



Federal Deposit Insurance Corporation

550 17th Street, NW, Washington, DC 20429-9990

Legal Division

February 9, 2017

John Greenewald


RE: FDIC FOIA Request Log Number 17-0125

Dear Mr. Greenewald:

This letter is our final response to your January 20, 2017 Freedom of Information Act (FOIA) request for a copy of "the DSC Formal and Informal Action Procedures (FIAP) Manual."

In Jerry Sussman's January 26, 2017 email, he abated the processing of your request, pending resolution of fee issues, including your requester category, which you stated was news media. By your January 30, 2017 reply, you stated that you accepted the category of "non-commercial," and agreed to pay up to \$10.00 for the processing of your request.

Mr. Sussman sent you a January 31, 2016 follow-up response, explaining that under our FOIA Fee Schedule, costs under \$10.00 are not assessed. Therefore, your \$10.00 agreement to pay would only afford you so much as may be provided to you at no cost. He further stated that the full FIAP Manual is 302 pages, less 100 pages which you are entitled to receive free, so the total cost for the full manual would be \$40.40. On February 3, 2017, you sent an e-mail to Mr. Sussman agreeing to accept the first 100 pages for free.

Based on your February 3rd email, I am interpreting this request to be for the first 100 pages of the FIAP Manual. As an "all other" requester under the FOIA, you will receive these pages in full for free.

Please note that I understand that the FIAP manual will be posted to the FDIC's external web site, although I don't have a proposed date. Please check back periodically at <https://www.fdic.gov/about/freedom/readingroom.html> if you have a continuing interest in obtaining the full manual, outside of the FOIA process.

This completes the processing of your request #17-0125. You may contact me at lsnider@fdic.gov or 703-562-2761 or our FOIA Public Liaison, Acting FDIC Ombudsman Gordon Talbot at GTalbot@fdic.gov or 703-562-6046, for any further assistance and to discuss any aspect of your request.

Sincerely,

Lisa M. Snider

Lisa M. Snider
Government Information Specialist
FOIA/Privacy Act Group, Legal Division

Enclosure (FIAP Manual –
First 100 pages)

FIAP MANUAL
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OVERVIEW

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Chapter 1

Overview

Introduction

The *Formal and Informal Action Procedures (FIAP) Manual* provides information on administrative procedures related to formal and informal corrective actions. Developed by the Division of Supervision and Consumer Protection (DSC), the manual is intended to support the work of field, regional, and Washington staff involved in processing and monitoring corrective actions.

The manual describes procedures for processing the actions most commonly initiated by the Federal Deposit Insurance Corporation (FDIC). These include informal actions (memoranda of understanding and bank board resolutions) and the formal actions listed below:

- Termination of insurance actions
- Cease-and-desist actions
- Removal, prohibition, and suspension actions
- Civil money penalties
- Prompt corrective actions
- Orders to correct safety and soundness deficiencies (Section 39)
- Investigation requests

The detailed procedures presented in this manual are not intended to replace sound judgment and discretion on the part of FDIC staff. Instead, the instructions are designed to promote uniformity in the application and processing of FDIC corrective actions.

A uniform, consistent approach toward determining the appropriate action against financial institutions and/or individual respondents will allow the FDIC to fairly address violations of law and other weaknesses in financial institutions.

About the *FIAP Manual*

The *Overview* provides basic information about formal and informal corrective actions. Chapter 2 covers the following topics:

- Notifications to other agencies;
- When to create Formal and Informal Action Tracking System (FIAT) records;
- Delegations of Authority;
- Mailing and Distribution instructions; and
- Abbreviations used in the manual.

Chapters 3 through 12 describe the most common types of corrective actions used by the FDIC:

- Informal actions;
- Insurance terminations;
- Cease-and-desist actions;
- Removal, prohibition and suspension actions;
- Civil money penalties;
- A comparison of the use of prompt corrective action directives and Section 8 notices and orders;
- Prompt corrective actions;
- Investigation requests; and
- Section 39 actions.

Each chapter includes information and processing procedures applicable to DSC Field Office (FO), Regional Office (RO), and Washington Office (WO) staffs.

Definitions

Informal actions are voluntary commitments made by an insured financial institution's board of directors (BOD). Such actions are designed to correct noted safety and soundness deficiencies or ensure compliance with Federal and state laws. Informal actions are not legally enforceable and are not available to the public.

Formal actions are notices or orders issued by the FDIC against insured financial institutions and/or individual respondents. The purpose of formal actions is to correct noted safety and soundness deficiencies, ensure compliance with Federal and state banking laws, assess civil money penalties, and/or pursue removal or prohibition proceedings. Formal actions are legally enforceable. Final orders are available to the public after issuance.

Provisions are specific corrective measures an institution or individual respondent is required to take under a corrective action.

Purpose of Actions

Formal and informal actions address practices, conditions, or violations of law that, if continued, could result in risk of loss or damage to an insured financial institution. To mitigate loss or other damage to an institution, the FDIC identifies and endeavors to secure correction of objectionable practices as soon as possible.

When unacceptable practices are detected early, moral suasion and informal action against an institution are usually sufficient. In more serious situations, however, formal action could be considered even for institutions that receive composite ratings of "1" or "2" for safety and soundness or compliance examinations to address specific actions or inactions by the institution.

**Types of
Corrective
Actions**

The FDIC may institute a wide range of informal and formal actions against a financial institution or individual respondent to obtain correction of noted safety and soundness or compliance deficiencies.

Informal Actions – A DSC Regional Director (RD) may recommend that the directors of an institution adopt a Bank Board Resolution (BBR) committing to addressing specific noted deficiencies. Alternatively, the RD may enter into a Memorandum of Understanding (MOU) with the institution. Chapter 3, *Informal Actions*, describes procedures for processing BBRs and MOUs. The request for and tracking of a compliance plan under Section 39(e) is an informal action as described in Chapter 11, *Section 39 Actions*.

Formal Actions – The FDIC may issue the following formal actions pursuant to Section 8 of the Federal Deposit Insurance (FDI) Act: termination of Federal deposit insurance; cease-and-desist actions; removal, prohibition, and suspension actions; and civil money penalties.

Additionally, Section 38 of the FDI Act authorizes the FDIC to issue prompt corrective action directives to undercapitalized institutions. In certain circumstances, the FDIC also may conduct an investigation to obtain information or evidence pursuant to Section 10(c) of the FDI Act. The various chapters in this manual provide instructions for processing these types of formal actions.

Under Section 39, if the bank fails to submit or materially implement an acceptable compliance plan, the bank will become subject to a formal action.

Note: When processing actions that are not described in this manual, staff in the FO, RO, and WO (DSC and Legal) should communicate closely to ensure adequate documentation and evidentiary support exists for the actions.

**Grounds for
Informal and
Formal Actions**

The FDIC **generally** initiates formal or informal corrective action against institutions with a composite safety and soundness or compliance rating of "3," "4," or "5," unless specific circumstances warrant otherwise. The belief that the institution's management has recognized the deficiencies and will institute corrective action is not a sufficient basis, in and of itself, to preclude taking corrective action.

Generally, the FDIC institutes informal and formal action against institutions under the following conditions.

Informal Actions - Informal action is **generally** appropriate for institutions that receive a composite rating of "3" for safety and soundness or compliance. This rating indicates the institution has weaknesses that, if left uncorrected, could cause the institution's condition to deteriorate.

Formal Actions - Formal action is **generally** initiated against an institution with a composite rating of "4" or "5" for safety and soundness or compliance if there is evidence of unsafe or unsound practices and/or conditions, or concern over a high volume or severity of violations at the institution. (Chapter 4 discusses Unsafe/Unsound Practices and Conditions/Violations of Law.)

Exceptions to these general parameters may be appropriate if an institution's condition reflects significant improvement resulting from an effective correction program, or if other circumstances eliminate the need for the FDIC to initiate corrective action. For example, action taken by the State Authority may be deemed adequate given the pertinent circumstances, or qualified new management of the institution may justify taking informal corrective action instead of formal action. More severe action may be taken if the circumstances present undue risk to the bank and insurance funds.

Detecting Problems Requiring Corrective Action

Nearly all corrective actions are initiated as a result of facts and circumstances uncovered by FDIC field examiners during examinations of financial institutions. Deficiencies may also be identified in the Reports of Examination (ROE) prepared by other financial regulatory agencies, extracted from Reports of Condition and Income filed quarterly by institutions, or identified through reviews of published reports, news releases, or other sources.

In addition, employees and customers sometimes volunteer information concerning irregular activities at financial institutions. Such disclosures may prompt formal FDIC review through an onsite visitation/examination of the institution, or initiation of a formal investigation by the FDIC pursuant to Section 10(c) of the FDI Act.

Documenting Section 8 Actions

Actions under Section 8 of the FDI Act constitute formal proceedings against respondents. Lengthy time periods may elapse between completion of an examination and the date of a formal hearing, if required, to adjudicate Section 8 charges. The burden of proving all charges rests with the FDIC. Since examiners may be called as witnesses during the adjudication process, the ROE must contain all pertinent facts in support of each charge.

In addition, examination work papers may be admitted as evidence at a hearing or used to refresh the examiner's memory before giving testimony. Therefore, particular care should be taken to ensure work papers are complete, comprehensive, legible and consistent with the ROE. Work papers and ROEs should be retained under appropriate safeguards until a Section 8 proceeding (and related order, when issued) is terminated.

Initiating Actions

The FDIC's first line of supervision is the field examiner staff. The DSC Risk Management and Compliance manuals of examination policy require examiners to describe any problems detected during examinations of financial institutions and to recommend appropriate corrective action.

For relatively inconsequential deficiencies that do not affect the safety and soundness of an institution, it is generally sufficient for examiners to inform the institution's management of the deficiencies and work with the institution to effect correction. If such action would not be sufficient or if

serious deficiencies exist, the examiner should discuss appropriate corrective measures (which may include formal or informal action) with the Field Supervisor (FS) and/or RO staff **before** the examination is completed. The Legal Division should also be consulted during these discussions.

**Expedited
Processing**

Depending on the situation, it may be appropriate to expedite the processing of certain actions (for example, to immediately halt practices that could materially impact the safety and soundness of an institution). Complete, effective communication is essential among field, regional, and Washington staffs to ensure all parties are aware of the need for expedited processing.

In compliance with pertinent RO policy, field staff should inform either the FS or RO Reviewer of situations that appear to require expedited processing.

If the RD concurs with the recommendation for expedited processing, the RO Reviewer should provide relevant information about the case to the WO Reviewer, Section Chief or Associate Director.

**Modifying,
Withdrawing,
and Terminating
Actions**

When the provisions of a formal or informal action are changed during the life of the action, the action must be **modified** to reflect the change. An action is most often modified following an examination or visitation. **A modification order must be issued to modify a formal action.**

An action is **withdrawn** when a decision is made by either the WO or RO to cease pursuing the action prior to issuance.

Actions may be **terminated** after issuance when certain conditions are met. Common reasons for terminating informal actions are listed in Chapter 3, *Informal Actions*. Formal actions are usually terminated when any of the following circumstances exist:

- Conditions and relevant circumstances at the institution have improved sufficiently, and the formal action is no longer needed.
- The provisions of the formal action have been fully satisfied.
- A replacement formal or informal action has been issued to address the outstanding issues.
- Conditions at the institution have deteriorated, and a new action has been initiated.

An order must be issued to terminate a formal corrective action.

FIAT Records

FIAT is a computer system that serves as a central source of information about DSC corrective actions. RO Reviewers and WO Reviewers are responsible for ensuring that tracking records are created and updated on FIAT in a timely manner.

For guidance on when to create FIAT records, refer to Chapter 2, *Administrative Issues - When to Create a FIAT Record*.

Notes

CHAPTER 2
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Notifying Other Agencies

Overview Notifying other agencies of proposed corrective actions at the earliest practicable date allows more effective assessment of the situation and ensures that appropriate administrative action is implemented.

The Joint Statement of Policy entitled "Interagency Notification and Coordination of Enforcement Actions by the Federal Banking Regulatory Agencies" requires federal financial regulatory agencies to notify other supervisory agencies in writing of proposed corrective actions and to coordinate complementary actions with the appropriate agencies.

The Gramm-Leach-Bliley Financial Services Modernization Act of 1999 (GLBA), dated November 12, 1999, modified various laws governing Federal banking agency supervision to incorporate the concept of functional regulation. GLBA contains requirements for certain consultation and information sharing.

Joint Policy Statement Provisions Under the terms of the joint policy statement entitled "Interagency Notification and Coordination of Enforcement Actions by the Federal Banking Regulatory Agencies," Federal financial regulatory agencies are required to perform the following actions:

- When proposing to take formal action against an institution or an institution-affiliated party (IAP), notify in writing the other Federal financial regulatory agencies and, where appropriate, a state supervisory authority.
- When proposing informal corrective action against an institution or IAP, notify other agencies in writing if an affiliate or other inter-institutional relationship is known or suspected.
- If complementary action is considered appropriate by two or more Federal banking regulatory agencies, coordinate the action with the other agencies.

Note: The Joint Policy Statement is available at <http://www.fdic.gov/regulations/laws/rules/5000-700.html>. The contact information for each of the other Federal agencies is included in the *Regional Office Information* section.

**Notification of
Federal Banking
Agencies**

DSC RDs are responsible for notifying in writing the designated contact person(s) at the Federal Reserve Board, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision of proposed formal actions. The contact person(s) should also be notified of proposed informal actions when there is an affiliation or other inter-institutional relationship known or suspected. Additionally, the appropriate primary Federal regulator should be notified in the instance when an FDIC respondent moves to a position in one of their institutions.

Notification should be given whether or not these agencies have an obvious interest in the potential action. The notifications are considered a courtesy, and one agency may not preclude any corrective action proposed by another agency. Notification should not result in delays in taking timely action.

**Notification of
State Authority**

In all cases, it is the policy of the FDIC to contact the appropriate state regulatory authority when administrative actions are contemplated. The opinion of the State Authority regarding the proposed action as well as any complementary actions which are being undertaken by that agency should be included in memoranda or other documentation supporting the action.

Section 8(m) of the FDI Act requires that the State Authority be contacted in connection with any proceeding under Section 8(b), (c)(1), or (e), and provided with notification of the action to be taken and grounds therefor. Unless corrective action is effectuated by action of the State Authority within a time specified in the notice mentioned above, the FDIC may proceed. Failure to follow these procedures is not grounds for attacking the validity of any notice or order issued under these sections.

**Functional
Regulation
Notification
Requirements**

GLBA's functional regulation means that similar activities should be regulated by the same regulator so as to promote regulatory efficiencies and eliminate burden and duplication. Accordingly, banking activities are to be regulated by bank regulators, securities activities by securities regulators, and insurance activities by state insurance regulators.

Capital Directives or Orders – Section 112 of the GLBA grants power to the functional regulator to veto any FDIC requirement for a functionally regulated affiliate to provide funds or assets to a depository institution. Since FDIC capital directives or orders generally do not target a specific source of funds, this provision of the GLBA should rarely be invoked.

**Functional
Regulation
Notification
Requirements
(cont'd)**

Nevertheless, ROs must promptly notify the functional regulator if any such requirement is put in place. Unless impractical under the particular circumstances, this notification should occur prior to the issuance of any such capital directive or order.

Taking Any Action – Section 113 of GLBA prohibits the FDIC from prescribing regulations, issuing orders, or imposing restraints, restrictions, guidelines or other requirements, or otherwise taking any direct or indirect action “with respect to a functionally regulated subsidiary” unless the action “is necessary to prevent or redress an unsafe or unsound practice or breach of fiduciary duty that poses a material risk to the safety and soundness of an affiliated depository institution or the domestic or international payments system” and the FDIC is unable to protect itself through action against the affiliated depository institution or insured depository institutions generally. The direct action restriction would include such actions as rulemaking, the issuance of guidelines and various types of regulatory orders, as well as enforcement actions. Regarding indirect actions, this should be interpreted to prohibit back-door actions against functionally regulated subsidiaries. For example, since wholly-owned subsidiaries of banks are effectively controlled by the sole-shareholder bank, action by the subsidiary could be effected either through imposing a requirement directly on the subsidiary or indirectly through requiring the bank to take specific action to force its subsidiary to act or refrain from acting in some way.

If an enforcement action is being contemplated that could fall into the category above, the appropriate Section Chief should be contacted first.

**Timing of
Notification**

Notification should be made as soon as the RO gives serious consideration to initiating the action.

**Documenting
Notification**

RO staff members should document notification in a letter or file memorandum, and a copy of the letter or file memorandum should accompany the action when it is forwarded to the WO.

**Coordinating
Related Actions**

Complementary actions against affiliated or related institutions need not be issued simultaneously; however, their preparation, processing, service, and follow-up should be coordinated by the appropriate agencies.

When to Create a FIAT Record

Overview

FIAT is a computerized system used by DSC to track the progress of formal and informal actions. FIAT tracks both actions that were issued as well as actions that were pursued but ultimately not issued. The appropriate initiation of FIAT records allows for tracking the full range of FDIC enforcement activity.

If FDIC action is to be taken against an institution, a record should be created on FIAT when a memorandum recommending pursuit of an informal or formal enforcement action is received by the RO. Informal or formal enforcement actions independently initiated by the State Authority for a state nonmember bank should be recorded in FIAT when a signed enforcement action is received by the RO. Informal or formal enforcement actions independently initiated by the OTS, FRB, or OCC should not be recorded in FIAT.

If the action is to be taken against an individual, a FIAT record should be created when enough facts are obtained, either from an on-site inquiry, discussions with an Assistant United States Attorney (AUSA) or other criminal investigation authorities, or through other means, to indicate a reasonable likelihood that an enforcement action will be pursued. Initiation of the FIAT record should not be delayed pending the conclusion of an on-site inquiry or receipt of a recommendation memorandum by the RO.

If FDIC staff subsequently determines the action should not be pursued, the record can be withdrawn. Initiating FIAT records in the early stages provides FIAT users with a complete summary of formal and informal actions in progress (including actions awaiting a legal opinion or review).

Additional guidelines on when to create FIAT records for formal and informal actions against institutions are presented below.

Informal Actions

The appropriate time to create a FIAT record for an informal action varies, depending on how the action is initiated. Refer to the following table to determine when to create an informal action record on FIAT.

If action is initiated by ...	Create FIAT record when ...
Institution's BOD during an examination	RO Reviewer receives an acceptable action executed by the institution's BOD
Field Examiner during an examination	RO Reviewer receives recommendation memorandum or draft action
RO after receiving examination report	RO Reviewer drafts action
State Authority independently	RD (or designee) receives signed action
State Authority and FDIC joins the action	RD (or designee) decides to join in the action

Formal Actions

A FIAT record is created for a formal action against an institution when a memorandum, recommending the FDIC pursue the formal action, is received by the RO.

If action is initiated by ...	Create FIAT record when ...
Field Examiner during an examination	RO Reviewer receives recommendation memorandum or draft action
RO after receiving examination report	RO Reviewer drafts action
State Authority independently	RD (or designee) receives signed action
State Authority and FDIC joins the action	RD (or designee) decides to join in the action

Cases Involving Multiple Respondents

Cases involving multiple respondents based on the same set of facts and evidence should generally be entered into FIAT and the Legal Integrated Management System (LIMS, collectively Tracking Systems) as a single case. For example, proposed CMPs against four board members for a section 23B violation should be entered as a single CMP action with four respondents (not four separate CMP actions). The Tracking Systems require separate entries for different types of enforcement actions on the same respondent(s). For example, a prohibition action and a CMP action will require two separate entries. In

**Cases Involving
Multiple
Respondents
(cont'd)**

instances where all of the respondents of a single entry are not processed on roughly parallel tracks, the initial entry to the Tracking Systems must then be split and additional entries created to track the different processing timeframes for the various respondents. For example, if three of the board members above stipulate to the issuance of a CMP and one does not, a new record would be created to track the processing of the notice.

**RO Processing
Comments**

General - All Actions

Processing comments for formal and informal actions should denote the current status of the action, including target dates. Actions requiring periodic reporting by the institutions should be updated upon receipt of those reports. Comments should be preceded by the date and the initials of the RO Reviewer. An initial regional processing status comment will be required at the time the action is added to the FIAT system. The most recent comment should be at the top of previous regional comments.

Specific - Formal Actions

Formal actions should also include brief background information along with the basis of the action in the summary comment. Sections 8(e), 8(g), and 8(i) actions, while in process, should be updated at least monthly for the status of the actions and should also denote the following information in the individual respondent section of the FIAT record:

- Respondent name
- Respondent title
- Event date (earliest date if a range of dates)
- Discovery date
- Investigation date(s), if applicable
- Decision date
- Projected submission to WO date

If the “Event date” is a range of dates, that should be included in the RO comments.

**RO Processing
Comments
(cont'd)**

The following information should be provided in RO comments section of the FIAT record:

- Respondent's title (if multiple titles are held or if the FIAT position description is vague [e.g., employee]),
- Event date range (if applicable),
- Basis of action (e.g., Suspicious Activity Report),
- Whether an FDIC restitution action will be pursued, or if one is being pursued, the SYSID of the action, and
- Whether a criminal case is being pursued and by whom.

Actions involving the U.S. Attorney should also include the following information in the RO comments section of the FIAT record:

- Status of the U.S. Attorney's action, and
- Reasons for holding the processing of a proposed FDIC action in abeyance.

**WO Processing
Comments**

Subsequent to the WO's receipt of an action, the WO Reviewer will input processing comments regarding the current status of the action, including target dates. Comments should be preceded by the date and the initials of the WO Reviewer.

FIAT Document Codes The following codes are used for documents in FIAT.

<u>Nature Of Action</u>	<u>Document Code</u>	<u>Document Description</u>
Cross Guarantee Assessment		
5(e)	ORD PAY	Order to Pay
5(e)	OP-MOD	Order to Pay - Modification
5(e)	OP-TERM	Order to Pay - Termination
5(e)	N-LIAB	Notice of Liability
5(e)	CON-WAV	Conditional Waiver
5(e)	CW-MOD	Conditional Waiver - Modification
5(e)	CW-TERM	Conditional Wavier - Termination
Temporary Insurance Termination		
8(a & t)	NPR	Notice to Primary Regulator
8(a & t)	NPR-MOD	Notice to Primary Regulator - Modification
8(a & t)	NPR-TERM	Notice to Primary Regulator - Termination
8(a & t)	TSI	Temporary Suspension of Insurance
8(a & t)	TSI-MOD	Temporary Suspension of Insurance - Modification
8(a & t)	TSI-TERM	Temporary Suspension of Insurance - Termination
8(a & t)	FH	Findings/Hearings
8(a & t)	FH-MOD	Findings/Hearings - Modification
8(a & t)	FH-TERM	Findings/Hearings - Termination
8(a & t)	TA	Termination Agreement
8(a & t)	TA-MOD	Termination Agreement - Modification
8(a & t)	TA-TERM	Termination Agreement - Termination
8(a & t)	IT	Insurance Termination
8(a & t)	IT-MOD	Insurance Termination - Modification
8(a & t)	IT-TERM	Insurance Termination - Termination
8(a & t)	VT	Voluntary Termination of Insurance
8(a & t)	VT-MOD	Voluntary Termination of Insurance - Modification
8(a & t)	VT-TERM	Voluntary Termination of Insurance - Termination
Insurance Termination		
8(a)	NPR	Notice to Primary Regulator
8(a)	NPR-MOD	Notice to Primary Regulator - Modification
8(a)	NPR-TERM	Notice to Primary Regulator - Termination
8(a)	FH	Findings/Hearings
8(a)	FH-MOD	Findings/Hearings - Modification
8(a)	FH-TERM	Findings/Hearings - Termination
8(a)	TA	Termination Agreement
8(a)	TA-MOD	Termination Agreement - Modification

<u>Nature of Action</u>	<u>Document Code</u>	<u>Document Description</u>
8(a)	TA-TERM	Termination Agreement - Termination
8(a)	IT	Insurance Termination
8(a)	IT-MOD	Termination Agreement - Modification
8(a)	IT-TERM	Termination Agreement - Termination
8(a)	VT	Voluntary Termination of Insurance
8(a)	VT-MOD	Voluntary Termination of Insurance - Modification
8(a)	VT-TERM	Voluntary Termination of Insurance - Termination
8(a)	FO	Findings/Order
8(a)	FO-MOD	Findings/Order - Modification
8(a)	FO-TERM	Findings/Order - Termination
8(a)	CH	Continuation/Hearing
8(a)	CH-MOD	Continuation/Hearing - Modification
8(a)	CH-TERM	Continuation/Hearing - Termination
Cease and Desist Order		
8(b)	NOT-CD	Notice - Cease and Desist
8(b)	NCD-MOD	Notice - Cease and Desist - Modification
8(b)	NCD-TER	Notice - Cease and Desist - Termination
8(b)	ORDER	Order
8(b)	MOD	Order - Modification
8(b)	TERM	Order - Termination
Temporary Cease and Desist Order		
8(c & b)	NOT-CD	Notice - Cease & Desist
8(c & b)	NCD-MOD	Notice - Cease & Desist - Modification
8(c & b)	NCD-TER	Notice - Cease & Desist - Termination
8(c & b)	TEMP-ORD	Temporary Order - Cease & Desist
8(c & b)	TEMP-MOD	Temporary Order - Cease & Desist - Modification
8(c & b)	TEMP-TER	Temporary Order - Cease & Desist - Termination
8(c & b)	ORDER	Order
8(c & b)	MOD	Order - Modification
8(c & b)	TERM	Order - Termination
Removal/Prohibition		
8(e)	NOTICE	Notice
8(e)	N-MOD	Notice - Modification
8(e)	N-TERM	Notice - Termination
8(e)	IMM-SUS	Immediate Suspension
8(e)	IS-MOD	Immediate Suspension - Modification
8(e)	IS-TERM	Immediate Suspension - Termination
8(e)	REM-ORD	Order
8(e)	REM-MOD	Order - Modification
8(e)	REM-TERM	Order - Termination

<u>Nature of Action</u>	<u>Document Code</u>	<u>Document Description</u>
Suspension/Prohibition (Criminal Proceedings)		
8(g)	TEMP-SUS	Temporary Suspension
8(g)	TS-MOD	Temporary Suspension - Modification
8(g)	TS-TER	Temporary Suspension - Termination
8(g)	REMOVE	Removal
8(g)	REM-MOD	Removal - Modification
8(g)	REM-TERM	Removal - Termination
Court Enforcement		
8(i)	COURT	Court Enforcement
8(i)	C-MOD	Court Enforcement - Modification
8(i)	C-TER	Court Enforcement - Termination
Termination of Insurance		
8(p)	NOTICE	Notice
8(p)	N-MOD	Notice - Modification
8(p)	N-TERM	Notice - Termination
8(p)	ORTERINS	Order for Termination of Insurance
8(p)	TI-MOD	Order - Modification
8(p)	TERM	Order - Termination
Voluntary Termination of Insurance		
8(q)	APTERINS	Order Approving Termination of Insurance
8(q)	TI-MOD	Order - Modification
8(q)	TERM	Order - Termination
Investigation Request		
10(c)	INV REQ	Investigation Request
10(c)	INV-MOD	Modification
10(c)	TERM	Termination
Capital Agreement		
325	CAP AGR	Capital Agreement
325	MOD	Modification
325	TERM	Termination
Bank Board Resolution		
BRR	RESO	Bank Board Resolution
BRR	MOD	Modification
BRR	TERM	Termination

<u>Nature of Action</u>	<u>Document Code</u>	<u>Document Description</u>
Civil Money Penalty		
CMP	CMP	Civil Money Penalty Assessment
CMP	AMEND	CMP - Amended Order
CMP	TERM	CMP - Termination
CMP	BOARD	CMP - Board Order
Capital Directive		
ILSA	DIR-CAP	Directive - Capital
ILSA	MOD	Directive - Modification
ILSA	TERM	Directive - Termination
ILSA	NOTC-CAP	Notice - Capital
ILSA	NCAP-MOD	Notice - Capital - Modification
ILSA	NCAP-TER	Notice - Capital - Termination
Memorandum of Understanding		
MOU	MOU	Memorandum of Understanding
MOU	MOD	Modification
MOU	TERM	Termination
Other Formal Action		
OFA	OFA	Other "Formal" Action
OFA	OFA-MOD	Modification
OFA	OFA-TERM	Termination
Other Informal Action		
OIA	OIA	Other "Informal" Action
OIA	MOD	Modification
OIA	TERM	Termination
Delay Self Appointment		
PCAA	TERM	Termination
PCAA	DELAY-1	Delay Self Appointment # 1
PCAA	DELAY-2	Delay Self Appointment #2
PCAA	DELAY-3	Delay Self Appointment #3
PCAA	VIABCERT	Viability Certification in Lieu of Appointment
Dismissal		
PCAD	NOTICE	Notice
PCAD	N-MOD	Notice - Modification
PCAD	N-TERM	Notice - Termination
PCAD	IMM-DIS	Directive - Immediate Dismissal
PCAD	IDIS-MOD	Directive - Immediate Dismissal - Modification

<u>Nature of Action</u>	<u>Document Code</u>	<u>Document Description</u>
Dismissal (cont'd)		
PCAD	IDIS-TERM	Directive - Immediate Dismissal - Termination
PCAD	DIR-DIS	Directive - Dismissal
PCAD	DD-MOD	Directive - Dismissal - Modification
PCAD	DD-TERM	Directive - Dismissal - Termination
PCAD	REIN-PET	Reinstatement - Petition
PCAD	REIN-DEN	Reinstatement - Denial
PCAD	REINST	Reinstatement - Approval
Capital Plan		
PCAP	NOTICE	Notice
PCAP	N-MOD	Notice - Modification
PCAP	N-TERM	Notice - Termination
PCAP	IMM-CPD	Directive - Immediate Capital Plan
PCAP	ICAP-MOD	Directive - Immediate Capital Plan - Modification
PCAP	ICAP-TER	Directive - Immediate Capital Plan - Termination
PCAP	DIR-CP	Directive - Capital Plan
PCAP	CP-MOD	Directive - Capital Plan - Modification
PCAP	CP-TER	Directive - Capital Plan - Termination
Capital Category Reclassification		
PCAR	NOTICE	Notice
PCAR	N-MOD	Notice - Modification
PCAR	N-TERM	Notice - Termination
PCAR	DIR-CCR	Directive - Capital Cat Reclassification
PCAR	CCR-MOD	Directive - Capital Cat Reclassification - Modification
PCAR	CCR-TER	Directive - Capital Cat Reclassification - Termination
PCAR	RECON	Reconsideration
PCAR	DENIAL	Reconsideration - Denial
Supervisory Directive		
PCAS	NOTICE	Notice
PCAS	N-MOD	Notice - Modification
PCAS	N-TERM	Notice - Termination
PCAS	DIR-SUP	Directive - Supervisory
PCAS	DS-MOD	Directive - Supervisory - Modification
PCAS	DS-TER	Directive - Supervisory - Termination
PCAS	IMM-SUP	Directive - Immediate Supervisory
PCAS	ISUP-MOD	Directive - Immediate Supervisory - Modification
PCAS	ISUP-TER	Directive - Immediate Supervisory - Termination

<u>Nature of Action</u>	<u>Document Code</u>	<u>Document Description</u>
Self-Appointment Conservator/Receivership		
SA	CONS	Self-Appointment Conservatorship
SA	CONS-MOD	Self-Appointment Conservatorship - Modification
SA	CONS-TER	Self-Appointment Conservatorship - Termination
SA	RECEIV	Self-Appointment Receivership (Never w/cons)
Plan Requested/Informal		
SEC39	PLAN	Plan For Standards
Safety and Soundness Standards/Formal		
39(E)	NOTICE	Notice
39(E)	N-MOD	Notice - Modification
39(E)	N-TERM	Notice - Termination
39(E)	ORDER	Order
39(E)	MOD	Order - Modification
39(E)	TERM	Order - Termination
Written Agreement		
WA	WA	Written Agreement
WA	WA-MOD	Written Agreement - Modification
WA	WA-TERM	Written Agreement - Termination

Delegations of Authority

Overview

The FDIC Board of Directors (FDIC Board) has delegated authority to DSC management to issue certain types of formal actions. In several cases, delegations of authority allow for a delegation below the director level, but only if confirmed in writing by the respective division director. In most cases, delegated authority can not be exercised without receipt of concurrent certification by the appropriate representative of the Legal Division.

The current delegations of authority can be found on the FDIC website at <http://www.fdic.gov/regulations/laws/matrix/exhibit2.html>.

Mailing and Distribution of Formal Enforcement Actions Sent to the Washington Office

Overview RO staff members should observe the following guidelines for mailing and distributing formal enforcement actions to the WO.

Informal Actions Copies of signed MOUs, BBRs, and Other Informal Actions (OIA), as well as modifications/terminations of these informal actions, should not be routinely forwarded to the WO. A copy of an informal action would be forwarded to the WO when it is associated with an institution which has a “4” or “5” composite rating or has a “3” composite rating and total assets exceeding \$1 billion.

Formal Actions Issued by RD Under Delegated Authority In each RO, a Legal Division staff member should be assigned responsibility for ensuring proper mailing and distribution of formal actions issued by the RD under delegated authority.

The responsible RO Reviewer should ensure FIAT records for the action are updated, and input the date the action is mailed to the WO.

A copy of Notices issued and the accompanying transmittal documents (currently Section 8(b) Notices) should be forwarded to the WO using overnight mail.

Other documents may be forwarded to the WO by interoffice mail (unless otherwise directed). However, they should be batched separately from general correspondence, and placed in an interoffice mail envelope addressed to the appropriate party.

**Formal Actions
Issued by RD
Under Delegated
Authority
(cont'd)**

Copies of the formal actions should be forwarded *simultaneously* to the appropriate individuals in the WO and RO as follows:

Washington Office Distributions		
DSC – Risk Management Actions	DSC - Compliance Actions	Joint Risk Management and Compliance Actions
<ul style="list-style-type: none"> • Appropriate Section Chief • Senior Counsel (EU) • Executive Secretary 	<ul style="list-style-type: none"> • Appropriate Section Chief • Senior Counsel (EU) • Executive Secretary 	<ul style="list-style-type: none"> • Appropriate Section Chiefs • Senior Counsel (EU) • Executive Secretary
<p>The WO Reviewer forwards all Enforcement Actions to the Research Assistant so that FIAT records can be updated and filed. The Research Assistant will ensure that the date received in the WO is recorded.</p>		
Regional Office Distributions		
<p>All appropriate parties, including the RD, DRD, ARD, RC, State Authority, and other Federal bank regulatory agencies, as established by the RD and RC. To facilitate timely entry of data in FIAT, also provide copies of the action to the appropriate RO Reviewer and RO Attorneys.</p>		

**Formal Actions
Requiring WO
Processing**

In each RO, a DSC or Legal Division staff member should be assigned responsibility for ensuring proper distribution of formal action cases that require WO processing. Distribution should be made *simultaneously* to the WO and RO in accordance with the following instructions.

Washington Office Distributions
<p>Forward <i>original</i> signed recommendation memorandum, any supporting documents (e.g., CMP matrix), and copies of Legal documents to the appropriate individuals listed below.</p> <p>DSC - Risk Management Actions - Section Chief, with copies to the Senior Counsel, Enforcement Unit (EU).</p> <p>Note: After receiving a copy of the signed recommendation memorandum, the RO Reviewer should transmit all of the documents electronically to the appropriate Section Chief, the appropriate WO Review Examiner, and the Senior Counsel, EU. The WO Review Examiner is responsible for updating FIAT to ensure that the date received in the WO is recorded.</p> <p>DSC - Compliance Actions - Section Chief, with copies to the Senior Counsel, EU.</p> <p>Joint DSC - Risk Management and Compliance Actions - The original recommendation memorandum and copies of legal documents and supporting information should be forwarded to the branch with responsibility for processing the case, with a copy of the entire package forwarded to the non-processing branch, in accordance with the instructions above.</p> <p>Legal – The Legal Division receives original legal documents and copies of DSC memorandum.</p>
Regional Office Distributions
<p>Distribute copies in accordance with instructions established by the RD and RC. To facilitate timely entry of data in the appropriate automated tracking system and electronic transmission of the case documents, provide <i>copies</i> of the RD recommendation memorandum and all supporting information to the responsible RO Reviewer and RC. The responsible RO Reviewer should ensure that FIAT records for the action are updated, and input the date the action is mailed to the WO.</p>

**Designating a
Back-up
Employee**

Each RO is encouraged to designate a back-up employee who will assist the individual with primary mailing responsibility and help ensure that proper procedures are followed.

Regional Office Information

Overview This section provides additional information for processing informal and formal actions.

Contacts for Notifying Other Agencies of Proposed Actions

Introduction To facilitate notification of proposed formal and informal actions as outlined in the *Notifying Other Agencies* section, each Federal agency has designated a contact person. The names and addresses of the contact persons named by the Federal Reserve Board, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision are listed below. RO staff may provide a courtesy copy of the official notification letter to the appropriate regional personnel of these agencies as well.

Contact Parties

Federal Reserve Board:

Deputy Associate Director
Division of Banking Supervision and Regulation
Board of Governors of the Federal Reserve System
20th and Constitution Avenue, NW
Washington, D.C. 20551

Office of Thrift Supervision:

Deputy Chief Counsel
Enforcement Division
Office of Thrift Supervision
1700 G Street, NW
Washington, D.C. 20552

Office of the Comptroller of the Currency:

Director
Enforcement and Compliance
Office of the Comptroller of the Currency
250 E Street, SW
Washington, D.C. 20219

Log of Enforcement Action Inquiries

Overview

Upon passage of FIRREA, the chairman of the House and Senate Banking Committees requested that the FDIC maintain records of inquiries regarding enforcement actions. DSC WO and ROs are required to maintain records for inquiries regarding both formal and informal administrative proceedings, either outstanding or under consideration. The records are to reflect all inquiries made, other than those from the appropriate regulatory officials made in the regular course of supervising and/or regulating depository institutions and those from management officials and legal counsels regarding the depository institutions they represent. The ROs should establish procedures for maintaining a log of such inquiries. If an inquiry is received, the RO should report the inquiry on its log and forward the log to the Associate Director, Supervision and Applications Branch, no later than the Monday of the week following the inquiry.

Civil Actions Against Individuals Report

Overview

Regulatory agencies have the ability to fine, censure, bar, suspend, or otherwise sanction individuals for violations of Federal laws related to the safe and sound operation of financial institutions. Before the passage of FIRREA, all adjudicated decisions of the FDIC were published in redacted form, with the names of banks, directors, officers, and other identifying details deleted. Decisions rendered on or after August 8, 1989, include identifying information, except in rare instances where the identities of non-respondents have been redacted or where the principles of the Freedom of Information Act or the Privacy Act apply.

Each regulatory agency has established a public website to view/search for these actions. The FFIEC lists the link to each regulatory agency's *enforcement actions against individuals* website. The relevant website addresses for the FFIEC and each regulatory agency are listed below.

FDIC – <http://www.fdic.gov/bank/individual/enforcement/index.html>

FRB – <http://www.federalreserve.gov/boarddocs/enforcement>

OCC – http://www.occ.treas.gov/enforce/enf_search.htm

OTS – <http://www.ots.treas.gov/enforcement>

FFIEC – <http://www.ffiec.gov/enforcement.htm>

NCUA – http://www.ncua.gov/administrative_orders/Admin/administrative.html

Abbreviations

APA	Administrative Procedure Act
APR	Annual Percentage Rate
BBR	Bank Board Resolution
BOD	Board of Directors
BSA	Bank Secrecy Act
CFR	Code of Federal Regulations
CM	Case Manager
CRA	Community Reinvestment Act
CRC	Case Review Committee
CMP	Civil Money Penalty
CY	Calendar Year
DDD	Deputy Division Director
DGC	Deputy General Counsel
DOJ	Department of Justice
DRD	Deputy Regional Director
DRR	Division of Resolutions and Receiverships
DSC	Division of Supervision and Consumer Protection
ECOA	Equal Credit Opportunity Act
EIC	Examiner in Charge
ES	Executive Secretary
EU	Enforcement Unit
FDI Act	Federal Deposit Insurance Act
FDIC	Federal Deposit Insurance Corporation
FFIEC	Federal Financial Institutions Examination Council
FHA	Fair Housing Act
FIAP	Formal and Informal Action Procedures
FIAT	Formal and Informal Action Tracking System
FIRIRCA	Financial Institutions Regulatory and Interest Rate Control Act of 1978
FIRREA	Financial Institutions Reform, Recovery, and Enforcement Act of 1989
FO	Field Office
FRB	Federal Reserve Board
FS	Field Supervisor
GLBA	Gramm-Leach-Bliley Financial Services Modernization Act of 1999
HMDA	Home Mortgage Disclosure Act
HOEPA	Home Owner's Equal Protection Act
HUD	Department of Housing and Urban Development
IAP	Institution-Affiliated Party
LAR	Loan Application Register
LIMS	Legal Integrated Management System
LOP	Legal Opinion Requested
MA	Metropolitan Area

MOU	Memorandum of Understanding
MSA	Metropolitan Statistical Area
NOI	Notice of Intent to Terminate Insured Status, Findings, and Order Setting Hearing
NPR	Notice to Primary Regulator
OCC	Office of the Comptroller of the Currency
OFA	Other Formal Action
OIA	Other Informal Action
OMB	Office of Management and Budget
OTS	Office of Thrift Supervision
PCA	Prompt Corrective Action
RC	Regional Counsel
RD	Regional Director
RE	Review Examiner
RM	Risk Management
RMAS	Risk Management and Applications Section
RO	Regional Office
ROE	Report of Examination
RO Reviewer	Regional Reviewer – Any Regional staff member assigned the task
SE	Supervisory Examiner
S&L	Supervision and Legislation Branch
SOURCE	System of Uniform Reporting of Compliance and CRA Exams
US	United States
USC	United States Code
WA	Written Agreement
WO	Washington Office
WO Reviewer	Washington Reviewer – Any Washington staff member assigned the task
5(e)	Cross Guaranty Agreement
8(a)	Insurance Termination
8(a&t)	Temporary Insurance Termination
8(b)	Cease and Desist Order
8(e)	Removal/Prohibition
8(g)	Suspension/Prohibition (Criminal Proceedings)
8(i)	Court Enforcement
8(p)	Termination of Insurance (Institution no longer in business of receiving deposits)
8(q)	Termination of Insurance (Institution's deposits are assumed by another insured institution)
10(c)	Investigation Requests

Notes

CHAPTER 3
INFORMAL ACTIONS

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Chapter 3

Informal Actions

Overview	<p>The FDIC may initiate informal action when a financial institution is found to be in a marginally unsatisfactory condition or to address specific concerns. Although informal actions are not legally enforceable and are viewed as voluntary corrective administrative actions, they represent an alternative to formal action when moral suasion will not, by itself, accomplish the FDIC's goal of correcting identified deficiencies in an institution's operations.</p>
Definition	<p>Informal actions are voluntary commitments made by the BOD of a financial institution. They are designed to correct noted safety and soundness deficiencies or ensure compliance with federal and state laws. Informal actions are neither publicly available nor legally enforceable.</p>
Types of Informal Actions	<p>Informal actions may include the following:</p> <ul style="list-style-type: none">• Bank Board Resolution (BBR)• Memorandum of Understanding (MOU)• Any other informal action deemed necessary for the situation and condition of a financial institution (this category includes any informal action not considered a BBR or MOU, such as a Supervisory Letter). <p>The informal actions used most commonly by the FDIC are BBRs and MOUs. Procedures for processing BBRs and MOUs are provided in the following pages.</p> <p>Because other informal actions are unique and nonrecurring, specific procedures for processing them are not included in this manual. However, the procedures for processing BBRs and MOUs may apply to other informal actions, depending on the basis of the action.</p>

Purpose of Informal Actions

Informal actions are designed to address and correct identified weaknesses in an institution's financial condition, performance, risk management practices, or regulatory compliance. The actions highlight problem areas for the institution's BOD and senior managers and address the deficiencies to be corrected.

When the Actions Are Used

Informal actions are particularly appropriate when the FDIC has communicated with bank management regarding deficiencies and has determined that the institution's managers and BOD are committed to and capable of effecting correction with some direction, but without the initiation of a formal corrective action.

Informal vs. Formal Actions

The following criteria should be considered in determining whether to seek informal or formal action:

- Bank management's attitude toward complying with laws and regulations or correcting undesirable or objectionable practices.
 - Whether violations or objectionable practices were willful or intentional, repetitive, substantive, or numerous.
 - The Bank's history of violations or unsatisfactory practices, as well as its history of instituting remedial or corrective action in a timely manner once violations or undesirable practices have been identified.
 - Whether deficiencies resulted from changes in management or key personnel.
 - Whether the financial institution has already initiated corrective action and established procedures to prevent future deficiencies or violations.
 - The extent of financial or other harm caused, or likely to be caused, by the violations or unsatisfactory practices.
 - Any other circumstances that, in the examiner's judgment, warrant use of an informal rather than a formal action.
-

Bank Board Resolutions

BBRs are informal commitments adopted by a financial institution's BOD (often at the request of the FDIC) directing the institution's personnel to take corrective action regarding specific noted deficiencies. BBRs may also be used as a tool to strengthen and monitor the institution's progress with regard to a particular component rating or activity.

The FDIC is not a party to these resolutions, but may review or draft the documents as a means of initiating corrective action.

Criteria for Bank Board Resolutions

Generally, the FDIC should consider recommending BBRs for financial institutions that received any of the following ratings, provided the institution's performance was not of supervisory concern during the the previous examination:

- A composite safety and soundness CAMELS rating of "3" or
- A composite compliance rating of "3."

In addition, a BBR may be appropriate if an institution's performance was of supervisory concern at a previous examination, but past corrective action has been successful and remaining concerns are minor.

The FDIC may also consider BBRs for institutions that receive a composite CAMELS or compliance rating of "2;" however, BBRs are rare in these instances. For example, the BBR could be targeted to address concerns noted in areas where component "3" ratings were assigned. Or, for example, asset quality could be rated "2," but there may be high risk in a particular lending segment that needs to be addressed.

Memoranda of Understanding

A MOU is an informal agreement between an institution and the FDIC, which is signed by both parties. The State Authority may also be a party to the agreement. MOUs are designed to address and correct identified weaknesses in an institution's condition. MOUs are usually drafted by a RO Reviewer based upon the EIC's recommendations, but in some regions they may be drafted by the EIC.

The FDIC generally uses MOUs instead of BBRs, especially when there is reason to believe the deficiencies noted during an examination need a more structured program or specific terms to effect corrective action.

**Criteria for
Memoranda of
Understanding**

In most cases, the FDIC should consider recommending MOUs for financial institutions that receive any of the following ratings:

- A composite safety and soundness CAMELS rating of “3” or
- A composite compliance rating of “3.”

A MOU may not be appropriate if an institution’s performance shows significant improvement or there are strong mitigating circumstances. In these instances, a BBR may be more appropriate. However, the mere belief that an institution’s management has recognized its errors and will improve is usually not grounds to forego a MOU.

Use of a MOU does not prevent the FDIC from subsequently pursuing formal enforcement action if the FDIC believes the institution’s management is unwilling or unable to voluntarily take necessary corrective action, nor is FDIC prohibited from seeking a MOU when an institution receives ratings other than the ones listed above.

**Delegations
of Authority**

Refer to the FDIC website for Delegations of Authority at <http://www.fdic.gov/regulations/laws/matrix/exhibit2.html>

Steps to Process Bank Board Resolutions

Introduction The following section describes procedures for processing BBRs.

Field Office Responsibilities FO staff members perform the following steps.

Step	Who Does It	What Happens
1	FO Examiner	<p>Contacts either FS (or designee) or RO Reviewer to discuss potential BBR, as required by RO policy.</p> <p>Note: For actions involving compliance issues, examiners must follow the requirements of the Consultation Policy.</p>
2	FO Examiner	<p>After obtaining concurrence from the appropriate individual identified in Step 1, performs the following actions:</p> <ul style="list-style-type: none"> • Discusses examination findings and possibility of BBR at exit meetings with institution's management and BOD; • Suggests recommended provisions for inclusion in BBR, if necessary, during onsite examination and at exit meeting with institution's BOD, with RO representation or FS, as appropriate; and • Informs BOD that additional corrective actions may be taken, as appropriate, if the BBR is not effective in correcting the noted deficiencies. <p>Note: For recommendations based on compliance issues, examiners should conduct meetings consistent with the approach explained in the Compliance Manual.</p>

**Field Office
Responsibilities
(cont'd)**

Step	Who Does It	What Happens
3	FO Examiner	<p>Prepares memorandum to RD recommending the BBR and lists areas the BBR should address (includes sensitive and/or confidential comments or observations about management's attitude, relevant comments by management, and an opinion on management's willingness to execute a BBR).</p> <p>Alternatively, if the institution executes a BBR before the examination ends, the recommendation memorandum should also indicate whether the BBR is acceptable and note any areas that should be changed. Any periodic reporting requirement for a BBR should be addressed if appropriate.</p>
4	FO Examiner	<p>Forwards the following to the RO:</p> <ul style="list-style-type: none"> • ROE; • Recommendation memorandum; • Draft of any proposed BBR or any additional information provided by the institution; and • Board certified copy of BBR (if BBR is executed before the examination ends).

**Regional Office
Responsibilities**

RO staff members perform the followings steps:

Step	Who Does It	What Happens
1	RO Reviewer	<p>Discusses proposed action with EIC, FS, and RD (or designee) to determine if a BBR is appropriate or if other action is warranted instead.</p> <p>Note: For informal actions based on compliance issues, the RO Reviewer must follow the requirements of the Consultation Policy.</p>
2	RO Reviewer	<p>After determining a BBR is appropriate, discusses possible areas to be addressed in BBR with EIC or assists EIC in formulating BBR provisions for presentation to institution's BOD.</p> <p>Any periodic reporting requirement for a BBR should also be discussed.</p>

**Regional Office
Responsibilities
(cont'd)**

Step	Who Does It	What Happens
3	RO Reviewer	<p>Reviews the following documentation from the EIC to ensure documents are consistent and support the recommended BBR provisions:</p> <ul style="list-style-type: none"> • ROE; • Recommendation memorandum; • Board certified copy of BBR (if executed by institution during examination or submitted subsequently); and • Draft of any proposed BBR or any additional information provided by the institution. <p>Note: When proposing adoption of a BBR, the RO should contact the State Authority to determine whether it concurs with the action. Any periodic reporting requirement for a BBR should also be discussed.</p>
4	RO Reviewer	<p>Prepares an examination transmittal letter, for signature by the RD, containing the appropriate information below.</p> <ul style="list-style-type: none"> • If the institution executed an acceptable BBR during the examination, the letter acknowledges adoption of the BBR and states that it has been accepted by the RD. Any periodic reporting requirement should be addressed. • If the institution executed an unacceptable BBR, the letter states this fact, provides recommended BBR provisions, and requests the institution to forward a revised BBR after it is executed by the institution's BOD. • If the institution did not execute a BBR during the examination, the letter provides recommended BBR provisions and requests the institution to forward a copy of the BBR after execution by the institution's BOD.
5	RO Reviewer	<p>Ensures a record of the BBR is created on FIAT</p> <ul style="list-style-type: none"> • After receiving an acceptable BBR executed by the institution's BOD during the examination; or • Upon receipt of a memorandum recommending pursuit of a BBR. <p>Note: The RO Reviewer is also responsible for ensuring that all appropriate updates are made to the RO comments section of the FIAT record in a timely manner.</p>

**Regional Office
Responsibilities
(cont'd)**

Step	Who Does It	What Happens						
6	RO Reviewer	<p>Forwards the following to RD (or designee) for review and/or signature:</p> <ul style="list-style-type: none"> • ROE; • Transmittal letter containing appropriate information listed in Step 4; and • Acceptable BBR (if executed by the institution). 						
7	RO Administrative Staff	Mails documents to institution's BOD and distributes copies in accordance with current mailing procedures						
		<table border="1"> <thead> <tr> <th>If ...</th> <th>Then ...</th> </tr> </thead> <tbody> <tr> <td>Institution executed an acceptable Board certified resolution during examination.</td> <td>Processing is complete at this time.</td> </tr> <tr> <td>Institution did not execute a Board certified resolution, or executed Board certified resolution is unacceptable.</td> <td>Processing continues under Step 8 guidelines.</td> </tr> </tbody> </table>	If ...	Then ...	Institution executed an acceptable Board certified resolution during examination.	Processing is complete at this time.	Institution did not execute a Board certified resolution, or executed Board certified resolution is unacceptable.	Processing continues under Step 8 guidelines.
		If ...	Then ...					
Institution executed an acceptable Board certified resolution during examination.	Processing is complete at this time.							
Institution did not execute a Board certified resolution, or executed Board certified resolution is unacceptable.	Processing continues under Step 8 guidelines.							
8	RO Reviewer	<p>When an acceptable Board certified resolution is received from the institution after ROE has been transmitted to the institution, prepares letter from RD (or designee) acknowledging receipt and informing institution the BBR is acceptable.</p> <p>Note: If the institution will not execute an acceptable BBR, the letter should acknowledge the BOD's unwillingness to adopt a BBR and encourage it to take the steps needed to bring about correction of the deficiencies noted at the examination. The letter should also note that the RD (or designee) may determine that, based on the institution's condition, an alternative method of obtaining correction is appropriate.</p>						
9	RO Reviewer	Forwards letter to RD (or designee) for review and signature.						
10	RO Administrative Staff	Mails letter to institution and distributes copies in accordance with current mailing procedures.						

Steps to Process Memoranda of Understanding

Introduction The following section describes procedures for processing MOUs.

Field Office Responsibilities FO staff members perform the following steps.

Step	Who Does It	What Happens
1	FO Examiner	<p>Contacts either FS (or designee) or RO Reviewer to discuss potential MOU, as required by RO policy.</p> <p>Note: For actions involving compliance issues, examiners must follow the requirements of the Consultation Policy.</p>
2	FO Examiner	<p>After obtaining concurrence from appropriate individual identified in Step 1, performs the following actions.</p> <ul style="list-style-type: none"> • Drafts memorandum to RD recommending issuance of MOU and areas MOU should address. • Discusses examination findings and possibility of MOU, including possible provisions at exit meetings with institution's management and BOD, with RO representation or FS, as appropriate. • With concurrence of the RD (or designee), informs institution's BOD of actions that may be considered if MOU does not result in correction of noted deficiencies. <p>Note: For recommendations based on compliance issues, examiners should conduct meetings consistent with the approach explained in the Compliance Manual.</p>
3	FO Examiner	<p>Forwards ROE, recommendation memorandum, and draft MOU (if applicable).</p>

Regional Office Responsibilities

RO staff members perform the followings steps:

Step	Who Does It	What Happens
1	RO Reviewer	<p>Discusses proposed action with EIC and RD (or designee) to determine if a MOU is appropriate or necessary, or if other action is warranted instead, and to arrange for discussion of proposed action with the institution's BOD.</p> <p>Note: For informal actions based on compliance issues, the RO Reviewer must follow the requirements of the Consultation Policy.</p>
2	RO Reviewer	<p>After receiving ROE and recommendation memorandum, performs the following actions:</p> <ul style="list-style-type: none"> • Reviews ROE, recommendation memorandum, and draft MOU (if applicable); • Drafts proposed MOU; • Drafts transmittal letter that may include request for meeting with BOD to discuss and sign MOU; and • Ensures record of MOU is created and maintained on FIAT. <p>The MOU should</p> <ul style="list-style-type: none"> • Expressly address specific problems of the financial institution; • Include target dates and other benchmarks, as appropriate, to provide measures for the level of compliance with the action; • Be clear and concise, so all parties fully understand exactly what is expected; and • Require periodic reporting by the institution to the RO. <p>Note (1): The RO Reviewer is also responsible for ensuring that all appropriate updates are made to the RO comments section of the FIAT record in a timely manner.</p> <p>Note (2): The RO should invite the State Authority to join in the MOU. The RO must coordinate issuance, modification, and termination of the MOU with the State Authority if the state is a party to the action.</p>

**Regional Office
Responsibilities
(cont'd)**

Step	Who Does It	What Happens	
3	RO Reviewer	If ...	Then ...
		Proposed MOU is mailed to institution with final ROE,	Forwards proposed MOU, ROE, and ROE transmittal letter to RD (or designee) for signature.
		MOU is mailed to institution after final ROE is mailed,	Forwards proposed MOU and transmittal letter to RD (or designee) for signature.
Note: The transmittal letter may include a request for a meeting to discuss and sign the MOU.			
4	RO Reviewer	<p>After receiving an acceptable MOU from the institution's BOD, drafts transmittal letter to be sent to institution with MOU executed by RD (or designee).</p> <p>Note (1): If the State Authority is a party to the MOU, the RO Reviewer should first forward the MOU to the appropriate State Authority for review and signature.</p> <p>Note (2): If the institution will not execute an acceptable MOU, the letter should acknowledge the BOD's unwillingness to adopt the MOU and encourage it to take the steps needed to bring about correction of the deficiencies noted at the examination. The letter should also note that the RD (or designee) may determine that, based on the institution's condition, an alternative method of obtaining correction is appropriate.</p>	
5	RO Reviewer	Forwards MOU and transmittal letter to RD (or designee) for review and signature.	
6	RO Administrative Staff	Mails transmittal letter and executed MOU to institution.	
7	RO Administrative Staff	Distributes copies of transmittal letter and MOU in accordance with current mailing procedures.	

Modifying Informal Actions

Modifying Informal Actions

When subsequent events such as an examination or visitation result in the need to make minor changes to an outstanding informal action, the FDIC may suggest that an institution modify a BBR or agree to modify a MOU. Procedures and standards for modifying an informal action are similar to those for initiating a new action.

The RO must coordinate modification of a MOU with the State Authority if the state is a party to the action.

Terminating Informal Actions

Terminating Informal Actions

The FDIC may terminate informal actions when any of the following conditions exist:

- The institution is in significant compliance with the provisions of the action.
- The institution's condition has improved sufficiently that the action is no longer needed.
- The institution has partially met the provisions of the action, and a new informal action has been issued to address outstanding provisions or new areas of concern.
- Deterioration or lack of compliance leads to issuance of a new informal or formal action.
- The institution merges or is closed.

Note: The FDIC does not actually terminate BBRs since it is not a party to these actions. However, if a BBR contains requirements for reporting the institution's progress to the RO, the RO should send a letter to the institution's BOD stating that reporting is no longer necessary.

Procedures and standards for termination due to substantial compliance are similar to procedures for initiating an informal action. If termination is due to issuance of a new informal or formal action, the FO Examiner should include a recommendation regarding disposition of the outstanding informal action in the recommendation memorandum to the RD. The outstanding action should remain in effect until the new action is issued.

The RO must coordinate termination of a MOU with the State Authority if the state is a party to the action.

Documenting Informal Action Terminations

Documenting Informal Action Terminations

RO staff must document termination of informal action using one of the following methods:

- A letter from the RD (or designee) informing the institution's BOD of the termination (MOU or other informal action) or discontinuance of progress reports (BBR).
- A file memorandum from the RO Reviewer stating the action has been terminated or discontinued due to the institution's closing or merger.
- A written statement that the action has been terminated or discontinued and replaced by a new action (the statement should be included in the documentation for the new action).

In all cases, RO staff must ensure that the termination is recorded in FIAT.

Notes

CHAPTER 4

**UNSAFE AND UNSOUND PRACTICES AND
CONDITIONS/VIOLATIONS OF LAW**

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Chapter 4

**Unsafe and Unsound Practices and
Conditions/Violations of Law**

Overview

The following sections provide information about unsafe or unsound practices, unsafe or unsound conditions, and violations of law.

Unsafe or Unsound Practices

An unsafe or unsound practice is any action or lack of action that is contrary to generally accepted standards of prudent financial institution operation that, if continued, would result in abnormal risk of loss or damage to a financial institution, its shareholders, or the deposit insurance funds.

Because unsafe or unsound practices may involve any area of an institution's operations, it is impossible to provide an all-inclusive list of such practices. In addition, an activity may be considered an unsafe or unsound practice at one institution and not at another after all relevant facts and circumstances are considered.

Although the FDI Act does not define unsafe or unsound practices, examples have been established through Section 8 administrative proceedings. Examples of common unsafe or unsound practices are listed on the following pages.

Practices Deemed Unsafe or Unsound

Actions deemed to be unsafe or unsound practices for insured financial institutions include, but are not limited to, the following:

- Operating with an inadequate level of capital for the kind and quality of assets held.
- Engaging in hazardous lending and lax collection practices that include, but are not limited to, extending credit without first obtaining complete and current financial information, extending credit that is inadequately secured, extending credit in the form of overdrafts without adequate controls, and extending credit with inadequate diversification of risk.
- Operating without adequate liquidity, in light of the asset and liability mix.
- Operating without adequate internal controls and an adequate audit program.
- Engaging in speculative or hazardous investment practices.
- Paying excessive dividends in relation to capital and earnings.
- Committing violations of law.

Lack of action deemed to be an unsafe or unsound practice may include the following:

- Failure to provide adequate supervision and direction over the officers of an institution.
- Failure to provide an adequate allowance for loan and lease losses.
- Failure to promptly post the general ledger.
- Failure to keep accurate books and records.
- Failure to enforce programs for repayment of loans.
- Failure to properly account for transactions.

**Practices Deemed
Unsafe or Unsound
(cont'd)**

- Failure to obtain or maintain on-premises evidence of priority liens on loans secured by real estate.
- Failure to provide supervision and oversight of the institution's compliance with Federal and state laws and regulations.

Unsafe or Unsound Conditions

As with unsafe or unsound practices, it is impossible to define precisely what constitutes an unsafe or unsound condition because an institution's condition depends on virtually every aspect of its operations. At a minimum, an institution's capital level, asset quality, management, earnings prospects, liquidity, and sensitivity to market risk must be carefully evaluated to determine whether unsafe or unsound conditions exist. An institution's condition need not deteriorate to a level near insolvency for a condition to be considered unsafe or unsound.

The FDIC Board has determined the following to be unsafe/unsound conditions:

- Maintenance of unduly low net interest margins.
 - Excessive overhead expenses.
 - Excessive volume of loans subject to adverse classification.
 - Excessive net loan losses.
 - Excessive volume of non-earning assets.
 - Excessively large liability dependence.
-

Violations of Laws, Regulations, Written Conditions, and Written Agreements

Failure to comply with laws, regulations, written conditions, cease-and-desist orders, or other written agreements imposed by the FDIC is generally definite and ascertainable, and therefore is more easily proved than assertions of unsafe or unsound practices.

Violations cited in safety and soundness ROEs – In many cases, violations remain subject to legal interpretation and determination. For this reason, examiners conducting safety and soundness examinations should use the phrase “apparent violations” to describe an action or lack of action that *appears* to violate a law, regulation, written condition, written agreement, or cease-and-desist order.

Violations cited in compliance reports ROEs – When describing violations of consumer protection and fair lending laws and regulations, the phrase “apparent violation” must be used *only* in the following cases:

- The violation remains subject to legal interpretation/determination.
 - The financial institution’s managers disagree with the interpretation of a law or regulation.
 - The violation involves discrimination prohibited by the Equal Credit Opportunity Act or the Fair Housing Act.
-

Notes

CHAPTER 5
CEASE-AND-DESIST ACTIONS

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Chapter 5

Cease-and-Desist Orders

Overview

The FDIC can issue a cease-and-desist order (Order) against institutions and IAPs to prevent or stop violations of laws and/or regulations or unsafe or unsound practices. Orders may also require affirmative action(s) to correct any conditions resulting from such violations or practices. The Orders may be issued with the consent of the institution or IAP, or through a notice-and-hearing process.

The FDIC also has the authority to issue temporary Orders in the most severe situations. Temporary Orders become effective immediately, are made permanent after the expiration of 10 days or completion of a Federal District Court hearing if requested by respondent, and are issued in conjunction with a Notice of Charges supporting an Order under Section 8(b).

The following pages describe procedures for issuing, modifying, and terminating Orders.

Cease-and-Desist Orders

Introduction

Orders may be issued to stop violations of law, rule, or regulation or unsafe or unsound practices, as well as to require affirmative action to correct any conditions resulting from such violations or practices. Orders may be issued after notice and hearing or after stipulation by the institution or IAP.

By ordering an institution or IAP to cease and desist from violations or practices and/or to take affirmative actions, the FDIC may prevent the institution's problems from reaching such serious proportions as to require more severe corrective measures.

Statutory Authority

Section 8(b) of the FDI Act authorizes the FDIC to issue Orders.

Grounds

The FDIC may issue Orders when the facts reasonably support the conclusion that an insured depository institution or IAP has engaged, or is about to engage in:

- An unsafe or unsound practice in conducting the business of the institution; or
- A violation of a law, rule, regulation, written agreement with the FDIC, or written condition imposed by the FDIC in connection with the granting of any application or other request.

Note: Violations of law are further described in Chapter 4 (*Unsafe and Unsound Practices and Conditions/Violations of Law*).

Notice and Hearing

The formal administrative proceedings that result in the issuance of an Order typically commence with the service of a notice of charges. The notice of charges contains a statement of facts constituting the alleged practices or violations and fixes the time and place of an administrative hearing to adjudicate the charges. The parties to the administrative proceeding are the FDIC (petitioner) and the institution and/or IAP (respondent). The respondent's failure to appear at the hearing constitutes consent to issuance of the Order.

An Order may be issued after the hearing, if one is held (a hearing is not held if the institution or IAP stipulates to a consent Order). An Order issued by the FDIC Board becomes effective 30 calendar days after the Order is served on the institution or IAP, or at the time indicated in the Order if issued with the consent of the institution or IAP.

The Order remains in effect until modified or terminated by the FDIC, or stayed or set aside by a reviewing court. An Order can be issued against an institution or any director, officer, employee, agent, or other IAP.

Consent Cease-and-Desist Orders

To eliminate the need for time-consuming administrative hearings, the FDIC attempts to obtain the respondent's stipulation to a consent Order. By stipulating to the Order, the institution or IAP waives the right to an administrative hearing and consents to the issuance of an Order. Typically, the institution or IAP consents to issuance of the Order without admitting or denying engagement in any unsafe or unsound practice or violation of any laws, regulations, etc. This procedure reduces the time period between initial case review and issuance of a final Order.

RO representatives negotiate the stipulation with the institution's BOD. When a stipulation is obtained, the Regional Counsel (RC) certifies in writing that the respondent has been advised of its right to the issuance and service of a notice of charges and of a hearing. The directors or their representative sign the stipulation and the RC certifies that a legal basis exists for the case. After the respondent executes the stipulation, the RD signs and issues the Order.

If a stipulation cannot be obtained, the FDIC can issue a notice of charges which starts the formal administrative proceeding.

Delegations of Authority

Refer to the FDIC website for Delegations of Authority at <http://www.fdic.gov/regulations/laws/matrix/exhibit2.html>.

Failure to Comply with Order

Failure to comply with an Order that has become final can be the basis for the following actions by FDIC:

- Imposing CMPs against an institution or any officer, director, employee, or other person involved in the conduct of the affairs of the institution;
 - Petitioning the U.S. District Court to enforce the Order;
 - Removing officials under Section 8(e) of the FDI Act; and
 - Terminating Federal deposit insurance.
-

Evidence Required

Under Section 8(b), the FDIC may issue an Order based on the opinion that an institution is engaging, has engaged, or is about to engage in unsafe or unsound practices or violations. However, mere suspicion does not constitute sufficient grounds for instituting the enforcement action.

The FDIC has the burden of proving the allegations contained in the notice of charges; therefore, a decision to issue an Order must be based on reliable evidence. While, in practice, the FDIC rarely issues a notice of charges before attempting to negotiate a stipulation, the evidence must still support the findings in the notice of charges and establish a basis for the provisions of the Order.

Relevant documentation or similar evidence of the following is required to support the notice of charges and to establish a basis for the provisions of the Order:

- FDIC requests made of the institution's BOD and/or officers;
- Promises regarding actions to be taken by the institution's BOD and/or officers;
- Conferences and meetings held with the institution's BOD and/or officers; and
- Institution records.

Examination Report Not Required

When sufficient evidence is otherwise available, it is unnecessary to wait for completion of an examination or preparation of a ROE before recommending and issuing an Order. However, all unsafe and unsound practices or violations should be carefully addressed and documented. Any ROE or memorandum to the RD should include as many detailed facts about the alleged practices or violations as possible.

Commission of Practice or Violation Not Required

A final Order may be issued before a violation or unsafe or unsound practice occurs in order to prevent a developing situation from reaching serious proportions.

Example: Four banks are owned by the same individuals, and the owners have misused three of the banks (but not the fourth) through self-dealing transactions. In this situation, the FDIC could issue an Order against the owners banning all loans and fees to the owners. The prohibition could apply to all four banks even though no self-dealing had occurred at the fourth bank. The basis for the Order against the fourth bank could be the FDIC's reasonably-held belief that, because of abuse at the related banks, similar unsafe or unsound practices are likely to occur at the remaining bank.

Requiring Affirmative Action

In addition to prohibiting unsafe or unsound practices and violations of law, the FDIC may require affirmative action to correct any conditions resulting from violations or practices. The authority to require affirmative action includes the authority to require an institution or IAP to make restitution or provide reimbursement, indemnification, or guarantee against loss if such institution or IAP was unjustly enriched, or if the violation or practice involved a reckless disregard for the law or applicable regulations.

RM Example: If a bank is operating with an excessive amount of substandard loans as a result of unsafe or unsound lending policies, an Order may require the bank to reduce the dollar volume of such loans to an amount specified in the Order and to adopt sound lending policies and practices.

Compliance Example: If a financial institution is operating with an excessive volume of significant violations of consumer protection and civil rights laws and regulations due to the lack of an effective compliance program, an Order may require the financial institution to correct all violations *and* establish a program and procedures to ensure future compliance.

Corrective Provisions

The following table lists possible unsafe and unsound practices or violations and the corresponding corrective measures that *may* be included in an Order. *This list is not all-inclusive.*

Note: All Risk Management-initiated Orders against stock institutions should contain a provision prohibiting the payment of dividends without prior written approval from the RD and the State Authority (if it is a party to the action), unless the provisions of the Order address only practices and conditions unrelated to capital.

All DSC-initiated Orders should contain a provision requiring disclosure of the Order in the next communication to shareholders following review of the disclosure by DSC's Accounting and Securities Disclosure Section.

Practice/ Violation	Corrective Provision	Additional Considerations
Inadequate Capital	State amount of required capital.	<p>Tier 1 leverage capital, Tier 1 risk-based capital, and Total risk-based capital ratios should be used in the formulation and recommendation of capital level provisions.</p> <p>The amount should be a ratio (e.g., "Restore Tier 1 leverage capital ratio to X%"), but can be a dollar amount (e.g., "Increase Tier 1 capital by \$XXX").</p> <p>If a dollar amount is used, it should be rounded to the nearest \$50,000 for increases of less than \$1,000,000, or rounded to the nearest \$100,000 for increases of more than \$1,000,000.</p> <p>Note: If the amount requested is larger than Part 325 minimum capital requirements, the amount must be justified based on the institution's condition. In addition, the State Authority should be consulted.</p>
Inadequate allowance for loan and lease losses (ALLL)	Direct institution to review current ALLL and make such entries as are necessary to provide an adequate ALLL, considering the condition of the loan portfolio.	In reviewing the adequacy of the ALLL, the institution should consider the volume and severity of adverse loan classifications at the most recent examination, projections for loan growth, composition of the future portfolio, etc. The institution's basis for adjustments to the ALLL should be documented and provided to the regulatory authorities for review.

Corrective Provisions (cont'd)

Practice/ Violation	Corrective Provision	Additional Considerations
	Also direct institution to review and amend the methodology for determining the ALLL balance.	Except in unusual circumstances, Orders should include a provision requiring the institution to establish and maintain an adequate ALLL. In addition, the Order should require the institution to provide accurate financial reporting prospectively and/or submit amended Reports of Condition and Income to correct previous inaccuracies in the ALLL balance.
Hazardous lending and collection policies	Order institution to cease and desist from such practices.	<p>The requirement usually involves establishing a list of conditions for extending credit, which might include the following:</p> <ul style="list-style-type: none"> • Obtaining documents necessary to perfect the institution's lien and evaluate the lien's priority; • Obtaining and maintaining current financial information on unsecured credits; • Establishing a repayment program consistent with the loan's purpose, security and source of repayment; or • Adopting adequate policies, procedures and information systems. <p>The Order may also mandate reductions in the volume of adversely classified assets.</p>
Extending credit with inadequate risk diversification	Require that credit extensions to any individual (or related interests of an individual) or extensions supported by a particular type of collateral be limited to a specific percentage of the institution's Tier 1 leverage capital.	
Operating without adequate liquidity	Develop a written plan, acceptable to the RD, which details primary and contingency courses of action for returning liquidity to an adequate level. The plan should	<p>This provision should be enhanced as necessary to address specific liquidity concerns including establishment of limits on material liquidity measures, establishment of borrowing lines, the use of borrowed funds, and reliance on volatile funding sources.</p> <p>Note: The Order may also require the</p>

Corrective Provisions (cont'd)

Practice/ Violation	Corrective Provision	Additional Considerations
	define the bank's liquidity measure and establish a prudent limit for that measure. Where applicable, the plan should establish specific timelines for meeting established liquidity goals.	institution to establish formal policies for asset/liability management.
Inadequate internal controls	Require affirmative action to correct specific weaknesses, hire qualified operations officer(s), and/or contract for an outside audit that will include direct verification.	This condition usually includes a requirement that applicable policies be enhanced.
Operating at a Deficit/Loss	Require formulation and implementation of comprehensive annual budgets for all income and expense categories.	The FDIC may also direct the institution to appoint a committee that will review and analyze the institution's income and expenses and/or supervise adherence to budgetary requirements.
BOD dominated by related individuals or officers, or members' effectiveness compromised by dependence on bank for credit or income	Require institution to change composition of BOD to reduce individuals' impact on decision-making.	Each situation is unique, but generally a majority of the members of the BOD and of influential committees should be outside directors with sufficient knowledge and expertise to fulfill their assigned responsibilities.
Several severe, repeated violations of consumer and civil rights laws and regulations and/or failure to substantially comply with informal enforcement actions based on compliance issues	Require correction of all violations of consumer and civil rights laws and regulations noted during examination.	Other provisions may include one or more of the following: <ul style="list-style-type: none"> • Adopt appropriate procedures to ensure future compliance; • Retain a qualified senior compliance officer; • Establish regular, ongoing audit and review programs for compliance; • Establish an ongoing compliance training program for staff; • Review type and number of staff positions needed to manage and supervise compliance program; • Establish procedures for compliance officer to report to institution's BOD at least quarterly; and/or

Corrective Provisions (cont'd)

Practice/ Violation	Corrective Provision	Additional Considerations
		<ul style="list-style-type: none"> • Ensure institution's BOD provides adequate supervision over compliance program.
Discriminatory Lending	Eliminate and prevent discriminatory treatment in institution's lending activities.	<p>Additional provisions may include the following:</p> <ul style="list-style-type: none"> • Review lending policies for prohibited discriminatory guidelines, and eliminate any such guidelines; • Provide additional training to staff; • Establish monitoring and review programs; • Reimburse customers for the effects of discrimination; • Offer a new credit opportunity for persons denied credit due to discrimination; • Advise consumers of their rights under the ECOA; or • Contact credit reporting agencies regarding any change in debt status (such as removing a signor from the obligation).

Steps to Issue Cease-and-Desist Orders

The following sections describe FO, RO, and WO responsibilities for initiating cease-and-desist actions under Section 8(b).

Field Office Responsibilities

FO staff members perform the following steps.

Step	Who Does It	What Happens
1	FO Examiners	Discuss potential 8(b) action with FS or RO Reviewer, as required by RO policy. Note: For actions involving compliance issues, the requirements of the Consultation Policy must be followed. The CRA regulation does not authorize regulatory agencies to impose formal enforcement actions under 12 U.S.C. 1818 (such as cease-and-desist action for CRA deficiencies).
2	FO Examiners	After obtaining concurrence of FS or RO Reviewer, prepare recommendation memorandum from EIC to RD detailing each undesirable and objectionable practice, condition, or violation.
3	FO Examiners	Forward memorandum and ROE to RO. Note: Guidelines for preparing the ROE and recommendation memorandum follow.

Report of Examination Guidelines

Examiners should observe the following guidelines when preparing a ROE:

- Only the FDIC Board is authorized to make a finding that a particular practice or condition is “unsafe” or “unsound.” Avoid using these words in the examination report and employ descriptive terms such as “undesirable,” “unacceptable,” or “objectionable” instead.
 - Cite facts supporting the need to name specific individuals in the action.
-

Memorandum Guidelines

The following guidelines should be observed in drafting the recommendation memorandum:

- Detail each undesirable or objectionable practice or condition regarded as unsafe or unsound. Describe/discuss relevant facts regarding each practice in order of importance under appropriate

**Memorandum
Guidelines
(cont'd)**

descriptive subheadings and captions, and refer to the specific schedules in the ROE where full details may be found. Provide originals or legible and complete copies of all documentary evidence. Include statements from the institution's directors or officers supporting any charges made by the examiner or showing corrective action. If the institution's management previously failed to complete promised corrective actions, cite relevant facts and circumstances detailed in prior examination reports and letters from the RD and/or State Authority. Comment on any undesirable or objectionable practices or conditions that deviate from the institution's formal policies.

- Address any violations of law, rule, or regulation disclosed by the examination.
- Suggest measures to correct each undesirable or objectionable practice and condition listed in the memorandum and recommend time frames for corrective action. Ensure that the measures are tailored to the situation and can be completed in the given time frames.
- Include specific comments and recommendations regarding the institution's management. Indicate whether existing management is adequate or inadequate to resolve the problems facing the institution (and whether a redirection or clarification of authority is necessary).
- If the institution's existing management is unsatisfactory, comment on the need for the following measures:
 - Addition of independent outside directors and/or a chief executive officer, senior lending officer, or other appropriate senior officer with defined authority;
 - Establishment of appropriate lines of authority, suitable board committees with representation by outside directors, and/or additional board policies providing guidance for the institution's management;
 - Implementation of board procedures to ensure compliance with policy and directives;
 - Restrictions on the authority of specific officers;
 - Assessment of active management and/or the BOD by independent committee or outside consultant; and

**Memorandum
Guidelines
(cont'd)**

- Any other measures required to address specific problems in the institution's management
- List names and home addresses of individuals who should be named in a formal action and explain why they should be named.
- If information needed to fully support the recommendation cannot be obtained through customary examination techniques, indicate this fact in the memorandum. (The RD may consider use of the formal investigative procedures authorized by Section 10(c) of the FDI Act.)
- Avoid charging any practice or violation on inadequate grounds, since Section 8(b) proceedings fall within the purview of the Equal Access to Justice Act. Under the terms of this act, certain parties who prevail in contested administrative or judicial proceedings against a Federal agency may be able to recover their litigation expenses from the agency if the position of the agency in the proceeding was not substantially justified. In addition, memorandum comments may be a matter of record at any required hearing. Therefore, comments and observations in the memorandum must be well supported by substantial evidence and able to withstand cross-examination during a hearing.
- If the potential action was discussed with the institution's BOD, include a statement to that effect and describe the BOD's response.

Note: Before disclosing the specific type of action contemplated, obtain clearance from the RO. Any discussions with the institution's board members and management should be general, covering the type of action usually recommended in similar circumstances.

Regional Office Responsibilities

RO staff members perform the following steps.

Step	Who Does It	What Happens	
1	RO Reviewer	Discusses proposed action with EIC and RD (or designee) to determine if action is advisable.	
		If consensus is against the action, an alternative corrective action may be initiated.	If consensus is in favor of the action, the EIC is instructed to submit the recommendation memorandum (with or without the ROE).
2	RO Reviewer	If ROE is available, reviews it to ensure <ul style="list-style-type: none"> • facts are correct; • comments and conclusions are well supported; • cited apparent violations of law or regulations are accurately detailed; and • gratuitous, inflammatory, or personal remarks are not included. 	
3	RO Reviewer	Reviews recommendation memorandum to determine if action should continue.	
		If disagrees, discusses situation with RD (or designee).	If agrees, proceedings continue.
4	RO Reviewer	<ul style="list-style-type: none"> • Creates enforcement action record on FIAT, and • Mails letters notifying other Federal bank regulatory agencies of possible Section 8(b) action. <p>Note: For state nonmember institutions, the RO Reviewer must contact the appropriate State Authority to obtain its opinion of whether the action is appropriate. The State Authority may also be given the option of joining in the action. Contact may be made by telephone and results should be documented in the recommendation memorandum.</p>	

**Regional Office
Responsibilities
(cont'd)**

Step	Who Does It	What Happens	
5	RO Reviewer	Performs the appropriate actions below.	
		If ...	Then ...
		relatively certain the institution will stipulate	<ul style="list-style-type: none"> • prepares file memorandum from RD summarizing institution's ownership, its current condition and causes, support for Order provisions, and attitude of the State Authority. A space should be included for the RC to indicate concurrence with the proposed action. • forwards the following to RO Legal Division: <ul style="list-style-type: none"> ○ sufficient information to prepare legal documents in accordance with RO policy ○ file memorandum ○ draft ROE ○ EIC memorandum to RD <p>Note: The RO Reviewer is also responsible for ensuring that all appropriate updates are made in a timely manner to the FIAT record at the RO level.</p>

**Regional Office
Responsibilities
(cont'd)**

Step	Who Does It	What Happens	
6	RO Reviewer	Performs the appropriate actions below.	
		If ...	Then ...
		relatively certain the institution will <i>not</i> stipulate	<ul style="list-style-type: none"> • prepares file memorandum from RD summarizing institution's ownership, its current condition and causes, support for Order provisions, and attitude of the State Authority. Memorandum should include reasons why BOD failed to stipulate. A space should be included for the RC to indicate concurrence with the proposed action. • forwards the following to RO Legal Division: <ul style="list-style-type: none"> ○ sufficient information to prepare legal documents in accordance with RO policy ○ file memorandum ○ draft ROE ○ EIC memorandum to RD <p>Note: The RO Reviewer is also responsible for ensuring that all appropriate updates are made in a timely manner to the FIAT record at the RO level.</p>

**Regional Office
Responsibilities
(cont'd)**

Step	Who Does It	What Happens	
7	RO Reviewer	Prepares letters notifying institution's BOD that Section 8(b) action is contemplated, stating that a meeting will be held to discuss the action, and requesting their attendance. Forwards letters to RD (or designee) for signature.	
8	RO Reviewer	Ensures the appropriate action listed below is performed.	
		If ...	Then ...
		final documents received from RO Legal Division	include copies of documents with ROE when mailed to institution.
final documents <i>not</i> received from RO Legal Division	when received, mail copies of final legal documents to institution's BOD for review.		
9	RO Reviewer	Schedules meeting with institution's board members and their legal counsel.	
10	RD (or designee)	Performs one of the following actions.	
		If ...	Then ...
		institution stipulates	may issue consent Order after certification by RC.
Institution does <i>not</i> stipulate	may issue notice of charges after receiving completed legal documents from RC.		
11	RO Administrative Staff	Distributes stipulated Order or notice of charges following established mailing procedures. Note: RM personnel should always send copies to WO RMAS. Compliance personnel must follow the requirements of the Consultation Policy and update SOURCE as appropriate.	

**Washington
Office
Responsibilities**

After receiving a stipulated Order or notice of charges issued under delegated authority by the RD, the WO Reviewer reviews it for the following items:

- Evaluates if the stipulated Order or notice of charges contains any nonstandard provisions (while there is no prohibition against the use of nonstandard provisions, the WO should monitor the use of such requirements for consistency and compliance with policies);
- Ensures that the file memorandum supports the action and reviews issues or concerns with Section Chief, and
- Verifies that the action has been certified by the RC.

The WO Reviewer should, if there are no questions or concerns, forward the package to the individual responsible for recording its receipt in the WO on FIAT.

**Modifying
Section 8(b)
Actions**

When subsequent events such as an examination or visitation result in the need to make minor changes to an outstanding action, the action may be modified. Procedures for modifying a Section 8(b) action are similar to those for initiating a new action. If an action is modified, the case memorandum should support the changes made to the original Order. The FIAT record for the action should be updated to reflect the modification.

**Terminating
Section 8(b)
Actions**

Section 8(b) actions may be terminated under any of the following conditions:

- The institution is in material compliance with the provisions of the action.
- Deterioration or lack of compliance leads to issuance of a new or revised formal action.
- The institution merges or is closed.
- The institution's condition has improved sufficiently and the action is no longer needed.

**Terminating
Section 8(b)
Actions (cont'd)**

- The provisions of the Order have been partially met, and a new formal or informal action has been issued to address the outstanding provisions.
- Other changes render the Order unnecessary.

Procedures for termination are similar to those for initiating a Section 8(b) action (and, likewise, an ROE is not required). The recommendation memorandum in such cases describes and supports the reasons for terminating the Order. If a revised action is being pursued, the Order generally remains in effect until the new action is issued and effective.

Temporary Cease-and-Desist Orders

Introduction	A temporary Order may be issued to halt particularly dangerous practices or conditions pending a formal hearing on a permanent Order.
Statutory Authority	Section 8(c) of the FDI Act authorizes the FDIC to issue temporary Orders.
Grounds	<p>A temporary Order may be issued if either of the following conditions are met:</p> <ul style="list-style-type: none">• An insured institution or IAP has violated or threatens to violate a law, regulation, or written agreement, or threatens to engage in or has engaged in an unsafe or unsound practice (or its continuation); and the violation or threatened violation or practice is likely to result in the insolvency of the institution, the substantial dissipation of its assets or earnings, a weakening of its condition, or prejudice to the interests of depositors prior to completion of the cease-and-desist proceedings.• An institution's accounts and records are so incomplete or inadequate that the FDIC is unable to determine its financial condition or the details or purpose of any transaction or transactions that might have a material effect on a financial institution.

**Provisions of
Temporary
Orders**

The provisions included in temporary Orders vary, depending on the grounds for the action. The Section 8(c) action should focus on matters that require immediate action. The following table lists provisions that may appear in temporary Orders.

Grounds	Provisions of Order
Violations or unsafe/ unsound practices	<p>Cease and desist from violations or practices, and take affirmative action to prevent insolvency, dissipation of assets, weakening of condition, or prejudice to depositors pending completion of Section 8(b) proceedings.</p> <p>The temporary Order may also require restitution or reimbursement, indemnification, or guarantee against loss if unjust enrichment is involved, or if the violation or practice involved a reckless disregard for the law or applicable regulations.</p> <p>The institution may also be required to restrict growth, dispose of the loans or assets involved, rescind agreements or contracts, employ qualified officers or employees, or take other action deemed appropriate by the FDIC.</p>
Incomplete or inaccurate books and records	Cease activity or practice that gave rise to incomplete/inaccurate state of books and records. Restore books and records to a complete and accurate state.

**Companion
Section 8(b)
Action Required**

An action under Section 8(c) must be accompanied by a Section 8(b) action (i.e., permanent Order proceedings), which can address broader issues in its provisions.

**Delegations of
Authority**

Refer to the FDIC website for Delegations of Authority.
<http://www.fdic.gov/regulations/laws/matrix/exhibit2.html>.

**Meeting
Before
Issuance**

A meeting with the institution's BOD may be held before issuing the notice of charges and the temporary Order. If the BOD or the respondent consents to issuance of a permanent Order under Section 8(b), there is no need to proceed with an action under Section 8(c). Instead, the RD can issue the permanent 8(b) Order immediately if the RC certifies that the action is legally appropriate.

**When Orders
Become
Effective**

Temporary Orders are effective upon service and remain effective and enforceable pending completion of Section 8(b) proceedings.

**Steps to Issue
Temporary
Cease-and-Desist
Orders**

The following pages describe the tasks performed to issue a temporary Order.

**Field Office
Responsibilities**

FO staff members perform the following steps.

Step	Who Does It	Actions
1	FO Examiners	Discuss potential 8(c) action with FS or RO Reviewer, as required by RO policy. Note: For actions involving compliance issues, the requirements of the Consultation Policy must be followed. The CRA regulation does not authorize regulatory agencies to impose formal enforcement actions under 12 U.S.C. 1818 (such as cease-and-desist action for CRA deficiencies).
2	FO Examiners	After obtaining concurrence of FS or RO Reviewer, prepare recommendation memorandum from EIC to RD detailing each undesirable and objectionable practice of the institution.
3	FO Examiners	Forward memorandum and ROE to RO. Note: For instructions on preparing these documents, refer to the following topics in the <i>Cease-and-Desist Orders</i> section: <i>Report of Examination Guidelines</i> and <i>Memorandum Guidelines</i> .

Regional Office Responsibilities

RO staff members perform the following steps.

Step	Who Does It	What Happens		
1	RO Reviewer	When notified Section 8(c) action may be necessary, discusses basis of action with RD (or designee) and legal counsel.		
2	RO Reviewer	Provides guidance to EIC as necessary regarding evidence to be obtained.		
3	RO Reviewer	If ROE is available, reviews it to ensure: <ul style="list-style-type: none"> • facts are correct; • comments and conclusions are well supported; • cited violations of laws or regulations are accurately detailed; and • gratuitous, inflammatory, or personal remarks are not included. 		
4	RO Reviewer	Reviews memorandum from EIC to RD to ensure the undesirable and objectionable practices listed are supported by the ROE (if available) or other evidence submitted.		
5	RO Reviewer	Obtains decision on whether action should continue from RD (or designee). <table border="1" data-bbox="792 1014 1443 1108"> <tr> <td>If decision made against continuing, action ends. Consider alternative action.</td> <td>If decision made to continue, action proceeds.</td> </tr> </table>	If decision made against continuing, action ends. Consider alternative action.	If decision made to continue, action proceeds.
If decision made against continuing, action ends. Consider alternative action.	If decision made to continue, action proceeds.			
6	RO Reviewer	After a decision is made to continue, ensures a record of the action is created on FIAT. Confers with appropriate Section Chief. Note: The RO Reviewer is also responsible for ensuring that all appropriate updates are made to the FIAT record at the RO level in a timely manner.		
7	RO Reviewer	Prepares and mails letters notifying other Federal bank regulatory agencies of possible Section 8(c) action. Note: For state nonmember institutions, the RO Reviewer must contact the appropriate State Authority to obtain its opinion of whether the action is appropriate. The State Authority may also be given the option of joining in the action. Contact may be made by telephone and results should be documented in the recommendation memorandum.		

**Regional Office
Responsibilities
(cont'd)**

Step	Who Does It	What Happens						
8	RO Reviewer	<ul style="list-style-type: none"> • Prepares file memorandum from RD summarizing institution's ownership, its current condition and causes, support for Order provisions, and attitude of the State Authority. Memorandum should indicate why the board failed to stipulate and reasons why a temporary Order is necessary. A space should be included for the RC to indicate concurrence with the proposed action. • Forwards the following to RO Legal Division: <ul style="list-style-type: none"> ○ sufficient information to prepare legal documents in accordance with RO policy ○ file memorandum ○ draft ROE ○ EIC memorandum to RD 						
9	RO Reviewer	Arranges meeting with institution's BOD to discuss Sections 8(b) and 8(c) actions and attempts to obtain institution's stipulation to 8(b) action.						
10	RO Reviewer	Performs the appropriate action below.						
		<table border="1"> <thead> <tr> <th>If...</th> <th>Then...</th> </tr> </thead> <tbody> <tr> <td>institution agrees to stipulation</td> <td>forwards consent Order to RD for issuance.</td> </tr> <tr> <td>stipulation cannot be obtained</td> <td>forwards the following, both electronically and in hard copy, to the WO: <ul style="list-style-type: none"> • documents listed in Step 8 of this table; • Findings of Fact and Conclusions of Law document prepared by RO Legal Division; • temporary Order prepared by RO Legal Division; and • memorandum from RD, concurred with by RC, supporting the 8(c) action. </td> </tr> </tbody> </table>	If...	Then...	institution agrees to stipulation	forwards consent Order to RD for issuance.	stipulation cannot be obtained	forwards the following, both electronically and in hard copy, to the WO: <ul style="list-style-type: none"> • documents listed in Step 8 of this table; • Findings of Fact and Conclusions of Law document prepared by RO Legal Division; • temporary Order prepared by RO Legal Division; and • memorandum from RD, concurred with by RC, supporting the 8(c) action.
		If...	Then...					
institution agrees to stipulation	forwards consent Order to RD for issuance.							
stipulation cannot be obtained	forwards the following, both electronically and in hard copy, to the WO: <ul style="list-style-type: none"> • documents listed in Step 8 of this table; • Findings of Fact and Conclusions of Law document prepared by RO Legal Division; • temporary Order prepared by RO Legal Division; and • memorandum from RD, concurred with by RC, supporting the 8(c) action. 							

**Washington
Office
Responsibilities**

WO staff members perform the following steps.

Step	Who Does It	What Happens		
1	WO Reviewer	After receiving recommendation memorandum, notifies WO Legal Division by means of established procedures.		
2	WO Reviewer	<p>Provides the following to personnel responsible for entering receipt of memorandum and legal documents in WO on FIAT:</p> <ul style="list-style-type: none"> • copies of memorandum and legal documents; and • note indicating date of receipt in WO and name of assigned WO Reviewer. <p>Note: The WO Reviewer is responsible for ensuring that all updates to the FIAT record are made in a timely manner (including the initial entry regarding receipt and any subsequent entries needed to complete the record).</p>		
3	WO Reviewer	Reviews recommendation to determine if action is appropriate.		
		<table border="1"> <tr> <td>If action seems inappropriate, consults Section Chief to determine if additional supporting information should be requested or if case should be returned to RO and/or withdrawn.</td> <td>If concurs with action, case continues.</td> </tr> </table>	If action seems inappropriate, consults Section Chief to determine if additional supporting information should be requested or if case should be returned to RO and/or withdrawn.	If concurs with action, case continues.
		If action seems inappropriate, consults Section Chief to determine if additional supporting information should be requested or if case should be returned to RO and/or withdrawn.	If concurs with action, case continues.	
<p>Note: If the case is <i>returned</i> to the RO, the WO Reviewer should prepare a memorandum from the Section Chief or DSC Associate Director to the RD, remove the "Received in WO" date from the FIAT record, and add a comment to the FIAT WO comments record providing "Received in WO" date, the date returned to the RO, and any other pertinent information. In addition, the RO Reviewer should remove the "Sent to WO" date from the RO FIAT record.</p> <p>If the case is <i>withdrawn</i> from processing by the WO, the WO Reviewer should prepare a memorandum from the Section Chief or DSC Associate Director to the RD, enter the "Date Withdrawn" in the FIAT record, and add a comment to the FIAT official comments record stating reasons for the withdrawal.</p>				

**Washington
Office
Responsibilities
(cont'd)**

Step	Who Does It	What Happens
4	WO Reviewer	Prepares addendum to case providing any additional information that is pertinent. The addendum should include signature lines for the following individuals to indicate concurrence: <ul style="list-style-type: none"> • WO Reviewer • Section Chief • DSC Associate Director • Senior Counsel (EU) • Assistant General Counsel (S&L) • Senior Deputy General Counsel
5	WO Reviewer	Reviews legal documents for consistency with case memorandum and supporting documentation.
6	WO Reviewer	After receiving final legal documents, prepares and circulates case file to appropriate individuals in WO. Once the Order is signed by the appropriate person with delegated authority, it is issued.

**Modifying/
Terminating
Section 8(c)
Actions**

Procedures for modifying a Section 8(c) action are similar to those for initiating a new action. If a Section 8(c) action is modified, the recommendation memorandum should support the changes made to the original temporary Order.

In most cases, it will not be necessary to formally recommend termination of a Section 8(c) action because the temporary Order expires by operation of law when the Section 8(b) Order becomes effective. However, the FIAT record will need to be updated upon expiration. More formal action may be needed if the action is terminated due to FDIC dismissal of the case. In these instances, a memorandum to the DSC Director outlining the reasons for termination and recommending same should be prepared and forwarded with processing similar to originating the action.

If an institution is closed by Federal or State Authorities or merges into another institution before a Section 8(b) Order is issued, then it will be necessary to terminate the Section 8(c) Order. In these instances, the RD has authority to terminate the temporary Order. The procedures would be similar to the steps for terminating a Section 8(b) action. The recommendation memorandum in such instances describes the reasons for terminating the Order.

Section 8(b)(6) Restitution

Appropriateness of Restitution under Section 8(b)(6) Actions pursuant to Section 8(b)(6) may be appropriate in circumstances where the Respondent has been unjustly enriched or where the respondent exhibits reckless disregard for the law. Such actions are usually considered during the CMP process. For guidelines on how to process restitution under this section, refer to the chapter entitled Restitution and Civil Money Penalties.

Cease-and-Desist Orders Based on Noncompliance with Monetary Transaction Recordkeeping and Report Requirements

Introduction

Section 8(s) of the FDI Act was enacted in 1986 as part of the Anti-Drug Abuse Act of 1986. The FDIC implemented the statute by promulgating 12 CFR § 326.8¹. 12 CFR § 326.8 requires each state nonmember bank to establish and maintain a compliance program to assure and monitor the bank's compliance with the requirements of the Bank Secrecy Act (BSA) and the implementing Treasury regulations, 31 CFR Part 103.

Section 8(s) requires that each examination of an insured depository institution include a review of BSA compliance procedures required by 12 CFR § 326.8, and provides that the FDIC and the other Federal banking agencies may initiate cease-and-desist action if 1) an institution has not instituted programs and procedures designed to ensure compliance with the BSA; or 2) an institution has failed to institute proper procedures after being informed of weaknesses by its primary Federal regulator.

The statutory intent of Section 8(s) is to formalize a bank's compliance with the BSA and foster appropriate corrective action based on the severity of the problem, the risks it poses, and the bank's willingness to comply expeditiously. Although the FDIC has issued Orders under Section 8(b) or 8(c) to facilitate correction of programmatic and procedural BSA weaknesses, many such weaknesses have been corrected using less formal remedies.

Statutory Requirements

Section 8(s) states that if the appropriate Federal banking agency determines that an insured depository institution has 1) failed to establish and maintain procedures reasonably designed to assure and monitor its compliance with the requirements of subchapter II of chapter 53 of title 31, United State Code (Records and Reports on Monetary Instruments Transactions); or 2) failed to correct any problems with procedures that were previously reported to the institution by the appropriate Federal banking agency, the agency shall² issue an order in the manner prescribed in Section 8(b) or 8(c) of the FDI Act. If issued, the Order shall require

¹ After enactment of Section 8(s), the FDIC and other Federal banking agencies and the NCUA, in a joint rulemaking, issued parallel rules to implement the statute.

² As to those violations that fall within the scope of Section 8(s), case law establishes that using the word "shall" in a statute may not require an agency to follow the statute in an absolute way. The court case interpreting statutes most

**Statutory
Requirements
(cont'd)**

such depository institution to cease and desist from its violation of Section 8(s) or regulations prescribed under this subsection.

**Policy
Considerations**

Section 8(s) applies to problems with an insured institution's procedures and violations that demonstrate flaws in a bank's BSA compliance procedures or program, not to individual violations of the BSA or its implementing regulations.

Section 8(s) authorizes the FDIC to issue an Order pursuant to Section 8(b) or 8(c) of the FDI Act for failure to establish and maintain adequate procedures to monitor BSA compliance; however, it should not be viewed as an absolute requirement that the FDIC bring a cease-and-desist proceeding in every situation where a procedural problem has been identified in a bank.

An appropriate corrective action resulting from a violation of Section 8(s) should be considered based upon the severity of the problem, the risks it poses, and the bank's willingness to comply expeditiously. For example, where there is a repeat procedural problem identified during an examination, but it is immediately corrected by management, there is no need for an Order to achieve correction³. Similarly, if correction immediately after an examination is assured either by an informal action or otherwise, there is no need for an Order. In addition, where correction of BSA-related weaknesses is mandated or obtained by an Order issued under Section 8(b) as part of an overall correction program, a separate action pursuant to Section 8(s) would not be necessary.

**Field and Regional
Office
Responsibilities**

Refer to the "Field Office Responsibilities" and "Regional Office Responsibilities" sections of this chapter.

**Washington
Office
Responsibilities**

Refer to the "Washington Office Responsibilities" section of this chapter.

analogous to Section 8(s) interpret the "shall" to be "directory" rather than mandatory. That is, the status is intended to guide the agency in the orderly conduct of its business, but not to compel an unduly harsh or unreasonable result.

³ A repeat procedural problem refers to repeated instances of the same flaw in an institution's program or procedures.

Notes

CHAPTER 6
PROMPT CORRECTIVE ACTION

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Chapter 6

Prompt Corrective Action

Overview

Section 38 of the FDI Act authorizes the FDIC to take prompt corrective action (PCA) against insured depository institutions based on their capital levels. The actions may include the following:

- Reclassifying (downgrading) a depository institution's capital category.
- Issuing supervisory directives to institutions in certain capital categories.
- Dismissing directors or senior executive officers of depository institutions.

Under certain circumstances, the FDIC may delay resolution of a critically undercapitalized institution if a determination is made that it is in the best interest of the deposit insurance fund.

Instructions for processing prompt corrective actions appear in the following pages. This chapter also provides information regarding the FDIC's authority to appoint itself as conservator or receiver of a depository institution under Section 11(c) of the FDI Act.

Purpose of PCA

PCA is intended to resolve the problems of insured depository institutions at the least possible long-term cost to the deposit insurance fund. PCA is designed to limit regulatory forbearance by requiring more timely closure of failing institutions and earlier intervention in problem banks.

**Providing
Notification to the
Federal Reserve**

Based upon Subpart B of Part 325 and various Federal Reserve Board regulations governing Federal Reserve Bank (Reserve Bank) extensions of credit to financial institutions, the appropriate Reserve Bank has a legitimate statutory interest in an institution's decline to a Critically Undercapitalized status.

The regulations require the Reserve Bank to inquire as to whether an institution is Critically Undercapitalized before extending credit. Further, the Reserve Bank cannot extend credit to a Critically Undercapitalized institution for more than 60 days during any 120-day period without written certification from the appropriate Federal banking agency. In the case of the FDIC, the authority to issue such a certification is vested in the Chairman.

If the Reserve Bank has extended credit to an institution that subsequently declines to a critically undercapitalized status, the Reserve Bank is required to demand payment of any outstanding balance within five days of the reclassification. If the Reserve Bank fails to adhere to these requirements, it would be held liable to the FDIC for any excess losses the FDIC incurred due to a delay in closing the institution caused by the Reserve Bank's delayed action.

As such, the FDIC is required to provide the appropriate Reserve Bank with notice that a bank has become Critically Undercapitalized. When notifying an institution that its PCA category has declined to Critically Undercapitalized, the RO should also notify the appropriate Reserve Bank. All such correspondence should be clearly noted in the bank's file, and a copy should be forwarded to the appropriate Section Chief.

Capital Categories

Section 38 provides five capital categories, as described below.

PCA Capital Category	Description
Well Capitalized	Total risk-based capital ratio > 10.0%; and Tier 1 risk-based capital ratio > 6.0%; and leverage ratio > 5.0%; and not subject to any action issued by the FDIC pursuant to Section 8 of the FDI Act, International Lending Supervision Act of 1983 (ILSA), Section 38 of the FDI Act, or any regulations thereunder, to meet and maintain a specific capital level for any capital measure.
Adequately Capitalized	Total risk-based capital ratio > 8.0%; and Tier 1 risk-based capital ratio > 4.0%; and leverage ratio > 4.0% (or leverage ratio > 3.0% if composite rating is 1 and no significant growth is experienced or anticipated); and does not meet the definition of a well-capitalized institution.
Undercapitalized	Total risk-based capital ratio < 8.0%; or Tier 1 risk-based capital ratio < 4.0%; or leverage ratio < 4.0% (or leverage ratio < 3.0% if composite rating is 1 and no significant growth is experienced or anticipated).
Significantly Undercapitalized	Total risk-based capital ratio < 6.0%; or Tier 1 risk-based capital ratio < 3.0%; or leverage ratio < 3.0%.
Critically Undercapitalized	Tangible equity capital ratio < 2.0%.