

Communicating Findings

At the conclusion of an FDIC risk-focused, on-site consumer compliance and Community Reinvestment Act (CRA) examination, visitation or review, compliance examination staff communicates supervisory findings to institutions describing the strengths and weaknesses of an institution's compliance management system (CMS), assessing adherence to the consumer protection laws and regulations, and describing potential or actual consumer harm. Typically, such findings are conveyed during a closing meeting with the institution's management and/or the Board of Directors/Trustees (Board) at the conclusion of a consumer compliance examination, and also in the Report of Examination (ROE).

Examiners communicate Matters Requiring Board Attention (MRBAs) when significant issues are identified requiring an institution's Board and management to take prompt corrective action on behalf of the institution and elevated supervisory attention is necessary. Examiners also provide recommendations to management when issues are identified that have a lower risk of consumer harm and are correctable by management in the normal course of business. If institutions take recommended actions, their CMS generally improves, and subsequent supervisory attention may not be necessary.

Closing Management Meeting

A closing meeting is held with management at the conclusion of on-site compliance and CRA examination or reviews.¹ When practical, at least two FDIC representatives are present at the closing meeting. Attendance by financial institution representatives other than management is at the discretion of management. These participants may include: consultants, agents, counsel, accountants, holding company officers, directors, and employees who work directly with consumer protection laws or CRA. The presence of the aforementioned representatives should only be during segments that pertain to their area of responsibility. Third party participants must be under contract with the bank, with appropriate confidentiality language, in order to attend the closing meeting.

During concurrent examinations with Risk Management Supervision (RMS), DCP's Examiner-in-Charge (EIC) coordinates with RMS examiners to schedule the closing management and Board meetings in an effort to ensure that all necessary attendees are present and that the bank's and FDIC staff's time is used efficiently. Reasonable requests from management, such as for separate meetings, are considered and accommodated, if practical.

Examination findings, including compliance and CRA ratings, are not final until the appropriate reviews are conducted by review staff, Field Supervisors, and/or the Regional or Washington Offices, as applicable. Prior to the closing meeting, Regional Offices generally consult with examiners and approve enforcement action recommendations.

¹ An on-site review includes: Consumer complaint investigations; Visitations; or Other Special Reviews.

The closing meeting is used to:

- Summarize review or examination findings. All critical issues are discussed. If significant issues arise subsequently, they are discussed with management either in person or by telephone. If management presents significant, new information at the closing meeting, additional review by the examiner may be required. In such instances, the examination process is left open for further review of applicable regulatory issues and the institution's records. A second meeting with management may be necessary to discuss any additional matters.
- Discuss, when appropriate, positive findings to acknowledge the effectiveness of the institution's compliance or CRA efforts.
- Provide recommendations to address noted weaknesses or deficiencies.
- Obtain management's response(s) and commitment(s) for corrective action for deficiencies identified in the CMS and for cited violations and the resulting consumer harm.
- Advise management of recommended compliance and CRA ratings, as well as any recommendations for formal or informal enforcement actions.
- Recommend actions that would strengthen or enhance the financial institution's CMS, as applicable.

The agenda for the closing meeting lists the discussion items in the order of their significance in relation to the overall conclusions. The agenda also includes a tentative listing of Level 3 and 2 violations, and to the extent possible, draft copies of the pertinent violation sections of the ROE. At the closing meeting, examiners also provide management with a copy of the Level 1 violations, if applicable. A copy of the agenda is provided to management and included in the examination workpapers.

Board Meeting

The purpose of a meeting with the financial institution's Board is to convey the pertinent findings of the examination directly to persons ultimately responsible for the operating policies and procedures of the institution. Board meetings are conducted after the closing meeting with management, and are planned for regularly scheduled Board meetings, whenever possible. When significant issues requiring consultation with the Regional Office are present, the Consultation Policy is followed prior to scheduling the Board meeting.

Board meetings are attended by at least a quorum of Directors/Trustees. The EIC, Field Supervisor, and/or Review Examiner or senior member of the Regional Office staff attend, as deemed appropriate.

Board meetings are required under one or more of the following circumstances:

- Examiners identify significant problems that require consultations with the Regional Office;

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- An informal or formal enforcement action is recommended;
- The proposed compliance rating is “3,” “4,” or “5”;
- The proposed composite CRA rating, state rating, or multi-state rating is “Needs to Improve” or “Substantial Noncompliance”; or
- The institution’s management or Board requests such a meeting.

A Board meeting is not required for:

- Visitations;
- Consumer complaint investigations; or
- Other on-site reviews.

Report of Examination

Introduction

The ROE is a compliance examination’s principal document of record. It communicates the results of an examination to the Board and management of the financial institution. The ROE highlights the strengths and weaknesses of a financial institution’s CMS and cites violations (if any) in order of significance. The ROE may also include pages that inform the institution about matters requiring Board attention (MRBA), compliance with enforcement actions, or other matters. The ROE offers recommendations for addressing deficiencies and improving future compliance management performance, which could also include informal suggestions such as best practices.² Compliance examiners develop the ROE’s content and its findings based on bank information reviewed during the supervisory process, FDIC examination policies and procedures, and examiner experience and professional judgment. For additional information, see the instructions for the Bank of Anytown provided on page III-3.1 in this manual.

Format of the Report of Examination

The Report of Examination is a standalone document that is organized as follows:

- Transmittal Letter
- Cover Page
- Examiner’s Comments and Conclusions
 - Scope of the Examination
 - Consumer Compliance Rating
 - Compliance Management System

² Best practices may be communicated to an institution verbally or in writing. There is no supervisory expectation that an institution should implement suggested best practices.

- Board and Management Oversight
- Compliance Program
 - Violations of Law and Consumer Harm
 - Community Reinvestment Act Evaluation (if applicable)
 - Meeting with Management (and the Board if applicable)
- Matters Requiring Board Attention (if applicable)
- Compliance with Enforcement Actions (if applicable)
- Violations Page(s) (if applicable)
- Other Matters (if applicable)
- Supervisory Comments (if applicable)

Transmittal Letter

A transmittal letter accompanies a written ROE to a financial institution’s Board. The letter is used, in part, to require appropriate follow-up concerning the examination with the Regional Office. The transmittal letter requires the institution, within a timeframe established by the applicable Regional Office, to:

- Address each MRBA;
- Develop appropriate corrective actions for any Level 3 or Level 2 violation that was not adequately corrected prior to the completion of the examination; and
- Send a letter or letters to the appropriate FDIC office notifying it, in sufficient detail, of the actual resolution of the MRBAs and Level 3 and Level 2 violations.

Appropriate staff at the Regional Office level reviews an institution’s response letter(s) and determines whether the response sufficiently addresses the issues in a timely manner. The Regional Office maintains a tracking system to ensure responses are received and corrective actions are completed in a timely manner. In cases where an enforcement action is pursued against an institution, examination staff will follow established monitoring procedures.

Content of the Report of Examination

The guiding principle for completing the ROE is that it contains all information that is necessary and useful for the institution’s Board and management to understand the scope and conclusions of the examination, and any corrective actions that may be necessary to achieve compliance or address consumer harm. The ROE should aid the Board and management in developing an action plan to address any findings or supervisory concerns. Examiners exercise judgment and discretion when determining the amount of information and detail to include in the ROE. Examiners use the instructions and template for the Bank of Anytown at page III-3.1 in this manual when writing the following sections and pages of the ROE.

Scope of the Examination

This section of the ROE provides information regarding the date, type, and coverage of the examination.

Fair lending matters are incorporated into the ROE. Fair lending is specifically noted in the Scope of the Examination section, and the examiner's findings are incorporated into the CMS section of the ROE (described below), as appropriate. If warranted, a separate fair lending section may be included in the ROE.

Consumer Compliance Rating

This section of the ROE discloses and supports the consumer compliance rating. The introductory sentences disclose and support the consumer compliance rating, using the applicable rating definition as follows:

- 1: "A Consumer Compliance Rating of '1' is assigned. An institution in this category maintains a strong CMS and takes action to prevent violations of law and consumer harm."
- 2: "A Consumer Compliance Rating of '2' is assigned. An institution in this category maintains a CMS that is satisfactory at managing compliance risks in the institution's products and services and at substantially limiting violations of law and consumer harm."
- 3: "A Consumer Compliance Rating of '3' is assigned. An institution in this category reflects a CMS deficient at managing consumer compliance risk in the institution's products and services and at limiting violations of law and consumer harm."
- 4: "A Consumer Compliance Rating of '4' is assigned. An institution in this category reflects a CMS seriously deficient at managing consumer compliance risk in the institution's products and services and/or at preventing violations of law and consumer harm."
- 5: "A Consumer Compliance Rating of '5' is assigned. An institution in this category reflects a CMS critically deficient at managing consumer compliance risk in the institution's products and services and/or at preventing violations of law and consumer harm."

Compliance Management System

This section of the ROE includes the EIC's comments and conclusions regarding the overall quality of the institution's CMS and the Board and management's ability to effectively meet its compliance responsibilities. This section discusses the EIC's comments and conclusions relative to each of the two elements of a CMS: Board and management oversight, and the Compliance Program. Both positive and negative aspects of the institution's management of its compliance responsibilities are discussed. Recommendations are described in a separate paragraph after the discussion of the strengths and weaknesses of the CMS components, as applicable. Additionally, there may be issues that need to be covered under a separate heading, and these are discussed

under the Other Matters section of the ROE (described below).

Violations of Law and Consumer Harm

This section of the ROE summarizes the relationship between violations identified and the deficiencies in the CMS. This section also summarizes the consumer harm that resulted from such deficiencies. Generally, examiners consider the collective significance and frequency of all infractions and any mitigating factors.

Violations are categorized as Level 3/High Severity, Level 2/Medium Severity, and Level 1/Low Severity. Only violations at Levels 3 and 2 that are of High or Medium Severity are discussed in this section of the ROE. Level 1 violations will not be mentioned in the examiner's comments and conclusions pages of the report.

This section may include information about reimbursements related to Truth in Lending, administrative enforcement actions, or potential civil liability. In the case of reimbursement (or restitution of any type), this section briefly states the total reimbursable amount when reliable estimates have been determined, or estimates based upon the examiner's calculations, including the assumptions on which the estimate is based.

Community Reinvestment Act

If a concurrent CRA evaluation was conducted, this section of the report includes the CRA rating and a reference to the CRA Performance Evaluation.

Meeting with Management

This section of the ROE describes the exit meeting(s) with management.

Meeting with the Board

This section of the ROE describes the meeting with the Board, if applicable. If a meeting is held with the Board, this section includes the same elements that are discussed under "Meeting with Management" in the Bank of Anytown as it relates to the meeting with the Board members.

Matters Requiring Board Attention

The MRBA page is only included in the ROE for items that are significant and require prompt corrective action and elevated supervisory attention. MRBAs are intended to clearly convey to an institution's Board and management issues of the highest degree of supervisory concern. MRBA could include violations of consumer protection laws, CMS weaknesses that if left unaddressed could adversely affect the institution, activities that resulted in consumer harm, or emerging issues that impact the institution and require proactive attention to mitigate risks.

While formal and informal enforcement actions are often used to compel comprehensive corrective actions in adversely-rated institutions, such actions may also be used to address specific,

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serious situations that occur in well-rated institutions. When the EIC considers administrative enforcement actions, the ROE clearly informs the bank's Board that the EIC plans to recommend to FDIC management that an enforcement action be taken against the institution. The ROE also explains the reasons for the recommendation.

Compliance with Enforcement Actions

The Compliance with Enforcement Actions page is only included when applicable and discusses how management has addressed weaknesses identified in the action. The guidance in this section applies to both formal and informal actions. The page will start with a brief overview of the facts leading to the issuance of an action. At the first examination /visitation after the issuance of a formal or informal administrative action, the provisions of the action will generally appear verbatim on this page.

Each provision should be followed with the examiner's assessment of the adequacy of the steps taken by the institution to comply with the provision. For example, an assessment of a new policy might say "The updated Compliance Policy is comprehensive and tailored to the bank's product offerings." Examiners should not use conclusory statements of opinion such as "The institution is in compliance/noncompliance with this provision." Comments should indicate whether any time limits set forth in actions have been met. At subsequent examinations/visitations, the examiner need only address provisions of an ongoing nature and those that remain outstanding. In all cases, a summary of the institution's actions with regard to the enforcement action will be included on the examiner's comments and conclusions page along with the examiner's recommendation to terminate, continue, or change the enforcement action.

Violations Page(s)

The violations page(s) in the ROE, when applicable, serve as the institution's official record of violations identified during an examination.

Violations of Highest Concern -Level 3/High Severity:

Violations that have resulted in significant harm to consumers or members of a community are classified as Level 3/High Severity. These violations typically result in a request or a requirement that the institution provide restitution in excess of \$10,000 (in aggregate), and other examples include pattern or practice violations of anti-discrimination provisions, including redlining or widespread discouragement.

Violations of Moderate Concern - Level 2/Medium Severity:

Violations reflecting systemic, recurring, or repetitive errors that represent a failure of the bank to meet a key purpose of an underlying regulation or statute are classified as Level

2/Medium Severity. These violations may have had a small, but negative impact on consumers or have the potential to have a negative impact if uncorrected. Level 2 Violations may also include those resulting in potential restitution in an amount below the Level 3 threshold.

Violations of Lowest Concern- Level 1/Low Severity:

Violations that are isolated or sporadic, or systemic violations that are unlikely to affect consumers or the underlying purposes of an applicable regulation or statute are classified as Level 1/Low Severity. These violations are typically due to individual instances of failure to follow established procedures or minor errors in the implementation of reasonable procedures to comply with the obligations of a regulation or statute.

Violations Pages:

Level 3 and Level 2 violations are described in the ROE and are listed in order of severity with management's response to each violation. Level 1 violations are recorded as a list on the Level 1 Violations page. The Level 1 Violations page is left with management at the conclusion of the exit meeting but is not included in the ROE or mentioned in the examiner's comments and conclusions pages of the report.

Descriptions of the Level 3 and Level 2 violations in the violations pages readily call attention to the general nature and magnitude of these matters. Examiner's recommendations to address the violations along with management's responses will be included on the violations pages. Where no violation was found for a particular level of violation, the associated violations page is omitted.

The FDIC relies on examiner professional judgment in categorizing the level of violations. Examiners make reasonable efforts to appropriately categorize violations; however, the key purpose of the categorization system is to communicate to institutions the FDIC's level of concern regarding each of the violations cited, and for institutions to appropriately prioritize efforts to correct violations cited.

Violations that have been self-identified by a bank and fully corrected before the start of the examination (including remedial action, if appropriate) generally are **not** cited on the violations pages or recorded in SOURCE.³ Examiners confirm that the bank identified the root cause of the violation and that the corrective action gives reasonable assurance that the violation will not recur.

³ SOURCE is FDIC's system of record for all compliance and CRA examination activities. It stores both examination data and documents including the Compliance Report of Exam and the CRA Performance Evaluation.

Other Matters

The Other Matters page, if used, discusses matters that arise during an examination that may not rise to the level of a violation of law or regulation regarding which the FDIC has examination authority. Other matters may include violations that are referred to another agency, or details to support a potential risk that is included on the examiner's comments and conclusions pages.

Supervisory Comments

The purpose of the Supervisory Comments page is to provide the FDIC Regional and Washington Offices and other banking regulators with confidential or controversial information. It also provides information to succeeding examiners on supervisory and examination activities relating to the institution. The Supervisory Comments are not included in the ROE transmitted to the financial institution.

Most of the information that examiners traditionally placed on this page can now be found in SOURCE or in the examination workpapers. However, examples of information that continues to be important to report on this page include:

- Planned changes in key management positions or compliance personnel that are not widely known in the institution;
- Pending litigation on a consumer protection matter that is not widely known in the institution;
- Tentative plans or strategies that are not widely known in the institution that may affect the frequency or scope of future compliance examinations; and
- Matters requiring consultation with the Regional Office or Washington Office.
- An explanation as to why civil money penalties are not imposed for Flood violations.
- Bank's compliance with the Interstate Banking and Branching Efficiency Act of 1994.

This page is omitted when there are no issues to discuss, or all information is accessible in SOURCE, or the examination workpapers.

Review of the Report of Examination

The EIC or Review Examiner, as directed by regional policy, completes and uploads the following documents into SOURCE for review:

- Transmittal Letter;
- Cover Page;
- Page 1 – Examiner's Comments and Conclusions;
- CRA Performance Evaluation (if applicable);
- Matters Requiring Board Attention (if applicable);

- Compliance with Enforcement Actions (if applicable);
- Level 1, Level 2, and Level 3 Violations Pages (if applicable);
- Other Matters (if applicable)
- Supervisory Comments (if applicable);
- Final examination scoping documents for compliance and fair lending.

The EIC ensures that all SOURCE submission requirements are met, which includes completing all applicable screens and recording the appropriate violation code for all levels of violations cited during the examination or visitation.

During the review process, Review Examiners identify any gaps, inconsistencies, or unsupported or unexplained conclusions contained in the ROE or any other document informing the institution of a FDIC material supervisory determination. The assigned Review Examiner and the EIC shall fully support the facts identified with supporting information before the ROE or document is submitted to the institution.

Generally, examiners conduct Board meetings before forwarding the examination report to FDIC's Regional or Washington Office for review. However, in special circumstances, examiners may conduct the meeting after forwarding the report for review. If this occurs, the EIC will prepare a memorandum to the Regional Director summarizing the pertinent issues from the Board's discussion for inclusion in the ROE.

The FDIC communicates with the financial institution if, during the review process, the examiner's recommended rating is downgraded or the examiner's conclusions are changed in a way that adversely affects the financial institution.

After the ROE is signed, it is delivered to the Board of the financial institution.