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**FEDERAL DEPOSIT INSURANCE CORPORATION**

**Guidelines for Appeals of Material Supervisory Determinations**

**Docket No.:** [XXXXXX]

**RIN:** 3064-[XXXX]

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Notice and Request for Comment.

**SUMMARY:** The Federal Deposit Insurance Corporation (“FDIC”) proposes to amend its Guidelines for Appeals of Material Supervisory Determinations (Guidelines) so that institutions have additional avenues of redress with respect to these determinations and for greater consistency with the appeals process of the other Federal banking agencies. Consistent with Section 309(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103-325, 108 Stat. 2160) (“Riegle Act”), the FDIC, in 1995, established its Supervision Appeals Review Committee (SARC), an independent intra-agency appellate process to review appeals by institutions of “material supervisory determinations,” and has amended the Guidelines from time to time, as appropriate.

**DATES:** Written comments on the Proposal must be received by the FDIC on or before [insert date 60 days after publication in the Federal Register] for consideration.

**ADDRESSES:** Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Agency Web Site: <http://www.fdic.gov/regulations/laws/federal/propose.html>. Follow the instructions for submitting comments.
- E-mail: [comments@fdic.gov](mailto:comments@fdic.gov). Include “Guidelines for Appeals of Material Supervisory Determinations” in the subject line of the message.
- Mail: Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17<sup>th</sup> Street, N.W., Washington, D.C. 20429.
- Hand Delivery: Comments may be hand-delivered to the guard station located at the rear of the FDIC’s 550 17<sup>th</sup> Street building (accessible from F Street) on business days between 7 a.m. and 5 p.m.
- Public Inspection: All comments received, including any personal information provided, will be posted generally without change to <https://www.fdic.gov/regulations/laws/federal/index.html>. Comments may be inspected and photocopied in the FDIC Public Information Center, Room E-1005, 3501 North Fairfax Drive, Arlington, VA 22226 between 9 a.m. and 4:00 p.m. on business days.

**FOR FURTHER INFORMATION CONTACT:** [RMS / DCP Contacts]; [Legal Division Contacts]; and James Watts, Senior Attorney, Legal Division, (202) 898-6678.

**SUPPLEMENTARY INFORMATION:**

The FDIC is publishing for notice and comment proposed amendments to the Guidelines for Appeals of Material Supervisory Determinations. The FDIC considers it desirable in this instance to seek comments regarding these amendments to the Guidelines, although notice and

comment is not required. The proposed amendments would be effective upon adoption so that institutions have additional avenues of redress with respect to material supervisory determinations.

The proposed amendments would 1) permit appeal of the level of compliance with an existing formal enforcement action; 2) provide that a formal enforcement-related action or decision does not affect an appeal that is pending under the Guidelines; 3) make additional appeal rights available pursuant to the Guidelines with respect to material supervisory determinations in certain circumstances; and 4) make other limited technical and conforming amendments.

## **Background**

Section 309(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103-325, 108 Stat. 2160) (“Riegle Act”), required the FDIC (as well as the other Federal banking agencies and the National Credit Union Administration Board) to establish an independent intra-agency appellate process to review material supervisory determinations. The Riegle Act defines the term “independent appellate process” to mean a review by an agency official who does not directly or indirectly report to the agency official who made the material supervisory determination under review. In the appeals process, the FDIC is required to ensure that: (1) an appeal of a material supervisory determination by an insured depository institution is heard and decided expeditiously; and (2) appropriate safeguards exist for protecting appellants from retaliation by agency examiners.

The term “material supervisory determinations” is defined in the Riegle Act to include determinations relating to: (1) examination ratings; (2) the adequacy of loan loss reserve provisions; and (3) classifications on loans that are significant to an institution. The Riegle Act

specifically excludes from the definition of “material supervisory determinations” a decision to appoint a conservator or receiver for an insured depository institution or to take prompt corrective action pursuant to section 38 of the Federal Deposit Insurance Act (“FDI Act”), 12 U.S.C. 1831o. Finally, section 309(g) (12 U.S.C. 4806(g)) expressly provides that the Riegle Act’s requirement to establish an appeals process shall not affect the authority of the Federal banking agencies to take enforcement or supervisory actions against an institution.

On December 28, 1994, the FDIC published in the **Federal Register**, for a 30-day comment period, a notice of and request for comments on proposed Guidelines for Appeals of Material Supervisory Determinations (“Guidelines”) (59 FR 66965.) In the proposed Guidelines, the FDIC proposed that the term “material supervisory determinations,” in addition to the statutory exclusions noted above, also should not include: (1) determinations for which other appeals procedures exist (such as determinations relating to deposit insurance assessment risk classifications); (2) decisions to initiate formal enforcement actions under section 8 of the FDI Act; (3) decisions to initiate informal enforcement actions (such as memoranda of understanding); (4) determinations relating to a violation of a statute or regulation; and (5) any other determinations not specified in the Riegle Act as being eligible for appeal.

Commenters to the proposed Guidelines suggested that the proposed limitations on determinations eligible for appeal were too restrictive. In response to comments received, the FDIC modified the proposed Guidelines. The FDIC added a final clarifying sentence to the listing of “Determinations Not Eligible for Appeal” in the Guidelines as follows: “The FDIC recognizes that, although determinations to take prompt corrective action or initiate formal or informal enforcement actions are not appealable, the determinations upon which such actions may be based (e.g., loan classifications) are appealable provided they otherwise qualify.” (60 FR

15929, March 28, 1995.) On March 21, 1995, the FDIC's Board of Directors adopted the proposed Guidelines. (60 FR 15923.)

On March 18, 2004, the FDIC published in the **Federal Register**, for a 30-day comment period, a notice and request for comments regarding proposed revisions to the Guidelines, which would change the composition and procedures of the SARC. (69 FR 12855.) On July 9, 2004, the FDIC published in the **Federal Register** a notice of guidelines which, effective June 28, 2004, adopted the revised Guidelines, largely as proposed. (69 FR 41479.)

On May 27, 2008, the FDIC published in the **Federal Register**, for a 60-day comment period, a notice and request for comments regarding proposed revisions to the Guidelines. (73 FR 30393.) On September 23, 2008, the FDIC published in the **Federal Register** a notice of guidelines which, effective September 16, 2008, adopted revised Guidelines modifying the supervisory determinations eligible for appeal to eliminate the ability of an FDIC-supervised institution to file an appeal with the SARC for determinations or the facts and circumstances underlying a recommended or pending formal enforcement-related action or decision, including the initiation of an investigation. The FDIC noted that these amendments better aligned the SARC appellate process with the material supervisory determinations appeals procedures at the other Federal banking agencies. (73 FR 54822.)

On April 19, 2010, the FDIC published in the **Federal Register** a notice of guidelines which, effective April 13, 2010, adopted revised Guidelines extending the decision deadline for requests for review and clarifying the decisional deadline for written decisions by the SARC. (75 FR 20358.)

On March 23, 2012, the FDIC published in the **Federal Register** a notice of guidelines which, effective March 20, 2012, adopted revised Guidelines that included technical and

ministerial revisions to reflect changes in the organization of the FDIC's Board, of its offices and divisions, and in the categories of institutions that it supervises. (77 FR 17055.)

## **Proposed Amendments**

As noted above, the FDIC adopted amendments to the Guidelines in 2008 modifying the supervisory determinations eligible for appeal to eliminate the ability of an FDIC-supervised institution to file an appeal with the SARC for determinations or the facts and circumstances underlying a recommended or pending formal enforcement-related action or decision, including the initiation of an investigation. However, based on the FDIC's experience in administering the current appellate process, the FDIC believes that there are changes that could be beneficial to allow for additional avenues of redress with respect to certain material supervisory determinations. In considering changes, the FDIC also reviewed the current policies at the OCC and the Board of Governors of the Federal Reserve System. Accordingly, the FDIC is proposing amendments to the Guidelines that would expand institutions' appellate rights under certain circumstances as well as promote greater consistency with the other Federal banking agencies.

### *I. Amendment of Material Supervisory Determinations Eligible for Review*

Currently, the Guidelines state that "material supervisory determinations" subject to appeal do not include determinations regarding compliance with an existing formal enforcement action. The proposed amendment to the Guidelines would allow determinations regarding an institution's level of compliance with an existing formal enforcement action to be appealed; however, if the FDIC determines that lack of compliance with an existing enforcement action requires additional enforcement action, the proposed new enforcement action would not be appealable. This proposed amendment to the Guidelines would enhance institutions' opportunities to obtain an independent review of supervisory determinations, promoting the

goals of the Riegle Act in a manner consistent with the statute's requirement that the appeals process shall not affect the authority of the Federal banking agencies to take enforcement or supervisory actions against an institution.<sup>1</sup>

The FDIC notes that, similar to the proposed amendments, the current appeals process of the OCC allows institutions to appeal conclusions regarding their level of compliance with a formal enforcement action; however, if the OCC determines that the lack of compliance with an existing enforcement action requires additional enforcement action, the proposed new enforcement action is not appealable. *See* OCC Bulletin 2013-15 (June 7, 2013).

In addition, the proposed Guidelines would remove from the list of determinations that are not appealable the decision to initiate an informal enforcement action, such as a Memorandum of Understanding. This would better conform the FDIC's Guidelines to the current appeals process of the Office of the Comptroller of the Currency.

## *II. Commencement of Formal Enforcement Action*

Currently, the Guidelines state that a formal enforcement-related action or decision commences, and therefore becomes unappealable, when the FDIC initiates a formal investigation under 12 U.S.C. § 1820(c) or provides written notice to the bank indicating its intention to pursue available formal enforcement remedies under applicable statutes or published enforcement-related policies of the FDIC, including written notice of a referral to the Attorney General pursuant to ECOA or a notice to HUD for violations of the FHA or ECOA. The proposed amendments would provide that a formal enforcement-related action or decision commences and becomes unappealable when the FDIC initiates a formal investigation under 12 U.S.C. § 1820(c) or provides written notice to the bank of a recommended or proposed formal

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<sup>1</sup> 12 U.S.C. 4806(g).

enforcement action under applicable statutes or published enforcement-related policies of the FDIC, including written notice of a referral to the Attorney General pursuant to the ECOA or a notice to HUD for violations of the FHA or ECOA. This change would make the Guidelines more consistent with the process of the OCC.

The proposed amendments also would provide that a formal enforcement-related action or decision does not affect the appeal of any material supervisory determination that is pending under the Guidelines.

### *III. Additional SARC Appeal Rights*

The proposed amendments would make SARC appeal rights available with respect to material supervisory determinations in certain circumstances. In particular, SARC appeal rights would be made available pursuant to the Guidelines where the FDIC has provided an institution with written notice of a recommended or proposed formal enforcement action, but does not pursue an enforcement action within 120 days of the written notice. The FDIC may extend this 120-day period, with the approval of the SARC Chairperson, if the FDIC notifies the institution that the relevant Division Director is seeking formal authority to take an enforcement action.

In addition, SARC appeal rights would be made available in the case of a referral to the Attorney General for certain violations of the ECOA, if the Attorney General returns the matter to the FDIC and the FDIC does not initiate an enforcement action within 120 days of the date the referral is returned.

SARC appeal rights would also be made available if the FDIC provides notice to HUD for violations of the ECOA or FHA, but does not initiate an enforcement action within 120 days of the date the notice is provided.



Under the proposal, these additional appeal rights may be extended if the FDIC and the institution mutually agree and deem it appropriate in order to reach a mutually agreeable solution.

Institutions would be provided written notice of SARC appeal rights within 10 days of a determination that appeal rights have been made available.

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## **Proposed Amended Guidelines for Appeals of Material Supervisory Determinations**

### *A. Introduction*

Section 309(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (Public Law No. 103-325, 108 Stat. 2160) (“Riegle Act”) required the Federal Deposit Insurance Corporation (“FDIC”) to establish an independent intra-agency appellate process to review material supervisory determinations made at insured depository institutions that it supervises. The Guidelines for Appeals of Material Supervisory Determinations (“guidelines”) describe the types of determinations that are eligible for review and the process by which appeals will be considered and decided. The procedures set forth in these guidelines establish an appeals process for the review of material supervisory determinations by the Supervision Appeals Review Committee (“SARC”).

### *B. SARC Membership*

The following individuals comprise the three (3) voting members of the SARC: (1) One inside FDIC Board member, either the Chairperson, the Vice Chairperson, or the FDIC Director (Appointive), as designated by the FDIC Chairperson (this person would serve as the

Chairperson of the SARC); and (2) one deputy or special assistant to each of the inside FDIC Board members who are not designated as the SARC Chairperson. The General Counsel is a non-voting member of the SARC. The FDIC Chairperson may designate alternate member(s) to the SARC if there are vacancies so long as the alternate member was not involved in making or affirming the material supervisory determination under review. A member of the SARC may designate and authorize the most senior member of his or her staff within the substantive area of responsibility related to cases before the SARC to act on his or her behalf.

### *C. Institutions Eligible To Appeal*

The guidelines apply to the insured depository institutions that the FDIC supervises (i.e., insured State nonmember banks, insured branches of foreign banks, and state savings associations) and to other insured depository institutions with respect to which the FDIC makes material supervisory determinations.

### *D. Determinations Subject To Appeal*

An institution may appeal any material supervisory determination pursuant to the procedures set forth in these guidelines.

Material supervisory determinations include:

- (a) CAMELS ratings under the Uniform Financial Institutions Rating System;
- (b) IT ratings under the Uniform Interagency Rating System for Data Processing Operations;
- (c) Trust ratings under the Uniform Interagency Trust Rating System;
- (d) CRA ratings under the Revised Uniform Interagency Community Reinvestment Act Assessment Rating System;

- (e) Consumer compliance ratings under the Uniform Interagency Consumer Compliance Rating System;
- (f) Registered transfer agent examination ratings;
- (g) Government securities dealer examination ratings;
- (h) Municipal securities dealer examination ratings;
- (i) Determinations relating to the adequacy of loan loss reserve provisions;
- (j) Classifications of loans and other assets in dispute the amount of which, individually or in the aggregate, exceeds 10 percent of an institution's total capital;
- (k) Determinations relating to violations of a statute or regulation that may affect the capital, earnings, or operating flexibility of an institution, or otherwise affect the nature and level of supervisory oversight accorded an institution;
- (l) Truth in Lending (Regulation Z) restitution;
- (m) Filings made pursuant to 12 C.F.R. 303.11(f), for which a request for reconsideration has been granted, other than denials of a change in bank control, change in senior executive officer or board of directors, or denial of an application pursuant to section 19 of the Federal Deposit Insurance Act ("FDI Act"), 12 U.S.C. 1829 (which are contained in 12 C.F.R. 308, subparts D, L, and M, respectively), if the filing was originally denied by the Director, Deputy Director, or Associate Director of the Division of Depositor and Consumer Protection ("DCP") or the Division of Risk Management Supervision ("RMS");
- (n) Determinations regarding the institution's level of compliance with a formal enforcement action; however, if the FDIC determines that the lack of compliance with an

existing enforcement action requires additional enforcement action, the proposed new enforcement action is not appealable; and

(o) Any other supervisory determination (unless otherwise not eligible for appeal) that may affect the capital, earnings, operating flexibility, or capital category for prompt corrective action purposes of an institution, or otherwise affect the nature and level of supervisory oversight accorded an institution.

Material supervisory determinations do not include:

(a) Decisions to appoint a conservator or receiver for an insured depository institution;

(b) Decisions to take prompt corrective action pursuant to section 38 of the FDI Act, 12 U.S.C. 1831o;

(c) Determinations for which other appeals procedures exist (such as determinations of deposit insurance assessment risk classifications and payment calculations); and

(d) Formal enforcement-related actions and decisions, including determinations and the underlying facts and circumstances that form the basis of a recommended or pending formal enforcement action.

A formal enforcement-related action or decision commences, and becomes unappealable, when the FDIC initiates a formal investigation under 12 U.S.C. 1820(c) or provides written notice to the bank of a recommended or proposed formal enforcement action under applicable statutes or published enforcement-related policies of the FDIC, including written notice of a referral to the Attorney General pursuant to the Equal Credit Opportunity Act (“ECOA”) or a notice to the Secretary of Housing and Urban Development (“HUD”) for violations of the ECOA or the Fair Housing Act (“FHA”). A formal enforcement-related action or decision does not

affect the appeal of any material supervisory determination that is pending under these guidelines. For the purposes of these guidelines, remarks in a Report of Examination do not constitute written notice of a recommended or proposed enforcement action.

Additional SARC Rights:

- (a) In the case of any written notice from the FDIC to the institution of a recommended or proposed formal enforcement action, including a draft consent order, if an enforcement action, such as the issuance of a notice of charges or the signing of a consent order, is not pursued within 120 days of the written notice, SARC appeal rights will be made available pursuant to these guidelines. The FDIC may extend this 120-day period, with the approval of the SARC Chairperson, if the FDIC notifies the institution that the relevant Division Director is seeking formal authority to take an enforcement action.
- (b) In the case of a referral to the Attorney General for violations of the ECOA, if the Attorney General returns the matter to the FDIC and the FDIC does not initiate an enforcement action within 120 days of the date the referral is returned, SARC appeal rights will be made available pursuant to these guidelines.
- (c) In the case of providing notice to HUD for violations of the ECOA or the FHA, if the FDIC does not initiate an enforcement action within 120 days of the date the notice is provided, SARC appeal rights will be made available under these guidelines.
- (d) Written notification of SARC rights will be provided to the institution within 10 days of a determination that such rights have been made available.

- (e) The FDIC and an institution may mutually agree to extend the timeframes in paragraphs (a), (b), and (c) if the parties deem it appropriate in order to reach a mutually agreeable solution.

#### *E. Good Faith Resolution*

An institution should make a good-faith effort to resolve any dispute concerning a material supervisory determination with the on-site examiner and/or the appropriate Regional Office. The on-site examiner and the Regional Office will promptly respond to any concerns raised by an institution regarding a material supervisory determination. Informal resolution of disputes with the on-site examiner and/or the appropriate Regional Office is encouraged, but seeking such a resolution is not a condition to filing a request for review with the appropriate Division, either DCP or RMS, or to filing an appeal with the SARC under these guidelines.

#### *F. Filing a Request for Review with the Appropriate Division*

An institution may file a request for review of a material supervisory determination with the Division that made the determination, either the Director, DCP, or the Director, RMS, (“Director” or “Division Director”), 550 17th Street, NW, Room F-4076, Washington, DC 20429, within 60 calendar days following the institution’s receipt of a report of examination containing a material supervisory determination or other written communication of a material supervisory determination. A request for review must be in writing and must include:

- (a) A detailed description of the issues in dispute, the surrounding circumstances, the institution’s position regarding the dispute and any arguments to support that position (including citation of any relevant statute, regulation, policy statement, or other authority), how resolution of the dispute would materially affect the institution, and

whether a good-faith effort was made to resolve the dispute with the on-site examiner and the Regional Office; and

(b) A statement that the institution's board of directors has considered the merits of the request and has authorized that it be filed.

The Division Director will issue a written determination on the request for review, setting forth the grounds for that determination, within 45 days of receipt of the request. No appeal to the SARC will be allowed unless an institution has first filed a timely request for review with the appropriate Division Director.

#### *G. Appeal to the SARC*

An institution that does not agree with the written determination rendered by the Division Director must appeal that determination to the SARC within 30 calendar days from the date of that determination. The Director's determination will inform the institution of the 30-day time period for filing with the SARC and will provide the mailing address for any appeal the institution may wish to file. Failure to file within the 30-day time limit may result in denial of the appeal by the SARC. If the Division Director recommends that an institution receive relief that the Director lacks delegated authority to grant, the Director may, with the approval of the Chairperson of the SARC, transfer the matter directly to the SARC without issuing a determination. Notice of such a transfer will be provided to the institution. The Division Director may also request guidance from the SARC Chairperson as to procedural or other questions relating to any request for review.

#### *H. Filing with the SARC*

An appeal to the SARC will be considered filed if the written appeal is received by the FDIC within 30 calendar days from the date of the Division Director's written determination or if the written appeal is placed in the U.S. mail within that 30-day period. If the 30th day after the date of the Division Director's written determination is a Saturday, Sunday, or a Federal holiday, filing may be made on the next business day. The appeal should be sent to the address indicated on the Division Director's determination being appealed.

#### *I. Contents of Appeal*

The appeal should be labeled to indicate that it is an appeal to the SARC and should contain the name, address, and telephone number of the institution and any representative, as well as a copy of the Division Director's determination being appealed. If oral presentation is sought, that request should be included in the appeal. Only matters previously reviewed at the division level, resulting in a written determination or direct referral to the SARC, may be appealed to the SARC. Evidence not presented for review to the Division Director may be submitted to the SARC only if authorized by the SARC Chairperson. The institution should set forth all of the reasons, legal and factual, why it disagrees with the Division Director's determination. Nothing in the SARC administrative process shall create any discovery or other such rights.

#### *J. Burden of Proof*

The burden of proof as to all matters at issue in the appeal, including timeliness of the appeal if timeliness is at issue, rests with the institution.

#### *K. Oral Presentation*



The SARC may, in its discretion, whether or not a request is made, determine to allow an oral presentation. The SARC generally grants a request for oral presentation if it determines that oral presentation is likely to be helpful or would otherwise be in the public interest. Notice of the SARC's determination to grant or deny a request for oral presentation will be provided to the institution. If oral presentation is held, the institution will be allowed to present its positions on the issues raised in the appeal and to respond to any questions from the SARC. The SARC may also require that FDIC staff participate as the SARC deems appropriate.

#### *L. Dismissal and Withdrawal*

An appeal may be dismissed by the SARC if it is not timely filed, if the basis for the appeal is not discernable from the appeal, or if the institution moves to withdraw the appeal. An appeal may be rejected if the right to appeal has been cut off under Section D, above.

#### *M. Scope of Review and Decision*

The SARC will review the appeal for consistency with the policies, practices, and mission of the FDIC and the overall reasonableness of, and the support offered for, the positions advanced. The SARC will notify the institution, in writing, of its decision concerning the disputed material supervisory determination(s) within 45 days from the date the SARC meets to consider the appeal, which meeting will be held within 90 days from the date of the filing of the appeal. SARC review will be limited to the facts and circumstances as they existed prior to, or at the time the material supervisory determination was made, even if later discovered, and no consideration will be given to any facts or circumstances that occur or corrective action taken after the determination was made. The SARC may reconsider its decision only on a showing of

an intervening change in the controlling law or the availability of material evidence not reasonably available when the decision was issued.

#### *N. Publication of Decisions*

SARC decisions will be published, and the published SARC decisions will be redacted to avoid disclosure of exempt information. In cases in which redaction is deemed insufficient to prevent improper disclosure, published decisions may be presented in summary form. Published SARC decisions may be cited as precedent in appeals to the SARC.

#### *O. SARC Guidelines Generally*

Appeals to the SARC will be governed by these guidelines. The SARC will retain discretion to waive any provision of the guidelines for good cause. The SARC may adopt supplemental rules governing its operations; order that material be kept confidential; and consolidate similar appeals.

#### *P. Limitation on Agency Ombudsman*

The subject matter of a material supervisory determination for which either an appeal to the SARC has been filed, or a final SARC decision issued, is not eligible for consideration by the Ombudsman.

#### *Q. Coordination with State Regulatory Authorities*

In the event that a material supervisory determination subject to a request for review is the joint product of the FDIC and a State regulatory authority, the Director, DCP, or the Director, RMS, as appropriate, will promptly notify the appropriate State regulatory authority of the

request, provide the regulatory authority with a copy of the institution's request for review and any other related materials, and solicit the regulatory authority's views regarding the merits of the request before making a determination. In the event that an appeal is subsequently filed with the SARC, the SARC will notify the institution and the State regulatory authority of its decision. Once the SARC has issued its determination, any other issues that may remain between the institution and the State authority will be left to those parties to resolve.

*R. Effect on Supervisory or Enforcement Actions*

The use of the procedures set forth in these guidelines by any institution will not affect, delay, or impede any formal or informal supervisory or enforcement action in progress or affect the FDIC's authority to take any supervisory or enforcement action against that institution.

*S. Effect on Applications or Requests for Approval*

Any application or request for approval made to the FDIC by an institution that has appealed a material supervisory determination that relates to, or could affect the approval of, the application or request will not be considered until a final decision concerning the appeal is made unless otherwise requested by the institution.

*T. Prohibition on Examiner Retaliation*

The FDIC has an experienced examination workforce and is proud of its professionalism and dedication. FDIC policy prohibits any retaliation, abuse, or retribution by an agency examiner or any FDIC personnel against an institution. Such behavior against an institution that appeals a material supervisory determination constitutes unprofessional conduct and will subject the examiner or other personnel to appropriate disciplinary or remedial action. Institutions that

believe they have been retaliated against are encouraged to contact the Regional Director for the appropriate FDIC region. Any institution that believes or has any evidence that it has been subject to retaliation may file a complaint with the Director, Office of the Ombudsman, Federal Deposit Insurance Corporation, 550 17th Street, Washington, DC 20429, explaining the circumstances and the basis for such belief or evidence and requesting that the complaint be investigated and appropriate disciplinary or remedial action taken. The Office of the Ombudsman will work with the appropriate Division Director to resolve the allegation of retaliation.

[By order of the Board of Directors.

Dated at Washington, DC, the \_\_ day of June, 2016.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.]