

Ombudsman Procedures and Guidelines Manual

FDIC
Office of the Ombudsman

1 Concepts and Guidelines

The FDIC Office of the Ombudsman (OO) is one of the federal financial regulatory agency ombudsman programs created pursuant to the Riegle Community Development and Regulatory Improvement Act of 1994 (Riegle). In accordance with provisions set forth in Riegle, the OO was created to “(A) act as a liaison between the agency and any affected person with respect to any problem such party may have in dealing with the agency resulting from the regulatory activities of the agency; and (B) assure that safeguards exist to encourage complainants to come forward and preserve confidentiality.”

1.1 *Mission, Vision, Values*

The mission of the OO is to be an effective, neutral, and confidential resource and liaison for the banking industry and the general public; to facilitate the resolution of problems and complaints in a fair, impartial, and timely manner; to provide prompt and meaningful feedback; and to influence positive change at the FDIC.

The vision of the OO is to be highly respected by the financial community, the public, FDIC managers, and FDIC employees as a professional organization that provides quality liaison, facilitation and problem resolution services. The OO values its human resources and diversity, and will continue to foster a collaborative environment across FDIC divisions and offices in the resolution of issues as it remains a flexible, creative and efficient organization in fulfilling its mission.

The values of the OO are confidentiality,

neutrality, and independence. These values are described in Section 2 of this manual.

1.2 *History*

In 1993, acting FDIC Chairman Skip Hove announced that an Ombudsman would be located in each FDIC regional and field office to “facilitate action on complaints and questions from borrowers, lenders, and public officials” in connection with the FDIC’s liquidation activities.

Oversight and policy direction for these regional and field office Ombudsmen was provided by the Washington Office of Congressional Affairs and Public Relations, which was part of the former Division of Depositor and Asset Services (DAS). The Resolution Trust Corporation (RTC) had a similar function that handled problems concerning all RTC activities. In this connection, the Resolution Trust Corporation Completion Act required that a client responsiveness unit responsible to the RTC’s ombudsman exist at every RTC regional office.

The OO replaced the DAS Ombudsman function at the FDIC. In addition to establishing the OO, the FDIC Board of Directors, by Resolution (057628) adopted August 30, 1994, expanded the services of the OO to include problems or concerns resulting from the resolution, receivership, and asset disposition activities of the FDIC. FDIC Chairman Ricki Helfer also determined that the OO should serve as a feedback mechanism to the Corporation’s senior management, keeping them abreast of significant issues pertaining to corporate operations, and directed the OO to serve FDIC employees.

Initially, the Corporation’s role as a receiver and liquidation agent had the greatest impact on contacts to the OO.

The most significant number of inquiries to the OO from 1996 to 1999 was from the general public and related to bank activity such as closed loans, sold loans and other disputed asset matters. However, as the FDIC's role in addressing the banking crisis of the 1980s and early 1990s was completed, and the Corporation initiated downsizing in the late 1990s through 2005, the OO returned its focus to the statutory mission of the office. The OO's current focus is external and specifically directed toward the banking industry and public, with employee concerns addressed on an exception basis.

In 2001, the OO conducted through contractors a needs assessment survey of its stakeholders, including their perceptions of what the OO does well, what it could do better, and how it might best provide services. Responses to the survey, which were anonymous, were used to assist the OO in development of a business plan and budget that focused resources on addressing the identified needs of its stakeholders. Analysis of the findings indicated that the OO's chief priority should be aggressive marketing and external outreach to its stakeholders to better inform them of how the OO can best be of service to bankers and, in turn, the FDIC. Accordingly, the OO performed a thorough review of the analysis to identify stakeholder needs and desired internal, external, and programmatic actions

During the 2000s, the OO has implemented a series of initiatives focused on the banking industry. In 2002, the OO created a five-year Industry Outreach Plan that included visits by the Regional Ombudsmen to DSC Regional Directors to present the OO's Outreach Plan to bankers. The OO Regional Ombudsmen also visited and telephoned bank

commissioners, bankers, and state banking associations to introduce the OO and its services. The OO met its goal of increasing awareness of the OO functions and services by participating in over 1,000 in-person and telephone visits to bankers each year through 2006. The 2007 Outreach Plan concentrated on assisting Minority and DeNovo banks. The 2008 Outreach Plan focuses on new CEOs.

The OO plays an important role in contacting and surveying institutions that have used the Supervisory Appeals Process. In this connection, the OO compiles the feedback and recommendations it receives from the industry regarding the Supervisory Appeals Process and periodically reports this information to the Supervision Appeals Review Committee (SARC).

As may be requested by the Division of Resolutions and Receiverships (DRR), the OO also sends representatives to bank closings to communicate with the media and to help with matters of public confidence.

1.3 Functions

The key business functions of the OO are liaison and problem resolution; feedback and reporting; and outreach and awareness.

1.3.1 Liaison and Problem Resolution

Liaison and problem resolution services provided by the OO to stakeholders include:

- Responding to inquiries and providing general assistance

- Making referrals, as appropriate, to internal FDIC or external sources
- Facilitating the resolution of problems or complaints
- Providing conflict management services
- Providing industry feedback to the SARC relating to FDIC's Supervisory Appeals Process
- Participating as a neutral in FDIC bank closings to enhance public confidence
- Providing meeting facilitation services
- Serving as a neutral source of management skills for special corporate projects (e.g. Regulatory Burden Relief, Hay Group Survey)
- Banking association conferences
- National-banking conferences
- Assistance to agencies that are developing ombudsman programs

1.3.2 Feedback and Reporting

The OO performs the following management reporting activities:

- Reports on general and systemic issues
- Analysis of contacts and issues
- Research and trend analysis
- Feedback on problems or complaints regarding FDIC policies, procedures, or activities
- Policy recommendations to facilitate change within the Corporation

1.3.3 Outreach and Awareness

The OO maintains an aggressive outreach program that includes:

- Staff participation at national-level banking conferences (See Circular 2710.14, "Corporate Outreach Program")
- External marketing to banks and state banking commissioners

2 Independence, Neutrality, Confidentiality

The OO has continuously studied ombudsmanry to identify, implement, and update best practices consistent with the Riegle Act mandate and mission of the FDIC.

The OO has determined that the American Bar Association 2004 Standards for the Establishment and Operation of Ombudsman Offices (Standards) represent the most current and comprehensive statement of Ombudsman practice. Such standards were developed by a broad spectrum of ombudsman associations, practitioners, academics, lawyers, and other interested parties. This FDIC OO policy statement, therefore, recites and affirms the Standards to the maximum extent practicable, defining, limiting, and customizing the definitions and application of Independence, Neutrality, and Confidentiality as they relate to the FDIC OO.

The fundamental underlying premise of the Standards is that all Ombudsmen must operate within certain basic authorities and essential characteristics. The Standards, therefore, provide practical advice and guidance on the structure and operation of Ombudsman offices so that individuals who avail themselves of their aid may do so with greater confidence in the integrity of the process. The Standards recognize that practical and political considerations may require variations, but that all Ombudsman programs are built upon the core values of Independence, Neutrality, and Confidentiality – without them, an Ombudsman office cannot function effectively.

2.1 Values

The application and limitations of these values within the FDIC OO are detailed in the “Establishment and Operations” and “Limitations” sections.

2.1.1 Independence

To be credible and effective, the OO must appear, and actually be free from, interference in the legitimate performance of duties, including being free from control, limitation, or retaliation of anyone who is subject of a complaint or inquiry. The OO achieves this independence by reporting directly to the Chief Operating Officer.

2.1.2 Neutrality

The OO conducts impartial inquiries and investigations that are free from bias and conflicts of interest. Impartiality does not preclude the OO from developing an interest in securing changes; the OO advocates changing any process that is unfair.

2.1.3 Confidentiality

Confidentiality is essential in ombudsmanry. Confidentiality promotes disclosure from reluctant complainants, elicits candid discussions by all parties, and provides an increased level of protection against retaliation to or by any party. Confidentiality is another factor that distinguishes ombudsmen from others who receive and consider complaints such as elected officials, human resource personnel, government officials, and ethics officers. The OO will not voluntarily disclose and should not be required to involuntarily disclose any information, except where there is:

- Imminent risk of serious harm to persons or property

- Allegations of fraud, waste, or abuse
- Express OO contact confidentiality waiver
- Judicial process (e.g., subpoena, deposition, testimony)
- General, public-domain information request

2.2 Establishment and Operations

The FDIC Ombudsman applies Independence, Neutrality, and Confidentiality to its day-to-day operations through:

Establishment: explicitly by statute and defined by FDIC Board Resolution, Chairman and Chief Operating Officer directions.

Reporting lines: independent from line management, and report directly to the FDIC Chief Operating Officer.

Management access: direct access to the highest levels of FDIC senior management

Information access: access to all information within the organization, except as restricted by law

Legal counsel: access to resources for legal advice and counsel

Records: creation and maintenance of the minimum records required by law

Subject matter: complaints and questions about alleged acts, omissions, improprieties, and systemic problems within the OO's jurisdiction as defined in the charter establishing the office

Discretion: judgment to accept or decline to act on a complaint or question

Initiative: acting on the OO's volition to address issues within its prescribed jurisdiction

Fairness: timely procedures to aid in the just resolution of a complaint or problem

Resolution: reconciling issues at the most appropriate level of the entity

Methodologies:

1. Conducting fact finding and reporting such findings
2. Developing, evaluating, and discussing options available to affected individuals
3. Facilitating, negotiating, and informally mediating
4. Making recommendations for the resolution of an individual complaint or a systemic problem to persons who have the authority to act upon them
5. Identifying complaint patterns and trends
6. Educating
7. Issuing periodic reports

Retaliation: protecting those seeking assistance from, or providing information to, the ombudsman from reprisal

Written policies: incorporating the precepts of independence, neutrality, and confidentiality into all OO policies, including those addressing the broad areas of outreach, case processing, data input, and trend analysis and reporting.

2.3 Limitations on the Ombudsman's Authority

To ensure the appropriate application of the OO's independence, neutrality, and confidentiality, the OO's authority must be limited. The OO should not, nor should an entity expect or authorize the OO to, function in the following capacities:

Decisions: make, change or set aside a policy, administrative decision, or otherwise determine rights

Compulsion: directly compel an entity or any person to implement the OO's recommendations

Formal disputes: accept jurisdiction over an issue that is currently pending in a legal forum

Union: address any issue arising under the collective bargaining agreements or falling within the purview of any existing federal, state, or local labor or employment law, rule, or regulation, unless the OO is jointly authorized to do so by the FDIC and National Treasury Employee's Union

Role: act in a manner inconsistent with the granting of and limitations on the jurisdiction of the office when discharging the duties of the OO

Notice: accept formal notice, or act in any way to suggest acceptance, on behalf of the FDIC in lieu of FDIC established procedures, mechanisms, and points-of-contact.

3 Customer Service Standards

The telephone plays an important role in providing service to OO's customers. It is sometimes the only means of timely communication. While far fewer in number, the OO also receives written inquiries. The OO telephone and other service standards are consistent with FDIC standards, policies, and procedures, including those outlined in Circular 3110.1, for professional and courteous telephone service. The following guidelines are in addition to and supplement the aforementioned corporate policy on customer service standards.

3.1 Standards

Telephone coverage is during the business hours from 8:00 a.m. to 5:00 p.m. Regional offices shall observe the same business hours (adjusted for geographic location). When Regional Office staff is unable to adhere to the above hours of telephone coverage due to travel, etc., they will comply with the terms set forth in 4, below.

1. All calls should be answered within three rings.
2. As directed in FDIC Circular 3110.1, the OO strives for a 5 percent or less abandonment rate of the total number of calls received. Abandoned calls result when a caller hangs up after more than 10 seconds.
3. During periods of high call volume or non-business hours, voice mail is available for the caller to leave a message. Voice mail messages are to be reviewed daily by Headquarters staff and responded to within one business day.

4. OO staff unavailable during business hours because of training, leave, etc., will record a voicemail asking callers to leave a message if the matter is not time sensitive. Voice mail messages should include the FDIC Central Call Center's toll free number as an alternate contact source, 1-877-275-3342, option 1 for English, 1 again for bankers, and then 3 for the Office of the Ombudsman.
5. When OO staff are absent from the office for extended periods, personal voicemail greetings should indicate the anticipated date and time of return, as well as the toll free number for the FDIC Central Call Center or the name and telephone number of another OO staff member as an alternate contact.
6. Acknowledgment of all letters, facsimiles, or internet inquiries will be made by telephone or internet within three business days of receipt, if possible. In the event that no telephone number or internet address is available, every effort will be made to resolve the case as quickly as possible and respond appropriately to the written inquiry.

3.2 Responsibilities

OO managers shall:

1. Foster an environment that emphasizes customer service.
2. Routinely evaluate the OO's service process for quality assurance and process improvement.
3. Routinely review the information contained in the OO's recorded announcements and menus, updating this information, as necessary, for correctness, ease of understanding, and mission objective.

- FDIC management promptly. This can include emerging issues, fairness issues, and matters involving FDIC's image or reputation. This type of feedback is typically verbal and conveyed through meetings or calls by OO management or Regional Ombudsmen. Depending on the nature and complexity of an issue, talking points may be developed for the calls or meetings. A more comprehensive written report of a matter may follow initial oral contact.
- Trending Issues – Information pertaining to known or potential trends. Data is watched and could be provided as feedback at some point depending on the issue. An early warning of a trend is typically verbal and conveyed through meetings or calls by OO management or regional ombudsmen and may be subsequently followed by a comprehensive written report.
- Routine – Generally historical information, which may also include follow-up information regarding the status or results of actions taken. This type of feedback is written and can include briefing reports, summary reports, presentations, speeches, and talking points.
- Fairness issues
- Systemic or emerging issues (known or potential)
- Efficiency opportunities
- Potential for Congressional inquiries
- Process issues
- FDIC image and reputation
- Issue resolution (how an issue was resolved)
- Case resolution/facilitation examples
- Success stories
- Lessons learned
- Potential national trends
- Site-specific trends
- OO initiatives and outreach
- Input about the Chairman's priorities
- Other significant information, observations, or suggestions

The primary client base for feedback and reporting is internal, and generally, FDIC management. External clients (e.g., bankers, public) are secondary.

3.4 Procedures

The steps involved in analyzing data for feedback purposes can vary depending on the type of analysis required, depth and breadth of that analysis, purpose and nature of the feedback being given, and time constraints

3.4.1 On-going internal data review

OATS data is reviewed monthly. Senior Ombudsman Specialists review findings, such as issues requiring further analysis, observations, and statistical data. The OO staff member assigned primary responsibility for feedback and reporting generally undertakes this review. In

3.3 Feedback content

Feedback subject matter can include one or more of the following:

- Policy issues

addition, other types of data review may be conducted, including:

- Variance analysis – review of raw numerical contact data across issue codes and over time to identify and quantify trends.
- Systemic/trend analysis – review data to identify issues that are national or regional in scope. Systemic issues can be based on frequency, sensitivity, potential for recurrence, or indication of a process failure.

3.4.2 Identification of emerging or sensitive issues

When an OO staff member becomes aware of a significant or sensitive issue; he or she is responsible for immediately bringing it to OO management's attention. The employee would still handle the matter and attempt to resolve the matter at the lowest possible level of FDIC management.

3.4.3 Reporting and recording issues and findings

Each staff member is responsible for reporting significant issues and activities routinely and for timely recording of those issues in OATS. In addition, OO management will ensure that feedback reports are available to all OO staff.

3.4.4 Assigned feedback and reporting projects

OO management periodically assigns one or more staff members to prepare a report. These reports can vary in size and scope and include quarterly reports, year-end retrospectives, and a variety of ad hoc

reports focusing on one issue division or office.

For reports requiring extensive and thorough review of data, the responsible OO staff member should develop a project plan that identifies:

- Scope and purpose of the feedback
- Proposed audience
- Proposed format and content
- Research methodologies to be used
- Resources allocated to project
- Responsibilities of other OO staff to provide input
- Reporting milestones
- Time line for completion

3.5 Systemic Issues

A basic function of the OO is to serve as an agent for positive change in the FDIC. The OO is in a unique position to bring issues to the attention of FDIC management and to make recommendations related to FDIC processes, procedures, policies, systems, or regulations.

For an issue to be considered systemic, two conditions must be met: (1) the issue must have broad corporate implications (either national or regional in scope), and (2) the issue must indicate a need for change to FDIC processes, procedures, policies, systems, or regulations to improve efficiency or to correct patterns of inappropriate behavior, inconsistent enforcement, non-responsiveness, or unfairness. For the purposes of these procedures, "national in scope" means problems or issues that have appeared or have a clear potential to appear in two or more geographical locations (otherwise, the problem or issue would be considered regional in scope).

A systemic issue may be identified by the existence of multiple cases relating to an issue or by fewer cases (sometimes only one case) where the OO determines that the issue has significant impact on the effective and efficient accomplishment of the FDIC's mission.

When a systemic issue is identified, a **Systemic Issue Case (SIC)** shall be created by the OATS administrator. A SIC is a separate case in OATS that is opened subsequent to, and to provide follow up and resolution of, an original case that has been identified as being potentially systemic in nature. This case shall be assigned to an OO employee designated by the Director or his designee to handle an approved systemic issue.

Every OO employee is responsible for identifying and bringing forward any observed systemic issues. Whenever OO management rejects an issue as being systemic, that determination and the rationale will be communicated to the identifying employee.

3.5.1 Potential Systemic Issues

Potential systemic issues are typically identified in one of two ways:

- An OO staff member handles an individual case that he or she believes has systemic implications, or
- Analysis of OATs data uncovers a possible systemic issue.

Any OO employee who believes that he/she has identified a potential systemic issue first notifies and discusses the issue with appropriate Ombudsman. Research

of a potentially systemic issue requires approval by OO management.

If a possible systemic issue is identified during analysis of OATS cases, OO management may assign a staff member to research the issue and open a SIC in OATS.

After a potential systemic issue is approved for further research, the employee conducts a thorough analysis of the issue. The analysis should include the following factors:

1. FDIC programs and geographical areas involved;
2. Research conducted;
3. Frequency and scope (regional or national);
4. Results of analysis and impact;
5. Recommendations.

Discussion with other OO employees and managers and a review of OATS records is encouraged and would generally be appropriate at any point in the process. Findings are presented in a memo from the employee to the Director within 30 days of the identification of the potential systemic issue. These guidelines may be shortened at management discretion due to sensitivity.

At any time during this review, OO management can determine that the subject matter does not rise to the level of a systemic issue.

3.5.1.1 Documenting Systemic Issues in OATS

When an issue is approved as potentially systemic, the OO employee assigned the matter opens a SIC in OATS. The employee then begins the systemic issue analysis as described below.

The SIC should be completed as described in the OATS User Manual. The SIC should include the following:

Characteristics of issue:

1. FDIC programs and geographical areas involved;
2. Research conducted;
3. Frequency and scope (regional or national);
4. Results of analysis and impact;
5. Recommendations;
6. Final determination by OO management;
7. If not approved, stated reasons;
8. If approved as a SIC, steps taken to raise the issue to appropriate FDIC management; and
9. Final disposition of the issue (what FDIC did to resolve the matter).

3.5.1.2 Approval of Systemic Issues and Strategy for Systemic Change

The Director or his designee reviews the analysis, requesting any clarification or additional information, and approves or disapproves the issue as systemic.

If the issue is not approved as systemic, the employee records the reasons in the SIC as specified in the OATS User Manual.

It is expected that the Director or his designee will approve or reject an issue as systemic within 30 days of receipt, which would be within a maximum of 60 days of identification. If an issue is determined to be systemic, the Director or his designee provides guidance and recommendations for systemic change to senior FDIC managers who, along with the OO

Director, determine an appropriate course of action.

All decisions regarding systemic issues will be documented in OATS and communicated to the concerned OO staff as soon as possible, including any decisions by FDIC management to take no action.

3.5.1.3 Monitoring and Communicating Progress

OO staff actively monitors both potential and substantiated systemic issues. The following steps will be taken to ensure consistency in the process:

The Associate Ombudsman or his designee assigns an employee for each approved systemic issue. The employee will:

- Monitor systemic change activity,
- Input relevant activity into the sic in a timely manner, at least monthly,
- Facilitate internal OO coordination and communication, and
- Perform any task associated with the systemic issue.

An alternate employee may be designated for each systemic case to update the SIC in the absence of the designated employee.

OO managers periodically inform the OO employee of corporate-wide systemic efforts and progress achieved.

Systemic issues are routinely discussed and monitored by OO management.

Contact Follow-up. The initial individual or group of individuals raising the issues may be informed that their case has been

referred for high-level management review. The respective OO employee shall be responsible for keeping the contact apprised of the progress of the case to the extent possible without violating the OO's confidentiality policy. These updates will generally occur monthly.

3.5.1.4 Resolution of Individual Case(s) Giving Rise to Systemic Issue

When an individual case becomes part of a systemic change effort, the individual case generally is not pursued by itself on a parallel track. If an individual case has multiple issues, those issues not included in the systemic problem can be pursued on a parallel track. If non-systemic issues are pursued in parallel, OO staff members must take care to defer to the centralized systemic effort to avoid disruption of OO's systemic activities and miscommunication across divisions and offices. To accomplish this, the designated employee and the involved OO employees must maintain continuous communication with each other.