

FEDERAL RESERVE BANK OF RICHMOND

Appeals of Material Supervisory Determinations Operational Directive

Supervision, Regulation and Credit

05/11/2016

Federal Reserve Bank of Richmond

**Appeals of Material Supervisory Determinations
Operational Directive
June 1, 2015**

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I. Introduction

A. Legislative and Regulatory Authority

The Board of Governors of the Federal Reserve System issued final guidelines that implement the intra-agency appeals process required by section 309 of the Riegle Community Development and Regulatory Improvement Act of 1994. This appeals process is available to all financial institutions supervised by the Federal Reserve; its effective date was March 24, 1995. A copy of the Guidelines for Appeals of Material Supervisory Determinations (the “Guidelines”) is incorporated in this Operational Directive in Appendix A.

B. Purpose of Operational Directive

The purpose of this Operational Directive is to codify the Federal Reserve Bank of Richmond’s (the “Reserve Bank”) processes related to appeals filed under these guidelines.

II. Definitions

- A. Appellant:** The institution filing an Appeal of a material supervisory determination.
- B. Appropriate Reserve Bank Official:** The Executive Vice President with responsibility for Supervision, Regulation & Credit (SRC).
- C. Appropriate Reserve Bank Designee:** The person designated by the Appropriate Reserve Bank Official who does not hold the responsibility of examining any fifth district institution. The presumption is that the senior manager over the Quality Management and Strategy function within SRC will serve as the Federal Reserve Bank of Richmond’s Appropriate Reserve Bank Designee.
- D. Covered Examinations:** The appeal may cover any type of examination, including safety and soundness, trust, transfer agent, electronic data processing, consumer compliance, and CRA.
- E. Appeal:** The first or initial Appeal of a material supervisory determination.

- F. Material Supervisory Determination:** The definition of material supervisory determination in the Guidelines includes, but is not limited to, “material determinations relating to examination or inspection composite ratings, the adequacy of loan loss reserve and significant loan classifications.” Additional items may be considered material supervisory determinations if, in the opinion of the Review Panel or, in the case of a subsequent Appeal, the Reserve Bank President, the determination would have a significant effect on the composite rating assigned to the Appellant or the supervisory response to the Appellant. A determination is not a “material supervisory determination” for purposes of this Operational Directive until the Appellant has received a written communication from the Review Panel, Reserve Bank President, or the Board of Governors. The term “material supervisory determination” does not include any supervisory determination for which an independent right of appeal exists as defined in the Guidelines. Such actions include prompt corrective action directives issues pursuant to the Federal Deposit Insurance Act, as amended (FDI Act); actions to impose administrative enforcement actions under the FDI Act and the Bank Holding Company Act of 1956, as amended (BHC Act); capital directives; and orders issued pursuant to applications under the BHC Act. In such cases, the rights of appeal provided for in the statutes and regulations concerning these actions shall govern. Furthermore, as provided in the Guidelines, a material supervisory determination remains effective while under appeal.
- G. Person(s) Making a Material Supervisory Determination:** The Appropriate Reserve Bank Designee will determine the person(s) who made the material supervisory opinion under appeal based on documentation available in SRC. In most instances, the officer who signed the communication of the determination to the Appellant will be considered the person who made the material supervisory determination. Generally, the Examiner-in-Charge will also be designated as a person who made a material supervisory determination. Others may be designated as directly involved, depending on the particular issue under appeal (e.g., an examiner assigned as Loans-in-Charge may be designated as directly involved if the issue is over a particular loan classification or adequacy of loan loss reserves).
- H. Review Panel:** The panel solicited by the Appropriate Reserve Bank Official and appointed by the Appropriate Reserve Bank Designee to hear the Appeal of a material supervisory determination.
- I. Subsequent Appeals:** Any Appeal of the findings of a prior Appeal. Subsequent Appeals are reviewed by the Reserve Bank President or the Governor with oversight responsibility for the area making the material supervisory determination under appeal.

III. Submission of an Appeal

A. Institutions That May Submit Appeals

Only institutions subject to examination or inspection by the Reserve Bank may appeal a material supervisory determination. This includes state member banks; bank holding companies, including financial and thrift holding companies, and their nonbank subsidiaries; U.S. agencies and branches of foreign banks; Edge and agreement corporations; third party EDP servicers; and other entities that are examined or inspected by the Reserve Bank.

B. Filing Process

An Appeal must be filed in writing with the Appropriate Reserve Bank Official or the Secretary of the Reserve Bank within 30 calendar days of the Appellant's receipt of the written material supervisory determination. An Appeal will not be deemed received by the Reserve Bank unless it includes a certified copy of the minutes of the meeting at which the Appellant's Board of Directors approved filing the Appeal (or, in the case of a U.S. agency or branch of a foreign bank, approval of the senior management person(s) responsible for the bank's U.S. operations). Appeals should be addressed to either:

Appropriate Reserve Bank Official

Federal Reserve Bank of Richmond
Jennifer J. Burns
Executive Vice President
P.O. Box 27622
Richmond, VA 23261

Secretary

Federal Reserve Bank of Richmond
Christin Patel
Assistant Vice President & Corporate
Secretary
P.O. Box 27622
Richmond, VA 23261

C. Date Appellant Received Written Material Supervisory Determination

An Appellant shall be deemed to have received a written material supervisory determination on:

1. The date of delivery indicated on the certified mail receipt retained in the Reserve Bank's file, or:
2. In absence of the receipt, the date the Appellant date stamps the document if the Appellant routinely date-stamps incoming correspondence, or:
3. Three business days after the date of mailing.

An Appellant may, if appropriate, present evidence demonstrating receipt of the written determination at a later date.

D. Contents of Appeal

The Appeal must contain all the facts and information the Appellant wishes to have considered in deciding the Appeal and should not include information not available to the Reserve Bank at the time it made the material supervisory determination under appeal unless the Appellant offered to provide such information at the time of determination.

E. Extensions for Filing an Appeal

An Appellant may request an extension of time for filing an Appeal by sending a letter detailing the reason(s) for the request to the Appropriate Reserve Bank Official or Secretary within the thirty (30) day period for filing Appeals. The Appropriate Reserve Bank Official may, at his/her sole discretion, grant extensions arising from conditions outside the control of the Appellant or where the issues involved are complex and require collecting and organizing a significant amount of documentation.

IV. Receipt of an Appeal¹

A. First Steps

Upon receiving an appeal, the Appropriate Reserve Bank Official will:

- 1) Notify the Appropriate Reserve Bank Designee and provide them with a copy of the Appeal.
- 2) Solicit members of the review panel.

Within five (5) business days of receipt of Appeal, the Appropriate Reserve Bank Designee will:

- 1) Ensure the appeal is received within 30 calendar days of the Appellant's receipt of the written material supervisory determination.
- 2) Select Review Panel and Appoint chair person.

B. Records Management

When examination appeals are received by SRC leadership, the department's Records Management Unit must be informed to ensure that the appropriate controls are placed on existing documentation regardless of its format (paper or electronic). Per Board guidance, records regarding appeals should not be destroyed (including those that are housed on the Appeals SharePoint site) until further notice.

V. Review Panel

A. Guidelines

Any possible appearance of a conflict of interest must be eradicated from the Appeals Process to ensure integrity. Any person involved in the material supervisory determination under appeal is prohibited from participating in any aspect of the Appeals Review Panel, including initiating the request to convene the panel.

The Guidelines provide that the Review Panel, which is the first party to consider an Appeal, shall consist of persons selected by the Reserve Bank who (a) did not participate in the material supervisory decision; (b) do not directly or indirectly report

¹ Specific FRB staff procedures and tracking documents to satisfy Directive requirements are housed on the ETTAP SharePoint site.

to the person who made the material supervisory determination under review; and (c) are qualified to review the material supervisory determination.

B. Composition

The Review Panel shall be comprised of at least three individuals: who are officers or senior staff of the Federal Reserve System outside of the Federal Reserve Bank of Richmond; who possess clearance to review confidential bank and bank holding company data, including examination ratings; who were not involved in making the material supervisory determination; who do not directly or indirectly report to the individual(s) making the material supervisory determination; and who are otherwise qualified to decide the Appeal. Individuals so appointed should possess significant experience related to the matter being appealed and should have no conflicts with the Appellant, as defined in the Guidelines.

1. The Appropriate Reserve Bank Official will solicit members of the Review Panel by sending an e-mail to Officers in Charge of Supervision across the Federal Reserve System asking for assistance on the Appeal.
2. Members of the Review Panel shall be selected from the individuals offered as a result of the solicitation from the Appropriate Reserve Bank Official and appointed by the Appropriate Reserve Bank Designee who shall ensure that the Review Panelists have no conflicts, as defined in the above guidelines.
3. The composition of the Review Panel shall be determined within five (5) business days of the receipt of the Appeal. The Appropriate Reserve Bank Designee shall appoint one of the panelists as the chair of the panel.

VI. Rights, Responsibilities, and Activities of the Review Panel

A. Notifications

Within two (2) business days of the appointment of the Chair of the Review Panel, the Chair shall ensure that:

1. Any additional SRC documents related to the material supervisory determination are provided with additional written clarification, if necessary, on the matter under appeal.
2. A copy of the Appeal and the Reserve Bank's Operational Directive are provided to the appropriate division director of the staff of the Board of Governors.

B. Review Process

Within five (5) business days of appointment of the Chair, the Review Panel will review the Appeal to determine if it is informationally complete, is clear as to the matter being appealed and the basis for the Appeal, and concerns a material supervisory determination for which an alternative, independent right of appeal does not exist.

1. If the Review Panel determines that minor deficiencies in information or clarity exist in the Appeal, it will contact the Appellant by letter and request that specific additional documentation be forwarded to the Chair within seven (7) business days. Information received by the Chair within the required time frame shall be reviewed for completeness within five (5) business days of receipt. If the information is not received within this timeframe, the Review Panel will return the Appeal to the Appellant together with a letter notifying the Appellant of the deficiencies and stating that the Appeal may be refiled within 30 calendar days.
2. If the Review Panel determines that the Appeal is substantially deficient in terms of clarity or information, or concerns a material supervisory determination for which an alternative, independent right of appeal exists, the Review Panel will return the Appeal to the Appellant together with a letter notifying the Appellant of the deficiencies or other course of action, stating that the Appeal may be refiled within 30 calendar days.
3. If the Review Panel determines that the Appeal is deficient in terms of clarity or information, or concerns a material supervisory determination for which an alternative, independent right of appeal exists, the Appellant may request to provide oral testimony to the Review Panel. In this instance, the

Appeal will not be deemed informationally complete until the business day after all oral testimony has been heard or additional written information is received from the Appellant, if the Review Panel requested such information, whichever is later. This will not exceed the 30 calendar days to refile.

4. When the Review Panel determines that the Appeal is complete, it shall:
 - a. Notify the Appellant of receipt of a complete Appeal. If requested by the Appellant, provide a copy of the Guidelines and this Operational Directive.
 - b. Notify the Secretary of the Reserve Bank of receipt of a complete Appeal.
 - c. Notify the appropriate division director of staff of the Board of Governors of the date of receipt of a complete Appeal and the due date for a final written determination.
 - d. If the Appeal involves a joint examination with another state or federal agency, provide a copy of the complete Appeal to that agency, indicating the date of receipt of the complete Appeal, the date a final decision is required.

5. Within fifteen (15) business days of receiving the informationally complete Appeal, or other such time period as mutually agreed to by the Appellant and the Review Panel, the Review Panel shall hear oral testimony from the Appellant (if the Appellant desires to present such testimony) and the person(s) making the determination under appeal.
 - a. The Review Panel may structure oral testimony as it sees fit, including limiting the Appellant to prepared remarks or allowing the Review Panel to ask questions. Additional witnesses may be allowed to present testimony at the sole discretion of the Review Panel.
 - b. The Review Panel shall notify the Appellant and the person(s) making the determination under appeal of the format for providing oral testimony and the date such testimony will be heard no less than five (5) business days prior to taking testimony. Testimony may be given earlier if: Upon notification, the appellant requests to testify sooner than the 5 business days and the Review Panel agrees.
 - c. Oral testimony will be heard at the Reserve Bank or such other location as mutually agreed by the Appellant and the Review Panel.
 - d. The Review Panel should record any oral testimony for review in

Subsequent Appeals. The method of recording testimony shall be determined by the Review Panel.

6. Notwithstanding any of the above, the Review Panel may, at its sole discretion, solicit the views of the Appellant, any Reserve Bank staff involved in the determination under appeal, Legal Department staff, Board staff, and, where appropriate, the staff of other supervisory agencies or other parties, or may conduct other forms of independent research or investigation as it deems necessary to decide the matter under appeal.
7. However, in reaching a decision, the Review Panel will consider only that information (i.e., data and/or facts) that was available to the person(s) making the material supervisory determination which is the subject of the Appeal at the time of the determination or the information which the Appellant offered to provide at the time of determination, but which the person(s) making the determination declined to review. Subsequent information, such as information regarding payments on a classified loan after the date of the examination or a legal opinion sought and obtained after receipt of the material supervisory determination, will not be considered in deciding the Appeal unless the person making the determination should have been aware of the information when making the determination.

C. Determination of Findings and Decision

The Review Panel will issue written findings within thirty (30) calendar days of receiving the informationally complete Appeal, unless the Appellant and the Review Panel jointly agree to extend the time for decision.

1. The written decision will set forth the basis for the Review Panel's conclusions, including the scope of the review and appropriate citations to legal authority, to Federal Reserve System policies, and to documentation provided by the Appellant or the Reserve Bank.

2. The Reserve Bank will send the written decision to the Appellant by certified mail and will provide copies to the person(s) who made the material supervisory determination, the Secretary of the Reserve Bank, and the appropriate division director of staff of the Board of Governors.
3. The Review Panel Chair will prepare a complete record of the Appeal and forward it to the Appropriate Reserve Bank Official and the Appropriate Reserve Bank Designee. The Reserve Bank will retain the Appeal in a file separate from the general files maintained on the Appellant.
4. If the Review Panel reverses the material supervisory determination which is the subject of the Appeal, SRC shall update all files containing the original determination, both hard copy and electronic, to reflect the results of the Appeal. SRC shall maintain complete records of the original material supervisory determination and the Appeal.

D. Other Rights, Responsibilities, and Activities

All other rights, responsibilities, and activities of the Review Panel shall be as set forth in the SR 95-18 Guidelines or any updates thereafter.

VII. Subsequent Appeal to the Reserve Bank President

A. Filing Process

An Appellant may appeal an adverse determination by the Review Panel to the President of the Reserve Bank within thirty (30) calendar days of the Appellant's receipt of the adverse decision. This Subsequent Appeal shall include a certified copy of the minutes of the board of directors' meeting at which the Subsequent Appeal was authorized (or, in the case of a U.S. agency or branch of a foreign bank, approval of the senior management person(s) responsible for the bank's U.S. operations).

B. Contents of Appeal

The Subsequent Appeal may be filed with the Appropriate Reserve Bank Official or the Secretary of the Reserve Bank (at the address set forth in III.B) and must include all facts and information the Appellant wishes the President to consider. Subsequent Appeals sent to the Secretary of the Reserve Bank will be forwarded to the Appropriate Reserve Bank Official, who shall forward a copy of the Subsequent Appeal to the President of the Reserve Bank and to the appropriate

division director of the staff of the Board of Governors within two (2) business days after receipt of the Subsequent Appeal.

C. Review Process

The President shall:

1. Review the Subsequent Appeal for informational completeness and clarity as to the matter under appeal and shall notify the Appellant of any deficiencies, consistent with the procedures followed for initial Appeals.
2. Send a letter to Appellant acknowledging receipt of an informationally complete Appeal.
3. Obtain the record of the initial Appeal from the Review Panel Chair.
4. Provide the person(s) who made the initial determination with a copy of the Subsequent Appeal. If the Subsequent Appeal raises issues not addressed in the initial Appeal, the person(s) who made the material supervisory determination under appeal shall notify the President. The President will then provide a reasonable period of time for the person who made the material supervisory determination to provide a written response to the new material.

D. Determination of Findings and Decision

The President shall issue a written determination of the Subsequent Appeal to the Appellant and to the person(s) who made the original material supervisory determination within thirty (30) calendar days from receipt of the informationally complete Subsequent Appeal. The Reserve Bank will mail the determination to the Appellant by certified mail and will retain the complete record of the President's review in the Appeal file.

VIII. Subsequent Appeal to the Board of Governors

An Appellant receiving an unfavorable decision from the Reserve Bank President may file a written Appeal with the Secretary of the Board of Governors to:

Mr. Robert deV. Frierson, Secretary
Board of Governors of the Federal Reserve System
20th and Constitution Avenue NW
Washington, DC 20551

within thirty (30) days of receipt of the adverse written determination. The Board will decide any appeal within 60 days of its receipt. The Board of

Governors will establish procedures for reviewing such Appeals.

IX. Protection of Appellant from Retaliation

A. General Measures

Regardless of the outcome of an Appeal, the person(s) who materially participated in the material supervisory determination subject to appeal shall not participate in matters affecting the Appellant for at least one examination/inspection cycle, but in no case for a period less than one year after the final decision regarding an Appeal. In addition, in cases where the material supervisory determination is overturned as a result of an Appeal, the person(s) materially participating in the determination shall not participate in matters affecting the Appellant for one year, or such longer period as the Appropriate Reserve Bank Official deems appropriate. The Appropriate Reserve Bank Official, at his/her discretion, may extend further the recusal period, whenever such an extension is deemed appropriate.

Upon receipt of an Appeal, the Appropriate Reserve Bank Official will determine whether or not a change in supervisory responsibility of the institution is warranted. Additional protections, including additional or modified review processes, and recusal of Vice Presidents and/or Assistant Vice Presidents, may be implemented by the Appropriate Reserve Bank Official.

B. Disciplinary actions for retaliation

Any Reserve Bank employee found to retaliate against an institution for filing an Appeal shall be subject to the Reserve Bank's disciplinary policies, up to and including termination.

C. Remedies

Institutions that believe that they have suffered retaliation as the result of an Appeal may contact the Board's Ombudsman, who may be reached in the following ways:

Telephone

Dial toll free 1-800-337-0429 and leave a message.

Fax

Send written materials to 202-530-6208.

Mail

Margaret McCloskey Shanks
Associate Secretary & Ombudsman
Federal Reserve Board
20th & C Streets, NW, Mail Stop 28
Washington, DC 20551

X. Savings Provision

The appeal of a material supervisory determination will not prevent the Board or the Reserve Bank, pursuant to delegated authority, from taking a supervisory or enforcement action - formal or informal - that it might take in the absence of such an appeal.

XI. Modifications and Annual Review

A. Modifications

This Operational Directive may be modified by the President of the Reserve Bank or his designee.

B. Annual Review

This Operational Directive shall be reviewed annually by the President of the Reserve Bank, or his designee, the Appropriate Reserve Bank Official, and the Appropriate Reserve Bank Designee.

XII. Public Request for Operational Directive

A copy of this operational directive and the Board of Governors Guidelines for Appeals of Material Supervisory Determinations shall be made available to any member of the public who requests them.

Appendix A

SR 95-18 (SUP) Intra-Agency Appeals Process

FEDERAL RESERVE SYSTEM
[Docket No. R-0867]
Internal Appeals Process

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final guidelines.

SUMMARY: The Board is issuing its final guidelines on an internal appeals process for institutions wishing to appeal an adverse material supervisory determination.

EFFECTIVE DATE: March 24, 1995.

FOR FURTHER INFORMATION CONTACT: Gregory A. Baer, Managing Senior Counsel, Legal Division (202/452-3236); Shawn McNulty, Assistant Director, Division of Consumer and Community Affairs (202/452-3946); or Ann Marie Kohlligian, Senior Counsel/Manager, Division of Banking Supervision and Regulation (202/452-3528), Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION:

Background

Section 309 of the Riegle Community Development and Regulatory Improvement Act of 1994 (the Act), 12 U.S.C. 4806, requires the Board (as well as the other Federal banking agencies) to establish an independent, intra-agency appellate process that is available to institutions to seek review of material supervisory determinations. Section 309 specifies various requirements that the appellate process must meet.

On December 29, 1994, the Board published for public comment its proposed guidelines that would implement the intra-agency appellant process required by section 309 of the Act. (59 Fed. Reg. 67297 (December 29, 1994)). In general, the proposed guidelines required that: (1) all appeals be in writing and approved by the institution's board of directors; (2) all appeals be heard and decided within specified timeframes; (3) the initial appeal be heard by a person or persons selected by the Reserve Bank (the review panel) who had not participated in, or reported to the persons who made, the material supervisory determination under review; (4) an adverse decision by the review panel be appealable to a Reserve Bank President; (5) an adverse decision by a Reserve Bank President be appealable to the Board; and (6) Reserve Banks establish safeguards to protect institutions that file appeals from examiner retaliation.

Although section 309 requires the Board to develop an internal appeals process only for state member banks, the proposed guidelines expanded the process and made it available to all institutions

that are subject to Federal Reserve oversight, including bank holding companies, U.S. agencies and branches of foreign banks and Edge corporations.¹ The proposed guidelines also defined a "material supervisory determination" to include all material matters relating to the examination or inspection process, but exclude those matters, such as the imposition of a prompt corrective action directive or a cease and desist order, for which an alternative, independent right of appeal exists.

As noted in the proposed guidelines, the Board continues to believe that questions about or objections to supervisory determinations made during the course of an inspection or examination are most effectively handled through the longstanding Federal Reserve practice of resolving any problems informally during the course of the inspection or examination process.

Public Comments

The Board received 27 comments on its proposed guidelines from Federal Reserve Banks, financial institutions, trade associations, law firms and a consulting firm. While the comments were generally supportive of the proposed guidelines, most comments submitted suggested changes or raised concerns regarding the implementation of the internal appeals process. These proposed changes and concerns, which are discussed below, relate to five areas: (1) protection from examiner retaliation; (2) independence of the review panel; (3) who should decide the final appeal at the Board; (4) the need for additional, specific timeframes; and (5) procedural issues.

(1) Protection from Examiner Retaliation

Thirteen comments raised concerns about examiner retaliation. Several comments suggested that the Ombudsman, which the Board is required to establish under section 309 of the Act, should play a role in addressing this issue, such as serving as an independent contact for institutions that believe they have been subject to some form of retaliation or ensuring that different examiners conduct examinations that commence after an appeal has been filed. Some comments suggested that greater Board involvement in the appeals process would protect institutions against retaliation, while others suggested that the guidelines include specific sanctions and disciplinary actions for examiners found to have engaged in retaliation due to an appeal.

The Board acknowledges that some institutions may perceive that availing themselves of the appeals process may result in retaliatory action by examiners. As proposed, the guidelines require the Reserve Banks to establish safeguards to protect institutions that file appeals from retaliation. While the Board believes that this provides sufficient protection and meets the requirements of section 309, the Ombudsman is available to address such concerns and may be contacted by institutions who believe they may have suffered retaliation as a result of an appeal. The role of this official and his/her procedures for addressing these concerns will be outlined in the Board's Policy Statement for the Ombudsman.

(2) Independence of Review Panel

Six comments suggested modifications to the part of the guidelines that addressed the independence of the review panel. Several stated that the appeals process cannot be independent so long as it remains an internal procedure and suggested that outside parties, such as a peer review panel or a panel appointed by the Federal Financial Institutions Examination Council, hear and decide all appeals. Another comment suggested that the review panel exclude not only persons who participated in, or who directly or indirectly report to the person(s) who participated in, the material supervisory determination under appeal, but anyone who directly or indirectly supervises the person(s) who made such determination.

Section 309 of the Act reflects a Congressional conclusion that an intra-agency appeals process will provide institutions with an adequate means to redress adverse material supervisory determinations. The Board does not believe that it is necessary to expand the guidelines beyond what is required by the statute. Similarly, section 309 requires that the person hearing the appeal not directly or indirectly report to the person who initially made the supervisory decision under review. Consequently, the composition of the review panel has not been modified in the final guidelines.

(3) Who Decides the Final Appeal at the Board

The proposed guidelines provided for an appeal of an adverse decision by a Reserve Bank President to the appropriate Board division director, who would consult with the appropriate Governor of the Board's oversight committee for that division. Three comments suggested that it would be more suitable for a Governor to review a decision by a Reserve Bank President. The final guidelines have been modified so that an appeal of a Reserve Bank President's decision will be to the Governor who serves as chairman of the appropriate oversight committee, who will consult with that division's director.

(4) Need for Additional Timeframes

The proposed guidelines required institutions to file an appeal within 30 days of the material supervisory determination and the review panel to decide the appeal within 30 days of its receipt. The proposed guidelines also required Reserve Bank Presidents to make a decision on any matter appealed to them within 30 days of receipt. Several comments noted that the proposed guidelines did not contain timeframes for other actions, such as the time in which an appeal should be filed with a Reserve Bank President or the Board, or the time in which the Board would make a decision on an appeal.

The Board agrees with these comments on the need for additional timeframes. Consequently, the final guidelines require that an appeal to a Reserve Bank President or the Board to be filed within 30 days of receipt of an adverse decision by the review panel or the Reserve Bank President, respectively. The final guidelines also require that the Board decide any appeal within 60 days of its receipt.

(5) Procedural Issues

Several comments suggested that the Board's guidelines include some additional procedures in order to ensure that the internal appeal process works smoothly. One comment suggested that the guidelines explicitly provide that the material supervisory determination remain in effect while it is under appeal, while another comment suggested that the determination be stayed pending the completion of the appeal. The Board believes that it is appropriate for the determination to remain in effect while it is under appeal, and the final guidelines have been modified to state this explicitly. The Board does not believe that section 309 of the Act is intended to stay the Board's supervisory decisions, but rather is designed to provide institutions with a procedure by which to voice objections to supervisory determinations for which no other formal appeals procedures exist.

Another comment suggested that institutions that consent to the issuance of a formal enforcement action, such as a cease and desist order, be allowed to use the internal appeals process to challenge the material supervisory determinations that led to the enforcement action. This suggestion seems inconsistent with the intent of section 309 of the Act, which is to provide an avenue for the review of material supervisory determinations and not to contest enforcement actions for which an alternative appeals mechanism exists. Therefore, the Board has not adopted this suggestion. Another comment suggested that the record be expunged of any material supervisory decisions that have been modified or overturned on appeal. The Board believes that it is appropriate to maintain all records of its supervisory actions, including those relating to a decision that is modified or overturned as a result of an internal appeal. Nonetheless, the Reserve Banks are expected to maintain complete records of any appeal, including updating all files, both hard copy and electronic, to reflect the results of all appeals.

One comment suggested that the board of directors of an institution only be required to approve the initiation of an appeal, but that management be allowed to decide on any subsequent appeals to a Reserve Bank President or the Board. Another comment noted that getting approval of the board of directors of a foreign bank would be extremely difficult in order for its U.S. agency or branch to file timely appeals. The Board continues to believe that the board of directors should be involved in each step of the appeals process; therefore, the final guidelines still require board approval for each step in the appeals process. On the other hand, the final guidelines have been modified to allow the senior management person(s) with authority for U.S. operations of a foreign bank to approve appeals; however, he or she must approve each step of the appeal.

The Board has decided to adopt several other procedural suggestions. The final guidelines provide that any appeal filed must contain all of the facts and arguments that the institution would like to present to the review panel, the Reserve Bank President or the Board, as the case may be, and that the review panel, the Reserve Bank President or the Board may reject the appeal for lack of clarity or information. In such a case, an institution would have 30 days in which to refile a rejected appeal. Last, the final guidelines make explicit that the internal appeals process does not give the appealing institutions any discovery or other similar rights.

GUIDELINES FOR APPEALS OF MATERIAL SUPERVISORY DETERMINATIONS

Section 309 of the Riegle Community Development and Regulatory Improvement Act of 1994, 12 U.S.C. 4806, requires the Board and the other Federal banking agencies to establish an independent, intra-agency process to review appeals of material supervisory determinations.

The purpose of these guidelines is to allow each Reserve Bank to administer its own appellate process, but to establish procedures under which all Reserve Banks' appellate process must operate. Doing so will ensure that each Reserve Bank's process is consistent with section 309 and that institutions will be granted the same appellant rights regardless of the Federal Reserve district in which they reside.

Procedures for Appealing a Material Supervisory Determination

Any appeal of a material supervisory determination pursuant to section 309 shall be filed and considered pursuant to the following procedures.

- (1) Any appeal shall be approved by the board of directors of the institution, or in the case of a U.S. agency or branch of a foreign bank, the senior management person(s) responsible for the bank's U.S. operations, and filed in writing with the Secretary of the Reserve Bank or other appropriate Reserve Bank official within 30 calendar days of receipt of the written material supervisory determination, unless the time for filing is extended by the Reserve Bank. The Reserve Bank shall promptly provide a copy of the appeal to the appropriate division director of the staff of the Board of Governors.
- (2) Any appeal shall contain all the facts and arguments that the institution wishes to present. The appeal may be rejected for lack of clarity or information. In such case, the institution may refile the appeal within 30 calendar days of receipt of written notice of the rejection of any filing.
- (3) The appeal shall be considered in the first instance by a person or persons selected by the Reserve Bank (the review panel) who --
 - (A) did not participate in the material supervisory determination;
 - (B) do not directly or indirectly report to the person who made the material supervisory determination under review; and
 - (C) are qualified to review the material supervisory determination.
- (4) The appellant institution may appear before the review panel in order to present testimony and, with the consent of the review panel, witnesses. The review panel shall also solicit the views of the Reserve Bank staff involved in the determination under appeal, Board staff, and, where appropriate, the staff of other supervisory agencies (for example, in case of joint examinations or inspections). Nothing in this appeals process shall create any discovery or other such rights.

(5) Any appeal shall be decided, in writing, by the review panel within 30 calendar days of the filing of an informationally complete appeal, unless the appellant and the review panel jointly agree to extend the time for decision.

(6) Any appellant institution dissatisfied with the decision of the review panel may, with the consent of its board of directors of the institution, or in the case of a U.S. agency or branch of a foreign bank, the senior management person(s) responsible for the bank's U.S. operations, appeal that decision to the Reserve Bank President by filing a written appeal with the Secretary of the Reserve Bank or other appropriate Reserve Bank official within 30 calendar days of receipt of the review panel's written decision. The appeal shall contain all facts and arguments that the institution wishes to be considered. The appeal may be rejected for lack of clarity or information. In such case, the institution may refile the appeal within 30 calendar days of receipt of written notice of the rejection. The appeal shall be decided by the Reserve Bank President, in writing, within 30 calendar days of the filing of an informationally complete appeal.

(7) Any appellant institution dissatisfied with the decision of the Reserve Bank President may, with the consent of its board of directors of the institution, or in the case of a U.S. agency or branch of a foreign bank, the senior management person(s) responsible for the bank's U.S. operations, appeal that decision to the appropriate Governor by filing a written appeal with the Secretary of the Board within 30 calendar days of receipt of the Reserve Bank President's written decision. The appeal may be rejected for lack of clarity or information. In such case, the institution may refile the appeal within 30 calendar days of receipt of written notice of the rejection. The appeal shall be decided, in writing, by the appropriate Governor, who shall consult with the director of the appropriate division of the Board of Governors, within 60 calendar days of the filing of an informationally complete appeal.

Safeguards Against Retaliation. Each Reserve Bank shall establish appropriate safeguards to protect appellants from retaliation. The Board's Ombudsman will periodically contact institutions after their appeals have been decided in order to make certain that no retaliation has occurred. In addition, institutions who believe they have suffered retaliation as the result of an appeal may contact the Board's Ombudsman.

Availability of Procedures. Each Reserve Bank shall make these guidelines and the Reserve Bank's process for selecting a review panel available to each institution in its district, any institution appealing a material supervisory determination, and any member of the public who requests them.

Eligible Institutions. Any institution about which the Federal Reserve makes a material supervisory determination is eligible for the appeal process. This includes state member banks, bank holding companies and their nonbank subsidiaries, U.S. agencies and branches of foreign banks, Edge and agreement corporations, third party EDP servicers, and other entities examined or inspected by a Reserve Bank.

Material Supervisory Determination Defined. Whether an appealed action constitutes a "material supervisory determination" eligible for the appeals process shall be decided by the person or persons hearing the appeal, and a determination that the action is not appealable under these guidelines may be further appealed to the Reserve Bank President or the appropriate oversight Governor in the same manner as any other adverse decision.

The term "material supervisory determination" includes, but is not limited to, material determinations relating to examination or inspection composite ratings, the adequacy of loan loss reserves and significant loan classifications. The term does not include any supervisory determination for which an independent right of appeal exists. Such actions include prompt corrective action directives issued pursuant to section 38 of the Federal Deposit Insurance Act, as amended (the FDI Act), actions to impose administrative enforcement actions under the FDI Act and the Bank Holding Company Act of 1956, as amended (the BHC Act), capital directives, and orders issued pursuant to applications under the BHC Act.

Effect of Appeal on Material Supervisory Determinations. A material supervisory determination shall remain in effect while under appeal and until such time it is modified or overturned through the appeals process. The appeal of a material supervisory determination does not prevent the Federal Reserve from taking any supervisory or enforcement action -- formal or informal -- it deems appropriate to discharge the Federal Reserve's supervisory responsibilities.

Savings Provision. Section 309 expressly provides that it shall not affect the authority of the Board or any other agency to take enforcement or supervisory action against an institution. In such cases, the rights of appeal provided for in the statutes and regulations concerning these actions shall govern.

By order of the Board of Governors of the Federal Reserve System, March 24, 1995.

(signed)
Jennifer J. Johnson,
Deputy Secretary of the Board.

¹ The final guidelines have been modified to state explicitly that third party EDP servicers subject to examination by the Federal Reserve may appeal any material supervisory determination.

FAQ's

How can my bank file an appeal?

You may seek review of matters that qualify for appeal by submitting a written description of the matter(s) under dispute to either the Executive Vice President or Corporate Secretary of your supervisory Reserve Bank. You must submit the Appeal and indicate your board's approval of the action.

What matters qualify for an appeal?

Your bank may file an Appeal to seek review of an agency decision or action, including:

- Examination ratings,
- Adequacy of loan loss reserve provisions, and
- Classifications of loans significant to your bank

Are there any matters for which my bank may not file an Appeal?

Yes. Matters for which your bank may not file an Appeal include:

- Preliminary examination conclusions;
- Any formal enforcement-related actions or decisions, including decisions to
 - Seek issuance of a formal agreement or cease and desist order, or the assessment of a civil money penalty;
 - Take prompt corrective action;
 - Issue a safety and soundness order; and
 - Commence formal investigations;
- Formal and informal rulemakings;
- Decisions or recommended decision following formal and informal adjudications;
- Freedom of Information Act (FOIA) requests;
- Decisions made to disapprove directors and senior executive officers pursuant to Section 914 of the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA); and
- Any other agency decisions that are subject to judicial review.

What happens after my bank files an Appeal with the Reserve Bank?

- The Review Panel will
 - Request documents pertaining to the Appeal from Reserve Bank SRC management officials,
 - Request a meeting if necessary to gather more information,
 - Issue a written response within 30 calendar days of accepting your Appeal (absent extenuating circumstances), and

Must my bank adhere to supervisory decisions and actions during the appeals process?

Yes. However, under some circumstances, the appropriate Reserve Bank official may advise your bank is relieved from compliance during the pendency of the Appeal.

What is the authority of Federal Reserve System Ombudsman?

The Ombudsman functions outside Reserve Bank SRC and has the authority to:

- Act as a facilitator and mediator for the resolution of complaints concerning regulatory or supervisory actions;
- Where the Ombudsman is not the appropriate forum, direct complaints to the appropriate appeals process or other forum;
- Ensure that complaints about Board or Reserve Bank regulatory actions are addressed in a fair and timely manner; and
- Receive complaints of retaliation when a party has used the Ombudsman or any other existing avenue of appeal or complaint forum, and take steps to resolve those complaints.