



Processing of an Appeal of a Material Supervisory Determination

Results of Audit

Purpose of Audit

On March 21, 1995, the Federal Deposit Insurance Corporation's (FDIC) Board of Directors adopted the *Guidelines for Appealing Supervisory Determinations* (Guidelines) to establish an intra-agency independent appellate process for the review of material supervisory determinations, as required by Section 309(a) of the Riegle Community Development and Regulatory Improvement Act of 1994. The FDIC's Division of Supervision and Consumer Protection (DSC) makes these determinations, such as examination ratings and violations of a statute or regulation, in the course of examining and supervising FDIC-insured financial institutions. If institutions cannot resolve disputes regarding DSC supervisory determinations with on-site examiners or a DSC regional office, the institution may file an appeal with the Director, DSC. The Director appoints an appeal review panel to review the case and make a recommendation to the Director.

The overall objective of the audit was to review the allegations associated with a Hotline complaint received by the FDIC Office of Inspector General (OIG) regarding an FDIC-supervised bank (Bank). The complainant questioned the examination rating process and associated supervisory appeal of the Bank's safety and soundness examination rating.

We determined that DSC did not always follow appropriate procedures in upgrading the Bank's examination rating and in processing the appeal of the Bank's rating. Specifically, in deciding to upgrade an examination component rating, the DSC Area Office considered a planned transaction that was executed by the Bank after issuance of the examination report. Consequently, DSC relied on financial data that did not represent the Bank's actual financial condition and operations as of the date of the examination.

With respect to the appeal process, DSC's appeal review panel:

- Expanded the scope of the Bank's appeal to include an additional examination component rating after the Area Office had submitted its response to the appeal to the review panel. As a result, the DSC Area Office did not have the opportunity to prepare an analysis of the additional examination component for review and consideration before the upgrades occurred.
- Considered a prospective transaction in granting the bank's appeal, relying on information that did not accurately represent the bank's financial condition during the timeframe covered by the examination.
- Did not obtain additional information that may have been relevant in determining the merits of the appeal, risking a decision based on incomplete information.
- Did not fully coordinate with the State regulatory authority during the appeal process to ensure that the State's views were fully considered.

Further, DSC's regional office terminated a corrective action against the Bank after the appeal was granted even though Bank management had not fully complied with the corrective action terms.

Recommendations and Management Response

DSC management did not concur with two of our recommendations addressing consideration of subsequent events when determining examination ratings and the termination of corrective actions. Since this report focused on only one bank examination, the OIG plans to include these concerns in the scope of future audits that may provide a more comprehensive analysis. DSC management generally agreed with and has taken action to address the remaining recommendation to establish procedures requiring that the appeal review panel notify regional offices and state banking authorities when the scope of an appeal is expanded.

The findings related to the consideration of future events in processing bank appeals, the lack of independent analysis by DSC's appeal review panel, and coordination with the state banking authority had been similarly addressed in a prior OIG audit report. FDIC management has since taken action to address these issues, and this report did not include additional recommendations on these issues.

Given the extensive amount of privileged material in this report, the OIG does not intend to make the report available to the public.