



CONSUMER FINANCIAL PROTECTION BUREAU

12 CFR Chapter X

Supervisory Appeals Process

AGENCY: Consumer Financial Protection Bureau.

ACTION: Supervisory appeals process; update.

SUMMARY: The Consumer Financial Protection Bureau (CFPB or Bureau) is updating its internal supervisory appeals process for institutions seeking to appeal a compliance rating or an adverse material finding.

DATES: This revised supervisory appeals process is applicable as of [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: George Karithanom, Regulatory Implementation & Guidance Program Analyst, Office of Regulations, at (202) 435-7700 or CFPB_supervisoryappeals@cfpb.gov. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov.

SUPPLEMENTARY INFORMATION:

I. Overview

The CFPB first published its process for supervisory appeals on October 31, 2012, as Bureau Bulletin 2012-07.¹ The process was substantially modeled upon the practices of the prudential regulators. On November 3, 2015, the Bureau revised its process, superseding the 2012 Bulletin.² The Bureau has reviewed its current process and the revisions made by prudential regulators since 2015. As a result, the Bureau is revising its process to broaden the

¹ https://files.consumerfinance.gov/f/201210_cfpb_bulletin_supervisory-appeals-process.pdf.

² https://files.consumerfinance.gov/f/201510_cfpb_appeals-of-supervisory-matters.pdf.

Bureau officials eligible to evaluate appealed matters, the options for resolving an appeal, and the matters subject to appeal.

The main changes in the revised supervisory appeals process, which is set out in part II below, are as follows. First, the revised process broadens the pool of potential members of the appeals committee to include any CFPB manager who did not participate in the underlying matter being appealed and who has relevant expertise on the issue(s) raised by the appeal, not only managers from Supervision as under the previous process. The Supervision Director will select three CFPB managers who meet the criteria to serve on the appeals committee, which will advise the Supervision Director on how to resolve the appeal. The CFPB's General Counsel will designate legal counsel to advise the committee. Second, under the revised process there is a new option for resolving the appeal, which is remanding the matter to Supervision staff for consideration of a modified finding, in addition to the existing options of upholding or rescinding the finding. Third, under the revised process institutions may file an appeal as to any compliance rating issued to the institution, not only an adverse rating (e.g., 3, 4, or 5 rating) as under the previous process. Finally, the revised process includes additional clarifying changes and specifies that it applies to appeals pending on the date it is published.

II. Appeals of Supervisory Matters³

A. General Purpose

To promote a constructive supervisory relationship with the financial service providers, including depository institutions, under its jurisdiction, the Consumer Financial Protection Bureau (CFPB or Bureau) provides 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

³ This supervisory appeals process 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) limit the CFPB Director's authority to provide direction to CFPB staff at any time; (3) constitute an interpretation of law; or (4) 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.

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 compliance rating⁴ or any underlying adverse findings set forth in the relevant examination report, or adverse findings set forth in a supervisory letter,⁵ 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 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.

B. Entities Who May Initiate Appeals

Under the circumstances noted below, any entity subject to an examination under the CFPB's supervisory authority may use the appeals process.

C. Supervisory Matters Subject to Appeal

An entity may appeal final CFPB compliance ratings or any underlying adverse findings, 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 use this supervisory appeals process to appeal:

⁴ See the *CFPB Supervision and Examination Manual's* chapter on the examination process. <http://www.consumerfinance.gov/guidance/supervision/manual/>.

⁵ Supervision may issue supervisory letters for its reviews of consumer compliance matters that do not result in the issuance of the 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.

- Preliminary supervisory matters (including preliminary findings);
- CFPB examiners' decisions to initiate supervisory measures, such as 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 related⁶ to a recommended or pending investigation or public enforcement action;⁷ or
- Referrals of information to other law enforcement and regulatory agencies.

An entity may only appeal a finding once. For example, an entity that receives a rating 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.

D. Pre-Appeal Resolution Efforts

The CFPB expects its supervisory staff, including examiners and regional management, 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 this position. Through such communication, the CFPB anticipates that most disputes can be resolved before an examination is final.

E. Appeal Process

Within 30 business days of the date of the email transmitting an appealable examination report containing a compliance rating, or an appealable supervisory letter, the supervised entity

⁶ 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.

⁷ 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 record.

may submit a written appeal via email 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;
- c. A copy of a board resolution or other appropriate formal document issued by the entity’s board of directors or principal(s), which authorizes the filing of an appeal; and
- d. A statement of whether or not the entity’s board of directors or principal(s) requests an oral presentation to the CFPB. If an oral presentation is requested, a member of the board or principal must participate in and lead the oral presentation.

This revised supervisory appeals process applies to any appeal pending with Supervision on the date it is published in the *Federal Register*.

Within five business days of receipt of an appeal, the Supervision Director¹⁰ will designate a committee composed of three CFPB managers who were not involved in the supervisory matter being appealed and who have relevant experience on the issue raised by the appeal. The General Counsel¹¹ will designate legal counsel to advise the committee. The committee will:

⁸ The date that the entity or CFPB receives by email any material referenced in this supervisory appeals process 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.

¹⁰ The position of “Supervision Director” encompasses the combined positions of the Assistant Director for Supervision Policy and the Assistant Director for Supervision Examinations. Previously, these positions were occupied by the same individual, and the Bureau is in the process of consolidating these two positions into one Supervision Director position. In this supervisory appeals process, the Supervision Director means the Supervision Director or another CFPB employee designated by the CFPB Director or by the Supervision Director.

¹¹ In this supervisory appeals process, the “General Counsel” means the General Counsel of the CFPB or that person’s designee.

- 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); 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 will advise the Supervision Director in formulating a written decision on the appeal. The decision may uphold or rescind the finding; alternatively, the decision may remand the finding to Supervision staff who will consider a modified finding. The decision will be transmitted to the appealing entity by email, copying appropriate internal parties and the prudential regulator or state regulator where appropriate. The CFPB expects that a decision will be issued within 60 business days from the assignment of the appeal to the committee, but the committee will notify the supervised entity by email if a longer period will be needed.

The decision under the previous paragraph cannot be the subject of another appeal under this supervisory appeals process.

F. Confidentiality

¹² Any such presentation must be brief and must be limited to issues raised in the written appeal.

The appeals process will be confidential and submissions by supervised entities will be treated in accordance with the 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.

G. Role of the 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.

H. 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/>.

III. Regulatory Matters

This supervisory appeals process is a rule of agency organization, procedure, or practice under the Administrative Procedure Act.¹⁴

¹³ 12 CFR 1070.40-48.

¹⁴ 5 U.S.C. 553(b).

The CFPB has determined that this supervisory appeals process does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act.¹⁵

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¹⁵ 44 U.S.C. 3501–3521.