



Comptroller of the Currency
Administrator of National Banks

2004 Report of the Ombudsman



10
years
& making a difference

MISSION AND OBJECTIVES

Mission Statement

The Office of the Ombudsman is organized around core principles of dispute resolution and customer service. The office seeks to ensure national banks and customers of national banks receive fair and expeditious resolution of their complaints through two distinct units within the office. The National Bank Appeals Process is designed to resolve disputes of national banks arising from the supervisory process, while the Customer Assistance Group's primary focus is to ensure customers of national banks receive fair treatment resolving their complaints with national banks.

Guiding principles in fulfilling these responsibilities include:

- Maintenance of a professional staff.
- An environment that disadvantages no one and embraces a sense of fairness.
- Independence and no retribution.
- Convenience and accessibility for constituents.
- Effective use of technology.
- Processes that incorporate the OCC's regulatory responsibility.
- Confidentiality.

Objectives

- Continue to support agency objectives and provide value to OCC's mission.
- Deliver quality customer service that serves all constituents' interests and contributes to the effective supervision of the national banking system.
- Gather and analyze data and distribute meaningful information to our constituents.
- Formalize processes that will enable the ombudsman's leadership team to guide the creation of strategies, systems, and methods for achieving excellence and building capabilities.
- Create a work environment conducive to performance excellence, full participation, and personal and organizational growth.
- Establish an effective work process infrastructure that leverages technology to carry out the ombudsman's mission.

Report of the Ombudsman



Office of the Comptroller of the Currency

Washington, D.C.

December 2004

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Part I: Overview

Message from the Ombudsman

The OCC was the first federal bank regulatory agency to establish an ombudsman's office. With an initial staff of three, our mission focused principally on administering OCC's National Bank Appeals process in a manner that provided bankers with an independent avenue to challenge agency decisions without fear of retribution. Since then, our mission — and the staff dedicated to its accomplishment — has expanded to include the processing of complaints from customers of national banks through the Customer Assistance Group, or CAG. Today, the Office of the Ombudsman serves both national banks and their customers, providing high quality professional services to a diverse constituent base.

The ombudsman's reputation for excellence is the product of its people — people with a commitment to public service and to each other. I thank them for their extraordinary efforts in the cause of a safe, sound, and well-supervised national banking system. Their loyalty to the ombudsman's office is deeply appreciated.

The theme of this year's report is "*making a difference*." As with previous *Reports of the Ombudsman*, this report includes appellate case summaries, results of the examination questionnaire, and snapshots of the assistance we provide through the Customer Assistance Group (CAG). We

offer this information to illustrate how we make a difference to the OCC's ongoing effort to enhance the effectiveness of its supervision of the national banking industry and the quality of service delivered to the public.

The OCC's ombudsman program is unique in one respect: the ombudsman has decision-making authority to resolve appeals and functions similar to a binding arbitrator. However, I continue to believe that the most effective method of resolving disputes is for the parties involved to work through their disagreements. In the appellate process, we often facilitate resolution by involving the appropriate decision-makers and technical experts or merely by remaining engaged with both parties as they work through the underlying issues.

I want to sincerely thank the bankers who generously give their time to provide us with constructive feedback via the Examination Questionnaire. These documents are reviewed and analyzed only by me and members of our team. They remain the principle vehicle for measuring the effectiveness of our supervisory process. A summary analysis of the questionnaires submitted over the past two-year period is included herein. In response



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to your suggestions, we Web-enabled the questionnaire during 2004, which makes it possible for you to complete and submit the questionnaire from your personal computer. I encourage you to use this new application and to provide us with other suggestions that would make submitting feedback easier for you.

Unquestionably, the greatest changes in our operation have occurred in our CAG operations. While customer contacts remained steady at more than 6,000 per month, the issues brought to CAG have become more technically and politically complex. We are addressing this challenge by increasing our staffing and through additional technology enhancements. One example is CAGNet, a Web-based extranet application designed to electronically transfer complaints between CAG and the banks. Users now have the capacity not only to maintain an aged inventory of their complaints, but also to extract meaningful management reports. In response to requests from OCC's supervisory staff, we have enhanced CAG Wizard. This is a Web-services application that provides our supervisory staff with the ability to view the complete complaints database and create customized reports. We have an array of other technology-based enhancements under development that will provide additional utility to each of our customers.

We believe that consumer complaints represent an opportunity — for both bankers and bank supervisors — to identify risks. We strongly encourage all banks to use complaint-based data to identify products or services when additional employee training, simpler marketing tools, or enhanced customer service is warranted. In

addition, CAG closely monitors consumer complaint trends to determine emerging areas of potential risks to the industry or to individual banking organizations. Complaint-based data and analyses have become an integral component of the OCC's bank supervision strategy.

To maintain our ability to respond in a timely way to industry and consumer queries, last year we continued to supplement our team with capable professionals. During 2004, we increased our team of customer assistance specialists by 11 percent. Qualified professionals, committed to excellence, delivering high quality customer service remain the key to our success.

On a personal level, for the past 11 years of my 30-year OCC career, I have enjoyed the special privilege of serving you as the OCC's only ombudsman. I do not take for granted the confidence placed in our team. We remain committed to a career of service to each of you. Please feel free to contact us if we can ever be of assistance to you.

Yours truly,



Samuel P. Golden

Ombudsman

Our People and What We Do

OMBUDSMAN

The ombudsman is responsible for administering and implementing the National Bank Appeals Process and provides leadership, guidance, and oversight to the overall operations of the Customer Assistance Group. The ombudsman reports directly to the Comptroller of the Currency and operates independently of the bank supervision unit.

DEPUTY OMBUDSMAN

The deputy ombudsman manages and directs the work of the CAG. Specifically, he has direct oversight of Complaint Operations, Analysis, E-Business/Customer Services, Quality Development, and Process Improvement areas. The deputy ombudsman is the primary liaison in advising national bank management of its complaint volumes and trends and how complaint-based data can be used to effectively manage transaction, reputation, and strategic risks. He also conducts a variety of outreach efforts to industry trade groups.

EXECUTIVE ASSISTANT

The executive assistant provides advice and counsel to the ombudsman and participates in all functions of the ombudsman's office. The executive assistant also serves as the primary liaison between the ombudsman and other employees as well as external contacts.

ASSISTANT OMBUDSMEN

The assistant ombudsmen work directly with the ombudsman in resolving national bank appeals. They provide input to appeal decisions through research and analysis of appeal issues. The assistant ombudsmen also prepare summaries of appeal decisions to identify the impact to the individual bank, the banking industry, and internal supervisory policies and procedures. Additionally, assistant ombudsmen may be the initial contact for questions regarding the appeal process.

ANALYST TO THE OMBUDSMAN

The analyst to the ombudsman is primarily responsible for the collection and analysis of data received through the examination questionnaire process. The analyst apprises the ombudsman and other OCC supervisory units of feedback from national banks regarding the overall effectiveness of our supervisory examinations, policies, and procedures.

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Our People and What We Do (continued)

CUSTOMER ASSISTANCE ANALYSTS

The customer assistance analysts are the primary liaisons with bank supervision in identifying risks derived from consumer complaints. The analysts are responsible for continually monitoring trends in consumer complaint activity by both product type and banking company, and provide timely reports and other information to the appropriate OCC departments.

COMPLAINT OPERATIONS MANAGERS

The complaint operations managers direct the performance and manage the workload of consumer complaints. The managers are primarily responsible to ensure the group meets customer service standards for both telephone and written consumer contacts.

CUSTOMER ASSISTANCE SPECIALISTS

The customer assistance specialists are the first point of contact for resolution of consumer complaints and inquiries. They respond to telephone contacts and written correspondence involving national banks and their operating subsidiaries, and provide information about federal banking laws and regulations.

QUALITY AND PROCESS IMPROVEMENT MANAGER

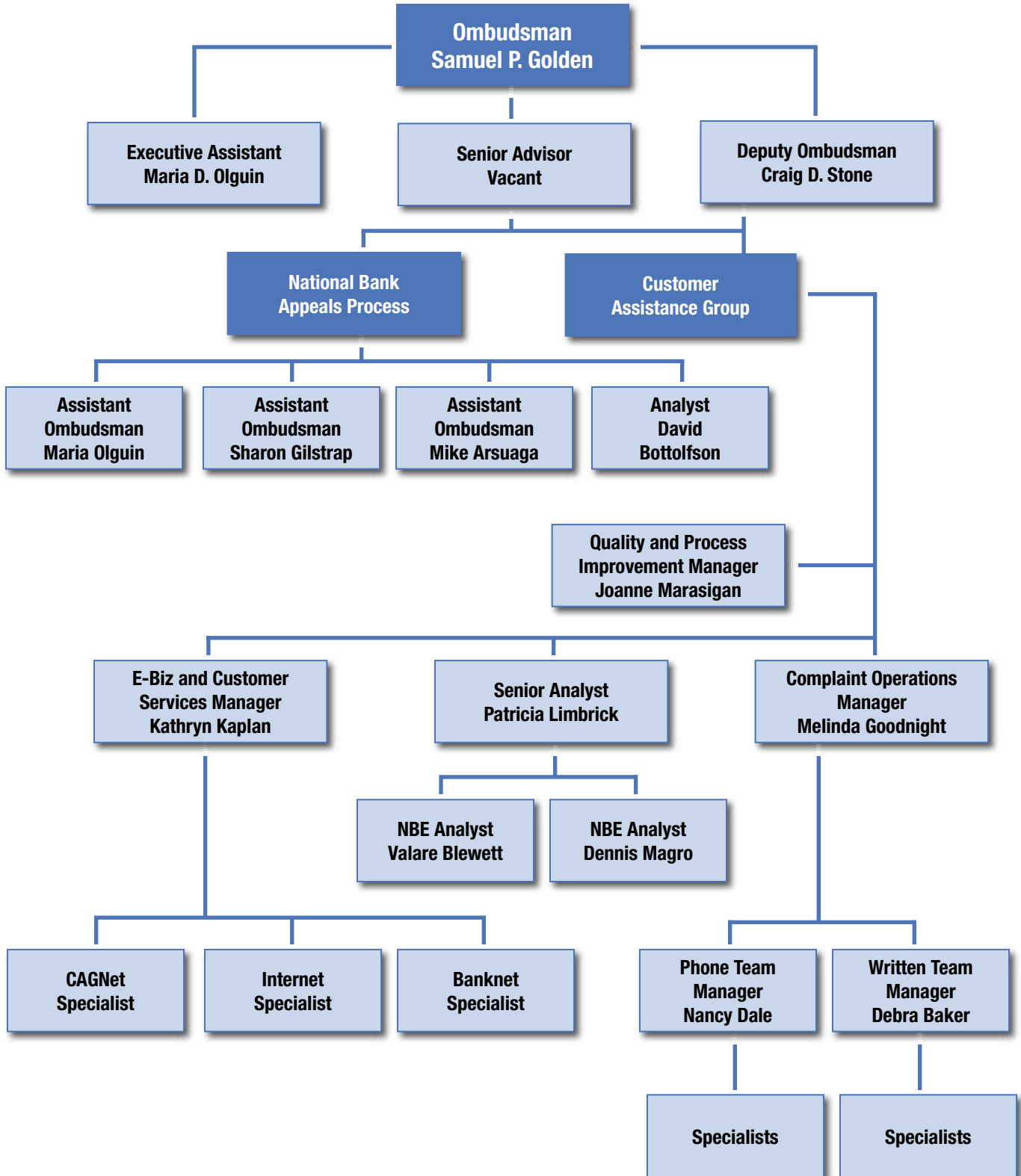
The quality and process improvement manager is responsible for developing and coordinating quality assurance programs to ensure the continuous improvement of the quality of service and information delivered to constituents. The quality manager is also responsible for maintaining the CAG Operations Manual and has input into all aspects of Complaint Operations.

E-BUSINESS AND CUSTOMER SERVICES

The E-Business and Customer Services team is primarily responsible for providing customer service and support for the OCC's National BankNet and the CAGNet application. This unit also is responsible for responding to consumer complaints and inquiries received via the e-mail.

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Office of the Ombudsman Organizational Chart



Part II: Appeals

The National Bank Appeals Process

Established in 1993, the Office of the Ombudsman is an independent, alternate avenue for the OCC and national banks to address disagreements arising from the supervisory process that cannot be resolved through informal discussion. The OCC encourages national banks to seek further review of OCC decisions or actions that are in dispute through the national bank appeals process. Other key facts about the process are:

- A national bank may file an appeal with either the ombudsman or its immediate

supervisory office. If a national bank files an appeal with its immediate supervisory office and disagrees with the decision rendered, it may further appeal the matter to the ombudsman.

- Bank management and directors may contact the ombudsman with questions or comments and be assured that all contact with the ombudsman is held in the strictest confidence.
- Absent any extenuating circumstances, the ombudsman's office will issue a written response to the appeal within 45 calendar days of its acceptance.

More detailed information about the national bank appeals process can be found on the next page or in OCC Bulletin 2002-9, "National Bank Appeals Process: Guidance for Bankers." The bulletin, revised and reissued February 25, 2002, describes the OCC's policy regarding its appeal process. See Appendix II in this report for a copy of this bulletin.



**THE OCC REMAINS
COMMITTED TO
MAKING EVERY
EFFORT TO RESOLVE
DISPUTES ARISING
DURING THE
SUPERVISORY
PROCESS, FAIRLY
AND EXPEDITIOUSLY,
IN AN AMICABLE,
INFORMAL MANNER.**

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How to File an Appeal

A bank should submit information in writing fully describing the matters in dispute. The appeal may be filed with either the ombudsman or the bank's immediate supervisory office. If the bank files the appeal with its immediate supervisory office and it disagrees with the decision rendered, it may further appeal the matter to the ombudsman.

The ombudsman has authority, with the prior consent of the Comptroller, to stay any appealable agency decision or action in the resolution of an appealable matter. Except as otherwise provided as follows, a national bank may seek review of *any* agency decision or action, including: (1) examination ratings; (2) adequacy of loan loss reserve provisions; and (3) classifications of loans that are significant to an institution. A national bank may not appeal to the ombudsman or its immediate OCC supervisory office:

- 1) Appointment of receivers and conservators.
- 2) Preliminary examination conclusions.
- 3) Any formal enforcement-related actions or decisions, including decisions to: (a) seek issuance of a formal agreement or cease-and-desist order, or the assessment of a civil money penalty; (b) take prompt corrective action; (c) issue a safety and soundness order; and (d) commence formal investigations.
- 4) Formal and informal rulemakings.

- 5) Decisions or recommended decision following formal and informal adjudications.
- 6) Freedom of Information Act (FOIA) requests.
- 7) Decisions made to disapprove directors and senior executive officers pursuant to section 914 of the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA).
- 8) Any other agency decisions that are subject to judicial review.

If you would like more information about the national bank appeals process, or would like to discuss an agency action, contact Samuel P. Golden at:

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Appeal Summaries

An appeal summary is prepared for each formal appeal received in the ombudsman's office. The summary gives the basic facts of the formal appeal without identifying the appealing institution. Each summary provides background, discussion, and conclusion(s) rendered. The following pages include appeal summaries for the past 24 months. Appeal summaries are also published in the OCC's *Quarterly Journal*.

Appeal of CRA Rating and Examination Conclusions

Background

A bank formally appealed its overall Community Reinvestment Act ("CRA") rating and the examination conclusions. At the most recent CRA examination, the bank's overall performance was downgraded from "outstanding" to "needs to improve." The bank asked the ombudsman to restore the "outstanding" rating and amend the conclusions of the CRA examination.

During the bank's most recent CRA examination, the lending test was rated "outstanding," the investment test was rated "outstanding," and the service test was rated "high satisfactory." However, the supervisory office concluded that the bank violated the Federal Trade Commission Act (the act) in connection with its marketing of subprime credit cards. According to the supervisory office, the marketing practices used by the bank to solicit consumers were misleading and deceptive as defined in the act and had a material adverse impact upon the cardholders. The bank was also cited for violations of the safety and soundness standards in its payday-lending program because it failed to identify the source of repayment and to assess the borrower's ability to repay the loan at each extension of credit.

In its appeal, the bank disagreed with the OCC's decision to downgrade the bank's CRA performance rating based on the aforementioned violations. The bank had discontinued the practices leading to the violations as well as eliminated the credit card programs prior to the start of the examination. The bank's appeal asserts that the supervisory office misinterpreted 12 CFR 25 in applying these violations to the CRA rating. The appeal also states that emphasis should be placed on the ratings assigned to the lending, investment, and service tests as they genuinely reflect the level of service to its local community.

Conclusion

The ombudsman agreed with the supervisory office regarding the egregiousness of the violations and that these violations were appropriately considered in determining the bank's overall CRA rating. However, the ombudsman also concluded that the ratings assigned to the bank's CRA performance technically supported an "outstanding" rating. After weighing the cumulative factors of the bank's CRA performance, the egregiousness of the violations, and corrective actions taken, the ombudsman concluded that the appropriate CRA rating was a "satisfactory."

Appeal of Partial Assessment Fee

Background

A bank appealed to the ombudsman for a partial refund of its semi-annual assessment fee. The bank originally appealed to its supervisory office and was denied.

Discussion

The bank converted to a federal savings bank three months after paying its semi-annual assessment fee. According to the appeal, since the bank was no longer under the supervision of the OCC, it was entitled to a refund of the remaining assessment. The appeal included documentation to

TO WHAT EXTENT
SHOULD VIOLATIONS
OF CONSUMER
LAWS AFFECT THE
BANK'S CRA RATING
WHEN THE CAUSE
OF THE VIOLATIONS
NO LONGER EXISTS?

**THE OCC CHANGED
ITS POLICY
REGARDING
PARTIAL REFUNDS
OF SEMI-ANNUAL
ASSESSMENTS
BEGINNING IN 2001.**

support the amount of payment made by the bank to the OCC for the six-month period.

Conclusion

The ombudsman reviewed the documentation submitted by the bank and OCC policies and procedures regarding payment of semi-annual assessment fees. According to paragraph (5) under section (a) of 12 CFR 8 Assessment of Fees, “Each bank subject to the jurisdiction of the Comptroller of the Currency on the date of the second or fourth quarterly Call Report required by the Office under 12 USC 161 is subject to the full assessment for the next six-month period.” The OCC assessment is levied against all institutions that are in the national banking system as of December 31st and June 30th. Therefore any bank that is a national bank on the assessment date is required to pay the full semi-annual assessment. Additionally, the Notice of Fees issued to all national banks on December 1, 2000 provided notification that the OCC planned to discontinue prorated refunds for institutions that leave the national banking system part way through an assessment period. This policy became effective as of January 1, 2001. Since the bank was a national bank on the date that the assessment was levied, the ombudsman opined that no partial refund was warranted.

Appeal of Composite and Component Ratings

Background

A bank, currently operating under a Consent Order for credit card practices, appealed its overall composite rating and the component ratings for Capital, Asset Quality, Management, and Earnings. Additionally, the bank expressed a desire to appeal the violations of 12 USC 1818 and Section 5 of the Federal Trade Commission Act (FTC Act).

The appeal states that the majority of the report of examination (ROE) portrays an incomplete picture of the bank’s condition and fails to recognize substantial steps taken to improve capital, asset quality, management, and earnings. In addition, the alleged violations of law were never mentioned during the examination or at the exit meeting, and the bank only became aware of them in the ROE.

According to the appeal, even when considering the subprime nature of its portfolio, the bank has been “well capitalized” for five examinations and its capital ratios remain substantially higher than that required by the OCC. The high loan loss rates are consistent with forecasts, and appropriate allowances are set aside for such losses. In addition, the OCC has praised the bank’s risk management processes as “best in its class” with sound credit analytics and underwriting. Earnings are derived from operations, not extraordinary income, and allow for capital accretion as well as provisions to the allowance for loan and lease losses (ALLL). A positive earnings trend was realized for the last seven consecutive years, which included economic downturns. No pending litigation exists. Additionally, management is responsive to regulatory requests and works with its supervisory office on all new initiatives.

The supervisory office response to the appeal stated that the condition of the bank continued to be unsatisfactory due to unacceptable asset quality, questionable quality of earnings, and bare minimum capital levels to support the high-risk profile of the bank. The supervisory office acknowledged that risk management processes have assisted management in operating profitably, but that did not mitigate the unsafe and unsound concentrations of risk funded by FDIC-insured deposits.

Discussion

Because of the impending enforcement action, the scope of the ombudsman's review was limited consistent with OCC Bulletin 2002-9, National Bank Appeals Process. In particular, the violations of law were deemed to be outside of the scope of the appeal. The ombudsman conducted a comprehensive review of the information submitted by the bank and documentation from the supervisory office. The review included meetings with members of the bank's board of directors, senior management team, and legal counsel. The ombudsman also met with members of the supervisory office. The ombudsman's review focused on whether there was adequate support for the assigned ratings and whether the ratings reflected the condition of the bank at the time of the examination.

Conclusion

The ombudsman concurred with the supervisory office regarding the high-risk profile of the bank and upheld the assigned composite rating. Although the violations of law were outside the scope of the appeal, the ombudsman could not ignore their existence and their impact on the component ratings. Therefore, unless the violations were overturned, the component ratings assigned by the supervisory office were also considered reasonable.

In addition to the conclusions reached previously, the ombudsman found several instances in which the communication process during the examination, both oral and written, was inconsistent with OCC policies and practices. Of particular concern was the manner and timeliness in which supervisory conclusions and violations of law were communicated to the bank.

Appeal of a Shared National Credit (SNC)

Background

A bank appealed to the ombudsman a decision rendered by the SNC Interagency Appeals Panel in July 2004. Initially, the SNC review team rated as substandard and nonaccrual two priority lien credit facilities secured by an assignment in an equity interest in the assets of two bankrupt commercial projects. Additionally, there was a guaranty from the parent company for an equity commitment to complete construction of the projects. The bank appealed the nonaccrual designation on both facilities to the SNC appeals panel. The SNC appeals panel determined that the bankrupt projects, including the priority lien credit facilities should be classified as "Other Assets," and the remaining unsecured portions of debt classified as loss.

The bank agreed with the classification of the affected credits as "Other Assets," however, it disagreed with the loss classification, and submitted an appeal to the ombudsman. According to the appeal, the bankruptcy documents supported that there were assets available to provide some relief to the unsecured creditors. The bank further cited inconsistent treatment among the SNC review teams in the classification of these credit facilities at other banks. Specifically, there were two other agent banks designated as unsecured creditors by the bankruptcy court, yet the SNC review teams at those banks gave value to varying degrees the underlying assets supporting the bankruptcy claims.

Management's view was that since the unsecured facilities would be treated equally in bankruptcy, they should be treated similarly in the SNC evaluation process. The fair value of the underlying assets should include value given to the bankruptcy claim on the underlying assets.

**INCONSISTENT
TREATMENT AMONG
SNC REVIEW TEAMS
BECAME THE BIGGER
ISSUE.**

Discussion

In December 2002, the lender groups assumed effective control of the two projects by replacing management, obtaining the rights to sell the projects, and actively marketing the plants for sale. (The guarantor for equity to finish these projects had previously experienced severe financial difficulties, abandoned support of the projects, and filed for bankruptcy protection.) Consequently, both the primary and secondary repayment sources were in jeopardy.

The appeal states that the bankruptcy court has recognized the obligations of the guarantor, and they are subject to claim by the unsecured creditors. The appeal also states that there is a secondary market for these bankruptcy claims that precludes a full loss classification.

The ombudsman reviewed the information submitted by the bank and held discussions with the bank's senior management team, the SNC review team, the SNC appeals panel and OCC accountants. While sufficient information was provided for the ombudsman to render a decision as to the fair value to be assigned to the underlying assets of the bankrupt guarantor, doing so would not resolve the issue of inconsistent treatment among the banks holding similar bankruptcy claims. Therefore, the ombudsman determined that the best course of action was to convene a new SNC review team consisting of a representative from each of the primary federal agencies to make a classification decision applicable to the banking groups.

Conclusion

The new SNC interagency review team was convened in November 2004. In the time period between the initial SNC review and the review by the new SNC interagency review team, the guarantor emerged from bankruptcy and the lending group signed contracts for the disposition of assets. Consequently, the credits were reviewed in November 2004, based on this later information rather than the bankruptcy status at the time of the initial review, which would be the traditional approach employed in the appellate arena.

The SNC interagency review team concluded that credit factors were substantively unchanged from when the guarantor originally filed for bankruptcy, and insufficient to maintain carrying the exposed portions of the facilities dependent on its guaranty in the active loan portfolio.

Critical to this evaluation is the determination of whether the obligation under this guaranty was, and should remain, a "bankable asset" (as referred to in the interagency definition of loss¹). This does not mean the obligation has absolutely no recovery or salvage value, but rather that it is not practical or desirable to defer writing off a basically worthless asset even though partial recovery may result in the future. In this assessment, credit factors should be present that provide assurances that the obligation is reasonably well secured and if not, at least in process for full collection with imminent closure expected. These are necessarily high standards because the obligor is in default and under the control of the bankruptcy court. The claim is unsecured, and the lenders were not

¹ Interagency definition of loss: "Assets classified loss are considered uncollectible and of such little value that their continuance as bankable assets is not warranted. This classification does not mean that the asset has absolutely no recovery or salvage value, but rather that it is not practical or desirable to defer writing off this basically worthless asset even though partial recovery may be effected in the future."

entitled to adequate protection payments or any other regular distribution from the bankruptcy estate that might be considered interest income. The total unsecured claims against the bankruptcy estate, of which the bank group was a part of, substantially exceed estimated recoverable amounts from a potential sale of the operating assets of the guarantor. These factors do not provide adequate support for the bank group's portion of these claims to remain indefinitely in the active portfolio, even when charged down to estimated recoverable amounts. The foreseeable events, since the guarantor filed for bankruptcy, held considerable uncertainties for those estimated recoverable amounts, and their unfolding in recent months does not obscure the fact that collection efforts were best characterized as recovery.

Thus, the classifications of the assignment of the equity interest in the commercial properties as "Other Assets" were upheld. Any remaining balance was deemed a recovery matter and directed to be charged off. However, since collection efforts were already in process, the banks were allowed to charge-off the losses consistent with the closing of the sales contracts scheduled for the upcoming quarter following this review. This decision was confirmed by the ombudsman and applied unilaterally to all banking groups.

Appeal of Examination Conclusions, Asset Quality, Capital Adequacy, Corporate Governance, recommended allocation to the ALLL, and designation as "troubled condition"

Background

A bank formally appealed the examination conclusions for asset quality, the recommended reserve allocation, capital adequacy, and corporate governance. In addition, the bank appealed its designation as "troubled condition." The bank asked

the ombudsman to conduct an independent review of the examination findings.

The basis of the appeal is the most recent safety and soundness examination in which the bank's composite rating was downgraded from 2 to 3; the component ratings for capital, asset quality, and earnings were downgraded from 2 to 3; management was downgraded from 2 to 5; and liquidity remained unchanged at 2. The appeal also states that the examiners recommended an immediate provision to the allowance for loan and lease losses (ALLL) that was excessive when compared to industry norms and the bank's loss history. According to the appeal, the downgrades are based on aberrations caused by a one-time event (i.e., the acquisition of the federal savings bank) rather than well-established patterns of mismanagement.

The appeal states, that based on its historical composite and component ratings, the bank has always been a well-run institution. Therefore it seems improbable that the condition of the bank had fallen so far and so fast in one year, particularly since the board and management had not changed. According to the appeal two things had changed, (1) was the acquisition of a troubled federal savings bank (which was approved by the OCC), and (2) the regulatory environment had tightened regarding corporate governance and internal audit.

The supervisory office response stated that the condition of the bank had vastly deteriorated. A series of events and activities negatively impacted the overall condition of the bank. The acquisition of the federal savings bank was inaccurately and untimely accounted for and internal audits were inadequate. Credit risks increased substantially due to improper monitoring and control. This resulted in the need for a substantial provision to the ALLL. Additionally, an international transaction though resolved without incident, exposed

HOW COULD A BANK WITH HISTORICAL COMPOSITE AND MANAGEMENT RATINGS OF 2 BECOME A COMPOSITE 3 AND 5-RATED MANAGEMENT IN ONE YEAR?

IN ITS
APPEAL, BANK
MANAGEMENT
STATED THAT THE
ROE CONTAINED
SUBJECTIVE
AND HARSH
COMMENTS THAT
OVERSHADOWED
THE FACTS.

the bank to undue financial risks and raised significant concerns about management and board oversight. The culmination of these deficiencies threatened the viability of the institution and replacing/strengthening management and the board was deemed critical to its survival.

Conclusion

The ombudsman conducted a comprehensive review of the information submitted by the bank and documentation from the supervisory office. The review included meetings with members of the bank's board of directors, senior management team, and legal counsel. The ombudsman also met with members of the supervisory office. The ombudsman's review focused on whether there was sufficient support for the assigned ratings and whether the ratings reflected the condition of the bank at the time of the examination.

The ombudsman opined that the conclusions reached by the supervisory office were well supported by the facts at the time of the examination. The designation of the bank as being in troubled condition was consistent with agency policies and standards.

Appeal of Report of Examination Conclusions

Background

A bank, operating under a formal agreement, formally appealed the examination conclusions regarding the condition of the bank. Specifically, bank management believed the report of examination:

- Overstated the adverse condition of the bank's commercial loan portfolio.
- Unduly criticized the bank's strategic planning process.
- Assigned a troubled condition designation to the bank without any reference to any standard; or benchmark against which the bank was judged.

- Incorrectly assessed the bank's risk profile and capital rating.

Discussion

The bank acknowledged deterioration in its commercial loan portfolio, but stated that:

- The Office of the Comptroller of the Currency's ("OCC") Canary benchmarks reflecting the operation of its credit function were inherently conservative.
- The loan portfolio has remained well balanced between retail, real estate, commercial, and construction.
- In 1999 asset quality was rated 2; since then, asset quality has improved and capital has grown.
- Risk from unsecured credit has been steadily declining since 1996.
- The commercial loan portfolio consists of loans to locally owned and operated businesses.
- The level of non-accrual loans, past-due loans, and charge-offs has improved.
- The allowance for loan and lease losses has been adequate.

The appeal further states that the objective measures reflected an asset quality rating of 2 while subjective and harsh comments were made in the report of examination ("ROE") that resulted in an assigned rating of 3.

From the perspective of the supervisory office, although some progress was noted, the bank continued to be in noncompliance with the formal agreement. The OCC believed that the bank's overall condition remained unsatisfactory and that the level of risk remained moderate and increasing. Subprime credit represented 150 percent of Tier 1 capital. Capital was insufficient in relation to the overall risk profile of the bank, and earnings continued to suffer because of high overhead and losses from loans and other assets. Asset quality and

credit administration practices were less than satisfactory. Classified loans increased from 15 percent to 37 percent, the loan review function and account officers failed to accurately identify problem loans, and the level of retail credit accounts with low credit scores was high. Also, while some progress had been made toward complying with the formal agreement, most articles were in noncompliance.

Conclusion

The ombudsman concluded that, while the tone of the report was unduly harsh, the overall assessment and ratings assigned in the report of examination (“ROE”) complied with agency policy and are reasonably reflective of the bank’s condition at that time. There was evidence of increased credit risk and the level of noncompliance with the formal agreement affected the ratings, risk profile, and overall condition of the bank.

Subsequent Event

Subsequent to the appeal, the supervisory office completed a review of the first quarter 2003 financial and asset quality information submitted by the bank. The review was initiated to assess management and the board’s progress in improving the bank’s earnings performance and lowering its risk profile. As a result, capital, asset quality, and liquidity ratings were upgraded. Additionally, the credit risk profile was reflected as moderate with a stable direction. A complete assessment of the composite and other component ratings was not performed. The ombudsman concurred with these changes.

Appeal of Certain Safety and Soundness Conclusions and Stay of Two Supervisory Directives

Background

A bank formally appealed certain conclusions contained in the most recent report of examination and asked for a stay

of two supervisory directives. Specifically, the bank appealed the classification of certain loans, the adequacy of the ALLL, the adequacy of the bank’s loan review process and the composite rating, as well as the component ratings of capital, management, and liquidity. Additionally, the appeal requested a stay of the revised capital plan directive and the directive to amend the most recent call report submission during the appeal process.

The appeal states that the bank disagreed with 56 percent of the loans classified by the supervisory office and the corresponding reserve requirement. If the loan classification and reserve allocation were adjusted on those loans, the ALLL provision would be significantly reduced and capital and liquidity would be less strained. The appeal further stated that the ALLL, as calculated by the bank, was fully funded and adequate without any additional provision. Therefore, management did not agree with the methodology used by the examiners to calculate the adequacy of the ALLL. The appeal also reiterated the bank’s position that the credentials of its external review firm are solid.

At the most recent examination, the supervisory office identified additional loan classifications and charge-offs as a result of poor credit underwriting and insufficient collateral values. The additional loan classifications and charge-offs required a substantial provision to the ALLL that severely impacted earnings, liquidity, and capital. The supervisory office further concluded that supervision by the board of directors and bank management was deficient because of vacancies in senior management positions, new and unproven management, and previously identified weaknesses that remained unresolved. The external loan review process was also determined to be inadequate and lacked independence.

**THE BANK
DISAGREED WITH
MORE THAN
56 PERCENT
OF THE LOAN
CLASSIFICATIONS
AS WELL AS THE
CORRESPONDING
RESERVE
REQUIREMENTS.**

Discussion

The ombudsman honored the request of the bank. The supervisory directives were stayed until the ombudsman formally opined on the issues raised in the appeal.

Loan Classifications

For each of the loan classifications disputed by the bank, the ombudsman's office reviewed file documentation, linesheets, OCC write-ups, appeal comments, loan review comments, and held loan discussion. Our review found two loans criticized by the supervisory office as special mention that could have been pass, however, there was no disagreement with loans classified as substandard, doubtful, or loss.

Allowance for Loan and Lease Losses (ALLL)

The ombudsman's office performed an in-depth review of the methodology utilized by both the bank and the supervisory office to calculate the ALLL balance. Through our review of individual credits and loan discussion, however, we noted that the bank's specific allocations were not always consistent with the level of identified risk. The supervisory office approach included several methodologies and adjustments to industry averages that considered the weaknesses in loan underwriting, the uncertainty of lien positions, and the questionable collateral values identified by both the bank and the supervisory office. This approach was consistent with the guidance in the *Comptroller's Handbook* on "Allowance for Loan and Lease Losses."

Consideration was also given to how the bank's ALLL ratios compared to other 4- and 5-rated banks under \$150 million in total assets. This bank had the highest level of classified assets among this peer group and the lowest coverage of ALLL to net losses. Additionally, it also had the lowest level of recoveries.

Loan Review Process

The ombudsman's office assessed the adequacy of the external loan review process by reviewing the services provided by the external loan review firm as well as interaction with senior management of the bank. In addition to loan review, the external loan review firm provided a number of services to the bank, including strategic planning, raising capital, and hiring of senior management. During our loan discussion with the bank, as well as in our face-to-face meeting, the external loan review firm actively participated in the defense of loan classifications and ALLL allocations. There is an appearance of a conflict of interest when the company that is assisting the bank in the solicitation of new capital is also responsible for identifying credit impairments and charge-offs that significantly impact the level of capital that the bank is attempting to raise. In addition, the external loan review, which was performed simultaneously with the supervisory office exam, did not recognize a significant number of downgrades.

Composite and Component Ratings

Capital — Given that the loan classifications and the ALLL recommended balance were determined to be reasonable, the ombudsman concluded that the rating for capital was appropriate. There was a critical deficiency in the level of capital to absorb the high level of risk within the bank.

Management — At the time of the examination, the current management team was unproven, particularly given the significantly troubled condition of the bank. The most senior member of management had been in place less than six months, the presidency office was vacant, and new loan officers were hired during the examination. Notwithstanding the qualifications and experience of these persons, the ombudsman concluded that the rating for management was appropriate.

Liquidity — The liquidity component was not reviewed as part of the most recent target examination. Therefore, the ombudsman did not opine on the rating that was carried forward from the previous full scope examination.

Conclusion

After conducting a review of the circumstances and facts present at the time in question, the ombudsman opined as follows:

- **Loan Classifications** – The ombudsman found substantial integrity in the loan classifications assigned by the supervisory office.
- **Adequacy of the ALLL** – The approach used by the supervisory office to determine the adequacy of the ALLL was consistent with the guidance in the *Comptroller’s Handbook* on “Allowance for Loan and Lease Losses.”
- **Loan Review Process** – The ombudsman concurred with the examination finding that the external loan review process was ineffective and lacked independence.
- **Component Ratings** – The ratings assigned to management, capital and

earnings were upheld.

- **Composite Rating** – Given the prior conclusions, the ombudsman concurred with the examination findings that the bank exhibited an extremely unsafe and unsound condition. The volume and severity of problems, as well as the urgency to inject new capital jeopardized the viability of the bank. Therefore, the ombudsman concluded that the assigned composite rating was appropriate.

In addition to these findings, the stays granted during the appeal process were lifted. The bank was directed to contact its supervisory office to establish appropriate action and time frames.

Examination Questionnaire

The OCC is committed to providing quality bank supervision to all financial institutions subject to its regulatory authority.

The OCC measures the effectiveness of the supervisory process through the examination questionnaire. The questionnaire is provided to all national banks at the conclusion of their supervisory cycles (12- or 18-month period). It is designed to gather direct and timely

feedback from bankers on the OCC's supervisory efforts.

Administration of the examination questionnaire is assigned to the Office of the Ombudsman. By providing an independent and confidential repository for the examination questionnaire, bankers' concerns over retaliation or retribution are alleviated. This also reassures examiners that the questionnaire will not be used for performance management.

Information received from the questionnaire provides OCC management with an indication of its overall effectiveness and allows the OCC to refine and enhance the quality of supervisory efforts.

Based on the comments received from individual respondents, further contact may be warranted for clarification, additional details, or follow-up. While general analysis from the questionnaire is shared within the agency, identifying information and copies of the questionnaires are not available to anyone outside of the Office of the Ombudsman.

**THE EXAMINATION
QUESTIONNAIRE
PROVIDES THE OCC
WITH AN INDICATION
OF SUPERVISORY
EFFECTIVENESS.**



*making a
difference*

Results of the Examination Questionnaire

The questionnaire process solicits feedback on the most recent examination as well as on the effectiveness of the OCC's overall supervision process during the past 12 to 18 months. The questionnaire asks respondents to rate the OCC on 22 questions relating to the professionalism and responsiveness of examiners, the reasonableness of the examination scope, and the appropriateness and clarity of the examination conclusions.

These questions are based numerically on a scale of 1 (completely agree) to 5 (completely disagree). Of questions 1 through 22, 1 through 15 focus on the examination function, while 16 through 22 focus on measuring the effectiveness of the OCC's overall supervisory process. Additionally, four narrative questions seek more specific comments. Two ask for the most and least useful aspects of the OCC's supervisory process. The remaining two ask for areas where examiners need greater knowledge, and areas where the OCC's fundamental supervisory approach and/or methods of supervision need to change.

Figure 1a—Most Useful Aspect of the Examination

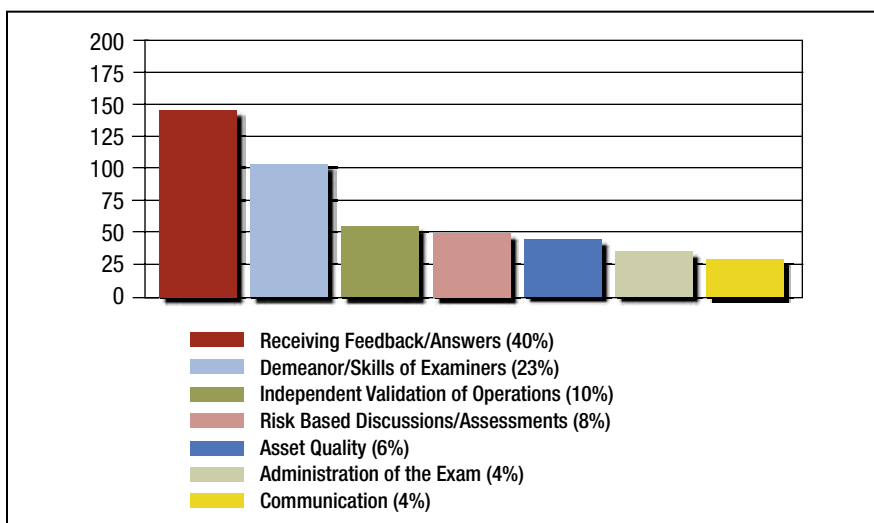
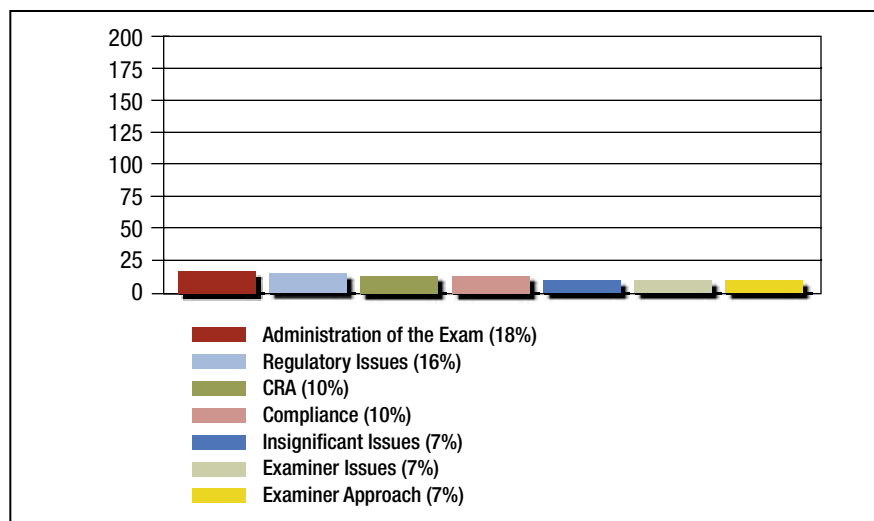


Figure 1b—Least Useful Aspect of the Examination



Bankers nationwide continue to give the OCC favorable ratings, as demonstrated in Table 1. The average rating on all 22 numerical questions in the aggregate over the past two years is 1.49. The most favorable rating continues to be on question 3, dealing with the professionalism of the examination team. Question 16a, follows closely as the second most favorable rating. This question asks whether the field examiners have been responsive to the bank's needs over the past 12 to 18 months. This is not surprising, as OCC supervision has stressed professionalism and timely feedback as key elements in the portfolio management process of bank supervision. Also, these questions are often removed from the condition and complexity of a particular bank. The least favorable ratings were received on question 19c, which asks whether OCC regulations eliminate unnecessary regulatory requirements and minimize the burden resulting from requirements necessary for effective supervision. Bankers often associate this question with various legislative initiatives rather than the burden of the regulation.

Narrative question 1 – Most useful aspect of the OCC’s supervision:

During the last 12 months, 52 percent of the bankers responded to this question. The most frequent comments related to the benefit of receiving feedback, suggestions, observations, and answers to questions from the onsite examiners [142 or 40 percent of those responding to this question]. The frequency of these comments may provide support for questions 3 and 16a as most favorable ratings. Other areas with significant comments are included in Figure 1a.

Narrative question 2 – Least useful aspect of OCC’s supervision:

During the last 12 months, 20 percent of the bankers responded to this question. Concerns about the administrative elements of the examination received the most comments. This and other leading comments are shown in Figure 1b.

Narrative question 3 – Areas where bankers think OCC examiners need greater knowledge:

Eighteen percent of the bankers offered comments to this question. The most frequent comment received offered no suggestions, but stated that they were satisfied with current OCC knowledge. The second most frequent comment suggested additional knowledge was needed in information technology. This and other leading comments appear in Figure 2.

Narrative question 4 – Areas where OCC’s supervisory approach needs enhancement:

Twenty-two percent of bankers responded to this question. Comments to this question were broad in nature. The highest number of comments indicated that bankers were satisfied with the OCC’s current approach. Figure 3 depicts leading comments.

Figure 2—Areas Where OCC Examiners Need More Knowledge

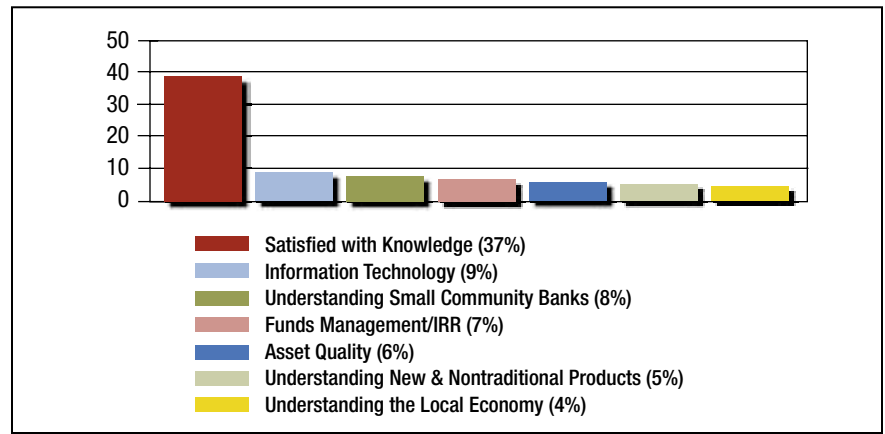
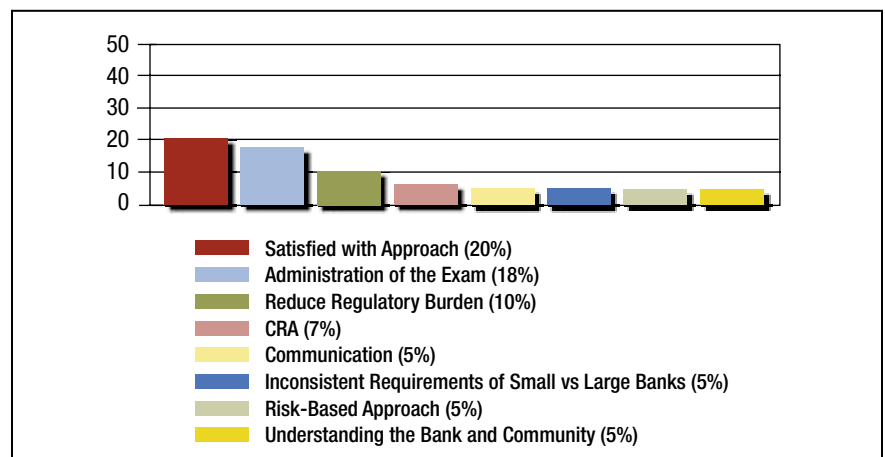


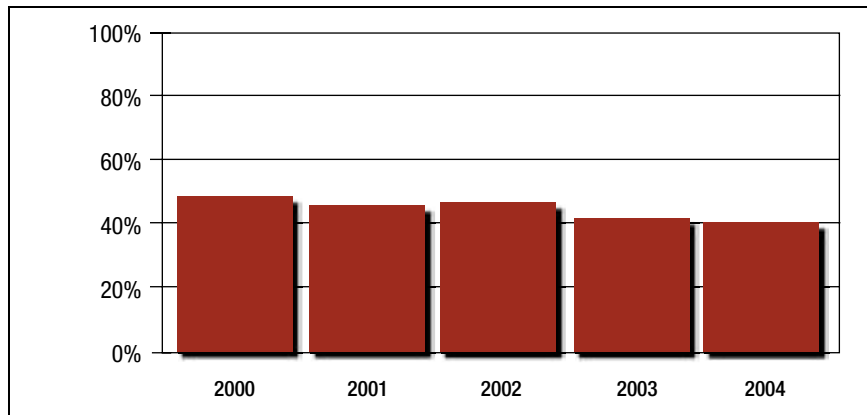
Figure 3—Areas Where OCC Supervisory Approach Needs Improvement



Response Rate

Semi-annually, the ombudsman's office compares the number of reports of examinations (ROEs) mailed to banks with the number of questionnaires received to track the response rate. Because questionnaires, in general, are not viewed positively, response rates usually are low. For the 12-month period January 1 through December 31, 2004, the agency mailed 1,733 questionnaires and the ombudsman's office received 685 questionnaires for a response rate of 40 percent. Figure 4 reflects the trend over the past 5 years.

Figure 4—Response Trend



*making a
difference*

Table 1 Questionnaire Results:

Bankers' Ratings of OCC Examinations for January 1, 2003 through December 31, 2004

Questions	Results: 2003	Results: 2004	Two-Year Average
1. The examination scope was appropriate to accurately assess the bank's condition.	1.37	1.40	1.39
2. The examiners' requests for information before and during the examination were reasonable and justified by the examination scope.	1.33	1.37	1.35
3. The examination team conducted the examination in a professional manner.	1.21	1.21	1.21
4. The examination placed appropriate reliance on the internal audit function and internal risk management functions in the institution to support effective supervision.	1.41	1.44	1.43
5. The examiner-in-charge and the examination team were knowledgeable.	1.28	1.33	1.30
6. The examiner-in-charge and examination team provided useful feedback, observations and suggestions.	1.33	1.40	1.36
7. The examiner-in-charge and examination team presented well-supported relevant conclusions regarding the condition of the bank.	1.43	1.49	1.46
8. The recommendations for corrective actions made by the examiner-in-charge and the examination team were reasonable.	1.50	1.50	1.50
9. During the exit and board meetings, the examiner-in-charge and examination team clearly and effectively communicated their findings and concerns.	1.31	1.35	1.32
10. The tone and content of the report of examination were consistent with the exit and board meetings.	1.25	1.32	1.28
11. The report of examination clearly communicated examination findings, significant issues and the corrective actions (including time frames) management and/or the board needed to take.	1.27	1.29	1.28
12. On-going communication by the examiner-in-charge with senior management and the board of directors was appropriate.	1.26	1.30	1.28
13. Examiners minimized the burden to the degree possible on the bank, its officers and employees when conducting the examination.	1.41	1.49	1.45
14. The supervisory objectives and strategy incorporated appropriate perspective and provided necessary focus on business risks, assessment of their significance, and resulted in appropriate development of the examination strategy, emphasis on key risk areas, and resulting areas of focus in the examination.	1.49	1.51	1.50
15. The examination report was delivered in a timely manner, so examination results and corrective actions required by bank management were influenced in a timely and appropriate manner.	1.37	1.47	1.42

**THE INTERACTION
OF EXAMINATION
STAFF CONTINUES
TO RECEIVE THE
MOST FAVORABLE
COMMENTS.**

Table 1 Questionnaire Results:

Bankers' Ratings of OCC Examinations for January 1, 2003 through December 31, 2004 (continued)

Questions	Results: 2003	Results: 2004	Two-Year Average
16. During the past year or 18 months (i.e., the examination cycle), OCC _____ has/have been responsive to the bank's needs.			
a) field staff;	1.22	1.26	1.24
b) corporate staff (e.g., for corporate applications);	1.32	1.33	1.33
c) attorneys (e.g., for legal opinions);	1.52	1.67	1.59
d) accountants (e.g., for accounting opinions);	1.46	1.66	1.56
e) other _____.	1.20	1.90	1.38
17. The OCC identifies potential problems before they can cause significant harm to the bank.	1.74	1.78	1.76
18. The OCC's supervisory efforts focus on banking activities that pose the highest risk.	1.57	1.66	1.61
19. OCC regulations:			
a) effectively target the areas of bank activity that present the greatest risk to safety and soundness, the payments system, or the long-term viability of the national banking system.	1.72	1.79	1.75
b) promote national banks' competitiveness and allow industry innovation.	1.98	2.03	2.00
c) eliminate unnecessary regulatory requirements and minimize the burden resulting from requirements necessary for effective supervision.	2.29	2.46	2.37
20. The OCC works with the bank and follows-up to ensure bank management addresses potential problems and risks.	1.35	1.44	1.39
21. The OCC allows the bank to offer new products and services if the bank has the expertise to manage the risks effectively and to provide the necessary consumer protections.	1.51	1.54	1.53
22. The OCC enforces CRA and fair lending laws by focusing on the bank's performance.	1.58	1.62	1.60
Average	1.46	1.52	1.49
Number of Questionnaires	782	685	1,467

Customer Assistance Group

CAG remains steadfast in actively responding to its constituents' needs. The group continues to implement a wide range of initiatives year after year to further improve the overall way it conducts its business. As a result of their sustained efforts, CAG personnel make a positive impact on the lives of many consumers, a considerable contribution to the supervisory process, and a significant difference to the overall banking industry.

In carrying out its mission, CAG:

- Assists consumers who have questions or complaints about national banks and their operating subsidiaries. CAG provides service to three constituent groups:
 - Customers of national banks and their subsidiaries – by providing a venue to resolve complaints.
 - OCC bank supervision – by alerting supervisory staff of emerging problems that may potentially result in the development of policy guidance or enforcement action.
 - National bank management – by providing a comprehensive analysis of complaint volumes and trends.
- Remains neutral in answering questions and offering guidance on applicable banking laws, regulations, and practices, and is not an advocate for the bank or consumers.



**THE CAG
FACILITATES
COMMUNICATION
BETWEEN NATIONAL
BANKS AND THEIR
CUSTOMERS.**

*making a
difference*

- Encourages customers to contact their banks first to try to resolve their concerns. However, if unsuccessful, CAG personnel may serve as liaisons between banks and their consumers. If the CAG specialist is unable to help over the phone, the consumer may be asked to submit a signed, written complaint.
- Educates consumers on federal laws and regulations that govern bank operations. Service issues or complaints related to the bank's internal policies may not be

governed by federal laws and regulations. Additionally, consumers may seek resolution through a court of law on factual or contractual disputes.

- Cannot give legal advice or personal opinions about consumer complaints or the bank's position in a case, but can offer informal education to the consumer on banking and the use of credit.

The CAG continues to play a vital role in the mission of the OCC to monitor, manage, and identify compliance risk. A value-added approach to accomplishing this mission is in place, which consists of six core strategies:

- Customer satisfaction
- Financial literacy
- Risk identification
- Information dissemination and partnerships
- Policy development
- Best practices

The demand for assistance in resolving consumer complaints remained steady over the past two years. Figure 5 depicts the volume of calls handled by the CAG in 2003 and 2004.

Figure 6 illustrates the volume of inquiries and complaints processed in the last two years, and the total volume of written cases handled by the CAG in both years respectively.

Figure 5—Call Volume

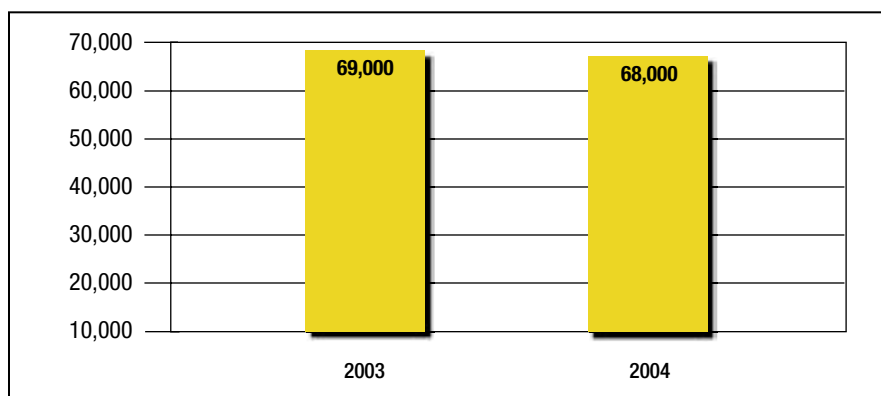
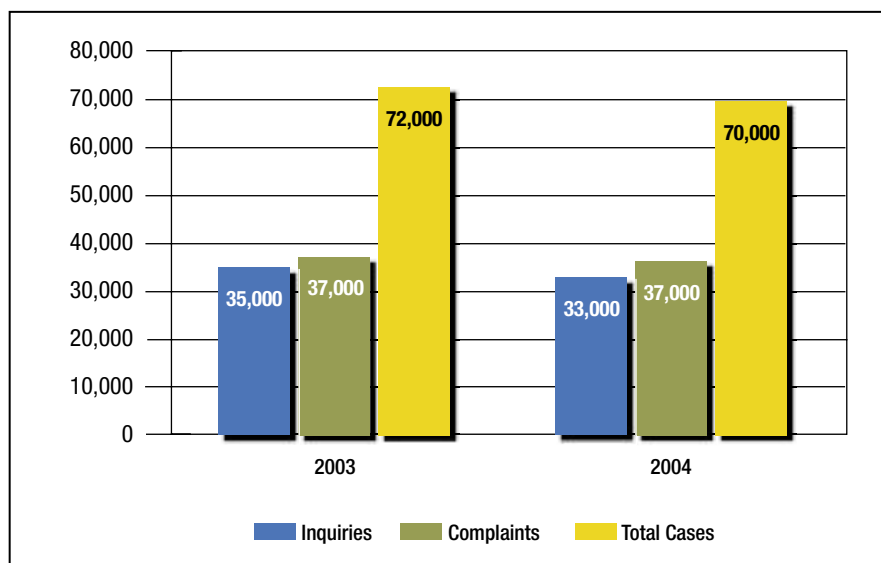


Figure 6—Case Volume



*Written cases require a formal response from the bank.

The volume of cases has remained flat in both years; however, CAG expects an increase in the number of complaints and inquiries received via e-mail correspondence, as consumers become more accustomed to filing their complaints electronically.

Customer Satisfaction

Delivery of high quality customer service is a primary objective of the CAG. The CAG specialists provide callers with current information on banking regulations while striving to resolve their issues with banks.

In October 2004, CAG expanded its call center hours to include Fridays. The extra day during the week increases call center accessibility by 20 percent per week, giving the general public greater access to CAG services. The most experienced specialists continue to handle the calls, so that as many cases as possible can be resolved at the first point of contact.

Compensation

In 2003, banks paid more than \$4,400,000 in estimated compensation to consumers, and approximately \$4,200,000 in bank fees, and charges were refunded to consumers in 2004, as illustrated in Figure 7. Many customers believe that they would not have received a favorable outcome without the assistance of the CAG, whether that outcome was as little as a \$29 credit card late fee waived by the bank as a gesture of goodwill, or an entire mortgage loan payment forgiven by the bank.

Over the years, CAG has received numerous thank-you letters from consumers. See appendix 1 for examples of thank-you letters received.

In regular meetings with banks' management staff, banks are constantly reminded to make a good faith attempt to evaluate all facts and circumstances of a consumer's issue in responding to complaints. Oftentimes, the dollar amount in dispute is often lower than the cost of processing a bank customer's complaint.

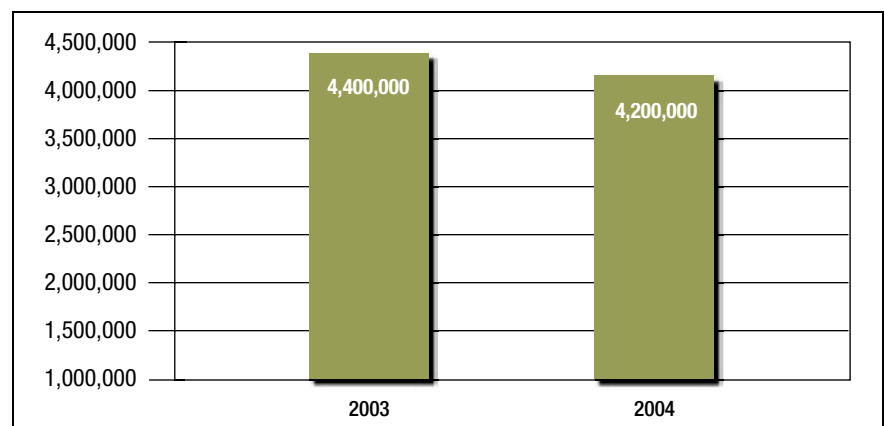
Case Study

A consumer opened an account in 2000 with the understanding that it was interest bearing. The consumer decided to close the account in 2002, however, when the bank performed interest calculations, the consumer did not believe that the rate was correct.

The consumer called the CAG after being told by the bank that the employee who had negotiated the rate was not authorized to pay outside the bank's interest guidelines. Therefore, the bank would not honor the rate.

The CAG contacted the bank and after re-evaluation the bank agreed to pay the interest at the rate agreed to in the contract.

Figure 7—Estimated Compensation



INCREASING COMPLAINT VOLUMES MAY SERVE AS A PRECURSOR TO SIGNIFICANT DETERIORATION OF A BANK'S FINANCIAL CONDITION.

Financial Literacy

The need for financial literacy is heightened by the diverse array of financial products, the changing landscape of financial institutions, and complex banking laws, regulations, and practices.

CAG maintains a professional and well-trained staff ready to ensure that consumers receive information and education to guide them in understanding banking laws and practices. The information and education provided by CAG is integral to resolving a significant volume of complaints during the initial call.

When consumers contact CAG with a complaint or inquiry about their banks, the specialists strive to educate them on basic, applicable banking laws and regulations as they pertain to their issues and advise them of their rights as defined in the regulations. In most cases, consumers are satisfied once they have gained a greater understanding of basic principles of banking.

The CAG philosophy is: through a better understanding of the operating principles and laws that govern a bank's operations, both consumers and bankers can benefit from a business relationship, which results in ultimate customer satisfaction.

Risk Identification

Complaints can serve as an early indicator of potential problems in a bank. Rising complaint volume warrants the need for an analysis of potential compliance, transaction, strategic, and reputation risks. Analysis of the data provides unique insight into how complaints arise and how they might be avoided. There are valuable lessons to be learned for both the financial services industry and for consumers.

Complaint-based data is used in the OCC's supervisory process. The OCC's bank supervision staff uses complaint volume and trends data on national banks to identify potential violations of law or systemic risks. Examiners look for changes in complaint volumes by product or regulation as a benchmark to establish the scopes of bank examinations. Bankers use the data for compliance and strategic risk management and in managing their customer satisfaction risk profile.

CAG Complaint Volumes and Trends

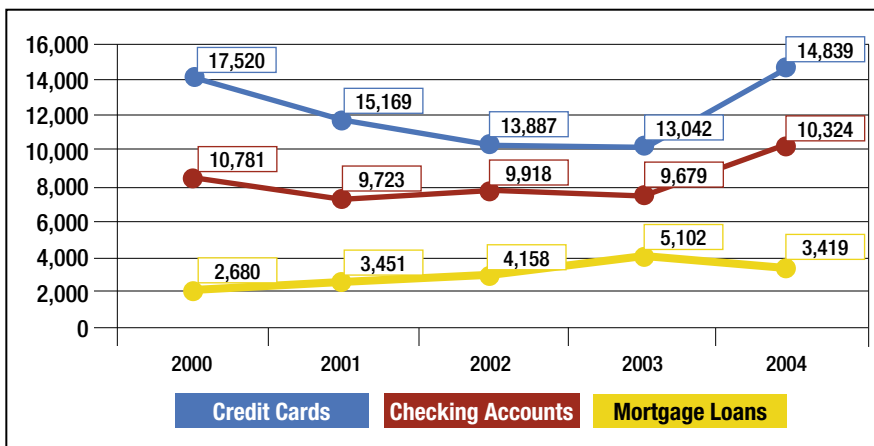
Complaints for year-end 2004 reflect a continuation of past trends. Credit cards, checking accounts, and mortgage loans remain the products with the highest volume of consumer complaints as displayed in Figure 8. Other areas of consumer complaints include: insurance products, non-deposit investments, asset management, and other consumer loan products.

Credit Cards

Credit cards remain the number one source of complaints, representing more than one-third of all complaints received by the CAG annually.

Truth in Lending Act and customer service issues are the primary components of credit card complaint volume. Fair

Figure 8—Selected Products with Significant Complaint Volume



Debt Collection Practices Act, Fair Credit Reporting Act, and Equal Credit Opportunity Act issues are the remaining areas, which comprise the top five areas of complaint volume for year-end 2004. Figure 9 illustrates this information.

Truth in Lending Act

The Truth in Lending Act (TILA) covers issues involving disclosures, billing error resolution provisions, unauthorized use of credit cards, and legal remedies customers may use in defense of disputed credit card charges. Complaints most often received by the CAG in 2004 relate to issues involving changes in terms and billing errors on credit card accounts.

Changes in credit card terms and conditions are frequently a result of portfolio sale or merger activities. Customers often are unfamiliar with the terms of their credit card agreements. Bank disclosures of changes in terms are often written in small print, contain unfamiliar terms, and are included among the advertising materials that accompany credit card statements, thus making them inconspicuous to the consumer. Common practices, such as increasing interest rates and fees, changing contract terms, reducing grace periods, and tightening late payment policies, can spur questions from consumers about their rights. The CAG guides consumers on understanding their rights under TILA.

In addition, consumers are often unfamiliar with the timelines for filing complaints involving billing error disputes or what constitutes a legitimate dispute. Providing consumers with an understanding of the provisions of this section of TILA as well as other consumer protection laws is part of the CAG mission to aid in promoting financial literacy.

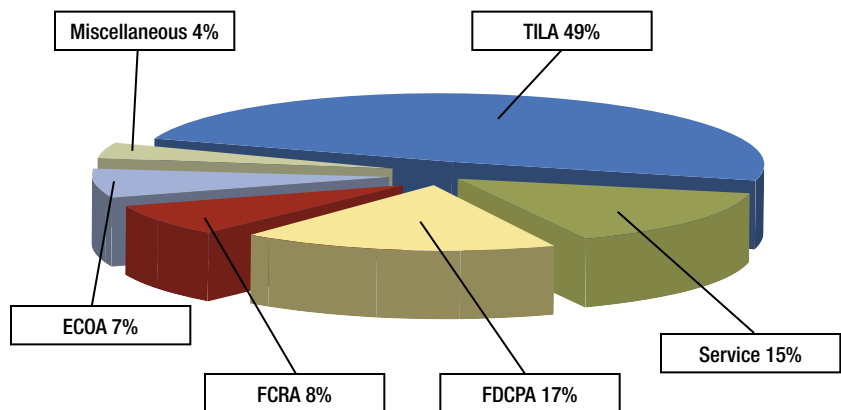
In concert with the OCC supervisory process, CAG specialists routinely analyze the bank's practices relating to advertising, disclosure of credit policies, and cost of

services. They provide patterns and trends of consumer concerns to the supervisory office for further review.

Loan Product Customer Service Issues

Customer service issues cover a broad array of operating practices and policies of national banks. Customer dissatisfaction

Figure 9—Credit Card Issues



with a bank's products, level of service, and communication with bank personnel, while not regulatory in nature, may negatively impact the bank's reputation if ignored. Examples of customer service issues identified in 2004 include:

- Communication barriers between bank employees and customers in clearly explaining bank products, services, and customer rights.

Case Study

A consumer contacted CAG with a complaint about information contained in her credit bureau report. According to the consumer, she is only an authorized user, not signer, on her spouse's credit card and therefore negative information regarding the account should not be reflected on her credit bureau report.

The consumer called the bank and was told that the information was being reported correctly.

CAG contacted the bank, and after a careful review, the bank determined that the information was being reported incorrectly. The bank corrected the consumer's records and reported the correction to the three credit bureaus.

- Customer dissatisfaction with the timeliness of loan payment processing services and management of escrow accounts (particularly mortgage transactions).
- Customer dissatisfaction with fees and charges assessed and higher interest rates charged without perceived benefits.

To address these types of issues, CAG specialists work as liaisons between banks and their customers to help foster communication and disseminate information on issues affecting customer satisfaction.

Debt Collection Practices/Fair Credit Reporting Act

Debt Collection Practices issues involve complaints about the conduct of third party collection agents of the bank, accounts placed in collection in error, and debts consumers allege were never contracted. Fair Credit Reporting Act (FCRA) issues typically involve disputes by consumers over the accuracy of account information reported to credit bureaus by banks.

The CAG provides guidance to consumers on these issues and facilitates communication between the consumer and the bank in evaluating the propriety of the consumer's complaint.

Equal Credit Opportunity Act

Equal Credit Opportunity Act (ECOA) and Fair Housing Act (FHA) complaints usually involve evaluation and denial of credit applications. Consumers' knowledge of bank credit evaluation standards may be limited, and they may be unfamiliar with the provisions of the law. Banks' written communications on reasons for denial of credit may not always provide consumers with a clear understanding. The CAG staff provides help to consumers in understanding the language of the law.

Complaints alleging potential ECOA or FHA discrimination issues receive high priority by the CAG. They are referred to the OCC supervisory office responsible for fair lending issues if there is reason to believe that discrimination may have occurred.

Deposit Accounts

Checking accounts represent the deposit product area receiving the most complaints in 2004, accounting for 84 percent of all deposit account products. Other deposit products include time, savings, and money market accounts. Customer service issues remain the primary focus of consumer attention for all deposit products.

Deposit account issues center on customer service, the Uniform Commercial Code (UCC), Electronic Funds Transfer Act (EFTA), Expedited Funds Availability Act, and Truth in Savings Act issues as shown in Figure 10.

Deposit Product Customer Service Issues

Customer service issues can create reputation risk for national banks. Typical deposit product customer service issues arise from customer dissatisfaction with bank fees and charges, communications with bank employees, access to products or services, and processing of transactions.

Customers frequently complain that a bank's fee structure is unfair or too high particularly in overdraft transactions, such as "sustained overdraft fees," when the customer may be charged multiple times for presenting the same item. Customers seeking information to understand the administration of their deposit accounts or information on the bank's policies complain that employees are not responsive, give inaccurate or no information, and often restate bank policy without providing adequate clarification of policy or how it is implemented. Many customer service issues relate to untimely or ineffective processing of transactions, such as deposits, stop payments, ATM failures, and online banking.

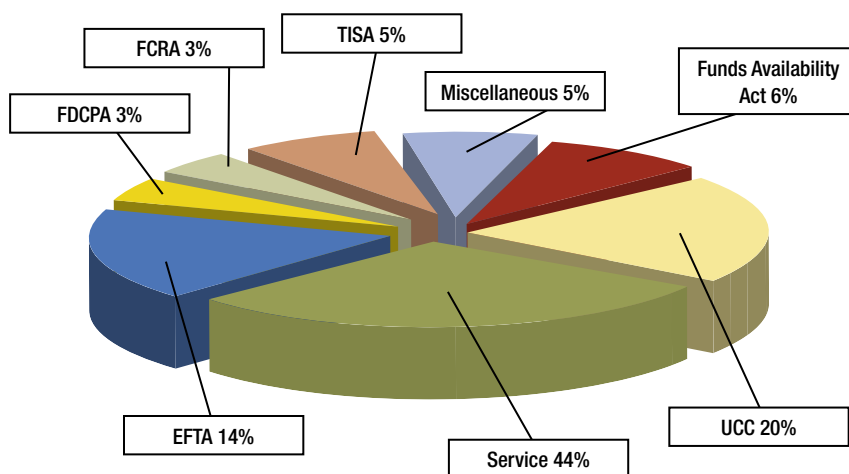
Uniform Commercial Code

The Uniform Commercial Code (UCC) covers the negotiation and collection of checks and drafts involving commercial transactions and sales contracts and agreements. Consumer complaints involving UCC issues typically focus on allegations of unauthorized transactions on deposit accounts and contract disputes. Examples include issues, such as fraudulent check writing, lost checks, check processing

errors, and mismanagement of stop-payment transactions.

The CAG office disseminates information to the OCC supervisory staff on issues involving UCC matters. It advises consumers of their right to seek legal counsel to facilitate the resolution of this type of complaint.

Figure 10—Deposit Account Issues



**BANKS ARE
REMINDED TO
ENSURE THE
SATISFACTION OF
THEIR CUSTOMERS'
EXPERIENCE TO
MINIMIZE THE
VOLUME OF
CUSTOMER SERVICE
ISSUES.**

Electronic Funds Transfer Act

Consumer concerns with the Electronic Funds Transfer Act (EFTA) involve unauthorized electronic transfers and error resolution. Customers express dissatisfaction with the bank's efforts to investigate EFTA claims and initiate corrective action. Guidance to the banking industry on prudent practices and responsibilities for compliance with the EFTA is contained in OCC Advisory Letter 2001-9.

Funds Availability Act

The Expedited Funds Availability Act (Regulation CC) contains rules regarding a bank's ability to make deposited funds available to its customers and rules regarding the prompt collection and return of checks through the banking system. Customers may often be confused about when deposited funds are available based on the guidelines banks are afforded under Regulation CC. Banks' disclosures may be confusing, and changes in policy may not be clearly communicated to the bank's front-line staff or their customers. As a result of discussions with CAG specialists, banks often re-evaluate their policies to ensure compliance with Regulation CC. In addition, CAG also provides guidance and education to consumers on this act.

Information Dissemination and Partnerships

A primary objective of CAG is to provide national banks with information on banking industry regulations, policies, practices, complaint volumes, trends, and risk management. Specialists work with bankers to aid them in strengthening their ability to identify risks and to take timely remedial action. This is done through regular meetings, dissemination of complaint information, and sharing of best practices regarding complaint risk management systems.

CAG specialists maintain ongoing dialogue with OCC supervisory staff and bankers to discuss topical information derived from database mining and analysis of complaint data. They partner with the OCC's bank supervisory staff to assist in setting an appropriate strategy for a national bank through access to and analysis of complaint information.

Using the Web-based supervisory tool, CAGWizard, OCC supervisory staff can quickly generate complaint data for use in risk identification. In addition, the Web-based complaint delivery system, CAGNet, is a user-friendly, timely, and efficient application for delivering consumer case management information to major banking companies for processing and report generation.

Interaction among the CAG, state insurance commissioners, states' attorney generals, state banking departments and other federal regulators aids in ensuring consistency in the handling of consumer disputes. It also promotes the exchange of information on consumer protection issues facing the banking industry.

In 2004, CAG made complaint referrals to:

- States' attorney generals and all other state agencies – 2,709 complaints.
- Federal agencies – 11,003 complaints.

In addition, CAG provides useful information to the general public on its complaint resolution process and on the OCC through its Web site and informational brochures.

Policy Development

CAG complaint data is integral to the creation of OCC guidance on compliance issues. For example, CAG has provided guidance on effective risk management relating to consumer protection laws, which contributed to the issuance of the following advisory letters:

- Advisory Letter 2001-9 - EFTA Investigations of Unauthorized Transactions.
- Advisory Letter 2003-2 - Guidelines to Guide Against Predatory and Abusive Lending Practices Letters.
- Advisory Letter 2003-3 - Avoiding Predatory and Abusive Practices in Brokered and Purchased Loans.
- Advisory Letter 2004-4 - Secured Credit Cards.
- Advisory Letter 2004-10 – Credit Card Practices.
- Strategic partnerships with insurance commissioners, states’ attorney generals, state banking departments and FFIEC agencies,
- On-going communication and meetings with bankers,
- Formal policies and procedures governing CAG operating activities,
- Highly trained staff.

Best Practices

CAG regularly researches and analyzes the best-demonstrated practices in the industry for effective complaint risk management. CAG shares this information through contacts with bankers, compliance professional organizations, and other regulatory agencies.

Over the years, CAG specialists have incorporated specific strategies to ensure their operating activities meet the group’s mandate of high quality customer service and successful complaint risk management. The strategies are:

- State-of-the-art technology,
 - Remedy case management system.
 - Imaging of all documents.
 - Automated telephony.
 - Call routing to English and Spanish queues.
 - Digital call recording.
 - CAGNet application.
- Data mining and analysis,
- Quality assurance program,

CAG is committed to hiring only the best-qualified candidates. It seeks persons that have an extensive background in banking and compliance, a high degree of customer service skills, and a solid understanding of and experience in a call center environment. On-going compliance and developmental training is provided to motivate and further strengthen the staff’s existing knowledge and skills.

Additional CAG Highlights 2003-2004

Enhancements to the Internet site

In 2004, CAG redesigned its Web site by enhancing the consumer’s capability to access information and learn more about its services and by adding a searchable list of national bank operating subsidiaries that do business directly with consumers. This upgrade allowed individual consumers to determine if an entity is associated with and supervised by the OCC. CAG also expanded its list of resources by adding links to other regulatory agency Web sites. A consumer complaint form, although not required, was added as a convenience to the consumer. With a single click of a button, consumers have 24-hour, 365-days-a-year access to CAG’s Web site at www.occ.gov.

**THE CAG IS
COMPRISED OF
MORE THAN 47
COMPLIANCE
PROFESSIONALS,
EXCLUSIVELY
DEDICATED
TO HANDLING
CONSUMER
COMPLAINTS.**

OCC's National BankNet

The OCC's National BankNet is an exclusive, secure Web application accessible only by national bankers. To enhance the customer experience, CAG established an E-Business team to provide a single point of contact for BankNet customer service. This value-added approach includes a unique 800 number and enhances responsiveness to CAG's BankNet customer base.

CAGNet Application

CAGNet is a Web-based business-to-business application created to help speed complaint resolution time and increase efficiency for both the banks and the CAG. The implementation of CAGNet created an environment whereby the delivery of a consumer's complaint to the bank is reliable and efficient. The consumer's complaint arrives at the bank in a timely manner, bypassing the pitfalls of fax machines and regular mail. The application eliminates the need to manually reconcile the CAG's records with the bank's records. Approximately 85 percent of all complaints sent to banks are done via this application.

CAGNet has made bankers and OCC supervisory staff more aware of the importance of using complaint-based data on an individual or global basis for risk identification. Bankers have access to historical complaint data for their respective charters. Combining this data with their own analysis shows bankers what their customers are experiencing and identifies potential opportunities for improvement.

Currently, a total of 33 banking companies use the CAGNet application, including all of the institutions in the OCC's Large Bank program.

Contacting the Customer Assistance Group

CAG's review of consumer complaints focuses on determining whether the bank's actions are consistent with banking statutes, regulations, or any policies applicable to nationally chartered banking institutions. The CAG uses the term "case" to track written, e-mail, and telephone complaints and inquiries. A *complaint* is defined as an expression of dissatisfaction about a national bank. An *inquiry* is defined as a question or comment about a national bank or federal laws and regulations related to banking.

There are four ways for consumers to contact our office as displayed in Figure 11.

A case number is assigned for the initial contact made with CAG. CAG's call center is staffed with compliance professionals who review the consumer information and attempt to resolve the issue at initial contact. However, if additional information and a bank response are necessary to address the concerns, CAG specialists ask the consumer to submit a signed, written complaint.

CAG acts only on complaints and inquiries submitted in writing that are signed by the account holder. The Right to Financial Privacy Act (RFPA) governs the disclosure of financial records of individual bank

Case Study

A consumer's mortgage loan was sold to a national bank. The acquiring bank calculated the remaining monthly payments on the mortgage loan and the consumer paid as agreed. At the end of the loan term, the bank notified the consumer that it had miscalculated the amount of the payments and the consumer owed an additional \$5,000.

The consumer called the CAG because he did not believe he should have to pay the additional money.

The CAG contacted the bank. After re-evaluation, the bank agreed to waive the additional principal since the consumer met the terms of the contract. The bank also agreed to review all the loans that were purchased at the same time as this loan to ensure that there were no additional miscalculations.

customers to agencies of the federal government. Once CAG receives a signed complaint, it resumes its review of the matter.

The written correspondence, does not have to be in a special form, but should contain:

- The full name of the national bank or its subsidiary.
- The consumer's complete name and mailing address as used by the bank.
- The consumer's daytime telephone number.
- The account number of the product in question.
- A detailed explanation of the complaint or inquiry and a description of how the consumer would like the matter to be resolved.
- The signature of the account holder, legal guardian, power of attorney, or other person authorized to act for the account holder. If the person submitting the complaint is not the account holder, CAG must receive documentation indicating his or her authority.
- Any documentation supporting the consumer's position.

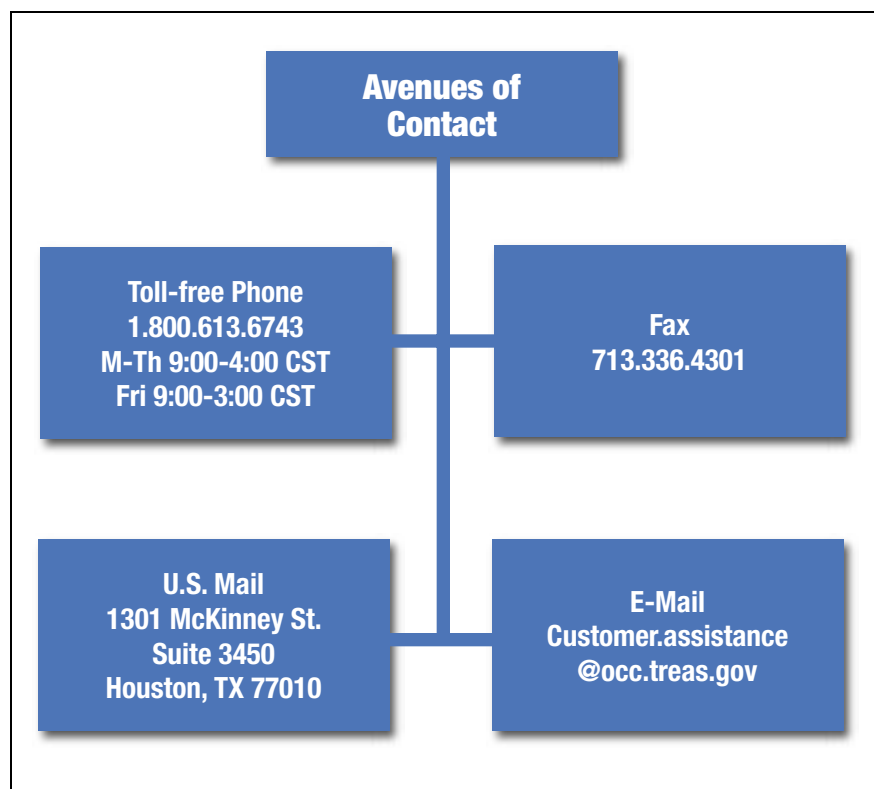
Once CAG obtains complete documentation, it sends an acknowledgment letter to the consumer, researches the complaint, and contacts the bank for a response. CAG provides a final response to the consumer's issue only after the bank or subsidiary submits its written reply.

Complaints caused by bank error or misunderstandings are often resolved voluntarily by the bank or its subsidiary. If CAG finds that a case involves disputes that are outside of its jurisdiction, the specialists suggest that the consumer consult an attorney for assistance. If a complaint involves a bank or other institution not

regulated by the OCC, CAG refers it to the appropriate agency.

General inquiries about banking laws or practices often can be answered via e-mail by a CAG specialist. The specialist may also be able to suggest other ways to resolve the problem directly with the bank or its subsidiary. E-mail is not necessarily secure against interception; therefore, CAG

Figure 11—CAG Avenues of Contact



**THE CAG DOES NOT
HAVE THE AUTHORITY
TO INTERVENE
IN MATTERS OF
LITIGATION.**

does not currently accept formal complaints by e-mail. The CAG also asks consumers to omit from their e-mails sensitive information of a personal or confidential nature, such as bank account, credit card, or social security numbers.

Over the years, CAG has found that the most effective way to resolve a complaint is for the consumer to address the issue first directly with the bank because a bank and its customer are most familiar with the account relationship. However, if the consumer is unable to resolve the complaint through the bank, he or she is encouraged to contact CAG for assistance.

*making a
difference*

Part V: Appendixes

Appendix 1 — Customer Assistance Group Thank You Letters

“Thanks for putting pressure on my bank. After receipt of your letter, not only did they temporarily credit my account, they miraculously found the two missing checks. Until you intervened, the process was moving at a snail’s pace.”

“I am writing to inform you that the problem referenced in my case for which I sought your assistance has been resolved. This outcome would not have been possible without your intervention and the office you represent. My sincere thanks to you for achieving in a week, what I was unable to accomplish in almost a year. For you and staff, please accept my deepest gratitude and appreciation for the fine work you do everyday for others like me.”

“Thank you very much for getting involved in my case about the bank unfairly raising my credit card interest rate. They have now corrected the problem and there is no question it is only because your organization became involved. I have letters from them previously making it clear they had no intention of correcting the situation so I was amazed at the swift turn around after you contacted them. Thank you again, you are so important to the “little guy” in these situations!”

“I received your letter and wish to state that I am entirely satisfied with the outcome. For me, it was probably more a matter of principle than substance. In my opinion, the matter would not have been satisfactorily resolved without the intervention of the Comptroller of the Currency.”

**Appendix 1 — Customer Assistance Group Thank You Letters
(continued)**

“Thank you so much for your work in my case with the bank. I feel that if you had not stayed in touch with them regarding my problem, that it would have never been resolved. We, as consumers, have no other help in seeing that we are treated fairly in dealing with these banks and credit card companies. If it had not been for your input and checking on their practices, we would have no help without hiring a lawyer, which can be too expensive in most cases. This case has been resolved to my satisfaction and I thank you for your help.”

“Thank you for your written response to my misunderstanding of the account with the bank. The information you gave me is quite thorough and clarifies my concern. I have written to the bank also and acknowledged responsibility for my account. I appreciate your attention to my questions. I am completely satisfied that the bank acted appropriately and I am the one who was confused.”

“You were my last hope to resolve my dispute with the bank. I can’t tell you how much I appreciate you considering and resolving this matter. I now consider this matter closed. Thanks for a professional job!”



Comptroller of the Currency
Administrator of National Banks

Subject: National Bank Appeals Process

Description: Guidance for Bankers

TO: Chief Executive Officers of All National Banks, Federal Branches and Agencies, Department and Division Heads, and All Examining Personnel

PURPOSE

This issuance revises the Office of the Comptroller of the Currency’s procedures for national banks to appeal agency decisions and actions. It replaces Banking Bulletin 96-18 (REV), dated February 23, 1996.¹

POLICY

The Office of the Comptroller of the Currency (OCC) is responsible for fostering the safety and soundness of the national banking system and for monitoring and enforcing national banks’ compliance with laws and regulations. It is also responsible for encouraging competitiveness, integrity, and stability of financial services provided by the national banking system. In fulfilling this mission, the OCC maintains open and ongoing communication with both the institutions it supervises and certain affected persons. The agency also fosters the fair and equitable administration of the supervisory process.

The OCC ombudsman functions *outside* the bank supervision area and reports directly to the Comptroller of the Currency. With the prior consent of the Comptroller, the ombudsman may stay any appealable agency decision or action during the resolution of an appealable matter. The ombudsman also may report weaknesses in OCC policy to the Comptroller, and may make recommendations regarding changes in OCC policy. The existence of a formal national bank appeals process does not change the core philosophy of the OCC concerning dispute resolution. The agency remains committed to making every effort to resolve disputes arising during the supervisory process fairly and expeditiously, in an amicable, *informal* manner.

National banks and federal branches and agencies of foreign banks (collectively referred to as “national banks” for the purpose of this issuance) are encouraged to contact the ombudsman to discuss any agency policy, decision, or action that might develop into an appealable matter. The ombudsman’s objective in these cases is to seek an agreeable resolution to the dispute *before* it develops into a formal appeal. This avenue provides an opportunity for national banks to resolve issues in the most efficient and expeditious manner possible.

¹ 12 USC 4806 required the OCC, Office of Thrift Supervision, Federal Deposit Insurance Corporation, Federal Reserve Board, and the National Credit Union Administration to establish an intra-agency appellate process for the review of “material supervisory determinations” made by agency officials. On February 23, 1996, the OCC issued Banking Bulletin 96-18 containing guidance on the types of determinations that are eligible for review and the process by which appeals are considered and decided by the OCC.

If national banks cannot resolve disagreements through informal discussions, they are encouraged to seek a further review of the OCC decisions or actions that are in dispute. The OCC official involved in the dispute should inform the bank of the formal appeals process.

This issuance establishes the process through which a national bank can seek such a review of agency decisions and actions. These procedures also ensure that no one is disadvantaged by filing an appeal. If a national bank questions whether it should make use of this appeal authority, it should contact the ombudsman. If called on, the ombudsman is available to act as a liaison between the OCC and *any* affected person with respect to any problem such a person may have in dealing with the OCC resulting from its regulatory activities. Interested parties should direct all communications with the ombudsman to the following address:

Office of the Ombudsman
1301 McKinney Street, Suite 3725
Houston, Texas 77010-3034
Phone: (713) 336-4350, Fax: (713) 336-4351

PROCEDURES

Appealable Matters

Except as otherwise provided below, a national bank may seek a review of *any* agency decision or action, including (1) examination ratings (2) adequacy of loan loss reserve provisions and (3) classifications of loans that are significant to an institution.

A national bank may *not* appeal to the ombudsman or its immediate OCC supervisory office:

- 1) Appointments of receivers and conservators;
- 2) Preliminary examination conclusions communicated to the national bank before a final report of examination or other written communication from the OCC is issued (although a national bank is encouraged to discuss any concerns or disagreements regarding these conclusions with its examiner-in-charge (EIC) or its supervisory office);
- 3) Any formal enforcement-related actions or decisions,² including decisions to: (a) seek the issuance

² For purposes of this section, a formal enforcement action is any action taken by the OCC or a state regulator regarding compliance with an existing formal enforcement action.

of a formal agreement or cease and desist order, or the assessment of a civil money penalty pursuant to Section 8 of the Federal Deposit Insurance Act (FDIA); (b) take prompt corrective action pursuant to Section 38 of the 12 USC 1831o); (c) issue a safety and soundness order pursuant to Section 39 of the FDIA (12 USC 1831p-1); and (d) commence formal investigations pursuant to 12 USC 481, 1818(n) and 1820(c);

- 4) Formal and informal rulemakings pursuant to the Administrative Procedure Act (APA), 5 USC 500 *et seq.*;
- 5) Decisions or recommended decisions following formal and informal adjudications conducted pursuant to the APA, 5 USC 701 *et seq.*;
- 6) Requests for agency records or information under, and submission of information to the OCC that are governed by, the Freedom of Information Act, 5 USC 552, or 12 CFR 4;
- 7) Decisions made to disapprove directors and senior executive officers pursuant to Section 914 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) (12 USC 1831i); and
- 8) Any other agency decisions that are subject to judicial review.

A formal enforcement-related action or decision commences when a Supervision Review Committee determines that the OCC will pursue a formal action under applicable statutes, regulations, or published enforcement-related policies of the OCC, and at that point becomes unappealable. Such policies include the OCC’s Policy for Corrective Action (PPM 5310-3 (REV)), Civil Money Penalty Policy (PPM 5000-7 (REV)), and Securities Enforcement Policy (PPM 5310-5). These policies are available on request from the OCC’s Communications Division, 250 E Street, SW, Washington, DC 20219-0001, or by telephone at (202) 874-4700. For purposes of this issuance only, remarks in a report of examination and other communications about a potential formal enforcement action made prior to a Supervision Review Committee decision are preliminary and, therefore, unappealable.

Filing an Appeal

A national bank may seek review of appealable matters by filing an appeal with *either* the ombudsman or the bank’s immediate OCC supervisory office.³ Except as otherwise provided in the process for appealing Shared National Credit (SNC) decisions and fair-lending-related matters, all appealable matters can be received in either location. The choice of where to file is left to the discretion of the bank, with a few exceptions. The procedures for filing an appeal under these options are outlined below:

- **Appeals to the Ombudsman.** Formal appeals to the ombudsman may arise from two sources: (1) appeals filed directly with the ombudsman, or (2) second-tier appeals of supervisory office appeal decisions and decisions rendered under one of the appeals procedures designed specifically for the issue in dispute (fair-lending-related appeals and SNC appeals).

³ These policies and procedures are not intended to, do not, and may not be relied upon to create rights, substantive or procedural, enforceable at law or in any administrative proceeding.

- **Appeals Directly to the Ombudsman:** National banks filing appeals with the ombudsman should submit information in writing fully describing the matter in dispute. To ensure that the bank’s board of directors supports the appeal, the president or chief executive officer must submit a bank’s appeal, and disclose in the submission the board’s approval of the action. When the ombudsman receives an appeal, he or she will contact the OCC management official(s) involved in the dispute. That management official(s) will submit written materials and relevant OCC documents pertaining to the appeal within 10 calendar days of the notice from the ombudsman. The ombudsman will contact the bank to ensure that the OCC has all relevant materials. If requested by either the OCC management involved in the dispute or a senior bank official, the ombudsman will arrange a meeting or a telephone call to more fully discuss the issues to be addressed in the appeal and any related matters. In the absence of any extenuating circumstances, the ombudsman will issue a written response to the appeal within 45 calendar days of accepting an appeal.
- **Second-Tier Appeals:** If a national bank *disagrees* with the decision rendered through a supervisory office appeal or a decision rendered under one of the specifically designated appeals procedures, the bank may further appeal the matter to the ombudsman. The bank must file written notice of this second-tier appeal within 30 calendar days of receiving the appeal decision letter from the appropriate deputy.

When the ombudsman receives the second-tier appeal, he or she shall review any material considered in the preparation of the initial appeal response, including information submitted by the appellant at the time of the first-tier (supervisory office) appeal, and any other information considered by the OCC management official in making the initial appeal decision. The ombudsman will contact the national bank to ensure that the OCC is in possession of all relevant material. If requested by either OCC management involved in the appeal or a senior official of the national bank filing the appeal, the ombudsman will arrange a meeting or a telephone call to more fully discuss issues to be addressed in the appeal and related matters. In the absence of any extenuating circumstances, the ombudsman will issue a written response to the second-tier appeal within 30 calendar days of the filing of that appeal.

- **Recusal of the Ombudsman:** In cases where the ombudsman should be recused from reviewing the decision under appeal, the ombudsman will transfer the appeal to a senior official designated by the Comptroller.
- **Supervisory Office Appeals.** Supervisory office appeals should be filed with the deputy comptroller representing the OCC supervisory office that supervises the bank. Community banks and mid-size banks should file such appeals with the deputy comptroller of the OCC district in which the bank is headquartered. Banks in Large Bank Supervision and Special Supervision programs using this option should file appeals with the appropriate deputy comptroller in the Washington office. National banks that choose not to file appeals of corporate decisions directly with the ombudsman should file with the deputy comptroller for Licensing.

National banks filing supervisory office appeals should submit information in writing fully describing the matter in dispute and setting forth their bases for requesting an appeal. Upon receipt of an appeal, a supervisory office official will contact the OCC employee(s) involved in the matter under appeal. The supervisory office official includes the appropriate deputy comptroller, or a designee who has not directly or indirectly participated in making the decision in dispute. The supervisory office official also should not be directly or indirectly responsible to the agency official who made the decision under review. The OCC employee(s) will submit written or oral information concerning the facts or circumstances resulting in the decision being appealed. If requested by a senior official of the national bank filing the appeal, the appropriate deputy comptroller will arrange a meeting or a telephone call to more fully discuss the issues to be addressed in the appeal and related matters.

In the absence of any extenuating circumstances, the appropriate deputy comptroller will issue an appeal decision letter within 45 calendar days of accepting the appeal. Immediately after issuing a decision letter, the deputy comptroller will forward to the ombudsman copies of all relevant materials considered in the preparation of the decision letter, including all written submissions by the bank.

If the national bank *disagrees* with the response from the deputy comptroller, a senior official of the bank may further appeal the matter to the ombudsman. The appeal decision letter from the deputy comptroller to the bank will notify the bank of this option. The bank must file written notice of this second-tier appeal within 30 calendar days of receiving the appeal decision letter from the appropriate deputy comptroller.

- ***Recusal of the Deputy Comptroller:*** In cases where the deputy comptroller directly or indirectly participated in making the decision under review, he or she must transfer the appeal to the ombudsman after advising the appellant. The same is true if he or she directly or indirectly reports to the agency official who made the decision under review.
- **Fair-Lending-Related Matters.** When the OCC has made a determination that there is reason to believe an instance or pattern or practice of discrimination exists that will result in either a referral to the Department of Justice or notification to the Department of Housing and Urban Development, the senior deputy comptroller for Mid-Size and Community Bank Supervision or the senior deputy comptroller for Large Bank Supervision (whichever oversees the bank) will provide written notice to the bank of this finding. National banks may file an appeal to the ombudsman for reconsideration of this decision within 15 calendar days of the date of this letter.
- **Shared National Credits.** Bank senior management should notify the EIC assigned to the bank if it disagrees significantly with a decision rendered through the SNC program. If the bank and the examining team are unable to resolve the disagreement through *informal* discussions, the bank may appeal the decision to the appropriate deputy comptroller for Large Bank Supervision.
 - ***Who May Submit a SNC Appeal:*** A SNC appeal may be submitted by the agent bank directly, or on behalf of any of the participating national banks. If the agent bank refuses, for whatever reason, to file the appeal on behalf of the bank group, Large Bank Supervision will accept

an appeal from any *one* participating bank. Banks must file SNC appeals with the regulator that supervises the agent bank. Therefore, if a state-member bank is a participant in a credit that is agented by a national bank, the state-member bank must file its appeal with the OCC. Conversely, if a national bank is a participant in a credit for which a state-member bank is agent, the national bank must file its appeal with the Federal Reserve Board. When there is no agent bank named, the appeal should be filed with the regulator that supervises the bank at which the SNC was reviewed. To ensure that the bank’s senior management supports the appeal, the chief executive officer (CEO) of the appealing bank must submit all SNC appeals.

- **Timing of SNC Appeals:** The agent bank should normally file a SNC appeal within 14 days of notification by the EIC of the preliminary disposition of the credit. Notification is when the EIC gives the bank the preliminary notification letter at the conclusion of the SNC review process. Any *one* participant bank can appeal either through the agent bank, or on its own, within 14 days of receiving the preliminary SNC results from the agent bank. If preliminary results are not provided by the agent bank, participant banks may file an appeal within 14 days of receiving the official SNC results from the primary regulator. Large Bank Supervision will evaluate the reasonableness of appeals delayed by extenuating circumstances on a case-by-case basis. The SNC preliminary notification letter authorizes agent or review banks, at their option, to notify participating banks of the preliminary disposition of each credit.

The report of shared national credits is issued annually to national banks participating in the SNC program at the end of each SNC review. Because of processing deadlines, the report may not reflect decisions on SNC appeals submitted beyond the initial 14-day filing period. In such cases, Large Bank Supervision will send a supplemental letter to each participating institution notifying them of the results of the appeal. The letter will also communicate any necessary revisions to each bank’s report of shared national credits.

- **SNC Appeal Letter:** In drafting a SNC appeal letter, senior bank management should explain why it disagrees with the SNC decision. The SNC appeal letter must identify the credit, commitment amount, disposition, basis for the bank’s disagreement, and any documentation that supports management’s position on the matter(s) in dispute. Banks should address all SNC appeals to the appropriate deputy comptroller for Large Bank Supervision, Comptroller of the Currency, Washington, DC 20219.
- **SNC Appeal Processing:** Once a SNC appeal is received in the Washington office, the appropriate deputy comptroller for Large Bank Supervision will immediately acknowledge receipt by letter to the CEO of the bank filing the appeal. Large Bank Supervision will normally forward a copy of the appeal letter and supporting information to the voting team within three working days of the receipt date. The voting team will then confirm the accuracy of the facts presented in the appeal letter.

A copy of the appeal letter will also be forwarded to the EIC of the bank. Each individual should provide his or her formal comments and opinions to the appropriate deputy comptroller for Large Bank Supervision within 10 working days after the receipt date. A deputy comptroller for Large Bank Supervision will normally grant requests by bank management for a meeting to discuss the issues in dispute.

An interagency panel consisting of senior credit examiners will evaluate the appeal and make a recommendation to senior management for approval. (Senior management of the appropriate agency has final approval on appeals submitted to them.) Large Bank Supervision will normally conclude the entire SNC appeal process within 30 days of receipt of the appeal. Immediately after issuing a decision letter, the appropriate deputy comptroller for Large Bank Supervision will forward to the ombudsman copies of all relevant materials considered in preparation of the response, including all written submissions by the bank. If a bank *disagrees* with the decision rendered through the SNC appeals process, it may further appeal the matter to the ombudsman. The appeal decision letter from the deputy comptroller to the bank will notify the bank of this option. The bank must file written notice of this second-tier appeal within 30 calendar days of receiving the appeal decision letter from the deputy comptroller for Large Bank Supervision.

For more information concerning the appeal of a SNC decision, please contact the Washington SNC program manager in Large Bank Supervision at (202) 874-4610.

Effect of Filing an Appeal

As a general matter, material supervisory decisions and actions are not stayed during the pursuit of an appeal. In the appropriate circumstances, however, the ombudsman or appropriate OCC official, upon written request of the bank, may relieve the bank of the obligation to comply with a supervisory decision or action while the supervisory appeal is pending.

Follow-up by the Ombudsman

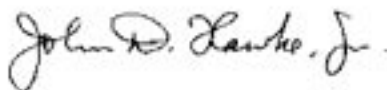
After the appropriate OCC official renders a decision on an appeal, the ombudsman will contact the appellant bank to ask whether the bank believes OCC examiners have taken actions against the bank in retaliation for its appeal. The ombudsman should make these contacts (1) six months after the date of the decision letter, and (2) six months after the date of completion of the first examination of the appellant bank following its appeal. A national bank may, of course, contact the ombudsman any time during or after the appeal if the bank reasonably believes that an OCC official is retaliating against it for its appeal.

Upon identifying or learning of any possible retaliatory actions, the ombudsman will investigate the complaint. In the absence of extenuating circumstances, such investigations will be completed within 30 days. If the ombudsman finds that retaliation has occurred, he or she will forward the complaint to either the senior deputy comptroller for Mid-Size and Community Bank Supervision or the senior deputy comptroller for Large Bank Supervision (whichever oversees the bank), or to the inspector general. These officials will take appropriate action, including disciplinary action consistent with OCC policies and procedures. In addition, to prevent future retaliation for an appeal, the ombudsman may recommend to the Comptroller that the next examination of the national bank exclude personnel involved in a ruling appealed by that bank. The Comptroller will make the final decision on any exclusion.

Liaison Activity of Ombudsman

In addition to hearing and deciding appeals brought by national banks, the ombudsman is available to act as a liaison between the OCC and any affected person(s). Such help may relate to any problem or question the party may have in dealing with the OCC resulting from the OCC’s regulatory activities. The ombudsman will either provide the requested information or direct the person to the appropriate point of contact. In so doing, the ombudsman will ensure that safeguards exist to encourage persons to come forward and to preserve the confidentiality of those seeking information or identifying a concern.

Interested parties may also call the OCC’s Customer Assistance Hotline, located in the OCC’s ombudsman’s office, to report any problems or concerns they may have regarding national banks. The toll-free number is 1-800-613-6743. In addition, interested persons may comment on proposed OCC rulemakings published in the *Federal Register* for notice and comment by filing written comments with the OCC, as described in the rulemaking.



John D. Hawke, Jr.
Comptroller of the Currency

Appendix 3 — Frequently Asked Questions about OCC Bulletin 2002-9, “National Bank Appeals Process: Guidance for Bankers”

OCC Bulletin 2002-9, “National Bank Appeals Process, Guidance for Bankers,” dated February 25, 2002, revises the OCC’s procedures for national banks to appeal agency decisions and actions. It replaces OCC Bulletin 96-18 (REV) dated February 23, 1996. In conjunction with this bulletin, the OCC also issued PPM 1000-9 (REV) that updates the guidelines for responding to national bank appeals and procedures for administering the appeals process.

I What Are the Major Differences between OCC Bulletins 2002-9 and 96-18?

The OCC’s Bulletin 2002-9 clarifies and revises OCC Bulletin 96-18 and makes some technical changes to reflect the OCC’s current organizational structure. The main clarifications and revisions are discussed as follows.

Appealable and Non-Appealable Matters

Bulletin 2002-9 clarifies the types of decisions that can be appealed to the ombudsman or the bank’s immediate supervisory office by allowing banks to appeal supervisory decisions resulting in informal enforcement actions.

In addition, Bulletin 2002-9 clarifies Bulletin 96-18 by stating that banks cannot seek ombudsman review of agency decisions for which banks are provided with an appeal mechanism by statute or OCC regulation, or when the decision is subject to judicial review. These include agency decisions to pursue formal enforcement action or recommended decisions following formal or informal adjudications pursuant to the Administrative Procedures Act, 5 USC 701 et seq., agency actions that are subject to judicial review, and decisions made to disapprove directors and senior executive officers pursuant to Section 914 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, 12 USC 1831i.

Formal Enforcement-Related Action or Decision Defined

Bulletin 2002-9 also clarifies that “formal enforcement-related actions or decisions” include the underlying facts that form the basis of recommended or pending formal enforcement actions, the acts or practices that are the subject of pending formal enforcement actions, and OCC determinations regarding compliance with an existing formal enforcement action. This clarification of the term “enforcement-related decisions” reflects that an enforcement-related decision includes the factual underpinnings of the decision.

Commencement of Formal Enforcement-Related Action or Decision

Bulletin 96-18 provided that when a bank receives notice from the OCC indicating its intention to pursue an enforcement action, the matter is removed from the appeals process. However, Bulletin 96-18 did not specify what type of notice from the OCC was required to remove enforcement actions from the

Appendix 3 — Frequently Asked Questions about OCC Bulletin 2002-9, “National Bank Appeals Process: Guidance for Bankers” (continued)

appeals process. To achieve agency consistency in the application of this rule and to eliminate confusion as to when a formal enforcement-related action or decision commences and therefore becomes unappealable, Bulletin 2002-9 clarifies that a formal enforcement-related action or decision commences when the OCC’s Supervision Review Committee determines that the OCC will pursue a formal action under applicable statutes, regulations, or published OCC enforcement-related policies.

Procedures for Filing an Appeal

Bulletin 2002-9 added language to clarify that to ensure that the bank’s board of directors supports the appeal, the president or chief executive officer must submit the bank’s appeal and disclose in the submission the board’s approval of the action.

Effect of Filing an Appeal

Bulletin 2002-9 revised Bulletin 96-18 to provide that as a general matter, material supervisory determinations and actions are not stayed during the pursuit of an appeal. However, upon written request from the bank, the ombudsman or an appropriate OCC official may relieve the bank of its obligation to comply with the supervisory decision or action while the appeal is pending.

2 What Is Appealable?

Material Supervisory Determinations

In accordance with 12 USC 4806, Bulletin 2002-9 provides that agency actions or decisions including examination ratings, the adequacy of loan loss reserve provisions, and classifications of loans that are significant to an institution can be appealed by national banks.

Scope of Review in Formal Enforcement Cases

While Bulletin 2002-9 does not allow appeals of the underlying facts of an enforcement action, it does permit material supervisory determinations to be appealed even when an enforcement action has been taken. For example, a bank that is being placed under formal enforcement action can appeal its CAMELSI ratings (composite or individual components), loan classifications, or conclusions rendered on the adequacy of its Allowance for Loan and Lease Losses. In such cases, the ombudsman would restrict his review to the factual record, primarily the facts detailed in the report of examination and make a determination on whether the Uniform Financial Institution Rating System criteria or other relevant policies have been applied correctly and consistently by the supervisory office.

Appendix 3 — Frequently Asked Questions about OCC Bulletin 2002-9, “National Bank Appeals Process: Guidance for Bankers” (continued)

Essentially, the ombudsman would use a process similar to that of a federal appeals judge versus the de-novo review process that is customarily employed on non-enforcement related appellate matters.

3 What Is Not Appealable?

In accordance with 12 USC 4806, Bulletin 2002-9 provides that the following agency actions or decisions are not appealable to the ombudsman or the bank’s immediate supervisory office:

- 1) Appointments of receivers and conservators.
- 2) Preliminary examination conclusions communicated to the national bank before a final report of examination or other written communication from the OCC is issued.
- 3) Any formal enforcement-related actions or decisions, including decisions to:
 - (a) Seek the issuance of a formal agreement or cease and desist order, or the assessment of a civil money penalty pursuant to Section 8 of the Federal Deposit Insurance Act (FDIA).
 - (b) Take prompt corrective action pursuant to Section 38 of the 12 USC 1831o).
 - (c) Issue a safety and soundness order pursuant to Section 39 of the FDIA (12 USC 1831p-1).
 - (d) Commence formal investigations pursuant to 12 USC 481, 1818(n) and 1820(c).
- 4) Formal and informal rulemakings pursuant to the Administrative Procedure Act (APA), 5 USC 500 et seq.
- 5) Decisions or recommended decisions following formal and informal adjudications conducted pursuant to the APA, 5 USC 701 et seq.
- 6) Requests for agency records or information under, and submission of information to the OCC that are governed by, the Freedom of Information Act, 5 USC 552, or 12 CFR 4.
- 7) Decisions made to disapprove directors and senior executive officers pursuant to Section 914 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) (12 USC 1831i).
- 8) Any other agency decisions that are subject to judicial review.

Comptroller of the Currency Examination Questionnaire

This form is being used to help measure the effectiveness of the overall supervision of your institution, including the examination that was just completed. Your input will help us evaluate the OCC's performance and progress in improving the efficiency and effectiveness of our bank supervision efforts. Please complete the attached questionnaire and return it to Samuel Golden, Ombudsman, the administrator of the program. Your response is **entirely voluntary** and will remain **confidential**. If you would like to discuss this questionnaire, please feel free to contact Samuel Golden at (713) 336-4350.

ATTENTION:

The Examination Questionnaire can now be completed electronically on the OCC's National BankNet. Log on to National BankNet (www.banknet.gov) Click Forms & Applications scroll down to The OCC's Electronic Bank Examination Questionnaire. Click *Add New Questionnaire* to start the process.

If you have any questions or problems please contact the Ombudsman's Office at (713) 336-4350.

PAPERWORK REDUCTION ACT STATEMENT FOR EXAMINATION QUESTIONNAIRE

No person is required to respond to an information collection unless it displays a currently valid OMB control number. This information collection is approved under Office of Management and Budget (OMB) Control Number 1557-0199. This information collection is voluntary. This information collection is needed to permit a national bank to provide feedback, directly to the Office of the Ombudsman, Office of the Comptroller of the Currency (OCC Ombudsman), on the content and conduct of OCC bank examinations. The OCC Ombudsman will use the information received to evaluate the effectiveness of the examination process and agency communications. The OCC Ombudsman promotes OCC/banker communications and resolves problems and conflicts.

The OCC expects to collect this information from approximately 2,100 national banks. Each respondent is estimated to file 0.89 responses per year. The burden per response is expected to average approximately 10 minutes. The time for completing the questionnaire will vary. A response may take a very short time if bank management has no descriptive comments, and could take 30 minutes or more in those instances where bank management has substantial descriptive comments. The burden for this collection is estimated at 312 burden hours per year.

Comptroller of the Currency Examination Questionnaire

To be filled out by the Assigned Examiner:

Type of Examination:

- Commercial
 Consumer Compliance
 CRA
 Information Technology (IT)
 Asset Management
 Federal Branch/Agency
 Other (specify)

Supervisory Cycle End Date:

Supervisory Office Location:

- Northeastern
 Central
 Southern
 Western
 Mid-Size Bank
 Large Bank

To be filled out by bank management:

Name and Position:

Bank Name:

Telephone Number:

Regarding the examination:

	Agree		Agree		Disagree
	1	2	3	4	5
	+-----+-----+-----+-----+				
1. The examination scope was appropriate to accurately assess the bank's condition.	1	2	3	4	5
	+-----+-----+-----+-----+				
2. The examiners' requests for information before and during the activities were reasonable and justified by the examination scope.	1	2	3	4	5
	+-----+-----+-----+-----+				
3. The examination team conducted their activities in a professional manner.	1	2	3	4	5
	+-----+-----+-----+-----+				
4. The examination placed appropriate reliance on the internal audit support effective supervision.	1	2	3	4	5
	+-----+-----+-----+-----+				
5. The examiner-in-charge and examination team were knowledgeable.	1	2	3	4	5
	+-----+-----+-----+-----+				
6. The examiner-in-charge and examination team provided useful feedback, observations and suggestions.	1	2	3	4	5
	+-----+-----+-----+-----+				
7. The examiner-in-charge and examination team presented well-	1	2	3	4	5
	+-----+-----+-----+-----+				
8. The recommendations for corrective actions made by the examiner-in-charge and the examination team were reasonable.	1	2	3	4	5
	+-----+-----+-----+-----+				
9. During exit and board meetings, the examiner-in-charge and examination team clearly and effectively communicated their findings and concerns.	1	2	3	4	5
	+-----+-----+-----+-----+				

Appendix 4 — Examination Questionnaire (continued)

	Agree		Agree		Disagree
	1	2	3	4	5
10. The tone and the content of the correspondence (reports, letters, conclusion memos, etc.) between the OCC and the bank were consistent with the exit and board meetings.	+-----+	+-----+	+-----+	+-----+	+-----+
11. The correspondence (reports, letters, conclusion memos, etc.) between the OCC and the bank clearly communicated supervisory findings, significant issues and corrective actions (with time frames) management and/or the board needed to take.	+-----+	+-----+	+-----+	+-----+	+-----+
12. On-going communication by the examiner-in-charge with senior management and the board or board committee(s) was appropriate.	+-----+	+-----+	+-----+	+-----+	+-----+
13. Examiners minimized the burden to the degree possible on the bank, its officers and employees when conducting the examination. This included coordination and cross-reliance with other regulators.	+-----+	+-----+	+-----+	+-----+	+-----+
14. The supervisory objectives and strategy incorporated appropriate perspective and provided necessary focus on business risks, assessment of their significance, and resulted in appropriate development of the examination strategy, emphasis on key risk areas and resulting areas of focus in the examination.	+-----+	+-----+	+-----+	+-----+	+-----+
15. The examination report was delivered in a timely manner, so examination results and corrective actions required by bank management were influenced in a timely and appropriate manner.	+-----+	+-----+	+-----+	+-----+	+-----+

Regarding the OCC's overall supervision of your institution:

16. During the past year, OCC _____ has/have been responsive to the bank's needs:					
a) field staff;	1	2	3	4	5
	+-----+	+-----+	+-----+	+-----+	+-----+
b) corporate staff (e.g., for corporate applications);	1	2	3	4	5
	+-----+	+-----+	+-----+	+-----+	+-----+
c) attorneys (e.g., for legal opinions);	1	2	3	4	5
	+-----+	+-----+	+-----+	+-----+	+-----+
d) accountants (e.g., for accounting opinions);	1	2	3	4	5
	+-----+	+-----+	+-----+	+-----+	+-----+
e) other _____.	1	2	3	4	5
	+-----+	+-----+	+-----+	+-----+	+-----+

(Please do not respond to b, c, d, or e if you have not dealt with OCC's corporate staff, attorneys, accountants, etc.)

17. The OCC identifies potential problems before they can cause significant harm to the bank.	1	2	3	4	5
	+-----+	+-----+	+-----+	+-----+	+-----+
18. The OCC's supervisory efforts focus on banking activities that pose the highest risk.	1	2	3	4	5
	+-----+	+-----+	+-----+	+-----+	+-----+

Appendix 4 — Examination Questionnaire (continued)

	Completely Agree		Somewhat Agree		Completely Disagree
19. OCC regulations:					
a) effectively target the areas of bank activity that present the greatest risk to safety and soundness, the payments system, or the long-term viability of the national banking system;	1	2	3	4	5
	+-----+	+-----+	+-----+	+-----+	+-----+
b) promote national banks' competitiveness and allow industry innovation;	1	2	3	4	5
	+-----+	+-----+	+-----+	+-----+	+-----+
c) eliminate unnecessary regulatory requirements and minimize the burden resulting from requirements necessary for effective supervision.	1	2	3	4	5
	+-----+	+-----+	+-----+	+-----+	+-----+
20. The OCC works with the bank and follows-up to ensure bank management addresses potential problems and risks.	1	2	3	4	5
	+-----+	+-----+	+-----+	+-----+	+-----+
21. The OCC allows the bank to offer new products and services if the bank has the expertise to manage the risks effectively and to provide the necessary consumer protections.	1	2	3	4	5
	+-----+	+-----+	+-----+	+-----+	+-----+
22. The OCC enforces CRA and fair lending laws by focusing on the bank's performance.	1	2	3	4	5
	+-----+	+-----+	+-----+	+-----+	+-----+

Please use the space below to add any descriptive comments or add additional pages, if needed.

What are the most useful aspects of the OCC's supervision, including the examination just completed?

What are the least useful aspects of the OCC's supervision, including the examination just completed?

Please indicate any areas where you think OCC examiners need greater knowledge to understand your bank's lines of business and their inherent risks.

Please address any areas where you think the OCC's fundamental supervision approach and/or methods of supervision need to change to evolve to keep pace with the industry.

Please return this form to: Samuel Golden, Ombudsman, 1301 McKinney Street, Suite 3400, Houston TX 77010. Phone (713) 336-4350 Fax: (713) 336-4351.