

TB 68 was rescinded 6/10/04 by 68a. Click [HERE](#) to link to TB 68a.

Handbook: Thrift Activities  
Subject: Examination Strategy, Management, and Scoping  
Oversight by the Board of Directors

Sections: 060, 310  
TB 68

July 15, 1996

## Supervisory Review, Appeal and Reconsideration Process and Ombudsman Matters

**RESCINDED**

*Summary:* This bulletin provides a process for the review and appeal of OTS supervisory decisions and examination findings; reconsideration of OTS application decisions; and utilization of the OTS Ombudsman. Regulatory Bulletin 4a, dated September 20, 1993, is rescinded.

*For Further Information Contact:* Director, Regional Operations (202) 906-5669 regarding the OTS supervisory review and appeals process; Program Manager, Corporate Activities (202) 906-6739 regarding application reconsiderations; and Ombudsman (202) 906-5685 regarding complaints, concerns or problems in dealing with the OTS.

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The OTS recognizes that its decisions have a significant effect on OTS regulated savings associations and that certain OTS supervisory decisions and examination findings may be challenged. Because it is the OTS's objective to ensure OTS decisions and findings are fair, equitable and consistent, the OTS has developed a process for the review, appeal and reconsideration of disputed OTS decisions and findings. Filings and submissions made pursuant to this Bulletin are not subject to 12 CFR Part 516.

The OTS supervisory review and appeals process is provided in Section I of this Bulletin. The reconsideration of application decisions process is provided in Section II of this Bulletin. Section III provides for the utilization of the OTS Ombudsman in dealing with the OTS in any matter, regardless of whether the matter relates to the OTS supervisory review and appeals process or the application reconsideration process.

### **I. Appeal of OTS Supervisory Decisions and Examination Findings, Including "Material Supervisory Determinations"**

#### **Background**

Section 309(b) of the Community Development and Regulatory Improvement Act of 1994 (CDRIA) requires that the OTS (and the other Federal banking agencies) establish an intra-agency appellate process for the review of "material supervisory determinations" made by agency officials. Decisions and findings made during the examination process by the OTS staff may affect savings associations directly and immediately. From time to time, savings associations may disagree with supervisory decisions or with examination findings upon which those decisions are based. The OTS previously followed guidelines set forth in Regulatory Bulletin 4a (RB 4a), dated September 20, 1993, for its supervisory review process which was applicable to all supervisory decisions and examination findings. This section of this Bulletin incorporates, with certain modification, the guidelines set forth in RB 4a and establishes the guidelines that govern the OTS supervisory review and appeals process for all OTS supervisory decisions and examination findings, including all "material supervisory determinations" as defined in Section 309 of the CDRIA (these terms

shall be collectively referred to as "supervisory determinations"). RB 4a is hereby rescinded and replaced by this Thrift Bulletin 68 (TB 68).

The OTS encourages the resolution of supervisory disputes through informal communications between savings associations and the OTS regional supervisory and examination staff. If disputes cannot be resolved successfully at the regional level, however, savings associations may appeal and seek independent review by the Executive Director, Supervision, in Washington, D.C. pursuant to the procedures specified below. Other parties affected by an OTS supervisory determination may also seek review under these guidelines.

#### **Scope of the OTS Supervisory Review and Appeals Process**

Matters that may be reviewed or appealed are all OTS supervisory decisions and examination findings, including "material supervisory determinations" such as:

- examination ratings;
- the adequacy of loan loss reserve provisions; and
- classifications of loans that are significant to the savings association.

Matters that may not be reviewed or appealed include:

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- decision to appoint a conservator or receiver;
- preliminary examination findings and conclusions prior to issuance of a final report of examination;
- any decision relating to formal enforcement-related action, such as a decision to initiate a formal investigation, to file a notice of charges, or to assess civil money penalties; or
- any decision to take action pursuant to the Prompt Corrective Action provisions that appear at Section 38 of the Federal Deposit Insurance Act, 12 U.S.C. Section 1831o.

Matters that are subject to a special review or appeals process, such as modification of the interest rate risk component discussed in Thrift Bulletin 67, dated August 21, 1995, are not immediately appealable through the OTS supervisory review and appeals process. However, if the special review or appeals process results in a supervisory determination that is adverse to the savings association and an additional appeal would further OTS's mandate under Section 309 of the CDRIA, the savings association may seek OTS supervisory review and appeal of the determination under these guidelines.

## Supervisory Review at the Regional Level

### A. During the On-Site Examination

If a disagreement arises during an on-site examination, the matter should be raised directly with the examiner-in-charge (EIC) while the EIC is at the savings association. If issues remain unresolved, the savings association should request that the EIC's supervisor (e.g., Field Manager or Assistant Regional Director) be included in the discussions. Disagreements will be briefly

noted in the final report of examination.

### B. With the Regional Office

Savings associations are encouraged to raise with the appropriate OTS Regional Office disagreements with examination findings during the examination or disagreements with supervisory decisions at any time. A final supervisory determination in dispute may be raised either orally or in writing to the Assistant Regional Director, Deputy Regional Director, or Regional Director or his designee, who was not directly involved in the determination being reviewed. If the savings association elects to state the issue or problem in writing, the written request for review should describe the issue or problem, specify the related facts, and be signed by the Chief Executive Officer. The Regional Office will act within 30 calendar days of receipt of the request for a supervisory review, unless the Regional Director responds to the savings association, in writing, stating the reason why a decision will take longer than 30 calendar days and specifying the expected date for a decision.

## Supervisory Appeal to the Executive Director, Supervision

### A. The Savings Association's Appeal Submission

If the above-described discussions or supervisory review do not result in satisfactory resolution of the disagreement or if the savings association elects to use the supervisory appeals process without first obtaining regional supervisory review, an appeal may be filed with the Executive Director, Supervision. The following procedures apply to supervisory appeals:

- The board of directors of the savings association must authorize the supervisory appeal by

resolution and forward one copy of such resolution to the Executive Director, Supervision with the appeal. A supervisory appeal by an individual or affiliate does not require an authorization from the savings association's board of directors.

- The savings association will have 60 calendar days from notification of a supervisory determination (or, in the event a request for regional supervisory review has been made, from the date of the Regional Office's decision) to file a supervisory appeal with the Executive Director, Supervision.<sup>1</sup> Requests for a supervisory appeal should be directed to: Executive Director, Supervision, Office of Thrift Supervision, 1700 G Street, NW, Washington, D.C. 20552.
- The supervisory appeal should contain:
  - A concise statement, no longer than five pages, of the dispute and why it is material. For example, identify the precise loans(s), property, appraisal, etc.
  - The remedy being sought and its financial effect.
  - A statement of whether the savings association has attempted to resolve the dispute at the regional level.
  - A description of any applicable statutes, regulations, policies, or procedures on which the savings association relies.

<sup>1</sup> The OTS will grant to a savings association a suspension from the requirement to publicly disclose the savings association's Community Reinvestment Act (CRA) Performance Evaluation in its public file within 30 calendar days after its receipt from the OTS; provided, however, that the savings association submits a supervisory appeal pertaining to its CRA rating within the 30 calendar day period.

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- Confirmation as to whether the savings association has, in the interim, complied with the supervisory determination being appealed. If the savings association has not complied with the supervisory determination, the supervisory appeal must include a request for a suspension of the supervisory determination.
  - Copies of any relevant excerpts from supervisory documents, reports and correspondence with the region about the supervisory determination. (These copies do not count toward the five page limit.)
  - The name, address and telephone number of an individual at the savings association designated to provide additional information.
- No fee is required for submission of the supervisory appeal. Savings associations are encouraged to minimize costs by internally preparing the supervisory appeal rather than using outside attorneys, accountants or consultants. If warranted by the circumstances and agreed to by the savings association, the OTS may use outside experts to evaluate issues. In such circumstances, the savings association shall pay the costs of such experts.
- B. Review by the Executive Director, Supervision**
- The OTS will acknowledge receipt of a supervisory appeal within five calendar days of receipt.
  - Within 15 calendar days of receipt, the OTS will make a request for any additional information necessary to complete the decision on the supervisory appeal.

- The savings association shall furnish additional information within 15 calendar days of receipt of the OTS's request, unless the time is extended by the Executive Director, Supervision, or his designee.
- Absent unusual circumstances, the OTS will provide its decision on the supervisory appeal within 60 calendar days of receipt of the filing of the supervisory appeal or, if additional information is requested, within 60 calendar days of receipt of any additional information.
- Any of the above timeframes may be extended by the Executive Director, Supervision, or his designee. Any extensions granted will be in writing, and will include the reason for the extension, and the expected date that a decision will be made.

## Effect of Initiating a Supervisory Review or Appeal

An OTS supervisory review or appeal will not suspend or delay the pursuit of any enforcement action or formal investigation. An OTS supervisory review or appeal will not stay the obligation of a savings association or an institution-affiliated party to comply with any order or other determination resulting from an enforcement action. An OTS supervisory review or appeal will not operate automatically to relieve a savings association or other party of the obligation to comply with the supervisory determination under review. Upon the request of the savings association or other party filed simultaneously with its supervisory appeal, the Executive Director, Supervision, may relieve the savings association or other party of the obligation to comply while the supervisory appeal is pending in Washington, D.C. The appropriate regional official may grant similar relief while a supervisory review is pend-

ing at the regional level. The OTS retains the right to take any action and to apply any standards deemed appropriate to ensure the safety and soundness of a savings association.

## Prohibition on Retaliation

The OTS prohibits any employee, including members of its examination and supervision staff, from acts of retaliation against a savings association or other party that seeks review or appeal of a supervisory determination. See Section III of this Bulletin.

## II. Reconsideration of Application Decisions

A request to reconsider a decision made on an application or notice (collectively referred to as an "application") may be made when, in the applicant's judgment, the OTS's decision on an application or its decision to impose non-standard conditions of approval is inconsistent with existing OTS regulations, policies, procedures or the facts presented in the application. In all cases, before filing a request to reconsider a decision made on an application, applicants are encouraged to discuss with the decision-making office (e.g., Regional or Washington, D.C.) any concerns regarding the OTS decision on the application.

Requests for reconsideration of application decisions or non-standard conditions of approval should be filed in the following manner:

- Applicants requesting a reconsideration of an application should file an original request with the OTS Applications Filing Room, and conformed copies with the Corporate Activities Division and Business Transactions Division, 1700 G Street, N.W., Washington, D.C. 20552

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within 30 calendar days of the OTS action on the application.

- The request should contain:
  - The type of application on which review is sought.
  - A statement of whether the applicant is submitting a request for reconsideration of an OTS application decision or the imposition of non-standard conditions of approval.
  - A concise statement of the reasons why the applicant disagrees with the OTS application decision or non-standard conditions of approval.
  - A description of any applicable statutes, regulations, policies or procedures on which the applicant relies.
  - Confirmation as to whether the applicant has, in the interim, complied with the terms of the application decision or non-standard conditions of approval.
  - Copies of any supporting documents.
  - The name, address and telephone number of an individual designated to provide additional information.
- No fees will be charged for a request for reconsideration.
- The Director, or his designee(s) will make every effort to take action upon a request for reconsideration within 60 calendar days of the receipt of a request, or if additional information is requested, within 60 calendar days of receipt of any additional information.

## Effects of Filing a Request for Reconsideration

The procedures described in this

section of the Bulletin regarding the reconsideration of application decisions do not supersede any statutory provisions for judicial or administrative review of agency decisions concerning applications. An applicant's election to use the procedures in this section of this Bulletin will not toll or suspend the running of any statutorily-prescribed period for seeking judicial review. In addition, when a statute requires the OTS to make a decision on an application within a specific period of time, the OTS will deem the original decision, and not the decision rendered in response to a request for reconsideration, to determine compliance with such a requirement.

## Prohibition on Retaliation

The OTS prohibits any employee, including members of its examination and supervisory staff, from acts of retaliation against an applicant that files for the reconsideration of an application. See Section III of this Bulletin.

## III. Ombudsman Matters

Section 309(d) of the CDRIA requires that each Federal banking agency appoint an Ombudsman. Section 309 provides that the Ombudsman is to:

- (1) 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) assure that safeguards exist to encourage complainants to come forward and preserve confidentiality.

Section 309(b)(2) of the CDRIA provides that each Federal banking agency shall ensure that appropriate safeguards exist for protecting any party who appeals a "material

supervisory determination" from retaliation by agency examiners.

## Responsibilities of the Ombudsman.

The OTS believes that the proper role of the Ombudsman under Section 309 is to act as a facilitator and mediator for the resolution of complaints. The Ombudsman will ensure that complaints about OTS regulatory actions are addressed in a fair and timely manner.

The Ombudsman's major function is to provide assistance as a liaison with the thrift industry and the public on issues, concerns or problems that they may have in dealing with the OTS. The OTS Ombudsman reports directly to the Director.

Handling of Complaints. When a problem is brought to the attention of the Ombudsman for which there is an existing avenue of appeal on the merits or another appropriate forum for resolution, the Ombudsman will explain the process or forum for resolution, and direct the party to the appropriate appeals process or forum for the dispute. The OTS's regulations provide existing mechanisms for resolutions of disputes in many instances, such as: prompt corrective action directives under Section 38 of the Federal Deposit Insurance Act; denials or partial denials of Freedom of Information or Privacy Act requests; issuance of capital directives; and supervisory decisions and examination findings; application decisions; and matters within the jurisdiction of the Department of the Treasury's Inspector General or Federal or State investigatory or prosecutorial authorities.

Where an established appeals process or forum may not be available to resolve a dispute or if a party has a complaint with regard to the process, the Ombudsman will meet with the appropriate OTS official, or arrange a meeting between the complainant and the appropriate OTS

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official and attempt to resolve the problem. If the Ombudsman believes a problem or complaint has not been satisfactorily addressed, the Ombudsman may raise the matter with a higher level official and/or the Director for resolution.

Safeguards. Section 309(d)(2)(B) of the CDRIA requires that the Ombudsman ensure that safeguards exist to encourage complainants to come forward and preserve confidentiality. In the OTS's view, the OTS's existing avenues for appeal or complaints, the Ombudsman's authority to compel meetings with appropriate OTS officials at all levels in Washington, D.C. and the regions, as well as the authority of the Ombudsman to review complaints of retaliation, should encourage complainants to come forward.

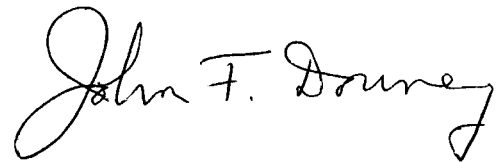
All information and materials utilized in the Ombudsman's review of

a complaint shall be used only for purposes of the review and not disclosed outside of the Ombudsman's office, except to appropriate reviewing officials or with appropriate authorization. The Ombudsman will honor requests to keep confidential the identity of a complaining party. It must be recognized, however, that the resolution of certain complaints (such as complaints of retaliation against an individual institution) may not be possible should the identity of the complainant remain confidential. In such cases, the Ombudsman will discuss the circumstances limiting confidentiality with the complaining party involved. The OTS believes these provisions should assist in preserving the confidentiality of complainants and the Ombudsman function.

Retaliation. The Ombudsman is authorized to receive complaints of

retaliation against a party as a result of utilizing the Ombudsman or any existing avenue of appeal or complaint forum. Upon receiving a complaint of retaliation, the Ombudsman will investigate the supervisory basis for the alleged retaliatory conduct. Upon completion of the review, the Ombudsman will report any findings of retaliation to the Director of OTS with a recommendation for remedial action to protect the complainant. A finding of retaliation will be referred to the Chief Counsel, for possible disciplinary action against the OTS employee who retaliated.

Procedures. A party may contact the Ombudsman at any time regarding a problem resulting from the regulatory activities of the OTS by calling (202) 906-5685 or writing to: Ombudsman, Office of Thrift Supervision, 1700 G Street, NW, Washington, D.C. 20552.



*John F. Downey*  
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