

Introduction

The frequency standards for scheduling compliance examinations are discussed in Section 105 of this Handbook. Following assignment of the first Compliance and CRA ratings under these procedures, the schedule for subsequent compliance examinations at each association will generally adhere to those standards. To some extent, the need for follow-up contact with the association will be satisfied by the post-examination meeting between regulatory staff and the board of directors. However, there will be instances requiring additional follow-up activity before the next examination.

Level of Follow-Up Activity

Additional follow-up activity will generally not be needed for an association earning a Compliance rating that is satisfactory or above, unless the OTS becomes aware that the association has made significant changes in its operations that would impact on its ability to maintain a strong overall compliance posture. In this case, regulatory staff should consider the need to conduct a targeted examination to review the new operations.

For an association receiving a Compliance rating of 3, 4, or 5, the level of follow-up activity will vary according to the severity of the compliance problem, the corresponding enforcement action taken, and the association's history of responsiveness to supervisory encouragement. (See Section 140)

For example, follow-up monitoring of an association receiving a Compliance rating of 3 can sometimes be carried out by an exchange of correspondence and telephone contact, especially if the association has a good record of positive responses to supervision or has already started to correct deficiencies. Lower ratings, more severe problems or management recalcitrance would generally mandate a more formal approach.

If the compliance deficiencies or the association's responsiveness are such that on-site verification of corrective action is deemed prudent, a targeted examination or other informal supervisory visitation

should be scheduled. The distinction is that the targeted examination will be entered in the Compliance as an examination, and a report of that examination will be prepared and provided to the association's board of directors, whereas the less formal visitation will not be considered an examination, although it may result in a letter or other correspondence from the OTS to the board of directors.

Timing

As discussed in Section 140, an association's unwillingness to comply with an appropriate informal remedy, or the recurrence of a problem that has been addressed by that remedy, raises a presumption that a formal enforcement action will be pursued. For example, a material violation of a supervisory agreement should cause a regulator immediately to consider pursuing a cease and desist order or assessing a civil money penalty unless there are substantial mitigating factors.

It is essential that compliance with any outstanding agreements or orders that address compliance matters is reviewed during each compliance examination. The terms of the agreement or order should dictate the scope of the inquiry. For example, an agreement requiring an association to develop and adopt effective procedures in a certain area necessitates that the examiner review them for clarity and effectiveness.

The timing of a follow-up review should be dependent on several factors, including the enforcement action taken, the severity of the problems contained in the action, the extent to which management's response to the action indicates substantive correction and the timing of the next regularly scheduled examination.

For example, if an association was placed under a supervisory agreement at the prior examination to correct relatively less severe problems, the next examination is scheduled to begin within six to twelve months after the effective date of the agreement, and the association's response to the agreement indicates that corrective action has been

taken or is substantially underway, then it may be appropriate to conduct the follow-up review as a part of the next scheduled examination. Conversely, if the problems are severe or the association's response is unclear, then it may be appropriate to initiate some form of on-site review, such as a targeted examination, within three to six months after the effective date of the supervisory or enforcement action.

The timing of a follow-up review would generally not affect the timing for the subsequent regularly scheduled examination. For example, the frequency guidelines contained in Section 105 indicate that, for associations assigned a Compliance rating of 5 or a CRA rating of substantial noncompliance, a regular compliance examination should commence within six to twelve months of the completion of the regular examination that resulted in that rating. The fact that a targeted examination or other form of on-site review occurred between examinations would ordinarily not affect the timing for the next regular examination. However, if a cease and desist order or other formal enforcement action is imposed shortly after a compliance examination, the operative date for scheduling the next regular compliance examination would be the effective date of the cease and desist order or other formal action.

Other Considerations

On-site reviews and targeted examinations with supervisory objectives will normally be limited in scope to verifying the level of compliance with the terms of an order, agreement, or directive. As stated above, a targeted examination will result in the preparation of a report of compliance examination. If the on-site review is not treated as an examination, then the written product will be more informal. If the visit or targeted examination reveals continuing noncompliance, or less than satisfactory progress toward agreed-upon actions, more severe supervisory enforcement action may be necessary. Subsequent follow-up visits should be scheduled as deemed necessary to assure that corrective measures are implemented and compliance maintained by the association until the next regular compliance examination.

In addition to follow-up in response to compliance deficiencies reported at the last regular examination, regulatory staff should be alert to other circumstances indicating the need to consider a targeted or special examination prior to the next scheduled regular compliance examination. Any association that makes substantial changes to its operations that could effect its compliance position may be a candidate for a targeted examination. Substantial organizational or operational changes may be disclosed through the routine monitoring process, through the review of strategic or capital plans, or other means.

The occurrence of new, or amended, compliance laws and regulations may also trigger the need for a targeted examination if regulatory personnel suspect that an association will have difficulty achieving compliance. Finally, unanticipated events may occur that require on-site review in the form of a special examination. Instances where a special examination might be considered include when an application is protested on CRA grounds, when a discrimination complaint is received, or a Truth in Lending suit is filed. A special examination should only be scheduled following the protest of an application on CRA grounds to obtain additional information that can only be obtained on-site, or to gain a better understanding of the current activities of the association. It is anticipated that, in most cases, the information generated in the application process will provide a sufficiently clear picture of a savings association's record of performance upon which a recommendation or decision can be made. Open communication between the association and regulatory staff is essential so that knowledge of significant events which occur between examinations is timely.