

**Guidelines for Appeals of Material Supervisory Determinations**  
**October 15, 2009**  
**Internal Appeals Process**

**Introduction**

*Background*

These guidelines administer this Reserve Bank's appeals of material supervisory determinations process, consistent with sections 309 of the Riegle Community Development and Regulatory Improvement Act of 1994, 12 U.S.C. Section 4806 as detailed in SR 95-18 (SUP).

*Definition of material supervisory determinations*

This appeals process involves 'material supervisory determinations' which include, but are not limited to, decisions related to composite examination, inspection, or target ratings; the adequacy of the allowance for loan and lease losses; and significant loan classifications.

*Eligibility*

This appeals process extends to all First District State member banks, bank holding companies and their nonbank affiliates, Edge and agreement corporations, Foreign Branches, or any other institutions examined or inspected by the Federal Reserve Bank of Boston.

*Decisions remain in effect/No preclusion to additional required action*

Any appealed material supervisory determinations will remain in effect throughout the appeal process. In addition, the appeal does not prevent this Reserve Bank from taking any supervisory actions, including enforcement actions, deemed appropriate to discharge its supervisory responsibility.

**Submission of an Appeal**

- Appeals of material supervisory determinations made by this Reserve Bank may be made by any institution, as detailed in the Eligibility section above, supervised by this Reserve Bank, provided the original determination was made by the Federal Reserve Bank of Boston.
- Any appeal must:
  - be approved by a majority of the board of directors of the appealing institution or the senior manager responsible for the U.S. operations of a foreign bank agency or branch;
  - be provided in writing to the Officer in charge of the Supervision, Regulation, and Credit Department (SR&C Officer) of this Reserve Bank within thirty (30) calendar days of receipt of the written material supervisory determination(s); and
  - contain all the facts and arguments the institution wishes to present. No new, or updated, supporting documentation, which may be pertinent to the appeal, will be accepted subsequent to the filing of the appeal except under unusual circumstances and with agreement of the SR&C Officer<sup>1</sup> and Review Panel. The existence of 'unusual circumstances' will be made by the SR&C Officer, with possible consultation of Reserve Bank Legal Staff.
- Written appeals may be rejected for lack of clarity, adequate information, or for failing to meet the material supervisory determination requirement within seven (7) calendar days of receipt of the written appeal. The institution will be notified in writing, including facsimile notification, of this decision. In such

<sup>1</sup> Or his designee if the SR&C Officer is unavailable. The designee will be an executive officer, at a Vice President level of above, in the SR&C Department that is unaffiliated with the material supervisory determination in question.

case, the institution may re-file the appeal within thirty (30) calendar days of receipt of this written rejection notice.

- Information provided and developed through this appeals process does not create discovery or other such rights.
- An appellant may request an extension of time by sending a letter detailing the reason(s) for this request to the SR&C Officer within the thirty (30) calendar day appeal filing requirement. The SR&C Officer may, at his/her discretion, grant the extension. If such extension is granted this Reserve Bank will provide the appealing institution written notification of the revised appeal due date within seven (7) calendar days.
- A copy of the appeal will be provided to the appropriate division of the Board of Governors by the SR&C Officer within seven (7) calendar days of receipt of the written appeal.

### **Review of the Appeal**

A Review Panel, composed of three department representatives and selected by the SR&C Officer; or three officers/managers from other districts will be established to review the appeal.

The panel members will:

- possess the requisite experience and/or background to assess the supervisory matter under appeal;
- be comprised of senior staff members at the officer, manager, or senior examiner level;
- not have directly participated in the material supervisory determination; and
- not report, directly or indirectly, to the person who made the material supervisory determination under review.

In addition, if the Review Panel is selected from FRB Boston staff (i.e., internal Review Panel) then two of three panel members will be individuals that do not report directly to the unit Vice President responsible for the material supervisory determination that is being appealed.

Upon receipt of the written appeal, a copy of these procedures and the Board's March 28, 1995 guidelines shall be provided to the appellant. If the appeal is rejected, written notification inclusive of the rationale for the rejection will be sent to the appealing entity, the appropriate division of the Board of Governors, and this Reserve Bank's Legal Staff within seven (7) days of receipt of the appeal. If the appeal is accepted, a letter will be sent to the appealing institution's President, Chief Executive Officer (CEO), and board of directors acknowledging the appeal, confirming all necessary documentation has been received and is being reviewed, and notifying the appellant of their right, if they chose to do so, to appear before the review panel to present testimony or witnesses regarding items documented within the provided information. Copies of this acknowledgment letter will also be sent to this Reserve Bank's Legal Staff, the unit Vice President where the material supervisory determination that is being appealed was made, and the appropriate division of the Board of Governors. As necessary, the Review Panel will solicit Reserve Bank staff involved in the original determination under appeal, Reserve Bank Legal Staff, appropriate Board staff, and, where appropriate, the staff of other supervisory agencies when a joint examination or inspection is involved.

The Review Panel will make their decision within thirty (30) calendar days of the filing of a complete written appeal, unless an extension has been granted. The final written Review Panel decision will be mailed (or facsimile delivered) to the institution and will include a written explanation of the rationale for the panel's conclusions and decision. This decision letter will be sent to the President, CEO, and the board of directors of the appealing institution. Additionally, the Review Panel's conclusion memo and decision letter will be shared with the SR&C Officer, the Vice President involved with the initial material supervisory determination, this Reserve Bank's Legal Staff, and Board staff. All supporting information provided by the institution and

generated by the Review Panel will also be maintained in accordance with the department's retention procedures.

### **Appeals of Review Panel Decision**

An appellant dissatisfied with the Review Panel's decision may, with the consent of a majority of its board of directors, or the senior manager responsible for U.S. operations of a foreign bank agency or branch, appeal the decision to this Reserve Bank's President. This requires filing a written appeal of the Review Panel Decision with this Reserve Bank's Secretary to the Board of Directors within thirty (30) calendar days of receipt of the Review Panel's written decision.

This appeal of the Review Panel decision must contain all facts and arguments the appellant wishes to be considered. This appeal may be rejected for lack of clarity or adequate information within seven (7) calendar days of its receipt. In such case, the appellant may re-file the appeal within thirty (30) calendar days of receipt of the written rejection notice. The appeal will be decided by the Reserve Bank President within thirty (30) calendar days of the filing of a complete appeal. A written decision will be mailed (or sent by facsimile) to the appellant institution with copies provided to the SR&C Officer, Vice President of the unit involved in the original appealed supervisory determination, Reserve Bank Legal Staff, Board staff, and, if necessary, the respective State regulatory agencies.

An appellant dissatisfied with the decision of the Reserve Bank President may, with the consent of a majority of its board of directors, or in the case of a U.S. agency or branch of a foreign bank, the senior manager(s) responsible for the bank's operations, appeal that decision to the Governor of the Federal Reserve System who serves as chairperson of the appropriate oversight committee. This requires filing a written appeal with the Secretary of the Board within calendar thirty (30) days of receipt of the Reserve Bank President's written decision. Like the Review Panel decision appeal, the appeal to the Governor may be rejected for lack of clarity or information. In such cases the institution may re-file the appeal within thirty (30) calendar days of receiving notification of the rejection. The appeal shall be decided by the Governor within sixty (60) calendar days of receipt of the complete appeal.<sup>2</sup>

### **Safeguards Against Retaliation**

The Legal Department of this Reserve Bank will be informed of any appeal and appeal decisions. In addition, any individual member of a Review Panel, or staff member that is involved in any manner in the appeals process, will inform the SR&C Officer of any possible conflicts of interest that may exist so that appropriate steps can be taken to ensure independence in the appeals process. Additionally, an SR&C Vice President unaffiliated with the unit involved in the appealed material supervisory determination will make periodic, no less than semi-annually, calls to the appellant institution for a period of two years to ensure no retaliation, or actions that could be interpreted as retaliation, have occurred. An appellant that believes it has suffered retaliation as the result of an appeal should contact the SR&C Officer to report such actions and may also contact the Board of Governors' Ombudsman. A Reserve Bank employee found to have taken any actions deemed as retaliatory will be subject to disciplinary actions.

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<sup>2</sup> Institutions should contact individuals at the Board of Governors involved in the individual appeal should be contacted to assure specific cited deadlines remain in effect.

**Appendix - Timeframes:**

<b>Institution:</b> <ul style="list-style-type: none"> <li>• File written appeal</li> <li>• Re-file written appeal</li> <li>• Request an appeal extension</li> <li>• Institution re-file of an appeal to Federal Reserve Bank President</li> </ul>	<ul style="list-style-type: none"> <li>• Within 30 calendar days of receipt of written material supervisory determination(s)</li> <li>• Within 30 calendar days of receipt of written rejection notice</li> <li>• Within 30 calendar days of receipt of written material supervisory determination(s)</li> <li>• Within 30 calendar days of receipt of an appeal decision</li> </ul>
<b>Federal Reserve Bank of Boston:</b> <ul style="list-style-type: none"> <li>• Reject an appeal</li> <li>• Inform institution of extended appeal due date</li> <li>• Appeal Decision Required</li> <li>• Notify Board staff of an appeal</li> <li>• Boston appeal guidelines, SR letter, and acknowledgement letter sent to institution</li> </ul>	<ul style="list-style-type: none"> <li>• Within 7 calendar days of receipt of a written appeal</li> <li>• Within 7 calendar days of granting such as extension</li> <li>• Within 30 calendar days of receipt of a complete appeal</li> <li>• Within 7 days of receipt of a written appeal</li> <li>• Within 7 calendar days of receipt of an appeal</li> </ul>
<b>Federal Reserve Bank President Review of appeal:</b> <ul style="list-style-type: none"> <li>• Rejection of an appeal</li> <li>• Decision by Federal Reserve President</li> </ul>	<ul style="list-style-type: none"> <li>• Within 7 calendar days of receipt of an appeal</li> <li>• Within 30 calendar days of receipt of a complete appeal</li> </ul>