



9575 Katy Freeway, Suite 300

Houston, TX 77024

Phone: 713-871-0005

Fax: 713-871-1358

Thomas E. Black, Jr., P. C. *

Calvin C. Mann, Jr., P. C.

Gregory S. Graham, P. C.

David F. Dulock

Diane M. Gleason

Benjamin R. Idziak **

Shawn P. Black **

Margaret A. Noles

Regina M. Uhl

Of Counsel

David M. Tritter

* Also Licensed in New York, Washington,
West Virginia and Iowa

** Also Licensed in New York

November 1, 2012

To: Clients

From: David F. Dulock

Subject: CFPB Bulletin 2012-07 - Appeals of Supervisory Matters

On October 31, 2012, the CFPB issued the above bulletin that advises it is implementing a policy that will allow its supervised entities to appeal certain supervisory findings in the examination reports and supervisory letters it issues to the financial service providers that the CFPB supervises.

The appeals process is outlined in the attached document and involves a review of the appealed matter by a committee that includes management at CFPB Headquarters in Washington, D.C. and representatives of regional offices that were not involved in the matter under review. The appeals process allows financial service providers to request a review of a less than satisfactory compliance rating or any underlying adverse finding set forth in the relevant examination report, or adverse findings conveyed in a supervisory letter.

The Bulletin states that the CFPB will periodically review and make any necessary updates to its appeals policy and that the CFPB welcomes feedback on the policy. Those wishing to submit comments may send comments to CFPB_Supervision@CFPB.gov.

The CFPB also released on October 31, 2012, its first Supervisory Highlights report that summarizes compliance problems its examiners discovered through the supervision process completed between July 21, 2011 and September 30, 2012. Those clients interested in reading or printing the report may do so by clicking [here](#). Pay particular attention to section "II. Compliance Management Systems" beginning on page 4 of the report and subsections "B. Violations That Relate to Credit Reporting" and "C. Violations by Mortgage Originators" of section "III. Significant Violations Detected" on pages 12 and 13 of the report.

Attachment: Appeals of Supervisory Matters

This Memorandum is provided as general information in regard to the subject matter covered, but no representations or warranty of the accuracy or reliability of the content of this information are made or implied. Opinions expressed in this memorandum are those of the author alone. In publishing this information, neither the author nor the law firm of Black, Mann & Graham L.L.P. is engaged in rendering legal services. While this information concerns legal and regulatory matters, it is not legal advice and its use creates no attorney-client relationship or any other basis for reliance on the information. Readers should not place reliance on this information alone, but should seek independent legal advice regarding the law applicable to matters of interest or concern to them. The law firm of Black, Mann & Graham L.L.P. expressly disclaims any obligation to keep the content of this information current or free of errors.

Attachment

Appeals of Supervisory Matters¹

October 31, 2012

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
- 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.

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.

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 actions, such as cease and desist orders; or referrals of information to other regulatory agencies.⁴ 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 days⁵ 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

⁴ Such unappealable matters would include referrals to the U.S. Department of Justice under the Equal Credit Opportunity Act.

⁵ The CFPB may extend the timing of the appeals submissions upon a reasonable request from the supervised entity.

The appeal request should be emailed to CFPB_Supervision@CFPB.gov.⁶ 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, supporting information presented to examination staff, and any supporting information not presented previously to examiners, if any, including the reasons for not having presented it, and recommendations for resolution;⁷
- b. a summary of informal efforts made to resolve the dispute with examiners or other CFPB Supervision staff;
- 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.

The Associate Director will appoint an Assistant Director who within five business days of receipt will assign the appeal to an appellate committee composed of one or more representatives from CFPB Headquarters Supervision management (aside from the Assistant Director who chairs the committee) and at least two representatives from CFPB regional management who were not involved in the supervisory matter being appealed.⁸

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);⁹ and
- d. hear a presentation from the appealing entity,¹⁰ if requested.

⁶ The date that the entity or CFPB receives by email any material referenced in this policy will be considered the receipt date.

⁷ 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.

⁸ If the primary matter being appealed concerns fair lending, the appellate committee will include a representative from the CFPB’s Office of Fair Lending and Equal Opportunity (OFLEO).

⁹ For example, OFLEO will be consulted about issues arising under the Federal fair lending laws, including the Home Mortgage Disclosure Act and the Equal Credit Opportunity Act.

¹⁰ 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.

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 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 45 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.¹¹ 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.¹² 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.

¹¹ See 12 CFR 1070.40 - 48.

¹² The CFPB may, at its discretion, suspend the requirement for an entity to comply with supervisory decisions and actions.

Effect on the Supervisory Relationship

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/>.