CORPORATION COMMENTS AND OIG EVALUATION

We provided our draft report to the Division of Supervision on December 11, 1998. On January 14, 1999, the Director of DOS provided a written response to our draft report. The response is presented in appendix D of this report.

DOS agreed with 3 of the 11 recommendations in our report (recommendation numbers 3, 6, and 10) and disagreed with 1 recommendation (recommendation number 8). However, DOS did not provide clear agreement or disagreement with the remaining 7 recommendations, nor did DOS propose alternative actions. In the discussion below, we present our overall evaluation of DOS's comments and provide a summary of DOS's response to our recommendations. DOS's response to recommendations 3, 6, and 10 is not summarized because the management actions planned were identical to those recommended in the report. We will continue to work with DOS to obtain management decisions on all recommendations.

OIG's Overall Evaluation of DOS's Response to the Draft Report

In responding to the draft report, DOS management referenced their own internal analysis of the supervision of BestBank. While we were aware that DOS had selected a senior examiner from the New York Region to conduct this analysis, the examiner's report was not finalized when we issued our draft report. As a result, we did not cite his findings. The report was subsequently finalized on January 4, 1999. The DOS examiner's report supports many of our results, including findings that:

- DOS did not properly follow up on allegations from a former BestBank employee,
- DOS Dallas did not consider enforcement powers under section 10(c) or 8(b) immediately following the October 1997 examination,
- the DOS examination team did not prepare a formal pre-examination planning memorandum for the October 1996 examination,
- DOS did not take the customary supervisory actions against BestBank following the February 1996 examination when the bank was rated a composite "4",
- DOS did not meet with the bank's Board of Directors to discuss the October 1997 examination results until April 1998—a delay of 6 months—but should have reacted sooner considering the bank's rapid growth, and
- examiners needed access to financial records supporting Century's financial statements.

Our detailed analysis of DOS management's response to the draft report is presented below. Appendix D has been annotated to cross-reference DOS's response to our comments.

1. The OIG's Changes to the Draft Report: DOS commented that they had concerns responding to a draft report that "continues to undergo changes."

During the comment period, we made several changes to the report as a result of subsequent discussions with DOS and the Legal Division. We provided DOS management with copies of the changes we made to our draft report in sufficient time for DOS to consider the changes prior to responding to the draft report. We also granted an additional 3 days for their review and comment.

2. Purpose of the Material Loss Review: DOS quoted an excerpt from section 38 of the FDI Act, which requires the OIG to conduct a material loss review. DOS correctly cited the requirement that the OIG determine why an institution's problems resulted in a material loss to the deposit insurance fund and make recommendations for preventing any such loss in the future.

However, in quoting the objectives of a material loss review, DOS did not quote the statute in its entirety. The statute directs that the OIG shall:

> (A) make a written report to that agency **reviewing the agency's supervision of the institution (**including the agency's implementation of this section**)**, which shall—
>
> (i) ascertain why the institution's problems resulted in a material loss to the deposit insurance fund; and
> (ii) make recommendations for preventing any such loss in the future…. [Emphasis added].

Thus, the clear statutory mandate is that the OIG's review focus on the agency's supervisory activities. In fulfilling that mandate, our recommendations relating to DOS's supervision of BestBank, including DOS's current policies and procedures, are appropriately presented in our material loss review report.

3. Irregular Activities: DOS takes strong exception to the OIG not reporting on irregular activities relating to the BestBank credit card portfolio. In their response, DOS management states that "BestBank and Century officials participated in an apparent fraudulent scheme to misrepresent the true condition of the credit card portfolio." Because we do not attribute the BestBank failure to potential fraudulent activities, DOS responded that the "OIG's Draft Report findings are fundamentally and substantially flawed due to a basic error in methodology and attribution."

We recognized the impact of irregular activities in the first two sentences on page 10 of this report under the heading, "CAUSES OF BESTBANK'S FAILURE…", which state:

> BestBank's demise was attributable to bank management's failure to operate the institution in a safe and sound manner, which led to substantial losses sustained in the high-risk unsecured credit card travel program. These losses were exacerbated by Century's apparent actions to make delinquent accounts appear current, which delayed the recognition of losses in the portfolio.

These sentences clearly pertain to activities at the bank and its outside credit card service organization. In the conclusion to its memorandum, DOS also states that "[f]rom a supervision perspective, the overriding issue is whether the apparent fraud could have been detected earlier." We consider early detection of unsafe and unsound practices to be central to our review of the agency's supervision of BestBank and believe that our report and recommendations address this issue.

In our report, we also state that the impact of possible criminal misconduct upon the failure of BestBank was not within the scope of a material loss review. We disclosed that the potential impact of possible criminal misconduct is being addressed by appropriate federal law enforcement authorities. The FDI Act requires that the OIG conduct a review of the FDIC's supervisory activities and report on a material loss to the BIF within 6 months from the date that a material loss is recognized. Because the failure of BestBank was immediately recognized as a material loss to the BIF triggering the 6 month reporting requirement, the results of federal law enforcement authorities' activities were not known at the time of our draft report and still are not known. It is inappropriate for us to comment on these activities at this time.

We continue to believe that our report appropriately identifies why BestBank's failure resulted in a material loss to the BIF. In addition, we believe that our recommendations related to DOS's supervision of BestBank could assist in preventing such losses in the future.

4. Purpose of Safety and Soundness Examinations: DOS management commented that according to the DOS Manual of Examination Policies (DOS Manual), safety and soundness examinations "…are not undertaken for the detection of fraud, nor is their sole or primary purpose to assure the complete correctness or appropriateness of records."

However, DOS did not acknowledge examiners' responsibilities to be alert to the possible existence of fraud and to take follow up actions when certain warning signs are evident. According to the DOS Manual, "The early detection of apparent fraud and insider abuse is an essential element in limiting the risk to the FDIC's deposit insurance funds and uninsured depositors. Although it is not possible to detect all instances of apparent fraud and insider abuse, potential problems can often be uncovered when certain warning signs are evident. It is essential for examiners to be alert for irregular or unusual activity and to fully investigate the circumstances surrounding the activity." The DOS Manual lists certain warning signs of potential credit card fraud that we believe were evident to examiners at BestBank, including:

- Customer complaints,
- The institution contracts with third-party servicers to process credit card customer and merchant transactions without verifying the financial stability and reputation of the servicer, and
- The merchant is engaged in telemarketing activities and is the subject of frequent customer complaints.

The DOS Manual provides that if these warning signs are found, the examiner should take certain actions, including reviewing customer complaints, no matter how insignificant they may appear to be, and conducting on-site inspections of a merchant's operations. DOS examiners did not take these actions in a timely manner.

5. Misleading Statements Regarding the 1996 OIG Investigation: DOS management commented that our report mischaracterizes the impact of the OIG review of allegations from the BestBank CEO regarding a "…multi year pattern of egregious, unethical, possibly unlawful conduct of Dallas and Denver FDIC staff…" The former FDIC Chairman forwarded the allegations to the OIG for review. DOS management believes that these actions gave the perception that the BestBank CEO had undue influence in Washington that allowed him to involve the OIG in the supervisory process. DOS management noted that the FDIC's Ombudsman "is a competent, neutral arbiter of issues arising between examiners and the banks they examine. There also is a supervisory appeals process by which a bank may obtain a higher level review of issues in dispute."

In our opinion, the former FDIC Chairman acted appropriately in forwarding the BestBank CEO's allegations to our office for review. The OIGs were established by the Congress:

> In order to create independent and objective units—
>
> (1) to conduct and supervise audits and investigations relating to the programs and operations of the establishments…and
> (3) to provide a means for keeping the head of the establishment and the Congress fully and currently informed about problems and deficiencies relating to the administration of such programs and operations and the necessity for and progress of corrective action….

The Congress established a statutory role for an independent Inspector General and in 1993 elected to establish a presidentially appointed Inspector General within the FDIC.

The former FDIC Chairman was faced with allegations of serious wrongdoing in connection with the supervision of BestBank. We believe it was entirely appropriate, and clearly within the mechanism established by the Congress, for her to forward these allegations to the OIG for review. There should be no intimidation associated with this process, and DOS should have ensured that all supervisory functions were pursued in a normal manner.

DOS management also suggests that the draft report "incorrectly paraphrases the 1996 OIG investigation in that conclusions in the 1996 Report do not mention that several of the allegations were found to be 'entirely with out merit.'" The draft report was not paraphrasing the conclusions, but rather the "Results in Brief" section of the 1996 OIG report, which characterized two allegations as "without merit" and a third as "not substantiated."

While DOS management acknowledged that the BestBank CEO's perceived influence was a "distraction and served as a source of intimidation," DOS subsequently took exception to our observation that the OIG's review of the allegations influenced DOS's decision not to pursue enforcement action on the bank. Although examiners rated BestBank a "4" at the February 1996 joint examination, DOS responded that "In fact, no action was taken as DOS adjudged that the report did not support an enforcement action." During our audit, FDIC staff in Dallas and Denver told us that they believed that any supervisory action taken by the FDIC at the time may have been viewed by the bank as retaliation for the allegations.

As noted in our report, the DOS Manual provides that a bank with a composite "4" or "5" rating will, by definition, have problems of sufficient severity to warrant formal action. The DOS Manual also notes that "Mere belief that bank management has recognized the problems and will implement corrective action is not a sufficient basis to preclude action if the bank is still deemed to warrant a composite rating of '3', '4', or '5'." Given DOS's own policies, we are concerned that DOS management would sign an examination report rating an institution a composite "4" if the report did not support an enforcement action.

We continue to believe that DOS should not have allowed the BestBank CEO's allegations, the FDIC Chairman's request that the OIG review the allegations, or the OIG's subsequent inquiry to influence DOS's decision to pursue supervisory action on a "4" rated institution.

6. Misleading Statements Regarding the Supervision of BestBank: DOS management responded that misleading statements in our report evidence a lack of understanding of the supervision process and the use of enforcement actions. DOS commented that MOUs and Board Resolutions are informal administrative actions, neither of which is legally enforceable, and that an MOU is not a stronger action than Board Resolutions. DOS further stated that our report incorrectly "implies" that the FDIC has the power to impose an MOU on a bank.
DOS management also took exception to comments in our draft that DOS contemplated an MOU, and subsequently a Cease and Desist Order following the October 1997 examination, but did not take either action before the bank was closed in July 1998.

The OIG material loss review team included a commissioned examiner, who was a DOS examiner prior to joining the OIG, and two individuals who have conducted prior material loss reviews and have completed DOS examiner training courses. The OIG team members have a competent understanding of the supervision process and the use of enforcement actions.

We are aware of the administrative nature of an MOU and Board Resolutions. We understand that the FDIC cannot impose an MOU on a bank. In our opinion, the report does not imply otherwise. We did observe, however, that DOS examiners proposed an MOU following several examinations to address the material deficiencies identified during the examination. In each case, either no action was taken or DOS accepted Board Resolutions in lieu of an MOU.

The DOS Formal and Informal Action Procedures Manual (FIAP Manual) addresses the use of Board Resolutions and MOUs. The FIAP Manual provides that "Bank Board Resolutions (BBRs) are informal commitments developed and adopted by a financial institution's board of directors directing the institution's personnel to take corrective action regarding specific noted deficiencies." According to the FIAP Manual, "A Memorandum of Understanding (MOU) is an informal agreement between an institution and the FDIC, which is signed by both parties. MOUs are designed to address and correct identified weaknesses in an institution's condition." The FIAP Manual continues: " FDIC generally uses MOUs instead of BBRs, especially when there is reason to believe the deficiencies noted during an examination will not be addressed adequately by a BBR." We believe the examination history of BestBank clearly demonstrates that deficiencies had not been adequately addressed over a period of several years.

With respect to the MOU and C&D contemplated by DOS based on the October 1997 examination, our report is correct in stating that DOS did not take either action before the bank was closed in July 1998. While the FDIC and the State planned to pursue a C&D if bank management refused to sign the MOU, neither agency implemented a C&D or entered into an MOU before the bank was closed. According to the DOS response, proposed MOUs were sent to the bank in February and March 1998, but the bank refused to sign them. After that, no corrective actions were taken until DOS initiated Prompt Corrective Action (PCA) provisions on July 22, 1998, one day before the State closed the bank. Although we recognize that it takes time to institute enforcement actions and other corrective measures, our broader concern is that neither DOS nor the State instituted any of the corrective actions proposed by examiners in the three examinations conducted in 1996 and 1997.

7. DOS Management Support for Examination Staff: DOS responded that they were disappointed with the negative depictions of the competency and performance of the examination staff. They also stated that DOS management has been and continues to be supportive of the examination staff.

We do not believe that our report denigrated the competency of the examiners who conducted the BestBank examinations. However, one of the purposes of our material loss review is to make recommendations regarding how the examination process can be improved. We found that, in some instances, examination staff did not receive support from DOS management. For instance, examiners wanted more time to conduct the October 1997 examination of BestBank, sought various means of gaining access to Century's financial records, and recommended some form of supervisory action following the February 1996, October 1996, and October 1997 examinations. However, DOS Dallas management did not approve or implement these requests. The recommendations we offer in this report are intended to provide policies and guidance that will assist examiners and supervisors in meeting their responsibilities.

8. Lack of Information on Century: DOS management stated in their response that our report suggests that "examiners had inadequate information and relied only on the repurchase agreement when evaluating Century-related credits and asset quality in general. [The OIG draft report] also suggests that if examiners had reviewed audited financial statements on Century, they would have been able to identify that Century did not have the wherewithal to continue repurchasing delinquent accounts." DOS management took exception to these facts and contended that the examiners reviewed various documents in addition to the repurchase agreement, including quarterly CPA-reviewed financial statements on Century.

DOS concluded that audited financial statements would not have revealed what DOS management terms the bank's "concealment" of true credit card delinquencies. Further, DOS states that the examiners used the best information available at the time and determined that the examination report could be completed without further information.

As cited on pages 33 and 34 of our draft report (page 21 of this report), the examiners expressed their compelling need to gain prompt, unrestricted access to records supporting the financial statements for

Century. These are the words of the examiners, not the OIG. The examiners stressed the need to have access to the financial information supporting Century's financial statements, not just the statements themselves. We support the examiners' position.

Also, if DOS management does not believe audited financial statements would be helpful to examiners, we do not understand why they cite access to "CPA-reviewed financial statements" as a particular strength of the examination. CPA-reviewed financial statements provide substantially less assurance than audited financial statements regarding the accuracy of an organization's reported financial condition.

As cited earlier, DOS appointed one of its senior examiners from the New York Region to conduct an internal analysis of DOS's supervision of BestBank. The DOS examiner's internal analysis fully supports our position regarding the examiners' need for financial data supporting Century's financial statements.

We continue to believe that DOS and the Dallas Regional Counsel should have worked more diligently to find alternative ways to gain access to records supporting Century's financial statements.

9. Limited Access to Records: DOS responded that we "incorrectly" report that examiners accepted the guidelines the bank imposed during the October 1996 and October 1997 examinations. DOS states that the examiners did not accept or follow those guidelines and that the October 1996 examination was terminated because of a lack of full access to the bank's premises, books and records, and. Following the FDIC's efforts to obtain a Temporary Restraining Order and a preliminary injunction, the bank formally rescinded the examiner guidelines.

As we reported, the FDIC did take steps to obtain a Temporary Restraining Order, and BestBank's Board of Directors formally rescinded the guidelines it had imposed on examiners. However, the examiners told us that despite the rescission, they completed the October 1996 examination while bank management continued to implement the guidelines. The Examiner-in-Charge of the October 1996 and 1997 examinations told us that bank management took actions to intimidate the examiners to ensure they had limited access to bank employees and records. The FDIC Dallas Regional Director and the State Commissioner acknowledged in a letter to BestBank's Board of Directors that there was limited access to senior bank officers during the October 1997 joint examination. The regulators stated that the communication barriers imposed by bank management "inhibited the normal examination process and often made it difficult to obtain and clarify requisite information."

10. Conclusion: DOS management concluded that implementing the OIG recommendations "would not have prevented BestBank's failure nor reduced exposure to the insurance fund. From a supervision perspective, the overriding issue is whether the apparent fraud could have been detected earlier. On this question, the Draft Report offers little illumination."

Our report clearly identifies a number of missed opportunities for timely and effective supervisory actions by DOS. These opportunities include:

- The February 1996 examination in which BestBank received a composite "4" rating but no supervisory actions were taken;
- Allegations by a former bank employee regarding the improper re-aging of accounts that were not appropriately addressed by DOS management in January 1997;
- A January 1997 revised agreement between Century and BestBank permitted the FDIC to examine Century's financial records. However, DOS management did not use this agreement to gain the needed access to Century until June 1998; and
- Following the October 1997 examination, DOS management did not promptly meet with BestBank's Board of Directors. Bank management successfully delayed this meeting for approximately 6 months until April 1998. During the meeting, DOS management became aware of a cash flow analysis that bank management had prepared to show that BestBank could survive without Century. The examiners' review of this analysis, as well as consumer complaints related to the credit card travel program, resulted in the examiners' discovery of the $20 credits posted to credit card accounts by Century's data processor.

We disagree with DOS's conclusion that earlier actions would not have reduced the exposure to the BIF. In our opinion, earlier action by DOS may have reduced the subsequent loss to the BIF. Specifically, DOS's earlier access to records supporting Century's financial statements may have resulted in the examiners identifying Century's true financial condition. Also, DOS's prompt supervisory action to control the bank's growth following the October 1997 examination may have reduced exposure to the BIF. According to a DOS report, in 1997 the bank was growing at an annual rate of 232 percent. Considering this rate of growth, we believe that every day the bank was allowed to continue operating resulted in additional losses to the BIF.

We believe that implementing our recommendations could assist in preventing future losses, such as those in BestBank, and will improve the DOS examination process.

Summary of DOS's Response to OIG Recommendations

Work with the Federal Reserve Board to expand its interpretations under section 23A of the Federal Reserve Act to include any entity whose business relationship with an insured depository institution has the ability to significantly affect the safety and soundness of the institution in the definition of "affiliate" (recommendation 1): The Director stated that increased regulatory powers via a revised section 23A would require Congressional action, and were not likely to be granted. The Director also indicated that section 10(c) of the FDI Act provides DOS the authority to examine nonaffiliates which in any way affect the bank's affairs or ownership. However, in the case of BestBank, DOS management believed, after consulting with counsel, that the FDIC did not have access to the financial records supporting Century's financial statements because Century was not an affiliate of BestBank. If DOS believes, in hindsight, that it had the authority to examine nonaffiliates, DOS should clearly communicate that authority to its examiners. The Director's response has not provided the requisites of a management decision, because the response has not clearly agreed or disagreed with our recommendation to work with the Federal Reserve Board to expand section 23A.

Work with the Legal Division to pursue alternative means of obtaining access to third party servicers (recommendation 2): The Director agreed that DOS will work with the Legal Division to determine the need for changes to existing statutes and regulations. However, the Director's response has not provided the requisites of a management decision, because the response has not specified an expected completion date or documentation that will confirm this action.

Establish a remedy for the FDIC to gain immediate, unfettered access to an insured depository institution that attempts to impede the examiners' access to bank employees or records (recommendation 4): The Director agreed that DOS needs a remedy to gain immediate, unfettered access to insured depository institutions. However, the Director's response has not provided the requisites of a management decision, because the response has not specified what action will be taken to gain this access, nor does the response provide an expected completion date or documentation that will confirm the action taken.

Modify existing policies to require the Regional Director to provide a written justification for taking no supervisory action on a "3," "4," or "5" rated institution (recommendation 5): The Director commented that this policy is already contained in the DOS Case Managers Procedures Manual. We reviewed this document and determined that the current policy does not require the Regional Director to provide a written justification for taking no supervisory action on a "3," "4," or "5" rated

institution. Accordingly, the Director's response has not provided the requisites of a management decision, because the response has not clearly agreed or disagreed with our recommendation to modify existing policies to require the Regional Director to provide written justification in this situation.

Develop and implement a policy where examiners take prompt action to address allegations of potential wrongdoing, including referring such allegations to the Regional Director, Regional Counsel, and, in certain circumstances, the OIG (recommendation 7): The Director stated that he would issue a written reminder to examiners regarding the referral of allegations. However, the Director has not agreed with our recommendation to develop and implement a policy where examiners refer allegations of potential wrongdoing to the Regional Director, Regional Counsel, and, in certain circumstances, the OIG. Furthermore, the Director stated that he will not instruct examiners to refer allegations to the OIG.

The Inspector General Act, as amended, created an independent OIG within the FDIC. As a part of its responsibilities under that Act, the OIG is to prevent and detect fraud and abuse in FDIC programs and operations; conduct and supervise or coordinate activities to prevent and detect fraud and abuse in FDIC programs and operations; and inform the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law. In carrying out its duties, the OIG also has the statutory authority to have access to all materials available to the FDIC which relate to programs and operations with respect to which the Inspector General has responsibilities under the Act. At the suggestion of the former Chairman, our office entered into a Memorandum of Understanding with the FBI under which the two offices have been operating for the last year. The FBI is designated as the lead agency (unless both parties agree otherwise) and the OIG assists them. The OIG does not object to DOS's longstanding practice of making referrals to the Department of Justice. However, in order to carry out our statutory responsibilities, we believe the OIG should be simultaneously notified of referrals.

DOS also states in its response that "[t]he investigation of alleged wrongdoing by banks or institution-affiliated parties, including appropriate referrals to the U.S. Attorney, is a program responsibility of DOS." As a part of its supervisory and regulatory responsibilities, DOS does investigate and review alleged wrongdoing by banks or institution-affiliated parties. However, to the extent that the DOS comment is intended to assert that the OIG has no jurisdiction whatsoever in such matters, we disagree. The Inspector General's statutory jurisdiction extends to all matters relating to the programs and operations of the FDIC. For example, the obstruction of a bank examination would go to the heart of the "programs and operations" of the FDIC, whose mission includes the examination of financial institutions. The investigation of potential criminal obstruction of the agency in its mission is squarely within the Inspector General's jurisdiction. DOS is not a law enforcement organization. Similarly, referrals to the Department of Justice can arise out of DOS's program activities, particularly the examination process. However, the Inspector General Act directs the Inspector General to refer information concerning potential criminal activity to the Department of Justice. Accordingly, there

are unique roles that the OIG performs with regard to the investigation of alleged wrongdoing by banks or institution-affiliated parties.

The Director's response has not provided the requisites of a management decision, because the response has not clearly agreed or disagreed with our recommendation to develop and implement a policy where examiners take prompt action to address allegations of potential wrongdoing, including referring such allegations to the Regional Director, Regional Counsel, and, in certain circumstances, the OIG.

Develop and implement a policy where examiners, as part of DOS's quarterly off-site review and pre-examination planning work, review DCA and State consumer complaint files on financial institutions that have been identified as a supervisory concern (recommendation 8): The Director disagreed with our recommendation and stated that DCA already has a mechanism in place to forward consumer complaints to DOS on all institutions if the complaints pose a safety and soundness concern. We do not agree with this management decision. We believe DOS needs to be proactive in reviewing DCA's complaint files on institutions that represent a supervisory concern. DOS examiners should be intimately familiar with a troubled institution's operations, including specialized programs such as the credit card travel program in BestBank. It is the responsibility of DOS, not DCA, to evaluate the safety and soundness of an insured depository institution. During our audit, DOS officials in the Dallas region told us it would not be time consuming or burdensome to review DCA's complaint files on troubled institutions as part of DOS's quarterly off-site review and pre-examination planning work.

Develop and implement a policy that requires examiners to document significant examination obstacles, such as impeded access to bank employees and records or unrealistic time constraints, including the Regional Director's resolution of such obstacles (recommendation 9): The Director stated that the practice of documenting significant examination obstacles is a longstanding fundamental examination concept. However, DOS does not have a written policy to address this issue. The Director's response has not provided the requisites of a management decision, because the response has not agreed or disagreed with our recommendation to develop and implement a written policy requiring examiners to document significant examination obstacles, including the Regional Director's resolution of such obstacles.

Issue policy reminders to DOS examiners and supervisors related to assessing compliance with outstanding supervisory actions, identifying concentrations of credit, preparing the pre-examination planning memorandum, and scheduling board meetings (recommendation 11): The Director stated that DOS will continue to amplify these policies at management meetings and review compliance with the policies at periodic Regional Office reviews. The Director's response has not provided the requisites of a management decision, because the response has not agreed or disagreed with our recommendation to provide written reminders to DOS examiners and supervisors related to specific issues included in this recommendation.

As noted earlier, we will continue to work with DOS to obtain management decisions on all recommendations. We provide a table in appendix F that presents the management responses that have been made on recommendations in our report and the status of management decisions.

The Associate Director of the Division of Compliance and Consumer Affairs also provided written comments on January 12, 1999 regarding DCA's role in the consumer complaint process (see appendix E). No changes were necessary based on DCA's comments.