

II. Compliance Examinations — Communication

be coordinated with RM examiners. Presentations to the Board should be planned for regularly scheduled meetings, whenever possible. Requests from management, such as for separate meetings, should be considered and reasonably accommodated.

Report of Examination

Introduction

The Report of Examination (ROE) communicates the results of a compliance examination to the Board of Directors and senior management of the financial institution. The ROE highlights the strengths and weaknesses of a financial institution's compliance management system, presents findings and violations (if any) in order of significance and as they relate to the compliance management system, and offers recommendations for addressing deficiencies and improving future compliance risk management performance. The Report of Examination is a stand alone document that details the:

- scope of the examination;
- compliance rating;
- examiner's comments and conclusions on compliance management, including recommendations for corrective action and management's response to the findings and recommendations; and
- significant violations and other matters of supervisory concern.

This section identifies minimum documentation and administration requirements for completing a ROE. Specifically, it provides guidance on:

- Format of the Report
- Content of the Report
- Supervisory Comments
- Review of the Report

Format of the Report of Examination

The ROE should be organized as follows:

- Transmittal Letter
- Cover Page
- Examiner's Comments and Conclusions
 - Scope of the Examination
 - Consumer Compliance Rating
 - Compliance Management
 - Board and Management Oversight
 - Compliance Program
 - Audit
 - Recommendations

- Enforcement Actions (if applicable)
- Community Reinvestment Act Examination (if applicable)
- Meeting with Management
- Significant Violations Page(s)
- Supervisory Comments (if applicable)

The following is substantive guidance pertaining to the various sections of the ROE.

Transmittal Letter

A transmittal letter accompanies a written ROE to a financial institution's Board of Directors. The letter is used in part, to require any follow-up concerning the examination with the appropriate Field or Regional Office. The following procedures should be used for each compliance examination whenever a significant violation is contained in the ROE. The transmittal letter should include text that:

- Informs the institution's board of directors about the existence of a significant violation in the ROE;
- Requires a written response from the institution that provides details about planned corrective actions for each significant violation that was not adequately corrected prior to the completion of the on-site examination and establishes deadlines for completing such actions; and
- Directs the institution to send a confirmation and response letter(s) to the appropriate FDIC office that sufficiently describes the actual corrective actions taken to address the significant violations and CMS deficiencies. The institution should also be required to submit ongoing reports by the end of each calendar quarter until full correction has been accomplished.

Appropriate staff at either the regional or field office level must perform a timely review of an institution's response letter(s) and determine if the response sufficiently addresses the issues. Staff must contact the institution if they have not received the response letters by the appropriate due dates or if additional information from the institution is needed.

In cases where an enforcement action is pursued against an institution, the procedures in this section should be used in conjunction with established monitoring procedures for enforcement actions and should not duplicate those procedures.

Content of the Report of Examination

The overall tone of the ROE should be consultative and its content designed to educate the Board and management. The ROE should contain sufficient information to support the rating, conclusions and recommendations. However, it is not necessary to provide lengthy factual summaries of policies,

procedures, management structure or the like. The ROE must assess the strengths of the bank's compliance management system, clearly identify the most critical deficiencies and related causes, and aid the Board and management in developing an action plan to address the findings. The report should be informative and, regardless of the institution's consumer compliance rating, concise. Findings should be presented in order of significance, with greater detail provided about the most serious matters.

Only significant findings and violations are to be reported in the ROE. These matters represent the highest degree of risk to the institution or its customers and require management's immediate attention.

Significant findings include weaknesses in one or more components of an institution's compliance management system that:

- result, or could result, in a significant violation of federal consumer protection laws and regulations;
- result in a large number of isolated violations; or
- result in a continuation of a compliance management system deficiency cited at the previous examination.

Fair lending matters should be incorporated in the ROE. Fair lending should be specifically noted in the scope section of the ROE, and the findings incorporated in the other sections of the ROE as appropriate.

The EIC should use the subheadings below to emphasize important issues and provide structure and organization to the ROE.

Scope of the Examination

This section of the ROE contains the following elements:

- Date of the examination, review period covered, and name of the examiner-in-charge;
- Type and purpose of the examination ;
- Compliance management, operational, and regulatory areas reviewed;
- Methods used to review CMS and operations; and
- Offices visited.

Consumer Compliance Rating

This section of the ROE discloses and supports the consumer compliance rating. In addition to the rating, the EIC should provide a brief description of the principal factors that contributed to the assigned rating and a statement about the overall improvement or decline of the institution's compliance posture since the last compliance examination.

Compliance Management

This section of the ROE discusses the overall quality of the institution's compliance management system and the EIC's conclusions regarding the Board and management's ability to effectively meet its compliance responsibilities, along with recommendations for corrective action. The EIC will identify compliance system strengths and weaknesses, and explain significant findings and regulatory violations. Explaining the cause and severity of program deficiencies or violations is critical to proposing appropriate changes or corrective actions that will be accepted by management and will prevent recurrences.

The analysis should support the consumer compliance rating assigned to the institution. In particular, the examiner should take the opportunity to relate the Board's and management's oversight of the institution's compliance management system to the overall results of the examination and the general compliance posture of the institution.

This section should discuss the EIC's conclusions relative to each of the three elements of a compliance management system:

- Board of Directors and senior management oversight;
- Compliance program; and
- Audit function.

The discussion for each compliance management system element should begin with a summary statement about the quality of the financial institution's compliance management practices (e.g., strong, adequate, or weak). The summary statement should be followed by more detailed comments that explain the examiner's findings and conclusions. Both positive and negative aspects of the institution's management of its compliance responsibilities should be discussed. If the institution's compliance management system element is strong, the EIC should briefly explain why. The discussion should explain the relationship between deficiencies in the compliance management system and significant violations that resulted, or could result, from such deficiency. Any consequences of violations cited during the examination should also be communicated, such as Truth in Lending reimbursements, administrative enforcement actions, or potential civil liability.

The EIC's comments should address any deficiencies noted in the following areas:

- Management's compliance knowledge, ability, and commitment;
- Organizational and reporting structure of the compliance management system;

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- Knowledge, experience, and effectiveness of the compliance officer or staff with compliance responsibilities;
- Changes in personnel, technology, or service providers;
- Scope and adequacy of compliance policies, procedures, and training;
- Ability to identify, monitor, and correct compliance system deficiencies and regulatory violations; and
- Frequency and effectiveness of the compliance audit function.

At the conclusion of the discussion for each compliance management system element, the EIC should identify the statute(s) or regulation(s) from which significant violations have been cited as a result of the deficiencies in the compliance management system element. The reader should be referred to the Significant Violations pages for further details on all significant violations found during the compliance examination.

In the case of reimbursements, the EIC should state the total reimbursable amount when reliable estimates have been determined. Otherwise, when reliable estimates of the total reimbursable amount are not available, state so and provide an estimate based upon the examiner's calculations. Also, provide the assumptions on which the estimate is based.

Recommendations for Corrective Actions and Management Response

The EIC should provide the Board and management with constructive recommendations for corrective actions that address the specific deficiencies noted in the narrative of the ROE. The recommendations should be appropriate in light of the size and complexity of the institution's operations. The recommendations should enable the institution to resolve current compliance management system deficiencies and regulatory violations, and to minimize future violations by making improvements to its compliance management system.

Examiners should use this section to provide guidance and advice to a financial institution relating to its director and management oversight, compliance program, and audit function (e.g., making specific suggestions to improve the institution's method of educating employees about their compliance responsibilities). Ultimately, the Board and management of the institution are responsible for determining the actions they will take to address the examination findings. However, the recommendations should be written in a way that demonstrates to the Board and management the importance and value of taking the corrective action.

The EIC should discuss any corrective action taken or promised by the Board or management, and the time frames for promised action. The EIC should consider identifying by

name those individuals who commit to specific corrective actions, in order to assist in follow-up efforts at future examinations. Place this discussion, in an italic font, after each recommendation as a "Management Response." Alternatively, an overall "Management Response" comment may be provided after all recommendations, if management's position is similar on all of them.

Enforcement Actions

When administrative enforcement actions are contemplated by the EIC, the ROE should clearly inform the bank's board of directors that the EIC plans to recommend to FDIC management that an enforcement action be taken against the institution. The ROE should clearly explain the reasons for this recommendation. While formal and informal enforcement actions are often used to compel comprehensive corrective actions in poorly-rated institutions, such actions may also be used to address specific, serious situations that occur in well rated institutions.²

For example, if a ROE contains a repeat significant violation, an enforcement action targeted to the specific violation should be considered. This would be appropriate in situations where a weakness in an institution's CMS exists, but its overall rating may still be "1" or "2" because of other strengths.

This section should also discuss how management has addressed and/or resolved outstanding enforcement actions. The EIC should include the type of enforcement action and the date the enforcement action was issued or, in the case of a bank Board Resolution, adopted.

A list of each provision of the applicable enforcement action and a brief discussion of the financial institution's compliance with each provision should be included, as well as the examiner's recommendation on whether the enforcement action should be continued, removed, or changed to another type of enforcement action.

If a visitation was conducted between examinations, and a Visitation Report was forwarded to the financial institution detailing compliance with the provisions of the enforcement action, the examiner need only address the remaining outstanding provisions of the enforcement action. The examiner should also refer to the Visitation Report.

Comments and Conclusions on Community Reinvestment Act Examination

This section should be included if a concurrent Community Reinvestment Act (CRA) examination was conducted. State the bank's CRA rating, and briefly discuss the basis for it. The comments should refer the reader to the CRA Performance Evaluation.

² Formal and Informal Enforcement Actions Procedures Manual, December 20, 2005, p. 1-4.

Meeting with Management

Under this section, provide the following:

- Date of meeting with management;
- Names and titles of financial institution attendees; and
- Names and titles of individuals representing the FDIC and state regulatory authority.

This section should specifically address management's disagreement with the recommended consumer compliance rating and any proposed enforcement action(s), if applicable, and the reasons for the disagreement. In addition, the EIC should provide comments on management's willingness to make Truth in Lending reimbursements. Management's response to the Community Reinvestment Act rating or performance evaluation should be discussed also.

If a meeting is held with the Board of Directors/trustees, provide the following:

- Date of the meeting with the Board of Directors;
- Names and titles of Directors/trustees in attendance;
- Names and titles of persons in attendance at the request of the institution's directors/trustees; and
- Names and titles of individuals representing the FDIC and state regulatory authority.

This section should discuss the Board's response to the examination findings. It should include, as applicable, any corrective actions promised by the Board and/or any indications on the part of the Board that they will agree to a proposed enforcement action (formal or informal).

Significant Violations Page(s)

The Significant Violations Page(s) serve as the institution's official record of all significant violations cited during the examination. They should readily call attention to the general nature and magnitude of these matters. Each violation should be related to the underlying deficiency in the component(s) of the institution's compliance management system that allowed the violation to occur so that the Board and management may take meaningful corrective actions to improve the institution's compliance risk management. All findings and violations should be addressed in descending order of importance.

Significant violations are violations of a specific law or regulation that individually or collectively represent serious concern for the financial institution. Significant violations include those that meet any of the following criteria:

- Result from material deficiencies in the financial institution's CMS;
- Affect, or could affect a large number of transactions or consumers in a way that has, or could have harmful

consequences for the consumers or the financial institution³; or

- Willful act or omission to defeat the purpose of or circumvent law or regulation.

Violations deemed to be isolated, inadvertent, and not indicative of an institution's practices should not be considered significant and not discussed in the ROE. They must, however, be reported to the bank for correction, and must be recorded in SOURCE as "other" violations.

Repeat Violations

Violations are repetitive when they are cited in substantially the same manner from one examination to the next. This includes, for example, violations that impact the same product line that result from the same or similar deficiency in the bank's CMS as previously cited. Repeat violations should not automatically be considered "significant" unless they meet the criteria listed above.

The examiner should include the following elements, as applicable, for each significant violation cited during the examination:

- A summary of the regulatory section and the six digit violation code obtained from the Automated ROE Violation Code Directory;
- How the institution's practices differed from the requirements of the regulatory section;
- Compliance management system deficiency(ies) that allowed the violation to occur;
- Corrective action taken by the institution before or during the examination (indicate if a previously identified violation remains unchanged since the previous examination);
- Corrective action recommended by the EIC;
- Management's response; and
- Sample size and number of violations identified in the sample, and two or three examples for each violation. (This requirement is not applicable to standardized disclosures or public notices, or in cases in which management admits to the violation before transaction sampling is performed).

Special Rule for Reimbursable Truth in Lending Violations

Include reimbursable Truth in Lending violations under a separate heading, "Reimbursable Truth in Lending Violations", in the Significant Violations pages. In the SOURCE System, ensure that these violations are appropriately coded as "reimbursable".

³ This would not include, for example, omissions or discrepancies of a portion of a required disclosure that does not change the meaning of what was disclosed to the consumer and does not result from a major weakness in the institution's CMS.

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In the text of the violation write-up, supply the following information to support the presence of a “pattern or practice” for each type of reimbursable Truth in Lending violation:

- Type of loan;
- Special characteristics or features, if any; and
- Number of loans sampled with reimbursement violations.

For violations involving both understated Annual Percentage Rates (APR) and Finance Charges (FC), identify the larger of the reimbursable amount.

In addition to the above information, forward to the Regional Office the following for each type of reimbursable violation cited (as applicable):

- APR calculation printouts;
- TIL disclosures;
- Contract note;
- Commitment letter;
- HUD-1/1A Forms;
- Private mortgage insurance agreements;
- Interest rate indices;
- Trial balances, loan history, or payment record showing first payment and at least one subsequent payment;
- Itemization of amount financed (if separate)/Good Faith Estimate;
- Amortization schedule; and
- Any other documentation supporting adjustments to the amount financed (e.g., credit insurance application forms, etc.).

Supervisory Comments

The purpose of the Supervisory Comments is to provide the FDIC Regional and Washington Offices and other banking regulators with confidential or controversial information. It also provides information to succeeding examiners on supervisory and examination activities relating to the institution. The Supervisory Comments are not included in the ROE transmitted to the financial institution.

Most of the information that examiners traditionally placed on this page can now be found in SOURCE or in the examination workpapers. However, examples of information that continues to be important to report on this page include:

- Planned changes in key management positions or compliance personnel that are not widely known in the institution;
- Pending litigation on a consumer protection matter that is not widely known in the institution; and
- Tentative plans or strategies that are not widely known in the institution that may affect the frequency or scope of future compliance examinations.

When there are no issues to discuss, or all information is accessible in SOURCE or the examination workpapers, exclude this page.

Review of the Report of Examination

The EIC must complete and put the following documents into SOURCE for review:

- Transmittal Letter;
- Cover Page;
- The ROE;
- Significant Violation Pages (if any);
- Supervisory Comments (if applicable); and
- Updated Risk Profile and Scope Memorandum.

Reviewers should question any gaps, inconsistencies, or any unsupported or unexplained conclusions contained in the compliance Report of Examination or any other document informing the institution of a FDIC material supervisory determination. The assigned Review Examiner (RE) and the EIC must strengthen any weak areas with supporting data before the compliance Report of Examination or document is submitted to the institution.

Communication between the FDIC and the financial institution should occur if, during the review process, the examiner’s recommended rating is downgraded or the examiner’s conclusions are changed, adversely affecting the financial institution.

Subsequent to final approval of the ROE, the Cover Page, Transmittal Letter, ROE, and Significant Violations pages should be delivered to the Board of Directors of the financial institution.

The EIC should coordinate with the Field Supervisor (FS) to ensure that all SOURCE submission requirements are met.