When Bank Examiners Get it Wrong: Financial Institution Appeals of Material Supervisory Determinations

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Dissatisfaction with Bank Exams

- Examiners are Inconsistent
- Examiners are Inexperienced and Wrong
- Rules Change Without Notice
- Exams are Biased
Independent Appeals Process

Federal financial regulators must provide an “independent intra-agency process . . . to review material supervisory determinations.”

— Riegle Community Development and Regulatory Improvement Act of 1994
Reviewing the Appeals Process

- Rules/Guidelines
- Decisions
  - Public
  - FOIA
- Regulator Interviews
Review Process

OCC
- Deputy Comptroller
- Ombudsman

Appeal can begin with either.

FDIC
- Division or Office Director

Federal Reserve
- Review Panel
- F.R. Bank Pres.
- F.R. Board

NCUA
- Region Contact
- NCUA Board
What Is Appealed

• OCC
  o CAMELS Ratings
  o Loan or Asset Classifications
  o CRA Rating

• FDIC
  o CAMELS Ratings
  o CRA Rating
  o Loan or Asset Classifications

• Federal Reserve
  o CAMELS Ratings
  o Loan or Asset Classifications
  o Capital Calculations

• NCUA
  o CAMEL Ratings
  o Document of Resolution
  o Exam Findings
Standard of Review

• OCC
  o Whether the “examiners appropriately applied agency policies and standards.”

• FDIC
  o “[C]onsistency with the policies, practices, and mission of the FDIC and the overall reasonableness . . . .”

• Federal Reserve
  o Varies by Federal Reserve Bank.

• NCUA
  o Review committee does not give deference to either the credit union or the examiners.
Recommendations

1. Direct access to appellate authority outside of the exam function.

2. Clear and rigorous standard of review.

3. Public disclosure of appeal decisions.