

## Corporate & Financial Weekly Digest

March 23, 2012 by [Jeffrey M. Werthan](#)

### **FDIC Threatens Bank Directors Who Copy Bank Records For Defense Purposes and "Reminds" Bank Counsel of Their Fiduciary Duty**

On March 19, the Federal Deposit Insurance Corporation (FDIC) issued Financial Institution Letter - 14 -2012, which among other things threatens directors and officers with enforcement action if they copy and remove financial institution and supervisory records "in anticipation of an institution's failure." The FDIC also stated that "copying and removing financial institution and supervisory records in anticipation of an institution's failure violates applicable federal statutes and FDIC regulations" and that "counsel representing an insured depository institution are reminded that their fiduciary duty, both legally and ethically, compels them to advance only the interests of the institution."

"This is a reminder to directors and officers that this activity is a breach of their fiduciary duty to the institution and an unsafe and unsound banking practice, which may also violate applicable laws and regulations and contravene the financial institution's information security program. Attorneys who represent an insured depository institution are also reminded that their fiduciary duty, both legally and ethically, obligates them to act in the best interests of the institution."

"Financial institution counsel who advise copying and removal of records contrary to the interests of the financial institution may be engaging in violations of law, codes of professional conduct, as well as breaches of fiduciary duty. The FDIC will investigate any matter that appears to violate confidentiality and pursue enforcement actions, as appropriate."

The action has been criticized by the American Association of Bank Directors, which believes that access to such records is a "fundamental right" and that the FDIC should have sought to pass a rule - not guidance - subject to notice and comment from the public pursuant to the Administrative Procedures Act.

For more information, click [here](#).