BETTER MARKETS

September 16, 2025

Jennifer M. Jones
Deputy Executive Secretary
Attention: Comments—RIN 3064-ZA50
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Re: Guidelines for Appeals of Material Supervisory Determinations; RIN 3064-ZA50; Document No. 2025-13506; 90 Fed. Reg. 33942 (July 18, 2025)

Dear Ladies and Gentlemen:

Better Markets[1] appreciates the opportunity to comment on the proposed changes ("Proposal") to the Federal Deposit Insurance Corporation ("FDIC" or "Agency") guidelines for handling appeals of material supervisory determinations ("Supervisory Appeals").[2]

As part of the normal process of supervising banks, the FDIC makes many supervisory decisions, including determinations relating to:

- Examination ratings;
- Adequacy of loan loss reserve provisions; and
- Classifications of significant loans.

For the vast majority of cases, banks accept the FDIC's supervisory decisions, but in some rare cases, banks disagree.

The Riegle Community Development and Regulatory Improvement Act of 1994 ("Riegle Act") required federal banking regulators to develop a process for handling Supervisory Appeals.[3]

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1 Better Markets is a non-profit, non-partisan, and independent organization founded in the wake of the 2008 financial crisis to promote the public interest in the financial markets, support the financial reform of Wall Street, and make our financial system work for all Americans again. Better Markets works with allies—including many in finance—to promote pro-market, pro-business, and pro-growth policies that help build a stronger, safer financial system that protects and promotes Americans' jobs, savings, retirements, and more.

2 Guidelines for Appeals of Material Supervisory Determinations, 90 Fed. Reg. 33942 (July 18, 2025), https://www.federalregister.gov/documents/2025/07/18/2025-13506/guidelines-for-appeals-of-material-supervisory-determinations.

3 12 U.S.C.§ 4806(a).

The FDIC's process for handling Supervisory Appeals has evolved over the years, but has always been grounded in efficiency, fairness, and independence.

We applaud the FDIC for its Proposal to further strengthen the Supervisory Appeals process. First, it is vital to have a process that is ***strong and fair for all banks***, not one that favors the largest Wall Street banks with power or influence over the banking regulatory agencies. It is also vital to have a process that is focused on maintaining strong supervisory practices to protect the economy and financial system.[4] Some supervisory decisions that are appealed may indeed be wrong and be reversed in favor of the bank. However, other decisions with which a bank disagrees and chooses to appeal may indeed be correct. The Supervisory Appeals process, and the individuals doing the work, must be robust enough to differentiate between these two scenarios and deliver unbiased decisions that support the safe and sound operation of all banks, which in turn benefits the American people, the economy, and financial stability.

We support the core of the FDIC's Proposal, specifically the changes to broaden the set of staff who handle Supervisory Appeals. Currently, the FDIC's Supervision Appeals Review Committee ("SARC") is made up of FDIC Board members and other senior FDIC officials. While these individuals are certainly experienced banking regulatory professionals, they may not have ***specific bank supervisory experience*** that is necessary to understand and make judgments on Supervisory Appeals. Moreover, they are busy with a range of responsibilities and may not always have the time to devote themselves to considering Supervisory Appeals. The Proposal appropriately addresses this problem by expanding the set of experienced professionals with specific backgrounds in bank supervision—such as former bank examiners—to handle Supervisory Appeals.

There are two aspects of the Proposal that we do not support:

- First, the Proposal says that former bankers—without specific supervisory experience—would be qualified to be hired to handle Supervisory Appeals. We disagree. While bankers certainly possess a wealth of knowledge in the banking industry, they do not have the same level of training and experience as bank examiners. Federal Reserve Vice Chair for Supervision Michelle Bowman recently recognized and affirmed the importance of the formal training and commissioning process for bank examiners. She said that trained, commissioned examiners bring "an elevated level of expertise, judgment, and fairness" to the supervisory process.[5] This support for and affirmation of the value of examiners' supervisory training must also apply to the appeals process.

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4 *See, e.g.*, Shayna Olesiuk, *Community Banks: Vital to Main Street Families, Small Businesses, and the Financial System* 11, BETTER MARKETS (Apr. 17, 2025), https://bettermarkets.org/wp-content/uploads/2025/04/BetterMarkets_Community_Banking_Report_04-17-2025.pdf; Better Markets, Comment Letter, *Making Community Banking Great Again Principles* 19 (Mar. 31, 2025), https://bettermarkets.org/wp-content/uploads/2025/04/Better-Markets-Comment-Letter-Community-Banking.pdf.

5 Vice Chair for Supervision Michelle Bowman, *Taking a Fresh Look at Supervision and Regulation,* Board of Governors of the Federal Reserve System (June 6, 2025), https://www.federalreserve.gov/newsevents/speech/bowman20250606a.htm.

[redacted]

Moreover, having bankers decide Supervisory Appeals and giving them the authority to overturn FDIC supervisory decisions presents a severe conflict of interest and potential for bias that does not serve the purpose of the appeals process or the FDIC's supervision function. Such a structure—where bankers can overturn or reverse FDIC supervisory decisions—creates a set of perilous incentives that ***undermine the FDIC's core supervisory function and make the banking system less safe***.

- Second, establishing a new Office at the FDIC to handle Supervisory Appeals is not necessary, given the low appeals volume. The Proposal did not provide any statistics on the recent volume of Supervisory Appeals or the cost associated with starting and maintaining such an office. However, publicly available data from the FDIC provide details showing that starting and maintaining such a new office does not make sense. For example, during the 15 years from January 2007 to January 2021, the SARC received only 51 appeals.[6] Put differently, during the time span that included the 2008 Financial Crisis ("2008 Crash"), a peak of about 900 problem banks[7] that by definition all had significant supervisory concerns, more than 113,000 bank examinations,[8] and countless examination downgrades and unfavorable supervisory determinations, ***there were only an average of 3-4 Supervisory Appeals per year***.[9]

  Moreover, FDIC data show that there have been ***only nine SARC decisions since 2021, or an average of just more than two decisions per year.***[10] It is possible that additional appeals were filed during this time and subsequently withdrawn before a decision was rendered, or that some are still pending. However, even in this scenario, the volume of Supervisory Appeals workload does not justify the creation of, and the associated costs of, staffing a new FDIC Office. Instead, the FDIC's goals can be met by hiring former bank supervisors to handle appeals on a contract basis. This would achieve the FDIC's goals in an effective and cost-efficient way. Alternatively, if the FDIC expects a significant increase in supervisory appeals, it should provide the reasons for that expectation.

Finally, the fact that the FDIC stated that it is already moving forward with hiring for the Supervisory Appeals function[11] ***appears to be a violation of the Administrative Procedure Act.*** This suggests that the Agency has already decided to finalize and begin implementing this

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[6] Chairman Jelena McWilliams, *Changes to Supervisory Appeals Process*, Federal Deposit Insurance Corporation (Jan. 19, 2021), https://www.fdic.gov/news/speeches/2021/spjan1921.html.

[7] Federal Deposit Insurance Corporation, *FDIC Quarterly Banking Profile Second Quarter 2025*, at Chart 13 (Aug. 26, 2025), https://www.fdic.gov/news/speeches/2025/fdic-quarterly-banking-profile-second-quarter-2025.

[8] McWilliams, *supra* note 6.

[9] To calculate this average, we simply divided 51 appeals by 15 years, which results in 3.4 appeals per year.

[10] FEDERAL DEPOSIT INSURANCE CORPORATION, SUPERVISION APPEALS REVIEW COMMITTEE DECISIONS, https://www.fdic.gov/laws-and-regulations/supervision-appeals-review-committee-decisions (last visited Aug. 28, 2025).

[11] Guidelines for Appeals of Material Supervisory Determinations, *supra* note 2, at 33944.

[redacted]

Proposal before it has been finally adopted and without regard to commenters' input. That violates the letter and spirit of the law, which requires a meaningful notice and comment process.

BACKGROUND

In 1994, the Riegle Act required the federal banking regulators to establish a process to review material supervisory decisions.[12] In response, the FDIC established the SARC in March 1995 to consider and decide bank appeals of supervisory decisions.[13] As detailed earlier in this letter, the SARC is currently made up of FDIC Board members and other senior officials, some of whom do not have an in-depth or specific professional background in bank examination work. SARC members also have many other professional responsibilities, so they are not exclusively focused on Supervisory Appeals work.

In 2020, the FDIC proposed changes to the Supervisory Appeals process that were similar to those being considered with this Proposal, and it formed the Office of Supervisory Appeals in 2021.[14] However, the Agency subsequently reconsidered its decision, disbanded the Office of Supervisory Appeals, and reconstituted the SARC,[15] specifically noting the reason of low appeals volume as justification for why a separate office was unnecessary.[16]

One key difference, though, between the 2020 Proposal and the current Proposal is the qualifications that are required to hear and decide Supervisory Appeals. In the 2020 Proposal, the FDIC suggested staffing the Office of Supervisory Appeals with individuals who specifically had bank examination or supervisory experience.[17] Bank trade organizations, a bank, and a law firm commented that the FDIC should expand the experience requirement to include individuals with banking industry experience, such as retired bank officers, bank board members, consultants, or banking law attorneys.[18] However, the FDIC held firm and stayed with its initial proposal, limiting the experience requirement to bank supervision or examination work, reasoning:

> [B]ecause of the Office's role in making final decisions on appeals of material supervisory determinations on behalf of the agency, ***supervisory experience and training provides a firm foundation for exercising that responsibility and helps***

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[12] 12 U.S.C. § 4806(a).

[13] Intra-Agency Appellate Process, 60 Fed. Reg. 15923 (Mar. 28, 1995), https://www.federalregister.gov/documents/1995/03/28/95-7523/intra-agency-appellate-process.

[14] Guidelines for Appeals of Material Supervisory Determinations, 86 Fed. Reg. 6880 (Jan. 25, 2021), https://www.federalregister.gov/documents/2021/01/25/2021-01547/guidelines-for-appeals-of-material-supervisory-determinations.

[15] Guidelines for Appeals of Material Supervisory Determinations, 87 Fed. Reg. 30942 (May 20, 2022), https://www.federalregister.gov/documents/2022/05/20/2022-10904/guidelines-for-appeals-of-material-supervisory-determinations.

[16] *Id*. at 30943

[17] Guidelines for Appeals of Material Supervisory Determinations, *supra* note 14, at 6882.

[18] *Id*.

[redacted]

> ***ensure a thorough understanding of the supervisory process.*** With this in mind, the FDIC will, as proposed, deem ***bank supervisory or examination experience as required background*** for panelists.[19]

For the current Proposal, Acting FDIC Chairman Travis Hill explained that loosening the professional experience requirement was necessary to increase the number of individuals who would be eligible to apply to be part of the proposed office to hear and decide Supervisory Appeals.[20] However, given the very low appeals volume[21] and the large pool of individuals with bank supervisory and bank examination experience who have recently been separated or retired from federal banking regulatory agencies,[22] it is not clear that there will actually be a problem finding eligible candidates with direct bank supervisory experience.

The bottom line is that having a well-defined process for banks to resolve Supervisory Appeals is vital. As was conceived in the Riegle Act, the process needs to allow for bank appeals to be heard and decided expeditiously, and it must have appropriate structures and safeguards in place to protect banks from retaliation from the agency or current supervisory staff.[23] However, the FDIC should consider available data on the typical volume of Supervisory Appeals and the cost of establishing and operating an entire Office within the Agency, all of which indicate that establishing a separate office would not be necessary or cost-efficient.

SUMMARY OF THE PROPOSAL

The Proposal would replace the SARC with a new, standalone Office within the FDIC that would consider and decide Supervisory Appeals. Key details of the Proposal include:

- Reporting Structure: The Office would function independently within the Agency and would report directly to the FDIC Board.

- Staffing: The Office would be staffed by reviewing officials, serving on term appointments.

- Required Experience: Supervisory or bank examination work experience at a federal banking regulatory agency or banking industry experience would meet the minimum requirements to be hired in this role.

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19 *Id*. (emphasis added).

20 Acting Chairman Travis Hill, *Proposal to Establish Office of Supervisory Appeals*, FEDERAL DEPOSIT INSURANCE CORPORATION (July 15, 2025), https://www.fdic.gov/news/speeches/2025/proposal-establish-office-supervisory-appeals.

21 *See, e.g.*, McWilliams, *supra* note 6; FEDERAL DEPOSIT INSURANCE CORPORATION, SUPERVISION APPEALS REVIEW COMMITTEE DECISIONS, *supra* note 10.

22 *See, e.g.*, *Financial Regulators Face Deepest Personnel Cuts in Decades*, PYMNTS (May 7, 2025), https://www.pymnts.com/news/regulation/2025/financial-regulators-face-deepest-personnel-cuts-decades/.

23 12 U.S.C. § 4806(b).

[redacted]

- Support: The FDIC's Legal Division would provide counsel to the Office and generally advise as needed.[24]

The FDIC plans to initiate the hiring process in the near term so that the Office can be operational as soon as the Proposal is finalized.[25]

COMMENTS

As detailed earlier in this letter, a robust, independent, fair, and timely process to hear and decide Supervisory Appeals is vital. Bank supervisors are rigorously trained over many years with classroom instruction, on-the-job training, and tests.[26] Despite this extensive training and experience for bank examiners and supervisory staff, along with several levels of review before a bank examination is finalized, it is possible that errors could be made. It is, therefore, important to have a process to correct such errors. However, it is also important for the FDIC to be a good steward of its operational resources and develop a process that is sized appropriately for the expected workload.

Better Markets generally supports the Proposal, as discussed below:

1. Revising and reconfiguring the structure of the team that hears and decides Supervisory Appeals is the right decision. As detailed earlier in this letter, the SARC is currently made up of FDIC Board members and other senior FDIC officials. These individuals may not have direct experience and knowledge related to bank supervision to decide on Supervisory Appeals. Beyond this potentially limited direct experience, current SARC members are already busy with a range of responsibilities and may not always have the time to devote themselves to considering Supervisory Appeals.

   The Proposal appropriately addresses this problem by expanding the set of experienced professionals with specific backgrounds in bank supervision who would be qualified to handle Supervisory Appeals. This change would bring multiple benefits, not only ensuring that the decision-makers have the necessary experience to consider and decide Supervisory Appeals, but also expediting the appeals process because the decision-makers would be juggling fewer other priorities than the current SARC members.

   However, ***specific changes to the Proposal are necessary***, as discussed below:

2. Bank supervisory or examination experience should be the ***only qualifying professional experience*** to be hired to hear and decide Supervisory Appeals. Banking industry experience alone is not sufficient. We urge the FDIC to reconsider this portion of the Proposal.

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24 Guidelines for Appeals of Material Supervisory Determinations, *supra* note 2, at 33943-44.

25 *Id*. at 33944.

26 *See, e.g.*, FEDERAL DEPOSIT INSURANCE CORPORATION, EXAMINER TRAINING PROGRAMS, https://www.fdic.gov/examiner-training-programs (last visited Sept. 3, 2025).

As detailed earlier, the FDIC's 2020 proposal specifically distinguished between bank supervision and examination experience and general banking industry experience. The FDIC wisely concluded at that time that ***banking industry experience alone was not enough*** for an individual to decide Supervisory Appeals. Without question, bankers have deep knowledge in the banking industry, but they simply do not have the specific training and experience as bank examiners in supervisory matters. We support the FDIC's conclusion from the 2020 proposal, where it ***rejected the banking industry's plea*** to allow bankers to be decision-makers on Supervisory Appeals. And, we still agree with the FDIC's reasoning that bank supervision or examination experience should be a ***necessary minimum requirement*** for this role.

> ***[S]upervisory experience and training provides a firm foundation for exercising that responsibility and helps ensure a thorough understanding of the supervisory process.*** With this in mind, the FDIC will, as proposed, deem ***bank supervisory or examination experience as required background*** for panelists.[27]

Moreover, giving former bankers with no bank supervision experience the authority to overturn FDIC supervisory decisions presents a dangerous conflict of interest. Undermining FDIC supervisors in this way does not serve the purpose of the appeals process or the FDIC's supervision function. It also creates bad incentives that undermine the FDIC's core supervisory function and make the banking system less safe.

Finally, as addressed earlier, Acting Chairman Hill supported easing the experience requirement in this Proposal and said it was necessary to increase the number of eligible applicants for the newly created Supervisory Appeals positions. There was no data in the Proposal to provide support for the fact that too few applicants will be an actual problem. Instead, the data we do have—the combination of (1) few appeals by banks and (2) many former bank supervisors and examiners looking for work—suggests that there would be ***plenty of qualified applicants.***

3. <u>Establishing an entirely new Office within the FDIC to handle Supervisory Appeals is unnecessary.</u> The small number of Supervisory Appeals does not support the creation of an entirely new Office within the FDIC. As detailed earlier, since 2007, through the ups and downs of economic cycles and amid hundreds of problem banks, ***the number of Supervisory Appeals averaged between two and four per year***. We do not understand how the FDIC has concluded that this workload necessitates or justifies the cost and resources of establishing an entirely new Office, particularly because the Agency has just undergone significant personnel cuts, to save money.[28]

[27] Guidelines for Appeals of Material Supervisory Determinations, *supra* note 14, at 6882 (emphasis added); *see also* Vice Chair for Supervision Michelle Bowman, *supra* note 5.

[28] *See, e.g.*, *Financial Regulators Face Deepest Personnel Cuts in Decades*, *supra* note 22.

[redacted]

Instead, the Supervisory Appeals workload could be handled by a team of professionals who are hired on a contract basis, as specified in the Proposal. That structure would still allow the appeals process to be separated from the Agency's supervisory function, and remain independent by reporting directly to the FDIC Board. It would also be much more cost-effective, only incurring costs when work is done.

4. <u>The FDIC appears to be violating the Administrative Procedure Act.</u>

It is alarming that the FDIC has already begun the process of hiring Supervisory Appeals staff. In the Proposal, it stated:

> [T]he FDIC plans to initiate the hiring process in the near term so that the Office may be fully operational as soon as the final Guidelines are in place.[29]

This suggests that the Agency has already decided to finalize and begin implementing this Proposal before it has been finally adopted and without regard to commenters' input. That violates the letter and spirit of the Administrative Procedure Act, which requires a ***meaningful*** notice and comment process. In such a process, the agency must consider and respond to all significant comments, without prejudging the issues, and before finalizing a proposed rule. By commencing the hiring process under the framework envisioned in the Proposal, the FDIC appears to be flouting these requirements arbitrarily and capriciously and in violation of the law.

[29] Guidelines for Appeals of Material Supervisory Determinations, *supra* note 2, at 33944.

[redacted]

<u>CONCLUSION</u>

We hope these comments are helpful and that they will persuade the FDIC to strengthen the Supervisory Appeals framework as outlined above.

Sincerely,

[redacted]

Shayna M. Olesiuk
Director of Banking Policy
[redacted]

Better Markets, Inc.
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