

From: Joel Johnson [REDACTED]
Sent: Thursday, October 29, 2020 11:21 AM
To: Comments
Subject: [EXTERNAL MESSAGE] Guidelines for Appeals of Material Supervisory Determinations - comments

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?

The Chair and/or Board having the opportunity to review decisions prior to issuance (14-30 days for review) would increase my confidence in the validity OSA's decisions. I do not believe a review opportunity will impair the perceived independence of the OSA.

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?

In most respects, yes. However, the OSA should have access to additional agency resources beyond just Legal (Accounting, IT, etc.) for Subject Matter support when requested. Panelists may lack relevant experience, especially as the OSA is starting up and building the panelist pool.

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

While I have confidence the panelists (selected as proposed) would be in fact impartial, the appearance of impartiality could be enhanced. Assuming the OSA is staffed with retired examiners, OSA guidelines should prohibit panelists from reviewing cases from the panelists' last duty region to reduce the appearance of conflicts (i.e., an OSA panelist who retired from an office in California (in the SF Region) should not review cases from the San Francisco region).

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?

It seems to me five panelists would be better. However, I would consider the panelists' experience more important in general than the number of panelists. Five panelists should be sufficient for all situations.

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

Before, no. Appellants should have already discussed the issue with the involved examiners, the regional office, often the Ombudsman's Office, and the Division Director. This is sufficient pre-appeal review, and the many layers of discussion and review are likely the main reason appeals to the SARC have not been more common. After, yes – the FDIC Board of Directors should have the opportunity to review/comment/suspend decisions prior to issuance.

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?

They seem appropriate. However, as many of the appealable items have a financial impact to the institution (through increased deposit insurance assessments, etc.) a specification that any financial impact will be remediated would be appropriate.

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?

I find the level of detail in the old, published legal opinions quite helpful (good description of the issue, clear explanation of why the decision/opinion was rendered as it was). I would prefer this level of detail (a statement of the facts, the argument of the appeal, and the reasoning of the decision).

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?

Extensions should not more than double the listed timeframes. Extensions should require notice to the Division Director and the institution, be rare, require stated reasons, and should be allowed only if the Chair and/or the FDIC Board of Directors has the opportunity to review the extension.