

April 13, 2010

TO: Board of Directors

FROM: Sandra L. Thompson
Director
Division of Supervision and Consumer Protection

Michael Bradfield
General Counsel

SUBJECT: Amendments to the Guidelines for Appeals of
Material Supervisory Determinations and to the Guidelines
for Appeals of Deposit Insurance Assessment Determinations

EXECUTIVE SUMMARY

This is a proposal that the Board adopt and authorize publication in the Federal Register¹ of the Guidelines for Appeals of Material Supervisory Determinations (SARC Guidelines) and the Guidelines for Appeals of Deposit Insurance Assessment Determinations (AAC Guidelines) contained in the attached Federal Register Notice. Amendments to the guidelines documents for the Supervision Appeals Review Committee (SARC) were made to extend the decisional deadline for requests for review and to clarify the decisional deadline for written decisions by the SARC. Also, limited technical and clarifying amendments were made to both the SARC Guidelines and the Guidelines for the Assessment Appeals Committee (AAC).

¹ Section 309(c) of the Riegle Community Development and Regulatory Improvement Act of 1994 (Public Law 103-325, 108 Stat. 2160) (“Riegle Act”) requires public notice and opportunity for comment on proposed guidelines for the establishment of the required independent review process for material supervisory determinations. Publication for notice and comment was made when the original guidelines were established in 1995, satisfying this requirement. Publication for notice and comment was also made when the guidelines were substantially revised in 2004 and again in 2008, each time noting that while the FDIC considered it appropriate to garner comments regarding the amendments being proposed, “notice and comment was not required and need not be employed should the FDIC make future amendments.” Here it is believed that the clarifying and technical amendments being proposed would be unlikely to benefit from public comment, so publication without seeking prior notice and comment is recommended.

RECOMMENDATION

The Division of Supervision and Consumer Protection (DSC) and the Legal Division request that the Board of Directors adopt and approve for publication in the *Federal Register* the revised Guidelines for Appeals of Material Supervisory Determinations and the Guidelines for Appeals of Deposit Insurance Assessment Determinations, attached for your consideration.

BACKGROUND

SARC Guidelines

Section 309(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 requires the FDIC (as well as the other Federal banking agencies and the National Credit Union Administration Board) to establish an independent intra-agency appellate process to review material supervisory determinations.

The Riegle Act defines the term “independent appellate process” to mean a review by an agency official who does not directly or indirectly report to the agency official who made the material supervisory determination under review. In the appeals process, the FDIC is also required to ensure that (1) an appeal of a material supervisory determination by an insured depository institution is heard and decided expeditiously; and (2) appropriate safeguards exist for protecting appellants from retaliation by agency examiners.

On March 21, 1995, the FDIC’s Board of Directors adopted the original Guidelines for Appeals of Material Supervisory Determinations that established and set forth procedures governing the SARC, whose purpose was to consider and decide appeals of material supervisory determinations as required by the Riegle Act. (60 *Fed. Reg.* 15923). The SARC Guidelines were modified in 2004 to change the composition and procedures of the SARC (69 *Fed. Reg.* 41479). The SARC Guidelines were modified again in 2008 to modify the supervisory determinations eligible for appeal. (73 *Fed. Reg.* 54822).

AAC Guidelines

The Assessment Appeals Committee, created by the FDIC Board of Directors in 1999, provides a forum for review within the FDIC of assessment determinations made by FDIC divisions regarding requests for revision of the computation of quarterly assessment payments and requests for review of assessment risk classifications. Responsibility for making deposit insurance assessment determinations is shared by the Division of Finance (DOF), the Division of Insurance and Research (DIR), and, in some instances, by DSC. DOF is responsible for calculating the assessments owed by individual insured institutions based on assessment risk classifications assigned by DIR, which in turn uses supervisory information provided by DSC. To calculate an

institution's assessment, DOF applies the assessment rate that corresponds to the institution's assessment risk classification to that institution's assessment base. DOF determines the assessment base from deposit and other data submitted in the institution's Report of Condition or Thrift Financial Report.

An insured institution may request revision of its quarterly assessment payment by following the procedures set forth at 12 C.F.R. § 327.3(h); similarly, an insured institution may request review of its assessment risk classification by following the procedures set forth at 12 C.F.R. § 327.4(d). Having complied with those procedures and received a determination from the appropriate division, an institution dissatisfied with that division's determination may file an appeal with the AAC. After reviewing the determination made at the division level, the AAC will issue a final decision.

On June 28, 2004, the FDIC Board adopted Guidelines for Appeals of Deposit Insurance Assessment Determinations that reconstituted the AAC and established and set forth procedures for appeals to the AAC. (69 *Fed. Reg.* 41479).

ANALYSIS OF PROPOSED CHANGES

I. Amendment of Decisional Deadline for the Director, Following the Filing of a Request for Review

The SARC Guidelines provide that following an institution's filing of a request for review of a material supervisory determination with the Director of DSC, the Director "will issue a written determination of the request for review, setting forth the grounds for that determination, within 30 days of receipt of the request." Paragraph F(b). This deadline has proven to provide insufficient time for the issuance of a determination following the necessary analysis of the request and coordination between FDIC divisions and offices charged with carrying out the appeals process. To provide necessary time, this language has been amended to provide that the Director will issue the written determination "within 45 days of receipt of the request."

II. Clarification of Decisional Deadline for the SARC

The SARC Guidelines provide that written decisions of the SARC will be issued "within 60 days from the date the appeal is filed, or within 60 days from oral presentation, if held." This requirement was established with the expectation that oral presentations would be made at meetings as a matter of practice to aid the committee in the decision-making process. Consequently, in cases where no oral presentation is requested, the guidelines as written would seem to require something less than 60 days after a committee meeting to issue a decision. In order to clarify the decisional deadline, the language quoted above would be amended to read "within 45 days from the date the SARC meets to consider the appeal, which meeting will be held within 90 days from the date of the filing of the appeal."

III. Additional Technical Amendments

At various places throughout both the SARC Guidelines and the AAC Guidelines, minor modifications of language are made to standardize references to FDIC divisions and FDIC officials who are charged with carrying out the appeals processes, and to make other, limited, clarifying and conforming changes. In addition, where the FDIC's regulations have been amended since the AAC Guidelines were adopted, the current regulatory citations have been provided.

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[FDIC – XXXXXX]

FEDERAL DEPOSIT INSURANCE CORPORATION

Intra-Agency Appeal Process: Guidelines for Appeals of Material Supervisory Determinations and Guidelines for Appeals of Deposit Insurance Assessment Determinations

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of Guidelines.

SUMMARY: On April XX, 2010, the Federal Deposit Insurance Corporation (“FDIC”) Board of Directors (“Board”) adopted revised Guidelines for Appeals of Material Supervisory Determinations (“SARC Guidelines”). The SARC Guidelines govern the Supervision Appeals Review Committee (“SARC”) process and supersede the FDIC’s prior SARC Guidelines, which were adopted by the FDIC’s Board of Directors on September 16, 2008. In addition, on April XX, 2010, the Board also adopted revised Guidelines for Appeals of Deposit Insurance Assessment Determinations (“AAC Guidelines”), which govern the Assessment Appeals Committee (“AAC”) process and supersede the FDIC’s prior AAC Guidelines, which were adopted on June 28, 2004. The SARC Guidelines have been amended to extend the decision deadline for requests for review and to clarify the decisional deadline for written decisions by the SARC. Also, both the SARC Guidelines and the AAC Guidelines have been amended to make additional, limited technical clarifying and conforming amendments. Both sets of revised guidelines are effective upon adoption.

DATES: The revised SARC Guidelines and the revised AAC Guidelines became effective on April XX, 2010.

**FOR FURTHER INFORMATION CONCERNING THE SARC GUIDELINES
CONTACT: Patricia Colohan, Acting Associate Director, Division of Supervision and Consumer Protection, (202) 898-7283; Richard Bogue, Counsel, Legal Division, (202) 898-3726; Jeannette E. Roach, Counsel, Legal Division, (202) 898-3785, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429.**

**FOR FURTHER INFORMATION CONCERNING THE AAC GUIDELINES
CONTACT: Christopher Bellotto, Counsel, (202) 898-3801, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429.**

SUPPLEMENTARY INFORMATION:

Background

1. Guidelines for Appeals of Material Supervisory Determinations

Section 309(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (Public Law 103-325, 108 Stat. 2160) (“Riegle Act”) required the FDIC (as well as the other Federal banking agencies and the National Credit Union Administration Board) to establish an independent intra-agency appellate process to review material supervisory determinations.

The Riegle Act defines the term “independent appellate process” to mean a review by an agency official who does not directly or indirectly report to the agency official who made the material supervisory determination under review. In the appeals process, the FDIC is required to ensure that (1) an appeal of a material supervisory determination by an insured depository institution is heard and decided expeditiously; and (2) appropriate safeguards exist for protecting appellants from retaliation by agency examiners.

On March 21, 1995, the FDIC’s Board of Directors adopted the original Guidelines for Appeals of Material Supervisory Determinations, which established and set forth procedures governing the SARC, whose purpose was to consider and decide appeals of material supervisory determinations as required by the Riegle Act. The SARC Guidelines were amended, after notice and comment, on July 9, 2004, adopting revised Guidelines and changing the composition and procedures of the SARC. (69 FR 41479 (July 9, 2004)).

The SARC Guidelines were amended again in 2008, after notice and comment, to modify the supervisory determinations eligible for appeal to eliminate the ability of an FDIC-supervised institution to file an appeal with the SARC with respect to determinations or the facts and circumstances underlying a recommended or pending formal enforcement-related action or decision, and to make limited technical amendments. (73 FR 54822 (Sept. 23, 2008)).

Although the FDIC considered it desirable in those instances to garner comments regarding the Guidelines, notice and comment rulemaking was not required, and the FDIC pointed out that notice and comment rulemaking need not be employed in making future amendments. Notice and comment rulemaking was not employed in making the present amendments.

2. Guidelines for Appeals of Deposit Insurance Assessment Determinations

The FDIC Board of Directors created the AAC in 1999 to provide a high-level process for considering all deposit insurance assessment appeals brought from determinations made by the appropriate FDIC Divisions. Responsibility for deposit insurance assessments is shared by the Division of Finance (“DOF”), the Division of Insurance and Research (“DIR”) and, in some respects, the Division of Supervision and Consumer Protection (“DSC”). DOF is responsible for calculating the assessments owed by individual insured institutions based on assessment risk rates assigned by DIR, which in turn uses supervisory information provided by DSC.

Institutions that dispute the computation of their quarterly assessment payments may request revision of their assessment payments by following the procedures set forth at 12 C.F.R. § 327.3(f). Institutions that dispute their risk assignment – or dispute any determination for which review may be requested as provided in Part 327 – may request review by following the procedures set forth at 12 C.F.R. § 327.4(c).

The AAC provides a process for considering all deposit insurance assessment appeals brought from determinations made by the appropriate FDIC divisions pursuant to 12 C.F.R. §§ 327.3(f) and 327.4(c). Having complied with those procedures and received a determination from the appropriate division, an institution dissatisfied with that division’s determination may file an appeal with the AAC. After reviewing the determination made at the division level, the AAC will issue a final decision.

The AAC Guidelines were promulgated by the FDIC on July 2, 2004, following notice and comment rulemaking. (69 FR 41479 (July 9, 2004)). Although the FDIC considered it desirable in that instance to garner comments regarding the AAC Guidelines, notice and comment rulemaking was not required, and the FDIC pointed out that notice and comment rulemaking need not be employed in making future amendments. Notice and comment rulemaking was not employed in making the present amendments.

Amendments to the Guidelines

The SARC Guidelines provide that following an institution’s filing of a request for review of a material supervisory determination with the Director of DSC, the Director “will issue a written determination of the request for review, setting forth the grounds for that determination, within 30 days of receipt of the request.” Paragraph F(b). This deadline has proven to provide insufficient time for the issuance of a determination following the necessary analysis of the request and coordination between FDIC divisions and offices charged with carrying out the appeals process. To provide the necessary time, this language has been amended to provide that the Director will issue the written determination “within 45 days of receipt of the request.”

The SARC Guidelines provided that written decisions of the SARC were to be issued “within 60 days from the date the appeal is filed, or within 60 days from oral presentation, if held.” It was contemplated that oral presentations would be made at SARC meetings to aid the Committee in issuing written decisions within 60 days thereafter. The prior language of the SARC Guidelines (paragraph M), however, contemplated a period of less than 60 days after the SARC met in which the Committee was to issue a decision in cases where no oral presentation was held. To clarify the decisional deadline for the Committee, the prior language has been amended to provide that, whether or not oral presentation has been held, the SARC will issue a decision “within 45 days from the date the SARC meets to consider the appeal, which meeting will be held within 90 days from the date of the filing of the appeal.”

At various places throughout both the SARC Guidelines and AAC Guidelines, minor modifications of language are made to standardize references to FDIC divisions and FDIC officials who are charged with carrying out the appeals processes. In addition, where the FDIC’s regulations have been amended since the AAC Guidelines were promulgated, the current regulatory citations have been provided.

Paragraph E of the AAC Guidelines (Appeal to the AAC) provides that a division director may, with the approval of the Chairperson of the AAC, transfer a request for review or request for revision directly to the AAC if the director lacks delegated authority to grant relief. In order to further facilitate the prompt resolution of such requests for review or requests for revision, a mechanism through which a division director may seek guidance from the AAC Chairperson has been added to Paragraph E, which conforms to similar, current language at Paragraph G of the SARC Guidelines. In addition, both Paragraph E of the AAC Guidelines and Paragraph G of the SARC Guidelines have been amended to provide that a division director’s request to transfer a matter directly to the SARC or AAC will be done on the director’s recommendation, rather than the director’s determination, since no determination will have been made.

Paragraph L of the AAC Guidelines (Publication of Decisions) provides that published AAC decisions will be redacted to avoid the disclosure of exempt information. Because there may be circumstances where no amount of redaction of the full-text AAC decision would be sufficient to prevent improper disclosure while at the same time providing a meaningful statement of what the AAC has decided, Paragraph L has been revised to provide for summary form publication where redaction is deemed to be insufficient to prevent improper disclosure. This amendment mirrors a change made to the corresponding Paragraph N of the SARC Guidelines in 2008.

For the reasons stated in the Preamble, the Board has adopted the Guidelines for Appeals of Material Supervisory Determinations and the Guidelines for Appeals of Deposit Insurance Assessment Determinations as set forth below.

Guidelines for Appeals of Material Supervisory Determinations

A. Introduction

Section 309(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (Public Law 103-325, 108 Stat. 2160) (“Riegle Act”) required the Federal Deposit Insurance Corporation (“FDIC”) to establish an independent intra-agency appellate process to review material supervisory determinations made at insured depository institutions that it supervises. The Guidelines for Appeals of Material Supervisory Determinations (“guidelines”) describe the types of determinations that are eligible for review and the process by which appeals will be considered and decided. The procedures set forth in these guidelines establish an appeals process for the review of material supervisory determinations by the Supervision Appeals Review Committee (“SARC”).

B. SARC Membership

The following individuals comprise the three (3) voting members of the SARC: (1) One inside FDIC Board member, either the Chairperson, the Vice Chairperson, or the FDIC Director (Appointive), as designated by the FDIC Chairperson (this person would serve as the Chairperson of the SARC); and (2) one deputy or special assistant to each of the inside FDIC Board members who are not designated as the SARC Chairperson. The General Counsel is a non-voting member of the SARC. The FDIC Chairperson may designate alternate member(s) to the SARC if there are vacancies so long as the alternate member was not involved in making or affirming the material supervisory determination under review. A member of the SARC may designate and authorize the most senior member of his or her staff within the substantive area of responsibility related to cases before the SARC to act on his or her behalf.

C. Institutions Eligible To Appeal

The guidelines apply to the insured depository institutions that the FDIC supervises (*i.e.*, insured State nonmember banks and insured branches of foreign banks) and also to other insured depository institutions with respect to which the FDIC makes material supervisory determinations.

D. Determinations Subject To Appeal

An institution may appeal any material supervisory determination pursuant to the procedures set forth in these guidelines. Material supervisory determinations include:

- (a) CAMELS ratings under the Uniform Financial Institutions Rating System;**

- (b) IT ratings under the Uniform Interagency Rating System for Data Processing Operations;**
- (c) Trust ratings under the Uniform Interagency Trust Rating System;**
- (d) CRA ratings under the Revised Uniform Interagency Community Reinvestment Act Assessment Rating System;**
- (e) Consumer compliance ratings under the Uniform Interagency Consumer Compliance Rating System;**
- (f) Registered transfer agent examination ratings;**
- (g) Government securities dealer examination ratings;**
- (h) Municipal securities dealer examination ratings;**
- (i) Determinations relating to the adequacy of loan loss reserve provisions;**
- (j) Classifications of loans and other assets in dispute the amount of which, individually or in the aggregate, exceeds 10 percent of an institution's total capital;**
- (k) Determinations relating to violations of a statute or regulation that may impact the capital, earnings, or operating flexibility of an institution, or otherwise affect the nature and level of supervisory oversight accorded an institution;**
- (l) Truth in Lending (Regulation Z) restitution;**
- (m) Filings made pursuant to 12 C.F.R. § 303.11(f), for which a Request for Reconsideration has been granted, other than denials of a change in bank control, change in senior executive officer or board of directors, or denial of an application pursuant to section 19 of the FDI Act (which are contained in 12 C.F.R. § 308, subparts D, L, and M, respectively), if the filing was originally denied by the Director, Deputy Director, or Associate Director of the Division of Supervision and Consumer Protection; and**
- (n) Any other supervisory determination (unless otherwise not eligible for appeal) that may impact the capital, earnings, operating flexibility, or capital category for prompt corrective action purposes of an institution, or otherwise affect the nature and level of supervisory oversight accorded an institution.**

Material supervisory determinations do not include:

- (a) Decisions to appoint a conservator or receiver for an insured depository institution;**

(b) Decisions to take prompt corrective action pursuant to section 38 of the Federal Deposit Insurance Act, 12 U.S.C. § 1831o;

(c) Determinations for which other appeals procedures exist (such as determinations of deposit insurance assessment risk classifications and payment calculations);

(d) Decisions to initiate informal enforcement actions (such as memoranda of understanding); and

(e) Formal enforcement-related actions and decisions, including determinations and the underlying facts and circumstances that form the basis of a recommended or pending formal enforcement action, and FDIC determinations regarding compliance with an existing formal enforcement action.

A formal enforcement-related action or decision commences, and therefore becomes unappealable, when the FDIC initiates a formal investigation under 12 U.S.C. § 1820(c) or provides written notice to the bank indicating its intention to pursue available formal enforcement remedies under applicable statutes or published enforcement-related policies of the FDIC, including written notice of a referral to the Attorney General or a notice to the Secretary of Housing and Urban Development for violations of the Equal Credit Opportunity Act or the Fair Housing Act. For the purposes of these guidelines, remarks in a Report of Examination do not constitute written notice of intent to pursue formal enforcement remedies.

E. Good-Faith Resolution

An institution should make a good-faith effort to resolve any dispute concerning a material supervisory determination with the on-site examiner and/or the appropriate Regional Office. The on-site examiner and the Regional Office will promptly respond to any concerns raised by an institution regarding a material supervisory determination. Informal resolution of disputes with the on-site examiner and/or the appropriate Regional Office is encouraged, but seeking such a resolution is not a condition to filing a request for review with the Division of Supervision and Consumer Protection or an appeal to the SARC under these guidelines.

F. Filing a Request for Review With the FDIC Division of Supervision and Consumer Protection

An institution may file a request for review of a material supervisory determination with the Director, Division of Supervision and Consumer Protection (“Director” or “Division Director”), 550 17th Street, NW, Room F-4076, Washington, DC 20429, within 60 calendar days following the institution’s receipt of a report of examination containing a material supervisory determination or other written communication of

a material supervisory determination. A request for review must be in writing and must include:

(a) A detailed description of the issues in dispute, the surrounding circumstances, the institution's position regarding the dispute and any arguments to support that position (including citation of any relevant statute, regulation, policy statement, or other authority), how resolution of the dispute would materially affect the institution, and whether a good-faith effort was made to resolve the dispute with the on-site examiner and the Regional Office; and

(b) A statement that the institution's board of directors has considered the merits of the request and authorized that it be filed.

The Division Director will issue a written determination of the request for review, setting forth the grounds for that determination, within 45 days of receipt of the request. No appeal to the SARC will be allowed unless an institution has first filed a timely request for review with the Division of Supervision and Consumer Protection.

G. Appeal to the SARC

An institution that does not agree with the written determination rendered by the Division Director must appeal that determination to the SARC within 30 calendar days from the date of that determination. The Director's determination will inform the institution of the 30-day time period for filing with the SARC and will provide the mailing address for any appeal the institution may wish to file. Failure to file within the 30-day time limit may result in denial of the appeal by the SARC. If the Division Director recommends that an institution receive relief that the Director lacks delegated authority to grant, the Director may, with the approval of the Chairperson of the SARC, transfer the matter directly to the SARC without issuing a determination. Notice of such a transfer will be provided to the institution. The Division Director may also request guidance from the SARC Chairperson as to procedural or other questions relating to any request for review.

H. Filing With the SARC

An appeal to the SARC will be considered filed if the written appeal is received by the FDIC within 30 calendar days from the date of the Division Director's written determination or if the written appeal is placed in the U.S. mail within that 30-day period. If the 30th day after the date of the Division Director's written determination is a Saturday, Sunday, or Federal holiday, filing may be made on the next business day. The appeal should be sent to the address indicated on the Division Director's determination being appealed.

I. Contents of Appeal

The appeal should be labeled to indicate that it is an appeal to the SARC and should contain the name, address, and telephone number of the institution and any representative, as well as a copy of the Division Director's determination being appealed. If oral presentation is sought, that request should be included in the appeal. Only matters previously reviewed at the division level, resulting in a written determination or direct referral to the SARC, may be appealed to the SARC. Evidence not presented for review to the Division Director may be submitted to the SARC only if authorized by the SARC Chairperson. The institution should set forth all of the reasons, legal and factual, why it disagrees with the Division Director's determination. Nothing in the SARC administrative process shall create any discovery or other such rights.

J. Burden of Proof

The burden of proof as to all matters at issue in the appeal, including timeliness of the appeal if timeliness is at issue, rests with the institution.

K. Oral Presentation

The SARC may, in its discretion, whether or not a request is made, determine to allow an oral presentation. The SARC generally grants a request for oral presentation if it determines that oral presentation is likely to be helpful or would otherwise be in the public interest. Notice of the SARC's determination to grant or deny a request for oral presentation will be provided to the institution. If oral presentation is held, the institution will be allowed to present its positions on the issues raised in the appeal and to respond to any questions from the SARC. The SARC may also require that FDIC staff participate as the SARC deems appropriate.

L. Dismissal, Withdrawal and Rejection

An appeal may be dismissed by the SARC if it is not timely filed, if the basis for the appeal is not discernable from the appeal, or if the institution moves to withdraw the appeal. An appeal may be rejected if the right to appeal has been cut off under Section D. above.

M. Scope of Review and Decision

The SARC will review the appeal for consistency with the policies, practices and mission of the FDIC and the overall reasonableness of and the support offered for the positions advanced, and notify the institution, in writing, of its decision concerning the disputed material supervisory determination(s) within 45 days from the date the SARC meets to consider the appeal, which meeting will be held within 90 days from the date of the filing of the appeal. SARC review will be limited to the facts and circumstances as they existed prior to or at the time the material supervisory determination was made, even if later discovered, and no consideration

will be given to any facts or circumstances that occur or corrective action taken after the determination was made. The SARC may reconsider its decision only on a showing of an intervening change in the controlling law or the availability of material evidence not reasonably available when the decision was issued.

N. Publication of Decisions

SARC decisions will be published, and the published SARC decisions will be redacted to avoid disclosure of exempt information. In cases where redaction is deemed to be insufficient to prevent improper disclosure, published decisions may be presented in summary form. Published SARC decisions may be cited as precedent in appeals to the SARC.

O. SARC Guidelines Generally

Appeals to the SARC will be governed by these guidelines. The SARC will retain the discretion to waive any provision of the guidelines for good cause; the SARC may adopt supplemental rules governing SARC operations; the SARC may order that material be kept confidential; and the SARC may consolidate similar appeals.

P. Limitation on Agency Ombudsman

The subject matter of a material supervisory determination for which either an appeal to the SARC has been filed or a final SARC decision issued is not eligible for consideration by the Ombudsman.

Q. Coordination With State Regulatory Authorities

In the event that a material supervisory determination subject to a request for review is the joint product of the FDIC and a State regulatory authority, the Director, Division of Supervision and Consumer Protection, will promptly notify the appropriate State regulatory authority of the request, provide the regulatory authority with a copy of the institution's request for review and any other related materials, and solicit the regulatory authority's views regarding the merits of the request before making a determination. In the event that an appeal is subsequently filed with the SARC, the SARC will notify the institution and the State regulatory authority of its decision. Once the SARC has issued its determination, any other issues that may remain between the institution and the State authority will be left to those parties to resolve.

R. Effect on Supervisory or Enforcement Actions

The use of the procedures set forth in these guidelines by any institution will not affect, delay, or impede any formal or informal supervisory or enforcement action in progress or affect the FDIC's authority to take any supervisory or enforcement action against that institution.

S. Effect on Applications or Requests for Approval

Any application or request for approval made to the FDIC by an institution that has appealed a material supervisory determination that relates to or could affect the approval of the application or request will not be considered until a final decision concerning the appeal is made unless otherwise requested by the institution.

T. Prohibition on Examiner 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 that appeals a material supervisory determination 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 are encouraged to contact the Regional Director for the appropriate FDIC region. Any institution that believes or has any evidence that it has been subject to retaliation may file a complaint with the Director, Office of the Ombudsman, Federal Deposit Insurance Corporation, 550 17th Street, Washington, DC 20429, explaining the circumstances and the basis for such belief or evidence and requesting that the complaint be investigated and appropriate disciplinary or remedial action taken. The Office of the Ombudsman will work with the Division of Supervision and Consumer Protection to resolve the allegation of retaliation.

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Guidelines for Appeals of Deposit Insurance Assessment Determinations

A. Introduction

The Assessment Appeals Committee (“AAC”) was formed in 1999 and, pursuant to the direction of the FDIC Board of Directors, has been functioning as the appellate entity responsible for making final determinations pursuant to Part 327 of the FDIC’s regulations regarding the assessment risk assignment, the assessment payment computation, and other related assessment determinations affecting insured depository institutions. Institutions that dispute the computation of their quarterly assessment payments must comply with the time limits and other filing requirements set forth at 12 C.F.R. § 327.3(f). Generally, any such request may be made within 90 days of the quarterly assessment invoice for which a revision is requested. Institutions that dispute their risk assignment – or dispute any determination for which review may be requested as provided in Part 327 - must comply with the time limits and other filing requirements set forth at 12 C.F.R. § 327.4(c). Generally, an institution may request review within 90 days from the date it receives notice of its risk assignment or other disputed

determination from the FDIC. The AAC provides a process for considering all deposit insurance assessment appeals brought from determinations made by the appropriate FDIC divisions pursuant to 12 C.F.R. §§ 327.3(f) and 327.4(c). The procedures set forth in these guidelines apply to all appeals to the AAC.

B. AAC Membership

The following individuals comprise the five (5) voting members of the AAC, representing each member of the FDIC Board of Directors: (1) One inside FDIC Board member, either the Vice Chairperson or the Director (Appointive), as designated by the FDIC Chairperson (this person would serve as Chairperson of the AAC); (2) one of the deputies or special assistants to the FDIC Chairperson, to be designated by the FDIC Chairperson; (3) a deputy or special assistant to the Office of the Comptroller of the Currency's member on the FDIC's Board of Directors; (4) a deputy or special assistant to the Office of Thrift Supervision's member on the FDIC's Board of Directors; and (5) a deputy or special assistant to either the Vice Chairperson or the inside Director (Appointive), whoever is not the AAC Chairperson. The General Counsel is a non-voting member of the AAC. The FDIC Chairperson may designate alternative member(s) for the AAC if vacancies occur. A member of the AAC may designate and authorize the most senior member of his or her staff within the substantive area of responsibility related to cases before the AAC to act on his or her behalf.

C. Institutions Eligible to Appeal

These guidelines apply to all depository institutions insured by the FDIC.

D. Determinations Subject to Appeal

The AAC, upon appeal by an insured depository institution, reviews determinations of the Director of the Division of Insurance and Research or the Director of the Division of Supervision and Consumer Protection made pursuant to the procedures set forth at 12 C.F.R. § 327.4(c) regarding the assessment risk assignment provided by the FDIC to the institution - or any determination for which review may be requested as provided in Part 327 - and renders a final determination. The AAC also, upon appeal by an insured depository institution, reviews determinations made pursuant to 12 C.F.R. § 327.3(f) by the Director of the Division of Finance regarding the computation of the institution's assessment payment and renders a final determination.

E. Appeal to the AAC

An institution that does not agree with the written determination rendered by the appropriate Division Director pursuant to 12 C.F.R. §§ 327.4(c) and 327.3(f) must appeal that determination to the AAC within 30 calendar days from the date of the determination. The division director's determination will inform the institution of the 30-day time limit for filing with the AAC and will provide the mailing address for any appeal the institution may wish to file. Failure to file within the 30-day time period may result in denial of the appeal by the AAC.

If a Division Director recommends that an institution receive relief that the Director lacks delegated authority to grant, the Director may, with the approval of the Chairperson of the AAC, transfer the matter directly to the AAC without issuing a determination. Notice of such a transfer will be provided to the institution. A Division Director may also

request guidance from the AAC Chairperson as to procedural or other questions relating to any request for revision or request for review.

F. Filing With the AAC

An appeal to the AAC will be considered filed if the written appeal is received by the FDIC within 30 calendar days from the date of the Division Director's written determination or if the written appeal is placed in the U.S. mail within that 30-day period. If the 30th day after the date of the Division Director's written determination is a Saturday, Sunday or Federal holiday, filing may be made on the next business day. The appeal should be sent to the address indicated on the determination being appealed.

G. Contents of Appeal

The appeal should be labeled to indicate that it is an appeal to the AAC and should contain the name, address, and telephone number of the institution and any representative, as well as a copy of the determination being appealed. If oral presentation is sought, that request should be included in the appeal. Only matters previously reviewed at the division level, resulting in either a written determination or a direct referral to the AAC, may be appealed to the AAC. Evidence not presented for review at the division level may be submitted to the AAC only if authorized by the AAC Chairperson. The institution should set forth all of the reasons, legal and factual, why it disagrees with the determination. Nothing in the AAC administrative process shall create any discovery or other such rights.

H. Burden of Proof

The burden of proof as to all matters at issue in the appeal, including timeliness of the appeal if timeliness is at issue, rests with the institution.

I. Oral Presentation

The AAC may, in its discretion, whether or not a request is made, determine to allow an oral presentation. The AAC generally grants a request for oral presentation if it determines that oral presentation is likely to be helpful or would otherwise be in the public interest. Notice of the AAC's determination to grant or deny a request for oral presentation will be provided to the institution. If oral presentation is held, the institution will be allowed to present its position on the issues raised in the appeal and to respond to any questions from the AAC. The AAC may also require that FDIC staff participate as the AAC deems appropriate.

J. Dismissal and Withdrawal

An appeal may be dismissed by the AAC if it is not timely filed, if the legal or factual basis for the appeal is not discernable from the appeal, or if the institution moves to withdraw the appeal.

K. Scope of Review and Decision

The AAC will review all submissions concerning an appeal, review the final determination being appealed, consider any other matters it deems in its discretion to be appropriate, and issue a written decision within 60 days from the date the appeal is filed, or within 60 days from oral presentation, if held. The AAC may reconsider its decision

only on a showing of an intervening change in the controlling law or the availability of material evidence not reasonably available when the decision was issued.

L. Publication of Decisions

AAC decisions will be published and the published AAC decisions will be redacted to avoid disclosure of exempt information. In cases where redaction is deemed to be insufficient to prevent improper disclosure, published decisions may be presented in summary form. Published decisions of the AAC may be cited as precedent in appeals to the AAC.

M. AAC Guidelines Generally

Appeals to the AAC will be governed by these guidelines. The AAC will retain the discretion to waive any provision of the guidelines for good cause; the AAC may adopt supplemental rules governing AAC operations; the AAC may order that material be kept confidential; and the AAC may consolidate similar appeals.

N. Effect on Deposit Insurance Assessment Payments

The use of the procedures set forth in these guidelines by an insured institution will not affect, delay, or impede the obligation of that institution to make timely payment of any deposit insurance assessment.

By order of the Board of Directors.

Dated at Washington, D.C. this XXth day of April, 2010.

Federal Deposit Insurance Corporation.

Robert E. Feldman
Executive Secretary

(SEAL)