



OCC 2011-44

Subject: Bank Appeals Process
Date: November 1, 2011

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

Description: Guidance for Bankers

OCC 2011-44 replaced by OCC 2013-15

PURPOSE

Pursuant to section 316 of the Dodd–Frank Wall Street Reform and Consumer Protection Act, the Office of the Comptroller of the Currency (OCC) is revising the OCC’s procedures for national banks to appeal agency decisions and actions to include federal savings associations. This issuance also replaces Banking Bulletin 2002-9, dated February 25, 2002,¹ and repeals Office of Thrift Supervision (OTS) Thrift Bulletin 68b, dated July 10, 2008. By revising the appeals procedure to include federal savings associations, a uniform appeals process will apply to national banks, federal branches and agencies, and federal savings associations (collectively referred to as “banks” for the purpose of this issuance).

POLICY

The OCC is responsible for assuring the safety and soundness of, and compliance with laws and regulations, fair access to financial services, and fair treatment of customers by, the institutions and other persons subject to its jurisdiction. 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 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.

Banks 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 banks to resolve issues in the most efficient and expeditious manner possible.

If 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 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 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
Office of the Comptroller of the Currency
250 E Street, SW
Washington, DC 20219
Phone 202-874-1530, Fax 202-874-5678

PROCEDURES

Appealable Matters

Except as otherwise provided below, a 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 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 bank before a final report of examination or other written communication from the OCC is issued (although a 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 of a formal agreement to 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 FDIA (12 USC 4310); (c) issue a safety and soundness order pursuant to section 39 of the FDIA (12 USC 4311p-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 101.11; and
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 un-appealable. 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 online at OCC.gov and 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, un-appealable.

Filing an Appeal

A 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).

Appeals Directly to the Ombudsman: 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 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 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 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 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:* If 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. Banks that choose not to file appeals of corporate decisions directly with the Ombudsman should file with the Deputy Comptroller for Licensing.

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 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 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:* If 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 applicant. 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 Midsize 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. 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 banks. If the agent bank refuses, for any 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 bank subject to OCC jurisdiction, the state-member bank must file its appeal with the OCC. Conversely, if a bank subject to OCC jurisdiction is a participant in a credit for which a state-member bank is agent, the 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 an 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 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 at the OCC Headquarters, 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 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 attenuating 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 Midsize 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 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 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 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 Walsh
Acting Comptroller of the Currency

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. On February 25, 2002, the OCC issued OCC 2002-9, which revised the previous guidance.

² For purposes of this bulletin, a formal enforcement-related action or decision includes the underlying facts that form the basis of a recommended or pending formal enforcement action, the acts or practices that are the subject of a pending formal enforcement action, and OCC determinations regarding compliance with an existing formal enforcement action.

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.