



Policy Statement on Appeals of Material Supervisory Determinations

Supervision, Regulation and Credit (SRC)

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¹ As of 2022, the Ombudsman Office has begun the process of renaming itself as the Office of the Ombuds (“Ombuds” or “Ombuds Office”).

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I. Introduction

A. Legislative and Regulatory Authority

The Board of Governors of the Federal Reserve System (Board of Governors) issued guidelines that implement the intra-agency appeals process required by section 309 of the Riegle Community Development and Regulatory Improvement Act of 1994. The original guidelines issued on March 24, 1995, have been amended, effective April 1, 2020.

B. Purpose of Policy

The purpose of this Policy is to codify the Federal Reserve Bank of Philadelphia's processes related to appeals filed under these Guidelines. The amended Policy includes an accelerated review process to improve alignment with the Prompt Corrective Action (PCA) framework under section 38 of the Federal Deposit Insurance Act (FDI Act).

II. Definitions

A. Appellant: The institution filing an appeal of a material supervisory determination.

B. Initial Review Panel: A panel of three (3) Federal Reserve Bank employees and an attorney who advises the panel in the exercise of its responsibilities. When appropriate, a Board of Governors employee may serve as one of the three members of the Initial Review Panel. The Initial Review Panel shall consist of persons that (a) were not substantially involved in any matter at issue; (b) must not directly or indirectly report to any person(s) who made the material supervisory determination under review; (c) must not be employed by the Federal Reserve Bank of Philadelphia; and (d) must have relevant experience to contribute to the review of the material supervisory determination. The Initial Review Panel shall determine all procedural issues regarding the initial review.

C. Material Supervisory Determination: The definition of material supervisory determination in the Guidelines includes, but is not limited to, any material determinations relating to examination or inspection composite ratings, material examination or inspection component ratings, the adequacy of loan loss reserves and/or capital, significant loan classifications, accounting interpretation, Matters Requiring Attention (MRAs), Matters Requiring Immediate Attention (MRIAs), Community Reinvestment Act ratings (including component ratings), and consumer compliance ratings.

The term material supervisory determination does not include any supervisory determination for which an independent right of appeal exists or a referral to another government agency as defined in the Guidelines. Excluded actions include 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

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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.

D. Ombuds for the Federal Reserve System

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 Ombuds. Section 309 provides that the Ombuds:

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 ensure that safeguards exist to encourage complainants to come forward and preserve confidentiality.

- E. **Final Review Panel:** A panel of three (3) individuals who serve as the final party to review an appeal. The Final Review Panel shall include at least two (2) Board of Governors employees, with one (1) required to be an officer of the Board of Governors at the level of associate director or higher. The Board of Governor'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 (a) must not be employed by the Federal Reserve Bank of Philadelphia; (b) must not have been members of the Initial Review Panel; and (c) 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.
- F. **Senior management:** 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.
- G. **Federal Reserve System:** The twelve (12) Federal Reserve Banks, their branches, and the Board of Governors

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H. Federal Reserve Bank: One of twelve (12) Federal Reserve Banks or branches that make up the Federal Reserve System

III. Submission of an Appeal

A. Institutions That May Submit Appeals

Any institution about which the Federal Reserve Bank of Philadelphia makes a written material supervisory determination is eligible to utilize the appeals process. This includes state member banks, bank holding companies and their nonbank subsidiaries, savings and loan holding companies, U.S. agencies and branches of foreign banks, Edge Act and agreement corporations, third party service providers, systemically important nonbanking financial organizations identified by the Financial Stability Oversight Council, and other entities that are examined or inspected by the Federal Reserve Bank of Philadelphia. 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).

B. Filing Process

An 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 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 institution must file the appeal in writing with the Ombuds within thirty (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 Federal Reserve Bank of Philadelphia received confirmation that the institution received the determination, with a copy to the officer in charge of supervision at the Federal Reserve Bank of Philadelphia. 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.

C. Contents of Appeal

The appeal must include a clear and complete statement of all relevant facts and issues, as well as all arguments that the appellant wishes to present, and must include all relevant and material documents that the institution wishes to be considered and should not include information not available to the Federal Reserve Bank of Philadelphia at the time it made the material supervisory determination under appeal, unless the appellant offered to provide such information at the time of determination.

D. Extensions for Filing an Appeal

An appellant may file a written request for an extension of time for filing an appeal with the Ombuds, which 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 of Governors in consultation with the Board of Governor's General Counsel or designee.

E. Distribution of Appeal

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After receipt of a request for an appeal, the Ombuds shall promptly notify the director of the appropriate division of the Board of Governors and the Board of Governor's General Counsel of the appeal.

IV. Initial Review

A. Guidelines and Formation of Initial Review Panel

Within ten (10) calendar days of receipt of a timely appeal, the director of the appropriate division of the Board of Governors or an officer designated by the appropriate division director must appoint three (3) Federal 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 division director may appoint a Board of Governors employee as one of the three members of the Initial Review Panel.

The Guidelines provide that the Initial Review Panel, which is the first party to consider an appeal, shall consist of persons that (a) were not substantially involved in any matter at issue; (b) must not directly or indirectly report to any person(s) who made the material supervisory determination under review; (c) must not be employed by the Federal Reserve Bank of Philadelphia; and (d) 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.

B. 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 decides to hold such a meeting, at its discretion. If a meeting is conducted, the panel should work with the institution to schedule a meeting for a date that is no later than twenty-one (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 in-person or through counsel to make an oral presentation to the panel. The panel may ask questions of any participant in the meeting. The institution and the panel may not cross-examine persons participating in the meeting. A verbatim transcript of the meeting may be taken if the institution requests a transcript, with all expenses assumed by the institution, 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.

C. 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

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with the appeal, and the materials identified by the Federal Reserve Bank of Philadelphia 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 of Governors, other Federal Reserve Banks, other supervisory agencies (in cases of joint examination or inspections), and the Federal Reserve Bank of Philadelphia 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 of Governors.

D. 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 Federal Reserve Bank of Philadelphia'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 judgement of the Federal Reserve Bank of Philadelphia's staff who made the material supervisory determination, though it may rely on any examination workpapers developed by the Federal Reserve Bank of Philadelphia or materials submitted by the institution if it determines it is reasonable to do so.

E. Notice of Decision

Within forty-five (45) calendar days after the date the appeal is received, the Initial Review Panel shall provide written notice of its decision to 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 of Governors, the Ombuds, and the officer in charge of supervision at the Federal Reserve Bank of Philadelphia.

The notice of decision shall:

1. 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 who made the determination to allow them to consider additional evidence presented in connection with the appeal.
2. 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 (7) calendar days of receipt of the notice of decision.
3. Indicate that the institution may request a final review as set forth in this

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subpart by filing a written request with the Ombuds.

The Initial Review Panel may extend the period for issuing a decision by up to thirty (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.

F. Use of Confidential Supervisory Information

If the Federal Reserve Bank of Philadelphia or the Board of Governors 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 of Governor's applicable regulations, and redaction of all information not relevant to the appeal.

V. Final Review

A. Guidelines and Formation of Final Review Panel

When an institution files a request for final review, the director of the appropriate division of the Board of Governors shall promptly appoint three (3) 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 (2) Board of Governors employees, at least one (1) of whom must be an officer of the Board of Governors at the level of associate director or higher. The Board of Governor'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 (a) must not be employed by the Federal Reserve Bank of Philadelphia; (b) must not have been members of the Initial Review Panel; and (c) must not have been personally consulted regarding the issue being determined, 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.

B. Request for Final Review

Within fourteen (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 Ombuds, with a copy to the officer in charge of supervision at the Federal Reserve Bank of Philadelphia. 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.

C. Waiver of Final Review

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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.

D. Distribution of Final Review Request

After receipt of a request for final review, the Ombuds shall promptly notify the director of the appropriate division of the Board of Governors and Board of Governors' General Counsel of the request for final review.

E. 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 in-person 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 of Governors 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.

F. 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.

G. 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.

H. Notice of Final Review Decision

Within twenty-one (21) calendar days of the filing of a request for final review, the director of the appropriate division of the Board of Governors shall provide written notice of the decision of the Final Review Panel 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 of Governors, the Ombuds, and the officer in charge of supervision at the Federal Reserve Bank of Philadelphia. A copy of the decision will also be published on the Board of Governors' public website as soon as practicable, and the published decision will be redacted to avoid disclosure of exempt information. In cases in

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which redaction is deemed insufficient to prevent improper disclosure, the published decision may be presented in summary form.

The notice of decision shall contain a statement of the basis for the Final 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 who made the determination to allow them to consider additional evidence presented in connection with the appeal.

The Final Review Panel may extend the period for issuing a decision by up to thirty (30) calendar days if the panel determines that, based on the facts and circumstances of the appeal, an extension is appropriate.

VI. Ombuds Participation

The Ombuds may attend, as an observer, meetings or deliberations relating to the appeal at either level if requested by either the institution or Federal Reserve Bank of Philadelphia staff. The Ombuds will not have substantive involvement in or act as a decision maker with respect to the appeal.

VII. Expedited Procedures for Appealing a Material Supervisory Determination

When a material supervisory determination relates to or causes an institution to become critically undercapitalized, 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:

1. The Initial Review Panel will issue a decision within thirty-five (35) calendar days following the date the appeal is received (such period may be extended by up to an additional seven (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).
2. The institution shall have seven (7) days to file an appeal of the Initial Review Panel's decision.
3. The Final Review Panel will issue a decision within ten (10) calendar days.

VIII. 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 Bank of Philadelphia or any other appropriate

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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.

IX. Safeguards Against Retaliation

No employee of the Federal Reserve Bank of Philadelphia may retaliate against an institution or person based on the filing or outcome of an appeal under this process. In accordance with longstanding Federal Reserve Bank of Philadelphia practices, the appeals framework is intended to foster an environment where concerns and issues may be freely and openly discussed.

The Federal Reserve Bank of Philadelphia shall provide institutions with notice of the Board of Governor's antiretaliation policy in connection with each Federal Reserve Bank of Philadelphia led examination.

An institution that believes that it has suffered retaliation, or any other form of unfair treatment is encouraged to contact the Federal Reserve Bank of Philadelphia and may file a claim of retaliation with the Ombuds. The Ombuds may attempt to resolve a claim of retaliation informally by engaging in discussions with the concerned institution and the appropriate Board of Governors or Federal Reserve Bank of Philadelphia staff.

Nothing in the guidance is intended to prevent the Ombuds from initiating a factual inquiry into alleged retaliation at any time. The Ombuds may initiate a factual inquiry into a claim of retaliation, at any time, by providing notice to the appropriate Board of Governor's division director(s) and committee, the Federal Reserve Bank of Philadelphia's General Counsel, and the officer in charge of supervision at the Federal Reserve Bank of Philadelphia. The Ombuds should also notify the Board's General Counsel and point of contact (POC) for Board Legal as well as the POC for Division of Consumer and Community Affairs (DCCA) or Supervision and Regulation (S&R), as appropriate. As part of the inquiry, the Ombuds may collect and review documents, interview witnesses, and consult Board of Governors and Federal Reserve Bank of Philadelphia staff with subject matter expertise. The Ombuds also may request that the appropriate division director, or designee, and the Board's General Counsel, or designee, authorize or assign such additional resources as necessary to assist the Ombuds in fully reviewing the matter.

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Upon the completion of a factual inquiry into a claim of retaliation, if the Ombuds concludes that retaliation has occurred, the Ombuds will forward the claim of retaliation, along with the Ombuds' factual findings memorandum, to the appropriate division director(s) of the Board of Governors. These officials will take appropriate action consistent with the Board of Governors or Federal Reserve Bank of Philadelphia's policies and procedures to resolve the matter. In addition, to prevent future retaliation for an appeal, the Ombuds 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 staff 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 Ombuds will provide the factual findings memorandum to the appropriate Board of Governor's committee or governor, and division director, the Board's General Counsel, the Federal Reserve Bank of Philadelphia's General Counsel, and the officer in charge of supervision at the Federal Reserve Bank of Philadelphia.

The Ombuds Office will draft a letter to the supervised person that filed the claim of retaliation communicating the Ombuds' determination regarding whether retaliation occurred. The Ombuds Office will provide a draft letter to the appropriate Board of Governor's division director, the Board's General Counsel or designee, and the officer in charge of supervision at the Federal Reserve Bank of Philadelphia. In appropriate circumstances, the Ombuds may brief the appropriate Board of Governor's committee or governor on the Ombuds' findings and determination. The Ombuds will then send the letter to the supervised person that filed the claim of retaliation.

The Ombuds will contact the institution within six (6) months after a material supervisory determination appeal has been decided to inquire whether the institution believes retaliation has occurred.

X. Availability of Procedures

The Board of Governors and the Federal Reserve Bank of Philadelphia shall make this process readily available on its respective public website and to any member of the public who requests it.

XI. Mission of the Ombuds

The Ombuds is charged with performing three (3) 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 of Governors on issues that are likely to have a significant impact on the Federal Reserve System's missions,

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activities, or reputation that arise from the Ombuds' 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 Ombuds 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 Ombuds ensures that safeguards exist to encourage complainants to come forward and to protect confidentiality.

A. Serving as a Complaint Facilitator

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

When an issue is brought to the attention of the Ombuds for which the Board of Governors' rules or procedures provide an avenue of appeal or another appropriate forum for resolution, the Ombuds will explain the process to the complaining party and direct the party to the appropriate appeals process or forum for the complaint. In addition, the Ombuds is also available to facilitate informal discussions between a potential appellant and the Federal Reserve Bank of Philadelphia or Board of Governors 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 of Governors' rules or procedures.

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The Ombuds 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 Federal Reserve Bank of Philadelphia staff. In any event, the Ombuds will not have any substantive involvement in or act as a decision maker with respect to the appeal.

B. Providing Feedback on Patterns of Issues

The Ombuds is in a unique position to identify and report patterns of issues arising from complaints related to Federal Reserve Bank of Philadelphia or Board of Governors' regulatory activities. The Ombuds 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 the confidentiality of the complainant to the maximum extent possible. As appropriate, the Ombuds will report findings of patterns of issues to the appropriate Board of Governors' committee or division director and Federal Reserve Bank of Philadelphia or Board of Governors' staff. The Ombuds 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.

C. Retaliation Claims by Supervised Persons

The Board of Governors does not tolerate retaliation by Federal Reserve Bank of Philadelphia staff against a supervised institution or its employees (supervised persons). Retaliation is defined as any action or decision by Federal Reserve Bank of Philadelphia or Board of Governors' staff that causes a supervised person to be treated differently or more harshly than other similarly situated persons because the supervised person attempted to resolve a complaint by filing an appeal of a material supervisory determination or utilized any other Board of Governors' 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 Ombuds is authorized to receive, review, and determine the merits of complaints of retaliatory conduct by Federal Reserve Bank of Philadelphia or Board of Governors' staff. The Ombuds may attempt to resolve retaliation claims informally by engaging in discussions with the concerned supervised person and the appropriate Board of Governors or Federal Reserve Bank of Philadelphia's staff. If a complaint cannot be resolved informally, the Ombuds may initiate a full investigation into the underlying facts and circumstances.

To commence a factual investigation of a complaint of retaliatory conduct, the Ombuds should provide written notice to the appropriate Board of Governors' committee and

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division director and the appropriate Federal Reserve Bank of Philadelphia's officer in charge of supervision. As part of the investigation, the Ombuds may, among other things, collect and review documents, interview witnesses, and seek any other relevant information. The Ombuds may also consult Board of Governors and Federal Reserve Bank of Philadelphia's staff with subject matter expertise. Where necessary, the appropriate Board of Governors' committee or division director may authorize or assign such additional resources as may be needed to assist the Ombuds in fully reviewing the matter.

Upon completion of the factual investigation of a complaint of retaliatory conduct, the Ombuds will decide whether a member of the Federal Reserve Bank of Philadelphia retaliated, as defined above. The Ombuds will report this determination to the appropriate Federal Reserve Bank of Philadelphia's 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 Ombuds 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 staff should be excluded. However, the Ombuds shall not make recommendations regarding disciplinary action against a Federal Reserve Bank of Philadelphia staff member. The appropriate staff will consider further action consistent with the Board of Governors and Federal Reserve Bank of Philadelphia's policies and procedures. The Ombuds' 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 Ombuds will contact a supervised institution within six (6) months after an appeal has been decided to inquire whether the institution believes retaliation occurred. Where possible, the Ombuds will also contact the institution after the next examination following an appeal. In the event an institution complains of retaliation, the Ombuds will initiate the process outlined above to informally review the matter or initiate a factual investigation.

D. Consumer Complaints and Appeals

Independent of the Ombuds 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 Ombuds receives a consumer complaint directly, the Ombuds will refer the complaint to 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 the Federal Reserve Bank of Philadelphia is treated as an appeal. Consumers should

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be advised that they can file an appeal through FRCH or with the Ombuds if the consumer requests confidential treatment of the appeal or prefers that the Ombuds handle the appeal.

When an appeal is received by the Ombuds, he or she will consult with DCCA to determine who will handle the appeal, unless the consumer has requested confidential treatment or that the Ombuds 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 Ombuds, DCCA will consult with the Ombuds 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 Ombuds.

The Ombuds 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 Ombuds handle the initial appeal. The Ombuds may handle other appeals, as determined in collaboration with DCCA. The Ombuds 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 Ombuds handle the appeal, the Ombuds will typically consult with DCCA during the investigation. For appeals where the consumer requests confidential treatment, the Ombuds typically will not consult with DCCA during the investigation.

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

E. 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 Bank of Philadelphia's supervisory activities.

To the extent possible, the Ombuds 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 Ombuds to resolve certain complaints, including complaints of retaliation, if the Ombuds cannot disclose the identity of the complaining party to other members of Federal Reserve Bank of Philadelphia staff.

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F. Procedures

A party may contact the Ombuds at any time regarding concerns or issues resulting from the regulatory activities of the Board of Governors or the Federal Reserve Bank of Philadelphia.

Telephone: 1-800-337-0429

Fax: 1-202-530-6208

Email: ombuds@frb.gov

Mail: Office of the Ombuds
Federal Reserve Board
20th & C Streets, NW, Mail Stop 28
Washington, D.C. 20551

XII. Modifications and Annual Review

A. Modifications

This Policy may be modified by the president of the Federal Reserve Bank of Philadelphia or his/her designee.

B. Annual Review

This Policy shall be reviewed annually by the president of the Federal Reserve Bank of Philadelphia or his/her designee, and the appropriate Federal Reserve Bank of Philadelphia official.