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]

Dear Ms. Jones:

The Independent Community Bankers of America[1] ("ICBA") appreciates this opportunity to comment on the Federal Deposit Insurance Corporation's ("FDIC" or "the agency") proposed guidelines for appeals of material supervisory determinations ("the proposed guidelines" or "the proposal").[2] ICBA believes the best approach to reviewing material supervisory determinations is the creation of a separate appeals office under the Federal Financial Institutions Examination Council ("FFIEC") that would be independent of all three federal prudential banking regulators and provide the right to expedited reviews. Nevertheless, we support the steps taken by the FDIC in this proposal to increase the independence of the current appeals process within the agency.

The FDIC's Supervision Appeals Review Committee ("SARC") is an underutilized and flawed forum for supervisory appeals because it is not perceived as an independent or impartial decision-making body. ICBA has long questioned whether the SARC can operate in a fair and impartial manner, or fulfill statutory requirements for an independent review, when the most senior insiders of the agency are tasked with reviewing the actions of examiners who report to these same senior leaders, and scrutinizing the internal processes developed or approved by these same reviewers. Accordingly, the FDIC's proposal to transition away from the SARC and restore its Office of Supervisory Appeals ("OSA") is a significant improvement over the status quo.

[1] The Independent Community Bankers of America® has one mission: to create and promote an environment where community banks flourish. We power the potential of the nation's community banks through effective advocacy, education, and innovation. As local and trusted sources of credit, America's community banks leverage their relationship-based business model and innovative offerings to channel deposits into the neighborhoods they serve, creating jobs, fostering economic prosperity, and fueling their customers' financial goals and dreams.

[2] 90 Fed. Reg. 33942 (July 18, 2025).

As compared to the SARC, the proposed OSA offers several enhancements to the supervisory appeals process, including: (1) creating a standalone office to consider and resolve supervisory appeals; (2) staffing the office with former industry professionals and those with bank supervisory expertise; (3) restricting *ex parte* communications between FDIC supervisory staff and members of the OSA; and (4) promoting a more independent appeals process to reduce actual and perceived conflicts of interest.

If finalized, each of these proposed enhancements would not only bolster the OSA's ability to provide fair and impartial reviews but also improve the current supervisory appeals process. However, to ensure the effectiveness of proposed changes, ICBA urges the FDIC to accept the following additional recommendations:

I. Require Reviewing Officials to Have Significant Community Banking Experience

ICBA applauds the FDIC for recognizing that "direct experience with the supervisory process is highly valuable for reviewing officials . . . [and] this experience can be achieved through both government and industry experience."[3] Staffing OSA panels with former bankers and other industry professionals with supervisory experience will provide appellants more balanced reviews than SARC panels staffed only with agency officials. Nevertheless, community banks are best understood by individuals that have significant community banking experience. These individuals understand the unique features of community banks, the customers community banks serve, and both the challenges and opportunities present within the community bank model.

Providing community banking representation on the panel will ensure the panel remains objective and will make the appeals process less intimidating for community banks seeking review of a material supervisory determination. The FDIC serves as the primary federal regulator for 2,808 insured depository institutions ("IDIs"), and among those are 2,757 community banks holding fewer than $10 billion in assets.[4] Because nearly all of the institutions the FDIC primarily supervises are community banks, the FDIC should finalize guidelines that require each OSA panel include at least one reviewing official who has significant community bank expertise.

II. Clarify the Burden of Proof by Applying a Preponderance of the Evidence Standard

The Proposal specifies "[t]he burden of proof as to all matters at issue in the appeal, including timeliness of the appeal if timeliness is at issue, rests with the institution."[5] Since it is banks that will request review, it is consistent with appellate practice and procedure that the burden of proof should rest with them. However, we believe the guidelines should clarify that the standard of proof is

[3] Proposal at 33944.

[4] Data generated by FDIC's Bank Find Suite for the second quarter 2025 reporting period. Available at: [BankFind Suite: Find Institution Financial & Regulatory Data]().

[5] Proposal at 33947.

preponderance of evidence. This standard would be in keeping with generally accepted administrative law principles and would avoid giving undue deference to the examiner's conclusions during the review process.

III. Publish Informational Materials Explaining the Supervisory Appeals Process

As acknowledged in the Proposal, the FDIC has encountered issues in administering its supervisory appeals guidelines because the enforcement-related provisions of the guidelines are confusing and there is some uncertainty as to which determinations are subject to appeal. In some cases, the guidelines provide for a piecemeal appeal which allows an institution to appeal certain determinations within the standard timeframes established by the guidelines and others only after a decision is made on the enforcement action. Additionally, in many instances, the facts underlying an enforcement action are relevant to material supervisory determinations, but an institution that wants to appeal determinations cannot include these facts as part of the record in an appeal.

To assist community banks and the FDIC in navigating these challenges, the FDIC should publish informational materials that explain both the timelines for the supervisory appeals process as well as the timelines for the enforcement process. Additionally, the materials should explain any changes to the supervisory appeals process that differ from the decades-long practices associated with the SARC. These informational materials should be made available through the FDIC's website and should include hypothetical examples to help explain when formal enforcement actions suspend a right to appeal, the timeframes for seeking appeals, and situations in which the FDIC may bifurcate certain determinations between appeals timelines versus enforcement timelines.

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While supportive of establishing a separate appeals office under the FFIEC, ICBA commends the FDIC for its proposal to increase the independence of its own intra-agency appeals process and transition away from the SARC. Should you have any questions, please contact the undersigned at jenna.burke@icba.org.

Sincerely,

/s/ Jenna Burke________________________

Jenna Burke
EVP, General Counsel
Government Relations & Public Policy
Independent Community Bankers of America