Communicating Findings

Closing Management Meeting

A closing meeting must be held with senior management at the conclusion of any on-site compliance/CRA examination or review. An on-site review includes:

- Fair Lending or other consumer complaint investigations;
- Visitations; or
- Other Special Reviews.

Attendance by financial institution representatives other than management is at the discretion of senior management. These may include: consultants, counsel, accountants, holding company officers, directors, and employees who work directly with consumer protection laws or CRA. When practical, at least two FDIC representatives should be present at the closing meeting.

Management must be informed that examination findings, including compliance/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.

Regional Offices should generally approve any enforcement action recommended by the examiner through consultation prior to the meeting.

The closing meeting should be used to:

- Summarize examination or review findings. All critical issues should be discussed. If significant issues arise subsequently, these should be discussed with senior management either in person or by telephone. If senior management presents significant new information at the closing meeting, additional review by the examiner may be required. In such instances, the examination process should be left open for further review of applicable regulatory issues, the institution's records, and a possible second meeting with management.
- Discuss, when appropriate, positive findings to reinforce the institution's compliance/CRA efforts.
- Provide recommendations to address identified weaknesses or deficiencies.
- Obtain management's response(s) and commitment(s) for corrective action for deficiencies noted in the compliance management system and for cited violations.
- Advise management of recommended compliance and CRA ratings, as well as any recommendations for formal or informal enforcement actions and civil money penalties.

The agenda for the closing meeting should indicate the order of discussion items based on their significance to the overall conclusions. The agenda should also include a tentative listing of violations, and to the extent possible, draft copies of the pertinent violation sections of the Report of Examination should be provided. A copy of the agenda should be filed with the 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 should be conducted after the closing meeting with management, and should be 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 should attend, as applicable. Board meetings are required when one or more of the following circumstances are present:

- Significant problems that require consultations with the Regional Office (refer to the Consultation Policy for further information);
- 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 requested such a meeting.

A Board meeting is not required for:

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

The Board meeting should be used to discuss examination findings and to advise the Board of the recommended compliance and CRA ratings and when applicable, any recommended enforcement actions. When significant issues requiring consultations with the Regional Office are present, the appropriate requirements of the consultation policy should be followed prior to scheduling the Board meeting.

Generally Board meetings should be conducted before the examination report is forwarded to the appropriate staff for review; however, in special circumstances, the meeting may be conducted after the report is forwarded for review. If this occurs, the EIC should prepare a memorandum to the Regional

Director summarizing the pertinent issues from the Board's discussion for inclusion in the Report of Examination.

During concurrent examinations with Risk Management (RM), closing management and Board meetings must be coordinated with RM examiners. Presentations to the Board should be planned for regularly scheduled meetings, whenever possible. Requests from management, such as for separate meetings, should be considered and reasonably accommodated.

Report of Examination

Introduction

The Report of Examination (ROE) is a compliance examination's principal document of record. It communicates the results of an examination to the Board of Directors and senior management of the financial institution. The ROE highlights the strengths and weaknesses of a financial institution's compliance management system (CMS) and cites violations (if any) in order of significance. The ROE also offers recommendations for addressing deficiencies and improving future compliance management performance.

The specific content of the ROE is determined by examiners' professional judgment and discretion, and the guidance provided in this manual. This section of the manual provides general guidance and technical requirements for completing a ROE. Specifically, it provides guidance on:

- Format of the Report
- Content of the Report
- Supervisory Comments
- Review of the Report

Format of the Report of Examination

The ROE should be organized as follows:

- Transmittal Letter
- Cover Page
- Examiner's Comments and Conclusions
  - Scope of the Examination
  - Consumer Compliance Rating
  - Compliance Management
    - Board and Management Oversight
    - Compliance Program
    - Audit
  - Recommendations
  - Enforcement Actions (if applicable)
  - Community Reinvestment Act Evaluation (if applicable)
  - Meeting with Management and the Board of Directors (if applicable)
- Violations Page(s)
- Supervisory Comments (if applicable)

The following is substantive guidance pertaining to the various sections of the ROE.

Transmittal Letter

A transmittal letter accompanies a written ROE to a financial institution's Board of Directors. The letter is used, in part, to require appropriate follow-up concerning the examination with the Field or Regional Office. The following procedures should be used for each compliance examination in which a Level 3 or Level 2 violation is contained in the ROE. The transmittal letter should require the institution to take the actions listed below within a timeframe established by the applicable Field or Regional Office:

- Develop appropriate corrective actions for each Level 3 or Level 2 violation that was not adequately corrected prior to the completion of the examination; and
- Send a letter(s) to the appropriate FDIC office notifying it, in sufficient detail, of the actual corrective actions taken to address the Level 3 and Level 2 violations.

Appropriate staff at either the Field or Regional Office level should review an institution's response letter(s) and determine whether the response sufficiently addresses the issues in a timely manner. The Regional Office shall maintain 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 should follow the previously established monitoring procedures for enforcement actions.

Content of the Report of Examination

The Report of Examination is the principal document of record for examination findings and violations. It is a standalone document that details the:

- Scope of the examination;
- Compliance rating and the basis for the rating;
- Examiner's comments and conclusions on the CMS;
- Violations and other matters of supervisory concern;
- Enforcement Actions;
- Community Reinvestment Act Evaluation; and
- Meeting with Management.

Examination staff should use their professional judgment and discretion when writing the ROE. The ROE should present to

the Board of Directors and management a comprehensive picture of the compliance position of the institution, including strengths and weaknesses of the institution's CMS, and explain significant findings and, violations and related root causes. The Board's and management's attention should be drawn to matters representing the highest degree of risk to the institution or consumers requiring their immediate attention. Explaining the cause and severity of program deficiencies or violations is critical to proposing appropriate changes or corrective actions that will be accepted by management and will prevent recurrences. The overall tone of the ROE should be consultative, designed to educate and inform the Board and management.

The ROE should fully document examination findings and violations. Information necessary to support the assigned compliance rating, the examiner's comments and conclusions, and recommendations should be in the ROE. Information recorded in examination workpapers, including the Risk Profile and Scope Memorandum and Examiner Summary, should document examination activities and support, but not necessarily duplicate, the information in the ROE. The guiding principle for completing the ROE is that it should contain all information that is necessary and useful for the institution's Board and management to understand the scope and conclusions of the examination, as well as any corrective actions. It should also aid them in developing an action plan to address findings.

When determining the amount of information and detail to include in the ROE, examiners should exercise their discretion and consider the collective significance and frequency of findings and violations and mitigating factors. For example, CMS weaknesses that have not yet led to problematic conditions, findings, or violations, but are likely to if not corrected, should be brought to management's attention. However, the amount of detail and the extent of recommendations necessary to include in the ROE will vary depending on the particular situation at that institution.

Fair lending matters should be incorporated in the ROE. Fair lending should be specifically noted in the scope section of the ROE, and the findings incorporated in the other sections of the ROE as appropriate.

The EIC should use the subheadings below to emphasize important issues and provide structure and organization to the ROE.

Scope of the Examination

This section of the ROE describes the scope of the examination and contains the following elements:

- Date of the examination, review period covered, and name of the examiner-in-charge;
- Type and purpose of the examination;
- Compliance management, operational, and regulatory areas reviewed;
- Role, if any, of other examination findings and ratings (e.g., Risk Management) that had an impact on establishing the scope of the examination;
- General description of the process (e.g., discussions with senior management, review of specific documents and reports, transaction testing) used to review the CMS and operations (including fair lending); and
- Offices visited.

Consumer Compliance Rating

This section of the ROE discloses and supports the consumer compliance rating. In addition to the rating, the EIC should provide a brief description of the principal factors that contributed to the assigned rating and a statement about the overall improvement or decline of the institution's compliance posture since the last compliance examination.

Compliance Management

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. The examiner's comments and conclusions should identify the institution's CMS strengths and weaknesses, and explain the root cause for significant findings and regulatory violations.

The section should discuss the EIC's comments and conclusions relative to each of the three elements of a CMS:

- Board of Directors and senior management oversight;
- Compliance program; and
- Audit function.

The discussion for each CMS element should begin with a summary statement about the quality of the financial institution's compliance management practices (e.g., strong, adequate, or weak). The summary statement should be followed by more detailed comments that explain the examiner's findings and conclusions. Both positive and negative aspects of the institution's management of its compliance responsibilities should be discussed. For example, if the institution's CMS element is strong, the EIC should briefly explain why. Such explanations help support the rating, and reinforce good practices.

The EIC's comments and conclusions should address the following areas:

- Management's compliance knowledge, ability, and commitment;
- Organizational and reporting structure of the compliance management system;
- Knowledge, experience, and effectiveness of the compliance officer or staff with compliance responsibilities;
- Changes in personnel, technology, or service providers;
- Scope and adequacy of compliance policies, procedures, and training;
- Response to consumer complaints;
- Ability to identify, monitor, and correct compliance system deficiencies and regulatory violations; and
- Frequency and effectiveness of the compliance audit function.

The EIC's comments and conclusions should also explain the relationship between deficiencies in the CMS and violations that resulted, or could result, from such deficiency. Generally, in discussing a violation in this section of the ROE examiners should consider the collective significance and frequency of all infractions and any mitigating factors, and use their discretion in determining the extent to which Other violations need to be discussed in this section.

Any consequences of violations cited during the examination should also be communicated in the EIC's comments and conclusions, such as Truth in Lending reimbursements, administrative enforcement actions, or potential civil liability. In the case of reimbursements, the report should state the total reimbursable amount when reliable estimates have been determined. Otherwise, when reliable estimates of the total reimbursable amount are not available, state so and provide an estimate based upon the examiner's calculations and the assumptions on which the estimate is based.

All violations cited during the examination must be included in the Violations Page(s) with Level 3 and Level 2 Violation Page(s) included in the ROE. Therefore, in this section of the ROE the reader should be referred to the Violations Page(s) included in the ROE for further details on Level 3 and Level 2 violations cited during the examination.

Recommendations for Corrective Actions and Management Response

This section of the report should provide the Board and management with constructive recommendations for corrective actions that address the specific compliance management deficiencies and violations noted in the narrative of the ROE, and ensure that management understands that Level 3 and Level 2 violations require prompt corrective action and are more serious compared to Level 1 violations. The recommendations should be appropriate for the size and complexity of the institution's operations. The recommendations should enable the institution to resolve current compliance management system deficiencies and regulatory violations, and to minimize future violations by making improvements to its CMS.

Examiners should use this section to provide guidance and advice to a financial institution relating to its director and management oversight, compliance program, and audit function (for example, making specific suggestions to improve the institution's compliance training, create a monitoring function, expand the audit program, etc.). Ultimately, the Board and management of the institution are responsible for determining the actions they will take to address the examination findings. However, the recommendations should be written in a way that demonstrates to the Board and management the importance and value of taking the corrective action.

This section of the report should also discuss any corrective action taken or promised by the Board or management in response to the recommendations, and the time frames for promised action. The EIC should identify by name those individuals who commit to specific corrective actions, in order to assist in follow-up efforts at future examinations.

Enforcement Actions

While formal and informal enforcement actions are often used to compel comprehensive corrective actions in poorly-rated institutions, such actions may also be used to address specific, serious situations that occur in well rated institutions.[1] When administrative enforcement actions are contemplated by the EIC, the ROE should clearly inform the bank's board of directors that the EIC plans to recommend to FDIC management that an enforcement action be taken against the institution. The ROE should explain the reasons for the recommendation.

This section should also discuss how management has addressed and/or resolved outstanding enforcement actions. The report should include the type of enforcement action and the date the enforcement action was issued or, in the case of a bank Board Resolution, adopted. A list of each provision of the applicable enforcement action and a brief discussion of the financial institution's compliance with each provision should be included, as well as the examiner's recommendation on whether the enforcement action should be continued, revised, removed, or changed to another type.

1 Formal and Informal Enforcement Actions Procedures Manual, December 20, 2005, p. 1-4.

If a visitation was conducted between examinations, and a Visitation Report was forwarded to the financial institution detailing compliance with the provisions of the enforcement action, the ROE should refer to that report, and need only address the remaining outstanding provisions of the enforcement action.

Comments and Conclusions on Community Reinvestment Act Evaluation

If a concurrent Community Reinvestment Act (CRA) evaluation was conducted, this section of the report should provide the bank's CRA rating and a brief discussion of the basis for it. The comments should refer the reader to the CRA Performance Evaluation.

Meeting with Management

This section should describe the exit meeting(s) with management and the Board of Directors and provide the following:

- Date of meeting with management;
- Names and titles of financial institution attendees; and
- Names and titles of individuals representing the FDIC and state regulatory authority.

The report should describe management's and/or the Board's response to the recommended consumer compliance examination findings, rating, and recommendations; CRA performance evaluation and rating; and any proposed enforcement action(s), if applicable. Examiners should specifically describe the institution's disagreements and the reasons for the disagreements, if any. In addition, the EIC should comment on management's willingness to make Truth in Lending reimbursements.

If a meeting is held with the Board of Directors/Trustees, provide the following:

- Date of the meeting with the Board of Directors;
- Names and titles of Directors/Trustees in attendance;
- Names and titles of persons in attendance at the request of the institution's Directors/Trustees; and
- Names and titles of individuals representing the FDIC and state regulatory authority.

This section should discuss the Board's response to the examination findings. It should include, as applicable, any corrective actions promised by the Board and/or any indications on the part of the Board that they will agree to a proposed enforcement action (formal or informal).

Violations Page(s)

The violations pages in the ROE serve as the institution's official record of violations identified during an examination. Because different types of violations cause different levels of risk to consumers and to institutions, a method of classifying violations is necessary in order to communicate the FDIC's level of concern regarding the violations identified. The classifications for consumer protection violations is a three-level system, with violations being characterized as Level 3/High Severity, Level 2/Medium Severity, and Level 1/Low Severity.

Violations of Highest Concern -Level 3/High Severity

Violations that have resulted in significant harm to consumers or members of a community. These violations typically result in a request or a requirement that the institution provide restitution in excess of $10,000 (in aggregate), and also 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 the underlying regulation or statute. 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 the regulation or statute. These violations are typically due to individual instances of failure to follow established procedures or minor errors in the implementation of reasonable procedures to meet obligations of the regulation or statute.

Level 3 and Level 2 violations will be described in the ROE and will be listed in order of severity on the Level 3 Violations or Level 2 Violations pages, as appropriate, with management's response to each violation. Level 1 violations will be recorded as a list on the Level 1 Violations page with a blanket statement indicating management's acknowledgement of the noted violations and a commitment that the violations will be addressed. A list of those violations should be left with management at the conclusion of the exit meeting, and a copy maintained in the examination workpapers. All final Level 3 and Level 2 violations cited against the institution should only be provided in writing to the institution's Board and management in the ROE. Where no violation was found for a particular level of violation, the associated Violations page should be omitted. All violations cited during the examination,

whether included in the ROE or provided on a separate listing to bank management, are to be recorded in SOURCE.

Descriptions of the Level 3 and Level 2 violations should readily call attention to the general nature and magnitude of these matters. Depending on the nature of the violation, the examiner should include the following elements, as applicable or appropriate, for each violation cited during the examination:

- A summary of the regulatory section and the six digit violation code obtained from the Automated ROE Violation Code Directory;
- How the institution's practices differed from the requirements of the regulatory section;
- Identify root cause(s) of violations by identifying behaviors, actions, inactions, or conditions that need to be changed to cure the violations or prevent reoccurrence;
- Corrective action taken by the institution before or during the examination;
- Whether a previously identified violation remains unchanged since the previous examination;[2]
- Corrective action recommended by the EIC;
- Management's response; and
- Sample size and number of violations identified in the sample, and two or three examples for each Level 3 and Level 2 violation. (This requirement is not applicable to standardized disclosures or public notices, or in cases in which management admits to the violation before transaction sampling is performed).

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

Violations that have been self-identified by the bank, and have been fully corrected before the start of the examination, should **not** be cited on the Violations Pages or recorded in SOURCE. Examiners will 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.

Special Rule for Reimbursable Truth in Lending Violations

Include reimbursable Truth in Lending violations under a separate heading, "Reimbursable Truth in Lending Violations," in the Level 3 and Level 2 Violations pages. In the SOURCE System, ensure that these violations are appropriately coded as "reimbursable."

In the text of the violation write-up, supply the following information to support the presence of a "pattern or practice" for each type of reimbursable Truth in Lending violation:

- Type of loan;
- Special characteristics or features, if any; and
- Number of loans sampled with reimbursement violations.

For violations involving both understated Annual Percentage Rates (APR) and Finance Charges (FC), identify the larger of the reimbursable amount.

In addition to the above information, forward to the Regional Office or Field Office the following for each type of reimbursable violation cited (as applicable):

- APR calculation printouts;
- TIL disclosures;
- Contract note;
- Commitment letter;
- HUD-1/1A Forms;
- Private mortgage insurance agreements;
- Interest rate indices;
- Trial balances, loan history, or payment record showing first payment and at least one subsequent payment;
- Itemization of amount financed (if separate)/Good Faith Estimate;
- Amortization schedule; and
- Any other documentation supporting adjustments to the amount financed (e.g., credit insurance application forms, etc.).

2 Violations are deemed repeat when they are cited in consecutive examinations and the bank has failed to establish reasonable procedures, including self-monitoring, to effectively prevent the violation from recurring. The determination of whether a violation is repeat should focus on the cause and nature of the violation and not the level at which the violation was previously categorized. Violations that result from the same or similar cause as previously cited are considered repeat. For example: A violation during one examination for failing to include the origination fee in the finance charge due to a glitch in the automated disclosure software and a deficiency in transactional monitoring would not be considered a repeat violation at the next examination where the violation is for not including a credit report fee (which had not been charged in the past) due to an unfamiliarity with the regulation, even though the same violation code is cited. However, failure to include an origination fee in the finance charge for real estate purchase loans at one examination and failure to include an origination fee for home improvement loans at the next examination would be a repeat violation. Repeat violations do not automatically change the severity of a violation; however, the existence of repeat violations should be factored into the overall assessment of the CMS.

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.

When there are no issues to discuss, or all information is accessible in SOURCE or the examination workpapers, exclude this page.

Review of the Report of Examination

The EIC must complete and put the following documents into SOURCE for review:

- Transmittal Letter;
- Cover Page;
- The ROE, including Violation Pages if any;
- Supervisory Comments (if applicable); and
- Risk Profile and Scope Memorandum [with updates to the Scope of the Examination and Issues to be Investigated or Areas to be Targeted (regulation matrix) sections of the document].

The EIC should coordinate with the Field Supervisor or Review Examiner to ensure that all SOURCE submission requirements are met, which will include completing all applicable screens and recording the appropriate violation code for all Levels of violations cited during the examination or visitiation.

Reviewers should question any gaps, inconsistencies, or any 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 must strengthen any weak areas with supporting data before the ROE or document is submitted to the institution.

The FDIC should communicate with the financial institution if, during the review process, the examiner's recommended rating is downgraded or the examiner's conclusions are changed, adversely affecting the financial institution.

After the ROE is signed, it should be delivered to the Board of Directors/Trustees of the financial institution.

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