



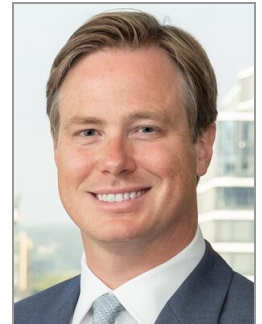
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# Communication Is Key As CFPB Updates Appeals Process

By **Jason McElroy** (February 28, 2024, 10:08 AM EST)

On Feb. 16, the Consumer Financial Protection Bureau **issued revisions** to its supervisory appeals process.[1] Entities supervised by the CFPB and their counsel should become familiar with the new process, and understand the interplay between good communication channels with their examination teams and the use of the supervisory appeal process.

Good communication with CFPB examination teams is often a superior method of resolving disputes about supervisory issues. Where entities and their counsel develop and maintain strong dialogue with the examination team, the supervisory appeals process may be necessary only as a last resort effort.



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The bureau's supervisory appeals process applies only to formal findings in examination reports or supervisory letters issued under the CFPB's supervisory authority. It does not affect enforcement authority or play a role in enforcement actions.[2] As the supervisory appeals process has not changed since 2015, the bureau's announcement notes that these new revisions "broaden the Bureau officials eligible to evaluate appealed matters, the options for resolving an appeal, and the matters subject to appeal." [3]

The new process allows supervised entities an opportunity to appeal a broader subset of issues than previously allowed, and provides supervised entities with additional guidance on the appeal process. The revised rules will apply to all supervised entities currently undergoing examinations, as well as any entity that may currently have an appeal pending with the CFPB: The new requirements apply to all appeals pending as of its publication in the Federal Register, which was on Feb. 22.[4]

The CFPB's revisions now allow supervised entities to appeal any compliance rating or adverse findings made during an examination, not just adverse ratings and findings, as was the case before. [5] Adverse findings are defined as those findings that result in what the CFPB calls matters requiring attention, which are specific findings that the bureau requires responses or corrective action to be taken in response to.[6]

The bureau does not allow entities to use the supervisory appeals process to dispute:

- Preliminary supervisory findings;
- An examiner's decision to initiate supervisory measures, such as a memorandum of understanding;
- Enforcement decisions;
- Adverse findings related to a pending investigation or enforcement action; or
- Referrals to other law enforcement agencies.[7]

The bureau requires any supervisory appeal to be submitted within 30 business days of receipt of the email transmitting the findings to be appealed.[8]

This process remains confidential, and the bureau states that it takes measures to ensure that the filing of an appeal does not have an adverse effect on the entity's relationship with the bureau.[9] The bureau only allows one appeal of a supervisory finding.[10]

When submitting the appeal, the bureau requires the following information:

- An email subject line that states the name of the supervised entity and includes the words "Appeal of Supervisory Matter";
- A description of the issues in dispute and appropriate supporting information;
- A summary of informal efforts made to resolve the dispute with bureau staff;
- A copy of a board resolution or other formal document authorizing the filing of the appeal; and
- Whether the company requests an oral presentation.[11]

The bureau will then, within five business days, designate a committee of three bureau managers who were not involved with the matter being appealed and who have relevant experience.[12] The general counsel of the bureau will designate legal counsel to advise this committee, then the committee will review the appeal.[13]

The bureau expects that decisions on supervisory appeals will be issued within 60 business days of assignment to the committee.[14]

All appeals of supervisory findings will be treated as confidential supervisory information under the CFPB's regulations.[15] CFPB regulations require both the CFPB and the supervised entity to maintain the confidentiality of its supervisory information, and allow disclosure of such information in limited circumstances.[16]

One concern that many supervised entities may have when considering appealing supervisory finding is having the examination team retaliate against the company for doing so.

While the appeal guidelines make a passing attempt to address this concern, the language the CFPB uses to do so is weak: "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." [17]

The bureau could have, and arguably should have, stated more affirmatively and forcefully that a supervised entity exercising its rights to disagree with a finding will not have any effect on its supervisory relationship.

Nonetheless, to the extent that a supervised entity believes that its submission of a supervisory appeal has negatively affected its relationship, the CFPB's ombudsman may be contacted, confidentially, to express these concerns.[18]

Throughout the revised appeal guidelines, the CFPB notes its expectation that the management of the supervised entity will maintain good communications with the examination team, and attempt to work out any misunderstandings or concerns prior to any exam report or supervisory letter.[19] Maintaining good communications and a strong professional relationship with the CFPB examination team can be beneficial to both the supervised entity and the examination team.

Strong relationships and good dialogue offer opportunities for informed advocacy on behalf of the supervised entity prior to issuance of any findings, allowing for the examination team to offer its preliminary thoughts and concerns and the company to respond and provide additional relevant information.

The CFPB agrees, and expects this from both its examiners and the entities it examines, noting that "through such communication, the CFPB anticipates that most disputes can be resolved before an

examination is final." [20]

In the best circumstances, a strong relationship between examiner and supervised entity may obviate the need to file an appeal in the first place. In circumstances in which an appeal must be filed, despite ongoing communications, it provides the supervised entity with invaluable insight into the situation, informing and improving the appeal submission itself.

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[1] Consumer Financial Protection Bureau, Press Release, "CFPB Issues Revised Supervisory Appeals Process" (Feb. 16, 2024) available at <https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-revised-supervisory-appeals-process/>.

[2] 89 Fed. Reg. 13263, 13263 (Feb. 22, 2024).

[3] 89 Fed. Reg. 13263, 13263 (Feb. 22, 2024).

[4] The guidance was published in the Federal Register on Feb. 22, 2024. <https://www.govinfo.gov/content/pkg/FR-2024-02-22/pdf/2024-03615.pdf>.

[5] See Nov. 3, 2015, CFPB Guidance on Appeals of Supervisory Matters, available at [https://files.consumerfinance.gov/f/201510\\_cfpb\\_appeals-of-supervisory-matters.pdf](https://files.consumerfinance.gov/f/201510_cfpb_appeals-of-supervisory-matters.pdf).

[6] 89 Fed. Reg. 13263, 13263 (Feb. 22, 2024).

[7] 89 Fed. Reg. 13263, 13264 (Feb. 22, 2024).

[8] 89 Fed. Reg. 13263, 13264 (Feb. 22, 2024).

[9] 89 Fed. Reg. 13263, 13264 (Feb. 22, 2024).

[10] 89 Fed. Reg. 13263, 13264 (Feb. 22, 2024).

[11] 89 Fed. Reg. 13263, 13264 (Feb. 22, 2024).

[12] 89 Fed. Reg. 13263, 13264 (Feb. 22, 2024).

[13] 89 Fed. Reg. 13263, 13264 (Feb. 22, 2024).

[14] 89 Fed. Reg. 13263, 13264 (Feb. 22, 2024).

[15] 89 Fed. Reg. 13263, 13264 (Feb. 22, 2024).

[16] See 12 C.F.R. § 1070.42.

[17] 89 Fed. Reg. 13263, 13264 (Feb. 22, 2024).

[18] 89 Fed. Reg. 13263, 13264 (Feb. 22, 2024).; see also <https://www.consumerfinance.gov/cfpb-ombudsman/>.

[19] 89 Fed. Reg. 13263, 13264 (Feb. 22, 2024).

[20] 89 Fed. Reg. 13263, 13264 (Feb. 22, 2024).

