



Federal Deposit Insurance Corporation
550 17th Street NW, Washington, D.C.

Financial Institution Letter
FIL-51-2016
July 29, 2016

Reminder on FDIC Examination Findings

Summary: The Federal Deposit Insurance Corporation (FDIC) is updating and reissuing FIL-13-2011, *Reminder on FDIC Examination Findings*, dated March 1, 2011, to re-emphasize the importance of open communications regarding supervisory findings. An open dialogue with bank management is critical to ensuring the supervisory process is effective in promoting an institution's strong financial condition and safe-and-sound operation. The FDIC encourages bank management to provide feedback on FDIC supervisory activities and engage FDIC personnel in discussions to ensure full understanding of the FDIC's supervisory findings and recommendations. If an institution disagrees with examination findings, it has several informal and formal avenues to raise its concerns.

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

Distribution:

FDIC-Supervised Banks (Commercial and Savings)

Suggested Routing:

Chief Executive Officer

Related Topics:

Appeals of Material Supervisory Determinations:
Guidelines & Decisions

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

Attachment:

Reminder on FDIC Examination Findings

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FDIC Office of the Ombudsman, at
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Note:

FDIC Financial Institution Letters (FILs) may be accessed from the FDIC's Web site at
www.fdic.gov/news/news/financial/2016/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:

- Ongoing communication between the examination staff and bank management is a critical element of effective bank supervision.
- The FDIC encourages banks to provide feedback on FDIC supervisory programs and to seek clarity on the FDIC's findings and recommendations as necessary.
- Institutions with concerns about FDIC examination findings may: discuss these matters with the examiner-in-charge or contact the appropriate field office or regional office personnel; file a request for review under the FDIC's formal appeals process for material supervisory determinations; as well as contact FDIC Office of the Ombudsman, which provides a confidential, neutral, and independent source of information and assistance.
- FDIC policy prohibits any retaliation, abuse or retribution by an agency examiner or any FDIC personnel against an institution. Institutions that believe they have been retaliated against are encouraged to contact the Regional Director for the appropriate FDIC region and may file a complaint with the FDIC Office of the Ombudsman or the FDIC Office of Inspector General.

Reminder on Examination Findings

The FDIC is updating and reissuing this letter to re-emphasize the importance of open communications regarding supervisory findings. An open dialogue with bank management is critical to ensuring the supervisory process is effective in promoting an institution's strong financial condition and safe-and-sound operation. The FDIC encourages bank management to provide feedback on FDIC supervisory activities and engage FDIC personnel in discussions to ensure full understanding of the FDIC's supervisory findings and recommendations. If an institution disagrees with examination findings, it should address those concerns through communication with the examiner, field office management, or the appropriate regional office staff. Division-level informal reviews are also available. If informal efforts to resolve disagreements are not successful, bank management may pursue a formal supervisory appeal and contact the Office of the Ombudsman.

Communication of Examination Activities and Findings

Ongoing communication between the examination staff and bank management is a critical element of effective bank supervision. Open communication helps ensure examination requests are met and disruptions to an institution's daily activities are minimized.

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. Prior to the conclusion of the examination, examiners will thoroughly discuss their findings and recommendations with senior management and provide management an opportunity to respond.

Final examination findings will be conveyed through a written Report of Examination. Any supervisory recommendations made as part of the examination process, or between examinations as appropriate, will be conveyed in writing through either a Report of Examination or other official FDIC communication. Supervisory recommendations should be discussed with and explained to bank management, but they may not be solely verbal.

Examiners will also engage in informal communication with bankers during the examination process. For example, examiners may make verbal suggestions to address minor issues identified during an examination. In addition, bankers routinely ask examiners to describe, without attribution, effective practices they have observed at other institutions. FDIC encourages these types of communication, but does not consider these conversations to be supervisory recommendations. Accordingly, informal communications will not be considered to convey expectations of action by bank management and will not be tracked through the FDIC's examination follow-up activities or at subsequent examinations.

Providing Feedback 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 dialogue with the banking industry to ensure the agency's supervisory programs are effective, reduce unnecessary burden, and promote a balanced approach. When examination reports are transmitted to state nonmember institutions, the FDIC encourages banks to provide post-examination feedback. This provides banks an opportunity to articulate concerns about the examination process and present ideas on improving FDIC programs and provides FDIC valuable information to improve the quality and efficiency of the examination process.

Expressing Concerns about FDIC Supervisory Findings

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.

The FDIC 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 its disagreement with an examination are not sufficient, a request for review of a material supervisory determination, as described below, may be filed. Institutions are not required to pursue informal resolution before making a request for review of material supervisory determinations to the Division Director.

The FDIC's Formal Appeals Process for Supervisory Determinations

The FDIC provides institutions with a formal appeals process to address disagreements regarding material supervisory determinations. This process is independent of the examination function and, as is the case for informal processes, free of retribution or other retaliation. The appeals process is set forth in the *Guidelines for Appeals of Material Supervisory Determinations*. 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.

Institutions should refer to the Web site referenced earlier for a list of all determinations that may be appealed. To ensure there is a process for reviewing matters for which there is no other official avenue for review, FDIC provides an informal process for a request for review at the Division Director level for matters that are not covered by an existing FDIC appeals or administrative process, such as the SARC or the administrative enforcement process. In the case of an institution that submits a request for review of matters that do not meet the definition of a material supervisory determination and are not eligible for review through another existing agency process, the appropriate Division Director¹ will inform the institution and afford it an opportunity for an informal review at the Division Director level. The Division Director will provide a written response within 45 days of a request from an institution for an informal review.

The FDIC Ombudsman

Financial institutions with concerns about their interactions with the FDIC 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>. The Ombudsman may also be reached by mail at Director, Office of the Ombudsman, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC, 20429.

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

¹ 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, or by email to DirectorRMS@fdic.gov.

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 or by email to DirectorDCP@fdic.gov.

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 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 may take any or all of the following steps:

- 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.
- File a complaint with the FDIC Ombudsman, through any of the contact method referenced above. The Office of the Ombudsman will work with the appropriate division to resolve the allegation of retaliation.
- File a complaint with the FDIC Office of Inspector General (OIG). The FDIC's independent OIG is charged with addressing allegations of waste, fraud, and abuse related to the programs and operations of the FDIC. Individuals or institutions may contact the FDIC OIG through its Web site at www.fdicoint.gov by using the "Hotline" button, by phone at 1-800-964-3342, or by email at ighotline@fdic.gov.