

FORMAL CONSULTATION POLICY

OVERVIEW

The Division of Compliance and Consumer Affairs (DCA) relies upon the informal and ongoing dialogue between Field, Regional, and Washington Office staff to maintain the quality and consistency of the compliance/Community Reinvestment Act (CRA) examination process. In addition, a formal consultation policy has been adopted to assure that significant or unusual supervisory situations are properly and consistently addressed. The following guidance provides assistance in identifying situations where formal consultation with either the Regional or Washington Office is required.

In all instances requiring formal consultation with either the Regional or Washington Office, examiners must firmly establish and support, with appropriate documentation, the situation or issue. Examiners must also obtain management's position on the particular issue.

Policy Objective(s)

The objectives of this policy are to:

- Identify those situations during the course of the examination where the Examiner-in-Charge must consult with the Regional Office and the Regional Office must consult with the Washington Office
- Establish time frames and documentation standards for review of any supervisory issue subject to this policy

NOTE: A separate consultation policy applies to violations of the anti-discrimination provisions of the Equal Credit Opportunity and Fair Housing Acts. Examiners and review staff must comply with the specific time frames and procedures outlined in the memorandum entitled "Guidelines for Referring Violations of the Anti-discrimination Provisions of the Equal Credit Opportunity and Fair Housing Acts to the Department of Justice or Notifying the Department of Housing and Urban Development of Violations of the Fair Housing Act" dated January 23, 1997 (Transmittal No. 97-003).

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CONSULTATION WITH THE REGIONAL OFFICE

Throughout the examination, open dialogue and discussion between the Examiner-in-Charge, the Field Office Supervisor, and the Regional Office staff should be ongoing. However, the following situations require the Examiner-in-Charge to consult with the Regional Office:

- Violations of an unusual nature requiring further guidance or clarification

Examples of Violations of an Unusual Nature
May include reimbursable violations under Regulation Z, or a practice of not requiring flood insurance for properties located in flood hazard areas in participating communities. When in doubt, contact your Field Office Supervisor or Regional Office staff.

- Recommendation of formal or informal enforcement action
- Recommendation of a “3,” “4,” or “5” composite compliance rating or a “Needs to Improve” or “Substantial Noncompliance” composite CRA rating

Formal consultation is required in the situations discussed above prior to the exit meeting with management.

Procedures

Regional Directors must establish written formal consultation procedures. These procedures will include a five business day review period after receipt of the required documentation. This time limit is necessary to prevent undue delay in completing the examination and conducting the closing board of directors/trustees meeting. The Regional Director may extend the review period in unusual circumstances, such as the need to obtain a legal opinion or additional information, analyze complex factual questions involving discrimination or reimbursements, or consult with the Washington Office.

CONSULTATION WITH THE REGIONAL OFFICE (cont'd)

Procedures (cont'd)

Regional Office Consultation Procedures and Responsibilities	
	1. Formal consultation is required either prior to the examination's conclusion or the Examiner-in-Charge's closing meeting with management, but before the meeting with the financial institution's board of directors/trustees.
	2. Follow documentation requirements established by the Regional Director.
	3. The Examiner-in-Charge will discuss the situation/issue with the Field Office Supervisor prior to formal consultation with Regional Office.
	4. The Examiner-in-Charge will initiate the formal consultation with the designated Regional Office staff.
	5. The Regional Office will acknowledge receipt of required documentation to the Examiner-in-Charge and Field Office Supervisor.

Additional Participation

As a general rule, a Review Examiner will review and prepare an analysis of the formal consultation summary. At the discretion of the Regional Director, the Community Affairs Officer (CAO) or Regional Office Legal Division may also be included in the formal consultation review process. The CAO and/or Legal Division should be involved in the consultation process in the following circumstances:

- Proposed "Needs to Improve" or "Substantial Noncompliance" composite CRA ratings
- Reimbursement is required and requested pursuant to Federal Reserve Board's Regulation Z, Truth in Lending; request is unusual or has potential legal implications
- Other instances as deemed appropriate by the Regional Director

CONSULTATION WITH THE WASHINGTON OFFICE

The Regional Office will initiate formal consultation with the Washington Office in the following circumstances:

- A formal enforcement action is recommended
Exception: Civil money penalty cases of \$10,000 or less that pertain exclusively to violations of the Home Mortgage Disclosure Act (HMDA) do not require consultation with the Washington Office.
- A composite CRA rating of “Substantial Noncompliance” or a composite compliance rating of “5” has been recommended
- Section 8 violations of Real Estate Settlement Procedures Act (RESPA) are noted (unless they are technical violations corrected by management during the examination)

Procedures

Consultation with the Washington Office	
Regional Office will:	
1.	Consult with the Washington Office following examiner’s meeting with the financial institution’s board of directors/trustees. For applicable civil money penalty cases, consult with the Washington Office prior to sending the 15-day letter to the institution.
2.	Send to the Associate Director, Supervision and Regulation Branch, by overnight mail or facsimile, a memorandum summarizing the specific issue(s) requiring Washington Office review. The summary must include a statement of the issue(s), the proposed plans for corrective actions, and an explanation of how corrective actions will be monitored, supported by appropriate documentation. Advise the Associate Director by e-mail when and how the consultation summary has been sent.
3.	Contact the Associate Director, Supervision and Regulation Branch, if no response or acknowledgment of receipt is received within ten (10) business days.
<i>NOTE: Do not send the Compliance Report of Examination to the financial institution until after the Washington Office consultation is completed.</i>	
Washington Office will:	
1.	Acknowledge receipt of the consultation summary to the Regional Office
2.	Provide the name of the Washington Office Review Examiner responsible for reviewing the consultation summary.
3.	Respond to all consultation requests within ten (10) business days of receipt of the required documentation.
4.	A Washington Office Review Examiner will review and analyze the Regional Office’s consultation summary. At the discretion of the Associate Director, Supervision and Regulation Branch, a Fair Lending Specialist or Legal Division may be included in the consultation review process.

CONSULTATION WITH THE WASHINGTON OFFICE (cont'd)

5. In response to a consultation request, the Washington Office will either:
 - Concur with the proposed ratings and corrective measures
 - Request further information
 - Request the region to consider a different rating or corrective action based on the information forwarded for review

Extension of the Washington Office Review Period

Procedures (cont'd)

In rare instances, the consultation review period will be extended by the Associate Director, Supervision and Regulation Branch.

1. Extensions may be granted only for unusual circumstances, such as the need to obtain a legal opinion or additional information, or analyze complex factual questions involving discrimination or reimbursements.
2. The Washington Office Review Examiner will advise the Regional Office of the extension and its anticipated length.

EXCEPTIONS TO POLICY

Formal consultation with Regional or Washington Offices will not be required for situations such as, but not limited to, the following:

- Examination findings noting an unchanged compliance or CRA posture from the previous examination
- An improved composite compliance or CRA rating which warrants the removal of a financial institution from a problem institution classification
- Removal of an enforcement action



**FDIC LAW,
REGULATIONS,
& RELATED
ACTS**

Applicable Rules

None

**Advisory
Opinions**

None

**Statements of
Policy**

None

**DCA
MEMORANDA**

Consultations with the Washington Office for Civil Money Penalty Cases, Transmittal # DCA-99-005, dated 5/11/99.

Guidelines for Referring Violations of the Anti-discrimination Provisions of the Equal Credit Opportunity and Fair Housing Acts to the Department of Justice or Notifying the Department of Housing and Urban Development of Violations of the Fair Housing Act, Transmittal # 97-003, dated 1/23/97.

**FINANCIAL
INSTITUTION
LETTERS (FIL)**

None
