

This handbook section provides information regarding the appeals process for Office of Thrift Supervision (OTS) decisions on applications, notices, and filings (collectively defined as applications). OTS recognizes that its decisions have a significant effect on its regulated savings institutions and that certain OTS application decisions may be challenged. Because it is the OTS's objective to ensure its decisions are fair, equitable and consistent, OTS has developed a process for the review, appeal and reconsideration of disputed OTS decisions. Further, the OTS Ombudsman is also available for use by an institution in dealing with OTS on any dispute or appeal relating to an OTS decision on an application.

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

FILING REQUIREMENTS

Filings and submissions made pursuant to the appeals process are not subject to the application processing procedures in 12 CFR Part 516.

Processing Procedures and Time Frames

A formal request for reconsideration of an OTS application decision, or for reconsideration of an OTS decision to impose a nonstandard condition of approval, should be filed with OTS within 30 calendar days of the OTS decision on the application. Applicants requesting reconsideration should submit an original and two copies of the request to the OTS-Washington Applications Filing Room, and submit one copy to the appropriate Regional Office. See Application Filing Requirements in Section 010 of this handbook for OTS addresses and more information.

No fees are charged for a request for reconsideration. OTS will make every effort to take action upon a request for reconsideration within 60 calendar days of the receipt of a request, or if additional information is requested, within 60 calendar days of receipt of any additional information.

Information and Form Requirements

The request should contain the following information:

- Identification of application on which review is sought;
- A copy of the original OTS decision letter or order, and any subsequent modifications;
- A statement of whether the applicant is submitting a request for reconsideration of an OTS application decision, or for the imposition of nonstandard conditions of approval;
- A concise statement of the reasons why the applicant disagrees with an OTS application decision or imposition of nonstandard conditions of approval;

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- A description of any applicable statutes, regulations, policies or procedures on which the applicant relies;
 - Confirmation as to whether the applicant has, in the interim, complied with the terms of the application decision and any nonstandard condition of approval;
 - Copies of any supporting documents; and
 - The name, address and telephone number of an individual designated to provide additional information.

Special Considerations

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

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

Ombudsman

Section 309(d) of the Community Development and Regulatory Improvement Act of 1994 (CDRIA), requires that each Federal banking agency appoint an Ombudsman. Section 309 provides that the Ombudsman is to:

- Act as a liaison between the agency and any affected person with respect to any problem such party may have in dealing with the agency resulting from the regulatory activities of the agency; and
- Assure that safeguards exist to encourage complainants to come forward and preserve confidentiality.

Section 309(b)(2) of the CDRIA provides that each Federal banking agency shall ensure that appropriate safeguards exist for protecting any party who appeals a “material supervisory determination” from retaliation by agency examiners.

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

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

When a problem is brought to the attention of the Ombudsman, the Ombudsman will explain the appeals process. Where the applicant has a complaint with regard to the process, the Ombudsman will meet with the appropriate OTS official, or arrange a meeting between the complainant and the appropriate OTS official and attempt to resolve the problem. If the Ombudsman believes a problem or complaint has not been satisfactorily addressed, the Ombudsman may raise the matter with a higher level official and/or the Director for resolution.

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

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

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

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

INFORMATION SOURCES

Thrift Bulletin 68 dated July 15, 1996