

**FEDERAL RESERVE BANK OF KANSAS CITY**  
**PROCEDURES FOR APPEALING MATERIAL SUPERVISORY DETERMINATIONS**

**Scope**

Section 309 of the Riegle Community Development and Regulatory Improvement Act of 1994 requires the Board of Governors of the Federal Reserve System (“FRS”) to establish and administer its own appellate process for specified regulatory matters. These procedures apply to all appeals of a "material supervisory determination" by staff of the Division of Supervision and Risk Management at the Federal Reserve Bank of Kansas City (“Reserve Bank”) and are intended to supplement the Guidelines for Appeals of Material Supervisory Determinations adopted by the Board of Governors of the FRS on March 24, 1995 ("FRS Appeals Procedures”).

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

A material supervisory determination shall remain in effect while under appeal and until such time as it is modified or overturned through the appeals process. The appeal of a material supervisory determination does not prevent the FRS from taking any supervisory or enforcement action, formal or informal, it deems appropriate to discharge its supervisory responsibilities.

**Definitions**

- (1) *Appeal Panel*: The panel appointed by the Appropriate Reserve Bank Official or his/her designee to hear the initial appeal of a material supervisory determination.
- (2) *Appellant*: The institution filing an appeal of a material supervisory determination.
- (3) *Appropriate Reserve Bank Official*: The Appropriate Reserve Bank Official is the Senior Vice President with responsibility for the Division of Supervision and Risk Management.

- (4) *Informationally Complete Appeal:* An appeal must clearly indicate the determination being appealed and the basis for the appeal, and must provide all facts and information related to the determination that the Appellant wishes the Appeal Panel to consider. An appeal will be considered informationally complete on the date the Appellant has submitted sufficient information upon which to base a review of the material supervisory determination as determined by the Appeal Panel, in its sole discretion. If an Appellant seeks to present oral testimony to the Appeal Panel, an appeal will be considered informationally complete at the conclusion of all oral testimony or the date the Appeal Panel receives timely additional written material, if such additional information is requested by the Appeal Panel. If additional written information is not received by the deadline established by the Appeal Panel, the appeal will be determined informationally complete on the date that the material was due.
- (5) *Initial Appeal:* The first appeal of a material supervisory determination. The Initial Appeal is reviewed by the Appeal Panel.
- (6) *Material Supervisory Determination:* Material supervisory determination is defined in the FRS Appeals Procedures to include, but not be limited to, "material determinations relating to examination or inspection composite ratings, the adequacy of loan loss reserve and significant loan classifications." Additional items may be considered a material supervisory determination if, in the opinion of the Appeal Panel or, in the case of a second appeal, the Reserve Bank President, the determination would have a significant effect on the composite or component ratings assigned to the Appellant or the supervisory response to the Appellant. No determination will be eligible for appeal until it has been communicated to the Appellant in writing by the Reserve Bank or the Board of Governors. The term 'material supervisory determination' does not include any supervisory determination for which an independent right of appeal exists as defined in the FRS Appeals Procedures. A determination that an action is not appealable under these guidelines may be appealed to the Reserve Bank President or Board of Governors in the same manner as any other adverse action. As provided in the FRS Appeals Procedures, a material supervisory determination remains effective while under appeal and until such time as it is modified or overturned through the appeals process.

- (7) *Person Making a Material Supervisory Determination:* In the case of an appeal, the Appropriate Reserve Bank Official will determine the person(s) who made the material supervisory determination under appeal based on documentation available in the Division of Supervision and Risk Management.
- (8) *Subsequent Appeals:* Any appeal of the findings of a prior appeal. A first subsequent appeal is reviewed by the Reserve Bank President. A second subsequent appeal is reviewed by the appropriate oversight Governor.

### **Procedures for Filing An Appeal**

- (1) An appeal must be filed in writing with the Appropriate Reserve Bank Official within 30 calendar days of the Appellant's receipt of the written material supervisory determination or within the amount of time granted in a request for an extension of time to appeal. If the appeal does not meet these filing requirements, it shall be rejected and the Appellant may not refile the appeal.
- (2) An Appellant will be deemed to have received a written material supervisory determination on the date of delivery indicated by the Federal Express record or the date of delivery indicated on a certified mail receipt retained in the Reserve Bank's file. In the absence of a Federal Express record or certified mail receipt, an Appellant will be deemed to have received the material supervisory determination three (3) business days after the date of mailing or shipment. An Appellant may, if appropriate, present other evidence demonstrating receipt of the written determination on a later date.
- (3) The written appeal must contain all the facts and information the Appellant wishes to have considered in deciding the appeal and should not include information not available to the Reserve Bank at the time the material supervisory determination being appealed was made unless the Appellant offered to provide such information at the time of the determination. An appeal will not be deemed received by the Reserve Bank unless it includes a certified copy of the minutes of the meeting at which the Appellant's board of directors approved filing the appeal. If the Appellant wishes to present oral testimony, a

request to do so should be contained in the appeal.

- (4) An Appellant may request an extension of time for filing an appeal by sending a letter detailing the reason(s) for the request to the Appropriate Reserve Bank Official within the 30 day period for filing appeals. The request shall indicate why a complete appeal cannot be filed within 30 calendar days from receipt of the material supervisory determination and shall indicate the date by which the Appellant will file the appeal. The Appropriate Reserve Bank Official may, in his/her sole discretion, grant a request for an extension as circumstances warrant.

### **Procedures for Reviewing Appeals**

- (1) By the end of the first business day after receipt, a copy of the appeal shall be forwarded to the appropriate Division Director of the Board of Governors and the Appropriate Reserve Bank Official.
- (2) Within approximately five (5) business days of receipt of the appeal, the Appropriate Reserve Bank Official, or his/her designee, will select a panel to review the appeal (the Appeal Panel).
  - (a) The Appeal Panel shall consist of individuals who are FRS officers or senior staff. The size of the Appeal Panel shall be determined by the Appropriate Reserve Bank Official, or his/her designee, in light of the nature of the appeal, availability of independent qualified officers and staff, and other factors deemed relevant by the Appropriate Reserve Bank Official. The panel members shall have experience relevant to the matter being appealed.
  - (b) The Appeal Panel will consist of individuals who were not involved in making the material supervisory determination, who do not directly or indirectly report to the person(s) making the material supervisory determination, and who are qualified to decide the appeal.
  - (c) The Appropriate Reserve Bank Official, or his/her designee, shall appoint a Chair of the Appeal Panel when designating the panel membership. The Chair shall ensure that a letter acknowledging receipt of the appeal is sent to the Appellant

generally within one (1) to two (2) business days of appointment. The letter will acknowledge receipt of the appeal and inform the Appellant when a determination as to completeness will be made. In addition, the Chair will provide the Appellant a copy of these procedures and the FRS Appeals Procedures, if appropriate.

- (3) Within two (2) business days of appointment, the Appeal Panel will review the appeal to determine if it concerns a material supervisory determination, is informationally complete, and is clear as to the matter being appealed and the basis for the appeal.
  - (a) If the Appeal Panel determines that the appeal lacks clarity or information, it will return the appeal to the Appellant together with a letter notifying the Appellant of the deficiencies and stating that the appeal may be refiled within 30 calendar days of the date on the deficiency letter.
  - (b) If the Appeal Panel determines that the appeal does not concern a material supervisory determination, it will deny the appeal.
  - (c) When the Appeal Panel determines that the appeal is complete, it will notify the Appellant that a complete appeal was received.
- (4) Upon determining that an appeal is complete, the Appeal Panel will notify the appropriate Board of Governors Division Director of the receipt date of an informationally complete appeal and the date a final written decision is due. The Appeal Panel, at its discretion, may request that staff of the Board of Governors provide their views, if any, on the matter under appeal and provide a date by which such information must be received.
- (5) If the appeal involves a joint examination with a state regulatory agency, the Appeal Panel will provide a copy of the complete appeal to that agency upon determination that the appeal is informationally complete. The Appeal Panel will indicate the receipt date of an informationally complete appeal and the date a final decision is required. At its sole discretion, the Appeal Panel may provide the other agency an opportunity to comment on the appeal in advance of a final decision.

- (6) The Appeal Panel will determine administrative matters such as its standard for review. Generally, the standard of review will focus on whether the Reserve Bank's findings and conclusions are based on sufficient evidence and are consistent with FRS policy. In most cases, a de novo review will not be undertaken.
- (7) (a) Within twenty (20) business days of receiving an appeal, or such other time period as mutually agreed to by the Appellant and the Appeal Panel, the Appeal Panel shall hear oral testimony from the Appellant if the Appellant desires to present such testimony. The Appeal Panel may structure oral testimony as it sees fit, including limiting the Appellant to prepared remarks or allowing the Appeal Panel to ask questions. Additional witnesses may be allowed to present testimony in the sole discretion of the Appeal Panel.
- (b) The Appeal Panel shall notify the Appellant of the format for providing oral testimony and the date such testimony will be heard no less than five (5) business days prior to taking testimony. Oral testimony will be heard at the Reserve Bank or such other location as mutually agreed upon by the Appeal Panel and the Appellant.
- (c) The Appeal Panel shall record any oral testimony by the Appellant for review in further appeals. The method of recording testimony shall be determined by the Appeal Panel.
- (d) The Appeal Panel may, in its discretion, allow the Appellant to submit additional written materials after hearing testimony. The format and timing of such materials shall be established by the Appeal Panel.
- (8) Notwithstanding any of the above, the Appeal Panel may, in its sole discretion, solicit the views of the Appellant, any Reserve Bank staff involved in the determination under appeal, Board staff and, where appropriate, the staff of other supervisory agencies or other parties, as it deems necessary to decide the matter under appeal.

- (9) Nothing in these procedures shall be construed to create a right of discovery in favor of Appellant with respect to Reserve Bank or FRS documents regarding the material supervisory determination under appeal.

### **Findings**

- (1) The Appeal Panel will issue written findings within 30 calendar days of receiving an informationally complete appeal unless the Appellant and the Appeal Panel jointly agree to extend the time for decision.
- (2) In reaching a decision, the Appeal Panel will utilize the standard for review determined at the outset of the appeal and will consider only that information that was available to the individual making the material supervisory determination under appeal at the time the determination was made or information which the Appellant offered to provide at the time of the determination but which the person making the material determination declined to review. Subsequent information, such as information regarding payments on a classified loan after the date of the examination or a legal opinion sought and obtained after receipt of the material supervisory determination will not be considered in deciding the appeal unless the person making the determination should have been aware of the information at the time the determination was made.
- (3) The written decision will include a memorandum outlining the basis for the Appeal Panel's conclusions, including appropriate citations of legal authority or FRS policies and documentation provided by the Appellant or the Reserve Bank.
- (4) The written decision will be sent to the Appellant by certified mail and to the Appropriate Reserve Bank Official and other supervisory agencies, if appropriate. A complete record of the appeal will be prepared by the Appeal Panel Chair and will be retained in a separate appeal file.
- (5) If the Appeal Panel reverses the material supervisory determination under appeal, the Division of Supervision and Risk Management shall update all files, both hard copy and electronic, containing the original determination to reflect the results of the appeal

decision. Complete records of the original material supervisory determination and the appeal shall be maintained.

**Subsequent Appeal to Reserve Bank President**

- (1) An Appellant may appeal an adverse determination by the Appeal Panel to the President of the Reserve Bank within 30 calendar days of the Appellant's receipt of the adverse decision and shall include a certified copy of the minutes of the board of directors' meeting at which the subsequent appeal was authorized. The appeal may be filed with the Appropriate Reserve Bank Official and must include all facts and information the Appellant wishes the President to consider. The Appropriate Reserve Bank Official shall forward a copy of the appeal to the President of the Reserve Bank and to the appropriate Division Director at the Board of Governors on or before the end of the business day after receipt of the appeal.
- (2) An Appellant will be deemed to have received a written decision of the Appeal Panel on the date of delivery indicated on a certified mail receipt received by the Reserve Bank for the written determination.
- (3) The President, or his/her designee, shall review the appeal to determine whether it is informationally complete and clear as to the matter being appealed and shall notify the Appellant of any deficiencies consistent with the procedures followed for initial appeals.
- (4) The President, or his/her designee, shall obtain the record of the initial appeal from the Appeal Panel Chair.
- (5) The President may rely upon all resources within the Reserve Bank in the review of the appeal and underlying material supervisory determination. Specific standards for review are not set, but rather the President may base his/her decision on whatever facts and information the President deems relevant under the circumstances.
- (6) The President shall issue a written determination of the appeal which shall be provided to the Appellant within 30 calendar days from receipt of the request for appeal. The determination will be provided to the Appellant by certified mail and to the Appropriate

Reserve Bank Official and other supervisory agencies, if appropriate. The complete record of the President's review shall be retained in the appeal file.

### **Subsequent Appeal to the Board of Governors**

- (1) An Appellant receiving an unfavorable decision from the Reserve Bank President may, with the consent of the board of directors of the institution, appeal the decision to the appropriate Governor by filing a written appeal with the Secretary of the Board of Governors within 30 calendar days of receipt of the Reserve Bank President's written decision. A copy of the board's minutes which authorizes the institution to make the appeal to the Board of Governors must be submitted with the appeal.
- (2) The appeal may be rejected for lack of clarity or information. If the appeal is rejected for lack of clarity or information, the Board will notify the institution, in writing, that the appeal was rejected. The institution may refile the appeal within 30 calendar days of receipt of written notice of the rejection.
- (3) The appeal shall be decided by the appropriate Governor, who shall consult with the director of the appropriate division of the Board of Governors, within 60 calendar days of the filing of an informationally complete appeal. Also by the 60th calendar day, the final decision of the Governor shall be mailed to the institution and to the Reserve Bank.

### **Protection of Appellant from Retaliation**

Appellants will be protected from retaliation in a manner to be determined by the Appropriate Reserve Bank Official and considering the specific circumstances in each instance. This may include the following actions:

- (1) The examiner-in-charge or other person involved in the material supervisory determination that led to the appeal shall be informed of the appeal and instructed not to take any action that could be construed as retaliation against the institution.

- (2) The examiner-in-charge or other person involved in the material supervisory determination that led to the appeal shall not be involved in the next two examinations/inspections of the institution by the Reserve Bank.
  
- (3) If appropriate, the institution shall be assigned to a different analyst for ongoing supervision.

Retaliation is not permitted and allegations of retaliation will be investigated. Any Reserve Bank employee found to retaliate against an institution for filing an appeal shall be subject to the Reserve Bank's disciplinary policies. Institutions who believe they have suffered retaliation as the result of an appeal may contact the Appropriate Reserve Bank Official or the Board of Governors Ombudsman.