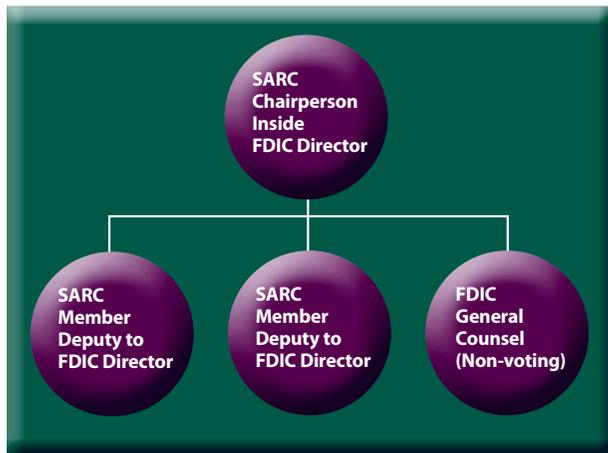


Overview

The Riegle Community Development and Regulatory Improvement Act of 1994 required the FDIC to establish an independent, intra-agency appellate process to review material supervisory determinations made by the FDIC at FDIC-supervised financial institutions. The FDIC implemented its appellate process with the creation of the **Supervision Appeals Review Committee (SARC)** in 1995.



This pamphlet summarizes the types of determinations that are eligible for consideration and describes the request for review and appeals process in which disputes of material supervisory determinations are decided by the FDIC.

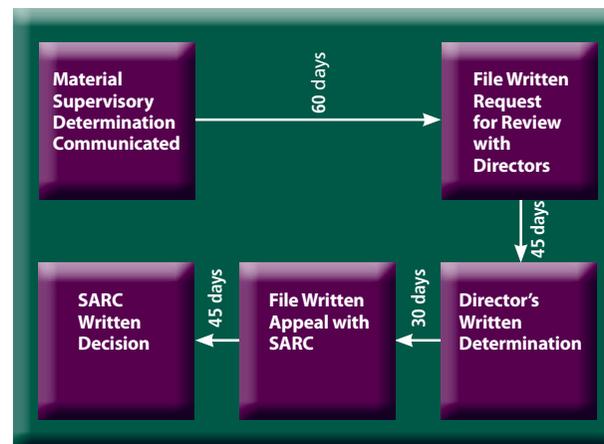
The FDIC's *Guidelines for Appeals of Material Supervisory Determinations* (Published at 77 Federal Register 17055, March 23, 2012) should always be consulted before filing any request for review with the Directors of the Division of Depositor and Consumer Protection (DCP) or the Division of Risk Management Supervision (RMS) or any appeal to the SARC. The *Guidelines*, and information on the decisions issued by the SARC, are available on the FDIC's website:

<http://www.fdic.gov/regulations/laws/sarc/sarcguidelines.html>.

The Process

If an institution receives a Report of Examination or other written communication that contains disputed material supervisory determination(s):

- The institution may submit a written request for review to the Director of DCP or the Director of RMS within 60 days following the receipt of the Report of Examination or written communication.
- The DCP/RMS Director will issue a written determination within 45 days of receipt of the written request.
- An institution that does not agree with the written determination by DCP/RMS may file an appeal with the SARC within 30 days from the date of the written determination.
- 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 the appeal is filed.



Material Supervisory Determinations Eligible for Consideration

An FDIC-supervised institution may request a review of or appeal material supervisory determinations; which include, among others:

- Examination ratings (CAMELS, Compliance, CRA);
- Adequacy of loan loss reserve provisions;
- Classifications of loans and other assets that, individually or in aggregate, exceed 10% of an institution's total capital;
- Determinations relating to violations of law that may affect the capital, earnings or the operating flexibility of an institution, or otherwise affect the nature and level of its supervisory oversight; and
- Any other supervisory determination (unless otherwise not eligible for appeal) that may affect the institution's operating flexibility or the level of its supervisory oversight.

An FDIC-supervised institution may not request a review of or appeal any of the following, which are not material supervisory determinations, under the *Guidelines*:

- Decisions to appoint a conservator or receiver for an insured depository institution;
- Decisions to take prompt corrective action pursuant to section 38 of the Federal Deposit Insurance Act;
- Decisions for which other appeals procedures exist;
- Decisions to initiate informal enforcement actions (such as memoranda of understanding); and

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, and FDIC determinations regarding compliance with an existing formal enforcement action.

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, including written notice of a referral to the Attorney General or a notice to the Secretary of Housing and Urban Development for apparent violations of the Equal Credit Opportunity Act or the Fair Housing Act.

FDIC Consideration of Material Supervisory Determinations

FDIC-supervised institutions are encouraged to make a good faith effort to resolve disputes regarding material supervisory determinations with the onsite FDIC examiner, appropriate FDIC Regional Office, or both. However, informal resolution of a dispute regarding a material supervisory determination with the onsite examiner or Regional Office is not a requirement for requesting a review and, if necessary, seeking an appeal of a material supervisory determination.

Request for Review

Disputes regarding material supervisory determinations must first be filed with the appropriate Division Director. A written request for review must be received by the appropriate Division Director within 60 days following the institution's receipt of the report of examination or other written communication containing the material supervisory determination.

A request for review must be in writing and:

- Describe the issues in dispute;
- State the institution's position and supporting arguments regarding the dispute;
- Explain how the supervisory determination would materially affect the institution;
- State what efforts were made to resolve the dispute with the onsite examiner, the Regional Office, or both; and
- Include a statement that the institution's board of directors has considered the merits of the request and authorized that it be filed.

The appropriate Division Director will issue a written determination within 45 days of the receipt of the written request.

Appeal

An institution that does not agree with the written determination rendered by the appropriate Division Director may file an appeal of that written determination with the SARC. The SARC is comprised of three voting members, drawn from the most senior management levels at the FDIC, and the FDIC's General Counsel, who is a non-voting member of the committee.

An appeal to the SARC must be filed within 30 days following the date of the Director's written determination. No appeal to the SARC will be allowed for any matter unless that matter was the subject of a request for review that was filed timely with the appropriate Division Director.

An appeal to the SARC must be in writing and:

- Contain the name, address, and telephone number of the institution and any representatives;
- Include a copy of the Director's determination being appealed;
- State the institution's reasons, legal and factual, why it disagrees with the Director's determination; and
- Request an oral presentation, if desired, which the SARC may grant or deny at its discretion.

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. The SARC's 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.

Information on SARC decisions are published on the FDIC's website (redacted to avoid disclosure of exempt information) at: <http://www.fdic.gov/regulations/laws/sarc/sarcappeals.html>.

Please be sure to consult the *Guidelines for Appeals of Material Supervisory Determinations* at <http://www.fdic.gov/regulations/laws/sarc/sarcguidelines.html> before filing any request for review with the DCP/RMS Director or any appeal to the SARC.

For More Information

Associate Director

Division of Depositor and Consumer Protection
(202) 898-6958

Associate Director

Division of Risk Management Supervision
(202) 898-3504

Associate Ombudsman

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(703) 562-6047

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