

**Regulatory Bulletin**

RB 4 rescinded 9/20/93 by RB 4a. Click [HERE](#) to link to RB 4a.

**Handbook: Thrift Activities**  
**Subjects: Classification of Assets**

**Section: 260**  
**RB 4**

November 30, 1988

**RESCINDED**

**Summary:** This bulletin amends the informal review process for certain supervisory decisions and implements section 407 of the Competitive Equality Banking Act of 1987 (CEBA). It replaces R-Memorandum 76 which is rescinded.

**For further information contact:**

The FHLBank District in which you are located, or the Policy Analysis Division of the Office of Regulatory Activities, Washington, D.C.

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**Editor's note:** This Bulletin differs from R-76 in 3 areas.

1. The definition for "independent," contained in Guideline 2. K. (1) and (2) has been revised to explicitly state that independent arbiters are not consultants to the District Banks or the Board.

2. Guideline 5 has been revised to include permission for consolidation of requests that are related with respect to loan type, participation, region, or any reasonable combination.

3. Guideline 6 (b) has been revised to permit Principal Supervisory Agents to limit the quantity of pages in a written statement where a number of loans or classifications are simultaneously proposed for review and where it is clear that the Congressionally mandated review time will be inadequate to review the statements if their maximum permissible length is not reduced.

**Introduction**

Congress included an informal review of certain supervisory decisions as one of a number of supervi-

sory changes mandated by the Competitive Equality Banking Act (CEBA). Under the statutory provisions, an institution may request an informal review of a supervisory decision related to the valuation of loans or the collateral for those loans. Because valuation methods necessarily involve judgment, certain supervisory decisions may be controversial. This informal review process will allow disputed decisions to be reviewed promptly by an independent arbiter (or arbitration panel) and by the Principal Supervisory Agent (PSA).

The informal review should improve the overall responsiveness of the examinations and supervision staff to industry concerns. Because the review will not be adversarial in nature, improved communications between member institutions and the District Banks can be expected.

The review process should only be used for legitimate and material disagreements. The request for Principal Supervisory Agent review and arbitration does not stay the effects of the supervisory decision. Even though a thrift institution requests an informal review of a decision, the thrift institution must establish any valuation allowance immediately as the Principal Supervisory Agent directs and report the allowance on its Thrift Financial Report. Therefore, the review should not interfere with the mandate to ensure the overall safety and soundness of the thrift industry.

**Limitations**

1. Only written decisions will be subject to arbitration. A written decision provides the institution with the reasons for the decision and allows the thrift to file a meaningful request for review. Permitting arbitration on informal preliminary decisions would be time-consuming and costly for both the thrift and the District Banks.

2. The statute limits the review process to issues involving loans. The arbiter process is not to be used for disputed decisions involving direct investments, foreclosed real estate, fixed assets, or intangible assets.

3. Within 25 calendar days after the date of decision, a written request for review should be filed with the PSA. This time period gives the thrift ample opportunity to review the decision and gather additional information supporting its position. The time period should reduce the burden for all parties by focusing on current issues with readily available information.

4. Congress intended for the arbiter process to be an informal review. To keep it informal, retain the maximum amount of flexibility and to allow District Banks to use the varying resources available to them, certain procedures are left to the determination of the Principal Supervisory Agents. Each Principal Supervisory Agent is to develop pol-

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icies and standards in the following areas:

- a. Who may serve as an arbiter.
- b. How to determine that the arbiter is independent.
- c. Length restrictions on the arbitration report.
- d. Arbitration fee schedule.

## Guidelines

### *1. Purpose.*

This section describes the Board's procedures for informal review of certain supervisory decisions. This informal review is required by Section 407 of the Competitive Equality Banking Act of 1987.

### *2. Definitions.*

As used in this memorandum, the following definitions apply unless the context otherwise requires:

- a. "Arbiter" means the single arbiter or the arbitration panel designated by the Principal Supervisory Agent to consider a request for review under this part.
- b. "Arbitration panel" means three arbiters, each from separate business entities.
- c. "Bank" means the Federal Home Loan Bank for the district in which the principal office of the claimant is located.
- d. "Board" means the Federal Home Loan Bank Board.
- e. "Business days" means working days and excludes Saturdays, Sundays and federal holidays.
- f. "Claimant" means any thrift institution that submits a request for review by the Princi-

pal Supervisory Agent under this procedure.

- g. "Corporation" means the Federal Savings and Loan Insurance Corporation.
- h. "Decision" means a written determination by the examiner or supervisory agent on any matter that is a proper subject of a request for review under Section (3).
- i. "FADA" means the Federal Asset Disposition Association.
- j. "ORA" means the Office of Regulatory Activities.
- k. "Independent", when used with respect to any arbiter, means that the arbiter (1) is not a current director, officer or employee of or consultant to any Federal Home Loan Bank, the Corporation, ORA, or FADA; (2) is not a member or employee of or consultant to the Board; (3) is not a current director, officer, employee, agent, shareholder, bondholder, partner, borrower, depositor, attorney, accountant, or affiliate of or the consultant to the claimant or acting in a similar capacity for the claimant; and (4) has no interest in the decision for which a request for review has been submitted.
- l. "Principal Supervisory Agent" means the Principal Supervisory Agent for the Federal Home Loan Bank district in which a claimant is located.
- m. "Supervisory agent" means the supervisory agent as defined in Section 501.10 of the Board's regulations but excludes the Principal Supervisory Agent.

n. "Request for review" means a written appeal, consisting of those items required in guideline 6b., by a claimant for informal review of any decision under this procedure.

o. "Thrift institution" means any institution whose accounts are insured under Title IV of the National Housing Act of 1934, and any institution that has subscribed for the stock of a Federal Home Loan Bank.

### *3. Decisions subject to review.*

A thrift institution may obtain an informal review of the following decisions made by an examiner or supervisory agent:

- a. The appraisal value of:
  - Any loan held by the claimant.
  - Any property serving as collateral to secure the repayment of any loan held by the claimant.
- b. The classification of any loan held by the claimant.
- c. Any requirement imposed on the claimant to establish or to add to a reserve or allowance for a possible loss on any loan held by the claimant.

### *4. Decisions Not Subject to Review.*

The statute limits the review process to valuation or classification issues involving loans. Therefore, the arbiter process may not be used to dispute decisions about direct investments, foreclosed real estate, fixed assets, intangible assets, or other non-loan items. On a case-by-case basis, the Principal Supervisory

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Agent may choose to review decisions where the disputed valuation involves an asset that has in other cases been treated as a loan (e.g., treatment of junk bonds (below investment grade securities) as commercial loans).

## 5. Consolidation of Requests.

The Principal Supervisory Agent may consolidate two or more requests for review that are related with respect to borrower, industry, loan type, participation, region, thrift institution, or any reasonable combination and conduct a single review. A request for review may relate to a decision made by the supervisory agent about more than one loan, if more than one loan is the subject of the decision, or to multiple decisions made with respect to a single loan. Only one informal review per decision is allowed.

For decisions concerning participation loans, the Principal Supervisory Agent of the lead lender will conduct the review. All loan participants should be advised of the informal review by the requesting thrift.

## 6. Procedure for requesting a review.

### a. Time and place of filing.

The thrift institution must file a request for review with the Principal Supervisory Agent to be received before the 25th calendar day after the date of the decision. The Principal Supervisory Agent may extend the time for filing. (If the 25th calendar day falls on a weekend or Federal holiday, the receipt by the Principal Supervisory Agent for a request for review would extend to the next business day.)

### b. Content of the request for review.

A request for review must include the following:

1) A copy of the decision for which the review is requested.

2) A written statement of the factual basis for the request. The written statement shall not exceed 25 double-spaced pages and should include:

a) Identification of the precise loan or loans that are the subject of the request.

b) With respect to each loan, a statement whether the request involves an appraisal value, the classification, or the establishment of a reserve or allowance for loss.

c) The factual basis for the request as to each loan.

For multiple loans or classifications proposed for review, the Principal Supervisory Agent may require the institution to limit its written statement to ten pages per individual loan, classification, property, or appraisal, and an additional ten pages to discuss overall reserve levels, up to a total maximum of 100 pages.

Individual Principal Supervisory Agents may choose, on the basis of staff availability, to forgo the limitations expressed above. This procedure, however, is an acceptable variant to the guidelines and does not diminish the ability of thrifts to file requests for informal review in accordance with CEBA.

3) A request for an arbitration panel, if desired. If a panel is not requested, the Principal Supervisory Agent will appoint a single arbiter.

4) The name, address, and telephone number of the claimant's primary contact person for the receipt of all information during the review.

5) A statement by the claimant stipulating that any written statement made as a part of a review pursuant to this procedure may not be used in any further arbitration or administrative proceedings under this procedure, or in any judicial proceeding involving the decision (or content of the decision) that is the subject of the request for review. The claimant must further state that he/she waives the right to bring any action against the arbiter(s).

### c. Affidavit.

The request for review must be accompanied by a signed affidavit in a form and content satisfactory to the Principal Supervisory Agent, executed by an officer of the claimant, attesting to the personal knowledge or belief of the truth of each of the factual statements in the request for review.

### d. Incomplete request for review.

If a request for review is timely filed under paragraph (a) of this section but does not meet the requirements of paragraph (b) concerning "Content of the request for review," the arbiter and the Principal Supervisory Agent will review the decision based on the information sub-

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mitted. The Principal Supervisory Agent will not review a decision unless the request for review includes the affidavit required by paragraph (c).

## 7. Delegation by the Principal Supervisory Agent.

The Principal Supervisory Agent may delegate the responsibility to process requests for review under this section and the succeeding section to any agency employee of the Federal Home Loan Bank in the Principal Supervisory Agent's district. The Principal Supervisory Agent may not delegate the responsibility to review the arbiter's recommendation.

## 8. Choice of Arbitrator.

- a. Within five business days after receiving a request for review, the Principal Supervisory Agent shall provide the claimant with the names of two arbiters (four, if a panel has been requested) from a list of prospective arbiters maintained by the Principal Supervisory Agent.
- b. Within three business days after receiving the names of prospective arbiters, the claimant may choose to remove one prospective arbiter's name and advise the Principal Supervisory Agent of the action. Except as provided by this paragraph, the claimant shall have no right to challenge the arbiter appointed by the Principal Supervisory Agent.
- c. If no objection is received, the Principal Supervisory Agent will select an arbiter or arbitration panel from the names provided.

## 9. Supervisory agent's rebuttal.

Within ten business days after the request for review is received, the supervisory agent may deliver to the arbiter and the claimant a written rebuttal. This rebuttal statement may include factual support for the decision and should include any interpretation by the Board of Board regulations relevant to the issues raised in the request for review. The supervisory agent's rebuttal statement shall not exceed 25 double-spaced pages.

## 10. Conduct of Review.

- a. The arbiter shall conduct a review of the decision, based strictly on the materials presented, and shall base the recommendation to the Principal Supervisory Agent on a review of all the facts presented and any applicable laws or regulations.
- b. The arbiter's review shall be informal and non-adversarial. (As a consequence, discovery by either the claimant or the supervisory agent is inappropriate.)
- c. Within 25 business days after the request for review is received by the Principal Supervisory Agent, the arbiter shall provide the Principal Supervisory Agent, the claimant, and the supervisory agent with a written report, including the recommended decision.

## 11. The Principal Supervisory Agent's review of the arbiter's recommended decision.

- a. No later than twenty business days after receipt of the arbiter's

report containing the recommended decision, the Principal Supervisory Agent shall review the arbiter's report and, after taking into account the report, shall notify the claimant of the decision. The Principal Supervisory Agent may:

- 1) Accept or reject the arbiter's recommendation.
- 2) Approve, modify or set aside the decision that was the subject of the request for review.
- 3) Include such action as the Principal Supervisory Agent determines to be necessary or appropriate.

## 12. Expenses of the review.

- a. All reasonable expenses incurred, directly or indirectly, as a result of any review under the procedures established by this part shall be paid by the claimant.
- b. The expenses to be paid by the claimant pursuant to paragraph (a) of this section shall include (but are not limited to):
  - 1) A reasonable fee for the arbiter(s), to be established from time to time by the Principal Supervisory Agent.
  - 2) All reasonable costs of the arbiter(s), including the cost of travel, meals and lodging.
  - 3) A reasonable fee to be established from time to time by the Principal Supervisory Agent to cover, among other things:

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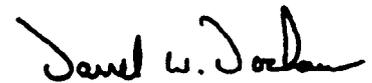
- a) The Principal Supervisory Agent's cost to process the request for review.
- b) The supervisory agent's expenses to respond to the review.
- c) The Principal Supervisory Agent's expenses to decide the request for review.

## 13. Collateral use of the arbiter's and Principal Supervisory Agent's findings.

- a. With the sole exception set forth in paragraph (b) of this section, no use may be made of any statement made as a part of a review pursuant to this procedure, in any further judicial or administrative proceedings involving the decision that is the subject of a request for review, or the content of the decision.
- b. The affidavit provided for in section 4(c), if materially false, may provide the basis for prosecution.

## 14. Supervisory action not delayed by request.

Initiation of the review process set forth in this part shall not stay any supervisory or enforcement action that the Principal Supervisory Agency or the Board may deem necessary during review.



— Darrel Dochow, Executive Director