

STAND UP FOR YOURSELF

FDIC urges banks to speak up. Nancy suggests how to do it—and why

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The FDIC's recent "Reminder on FDIC Examination Findings" reminded me that bankers need to be more willing to stand up for themselves before, during, and after compliance examinations. Too often, we accept without question the examiners' conclusions and are afraid to raise objections or argue our side of the issue.

FDIC says "talk to us"

On March 1st, the FDIC issued Financial Institution Letter FIL-13-2011 to state nonmember banks, reminding them that banks can "voice their concerns about an examination or other supervisory determination through informal and formal channels."

FDIC, OCC, and the Federal Reserve all have ombudsman offices that were established for the purpose of investigating and mediating disagreements arising from supervisory actions and examinations. Apparently, according to the FDIC reminder, the FDIC has received some criticism that its examination findings have been overly harsh.

(I can certainly attest to hearing the same comments about all of the agencies in my contacts with clients. Editor's Note: A report concerning an ABA National Conference for Community Bankers session that helped lead to the FDIC letter will be posted soon.)

Thus, the need for the FDIC reminder. The FDIC FIL also summarizes the FDIC's formal appeals process for supervisory determinations.

Appeals processes exist, but gather rust and dust

Formal appeals to an agency's ombudsman are not very common.

There have been 14 appeals decisions issued in the past two years, according to Comptroller of the Currency's website. FDIC's website shows that there have been six Supervisory Appeals Review Committee decisions since 2007. The vast majority of the appeals are decided in the agencies' favor.

Presumably, there are many more instances of informal appeals and complaints that don't make it all the way through to a formal decision process. However, I also think there are even a greater number of valid concerns and complaints that don't even get to the informal stage.

I think that banks too often keep quiet about their concerns to avoid making the examiners mad, or because they just don't want to rock the boat.

A special angle on compliance

There's a pretty good chance that your bank's compliance officer knows as much, if not more, than the examiner who has identified a problem. If the bank legitimately believes that it is not out-of-compliance, it should strongly make its case. If the issue can be resolved before the examiners leave the bank, there is less hassle than trying to convince people in the district office or in Washington to change an exam finding.

I've seen many cases in which a bank accepted the fact that there was a compliance violation based on the examiner's findings and corrected the problem, only to be criticized for the new procedure in the next exam conducted by a different examiner.

Who is right? The first examiner or the second examiner?

Examiners are not infallible. If we had more banks stand up to the examiners and question the validity of the findings, we might have a few less strange and conflicting compliance practices that are born out of examinations rather than the actual regulation.

What can you do?

If you think an examiner is incorrect...

1. Do your research. Research the regulation, any regulatory guidance, and contact other banks about their experience with the issue.

2. Document your position. Clearly outline in writing the basis of your argument.

3. Argue the right points. Stay away from emotional appeals, like "it doesn't make sense." Why? Simple. Because compliance regulations don't always make sense.

4. Don't try to pit one examiner against another. If you don't like mom's answer, don't go running to dad to see if you can get a different answer.

5. Do avail yourself of the agency's ombudsman and the appeals process.

Agency information:

FDIC Ombudsman • OCC Ombudsman • FRB Ombudsman

Have you had a similar experience? Tell us about it.

Have you found a good way to address compliance exam findings you don't agree with. Tell us about those too.

About Nancy Derr-Castiglione

"Lucy and Nancy's Common Sense Compliance" is blogged by both Lucy Griffin and Nancy Derr-Castiglione, both ABA Banking Journal contributing editors on compliance.

Nancy, a Certified Regulatory Compliance Manager, is owner of D-C Compliance Services, an independent regulatory compliance consulting services business that has provided expertise in compliance training, monitoring, risk assessment, and policies and procedures to financial institutions since 2002.

Previously, Nancy held compliance positions with Bank One Corporation and with United Banks of Colorado.

In addition to serving as a Contributing Editor of ABA Banking Journal, Nancy has served on the ABA Compliance Executive Committee; National and Graduate Compliance Schools board; conference planning committees, and the Editorial Advisory Board for the ABA Bank Compliance magazine. She can be reached at nancycastiglione@comcast.net

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