Federal Deposit Insurance Corporation

MEMO

TO: The Board of Directors

FROM: Matthew P. Reed
Acting General Counsel

DATE: July 15, 2025

RE: Notice regarding Proposed Amendments to FDIC Guidelines for Appeals of Material Supervisory Determinations

RECOMMENDATION

Staff recommends that the FDIC's Board of Directors (Board) authorize publication of the attached Notice regarding Proposed Amendments to FDIC Guidelines for Appeals of Material Supervisory Determinations. Through this Notice, the FDIC would replace the Supervision Appeals Review Committee (SARC) as the final level of review in the agency's supervisory appeals process with a standalone, independent office within the FDIC, known as the Office of Supervisory Appeals (Office). The Notice would solicit public comment with a 60-day comment period.

BACKGROUND

Section 309(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (Riegle Act) required each of the Federal banking agencies to establish an independent intra-agency appellate process to review material supervisory determinations. To satisfy this requirement, the Board established the SARC and adopted *Guidelines for Appeals of Material Supervisory Determinations* (Guidelines) governing the appellate process. The Board has periodically amended the Guidelines, often through the notice and comment process.

Under the FDIC's current supervisory appeals process, institutions are encouraged to make good-faith efforts to resolve disagreements with examiners and/or the appropriate FDIC Regional Office. If these efforts are not successful, the institution may submit a request for review with the appropriate Division Director, who issues a written decision. If the institution is not satisfied with the Division Director's decision, it may appeal that decision to the SARC, a standing Board-level committee that is authorized to decide supervisory appeals.

In January 2021, the Board replaced the SARC with an independent, standalone office within the FDIC, known as the Office of Supervisory Appeals. This Office was granted delegated authority to consider and resolve appeals of material supervisory determinations, and staffed by reviewing officials with bank supervisory or examination experience. In May 2022, the Board restored the SARC as the final level of review in the FDIC's supervisory appeals process.

DISCUSSION OF GUIDELINES

By approving the attached Resolution and Notice, the Board would propose the establishment of the Office of Supervisory Appeals as the final level of review of material supervisory determinations made by the FDIC, replacing the SARC.

Structure of the Office and Reviewing Officials

The Office of Supervisory Appeals would be established as a standalone office within the FDIC, independent of the Divisions that make supervisory determinations. The Office would be staffed by reviewing officials with relevant experience, serving on term appointments. The Office would report directly to the FDIC Chairperson's Office and would be granted delegated authority from the Board to consider and resolve appeals.

The Office would include individuals with bank supervisory or examination experience as well as others that have valuable perspectives which may benefit the appeals process for reviewing supervisory determinations, such as former bankers or other former industry professionals. Reviewing officials, as employees of the FDIC, would be part-time, intermittent employees who have been cleared for conflicts of interest and are subject to the FDIC's requirements for confidentiality. Employees with relevant experience from other government agencies could also serve as reviewing officials on a part-time basis through interagency agreement(s). Current FDIC employees would not be eligible to serve in these roles. Based on past experience with respect to staffing the Office, the hiring process may be initiated in the near term so that the Office may be fully operational as soon as the final Guidelines are in place.

When an appeal is submitted to the Office, a panel of three reviewing officials would be assigned to consider the matter. Given the value of experience with the supervisory process, at least one member of any panel would be required to have bank supervisory experience. The panel would consider the appeal and issue a written decision to the institution.

Legal Support for the Office

The Legal Division would provide counsel to the Office and generally advise the Office on FDIC policies and rules. To promote independence, the Office would be advised by legal staff that were not involved in making the material supervisory determinations under review.

If an appeal seeks to change or modify FDIC policies or rules, or raises a policy matter of first impression, the Legal Division would provide notice, along with a written explanation, to the Office. Afterwards, the Legal Division would refer the matter to the Chairperson's Office.

In addition, the Legal Division would review decisions of the Office for consistency with applicable laws, regulations, and policies of the FDIC prior to their issuance. If the Legal Division determines that an Office decision is contrary to a law, regulation, or FDIC policy, the Legal Division would notify the Chairperson's Office of the matter and the Office would be required to revise the decision to conform with relevant laws, regulations, or policies. The Legal

Division would not exercise supervisory judgment or opine on the merits of an appeal.

If an appeal raises procedural questions, including whether issues raised by the institution are eligible for review, the appropriate Division Director or the Office would refer such matters to the Legal Division. The Legal Division would determine whether such matters are ineligible for review under the Guidelines and would provide notice, with a written explanation, to the Office if an appeal or issue raised is deemed ineligible for review.

Burden of Proof and Standard of Review

The burden of proof as to all matters at issue in the appeal, including timeliness of the appeal if timeliness is at issue, would rest with the institution.

The proposed Guidelines would retain the existing standard of review for the Division Director. The Division Director would review the appeal by considering whether the material supervisory determination is consistent with applicable laws, regulations, and policy, and make his or her own supervisory determination without deferring to the judgments of either party.[1] The Division Director would have discretion to consider examination workpapers and other materials developed by staff during an examination.

The Office would review appeals for consistency with the policies of the FDIC and the overall reasonableness of, and the support offered for, the positions advanced. Policies would include FDIC regulations, guidance, policy statements, examination manuals, and other written publications. Similar to the current SARC Guidelines and the 2021 Office of Supervisory Appeals Guidelines, the Office would make an independent supervisory determination. However, unlike the current Guidelines or the 2021 Guidelines, the proposed Guidelines would specify that the Office will make its determination without deferring to the judgments of either party. This standard of review would underscore the independence of the review by the Office, subject to the reasonableness of the support for the positions advanced by both parties. The Office would not consider aspects of an appeal that seek to change or modify FDIC policy or rules; therefore, it could not overturn a material supervisory determination if the result of such a ruling would be inconsistent with the policies of the FDIC.

Formal Enforcement-Related Actions

Section 309 of the Riegle Act, which required the establishment of an appellate process, also provides that "[n]othing in this section shall affect the authority of an appropriate Federal banking agency…to take enforcement or supervisory action."[2] To clarify how the appellate and enforcement processes interact, the proposed Guidelines would retain certain provisions specifically addressing the appealability of formal enforcement actions and determinations underlying formal enforcement actions. However, the preamble describes issues that staff has observed and solicits specific comment on potential enhancements.

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[1] The FDIC has previously noted that this may be considered a *de novo* standard of review, but lays out with more specificity the actual considerations to be applied. *See* 87 FR 64034 and 64038 (Oct. 21, 2022).
[2] 12 U.S.C. 4806(g).

Role of the Ombudsman

The Ombudsman currently serves as a non-voting member of the SARC. The Ombudsman serves as a neutral liaison between the FDIC and institutions, as provided by section 309 of the Riegle Act. Because of the value in the Ombudsman's perspective, the proposed Guidelines would allow the Ombudsman to submit views to the panel for consideration. In addition, consistent with the current Guidelines, the proposed Guidelines would retain provisions regarding the Ombudsman's neutral oversight of the process.

Ex Parte Communications

The current Guidelines include a provision on sharing of information, requiring that information considered by the SARC be timely shared with both parties to the appeal, subject to applicable legal limitations on disclosure. In light of the Office structure and the roles defined in the proposed Guidelines, this provision would apply to materials submitted to the Office by either the relevant Division or the appealing institution.

Transition Period

Until the Office is fully operational, the current Guidelines would continue to apply, and all appeals of Division Directors' decisions would be reviewed by the SARC. Transition from the SARC to the Office would occur when the Office is fully operational, which would occur upon or following issuance of the final revised Guidelines.

CONCLUSION

Staff recommends that the Board approve the attached Notice for publication in the *Federal Register* with a comment period of 60 days.

STAFF CONTACTS

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