



March 11, 2016

TO: Fred W. Gibson
Acting Inspector General

FROM: Martin J. Gruenberg /S/
Chairman

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Thomas J. Curry /S/
Director (Comptroller of the Currency)

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Director (Director of the Consumer Finance Protection Bureau)

SUBJECT: Response to Office of Inspector General Report No. OIG-16-001

Thank you for the opportunity to review and respond to the final Report of Inquiry (Final Report) into *The FDIC's Supervisory Approach to Refund Anticipation Loans and the Involvement of FDIC Leadership and Personnel*, prepared by the FDIC's Office of Inspector General (OIG). While the FDIC's response to the Draft Report of Inquiry on February 17, 2016, addressed the factual record, this response addresses the matters raised by the OIG for consideration.

FDIC Board Review of Policy Matters Raised in the Final Report

The OIG requested that FDIC consider the issues contained in the Final Report and apprise the OIG of any actions FDIC will take as a result. In response, the FDIC Board of Directors (FDIC Board or Board) will undertake a review of the key issues raised in the Final Report for consideration. As a starting point, the FDIC Board reiterates its commitment to the Mission, Vision, and Corporate Values of the FDIC. Additionally, the FDIC Board commits to review and consider the following matters:

- the clarity and sufficiency of parameters applied to the use of moral suasion, or its equivalents;
- the adequacy of existing vehicles for examiners and other employees to report what they believe to be inappropriate actions or direction;
- the effectiveness and timeliness of avenues of redress available to banks that believe supervisory powers are not used appropriately; and
- the governance and procedures of the Board and its committees.

Interim Actions in Response to the Final Report

In addition to this Board-level review, the FDIC has identified a number of interim actions that may be taken now to be responsive to the OIG's concerns and further strengthen the FDIC's supervision programs.

Issuance of Internal Guidance Regarding Communication with Bankers

To further reinforce expectations that communication with bankers be clear and balanced, the Division of Risk Management Supervision (RMS) will issue a Regional Director Memorandum (RD Memo) *Best Practices: Communication and Coordination with Bank Management in Carrying Out Forward-Looking, Risk-Based Supervision*. The RD Memo will:

- set forth communication expectations and best practices for each stage of the supervisory cycle: pre-examination planning, on-site examination activity, post-examination report review, and the period between examinations;
- reinforce the importance of communicating matters involving policy or recommendations in writing on FDIC letterhead or through a report of examination and documenting all such communications in FDIC records; and
- provide expanded instructions for report of examination content and style, the focus of which will be that fact-based, diplomatic and objective language is ordinarily more effective than criticism in achieving corrective action or adoption of recommended improvements.

Enhancement of Appeals Processes

The FDIC agrees that banks should have meaningful avenues of redress if they believe supervisory powers are not used appropriately, including when the appeals process is not available. The Supervision Appeals Review Committee (SARC) guidelines were amended in 2008, after notice and comment, to modify the supervisory determinations eligible for appeal and align the FDIC's appeal procedures with those of the other federal banking agencies. Prior to 2008, the FDIC was the only federal banking agency that expressly allowed review of determinations that underlie formal enforcement actions, which are subject to a separate due process.

The FDIC Board will review and reconsider the changes made in 2008 to the SARC eligibility requirements as part of the Board-level review of the clarity and appropriateness of the roles and responsibilities of existing Board committees and the effectiveness and timeliness of avenues of redress available to banks that believe supervisory powers are not used appropriately. Additionally, RMS and the Division of Depositor and Consumer Protection (DCP) will develop a process for the review of appeals that are received but are deemed ineligible for the formal review process to ensure that any matters in the appeal that require FDIC management's attention, including employee behavior, are addressed. The process will require that such reviews be completed in a timely manner, similar to that afforded those appeals eligible for the formal process.

Issuance of External Guidance Regarding Expectations for Communication and Handling of Disagreements

RMS and DCP will update and reissue Financial Institution Letter (FIL) 13-2011, *Reminder on FDIC Examination Findings*. This FIL:

- reinforces FDIC's expectations for communications between FDIC and bankers;
- encourages banks to provide feedback on supervisory programs and to seek clarity on FDIC findings and recommendations as necessary;
- encourages institutions with concerns about examination findings to discuss those concerns with the examiner-in-charge or to contact field office or regional office personnel;
- provides an avenue for institutions to appeal examination findings through a formal appeals process; and
- provides a confidential, neutral and independent sounding board through the FDIC Office of the Ombudsman.

Issuance of Industry Guidance on Lending Through Third Parties

In response to the findings of the Final Report and prior OIG audits, the FDIC has begun developing guidance to address the risks associated with banks making loans through third parties as well as risk management practices that would be expected of banks engaging in these activities to mitigate the risks. This new guidance will supplement and expand on the guidance contained in FIL-44-2008, *Guidance for Managing Third-Party Risk*, and will specifically address the risks associated with banks making loans through rent-a-charter relationships, agent relationships, and other third-party relationships. FDIC staff will present the guidance to the FDIC's Board of Directors for consideration. As new products and delivery channels emerge, the FDIC commits to fully consider whether the issuance of specific regulatory guidance is warranted.

Independent Review

The FDIC has hired outside counsel to conduct an independent review of the Final Report and supporting materials to advise whether there is a basis for personnel action or changes to personnel policies.

Next Steps

We appreciate the opportunity to provide a response to the Final Report. The FDIC will provide a status update of the efforts outlined above by June 30, 2016.