

Thrift Bulletin
TB 68b



Handbooks: **Examination
Holding Company**

**Sections: 060, 070
200**

Subject: **Examination Scheduling, Scoping, and Management
Ratings: Development, Assigning, and Presenting
Administration**

Appeals and Ombudsman Matters

Summary: This bulletin provides a process for the appeal of material supervisory decisions and a description of the Office of Thrift Supervision's (OTS) Ombudsman's office functions. Thrift Bulletin (TB) 68b rescinds TB 68a, dated June 10, 2004.

For Further Information Contact: The OTS Ombudsman or your Regional Office, regarding the appeal of material supervisory decisions or other Ombudsman-related issues. You may access this bulletin at our website: www.ots.treas.gov.

Thrift Bulletin 68b

APPEALS

Federal law requires that OTS and the other federal banking agencies establish an appellate process for the review of material supervisory determinations and appoint an Ombudsman. This is by virtue of Section 309a of the Regulatory Improvement Act of 1994 (12 USC Section 4806). The Regulatory Improvement Act (RIA) was signed into law in September 1994. This thrift bulletin establishes the guidelines that govern the OTS's appeals process and describes the functions of the OTS Ombudsman's office.

The RIA statute only requires OTS to develop an internal appeals process for insured depository institutions. However, this bulletin expands the process to include savings and loan holding companies and individuals. For purposes of this bulletin, we define "you" as an OTS-regulated thrift, a savings and loan holding company, or an individual affected by an OTS supervisory determination.

OTS encourages the resolution of issues through informal communications between you and OTS regional staff. You may discuss with regional staff, including the Regional Director, any issues at any time. You may also, at any time, discuss any issues with the Ombudsman. OTS encourages you to discuss concerns about examination findings with the appropriate regional staff during the examination. You should raise the matter directly with the examiner-in-charge (EIC) while the EIC is on site at the thrift or savings and loan holding company. If the matter is not resolved, examiners will briefly note the issue in the final ROE.

We encourage you to raise the issue at the earliest possible date. If you cannot resolve the issue through regional level discussions, you may appeal and seek independent review through the Ombudsman's Office. Your appeal will be reviewed by the OTS Appeals Committee (OAC). The OAC is a three-person committee comprised as follows: (1) the Ombudsman – who serves as the chairperson, (2) the Deputy Director for Examinations, Supervision, and Consumer Protection – or designee, and (3) the Deputy Director and Chief Counsel – or designee. Matters heard by the OAC will be resolved by a majority vote and the decision will be communicated to the appealing party within 60 calendar days from the date the appeal is accepted. You will receive a written notice of the acceptance of the appeal.

All appeals must meet the requirements of Thrift Bulletin 68b. OTS does not charge a filing fee for appeals.

Scope of the OTS Appeal Process

Any written supervisory conclusion or decision by OTS may be appealed. Examples of appeals concerning material supervisory determinations are as follows:

- All thrift and holding company examination ratings including, among others, composite and component CAMELS ratings
- The adequacy of loan loss reserve provisions
- Significant loan classifications
- The categorization of a savings and loan holding company

The following matters are **not** appealable to the Ombudsman:

- Application decisions and conditions of approval
- Agency decisions subject to judicial review
- Any formal enforcement-related actions or decisions, including:
 - Initiating a formal investigation
 - Filing a notice of charges
 - Assessing civil money penalties
 - Taking action pursuant to the Prompt Corrective Action provisions of 12 USC 1831o
 - Issuing a supervisory agreement
 - Issuing a cease and desist order
- Decision to appoint a receiver or conservator

- Preliminary examination findings and conclusions
- Conclusions and Decisions of the OTS Consumers Affairs Division
- Formal and informal rulemakings
- Freedom of Information Act (FOIA) requests
- Actions under Section 914 of the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) concerning the disapproval of directors and senior executive officers
- Assessments pursuant to 12 CFR Part 502. You may raise concerns about semi-annual assessments for a thrift or holding company with the Regional Director or Ombudsman. OTS will not entertain any requests for refund or proration of assessments, other than for computational errors. While OTS will address computational errors in assessments through these procedures, it anticipates that the appropriate regional staff will first review such errors.

Procedures for Filing Appeals

The following procedures should be followed when submitting an appeal:

- The board of directors must authorize by resolution an appeal by a thrift or savings and loan holding company. An appeal by an individual does not require a board of directors' resolution.
- You must file one copy of the resolution with the appeal.
- You must file the appeal with the Ombudsman's Office.
- The appeal must be in writing with an original signed transmittal letter. The transmittal letter must contain the name of the individual with whom the Ombudsman may discuss the issue.

You must file an appeal within 60 calendar days from the date you were notified of a material supervisory decision. The appeal should contain the following information:

- A statement of why you are submitting an appeal and why you disagree with the OTS decision.
- The remedy you are seeking and its financial effect, if any.
- A statement of whether you tried to resolve the issue at the regional level.
- A description of any applicable statutes, regulations, policies, or procedures.
- Confirmation as to whether you are, in the interim, complying with the terms of the OTS decision.
- Copies of any other supporting documents, including excerpts from supervisory documents, reports, and correspondence with the region about the supervisory determination.
- The name, address, and telephone number of a person who can provide additional information, if necessary.

Effect of Initiating an Appeal

An appeal will not suspend or delay the pursuit of any enforcement action or formal investigation. An appeal will not delay the obligation to comply with any order or other determination resulting from an enforcement action. An appeal will not operate automatically to relieve you of the obligation to comply with required actions relating to the issue.

A thrift must publicly disclose its Community Reinvestment Act (CRA) Performance Evaluation in its public file within 30 calendar days after receipt from OTS. OTS will suspend the CRA-rating disclosure requirement if the thrift submits an appeal to the Ombudsman's Office prior to the disclosure due date.

Retaliation

OTS prohibits any employee from acts of retaliation against a thrift, savings and loan holding company, or other party that files an appeal.

OMBUDSMAN MATTERS

OTS Ombudsman

Frederick R. Casteel

Authority

Federal law requires each federal banking agency appoint an Ombudsman (12 USC Section 4806). The Ombudsman is to:

- Act as a liaison between the agency and you with respect to any problem in dealing with the agency resulting from the regulatory activities of the agency.
- Assure that safeguards exist for protecting any party who appeals a material supervisory determination from retaliation by agency examiners.

Responsibilities of the Ombudsman

The Ombudsman ensures that OTS addresses issues about OTS regulatory actions in a fair and timely manner. The Ombudsman's major function is to provide assistance as a liaison with the thrift industry. The Ombudsman will also provide assistance to the public on issues, concerns, or problems they may have in dealing with OTS. The Ombudsman reports directly to the Senior Deputy Director and Chief Operating Officer of OTS.

Resolution of Issues

The Ombudsman will explain the appeals process or forum for resolution. If there is an existing avenue of appeal on the merits or another appropriate forum for resolving a problem, the Ombudsman will direct the inquiring party to the appropriate appeals process or forum for resolution. OTS's regulations or procedures provide existing mechanisms for resolution of disputes in many instances such as the following:

- Prompt corrective action directives under Section 38 of the Federal Deposit Insurance Act
- Denials or partial denials of Freedom of Information or Privacy Act requests
- Issuance of capital directives
- Matters within the jurisdiction of the Department of the Treasury's Inspector General or Federal or State prosecutorial authorities
- Consumer complaints

Where there is no established process to resolve a dispute, or if you have a complaint regarding the established process, the Ombudsman will meet with the appropriate OTS official or arrange a meeting between the party and the appropriate OTS official. If the Ombudsman believes OTS has not satisfactorily addressed a problem or complaint, the Ombudsman may raise the matter with a higher level official and/or the Senior Deputy Director and Chief Operating Officer and/or the OTS Director for resolution.

Safeguards

The Ombudsman ensures that safeguards exist to encourage parties to come forward and preserve confidentiality. To encourage parties to come forward, OTS established the appeals process discussed above. The Ombudsman is responsible for resolving issues with OTS officials at all levels of the agency and has the authority to review allegations of retaliation.

If requested, the Ombudsman will keep all information and materials confidential. The Ombudsman will not disclose the materials, without approval, except to appropriate reviewing officials, officials with appropriate authorization, or as required by law. The Ombudsman will honor requests to keep confidential the identity of the party. The resolution of certain complaints (such as complaints of retaliation against an individual institution) may not be possible if the identity of the parties remains confidential. In such cases, the Ombudsman will discuss the circumstances limiting confidentiality with the party.

Retaliation

The Ombudsman may receive inquiries of retaliation against a party as a result of using the Ombudsman or any existing avenue of appeal or forum. Upon receiving an inquiry of retaliation, the Ombudsman will investigate the basis for the alleged retaliatory conduct. Upon completion of the review, the Ombudsman will report any findings of retaliation to the Senior Deputy Director and Chief Operating Officer of OTS with a recommendation. The Ombudsman may refer findings of retaliation to the Senior Deputy Director and Chief Operating Officer for possible disciplinary action against the OTS employee who retaliated.

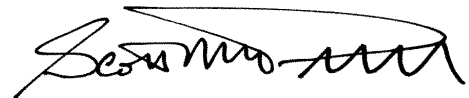
Additional Assistance Information for Small Businesses

The Small Business Regulatory Fairness Act (SBRFA) aids with comments and complaints between small businesses and federal agencies. The National Ombudsman for the Small Business Administration can provide assistance in this process.

For more information, go to <http://www.sba.gov/aboutsba/sbaprograms/ombudsman/index.html> or call toll free 888-REG FAIR (734-3247).

Contact Information

You may contact the Ombudsman Frederick R. Casteel at any time regarding a problem resulting from the regulatory activities of the OTS by calling (972) 277-9610 or writing to: Ombudsman, Office of Thrift Supervision, P.O. Box 619027, Dallas/Fort Worth, TX 75261-9027, or by email at: ombudsman@ots.treas.gov. Additional information on the Ombudsman is listed on our website at: www.ots.treas.gov.



—Scott M. Polakoff
Senior Deputy Director