Chapter 5 – Prompt Corrective Action

Prompt Corrective Action

Section 38 of the FDI Act authorizes the FDIC to take PCA against IDIs based on their capital levels. The actions may include the following:

- Reclassifying (downgrading) an IDI's capital category.
- Issuing supervisory directives to IDIs in certain capital categories.
- Dismissing directors or senior executive officers of IDIs.

Under certain circumstances, the FDIC may delay resolution of a critically undercapitalized IDI if a determination is made that it is in the best interest of the DIF.

Instructions for processing actions under PCA appear in the following pages. This chapter also provides information regarding the FDIC's authority to appoint itself as conservator or receiver of an IDI under Section 11(c) of the FDI Act.

Purpose of PCA

Based upon specific capital categories, PCA is intended to resolve various issues concerning problem IDIs in an expeditious manner through early intervention in such problem banks.

Capital Categories

Section 38 and Subpart H of 12 C.F.R. Part 324 provide five capital categories, as described below.

PCA Category	**Description**
Well Capitalized	Total risk-based capital ratio ≥ 10.0% **and** tier 1 risk-based capital ratio ≥ 8.0% **and** common equity tier 1 capital ratio ≥ 6.5% **and** leverage ratio ≥ 5.0% **and** not subject to any action issued by the FDIC under Section 8 of the FDI Act, the International Lending Supervision Act of 1983 (ILSA), the Home Owners' Loan Act (HOLA), or Section 38 of the FDI Act, or any regulations thereunder, to meet and maintain a specific capital level for any capital measure. A bank subsidiary of a covered bank holding company will be deemed well capitalized if it meets the above criteria **and** has a supplementary leverage ratio ≥ 6.0%.
Adequately Capitalized	Total risk-based capital ratio ≥ 8.0% **and** tier 1 risk-based capital ratio ≥ 6.0% **and** common equity tier 1 capital ratio ≥ 4.5% **and** leverage ratio ≥ 4.0% **and** does not meet the definition of a well capitalized IDI. An IDI using advanced approaches will be deemed adequately capitalized if it meets the above criteria **and** has a supplementary capital ratio ≥ 3.0%.
Undercapitalized	Total risk-based capital ratio < 8.0% **or** tier 1 risk-based capital ratio < 6.0% **or** common equity tier 1 capital ratio < 4.5% **or** leverage ratio < 4.0%. An IDI using advanced approaches will be deemed undercapitalized if it has a supplementary capital ratio < 3.0%.
Significantly Undercapitalized	Total risk-based capital ratio < 6.0% **or** tier 1 risk-based capital ratio < 4.0% **or** common equity tier 1 capital ratio < 3.0% **or** leverage ratio < 3.0%.

PCA Category	Description
Critically Undercapitalized	Ratio of tangible equity to total assets ≤ 2.0%. (Note: tangible equity is tier 1 capital plus the amount of outstanding perpetual preferred stock (including related surplus) not included in tier 1 capital.

Community Bank Leverage Ratio

Section 38 and Subpart H of 12 C.F.R. Part 324 also defines a qualifying community banking organization as having less than $10 billion in total consolidated assets, a leverage ratio greater than 9 percent, off-balance sheet exposures of 25 percent or less of total consolidated assets, and trading assets and liabilities of 5 percent or less of total consolidated assets (qualifying criteria). A qualifying community banking organization with a leverage ratio greater than 9 percent is considered to have met:

- the requirements of the generally applicable capital rule;
- the well capitalized capital ratio thresholds under the agencies' PCA framework for IDIs or the well capitalized standards under the Board's regulations for holding companies, as applicable; and
- any other capital or leverage requirements to which the banking organization is subject.

Such qualifying community banking organizations are not required to calculate capital ratios under the generally applicable rule. Additionally, to be considered well capitalized under the community bank leverage ratio framework, and consistent with the agencies' PCA framework, a qualifying community banking organization must not be subject to any written agreement, order, capital directive, or PCA directive to meet and maintain a specific capital level for certain PCA capital measures.

Under the community bank leverage ratio framework, a qualifying community banking organization that has a leverage ratio that is greater than 8 percent and equal to or less than 9 percent is allowed a two-quarter grace period to maintain its well capitalized PCA status under the community bank leverage ratio framework after which it must either:

- again meet all qualifying criteria or
- apply and report the generally applicable risk-based capital rule.

During this two-quarter period, a banking organization that is an insured depository institution and that has a leverage ratio that is greater than 8 percent would be considered to have met the well capitalized capital ratio requirements for PCA purposes. A qualifying community banking organization with a leverage ratio of 8 percent or less is not eligible for the grace period and must comply with the generally applicable risk-based capital rule starting with the quarter in which the banking organization reports a leverage ratio of 8 percent or less. Therefore, the existing PCA framework will apply to qualifying community banking organizations. The community bank leverage ratio framework simply allows a qualifying community banking organization the option to not report risk-based capital ratios.

Mandatory and Other Discretionary Supervisory Actions

Provisions Applicable to all FDIC Supervised Institutions

All IDIs are prohibited from making capital distributions or paying management fees if such distributions or payments would result in the IDI becoming undercapitalized, unless it is shown that the capital distribution would improve the IDI's financial condition or the management fee is being paid to a person or entity without a controlling interest in the IDI.

Note: Section 29 of the FDI Act also places restrictions on certain brokered deposit activity and on deposit rates offered by IDIs as the PCA capital category declines below well capitalized.

Provisions Applicable to IDIs that are less than Adequately Capitalized

An IDI, immediately upon receiving notice or deemed to have received notice due to a Call Report filing or a final ROE, that is undercapitalized, significantly undercapitalized, or critically undercapitalized is subject to the following provisions:

- An IDI cannot approve capital distributions or pay management fees.
- The FDIC will monitor the condition of the IDI and compliance with capital restoration plans, restrictions, and requirements imposed by Section 38.
- An IDI generally must submit a capital restoration plan to the FDIC within 45 days of becoming undercapitalized.
- An IDI's asset growth is restricted unless the asset growth is consistent with the FDIC approved capital restoration plan or both assets and capital increase at a rate that is sufficient for the IDI to become adequately capitalized within a reasonable time.
- An IDI is restricted from engaging in acquisitions, branching, or new lines of business unless the FDIC has provided prior approval.

Provisions Applicable to IDIs that are Significantly Undercapitalized or Critically Undercapitalized, or are Undercapitalized and have Failed to Submit an Acceptable Capital Restoration Plan

IDIs deemed to be significantly undercapitalized or critically undercapitalized, and undercapitalized IDIs that have failed to submit an acceptable capital restoration plan are restricted from paying a senior executive officer any bonus or compensation that exceeds that officer's average rate of compensation for the 12 months prior to the IDI becoming undercapitalized, unless the IDI had obtained prior written approval from its FBA.

In addition, these IDIs are subject to one or more of the following provisions:

- Requiring recapitalization through the sale of voting shares or other obligations;
- Restricting transactions with affiliates;

- Restricting interest rates paid for deposits to the prevailing rates in the IDI's location (as required by Section 29 of the FDI Act and Section 337.6 of the FDIC's Rules and Regulations);

Note: Under 12 U.S.C. § 1831*o*(f)(3), there is a presumption that the FDIC will, at a minimum, take the preceding three actions unless it determines that the actions would not further the purpose of Section 38.

- Further restricting asset growth, including a requirement to reduce total assets;
- Restricting activities that the FDIC determines pose an excessive risk to the IDI;
- Requiring management improvements through election of a new BOD, dismissing directors or senior executive officers, or approving employment of new senior executive officers;
- Restricting the acceptance of deposits from correspondent institutions;
- Requiring an IDI's holding company to obtain prior approval for capital distributions;
- Requiring an IDI to divest of its subsidiary or a parent company to divest of a non-depository affiliate or the IDI itself; and
- Requiring the IDI to take any other action that the FDIC determines will better carry out the purpose of Section 38.

Provisions Applicable to IDIs that are Critically Undercapitalized

When an IDI is deemed to be critically undercapitalized, it is prohibited from engaging in the following activities without prior FDIC approval:

- Enter into any material transaction other than in the usual course of business, including any action for which the IDI is required to provide notice to the FDIC;
- Extend credit for any highly leveraged transaction;
- Amend the IDI's charter or bylaws, except as is needed to carry out any other requirement of any law, regulation, or order;
- Make any material change in accounting methods;
- Engage in any covered transaction (as defined in Section 23A(b) of the Federal Reserve Act);
- Pay excessive compensation or bonus;
- Pay interest on new or renewed liabilities at a rate that would increase the IDI's weighted average cost of funds to a level significantly exceeding the prevailing rates of interest on insured deposits in the IDI's normal market area (as required by Section 29 of the FDI Act and Section 337.6 of the FDIC's Rules and Regulations); and

- Make any principal or interest payment on subordinated debt beginning 60 days after becoming critically undercapitalized.

The FDIC may further restrict the activities of any critically undercapitalized IDI to carry out the purposes of Section 38.

Reclassifying (Downgrading) a Capital Category

Under certain circumstances, the FDIC may reclassify (downgrade) an IDI to the next lower capital category. To reclassify an IDI, the FDIC issues a NOI to reclassify followed by an order of reclassification.

Criteria

The FDIC may reclassify a well capitalized IDI as adequately capitalized or downgrade an adequately capitalized or undercapitalized IDI to the next lower capital category (except that, a significantly undercapitalized IDI may not be reclassified as critically undercapitalized) in either of the following circumstances:

- An IDI has been determined, after notice and opportunity for a hearing under Section 308.202(a), to be in an unsafe or unsound condition.

- Under Section 8(b)(8) of the FDI Act, "[i]f an insured depository institution receives, in its most recent ROE, a less-than-satisfactory rating for asset quality, management, earnings, or liquidity, the appropriate FBA may (if the deficiency is not corrected) deem the institution to be engaging in an unsafe or unsound practice for purposes of this subsection."

Simultaneous Actions

If unsafe or unsound practices or conditions are noted, the FDIC will also generally pursue an order under Section 8(b).

Capital Restoration Plans

FDIC-supervised IDIs must file a written capital restoration plan with the appropriate FDIC RD within 45 days of the date the IDI receives notice that it is undercapitalized, significantly undercapitalized, or critically undercapitalized, unless the FDIC notifies the IDI in writing that the plan is to be filed in a different period. Adequately capitalized IDIs that have been required under 12 C.F.R. 324.403(d) to comply with supervisory actions as if the IDIs were undercapitalized are not required to submit a capital restoration plan solely because of the reclassification.

A capital restoration plan submitted by an IDI undergoing reclassification must describe how an IDI will correct its unsafe or unsound practices or conditions. In particular, the capital restoration plan must:

- Specify the steps the IDI will take to become adequately capitalized,

- Specify the levels of capital to be attained during each year in which the plan will be in effect,

- Specify how the IDI will comply with the restrictions or requirements in effect under Section 38,

- Specify the types and levels of activities in which the IDI will engage, and

- Contain such other information as the FDIC may require.

An acceptable capital restoration plan must be based on realistic assumptions, reflect criteria that are likely to succeed in restoring the IDI's capital, and not appreciably increase the IDI's risk exposure (i.e., credit risk, interest-rate risk, and other types of risk).

Further, if the IDI is undercapitalized, a capital restoration plan cannot be accepted unless each company having control over the IDI has guaranteed that the IDI will comply with the plan until the IDI has been adequately capitalized on average for four consecutive calendar quarters and has provided appropriate assurances of performance.

An IDI that has already submitted and is operating under an approved capital restoration plan is not required to submit an additional capital restoration plan based on a revised calculation of its capital measures or a reclassification of the IDI under 12 C.F.R. § 324.403 unless the FDIC notifies the FDIC-supervised institution that it must submit a new or revised capital restoration plan.

Reclassification Procedures

A NOI to reclassify has to be issued to initiate a reclassification action against an IDI. The IDI can either consent to the issuance of an order of reclassification or request a hearing to determine the appropriateness of reclassification.

Issuing a Notice of Intent to Reclassify

FDIC delegations of authority delineate the office or position with authorization to approve the issuance of a NOI to reclassify. The issuing office should document the basis for issuing of a NOI to reclassify and address the following relevant items:

- A determination that the IDI is in unsafe or unsound condition or engaged in an unsafe or unsound practice, which has not been corrected.

- A statement of the IDI's capital measures and capital levels and the category to which the IDI would be reclassified;

- The reasons for the reclassification; and

- The date by which the IDI subject to the notice of reclassification may file with the FDIC a written appeal of the proposed reclassification and a request for a hearing, which shall be at least 14 calendar days from the date of service of the notice unless the FDIC determines that a shorter period is appropriate in light of the financial condition of the IDI or other relevant circumstances.

Prior to final approval of such a document, the Legal Division must concur with the proposed reclassification action and must prepare all final legal documents. If consumer compliance issues are involved, DCP must also concur with the proposed reclassification action.

Requests for an Informal Hearing

An IDI has 14 calendar days to respond in writing to the NOI to reclassify its capital category, unless the FDIC determines that a shorter period is appropriate in light of the financial condition of the IDI or other relevant circumstances. An IDI's failure to file a response within the specified time period shall constitute consent to the reclassification. The IDI's response may include a request for an informal hearing on the matter. Failure to request a hearing will constitute a waiver of the right to present oral testimony or witnesses.

If a hearing is requested, the FDIC will issue an order directing an informal hearing to commence no later than 30 days after receipt of the request, unless a later date is requested by the IDI. The hearing officer will provide a recommendation to the FDIC within 20 days of the informal hearing. The final decision regarding the reclassification will be communicated to the IDI no later than 60 days from the close of the record for the informal hearing or the date of the response in a case where no hearing was requested.

Modifying or Terminating a Notice of Intent to Reclassify

RMS may *modify* a NOI to reclassify for the following reasons:

- An IDI's condition improves.
- Conditions that existed at the time the notice was issued have changed.

RMS may *terminate* a NOI to reclassify if an IDI substantially fulfills the requirements of the notice, or if the supervisory directive is no longer appropriate for other reasons.

FDIC delegations of authority delineate the office or position with authorization to approve the issuance of a NOI to reclassify. The office that issued the notice of intent to reclassify should prepare a memorandum that sufficiently supports the need for modifying or terminating the NOI to reclassify.

Modifying or Terminating an Order to Reclassify

Requirements for modifying or terminating an order to reclassify are similar to the requirements for issuing an order to reclassify (see above).

Reconsideration Requests

After an IDI has been reclassified to a lower capital category, it may submit a written request for reconsideration. The request may ask that the reclassification be rescinded or that related orders be modified, rescinded, or removed. The request must be based on a change in the circumstances that led to the reclassification.

The request should be sent to the RMS RO where the IDI is headquartered. Unless otherwise ordered by the FDIC, the IDI remains subject to the reclassification and any related orders while the request is pending.

If the request for reconsideration is to be denied, the RO should forward its recommendation and supporting documentation to the WO for final action. The WO will review, process, and issue a final action.

The Legal Division must concur with the request for reconsideration and must prepare all final legal documents. If consumer compliance issues are involved, then DCP must also concur with the proposed reclassification action.

Supervisory Directives

A supervisory directive is a final order issued to an IDI that fails to maintain capital at or above the minimum leverage capital requirement as set forth in Section 38 and Subpart H of 12 C.F.R. Part 324. A supervisory directive, including a plan submitted under a supervisory directive, is enforceable in the same manner and to the same extent as a final cease-and-desist order issued under section 8(b) of the FDI. The FDIC may issue supervisory directives requiring corrective action or compliance with the provisions of Section 38 to IDIs in any of the following capital categories:

- Undercapitalized,
- Significantly undercapitalized, or
- Critically undercapitalized.

Written Notice Generally Required

Before issuing a supervisory directive to an IDI, the FDIC generally must provide written notice to the IDI in the form of a NOI to issue a supervisory directive. The NOI should include the following:

- A statement regarding the IDI's capital measures and capital levels;
- A description of the restrictions, prohibitions, or affirmative actions that the FDIC proposes to impose or require;
- The proposed date when such restrictions or prohibitions would be effective or the proposed date for completion of such affirmative actions; and
- The date by which the IDI may file a written response to the notice, and the content required in the response (see below).

The IDI will have at least 14 days to respond in writing to the notice unless the FDIC determines a shorter time period is appropriate given the condition of the IDI or other relevant circumstances. Any such response should include:

- An explanation as to why the FDIC's proposed action is not appropriate under Section 38;
- Modifications the IDI recommends be made to the proposed directive; and
- Any other information, documentation, mitigating circumstances, or other evidence that supports the IDI's position regarding the proposed directive.

The FDIC will evaluate the IDI's written response and may request additional information. Following its review, the FDIC will take one of the following actions:

- Issue the directive as proposed or in modified form,
- Decide against issuing the directive and notify the IDI of this decision, or
- Seek additional information or clarification of information from the IDI or other relevant source.

Note: The IDI's failure to respond constitutes consent to the issuance of a supervisory directive.

Exception to Notice Requirement

FDIC staff may issue a supervisory directive without prior notice if it is considered necessary to carry out the purposes of Section 38. This directive would require the IDI to immediately take actions or follow proscriptions detailed in Section 38, but the IDI may appeal the action.

The appeal must be received within 14 days of the issuance of the directive, unless the FDIC permits a longer period. FDIC staff must consider the appeal within 60 days of receipt. The directive remains in effect throughout the appeal process, unless the FDIC delays the effective date of the directive. All appeals of a supervisory directive should be forwarded to the WO for processing.

Modifying or Terminating NOIs and Supervisory Directives

An IDI, upon a change of circumstances, may request the FDIC to reconsider the terms of the directive and may propose that the directive be rescinded or modified. The directive and plan, however, will continue in effect while such request is pending before the FDIC.

Enforcement of Directives

The FDIC may enforce PCA directives under Section 8(i)(1) of the FDI Act. The FDIC may also seek assessment of CMPs for violation of the directive against an IDI or IAP. The inflation-adjusted maximum CMP amount for such violations is published annually by January 15 in the *Federal Register*.

Dismissing Directors or Senior Executive Officers

As part of its authority to carry out PCAs, the FDIC may issue a directive requiring an undercapitalized or a significantly undercapitalized IDI to dismiss certain directors or senior executive officers from an IDI.

Definitions

The term **senior executive officer** has the same meaning as that established for an executive officer under Section 22(h) of the Federal Reserve Act. Section 22(h) defines an executive officer as an individual who participates or has authority to participate (other than as a director) in major policy-making functions of an IDI or company.

A director may be a trustee of an IDI under the control of trustees, or any person with a representative or nominee serving in this capacity.

Grounds for Dismissal

The FDIC may require the dismissal of any director or senior executive officer who held office for more than 180 days immediately before an IDI became undercapitalized, if any of the following conditions apply:

- An IDI is significantly undercapitalized.
- An IDI is undercapitalized and has failed to submit or implement an acceptable capital restoration plan.
- An IDI is undercapitalized and the FDIC determines dismissal is necessary to carry out the purpose of PCA.

Dismissal Criteria

FDIC delegations of authority delineate the office or position with authorization to approve the issuance of a NOI to issue a PCA directive ordering dismissal. The issuing office should prepare a memorandum that sufficiently supports the need for the issuance of a NOI to issue a PCA directive ordering the dismissal of a director or senior executive officer.

An individual may be subject to a dismissal action even if their employment or association with the IDI has not negatively impacted the IDI. For example, an individual who has been unable to restore the IDI’s capital to an adequately capitalized PCA designation may be dismissed to enable the IDI to employ a more-qualified candidate.

Comparison to Section 8(e) Removals

Section 38 specifically states that a dismissal under PCA should not be construed as a removal under Section 8(e) of the FDI Act. However, other enforcement actions, including an 8(e) action could still be recommended against an individual subject to dismissal under PCA.

Note: For information about the differences between Section 38 dismissals and Section 8(e) removals, refer to Chapter 8 – Comparison of Prompt Corrective Actions and Section 8 Actions.

Issuing a Notice of Intent

Before dismissing a director or senior executive officer under Section 38, the FDIC generally sends the appropriate IDI a NOI to issue a PCA directive ordering dismissal. The notice of intent must contain:

1. A statement regarding the IDI’s capital measures and capital levels;
2. A description of the restrictions, prohibitions, or affirmative actions the FDIC proposes to impose or require;
3. The proposed date when such restrictions or prohibitions would be effective or by when affirmative actions must be completed; and
4. The date (at least 14 days from the date of the NOI) by which the IDI may file a written response to the notice.

If necessary, the FDIC may issue a directive that, without the issuance of a NOI, would require the IDI to immediately take actions detailed in the directive. The IDI has at least 14 days from its issuance to respond to the NOI, unless the FDIC determines a shorter period is appropriate in light of the IDI's financial condition or other relevant circumstances. In the rare instances in which an immediate suspension or shorter response period is believed appropriate, the reasons for this course of action should be clearly documented.

Note: In those cases in which a Section 38 dismissal and a Section 8(e) removal and prohibition are both being pursued, these actions should be processed separately.

Based on FDIC's delegations of authority, the approving office should prepare a memorandum that supports the need for a dismissal action. The Legal Division must concur with the issuance of NOI and must prepare all final legal documents.

Issuing an Order of Dismissal

After the FDIC issues a NOI, an IDI has at least 14 calendar days to file a response to the notice. If the FDIC does not receive a response to the NOI, an order to dismiss a director or senior executive officer is issued using the same criteria used for issuing the NOI (see above).

If the FDIC receives a response to the NOI from the IDI within the established time frame, the appropriate RMS RO should forward its memorandum and all supporting documentation to the WO for review and processing of the final order of dismissal.

Modifying or Terminating Notices, Immediate Suspensions, and Dismissal Orders

The criteria used to issue a NOI are also used to modify or terminate a NOI. These criteria are also used to issue immediate suspensions and dismissal orders (see above).

Reinstatement Requests

A director or senior executive officer, who has been served with a dismissal order, may file a written request for reinstatement. The request must be filed within 10 calendar days of receipt of the order (unless the FDIC grants additional time at the request of the respondent) and must include reasons for requesting reinstatement (e.g., a dismissed officer must show that his or her continued employment would materially strengthen the IDI's ability to become adequately capitalized or to correct any unsafe or unsound conditions or practices). A request for reinstatement may also contain a request for an informal hearing.

- If a hearing is not requested, the reinstatement request is handled using the same criteria used to issue a NOI. The RO should document the justification for supporting or for terminating the dismissal action.

- If a hearing is requested, the FDIC will hold a hearing within 30 days from the date the request was filed, unless the respondent requests that the hearing be scheduled for a later date. The WO will review and process all requests for reinstatement where an informal hearing is requested. Procedures for informal hearings are detailed in Section 308.203 of the FDIC Rules and Regulations.

Delaying Mandatory Resolution of a Critically Undercapitalized Institution

Section 38 of the FDI Act authorizes the FDIC to delay mandatory resolution of a critically undercapitalized IDI to prevent risk of loss to the DIF.

When a Mandatory Resolution Is Required

Within 90 days after an IDI becomes critically undercapitalized, the appropriate FBA must take one of the following actions:

- Appoint a receiver (or, with FDIC concurrence, appoint a conservator) for the IDI, or
- Take such other action as the agency determines, with the concurrence of the FDIC, would better achieve the purposes of Section 38, after documenting why the action would better achieve that purpose (e.g., an open bank transaction pending regulatory approvals that will result in the IDI's recapitalization).

When Mandatory Resolution Can Be Extended

Any determination made by an appropriate FBA in lieu of appointing a conservator or receiver will cease to be effective not later than 90 days after the date that determination is made. A conservator or receiver will be appointed unless the agency makes a new determination at the end of the effective period of the prior determination.

Final Resolution

The appropriate FBA must appoint a receiver for the IDI if the IDI has been critically undercapitalized on average during the calendar quarter beginning 270 days after the date on which the IDI became critically undercapitalized.

Exception to Mandatory Resolution

The appropriate FBA may continue to take such other action as the agency determines to be appropriate in lieu of appointing a receiver if the agency determines, with the FDIC's concurrence, that:

- An IDI has a positive net worth;
- An IDI has demonstrated substantial compliance with an approved capital restoration plan, which requires consistent improvement in the IDI's capital since the date of the approval of the plan;
- An IDI is profitable or has an upward trend in earnings that the agency projects as sustainable; and
- An IDI is reducing the ratio of nonperforming loans to total loans.

In addition to these factors, the individual in charge of the appropriate FBA and the FDIC Chairman must certify that the IDI is viable and is not expected to fail.

Appointing the FDIC as Receiver or Conservator

Section 11(c) of the FDI Act authorizes the FDIC to appoint itself as receiver or conservator of an IDI. In addition, an IDI's state or federal supervisory authority may appoint the FDIC as conservator of an IDI, and the FDIC may accept such appointment.

Authority Retained by the FDIC Board

Final decisions to appoint the FDIC as receiver or conservator are made by the FDIC BOD after consultation with the appropriate federal bank regulatory agency and state authority.

Grounds for Self-Appointment

Self-appointment may take place if the appointment is necessary to reduce the risk of loss to the DIF. The FDIC can make a determination under Section 11(c)(4) of the FDI Act if the provisions of Section 11(c)(4)(A) have been satisfied or one or more of the following conditions under Section 11(c)(4)(B) exist at an IDI:

- Assets are less than the IDI's obligations to its creditors and others, including members of the IDI.
- There is substantial dissipation of assets or earnings due to any violation of any statute or regulation, or any unsafe or unsound practice.
- There is an unsafe or unsound condition to transact business.
- There has been any willful violation of a cease-and-desist order.
- There has been any concealment of the IDI's books, papers, records, or assets, or any refusal to submit the IDI's books, papers, records, or affairs for inspection to any examiner or lawful agent of the appropriate FBA or state bank supervisor.
- The IDI is likely unable to pay obligations or meet depositor demands during the normal course of business.
- Losses have been incurred or are likely to be incurred that will deplete all or substantially all of the IDI's capital, and there is no reasonable prospect for the IDI to become adequately capitalized without federal assistance.
- The IDI has violated any law or regulation, or engaged in any unsafe or unsound practice or condition that is likely to cause insolvency or substantial dissipation of assets or earnings, weaken the IDI's condition, or otherwise seriously prejudice the interests of the IDI's depositors or the DIF.
- The IDI, by resolution of its BOD, its shareholders, or its members, consents to the appointment.
- The IDI ceases to be an insured institution.

- The IDI is undercapitalized, and has no reasonable prospect of becoming adequately capitalized, fails to become adequately capitalized when required to do so under Section 38(f)(2)(A) of the FDI Act, fails to submit a capital restoration plan acceptable to its primary federal regulator within the time prescribed under Section 38(e)(2)(D) of the FDI Act, or materially fails to implement a capital restoration plan submitted and accepted under Section 38(e)(2) of the FDI Act.

- The IDI is critically undercapitalized or otherwise has substantially insufficient capital.

- The U.S. Attorney General notifies the appropriate FBA or the FDIC in writing that the IDI has been found guilty of money laundering-related offenses.

Processing Self-Appointment Actions

Self-appointment is a seldom-used remedy that requires coordination with DRR. If the condition or actions of an IDI appear to require use of this authority, the WO should be contacted for guidance on case preparation and timing.