



**Federal Deposit Insurance Corporation**  
550 17th Street NW, Washington, D.C. 20429-9990

**Financial Institution Letter**  
**FIL-14-2012**  
**March 19, 2012**

## **GUIDELINES REGARDING THE COPYING AND REMOVAL OF CONFIDENTIAL FINANCIAL INSTITUTION INFORMATION**

**Summary:** The FDIC has observed a limited number of instances in which directors and officers of troubled or failing institutions have made copies of financial institution and supervisory records, and removed those copies from the institution in anticipation of litigation or enforcement activity against them personally.

This is a reminder to directors and officers that this activity is a breach of their fiduciary duty to the institution and an unsafe and unsound banking practice, which may also violate applicable laws and regulations and contravene the financial institution's information security program. Attorneys who represent an insured depository institution are also reminded that their fiduciary duty, both legally and ethically, obligates them to act in the best interests of the institution. The FDIC will investigate any matter that appears to violate confidentiality and pursue enforcement actions, as appropriate.

**Statement of Applicability to Institutions Under \$1 Billion in Total Assets:** This Financial Institution Letter applies to all FDIC-supervised institutions, including community banks.

### **Distribution:**

FDIC-Supervised Institutions

### **Suggested Routing:**

Board of Directors  
Chief Executive Officer  
Legal Counsel

### **Attachment:**

Guidelines Regarding the Copying and Removal of Confidential Financial Institution Information

### **Related Guidance:**

Parts 350.9, 353.3(g), 364 (App. B), 332, and 334 of the FDIC Rules and Regulations

FIL-15-98 (Reissued) – Guidelines for Legal Advice to Financial Institution Directors

### **Contact:**

Martin P. Thompson, Senior Review Examiner, at (202) 898-6767 or [marthompson@fdic.gov](mailto:marthompson@fdic.gov)

John Dorsey, Counsel, at (202) 898-3807 or [jdorsey@fdic.gov](mailto:jdorsey@fdic.gov)

### **Note:**

FDIC Financial Institution Letters (FILs) may be accessed from the FDIC's Web site at [www.fdic.gov/news/news/financial/2012/index.html](http://www.fdic.gov/news/news/financial/2012/index.html).

To receive FILs electronically, please visit <http://www.fdic.gov/about/subscriptions/fil.html>.

Paper copies may be obtained through the FDIC's Public Information Center, 3501 Fairfax Drive, E-1002, Arlington, VA 22226 (877-275-3342 or 703-562-2200).

### **Highlights:**

- As fiduciaries, directors and officers are obliged to act in the best interests of the institution, free of self dealing or conflicts of interest.
- Legal counsel representing an insured depository institution are reminded that their fiduciary duty, both legally and ethically, compels them to advance only the interests of the institution.
- Financial institution records belong exclusively to the financial institution. Many institution records are subject to federal privacy and information security requirements.
- FDIC-prepared supervisory records are the property of the FDIC. The FDIC as receiver has the unrestricted and sole right to possess and use the books, records, and assets of a failed financial institution.
- Directors and officers need access to financial institution records to carry out their official duties and operate the financial institution as a going concern. However, copying and removing financial institution and supervisory records in anticipation of an institution's failure violates applicable federal statutes and FDIC regulations.
- The Federal Deposit Insurance Act gives the FDIC the authority to pursue enforcement actions against directors, officers, and institution-affiliated parties who knowingly or recklessly engage in violations of law or breach of fiduciary duty.