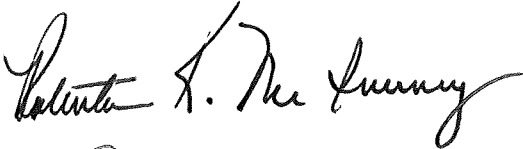
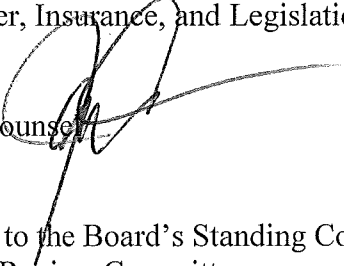


To: The Board of Directors

Through: Roberta K. McInerney 
Deputy General Counsel
Corporate, Consumer, Insurance, and Legislation Branch

From: James L. Anderson 
Assistant General Counsel
Consumer Section

Subject: Proposed Revisions to the Board's Standing Committee Resolution
Related to the Case Review Committee

Date: June 28, 2013

Summary:

We recommend that the FDIC's Board of Directors approve proposed changes to the section of the Board's Standing Committee Resolution that relates to the Case Review Committee ("CRC" or "Committee").¹ These proposed changes would: (1) streamline and clarify provisions of the existing Standing Committee Resolution that relate to the CRC's membership, functions, and operations; (2) allow the CRC to review cases involving the assessment of civil money penalties ("CMPs") for violations of the Home Mortgage Disclosure Act ("HMDA");² and (3) expressly allow for consultation between the CRC and division directors, office directors, or the General Counsel on any enforcement-related matter in advance of the issuance of a notice.

Background:

This matter arose out of a recent change by the Division of Depositor and Consumer Protection ("DCP") regarding the manner in which HMDA CMPs are assessed. Until recently, HMDA violations had been treated as technical in nature, and the CMPs assessed for such violations were relatively small.³ Cases involving violations of HMDA were expressly excluded from the review authority of the CRC in the same manner as cases involving violations for late, inaccurate, or misleading Reports of Condition, violations of flood insurance requirements, or late payment of assessments.⁴

¹ Section I of resolution bearing Seal No. 061427 (December 11, 1996), as amended (the "Standing Committee Resolution").

² 12 U.S.C. §§ 2801-2809. These violations relate to the failure to file Loan Application Registers ("LARs") required to be filed by insured depository institutions that make home mortgage loans or the submission of false or inaccurate information on such LARs.

³ In 2011, HMDA CMPs were assessed in seventy-three (73) cases with an average penalty of \$7,938.00. In 2010, sixty-nine (69) HMDA CMPs were assessed with an average penalty of \$6,170.00.

⁴ See Subparagraph (1)b of paragraph B of section I of resolution bearing Seal No. 061427 (December 11, 1996), as amended.

Proposed Revisions to the Authority of the Case Review Committee

Page 2 of 5

Last year, however, DCP announced its decision to approach HMDA violations in a new manner. Pursuant to this announcement, CMPs for minor, technical HMDA violations would be effectively eliminated, while egregious or repeat HMDA violations would result in larger, more substantial CMPs. In light of these procedural changes, DCP requested that the Legal Division prepare a Board case recommending that the authority of the CRC be expanded so that the assessment of HMDA CMPs would be subject to the same oversight and treated in the same manner as CMPs for other substantive violations of federal consumer protection laws.

The Legal Division was also requested to clarify and streamline the language of the section of the Standing Committee Resolution related to the CRC.

I. Supervision of the CRC over the Assessment of HMDA CMPs

A. Historical Exclusion of HMDA Cases from the CRC's Review Authority

In 2004, the membership and functions of the CRC were amended by Board resolution.⁵ At that time, the CRC was directed to (a) “adopt Guidelines for Enforcement Actions Against Individuals involving” certain enumerated types of actions, and (b) “review in advance and approve the initiation under delegated authority of certain enforcement actions within the scope of the adopted Guidelines....”⁶ Cases involving the assessment of CMPs for filing of false or misleading HMDA LARs were expressly carved out from the list of cases about which the CRC was to adopt guidance and, consequently, were removed from the types of cases over which the CRC had review authority.⁷

B. Separating the Jurisdiction of the CRC from its Authority to Promulgate Guidelines for Enforcement Actions

As noted above, by Board resolution, the CRC's authority to exercise review authority over certain types of cases ostensibly arises out of its promulgation of guidelines regarding such cases. Under this structure, to expand the CRC's authority over new types of cases, the Board would need to direct the CRC to promulgate guidelines regarding such cases, and the CRC would then need to promulgate such guidelines. Conversely, to exclude cases from the CRC's review, the guidelines related to such cases would presumably need to be rescinded. Consequently, we recommend that the CRC's authority to promulgate guidelines be separated from its review authority.

Under the proposed resolution, the CRC would maintain the authority to promulgate enforcement guidelines, and, with the exception of HMDA cases, its review authority would

⁵ See Resolution No. 072277 (April 6, 2004).

⁶ *Id.* The “Guidelines for Enforcement Actions Against Individuals” adopted by the CRC in 2004 address administrative actions against insured depository institutions and institution-affiliated parties (“IAPs”) under section 3(u) of the FDI Act, 12 U.S.C. § 1813(u).

⁷ *Id.* The 2004 Resolution has been followed by five subsequent amendments to the composite Standing Committee Structure Resolution since this date, most recently on March 5, 2012. See Resolution No. 079915 (March 5, 2012). Each revision has maintained the same structure: the CRC is to promulgate guidelines and review cases within the scope of the guidelines. In each version, cases involving HMDA LARs have been expressly excluded from the list of cases about which the CRC is to promulgate guidelines.

Proposed Revisions to the Authority of the Case Review Committee

Page 3 of 5

remain largely unchanged.⁸ Under the proposal, the CRC's authority to promulgate guidelines would be set forth in one subparagraph, and the CRC's jurisdiction would be established in a separate subparagraph.

The proposed resolution would maintain the existing supervisory structure of the CRC over actions to remove, suspend, or prohibit participation in the conduct of the affairs of an insured depository institution, actions seeking payment of restitution, and most actions to assess civil money penalties. However, the current carve-out of authority to review HMDA cases would be deleted, resulting in HMDA cases being treated the same as all other cases involving the assessment of CMPs.⁹

II. Other Proposed Clarifications and Revisions to the Standing Committee Resolution

A. Clarifying Revisions

We recommend that the section of the Standing Committee Resolution regarding the CRC be streamlined and clarified, and we have proposed making a number of clarifying revisions, including:

1. Restating the provisions contained in the current Standing Committee Resolution regarding the membership of the CRC in a more concise manner;
2. Grouping all provisions regarding the chairperson of the CRC in a single subparagraph;
3. Clarifying that the CRC's authority to "review and approve" enforcement actions brought under delegated authority, implicitly includes the Committee's authority to disapprove such actions;
4. Affirming that the CRC's authority to "review and approve" enforcement actions allows the Committee to approve of enforcement actions within defined parameters (e.g., allowing the CRC to approve a proposed settlement within a predetermined range);
5. Defining the phrase, "initiation of an enforcement action" to mean the "issuance of orders or notices" with respect to such actions;
6. Clarifying that the provisions of the Standing Committee Resolution related to concurrence requirements merely reaffirm existing requirements set forth in

⁸ Under the proposed resolution, the CRC would retain the authority to review all types of actions within the express jurisdiction of the Committee. Additionally, the proposed resolution clarifies that the CRC may review any other administrative enforcement action, if the action could affect Corporation policy, attract unusual attention or publicity, or involve an issue of first impression.

⁹ Cases involving the assessment of CMPs for the filing of late, inaccurate, or misleading Reports of Condition, violations of flood insurance requirements, and the failure to timely pay assessments would continue to be carved out of the CRC's express jurisdiction.

subparagraph N of Resolution of the Board of Directors bearing Seal No. 071098, dated December 3, 2002, as amended, except that they limit the ability to sub-delegate the authority to issue certain types of notices; and

7. Providing explanatory language regarding the relevance of the communication firewall.

B. Conforming Edits

Additionally, we propose making conforming edits to the section of the Standing Committee Resolution regarding the CRC, consistent with current operational realities.

1. Designation of temporary replacements

Under the current resolution, if a Committee member will be absent from a CRC meeting, he or she must name as a designee the most senior member of his or her staff to serve as a replacement. Given that four members of the CRC are the deputies and/or special assistants to individual Board members and that these Committee members may lack their own staff, we propose allowing the Board member on whose staff the Committee member serves to designate the replacement. We also propose expressly stating that the General Counsel may designate a Deputy General Counsel to serve on the CRC in the General Counsel's absence.

2. Consultation with the CRC on administrative enforcement-related matters.

Under the current resolution, the Committee's responsibilities appear to be limited to issuing written enforcement guidelines and reviewing and approving proposed enforcement actions. A concern was raised that nothing in the resolution expressly authorized division and office directors or the General Counsel to consult with the CRC on enforcement matters generally. The proposed resolution would explicitly allow the CRC to consult with division and office directors and with the General Counsel on matters of enforcement policy. This would allow the division and office directors and the General Counsel to obtain the CRC's guidance on cases that may not yet be ready for pursuit in a formal enforcement action. Like all matters brought before the CRC, this advisory function would be exercised at the discretion of the chairperson of the CRC.

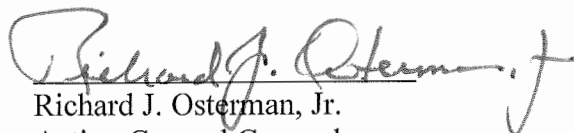
3. Identification of cases that may impact Corporation policy or attract unusual attention.

Under the current resolution, the CRC may review certain cases that could "affect Corporation policy, attract unusual attention or publicity, or involve an issue of first impression," if such a matter is identified by a division or office director "after consultation with the Legal Division...." To clarify and to provide the CRC with the appropriate level of involvement in major and precedential matters, the proposal explicitly allows the CRC to review any administrative enforcement action, if a division or office director, the General Counsel, or the chairperson of the CRC determine that the matter may affect Corporation policy, attract unusual attention or publicity, or involve an issue of first impression.

III. Recommendation

We recommend that the Board approve the attached Resolution implementing the proposed revisions to the procedures and authority of the CRC discussed above.

Concur:


Richard J. Osterman, Jr.
Acting General Counsel