



BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM

WASHINGTON, D.C. 20551

DIVISION OF SUPERVISION
AND REGULATION

DIVISION OF CONSUMER AND
COMMUNITY AFFAIRS

SR 20-28

CA 20-14

December 4, 2020

**TO THE OFFICER IN CHARGE OF SUPERVISION
AT EACH FEDERAL RESERVE BANK**

SUBJECT: Internal Appeals Process for Material Supervisory Determinations and Policy Statement Regarding the Ombudsman for the Federal Reserve System

Applicability: This guidance applies to institutions, including those with \$10 billion or less in total consolidated assets, that receive a material supervisory determination by the Federal Reserve.

On April 1, 2020, the Federal Reserve Board updated its policy statement governing the internal appeals process for material supervisory determinations and revised the Board's Ombudsman policy.¹ As explained in the attached policy statement, the Board is committed to maintaining an independent, intra-agency process to review appeals of material supervisory determinations that complies with Section 309 of the Riegle Community Development and Regulatory Improvement Act of 1994.² The Board is also committed to maintaining an effective Ombudsman to serve as a resource for individuals and institutions that are affected by the Federal Reserve's regulatory and supervisory actions.

¹ With the issuance of this SR/CA letter, SR letter 95-18, "Section 309 of the Riegle Community Development and Regulatory Improvement Act of 1994, Intra-Agency Appeals Process," is superseded.

A "material supervisory determination" includes, but is not limited to, any material determination relating to examination or inspection composite ratings, material examination or inspection component ratings, the adequacy of loan loss reserves and/or capital, significant loan classification, accounting interpretation, Matters Requiring Attention, Matters Requiring Immediate Attention, Community Reinvestment Act ratings (including component ratings), and consumer compliance ratings. The term does not include any supervisory determination for which an independent right of appeal exists or a referral to another government agency.

² Refer to 12 U.S.C. 4806.

Overview of Amended Appeals Process

As set forth in the policy statement, the Board amended its appeals process to improve and expedite the process. For instance, the amended appeals process specifies the standards of review that the Board will follow, and describes the selection of the review panel members. The amended appeals process also decreases the processing time for appeals, and provides an expedited timeline for appeals of determinations that relate to or that would cause an institution to become critically undercapitalized under the Prompt Corrective Action framework. Other changes to the appeals process include reducing the number of review levels from three under the prior process to two, and increasing transparency through public disclosure of final appeal decisions in redacted or summary form determined by the Board.

Overview of the Ombudsman Policy

The amended Ombudsman policy formalizes many of the current practices of the Ombudsman, including receiving supervisory-related complaints and material supervisory determination appeals. In addition, the amended policy clarifies that the Ombudsman may attend meetings or deliberations relating to an appeal as an observer, if requested by the institution or Federal Reserve staff. The amended policy also formalizes the Ombudsman's role as the decision-maker with respect to claims of retaliation.

Reserve Banks are asked to distribute this letter to the supervised institutions in their districts and to appropriate supervisory staff. Questions regarding this letter may be sent via the Board's public website.³ Questions regarding this letter may also be directed to the Board Ombudsman's Office, 1-800-337-0429.

Michael S. Gibson
Director
Division of Supervision
and Regulation

Eric S. Belsky
Director
Division of Consumer and
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Attachment:

- "Internal Appeals Process for Material Supervisory Determinations and Policy Statement Regarding the Ombudsman for the Federal Reserve System"

Supersedes:

- SR letter 95-18, "Section 309 of the Riegle Community Development and Regulatory Improvement Act of 1994, Intra-Agency Appeals Process"

³ See <http://www.federalreserve.gov/apps/contactus/feedback.aspx>

FEDERAL RESERVE SYSTEM

[Docket No. OP-1696]

Internal Appeals Process for Material Supervisory Determinations and Policy Statement Regarding the Ombudsman for the Federal Reserve System¹

PROCESS FOR APPEALS OF MATERIAL SUPERVISORY DETERMINATIONS

The Board is committed to maintaining an independent, intra-agency process to review appeals of material supervisory determinations that complies with section 309 of the Riegle Community Development and Regulatory Improvement Act of 1994, 12 U.S.C. 4806.

The purpose of this document is to establish a comprehensive appellate process for material supervisory determinations. In order to ensure that institutions will be granted the same appellant rights regardless of the Federal Reserve district in which they reside, appeals will be administered using procedures that are consistent with this process. This process includes an accelerated review process to improve its alignment with the Prompt Corrective Action (“PCA”) framework under section 38 of the Federal Deposit Insurance Act (“FDI Act”).

A. In General

Any institution about which the Federal Reserve makes a written material supervisory determination is eligible to utilize the appeals process. An eligible institution includes a state member bank, bank holding company and its nonbank subsidiaries, U.S. agency or branch of a foreign bank, Edge and agreement corporation, savings and loan holding company, third party electronic data processing servicer, systemically important nonbanking financial organization identified by the Financial Stability Oversight Council, and any other entity examined or inspected by the Federal Reserve.

¹ See Board of Governors of the Federal Reserve System, “[Internal Appeals Process for Material Supervisory Determinations and Policy Statement Regarding the Ombudsman for the Federal Reserve System](#),” *Federal Register*, vol. 85, pp. 15175-183 (March 17, 2020).

An appeal under this process may be made of any written material supervisory determination. A “material supervisory determination” includes, but is not limited to, any material determination relating to examination or inspection composite ratings, material examination or inspection component ratings, the adequacy of loan loss reserves and/or capital, significant loan classification, accounting interpretation, Matters Requiring Attention (“MRAs”), Matters Requiring Immediate Attention (“MRIAs”), Community Reinvestment Act ratings (including component ratings), and consumer compliance ratings. The term does not include any supervisory determination for which an independent right of appeal exists or a referral to another government agency. Excluded actions include, for example, PCA directives issued pursuant to section 38 of the FDI Act; an action to impose administrative enforcement actions under the FDI Act, the Home Owners’ Loan Act of 1933, the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Bank Holding Company Act of 1956 (“BHC Act”) or other applicable act; a capital directive; an order related to approval or denial of a transaction issued pursuant to section 3 or 4 of the BHC Act; written notice of a referral to the Attorney General pursuant to the Equal Credit Opportunity Act (“ECOA”) or a notice to the Secretary of Housing and Urban Development for violations of the ECOA or the Fair Housing Act; and determinations made under the Shared National Credit Program.

B. General Procedures for Appealing a Material Supervisory Determination

In general, the appeals process is an informal process that is not subject to the adjudicative provisions of the Administrative Procedures Act (5 U.S.C. 554, 556-557). An appeal of a material supervisory determination shall be filed and considered pursuant to the following procedures:

(1) **Authorization to File.** Any appeal must be approved by the board of directors of the eligible institution or by its senior management in consultation with its board of directors. Senior management is defined as the core group of individuals directly accountable to the board of directors for the sound and prudent day-to-day management of the firm, or in the case of a U.S. agency or branch of a foreign bank, responsible for the bank’s U.S. operations. Senior management shall inform the board of directors of the substance of the

appeal before filing the appeal and shall keep the board of directors informed of the status of the appeal.

(2) **Timelines and Contents.** The institution must file the appeal in writing with the Board's Ombudsman within 30 calendar days of the earlier of the date the material supervisory determination was sent electronically, the date the institution received the written determination, or the date the Reserve Bank received confirmation that the institution received the determination, with a copy to the officer in charge of supervision at the appropriate Reserve Bank. When the deadline for filing an appeal falls on a weekend or federal holiday, the deadline for the appeal shall be the next business day. The institution may file a written request for an extension of the time to file an appeal with the Ombudsman, which request shall state good cause for granting the extension. Such request shall be granted in the sole discretion of the director of the appropriate division of the Board in consultation with the Board's General Counsel or his designee. The appeal must include a clear and complete statement of all relevant facts and issues, as well as all arguments that the institution wishes to present, and must include all relevant and material documents that the institution wishes to be considered. Prior to a material supervisory determination being made, it is expected that the institution will have provided all available information it believes to be relevant to the examination staff to assist them in making the determination. Accordingly, absent good cause, as determined in the discretion of the initial review panel, any facts or data submitted by the institution in connection with the appeal shall be limited to those that were made available to examination staff prior to the date on which the written material supervisory determination was delivered to the institution.

(3) **Distribution of Appeal.** After receipt of a request for an appeal, the Board's Ombudsman shall promptly notify the director of the appropriate division of the Board and the Board's General Counsel of the appeal.

(4) **Initial Review Panel.** Within ten calendar days of receipt of a timely appeal, the director of the appropriate division of the Board or an officer designated by the appropriate division director must appoint three Reserve Bank employees to serve as an initial review panel to consider the appeal and an attorney to advise the initial review panel in the exercise of its responsibilities. In appropriate circumstances, the appropriate division director may appoint a Board employee as one of the three members of the initial review

panel. The members of the initial review panel and the appointed attorney must not have been substantively involved in any matter at issue; must not directly or indirectly report to any person(s) who made the material supervisory determination under review; must not be employed by the Reserve Bank that made the material supervisory determination under review; and must have relevant experience to contribute to the review of the material supervisory determination. An individual shall be considered to have been substantively involved in a material supervisory determination if the individual was personally consulted regarding the issue being determined and provided guidance regarding how it should be resolved. The initial review panel shall determine all procedural issues regarding the initial review.

(5) **Initial Review Meeting.** The initial review panel shall conduct an informal appeal meeting if the institution requests such a meeting at the time it files its appeal or if the panel, in its discretion, decides to hold such a meeting. If such a meeting is to be conducted, the panel should, in consultation with the institution, schedule a meeting for a date that is no later than 21 calendar days after the date the appeal is received. The panel shall notify the institution in writing of the date, time, and place of the meeting. The institution may appear at the appeal meeting personally or through counsel to make an oral presentation to the panel. Panel members may ask questions of any person participating in the meeting. The institution and the Reserve Bank may not cross-examine persons participating in the meeting. A verbatim transcript of the meeting may be taken if the institution requests a transcript and agrees to pay all expenses, and if the initial review panel determines that a transcript would assist the panel in carrying out its responsibilities. The meeting provided under this process is not governed by formal rules of evidence. No formal discovery is required or permitted. The initial review panel may make any rulings reasonably necessary to facilitate the effective and efficient operation of the meeting.

(6) **Record.** The record of the appeal shall at a minimum include the original material supervisory determination being appealed, the materials submitted by the institution in connection with the appeal, and the materials identified by Federal Reserve staff as relevant to the material supervisory determination being appealed, including workpapers. In addition, the initial review panel may, in its discretion, conduct additional fact finding. For example, the initial review panel may supplement the record by soliciting the views of outside parties, including staff from the Board, the Reserve Banks,

other supervisory agencies (for example, in cases of joint examinations or inspections), and the Federal Reserve staff who participated in making the material supervisory determination being appealed. The entire record of the appeal, including the decision of the initial review panel and any meeting transcripts or material(s) submitted in connection with any subsequent final review, shall be considered confidential supervisory information of the Board.

(7) **Standard of Review Applied by Initial Review Panel.** The initial review panel shall conduct a review of the material supervisory determination on appeal. The panel must consider whether the Reserve Bank's material supervisory determination is consistent with applicable laws, regulations, and policy, and supported by a preponderance of the evidence in the record. In doing so, the panel shall make its own supervisory determination and shall not defer to the judgment of the Reserve Bank staff that made the material supervisory determination though it may rely on any examination workpapers developed by the Reserve Bank or materials submitted by the institution if it determines it is reasonable to do so.

(8) **Notice of Decision.** Within 45 calendar days after the date the appeal is received, the initial review panel shall provide written notice of its decision to the senior management and the board of directors of the institution. A copy of the decision will be provided to the director of the appropriate division of the Board, the officer in charge of supervision at the appropriate Reserve Bank, and the Board's Ombudsman. The notice of decision shall contain a statement of the basis for the initial review panel's decision to continue, terminate, or otherwise modify the material supervisory determination(s) at issue or to remand consideration of the material supervisory determination at issue to the examiners that made the determination to allow them to consider additional evidence presented in connection with the appeal. The notice of decision shall identify the information upon which the panel relied in reaching its conclusion, and the panel shall promptly provide that information to the institution upon the institution's request to the extent permitted by law. Such request must be made within seven calendar days of receipt of the notice of decision. The notice of decision shall also indicate that the institution may request a final review as set forth in this subpart by filing a written request with the Board's Ombudsman. The initial review panel may extend the period for issuing a decision by up to 30 calendar days if the panel determines that the record is incomplete and additional fact-finding is necessary for the panel to issue a decision.

(9) **Use of Confidential Supervisory Information.** If the Reserve Bank or the Board has confidential supervisory information from another regulated institution that is pertinent to the appeal, they may elect to use that information, provided that the information is entered into the record for the appeal and provided to the appealing institution, subject to limitations on disclosure, including those imposed by the Board's applicable regulations,² and redaction of all information not relevant to the appeal.

(10) **Request for Final Review.** Within 14 calendar days after notice of decision by the initial review panel, the institution, at the direction of its board of directors or senior management in consultation with the board of directors, may appeal that decision to a final review panel by filing a written request for final review with the Board's Ombudsman, with a copy to the officer in charge of supervision at the appropriate Reserve Bank. Senior management shall inform the board of directors of the substance of the appeal before filing the appeal and shall keep the board of directors informed of the status of the appeal. The request for final review must state all the reasons, legal and factual, the institution disagrees with the initial review panel's decision. The institution may file a written request for an extension of the time to file an appeal with the Ombudsman, which request shall state good cause for granting the extension. The decision to grant such a request shall be in the sole discretion of the director of the appropriate division of the Board in consultation with the Board's General Counsel or his designee.

(11) **Waiver of Final Review.** Failure to timely request final review in a manner consistent with this process shall constitute a waiver of the opportunity for final review, and the decision of the initial review panel shall constitute a final and unappealable material supervisory determination.

(12) **Distribution of Final Review Request.** After receipt of a request for final review, the Board's Ombudsman shall promptly notify the director of the appropriate division of the Board and the Board's General Counsel of the request for final review.

(13) **Final Review Panel.** When an institution files a request for final review, the director of the appropriate division of the Board shall promptly

² See 12 CFR 261.20.

appoint three individuals to serve as a final review panel to permit completion of the appeal within the applicable period. The final review panel shall include at least two Board employees, at least one of whom must be an officer of the Board at the level of associate director or higher. The Board's General Counsel shall appoint an attorney to advise the final review panel in the exercise of its responsibilities. The members of the final review panel and the appointed attorney must not be employed by the Reserve Bank that made the material supervisory determination under review; must not have been members of the initial review panel; and must not have been personally consulted regarding the issue being determined and provided guidance regarding how it should be resolved, or directly or indirectly report to the person(s) who made the material supervisory determination under review. The final review panel shall determine all procedural issues regarding the final review.

(14) **Final Review Meeting.** The final review panel may determine in its discretion to have an informal appeal meeting at which a representative of the institution or counsel may appear personally to make an oral presentation to the panel. No facts may be introduced in this meeting that are not contained in the record upon which the initial review panel made its decision. In the event the panel decides to have a meeting with the appealing institution, panel members may ask questions of any person participating in the meeting. The institution may not cross-examine persons participating in the meeting. A verbatim transcript of the meeting may be taken at the cost of the Board if the final review panel determines that a transcript would assist the panel in carrying out its responsibilities. A meeting provided under this process is not governed by formal rules of evidence. No formal discovery is required or permitted. The final review panel may make any procedural rulings reasonably necessary to facilitate the effective and efficient operation of the meeting.

(15) **Scope of Final Review.** The scope of the final review shall be confined to the record upon which the initial review panel made its decision.

(16) **Standard of Review of Final Review.** The final review panel shall determine whether the decision of the initial review panel is reasonable. In reaching this determination, the panel should consider whether the decision was based on a consideration of the applicable law, regulations, and policy, and whether there has been a clear error of judgment. The final review panel may affirm the decision of the initial review panel even if it is possible to draw a contrary conclusion from the record presented on appeal.

(17) **Notice of Final Review Decision.** Within 21 calendar days of the filing of a request for final review, the director of the appropriate division of the Board shall provide written notice of the decision of the final review panel to the senior management and the board of directors of the institution. The final review panel may continue, terminate, or otherwise modify the material supervisory determination(s) at issue or remand consideration of the material supervisory determination at issue to the examiners who made the determination to allow them to consider additional evidence presented in connection with the appeal. The notice of decision shall contain a statement of the basis for the final review panel's decision. A copy of the decision will be provided to the director of the appropriate division of the Board, the officer in charge of supervision at the appropriate Reserve Bank, and the Board's Ombudsman. A copy of the decision will be published on the Board's public website as soon as practicable, and the published decision will be redacted to avoid disclosure of exempt information. In cases in which redaction is deemed insufficient to prevent improper disclosure, the published decision may be presented in summary form. The final review panel may extend the period for issuing a decision by up to 30 calendar days if the panel determines that, based on the facts and circumstances of the appeal, an extension is appropriate.

(18) **Ombudsman Participation.** The Board's Ombudsman may attend, as an observer, meetings or deliberations relating to the appeal at either level if requested by either the institution or System personnel. The Ombudsman will not have substantive involvement in or act as a decision-maker with respect to the appeal.

C. Expedited Procedures for Appealing a Material Supervisory Determination

When a material supervisory determination relates to or causes an institution to become critically undercapitalized, as defined by section 38 of the FDI Act, the review of any appeal of that supervisory determination will be processed on an expedited basis.

Notwithstanding any other provision in this process, a matter processed under expedited review will be subject to the same policies that govern all appeals except that the initial review panel will issue a decision within 35

calendar days following the date the appeal is received (such period may be extended by up to an additional 7 calendar days if the initial review panel decides that such time is required to supplement the record and to consider any additional information received), the institution shall have 7 days to file an appeal of the initial review panel's decision, and the final review panel will issue a decision within 10 calendar days.

D. Effect of Appeal on Material Supervisory Determinations

A material supervisory determination shall remain in effect while under appeal unless and until such time as it is modified or terminated through the appeals process. An appeal does not prevent or suspend the Federal Reserve or any other appropriate agency from taking any supervisory or enforcement action—either formal or informal—it deems appropriate to discharge the agency's supervisory responsibilities. In such cases, the rights of appeal provided for in the statutes and regulations concerning those actions shall govern.

In addition, an appeal does not prevent or suspend the operation of the PCA framework under section 38 of the FDI Act, prevent or suspend an appropriate authority from appointing a receiver for the institution or otherwise causing the closure of an institution, or prevent or suspend an appropriate authority from taking any other action under the PCA framework. If the institution is placed into receivership while an appeal is outstanding, the appeal will be considered moot and will not be completed.

E. Safeguards Against Retaliation

Neither the Federal Reserve nor any employee of the Federal Reserve may retaliate against an institution or person, including based on the filing or outcome of an appeal under this process. In accordance with longstanding Federal Reserve practice, the appeals framework is intended to foster an environment where concerns and issues may be freely and openly discussed.

Each Reserve Bank shall provide institutions with notice of the Board's anti-retaliation policy in connection with each Federal Reserve led examination.

An institution that believes that it has suffered retaliation or any other form of unfair treatment is encouraged to contact the appropriate Reserve Bank, and may file a claim of retaliation with the Board's Ombudsman. The

Ombudsman may attempt to resolve a claim of retaliation informally by engaging in discussions with the concerned institution and the appropriate Board or Reserve Bank staff.

Nothing in this guidance is intended to prevent the Ombudsman from initiating a factual inquiry into alleged retaliation at any time. The Ombudsman may initiate a factual inquiry into a claim of retaliation, at any time, by providing notice to the director of the appropriate division of the Board and appropriate Board committee, and the officer in charge of supervision at the appropriate Reserve Bank. As part of the inquiry, the Ombudsman may collect and review documents, interview witnesses, and consult Board and Reserve Bank staff with subject matter expertise. The Ombudsman also may request that the director of the appropriate division of the Board authorize or assign such additional resources as necessary to assist the Ombudsman in fully reviewing the matter.

Upon the completion of a factual inquiry into a claim of retaliation, if the Ombudsman concludes that retaliation has occurred, the Ombudsman will forward the claim of retaliation, along with the Ombudsman's factual findings to the director of the appropriate division of the Board. These officials will take appropriate action consistent with the Board's or relevant Reserve Bank's policies and procedures to resolve the matter. In addition, to prevent future retaliation for an appeal, the Ombudsman may recommend to the director of the appropriate division of the Board that the next examination of the institution or review that may lead to a material supervisory determination exclude personnel involved in the claim of retaliation. The division director(s) will make the final decision as to whether any examination staff should be excluded.

The Board's Ombudsman will contact institutions within six months after a material supervisory determination appeal has been decided to inquire whether the institution believes retaliation has occurred.

F. Availability of Procedures

The Federal Reserve, through the Board and Reserve Banks, shall make this process readily available on its public website and to any member of the public who requests it.

Ombudsman for the Federal Reserve System

Policy Statement

Section 309 of the Riegle Community Development and Regulatory Improvement Act of 1994, 12 U.S.C. 4806, requires each of the Federal banking agencies to appoint an Ombudsman. Section 309 provides that the Ombudsman:

- (1) Is to act as a liaison between the agency and any affected person with respect to any problem such party may have in dealing with the agency resulting from the regulatory activities of the agency; and
- (2) Is to assure that safeguards exist to encourage complainants to come forward and preserve confidentiality.

Mission of the Ombudsman. The Ombudsman is charged with performing three major functions: (1) serving as a facilitator and moderator for the fair and timely resolution of complaints related to the Federal Reserve System's regulatory activities; (2) reporting to the Board on issues that are likely to have a significant impact on the Federal Reserve System's missions, activities, or reputation that arise from the Ombudsman's review of complaints, such as patterns of issues that occur in multiple complaints; and (3) receiving, reviewing, and deciding claims of retaliatory conduct by Federal Reserve System staff. The Ombudsman also serves as the initial recipient for appeals of material supervisory determinations and plays a role in resolving appeals of some consumer complaints. In addition, the Ombudsman ensures that safeguards exist to encourage complainants to come forward and to protect confidentiality.

Serving as a Complaint Facilitator. The Ombudsman assists institutions with issues and questions related to Reserve Bank or Board regulatory activities. In doing so, the Ombudsman shall operate independently of the supervisory process to the extent necessary to ensure that appropriate safeguards exist to encourage complainants to come forward and preserve confidentiality.

In situations where the Board has not established a process for addressing a certain type of question or complaint, the Ombudsman is available to facilitate the resolution of the question or complaint. Although the Ombudsman does not

have decision-making authority regarding any substantive matters, including supervisory determinations and regulatory action (other than for retaliation claims), the Ombudsman is available to assist institutions, and particularly community banks, in locating the correct Federal Reserve System staff person to address or resolve such a question or complaint and may coordinate meetings and facilitate discussions between the institution and System staff, including senior officials, as necessary. In order to facilitate this process, the Ombudsman may investigate the situation in order to identify the relevant facts and circumstances. The Ombudsman may also participate in meetings or discussions related to the matter if requested by either the institution or System staff, and may require updates from System staff, as appropriate, until the matter is resolved. If the Ombudsman believes such a complaint has not been satisfactorily addressed, the Ombudsman may raise the matter with the appropriate division director or Board committee, as appropriate.

When an issue is brought to the attention of the Ombudsman for which the Board's rules or procedures provide an avenue of appeal or another appropriate forum for resolution, the Ombudsman will explain the process to the complaining party, and direct the party to the appropriate appeals process or forum for the complaint.³ In addition, the Ombudsman is also available to facilitate informal discussions between a potential appellant and the appropriate Reserve Bank or Board staff in order to explore solutions before an appeal is filed. Such discussions do not stay or otherwise alter any of the deadlines under the Board's rules or procedures.

The Ombudsman will serve as the initial recipient for an appeal of a material supervisory determination and may attend, as an observer, meetings or deliberations relating to the appeal if requested by either the institution or System personnel. In any event, the Ombudsman will not have any substantive involvement in or act as a decision-maker with respect to the appeal.

³ For example, the Ombudsman may explain some of the existing mechanisms for resolutions of complaints, such as: material supervisory determinations pursuant to section 309(a) of the Riegle Act; actions delegated to the Reserve Banks or Board staff pursuant to 12 CFR Part 265; prompt corrective action directives under section 38 of the FDI Act; denials or partial denials of Freedom of Information or Privacy Act requests; issuance of capital directives pursuant to 12 CFR 263.80-263.85; decisions with respect to applications; and matters within the jurisdiction of the Board's Inspector General or Federal or State investigatory or prosecutorial authorities.

Providing Feedback on Patterns of Issues. The Ombudsman is in a unique position to identify and report patterns of issues arising from complaints related to Reserve Bank or Board regulatory activities. The Ombudsman will track inquiries and complaints based on relevant characteristics, such as geographic location, scope, policy implications, and final disposition, to help identify any such trends, including trends that implicate differently sized institutions disproportionately. This tracking will be conducted in a manner designed to preserve confidentiality of the complainant to the maximum extent possible. As appropriate, the Ombudsman will report findings of patterns of issues to the appropriate Board committee or division director and Reserve Bank or Board staff. The Ombudsman will also report any issue stemming from a complaint that is likely to have a significant impact on the Federal Reserve System’s mission, activities, or reputation.

Retaliation Claims by Supervised Persons. The Board does not tolerate retaliation by Federal Reserve System staff against a supervised institution or its employees (“supervised persons”). Retaliation is defined as any action or decision by Reserve Bank or Board staff that causes a supervised person to be treated differently or more harshly than other similarly situated institutions because the supervised person attempted to resolve a complaint by filing an appeal of a material supervisory determination or utilized any other Board mechanisms for resolving complaints. Retaliation includes, but is not limited to, delaying or denying action that might benefit a supervised person without a sound supervisory reason or subjecting a supervised institution to heightened examination standards without a sound supervisory reason.

The Ombudsman is authorized to receive, review, and determine the merits of complaints of retaliatory conduct by Reserve Bank or Board staff. The Ombudsman may attempt to resolve retaliation claims informally by engaging in discussions with the concerned supervised person and the appropriate Board or Reserve Bank staff. If a complaint cannot be resolved informally, the Ombudsman may initiate a full investigation into the underlying facts and circumstances.

To commence a factual investigation of a complaint of retaliatory conduct, the Ombudsman should provide written notice to the appropriate Board committee and division director and the appropriate Reserve Bank officer in charge of supervision. As part of the investigation, the Ombudsman may, among other things, collect and review documents, interview witnesses, and seek any other

relevant information. The Ombudsman may also consult Board and Reserve Bank staff with subject matter expertise. Where necessary, the appropriate Board committee or division director may authorize or assign such additional resources as may be needed to assist the Ombudsman in fully reviewing the matter.

Upon completion of the factual investigation of a complaint of retaliatory conduct, the Ombudsman will decide whether a member of Federal Reserve System staff retaliated, as defined above. The Ombudsman will report this determination to the appropriate Board committee or Governor and division director and the appropriate Reserve Bank officer in charge of supervision and may make recommendations for resolution of the matter to those parties. In addition, to prevent future retaliation for an appeal, the Ombudsman may recommend to the appropriate division director(s) that the next examination of the institution or review that may lead to a material supervisory determination exclude personnel involved in the claim of retaliation. The division director(s) will make the final decision as to whether any examination staff should be excluded. However, the Ombudsman shall not make recommendations regarding disciplinary action against a Federal Reserve System staff member. The appropriate staff will consider further action consistent with the Board's and relevant Reserve Bank's policies and procedures. The Ombudsman's determination regarding retaliation will be communicated in writing to the supervised person.

To further ensure that supervised persons are not subjected to retaliation, as defined above, the Ombudsman will contact a supervised institution within six months after an appeal has been decided to inquire whether the institution believes retaliation occurred. Where possible, the Ombudsman will also contact the institution after the next examination following an appeal. In the event an institution complains of retaliation, the Ombudsman will initiate the process outlined above to informally review the matter or initiate a factual investigation.

Consumer Complaints and Appeals. Independent of the Ombudsman function, the Federal Reserve System operates a consumer complaint and inquiry program to assist members of the public who are experiencing problems with their financial institution. If the Ombudsman receives a consumer complaint directly, the Ombudsman will refer the complaint to the Board's Division of Consumer and Community Affairs ("DCCA") to determine

handling and send appropriate consumer complaints to the Federal Reserve Consumer Help Center (“FRCH”) for processing.

A request for an independent review of a consumer complaint previously investigated by a Reserve Bank is treated as an appeal. Consumers should be advised that they can file an appeal through FRCH or with the Ombudsman if the consumer requests confidential treatment of the appeal or prefers that the Ombudsman handle the appeal.

If an appeal is received by the Ombudsman, he or she will consult with DCCA to determine who will handle the appeal, unless the consumer has requested confidential treatment or that the Ombudsman’s Office handle the appeal. In many instances, DCCA will be responsible for investigating and responding to the appeal. For the appeals referred to DCCA by the Ombudsman, DCCA will consult with the Ombudsman during the appeal investigation to help ensure that the matter is fully and fairly addressed and provide a final copy of the response letter to the Ombudsman.

The Ombudsman handles appeals seeking further investigation of DCCA’s handling of an initial appeal, appeals where the consumer requests confidential treatment, and appeals where the consumer requests that the Ombudsman’s Office handle the initial appeal. The Ombudsman may handle other appeals, as determined in collaboration with DCCA. The Ombudsman will send an acknowledgement letter for each appeal it receives.

With respect to appeals seeking further investigation of DCCA’s handling of an initial appeal or where the consumer requests that the Ombudsman handle the appeal, the Ombudsman will typically consult with DCCA during the investigation. For appeals where the consumer requests confidential treatment, the Ombudsman typically will not consult with DCCA during the investigation.

For all appeals the Ombudsman handles, the Ombudsman will review the matter. In doing so, the Ombudsman will collect and review the complaint documents from DCCA and seek any other relevant information, unless confidential treatment is requested. The Ombudsman may also consult Board and Reserve Bank staff to discuss the details of the previous complaint investigations. The Ombudsman is responsible for responding to the complainant with its determination. As appropriate, the Ombudsman will contact the appropriate Board division director and Reserve Bank staff with feedback or concerns.

Safeguards. These policies, processes, and practices are intended as safeguards to encourage complainants to come forward with issues or complaints related to the Federal Reserve System's supervisory activities.

To the extent possible, the Ombudsman will honor requests to keep confidential the identity of a complaining party. It must be recognized, however, that it may not be possible for the Ombudsman to resolve certain complaints, including complaints of retaliation, if the Ombudsman cannot disclose the identity of the complaining party to other members of Federal Reserve staff.

Procedures. A party may contact the Ombudsman at any time regarding concerns or issues resulting from the regulatory activities of the Board or the Reserve Banks by calling 1-800-337-0429, by sending a fax to 202-530-6208, by writing to the Office of the Ombudsman, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or by sending an email to Ombudsman@frb.gov.

By order of the Board of Governors of the Federal Reserve System, March 12, 2020.

/s/Ann Misback,
Secretary of the Board.