

**EXCERPT FROM OIG'S REVIEW OF THE ALLEGATIONS REGARDING  
THE FEDERAL DEPOSIT INSURANCE CORPORATION'S SUPERVISION OF  
BESTBANK IN BOULDER, COLORADO**

*Results in Brief*

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Our review did not fully substantiate any of the allegations made by Mr. Mattar. Further, FDIC examiners generally followed applicable FDIC policies and procedures in carrying out those examination activities associated with the allegations. In a draft of this report, we identified issues that we believed may warrant attention and corrective action on the part of FDIC management. The following represents a synopsis of the allegations, our conclusions, the issues we identified, the Corporation's response, and our evaluation of the response for each allegation.

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***Allegation:*** "An FDIC examiner accused an officer of the Bank of criminal conduct at an exit interview without ever having contacted the officer during the many weeks of the examination."

***Conclusion:*** Because statements of participants in the exit interview conflict and there is no documentation to support either version of events, we cannot substantiate or disprove the allegation. Moreover, Mr. Mattar did not provide additional information regarding the expenses at the exit interview or closing Board of Directors' meeting, saying he would deal with them upon receipt of the final exam report. Lacking further details, the examiners' reporting of the expenses as apparent violations in the Report of Examination was appropriate.

In this instance, examiners did not prepare a written record of the exit interview. Such a record would have been helpful in determining the appropriateness of the examiners' handling of this issue, as well as documenting the presentation of the examination findings and management's response to them.

***Response:*** FDIC policies do not require the retention of examination workpapers beyond one examination. Because FDIC has conducted four examinations since the subject examination, the field office would not be expected to retain the workpapers.

***OIG***

***Evaluation:*** While the response acknowledged that the Manual requires the preparation and retention of examination workpapers, the response did not address the fact that a written record of the exit interview was not prepared. However, because the Manual contains adequate guidance in this area and we identified no evidence to suggest this is a recurring problem, the response is sufficient to address this issue.

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***Allegation:*** "An FDIC Examiner made an ex parte contact with a party to a Bank contract without advising the bank. The same FDIC examiner - not an attorney -

proceeded to give unsolicited legal advice, adverse to the Bank, to the contracting party.”

**Conclusion:** There is conflicting testimony regarding whether the examiner notified the Bank before contacting the contractor and what was said during the telephone call, thus, we cannot substantiate or disprove this allegation. The examiner’s need for information from the contractor appears reasonable. Because of limited written guidance addressing this issue, it is unclear whether the examiner should have contacted the contractor directly or requested the information through BestBank management.

Management should further review this issue to determine whether adequate guidance exists to address examiner contacts of parties to bank contracts and other business relationships.

**Response:** Examiners have the discretion to contact outside parties to obtain information necessary to determine the bank’s condition. Further, all contacts should be documented and made with two examiners present. DOS agreed to review the need for written guidance to address external contacts.

**OIG**

**Evaluation:** We concur with the response and FDIC’s intention to review this issue further.

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**Allegation:** “FDIC and State Examiners, with regional officials present, insisted that the Bank Board consent to action not within the scope of authority as a device to accuse the Bank of noncompliance in the future.”

**Conclusion:** This allegation is without merit. BestBank’s Board of Directors did not contain the number of Colorado residents required by Colorado State Law. The examiners’ appropriately recommended in the C&D that the Bank [management] prepare a plan for submission to the shareholders to reorganize the Board and achieve compliance.

**Response:** DOS concurred with this issue.

**OIG**

**Evaluation:** The response adequately addressed this issue.

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**Allegation:** “FDIC and State Examiners, with regional officials present, demanded that the Bank meet certain financial standards knowing their request violated procedures and guidelines, making it clear that they would not close an Exam which had gone on for many weeks, without acquiescence.”

**Conclusion:** FDIC and CDB examiners appeared to accurately calculate BestBank's December 31, 1995, leverage ratio. Their methodology complied with FDIC's Rules and Regulations and was well documented. However, the examiners may have inappropriately stated in the exit interview that BestBank was undercapitalized as of February 29, 1996, pursuant to the Prompt Corrective Action (PCA) provisions of Section 325.101 of the FDIC Rules and Regulations, and needed to immediately implement a plan to restore the Bank's capital. The CDB also included this finding in its draft examination report.

Regulation 325 is vague with respect to calculating and using leverage ratios between quarters. Following review of the issue, FDIC Regional officials removed PCA language from the draft report and indicated that the final examination report would include the February 29, 1996, leverage ratio for informational purposes only.

With regard to related issues, FDIC and CDB examiners used appropriate examination guidelines to review BestBank's merchant processing activities. Further, they considered relevant information in calculating BestBank's merchant processing reserves. Because of the inherent risks involved in merchant processing, the examiners' concerns with BestBank's inadequate reserves appeared reasonable.

Further, to prevent BestBank from becoming inadequately capitalized, the examiners delayed closing the examination and allowed the Bank 1 week to raise \$1.7 million for its merchant processing reserve account. We believe the examiners acted reasonably.

**Response:** The Dallas Regional Office removed PCA language from the draft examination report to correct an inaccuracy and presented prospective information for analytical and explanatory purposes. DOS has established a multi-tiered report review process which is also followed for joint examination reports. It is a regular occurrence that reports receive some editing for clarification purposes.

### **OIG**

**Evaluation:** The response adequately addressed this issue.

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**Allegation:** "More than one examiner, on more than one occasion, has criticized the Bank practices of lending to disadvantaged borrowers, by lecturing Bank officers as to their philosophy and experiences at other banks where they would not make loans to 'those people.'"

**Conclusion:** We could not fully substantiate Mr. Mattar's allegation. A former FDIC examiner did state she criticized the very high interest rates and balloon payments on loans to disadvantaged borrowers in a discussion with Mr. Mattar. Further, while we

have no evidence that CDB examiners shared their criticisms with Bank officials, they did tell us that BestBank was truly taking advantage of these people and that their rates were outrageous.

**Response:** DOS fully supports the spirit of consumer compliance and CRA activities, but advised that all lending activities require proper underwriting and that examiners should ensure that banks have appropriate safeguards to protect against losses. DOS added that examiners should refrain from personal opinions that give a bias to a certain type of lending activity.

**OIG**

**Evaluation:** The response adequately addressed this issue.

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**Allegation:** “For years, Bank Examiners have criticized certain Bank funding practices providing knee-jerk boiler plate safety and soundness language of criticism which was completely contradictory to the actual practices and experiences at the Bank.”

**Conclusion:** Mr. Mattar was concerned that FDIC examiners were not considering BestBank’s business and management practices when evaluating and commenting on the Bank’s use of brokered deposits. Based upon our review of the examination reports, FDIC examiners followed the DOS *Manual of Examination Policies* in evaluating and reporting on this issue and made reasonable recommendations based upon their findings.

**Response:** DOS is currently reviewing the use of brokered deposits by banks. DOS anticipates issuing additional guidance and expanding examination procedures in this area.

**OIG**

**Evaluation:** We concur with the response and FDIC’s intention to review this issue further.

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**Allegation:** In retaliation for the Bank’s exercising its rights relating to a proposed adverse action, the Dallas Regional Office chose to “teach them a lesson” by demanding stronger sanctions than originally proposed.”

**Conclusion:** FDIC did impose a more strict and independent level of review of Mr. Mattar’s personal expenses between the draft and final C&D. We found nothing to support the Bank’s belief that the stronger sanction was in retaliation for their refusal to stipulate to the C&D. Rather, it appears that the requirement was based on the presence of Mr. Mattar on the Board of Directors and FDIC’s desire to obtain an independent assessment of the propriety of the expenses.

**Response:** DOS concurred with this issue.

**OIG**

**Evaluation:** The response adequately addressed this issue.

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**Allegation:** “At least one FDIC examiner shared confidential Bank financial information with someone outside the agency.”

**Conclusion:** We could not substantiate this allegation. However, one examiner did state that he may have discussed merchant processing activities with his wife without mentioning details of BestBank activities. In addition, a former examiner told us that she probably did make remarks overheard by Bank personnel that were not favorable to the Bank in telephone calls to the Dallas Regional Office.

**Response:** DOS addresses the importance of professional standards of conduct and responsibility during an examiner’s initial orientation week and periodically reviews these standards with examiners on an as needed basis.

**OIG**

**Evaluation:** The response adequately addressed this issue.

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**Allegation:** “On more than one occasion the final report of examination and the rating did not reflect the lead Field Examiner’s recommendation and were not concurred in by the lead examiner.”

**Conclusion:** BestBank officials alleged that on two occasions their composite ratings had been lowered, once in an FDIC examination and once in a CDB examination. The DOS Dallas Regional Office did lower the December 1994 examination composite rating. The Regional Office has the authority to change the rating and the examination report properly included the examiner-in-charge’s (EIC) dissenting comments. The EIC disclosed the composite rating to Bank management at the exit meeting, prior to DOS Regional Office review. The EIC’s disclosure, however, appears appropriate based upon FDIC guidance. Further, we noted that a June 1995 Manual update did not include policy on disclosing ratings included in a June 1, 1995, Regional Director Memorandum.

With respect to the CDB examination, the EIC told us the examination rating had not been changed. We found no evidence that FDIC was involved in the examination or influenced the EIC’s composite rating of BestBank.

**Response:** The Manual update was prepared during May 1995, and therefore excluded the June 1, 1995, Regional Director Memorandum.

## **OIG**

**Evaluation:** Although neither the June 1995 Manual nor the current version includes the instructions regarding the disclosure of composite ratings, a DOS official told us DOS plans to include them in the next revision to the Manual. Accordingly, the response adequately addressed this issue.

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**Allegation:** “BestBank has never received higher than a “Satisfactory” rating on the Community Reinvestment Act (CRA) examinations from the FDIC even though all of the Bank’s borrowers are disadvantaged.”

**Conclusion:** Mr. Mattar's complaint is without merit. The CRA identifies a number of issues that FDIC examiners are to use when evaluating compliance with CRA in addition to lending to disadvantaged borrowers. BestBank’s three CRA examination reports provide discussions of the rating elements and the findings appear to reasonably support BestBank’s CRA ratings.

**Response:** DOS consulted the Division of Compliance and Consumer Affairs (DCA) about this allegation. Both DOS and DCA concurred with this issue.

## **OIG**

**Evaluation:** The response adequately addressed this issue.

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The last section of our report addresses communication between BestBank and FDIC examiners. It was apparent as we conducted our review that there has not been a free and open exchange of ideas at exit interviews and closing Board of Directors’ meetings. As a result, there has not been a “meeting of the minds” on various issues. We suggested in our draft report that the two parties should seek methods for reestablishing an effective dialogue to ensure the safety and soundness of the institution and to promote confidence in the Bank’s operations. In addition, we noted that the current version of the DOS *Manual of Examination Policies* does not contain guidance related to the discussion of examination findings with management prior to closing an examination that had been included in earlier versions of the Manual. Accordingly, we stated that management should determine whether the current version adequately addresses this issue.

The Director responded that even though communication was inhibited on both sides, it is still FDIC’s responsibility to discuss the findings of the examination. He also noted that the issue of meetings with Bank management has been included in revised procedural guidelines which are pending approval. The Director’s response adequately addressed this issue.