period imposed by 28 U.S.C. § 2462. The Legal Division should be consulted about questions related to this limitations period.

Supervisory Letter

The term "supervisory letter," as used in this manual, refers to correspondence sent by the FDIC to an IAP or IDI to communicate a supervisory concern or to admonish an IDI or IAP without seeking a formal enforcement action. For example, the instructions for the CMP matrix against individuals suggests that the FDIC consider sending a supervisory letter when the resulting matrix score does not suggest that a CMP be considered.

Violation

The term "violation" includes any action (alone or with others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation, which includes a violation of law, rule, regulation, final order, condition imposed in writing, or formal agreement.

Considerations for Appropriate Action

When actionable misconduct is detected early, staff should bring these matters to the attention of IDI management and engage in discussions regarding the problem areas and potential remedial steps. The ability for staff and management to engage in discussions is a vital and longstanding part of the examination process, and often results in the type of early intervention that is necessary to correct problems before they become serious.

If management is able to correct deficiencies within a reasonable timeframe, then supervisory recommendations for corrective action in the ROE could be a sufficient supervisory response, subject to appropriate follow-up during an interim contact, on-site visitation, or the next examination.

Note: The term "supervisory recommendations" refers to FDIC communications with an IDI that are intended to inform the IDI of the FDIC's views about changes needed in its practices, operations or financial condition. (See [Statement of FDIC Board of Directors on the Development and Communication of Supervisory Recommendations](#)).

If this process does not achieve the desired result, an informal or even formal corrective action may be warranted. Additionally, certain forms of misconduct require enforcement by law, including the assessment of CMPs for certain violations of the Flood Act, restitution for certain TILA violations, and the referral of certain ECOA violations to the U.S. Department of Justice.

Types of Actions

The FDIC may institute a wide range of informal and formal actions against IDIs or IAPs to address weak operating practices, deteriorating financial conditions, or other actionable misconduct. Although a single comprehensive solution is generally preferred, the FDIC may

seek more than one of the available remedies to bring about the necessary corrective action, if appropriate to the situation.

Informal Actions

The RO may recommend that the directors of an institution adopt a BBR committing to addressing identified deficiencies. Alternatively, the RO may enter into a MOU with the institution. Chapter 2 – Informal Actions describes instructions for processing BBRs and MOUs. A request for a plan to conform to safety and soundness standards under Section 39 of the FDI Act is an informal action as described in Chapter 10 – Section 39 Actions. Although not considered an informal action, the FDIC may send a supervisory letter to an IDI or IAP as a means of communicating a supervisory concern when circumstances do not warrant a formal action. Chapter 9 – Restitution and Civil Money Penalties discusses supervisory letters as an alternate to assessing a CMP.

Formal Actions

The FDIC may issue various formal actions pursuant to Section 8 of the FDI Act, including termination of federal deposit insurance; cease-and-desist and consent, and personal cease-and-desist; removal, prohibition, or suspension; restitution; and CMPs. The FDIC may also issue formal actions under the Flood Act to impose CMPs for certain flood insurance-related violations.

Additionally, Section 38 of the FDI Act authorizes the FDIC to issue PCA directives to IDIs that are less than adequately capitalized. In certain circumstances, the FDIC also may conduct a formal investigation pursuant to Section 10(c) of the FDI Act to obtain information or evidence that is not available through normal supervisory processes. Chapters 4 through 7, 9, and 11 provide instructions for processing these types of formal actions.

Under Section 39 of the FDI Act, if the IDI fails to submit or materially implement an acceptable plan, the IDI will become subject to a formal action under certain circumstances. Chapter 10 discusses Section 39 actions.

Grounds for Informal and Formal Actions

A risk management composite rating or a consumer compliance rating of “3,” “4,” or “5” will typically result in a formal or informal enforcement action. However, the FDIC may also pursue an enforcement action against a higher rated IDI, if the specific facts and circumstances make such an action appropriate. Composite ratings of “3,” “4,” or “5,” for specialty examination areas, such as Trust or Information Technology, or lack of compliance with AML/CFT¹ statutes and regulations, may also be addressed with informal or formal enforcement actions. The FDIC has broad discretion to determine what form of corrective program to pursue.

¹ The *Anti-Money Laundering Act of 2020* (the AML Act), amended subchapter II of chapter 53 of title 31 United States Code (the legislative framework commonly referred to as the “Bank Secrecy Act” or “BSA”). The AML Act requires FinCEN (in consultation with federal functional regulators) to promulgate AML/CFT regulations. Due to the addition of the CFT, and for consistency with FinCEN, the FDIC will use the term AML/CFT (which includes BSA/AML) instead of BSA/AML when referring to, issuing, or amending regulations to address the requirements of the AML Act of 2020.

The belief that the institution's management has recognized the deficiencies and will institute corrective action is not a sufficient basis, in and of itself, to preclude taking corrective action. Generally, the FDIC institutes informal and formal action against institutions under the following conditions.

Informal Actions

Informal action is **generally** appropriate for institutions that receive a composite rating of "3" for safety and soundness or consumer compliance. This rating indicates the institution has weaknesses that, if left uncorrected, could cause the institution's condition to deteriorate. Informal actions may also be appropriate when specialty examination areas are rated "3" or when significant weaknesses are identified in AML/CFT compliance. More severe remedies, including formal actions, may be taken if warranted. In addition, when formal action is considered but ultimately not pursued (e.g., when a CMP matrix score suggests no CMP be assessed) sending a supervisory letter to an IDI or IAP is an alternative action that may be considered.

The FDIC may also pursue an informal enforcement action against a higher rated IDI, if the specific facts and circumstances make such an action appropriate. For example, an action could be targeted to address concerns noted where a component "3" rating is assigned even though the composite rating remains "2" or higher. Or, for example, the asset quality component may be rated "2," but there may be high risk in a particular lending segment that needs to be addressed.

Formal Actions

Formal action is **generally** initiated against an IDI with a composite rating of "4" or "5" for safety and soundness, or for consumer compliance if there is evidence of unsafe or unsound practices and/or conditions or concern over a high volume or severity of violations at the IDI. (Refer also to Chapter 3 – Unsafe or Unsound Practices and Conditions / Violations of Law). However, specific facts and circumstances may warrant the pursuit of a formal action, even if an IDI has a composite rating of "3" or higher for safety and soundness or for consumer compliance. For example, certain actions, such as CMPs and restitution, may be taken based upon actionable misconduct that may be unrelated to the IDI's supervisory ratings or condition.

Detecting Problems Requiring Corrective Action

Most corrective actions directed toward IDIs are initiated as a result of facts and circumstances evaluated by FDIC field staff during examinations, including evaluation of compliance with any existing enforcement actions. Deficiencies may also be identified in the ROE prepared by other financial regulatory agencies, extracted from Reports of Condition and Income filed quarterly by institutions, or identified through reviews of published reports, news releases, or other sources.

In addition, employees or customers sometimes volunteer information concerning irregular activities at IDIs. IDIs may also discover and report suspected misconduct by its own IAPs. Such disclosures may prompt formal FDIC review through an onsite visitation or examination of the institution, or initiation of a formal investigation by the FDIC pursuant to Section 10(c) of the FDI Act. Accordingly, some enforcement actions against IAPs arise out of such supervisory activities outside of the normal examination process.

Documenting Formal Enforcement Actions under Section 8 and Other Laws

Actions under Section 8 of the FDI Act or other applicable laws (e.g., Flood Act) constitute formal proceedings against IDIs or IAPs. At an administrative hearing, the burden of proving by a preponderance of the evidence all charges rests with the FDIC. When an action is based on examination findings, the ROE should generally contain all pertinent facts in support of each charge. For actions based on events outside of an examination, such as a formal investigation, the evidence must, likewise, support the charges. FDIC staff are often called to testify during the adjudication process.

Initiating Actions

The FDIC's first line of supervision is the field staff. The RMS and DCP manuals of examination policy require staff to describe any problems detected during examinations of IDIs and to recommend appropriate corrective action.

Most supervisory recommendations are generally correctable in the normal course of business, and the FDIC will evaluate the effectiveness of an institution's response through routine examination and correspondence. If serious deficiencies exist, staff should discuss appropriate corrective measures (which may include formal or informal action) with the FO management and RO staff before the examination is completed. The Legal Division should also be consulted when enforcement actions are being considered.

Expedited Processing

Depending on the situation, it may be appropriate to expedite the processing of certain actions (for example, to immediately halt practices that could materially impact the safety and soundness of an institution). Complete, effective communication is essential among FO, RO, and WO staff to ensure all parties are aware of the need for expedited processing.

In accordance with pertinent policies and procedures, field staff should inform either the FO management and/or RO Reviewer of situations that appear to require expedited processing. If the RD concurs with the recommendation for expedited processing, the RO Reviewer should provide relevant information about the case to the WO Reviewer, Section Chief, and/or Associate Director.

Modifying and Terminating Actions

When the provisions of a formal or informal action are changed during the life of the action, the action must be **modified** to reflect the change. An action is most often modified following an examination or visitation. **For formal actions, a modification order must be issued to modify an existing order.**

Formal and informal actions may be **terminated** when certain conditions are met. Common reasons for terminating informal actions are listed in Chapter 2 – Informal Actions. Conditions for terminating formal actions are listed in the respective chapters addressing each type of formal action.

Notifying Other Agencies

On June 12, 2018, the FBAs jointly issued the “Policy Statement on Interagency Notification of Formal Enforcement Actions,” which is intended to promote notification of and coordination on formal enforcement actions among the FBAs. The policy statement is not intended as a substitute for informal communication that routinely occurs among the FBAs in advance of any possible enforcement action, including verbal notification of pending enforcement matters to officials and staff with supervisory and enforcement responsibility for the affected institution.

Joint Policy Statement Provisions

Under the terms of the joint Policy Statement on Interagency Notification of Formal Enforcement Actions, when an FBA determines it will take a formal enforcement action against any IDI, depository institution holding company, non-bank affiliate, or IAP, it should evaluate whether the enforcement action involves the interests of another FBA (i.e., affecting an institution subject to supervision by the FBA). Examples of such interests include unsafe or unsound practices or significant violations of law by an IDI, non-bank affiliate, or depository institution holding company or misconduct by an IAP that may have significant connections with an institution regulated by another FBA.

If it is determined that one or more other FBAs have an interest in the enforcement action, the FBA proposing the enforcement action should notify the other FBA(s). Notification should be provided at the earlier of the FBA's written notification to the IDI, depository institution holding company, non-bank affiliate, or IAP against which the FBA is considering an enforcement action or when the appropriate responsible agency official, or group of officials, determines that formal enforcement action is expected to be taken.

The scope of the information shared by the notification may depend on the gravity of the interests of the other FBA(s) and be determined on a case-by-case basis by the FBA providing the notification. The information shared, however, should be appropriate to allow the other FBA(s) to take necessary action in examining or investigating the financial institution or IAP over which they have jurisdiction.

If two or more FBAs consider bringing a complementary action (e.g., an action involving an IDI and its parent holding company), those FBAs should coordinate the preparation, processing, presentation, potential penalties, service, and follow-up of the enforcement action.

Note: The joint policy statement is available at <http://www.fdic.gov/regulations/laws/rules/5000-700.html>.

Memorandum of Understanding on Supervisory Coordination

The MOU on Supervisory Coordination is intended to implement the statutory mandate to establish coordination and cooperation between the CFPB and the FBAs, minimize unnecessary regulatory burden, avoid unnecessary duplication of effort, and decrease the risk of conflicting supervisory directives. Under the MOU, for FDIC-supervised depository institutions over \$10 billion and for FDIC-supervised affiliates of IDIs over \$10 billion, ROs should:

- Provide scheduling information for targeted reviews outlined in supervisory plans for the coming year;

- Provide a draft copy of any ROE and any related enforcement action, including MOUs, to the CFPB for comment at least 30 days prior to issuance to the institution;
- Consider any concerns raised by the CFPB before issuing the final ROE or any related enforcement action; and
- Provide the CFPB with copies of the transmittal letter and final ROE, any related enforcement action, including MOUs, and any related appeals by the IDI.

Each RO is responsible for coordinating with the CFPB to deliver required documents and to make a record of the information shared and any response received.

Note: The MOU on Supervisory Coordination is available at https://files.consumerfinance.gov/f/201206_CFPB_MOU_Supervisory_Coordination.pdf.

Notification of State Authority

It is the policy of the FDIC to contact the appropriate state regulatory authority when administrative actions are contemplated. The opinion of the state authority regarding the proposed action, as well as any complementary actions which are being undertaken by that agency, should be included in memoranda or other documentation supporting the action.

Section 8(m) of the FDI Act requires that the state authority be contacted in connection with any proceeding under Sections 8(b), (c)(1), or (e) of the FDI Act, and provided with notification of the action to be taken and grounds supporting the action. Unless corrective action is effectuated by action of the state authority within a time specified in the notice mentioned above, the FDIC may proceed. Failure to notify the state authority, however, will not invalidate a notice or order issued under these sections.

Notification of the Financial Crimes Enforcement Network

FinCEN is the administrator of the BSA under delegated authority from the Secretary of the Treasury. FinCEN has the authority to examine financial institutions for compliance with the BSA and regulations promulgated under the BSA at 31 C.F.R. Chapter X, as well as to take enforcement actions for violations of the BSA and its implementing regulations. The Secretary has delegated BSA examination authority, but not enforcement authority, to each FBA with respect to banking organizations supervised by that FBA. The FBAs have separate authority over banking organizations to enforce compliance with all laws and regulations, including the BSA.

Pursuant to an information-sharing MOU, the FDIC notifies FinCEN of significant BSA violations or deficiencies with the intent to improve and enhance the level of interagency cooperation in the area of BSA examination and compliance. The MOU sets forth procedures for the exchange of certain information between the FBAs and FinCEN. From the standpoint of policy, examination, and enforcement, the MOU enables the agencies to maximize their resources in discharging their statutory obligations. For this purpose, the FDIC provides FinCEN with copies of any formal or informal enforcement action and relevant ROE(s) relating to significant noncompliance with the BSA or its implementing regulations. The AML Section in the WO is responsible for coordinating the sharing of this information with FinCEN.

Referral to the U.S. Department of Justice and Notification to the Department of Housing and Urban Development

Whenever the FDIC has reason to believe that an institution has engaged in a pattern or practice of discouraging or denying applications for credit in violation of ECOA, the FDIC is required to refer the matter to the U.S. Department of Justice pursuant to Section 706(g) of ECOA, 15 U.S.C. § 1691e(g). In other fair lending cases where a referral is not made to U.S. Department of Justice, section 706(k) of ECOA, 15 U.S.C. § 1691e(k), requires the FDIC to notify Department of Housing and Urban Development when it has reason to believe that an institution has engaged in conduct that violates both ECOA and the Fair Housing Act. The RO should consult with WO examinations and Legal prior to making any referrals or providing notice under section 706 of ECOA.

Coordinating Related Actions

Complementary actions against affiliated or related institutions need not be issued simultaneously. However, their preparation, processing, service, and follow-up should be coordinated by the appropriate agencies.

Delegations of Authority

The FDIC BOD has delegated authority to RMS and DCP management to issue certain types of formal actions, including those addressed throughout this manual. The delegations chart should be consulted at all times to ensure that the action is authorized at the appropriate level of delegation. Delegated authority requires the receipt of concurrent certification by the appropriate representative of the Legal Division.

The current delegations of authority can be found on the FDIC website at <https://www.fdic.gov/regulations/laws/matrix/delegations-enforcement.pdf>.

Required Publications of Certain Formal Actions

Section 8(u) of the FDI Act requires the FBAs to publicly disclose certain orders and agreements that the FBA has issued. As required by this law, the FDIC publishes, on a monthly basis, all final administrative enforcement orders against IDIs and IAPs issued during the prior month. The orders are made available in a searchable database at the FDIC's Enforcement Decisions and Orders website at <https://orders.fdic.gov/s/>.

Each FBA has established a public website to search for and view these actions. The FFIEC's website lists the website address where each agency's enforcement actions publications can be found. These addresses are listed below.

FDIC	https://orders.fdic.gov/s/
FRB	http://www.federalreserve.gov/boarddocs/enforcement
OCC	https://apps.occ.gov/EASearch/
CFPB	https://www.consumerfinance.gov/policy-compliance/enforcement/actions/
NCUA	https://www.ncua.gov/regulation-supervision/enforcement-actions
FFIEC	http://www.ffiec.gov/enforcement.htm