June 17, 2022

Mr. James P. Sheesley
Assistant Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, D.C. 20429

Regarding: Guidelines for Appeals of Material Supervisory Determinations – RIN 3064-ZA20

Dear Mr. Sheesley:

The Community Bankers Association of Illinois ("CBAI") which proudly represents nearly 300 Illinois community banks provides herein our observations and recommendations on the Federal Deposit Insurance Corporation's ("FDIC" or "Agency") Notice and Request for Comment ("Proposal") regarding Guidelines for Appeals of Material Supervisory Determinations ('Guidelines Reversal"). This Proposal reverses guidelines adopted in January of 2021, which "generally replaced the SARC [Supervision Appeals Review Committee] as the final level of review in appellate processes with a standalone office within the FDIC, designated the Office of

Supervisory Appeals [("Office")] … to consider and resolve appeals of material supervisory determinations [("MSDs")]." The Guidelines Reversal and the new guidelines took immediate effect on May 17, 2022, three days before the publication of the Proposal in the Federal Register, and this deed was done without a prior request for information or notice and request for comment from the various constituencies interested in and subject to MSDs. Based on the way the previous Board-approved guidelines have been reversed, and the reinstatement of the SARC, CBAI has no alternative but to believe Agency's request for input at this point is merely a formality. **CBAI strongly opposes this Guidelines Reversal and the inappropriate process the FDIC followed to accomplish it, with no prior input from stakeholders.**

The implementation of the now reversed guidelines, which were originally adopted in January of 2021, followed a series of FDIC listening sessions across the country. CBAI and several of its leadership community bankers participated in the Chicago session in December of 2019. Following the listening session, CBAI reported the following to its nearly 300 members about the flawed existing appeals process stating, "CBAI is concerned about the [existing] appeals and dispute resolution process, which is time-consuming, expensive, lengthy, with little hope of a positive result and fear of retribution for elevating disputes. CBAI supports enhancing the powers of Office of the Ombudsman to resolve disagreements between banks and the FDIC, shortening the timeframes for pursuing reviews and appeals, and increasing the independence of the adjudicators of formal banker complaints."

At that time, CBAI appreciated that the FDIC was proposing to, "amend its Guidelines for Appeals of Material Supervisory Determinations to establish an independent office that would generally replace the existing Supervision Appeals Review Committee (SARC) and modify the procedures and timeframes for considering formal enforcement-related decisions through the supervisory review process." CBAI believed the timing for revising the appeals process was appropriate, and would make the process more accessible, reasonable, and successful before the next period of financial and regulatory stress.

CBAI is profoundly disappointed that within months of standing up the new Office and appeals process the FDIC Board has decided, without input from stakeholders, to reverse the guidelines and essentially revert to a process that lacks transparency and independence, and which perpetuates a flawed system that needed to be, and actually was for a short period of time, changed prior to the Guidelines Reversal.

CBAI takes exception to these statements in the Proposal.

*"The FDIC's experience suggests that its longstanding practice of providing Board-level review of material supervisory determinations [SARC] would better promote independence and accountability in the appellate process."*

CBAI suggests that what is needed is a more accessible, reasonable, and successful appeals process, and that the Guidelines Reversal reinstates a process that has none of these necessary and desirable characteristics.

*"Allowing the material supervisory determinations to be appealed to a Board-level committee underscores the significance of an independent review and lends credibility to the process."*

The appeals process was moved from the SARC precisely because the Office would have greater independence. A less independent appeals process, where the FDIC Board has ultimate control over the outcomes, will definitely not lend greater credibility to the appeals process.

*"Furthermore, Board-level review has historically ensured the accountability for the FDIC's supervisory determinations ultimately remains with the Agency's Board of Directors, consistent with sound corporate governance principals."*

In this case, apparently CBAI has a much different definition of "sound corporate governance principles" than the FDIC Board. The essential principles of corporate governance include accountability, transparency, fairness, and responsibility. In our opinion, the FDIC's Guidelines Reversal, which reinstates the SARC in the appeals process, violates these principles.

*"Aside from the substitution of the SARC for the Office as the final level of review, most aspects of the appeals process remain unchanged."*

That is quite an understatement.

Also, one of the most distressing aspects of the Guidelines Reversal is the FDIC is apparently dismissing perhaps the single-most important reason bankers do not appeal MSDs, namely, the fear of regulator retaliation or retribution. This fear is very real and undermines the SARC appeals process.

This is a particularly sensitive and important issue for community banks whose limited resources make the long and difficult journey of a supervisory appeal of an MSD more daunting, expensive, and risky, with little or no hope of success – and now there is a renewed fear of retaliation. While bankers consider regulatory retribution among their greatest concerns, the Proposal does not even mention this concern in the narrative and only includes a statement about the prohibition on examiner retaliation and retribution at the very end of the proposed new Guidelines.

CBAI is a strong proponent of the FDIC's Office of the Ombudsman ("Ombudsmen"). In our comment letter prior to the establishment of the Office, we stated, "Ombudsmen are the experienced professional who are specifically trained in resolving banker-regulator disputes. Their Rules and Practices include providing the FDIC's perspective to the bankers and the banker's perspective to the FDIC, interacting with other FDIC Divisions and Offices, and advocating for a fair and impartial process at the FDIC. In accomplishing their objectives, the Ombudsmen are … most familiar with both sides of the issues as well as previous decisions. The Ombudsmen would be a valuable source of information which would benefit the appeals panel discussions."

In the Guidelines Reversal, SARC decisions are not eligible for consideration by the Ombudsmen, but the Ombudsmen may submit views to the SARC for consideration in a pending appeal. However, for the SARC to benefit from Ombudsmen's' views they must have access to all the documents and materials that were submitted as part of the appeals process. The right to that access should be made clear in the Guidelines. If they are denied access to all these documents and material the Ombudsmen cannot effectively serve their role as an advocate for a fair and deliberative process. **CBAI strongly urges the role of the Ombudsmen be clarified and expanded in the Proposal.**

The Office and a revised appeals process went through a lengthy period of stakeholder input prior to adopting guidelines that replaced the SARC. However, this new appeals process was never given the opportunity to come to fruition because the guidelines were reversed by the FDIC Board with no prior listening sessions, no request for information, and no notice and request for comment (i.e., a proper and appropriate process). **CBAI opposes the Guidelines Reversal, urges the FDIC to stand up the Office that it has shuttered, and allow the now reversed appeals process sufficient time to succeed. This will be beneficial for the FDIC, the banking system, and the community banks that the FDIC is responsible for regulating.**

Please contact me with any questions you may have at 847/909-8341 or davids@cbai.com.

Sincerely,

/s/

David G. Schroeder
Senior Vice President
Federal Governmental Relations