



## Missouri Bankers Association

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October 5, 2020

Mr. Robert E. Feldman  
Executive Secretary  
Federal Deposit Insurance Corporation  
550 17<sup>th</sup> Street N.W.  
Washington DC 20429

VIA – [Comments@FDIC.gov](mailto:Comments@FDIC.gov)

RE: RIN 3064-7A20

Dear Mr. Feldman,

The Missouri Bankers Association appreciates the opportunity to comment on the FDIC's reform proposal for the Supervisory Appeals Review Committee. We also thank the FDIC Ombudsman's Office for the listening sessions conducted in 2019 to obtain input, comments and concerns with the SARC.

We are pleased that the FDIC is considering reforms to establish greater independence for the review committee by proposing to establish and staff an Office of Supervisory Review (Office) and is also proposing guidelines and time frames to reduce confusion for eligibility and timing of appeals and to promote timely appeal processes and decisions. We also believe that many of the stated details of the program demonstrate an emphasis by the FDIC to promote informal resolutions prior to the SARC process and to provide opportunities for the Corporation and supervised banks to cooperate on the procedural processes to promote efficiency and avoid undue burden in resolving the issue or issues presented to the Office.

We are pleased that decisions of the Office will be published in redacted form and hope that these decisions will be easily searched on an FDIC web page via topic or keywords.

In the Federal Register the FDIC seeks specific comments on eight questions.

Request for Comment Question 1: *In contrast to the SARC, the Office would not provide representation for Board members in the review process. Should the FDIC Chairperson and/or other Board members have an opportunity to review decisions before issuance?*

Decisions of the Office could be issued subject to a 30-day period for the Board or the supervised institution to request re-hearing of the matter or re-consideration of an issue.

Question 2: *The FDIC proposes that the members of the Office have bank supervisory or examination experience. Does this constitute the appropriate qualifications and experience?*

The FDIC should be able to establish and judge the qualifications and supervisory and examination experience for those individuals responding to a request for application to serve.

Question 3: *Are there additional steps the FDIC should take to promote independence of the Office?*

The Office should be resourced with independent administrative and legal support, possibly via the Office of the Ombudsman. The Office could establish a Code of Ethics and Professionalism.

Question 4: *How many reviewing officials should be included on a panel? Is three an appropriate number? Are there situations where more or less panelists might be appropriate?*

Three panelists appear sufficient. The Office should have adequate staffing to assure an appeals panel has subject matter expertise for the issue or issues presented and to allow substitution for a panelist that may be or may appear conflicted in a matter, such as due to recent or close association with either the regional office or the supervised institution involved.

Question 5: *Should the appellate process have any additional level(s) of review before or after the proposed three-member panel?*

See the response to question 1.

Question 6: *Do the proposed timelines properly balance the goals of resolving appeals as expeditiously as possible and providing adequate time for preparation and review?*

There should be flexibility in the rule or guidelines for the Office to revise or provide additional detail to the timelines, and to even establish case specific scheduling orders to assure timeliness as well as allowing time for sufficient preparation and review.

One of the three panelists/deciders for each appeal could be designated to manage the case, including conducting a scheduling conference and perhaps in some cases conducting a pre-hearing or pre-submission conference to consider resolving the case prior to hearing or final submission. This panelist could also address procedural and other requests by the Corporation or the institution. As the body of work of the Office is developed and panelists gain experience – some appeals could be resolved by reference to prior decisions.

Question 7: *Participants at the listening sessions commented on the type and extent of publicly available information on SARC decisions. What type of information would be helpful to publish about the appeals process or specific appeal decisions to promote transparency while still maintaining confidentiality?*

The format for written decisions should be standardized to findings of fact, identification of the relevant laws, regulations and policies, and to present a decision or resolution that applies the law, regulations, policies to the facts. The decisions should be searchable by topic, law, regulation and policy.

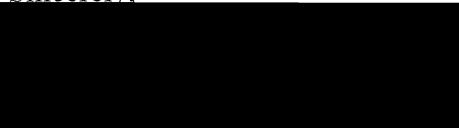
Question 8: *The FDIC expects the proposed changes to the procedures and timeframes applicable to formal enforcement-related decisions to be effective for the majority of enforcement actions. How should the FDIC handle those unusual cases for which the proposed timeframes are too restrictive? Should the parties expect to invoke the provision(s) allowing for an extension of the timeframes in these cases?*

See response to question 6. One of three panelists should provide case management for the appeal.

Please note that the Office should avoid over burdening its hearings and procedural processes and its decisions with formalities and legal process. The Office should not become an administrative court. The Office should ultimately promote consistency in the FDIC Regions and provide an impartial forum to resolve conflicts.

The Missouri Bankers Association appreciates the opportunity to comment.

Sincerely,



Keith Thornburg  
General Counsel

A small, handwritten mark or flourish, possibly a stylized 'v' or a checkmark, located to the right of the name and title.