Financial Institution Letter
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Reminder on FDIC Examination Findings

The banking environment has been particularly challenging during the past several years because of the financial crisis, the economic downturn, numerous legislative and regulatory changes, and the weak real estate market. Clearly, the financial position of some financial institutions is stressed as the number of problem institutions remains elevated, and bank failures have reached the highest point in nearly 20 years. At the same time, the FDIC recognizes that most banks are well-capitalized, profitable, and have effectively served the credit needs of their communities throughout the downturn. Even in cases where banks have significant problems and the FDIC needs to work with bank management on an informal or formal corrective program, the Corporation's goal and management's are the same—to return the institution to financial strength and healthy operation. In many ways, the condition of the industry is influenced by the economic cycle and local market conditions, but the bank supervision process reflects the unique position and circumstances of each institution. The Corporation acknowledges the difficulties banks and their management face, and the FDIC is taking steps to ensure its examinations are objective and balanced.

Recently, the FDIC has received some criticism that its examination findings have been overly harsh. It is always the FDIC's goal to work through disagreements, clarify examination findings, and reach a mutually agreeable result, if at all possible. If these informal efforts to resolve disagreements are not successful, institutions have the option of filing a formal supervisory appeal with the Corporation.

This letter serves as a reminder that FDIC-supervised institutions can voice their concerns about an examination or other supervisory determination through informal and formal channels. As the industry is well aware, FDIC examiners discuss their findings with banks as part of the examination process. If the bank disagrees with the findings and the issues remain unresolved, the FDIC encourages the institution to address its concerns through open communication with the appropriate field office or regional office. The goal is to ensure FDIC findings and recommendations are clearly communicated and understood.

During the first six months of 2011, the FDIC's Division of Risk Management Supervision and Division of Depositor and Consumer Protection will conduct discussions with FDIC staff about the Corporation's balanced approach to supervision. The goal of these discussions is to reiterate that the FDIC strives to be fair and objective in its dealings with financial institutions and to discuss how communication with the industry can be strengthened. The FDIC also has initiated an effort to discuss credit availability with banks during 2011 to determine what obstacles banks face in making loans and whether the regulatory process is influencing bank lending.

The following explains how financial institutions can provide feedback on the FDIC's supervisory findings as well as steps that can be taken to formally appeal an FDIC supervisory determination.

Providing Feedback and Expressing Concerns about FDIC Supervisory Findings

The FDIC encourages financial institutions to provide feedback on field examinations, Reports of Examination, and other supervisory processes. The FDIC relies on dialog with the banking industry to ensure the Corporation's supervisory programs are effective, reduce unnecessary burden, and promote a balanced, equitable approach. When examination reports are transmitted to state nonmember institutions, the FDIC encourages banks to complete a post-examination survey. This multi-question survey provides banks an opportunity to articulate concerns about the examination process and present ideas on improving FDIC programs. The survey provides valuable information to improve the quality and efficiency of the examination process. The FDIC has found that maintaining an open, cooperative relationship with FDIC-supervised institutions through its field and regional offices helps facilitate meaningful communication. This discourse fosters an effective flow of information between the regulator and the financial institution and helps ensure regulatory findings and recommendations are well understood.

Institutions with concerns about examination findings, assigned ratings, or other supervisory determinations reached by the FDIC often find that the most effective method for understanding the FDIC's conclusions is to discuss the matter with the examiner-in-charge or contact the appropriate field or regional office. Banks can informally contact FDIC offices by telephone or email, or request a meeting in-person. Institutions also can express concerns as part of their examination response letter or other correspondence. If an institution is unable to resolve its concerns with the regional office or believes that its regional office is not carrying out FDIC policies in the manner intended by the Chairman or Division management, it is encouraged to contact the appropriate Division Director for an informal review.

The Office of the Director, Division of Risk Management Supervision, may be contacted by mail to Office of the Director, Division of Risk Management Supervision, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC, 20429; by email to DirectorRMS@fdic.gov; or by phone to Larry Paul, Special Assistant to the Director, at (202) 898-3970.

The Office of the Director, Division of Depositor and Consumer Protection, may be contacted by mail to Office of the Director, Division of Depositor and Consumer Protection, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC, 20429; by email to DirectorDCP@fdic.gov; or by phone to David Lafleur, Special Assistant to the Director at (202) 898-6569.

The Corporation has found that most follow-up discussions are successful in clarifying examination findings or other supervisory determinations. However, if an institution believes the informal means of expressing their disagreement with an examination are not sufficient, a formal request for review of a material supervisory determination may be filed.

The FDIC's Formal Appeals Process for Supervisory Determinations

The FDIC provides institutions with a formal appeals process to address disagreements over material supervisory determinations. This process is independent of the examination function and free of retribution or other retaliation. The appeals process was most recently revised on April 13, 2010, when the FDIC Board of Directors adopted *Amendments to the Guidelines for Appeals of Material Supervisory Determinations and to the Guidelines for Appeals of Deposit Insurance Assessment Determinations* (the Guidelines). The Guidelines and instructions for filing an appeal can be found on the FDIC's Web site at http://www.fdic.gov/regulations/laws/sarc/. Under the Guidelines, a financial institution may file a request for review of a material supervisory determination with the Director of the

Division of Risk Management Supervision **within 60 calendar days** after the institution receives a Report of Examination or other document containing a material supervisory determination. The Director issues a written determination, including the grounds for that determination, within 45 days of receipt of the request. If the institution is not satisfied with the results of this review, it can appeal the Director's decision to the FDIC's Supervision Appeals Review Committee within 30 calendar days from the date of the Director's determination.

Material supervisory determinations can include, but are not limited to:

- CAMELS ratings under the Uniform Financial Institutions Rating System
- CRA ratings under the Revised Uniform Interagency Community Reinvestment Act Assessment Rating System
- Consumer compliance ratings under the Uniform Interagency Consumer Compliance Rating System
- Determinations relating to the adequacy of loan loss reserve provisions
- 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
- Determinations relating to violations of a statute or regulation, unless specifically excluded as the determination is the basis for a formal enforcement action or referral that may affect the capital, earnings, or operations of an institution, or otherwise affect supervisory oversight accorded an institution
- Any other supervisory determination (unless otherwise not eligible for appeal or specifically excluded as the determination is the basis for a formal enforcement action or referral) that may affect the capital, earnings, operations, or prompt corrective actions, or otherwise affect the supervisory oversight accorded an institution.

Material supervisory determinations do not include:

- Decisions to take prompt corrective action pursuant to Section 38 of the FDI Act
- Formal enforcement-related actions and decisions
- Decisions to initiate informal enforcement actions (such as a memorandum of understanding).

Institutions should refer to the Web site above for a list of all determinations that may be appealed.

Prohibition Against 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 and the Director of the appropriate division. For safety and soundness issues, contact the Director, Division of Risk Management Supervision, and for compliance or Community Reinvestment Act issues, contact the Director, Division of Depositor and Consumer Protection. 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, NW, 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 to resolve the allegation of retaliation.

The FDIC Ombudsman

Financial institutions with concerns about their interactions with the Corporation may also contact the FDIC Office of the Ombudsman. The FDIC Ombudsman provides a confidential, neutral, and independent source of information and assistance to anyone affected by the FDIC in its regulatory role. The Ombudsman can answer questions about FDIC policies and procedures; provide referrals to subject matter experts within the Corporation; and aid in the resolution of complaints against the FDIC by listening, clarifying the issues, and working with both parties to reach an acceptable solution. The FDIC Ombudsman does not take sides and is an advocate for a fair process.

More information about the Office of the Ombudsman is available at www.fdic.gov/ombudsman. Inquiries and requests for assistance from members of the banking industry and the general public are welcomed and may be made by calling (877) 275-3342, sending an e-mail to ombudsman@fdic.gov, or using the FDIC Comment Form on the FDIC Web site at https://www2.fdic.gov/CTSOATSMail/index.asp.

Contact information for the FDIC's regional ombudsmen can be found at http://www.fdic.gov/regulations/resources/ombudsman/RegionalOmbuds.html.