



Appeals of Supervisory Matters¹

October 28, 2015

General Purpose

To promote a constructive supervisory relationship with the financial service providers, including depository institutions, under its jurisdiction, the CFPB is implementing a supervisory appeals process.

Throughout the supervisory process, the CFPB and its supervised entities should engage in an open and candid dialogue on a continuing basis. During an examination or review, CFPB examiners and regional management should ensure that supervised entities understand examiner concerns and issues that arise. In turn, supervised entities should present all relevant information in a timely manner during the examination or review process to ensure that examiners' analyses are complete.

After an examination or targeted review, if a supervised entity disagrees with a less than satisfactory compliance rating (a 3, 4, or 5)² or any underlying adverse findings set forth in the relevant examination report, or adverse findings set forth in a supervisory letter,³ the entity may appeal. The key aspects of the appeals process as outlined in this document are:

- CFPB managers who did not participate in the supervisory matter and whose knowledge and background enable them to meaningfully evaluate supervisory matters will be involved in reviewing appeals;
- The CFPB will only entertain appeals submitted in writing, with documentation supporting the appeal, and within specified timeframes; and

¹ This policy is not intended to nor should it be construed to: (1) restrict or limit in any way the CFPB's discretion in exercising its authorities; (2) constitute an interpretation of law; or (3) create or confer upon any person, including one who is the subject of CFPB supervisory, investigation or enforcement activity, any substantive or procedural rights or defenses that are enforceable in any manner.

² See the *CFPB Supervision and Examination Manual's* chapter on the examination process. <http://www.consumerfinance.gov/guidance/supervision/manual/>

³ The CFPB will issue supervisory letters for its reviews of consumer compliance matters that do not result in the issuance of a compliance rating. Supervised entities may appeal adverse findings described in a supervisory letter in the same manner as such findings in an examination report. Adverse findings are those that result in a Matter Requiring Attention.

- The CFPB will take measures to ensure that an entity's filing of an appeal does not have an adverse effect on the entity's relationship with the CFPB.

Entities Who May Initiate Appeals

Any entity under the CFPB's supervisory authority may use the appeals process.

Supervisory Matters Subject to Appeal

An entity may appeal final CFPB compliance ratings that are less than satisfactory (a 3, 4, or 5) or any underlying adverse finding, or adverse findings conveyed to an entity in a supervisory letter. Adverse findings are those that result in a Matter Requiring Attention by the board of directors or principal(s) of the entity.

An entity may not appeal pursuant to this policy:

- preliminary supervisory matters (including preliminary findings);
- CFPB decisions to initiate supervisory measures, such as requiring memoranda of understanding;
- enforcement-related actions and decisions, including cease-and-desist-orders and determinations to proceed with an investigation or public enforcement action;
- adverse findings or an unsatisfactory rating contained in a supervisory letter or examination report related⁴ to a recommended or pending investigation or public enforcement action;⁵ or
- referrals of information to other regulatory agencies.⁶

⁴ A supervisory letter or an examination report is related to an investigation or enforcement action when it contains any part of the underlying facts and circumstances that form the basis of the investigation or enforcement action.

⁵ After an investigation or enforcement action has been resolved, the supervisory findings in a related supervisory letter or examination report may be appealed. In that case, the date of resolution of the investigation or public enforcement action will be treated as the date of the email transmitting an appealable supervisory letter or examination report for the purpose of determining the deadline for a written appeal.

⁶ Such unappealable matters would include referrals to the U.S. Department of Justice under the Equal Credit Opportunity Act.

An entity may only appeal a finding once. For example, an entity that receives a less than satisfactory rating (a 3, 4, or 5) in an examination report that is based on an earlier finding memorialized in a supervisory letter may appeal the letter or the report, but not both.

Pre-Appeal Resolution Efforts

The CFPB expects its supervisory staff, including examiners, field managers, and regional directors, to discuss with supervised entities their preliminary findings and any proposed ratings before an examination or supervisory review is completed. In addition, the CFPB encourages supervised entities to fully engage in this dialogue and, when disagreements occur, to present all available information to support their position. Through such communication, the CFPB anticipates that most disputes can be resolved before an examination is final.

Appeal Process

Within 30 business days⁷ of the date of the email transmitting an appealable examination report containing a compliance rating, or an appealable supervisory letter, the supervised entity may submit a written appeal to:

Associate Director for Supervision, Enforcement and Fair Lending

The appeal request should be emailed to CFPB_SupervisoryAppeals@CFPB.gov.⁸ The subject line of the email should state the name of the supervised entity and include the words: “APPEAL OF SUPERVISORY MATTER.”

The appeal request should include:

- a. a description of the issues in dispute and appropriate supporting information;⁹
- b. a summary of informal efforts made to resolve the dispute with examiners or other CFPB Supervision staff;

⁷ The CFPB may extend the timing of the appeals submissions upon a reasonable request from the supervised entity.

⁸ The date that the entity or CFPB receives by email any material referenced in this policy will be considered the receipt date.

⁹ If the staff reviewing the appeal notifies the supervised entity that the entity has not submitted sufficient supporting information, the entity will have 10 business days within which to resubmit the appeal with supporting information.

- c. a statement of whether the entity wants to make an oral presentation to the CFPB; and
- d. a statement that the entity's board of directors or principal(s) has authorized the filing of the appeal.

Within five business days of receipt of an appeal, the Associate Director will appoint a committee composed of individuals who were not involved in the supervisory matter being appealed. The committee's membership will include one member of the Associate Director's staff, one or more representatives from CFPB Headquarters Supervision management,¹⁰ and one or more representatives from CFPB regional management.

The committee will:

- a. review the supervised entity's written appeal, the examination report or supervisory letter at issue, and supporting documentation for both;
- b. if applicable, send a copy of the appeal to the prudential regulator of the appealing entity and solicit its views;
- c. solicit input from other CFPB personnel, such as examination staff and CFPB Headquarters staff (including those involved in the specific matter under appeal);¹¹ and
- d. hear a presentation from the appealing entity,¹² if requested.

The committee will review the supervisory letter or examination report for consistency with the policies, practices, and mission of the CFPB and the overall reasonableness of the examiners' determinations, and support offered for, the supervisory findings. Only the facts and circumstances upon which a supervisory finding was made will be considered by the committee. It is the appellant's burden to show that the contested supervisory findings should be modified or set aside.

Upon conclusion of the review, the committee's findings will be summarized in a written decision and submitted to the Associate Director, who will review the decision and make any modifications as he or she deems appropriate. The written

¹⁰ If the primary matter being appealed concerns fair lending, the appellate committee will include a representative from the CFPB's Office of Fair Lending (FL).

¹¹ For example, FL will be consulted about issues arising under the Federal fair lending laws, including the Home Mortgage Disclosure Act and the Equal Credit Opportunity Act.

¹² The policy anticipates that any such presentation would be brief since the entity would have had the opportunity to present all relevant information to, and to discuss its position with, CFPB regional management before the examination concluded. The presentation must be limited to issues raised in the written appeal.

decision will then be transmitted to the appealing entity by email, copying the prudential regulator or state regulator where appropriate, and other appropriate internal parties. The CFPB expects to issue the written decision within 60 business days from the assignment of the appeal to the committee, but will notify the supervised entity by email if a longer period will be needed.

The decision of the Associate Director will be final; no further attempts to appeal will be accepted.

Confidentiality

The appeals process will be confidential and submissions by supervised entities will be treated in accordance with CFPB regulations and guidance on confidential supervisory information.¹³ The CFPB may in the future publish summaries of issues raised in appeals, and the outcomes of such appeals, in a manner that will protect from disclosure the identity of the appealing entity and any other confidential information.

Role of CFPB Ombudsman Office

The CFPB Ombudsman Office serves as an independent, impartial, and confidential resource. It will act as a liaison between supervised entities and the CFPB, providing information about the appeals process. The Ombudsman will facilitate resolution of any process-related issues before an appeal is filed with the CFPB and will address process-related issues during the appeal. A supervised entity's reaching out to the Ombudsman will not delay or stay any statutory, regulatory, or agency timeframes.

Effect on Supervisory or Enforcement Actions

The appeals process does not relieve a supervised entity from complying with supervisory decisions and actions during the appeals process.¹⁴ In addition, an entity's filing of an appeal will not prevent the CFPB from pursuing an enforcement action or referring a matter to another agency.

Effect on the Supervisory Relationship

¹³ See 12 CFR 1070.40 - 48.

¹⁴ The CFPB may, at its discretion, suspend the requirement for an entity to comply with supervisory decisions and actions.

As noted previously, the CFPB encourages an open dialogue with its supervised entities and views appeals as one aspect of such dialogue. As such, the CFPB will take measures to ensure that an entity's filing of an appeal does not have a negative effect on its supervisory relationship with the CFPB. Any entity with concerns about its relationship with the CFPB should contact the CFPB's Ombudsman who will handle such concerns in a confidential manner, if requested. Information on how to contact the Ombudsman can be found at: <http://www.consumerfinance.gov/ombudsman/>.