Federal Deposit Insurance Corporation
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Legal Division

MEMORANDUM TO: The Board of Directors

March 8, 2018

FROM: Charles Yi
General Counsel

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Director, Division of Risk Management Supervision

Mark Pearce
Director, Division of Depositor and Consumer Protection

SUBJECT: Adoption of FBA Policy Statement on Enforcement Action Information Sharing

PROPOSAL

Staff recommends that the Board of Directors approve, for publication in the *Federal Register*, an interagency policy statement among the federal banking regulators (FBAs) concerning the sharing of information related to formal enforcement actions of interest to more than one of the FBAs. This interagency policy statement would encourage notification to one or both of the other FBAs at the earliest practicable date and promote coordination among the FBAs as appropriate. This new policy would also encourage coordination between FBAs and state bank regulatory authorities without affecting state-specific Memorandums of Understanding (MOUs). This proposed, new FBA policy statement will only go into effect concurrent with the rescission of the current 1997 interagency policy statement discussed further below.

BACKGROUND

In 1997, the Task Force on Supervision (TFOS), acting under delegated authority from the Federal Financial Institutions Examination Council (FFIEC), revised its original 1979 policy statement concerning information sharing between the FBAs regarding enforcement actions. That 1997 version, the *Interagency Coordination of Formal Corrective Action by the Federal Bank Regulatory Agencies*,[1] is currently outstanding.

On June 11, 2014, the Offices of the Inspectors General (OIG) for the Federal Deposit Insurance Corporation ("FDIC"), Board of Governors of the Federal Reserve System ("FRB"), and Department of the Treasury issued a report entitled "*Enforcement Actions and Professional Liability Claims Against Institution-Affiliated Parties and Individuals Associated with Failed Institutions*" (the Report). Included in the Report's seven recommendations was the recommendation that the Office of the Comptroller of the Currency (OCC), the FDIC, and the FRB revisit that policy statement which was last revised in 1997. That policy statement was

[1] 62 Fed. Reg. 7792 (1997).

applied to the FBAs and the Office of Thrift Supervision. The OIG concluded that the "Regulators may benefit from revisiting the policy statement to determine the best ways to address its requirements and differences that have arisen over time in agency notification practices."[2] In the FBAs' response to the Report, the OCC stated that it would "coordinate with representatives from the FDIC and FRB by March 31, 2015, to determine whether to increase the level of coordination or communication consistent with the policy statement or to revise the policy statement as appropriate."[3] The FRB said it "plans[s] to review the interagency policy statement, in coordination with the other Federal banking agencies, and consider ways to ensure an appropriate and effective level of communication between the Federal banking agencies as the report recommends."[4] The FDIC responded that it "will work with other federal banking regulators to either revise or rescind *Federal Register* policy statement 62 Fed. Reg. 7782 (1997) . . . ."[5]

The current FFIEC policy statement requires the FBAs to notify each other in writing prior to initiating enforcement action. As communication among the FBAs has evolved since the policy statement was last revised in 1997, the FBAs do not consistently provide each other with written notification prior to initiating enforcement action. Per the OIG's recommendation, the FBAs, as the impacted parties, reviewed the policy statement and determined that a new FBA-only policy statement from just the banking agencies should replace the now-outdated 1997 version. To that end, staffs at the FBAs have collectively drafted a proposed new FBA policy statement, which is attached to this memorandum.

On September 6, 2016, staff of the FBAs briefed TFOS on the FBA staff's proposed course of action for the rescinding of the 1997 FFIEC policy statement and concurrent, replacement issuance of this new FBA-only policy statement. TFOS concurred with the FBA staffs' proposal and related timeline. Because the new FBA policy statement and outdated 1997 version are conflicting, the FDIC Board's approval sought in this memorandum will be conditioned upon TFOS' rescission of the outdated 1997 version and will only take effect concurrently with the effective date of that TFOS rescission of its 1997 policy statement. If the FDIC Board and the other FBA principals approve, the FBAs will recommend that the outdated 1997 version be formally rescinded during a TFOS meeting later in 2018.

POLICY STATEMENT

The purpose of this new FBA statement is to encourage notification to other interested FBAs at the earliest practicable date and to promote coordination among FBAs related to formal enforcement actions as appropriate.

When an FBA determines it will take a formal enforcement action against any insured depository institution (IDI) or institution affiliated party (IAP), it will evaluate whether the enforcement

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[2] OIG, *Enforcement Actions and Professional Liability Claims Against Institution-Affiliated Parties and Individuals Associated with Failed Institutions*, 2014-SR-B-011 at 26 (2014).
[3] *Id. Regulators' Responses*, app. 4, 61–62, at 62 (July 16, 2014).
[4] *Id. Regulators' Responses*, app. 4, 59–60, at 59 (July 1, 2014).
[5] *Id. Regulators' Responses*, app. 4, 55–58, at 56 (June 27, 2014).

action implicates the interest of another FBA. Examples of the interests of another FBA may include unsafe or unsound practices or significant violations of law by an IDI, IAP, non-bank affiliate, or holding company that may have connections (such as common ownership or change in employment) with an institution regulated by another FBA.

The FDIC (and FRB) will continue, as is current procedure, to coordinate with state bank regulatory authorities when considering enforcement action; this coordination is consistent with existing MOUs with each state regulatory authority.

This new policy statement also does not affect coordination with the Consumer Financial Protection Bureau because that coordination is governed by a separate MOU.

Staff at the OCC and FRB are circulating the same policy statement draft to Principals at their respective agencies for final action.

RECOMMENDATION

Staff recommends that the FDIC Board of Directors adopt the new FBA policy statement and recommend that the outdated 1997 policy statement be formally rescinded at a TFOS meeting later in 2018.

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