

Community Banking
in the 21st Century

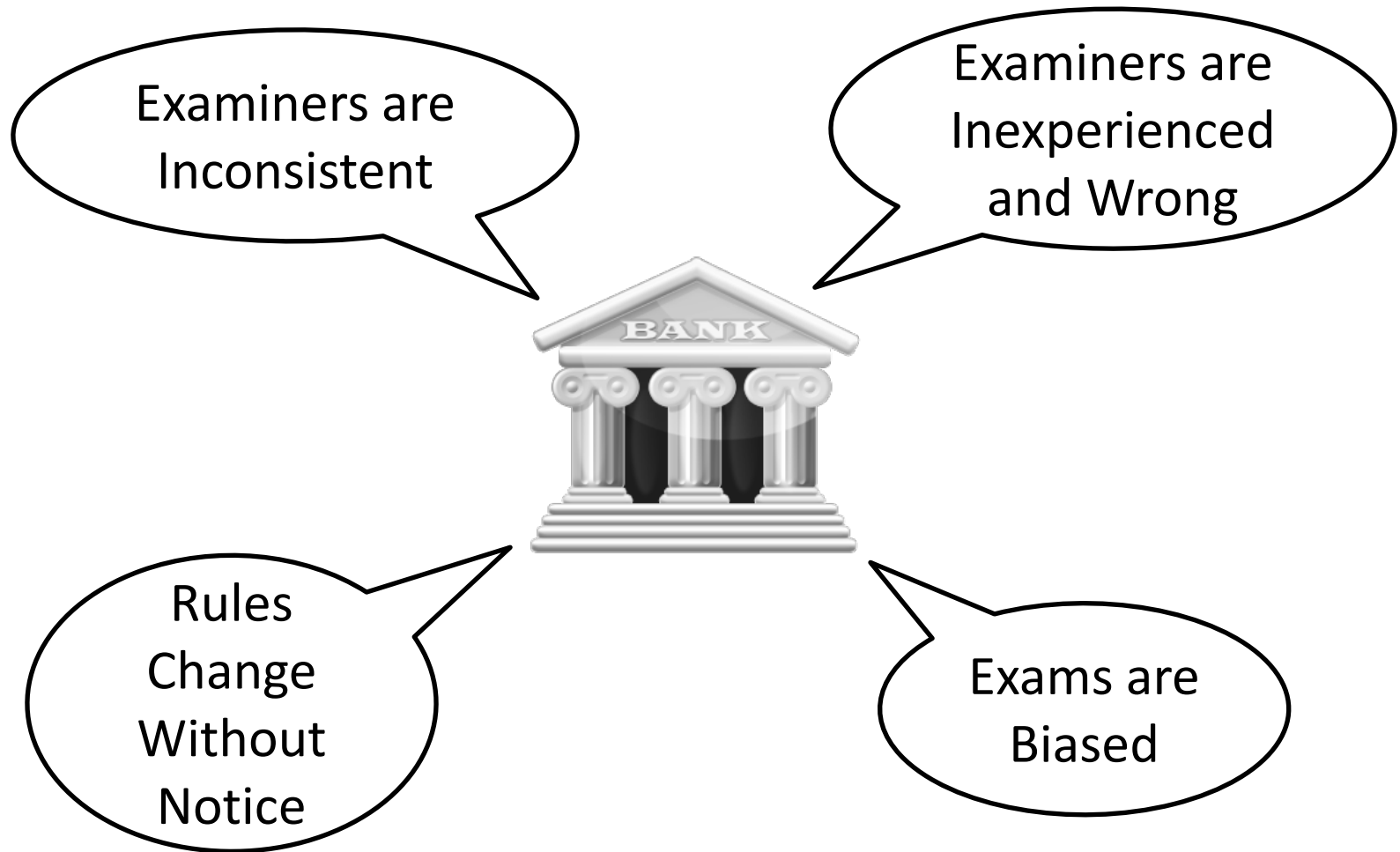


When Bank Examiners Get it Wrong: Financial Institution Appeals of Material Supervisory Determinations

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Dissatisfaction with Bank Exams



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

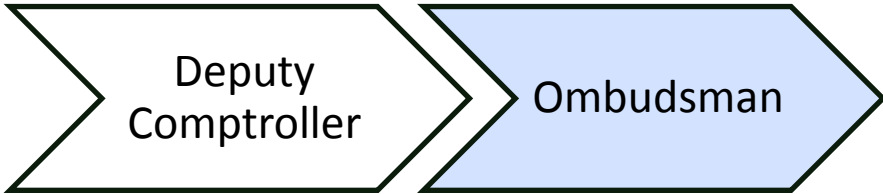
Reviewing the Appeals Process



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

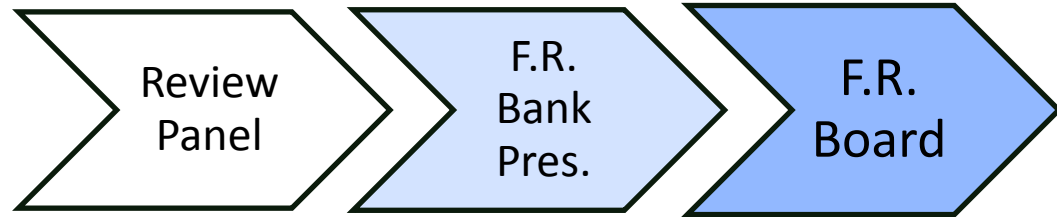
Review Process

OCC

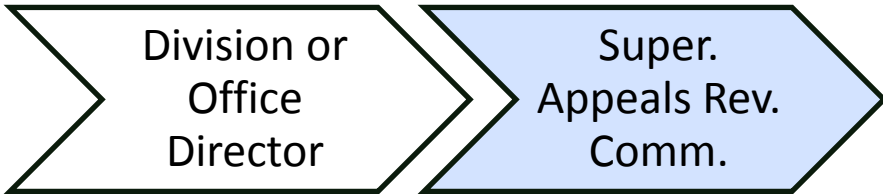


Appeal can begin with either.

Federal Reserve



FDIC



NCUA

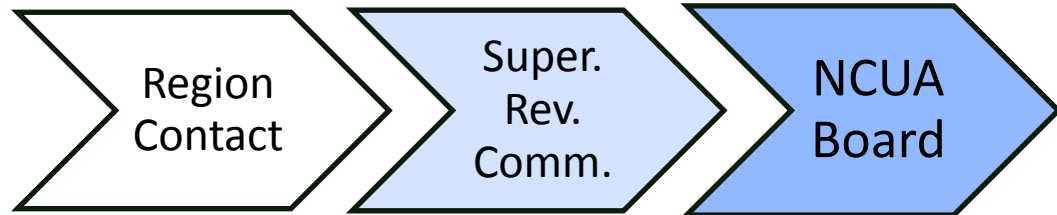


Figure 1: OCC Material Supervisory Determinations Ombudsman Appeals per Year (1994-2012)

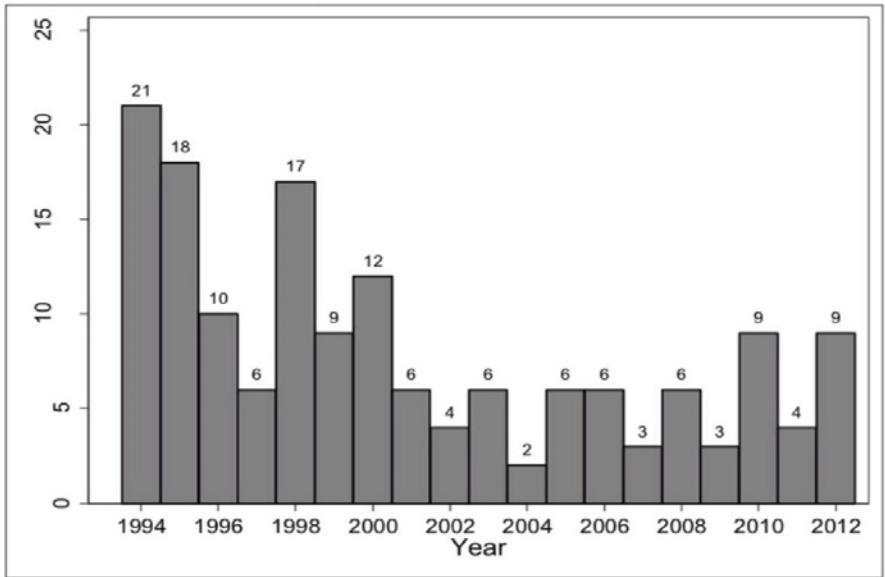


Figure 4: Federal Reserve Material Supervisory Determinations Appeals per Year (2001-2012)

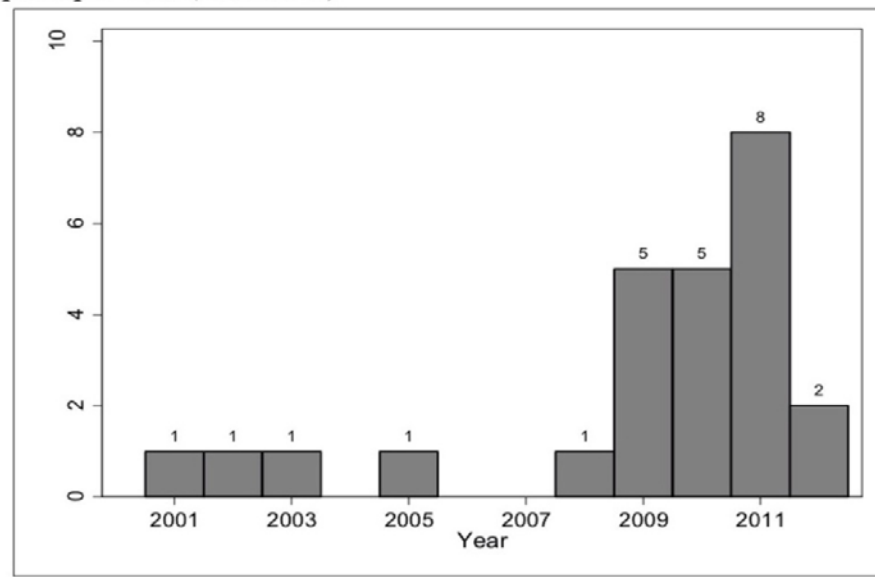
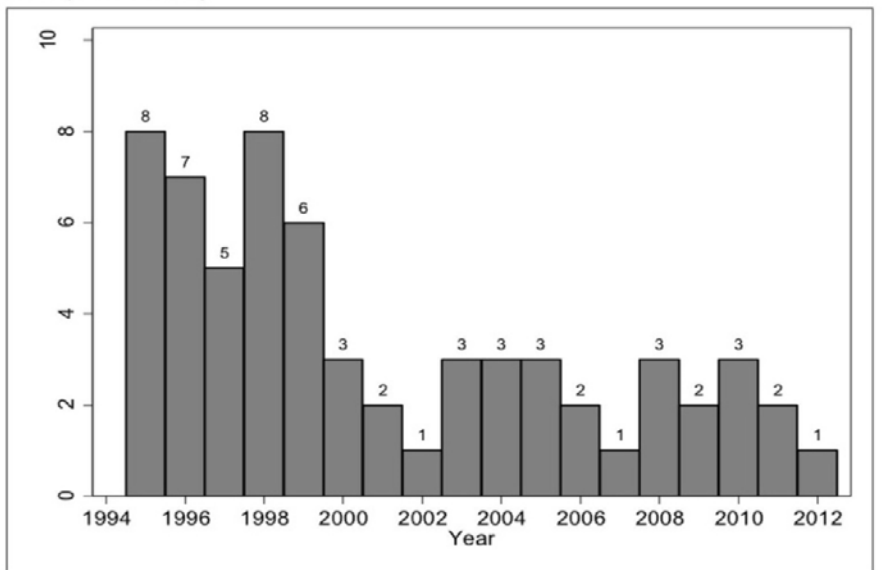


Figure 8: FDIC Supervision Appeals Review Committee Decisions per Year (1995-2012)



What Is Appealed

- OCC
 - CAMELS Ratings
 - Loan or Asset Classifications
 - CRA Rating
- FDIC
 - CAMELS Ratings
 - CRA Rating
 - Loan or Asset Classifications
- Federal Reserve
 - CAMELS Ratings
 - Loan or Asset Classifications
 - Capital Calculations
- NCUA
 - CAMEL Ratings
 - Document of Resolution
 - Exam Findings

Standard of Review

- OCC
 - Whether the “examiners appropriately applied agency policies and standards.”
- FDIC
 - “[C]onsistency with the policies, practices, and mission of the FDIC and the overall reasonableness”
- Federal Reserve
 - Varies by Federal Reserve Bank.
- NCUA
 - Review committee does not give deference to either the credit union or the examiners.

Figure 3: Outcomes of OCC Material Supervisory Determination Appeals to Ombudsman (1994-2012)

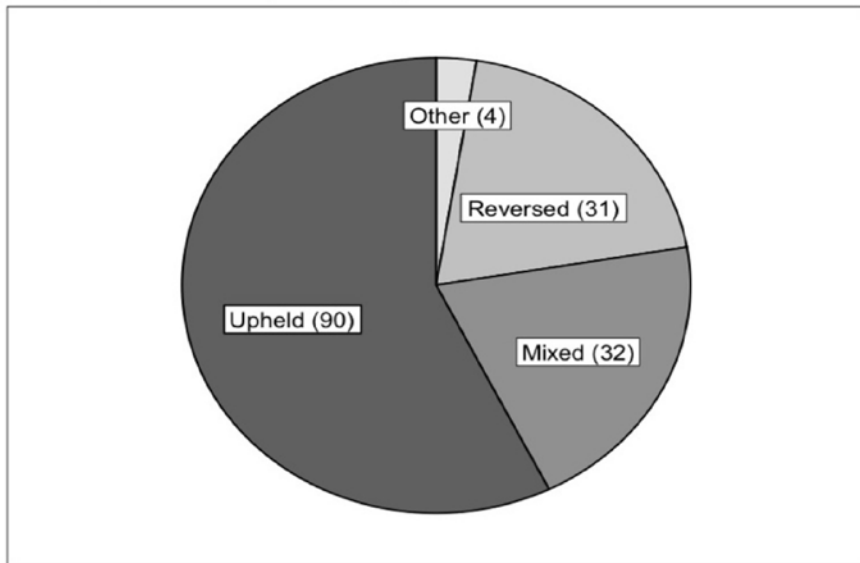


Figure 6: Outcomes of Federal Reserve Material Supervisory Determination Appeals (2001-2012)

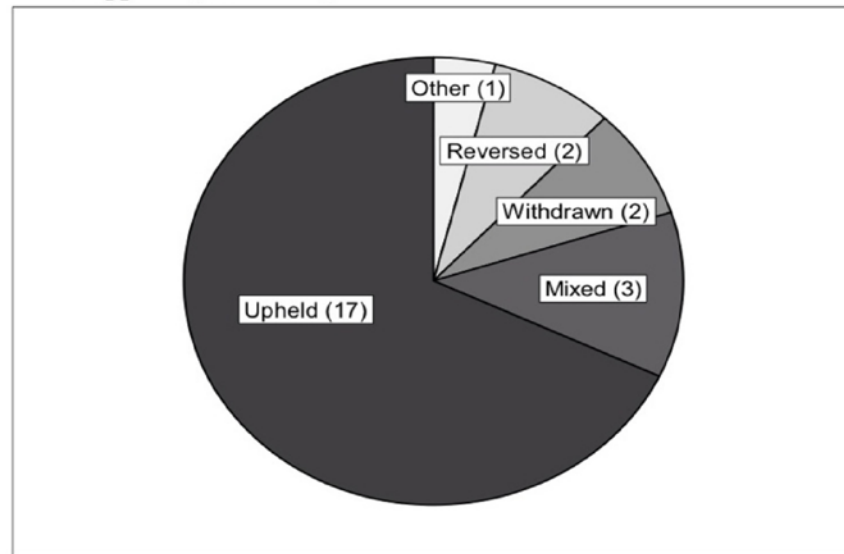


Figure 10: Outcomes of FDIC Material Supervisory Determination Appeals (2005-2012)²⁴⁹

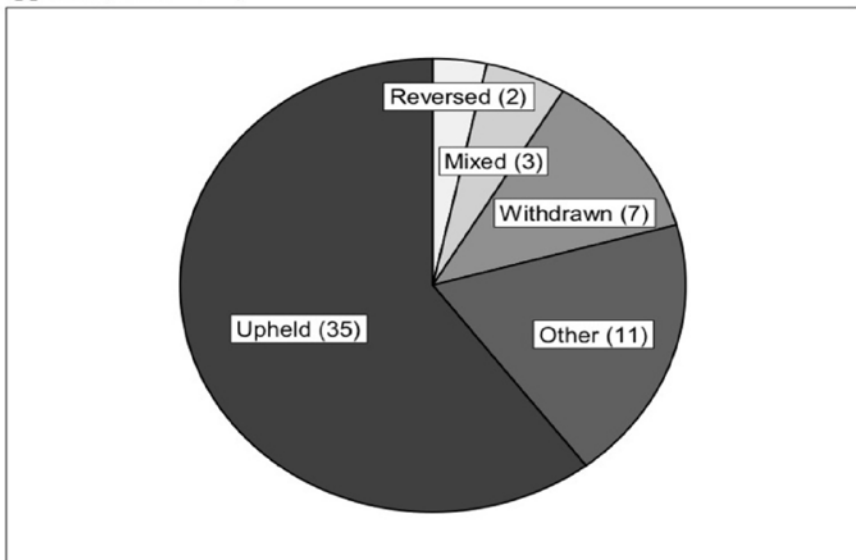
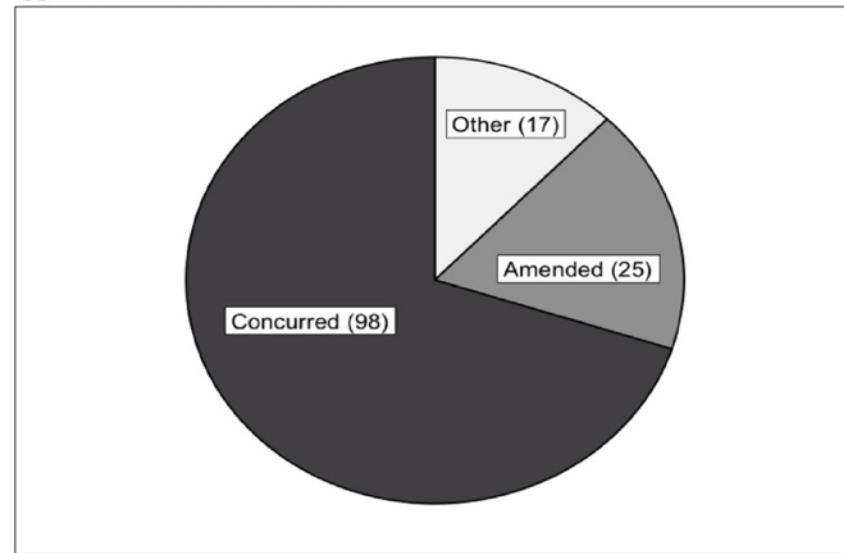


Figure 13: Outcomes of NCUA Material Supervisory Determination Appeals Process (2002-2012)



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.