Office of Thrift Supervision

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

Sections: 060, 310
TB 68
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Summarysthis 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 Regulatory Bulletin 4a, dated September 20, 1993, is rescinded.

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 RB 4a is hereby rescinded and replaced by this Thrift Bulletin 68 (TB 68).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:
• decision to appoint a conserva-

tor 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 pur-
suant 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 Bul-
letin 67, dated August 21, 1995, are
not immediately appealable
through the OTS supervisory
review and appeals process. How-
ever, if the special review or appeals
process results in a supervisory
determination that is adverse to the
savings association and an addi-
tional 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 sav-
nings association should request that
the EIC’s supervisor (e.g., Field
Manager or Assistant Regional
Director) be included in the discuss-
sions. Disagreements will be briefly
noted in the final report of examina-
tion.

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 Execu-
tive Officer. The Regional Office
will act within 30 calendar days of
receipt of the request for a supervi-
sory 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 Execu-
tive 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 disa-
greement or if the savings associa-
tion elects to use the supervisory
appeals process without first obtain-
ing regional supervisory review, an
appeal may be filed with the Execu-
tive Director, Supervision. The fol-
lowing procedures apply to supervi-
sory appeals:

• The board of directors of the
savings association must author-
ize the supervisory appeal by

resolution and forward a 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 direc-
tors.

• 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 Direc-
tor, Supervision.1 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, iden-
tify 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 dis-
pute at the regional level.

— A description of any appli-
cable statutes, regulations,
policies, or procedures on
which the savings associa-
tion relies.

1 The OTS will grant to a savings association
a suspension from the requirement to pub-
licly disclose the savings associations’s Com-
munity Reinvestment Act (CRA) Perfor-
mance Evaluation in its public file within 30
calendar days after its receipt from the OTS;
provided, however, that the savings associa-
tion submits a supervisory appeal pertaining
to its CRA rating within the 30 calendar day
period.
— 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 pending 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 conform copies with the Corporate Activities Division and Business Transactions Division, 1700 G Street, N.W., Washington, D.C. 20552.
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
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.