FDIC
FEDERAL DEPOSIT INSURANCE CORPORATION

NEWS RELEASE

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FDIC ISSUES GUIDELINES FOR BANK DIRECTORS, OFFICERS

The Federal Deposit Insurance Corporation today issued a statement intended to clarify the duties of bank directors and officers and to outline the factors the FDIC considers before filing a personal liability lawsuit after a bank fails.

The FDIC said it will not bring civil suits against those who fulfill their responsibilities "and who make reasonable business judgments on a fully informed basis and after proper deliberation." Lawsuits only follow "detailed investigations" by the FDIC, are approved by the agency's Board of Directors, and "are not brought lightly or in haste."

The guidance was issued by the FDIC in response to concerns from bankers and others that existing standards are unclear and that it is increasingly difficult for institutions to attract and retain qualified directors and officers because of fears of personal liability.

The FDIC's statement recognizes the importance of having knowledgeable and responsible bank directors and officers, especially when an insured institution becomes troubled. However, the statement also stresses that directors and officers have numerous responsibilities, including "duties of loyalty and care," that the FDIC expects will be carried out.

The duty of loyalty involves administering the affairs of the bank "with candor, personal honesty and integrity," and generally means the individual or an associate is prohibited from benefiting at the expense of the bank.

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The duty of care requires the individual to act as a "prudent and diligent" business person, which includes "making business decisions on the basis of fully informed and meaningful deliberation." The statement notes that "directors must require and management must provide the directors with timely and ample information to discharge board responsibilities."

Alfred J.T. Byrne, the FDIC's General Counsel, said today: "The vast majority of bank officers and directors know their duties and responsibilities. Most take them seriously and fulfill them. The FDIC wishes to encourage them and others like them to serve in the banking industry because responsible directors and officers are among the first lines of defense for our insurance fund. However, the FDIC also takes seriously our duties and responsibilities to the insurance fund and to the American taxpayer. We hope the guidelines announced today will help directors and officers understand what the FDIC expects, why we expect it, and why we sometimes file lawsuits to recover losses to the insurance fund."

The new statement represents a clarification of FDIC policies and procedures. It notes that FDIC lawsuits are authorized only if a breach of duty is uncovered. The guidelines also comment on the differences in the way the FDIC analyzes claims against inside directors versus those against outside directors, and recognizes that outside directors generally do not participate in the day-to-day business operations of the bank. The most common suits brought against outside directors involve "insider abuse" (such as preferential loans or contracts) and the failure to implement corrective measures after being warned of problems at the bank.

The statement on director and officer responsibilities is attached.

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