



FEDERAL DEPOSIT INSURANCE CORPORATION

RIN 3064-ZA50

Guidelines for Appeals of Material Supervisory Determinations

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of guidelines.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is adopting revised Guidelines for Appeals of Material Supervisory Determinations to replace the existing Supervision Appeals Review Committee with an independent, standalone office to consider and decide supervisory appeals.

DATES: The revised Guidelines become effective once the Office of Supervisory Appeals is fully operational.

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SUPPLEMENTARY INFORMATION:

The FDIC's Guidelines for Appeals of Material Supervisory Determinations (Guidelines) provide the process by which insured depository institutions (IDIs) may appeal material supervisory determinations made by the FDIC.¹ Under these Guidelines, the FDIC's Supervision Appeals Review Committee (SARC) has been the final level of review of the FDIC's material supervisory determinations. The FDIC is revising the Guidelines to replace the SARC with an independent, standalone office within the FDIC, known as the Office of Supervisory Appeals (Office). The Office will have delegated authority to consider and resolve appeals of material supervisory determinations.

¹ 87 FR 77112 (Dec. 16, 2022).

I. Background

Section 309(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (Riegle Act) required the FDIC (as well as the other Federal banking agencies and the National Credit Union Administration) to establish an “independent intra-agency appellate process” to review material supervisory determinations.² The Riegle Act defines the term “independent appellate process” to mean “a review by an agency official who does not directly or indirectly report to the agency official who made the material supervisory determination under review.”³ In the appeals process, the FDIC is required to ensure that (1) an IDI’s appeal of a material supervisory determination is heard and decided expeditiously; and (2) appropriate safeguards exist for protecting appellants from retaliation by agency examiners.⁴

On March 21, 1995, the FDIC’s Board of Directors (Board) adopted the Guidelines to implement section 309(a) and established the SARC to consider and decide appeals of material supervisory determinations.⁵ Since that time, the SARC has been composed of FDIC Board members and other senior FDIC officials.

In January 2021, the FDIC adopted Guidelines that replaced the SARC with an independent, standalone office within the FDIC, known as the Office of Supervisory Appeals.⁶ The Office was granted delegated authority to consider and resolve appeals of material supervisory determinations and was staffed by reviewing officials with bank supervisory or examination experience. However, in May 2022, prior to the Office considering any appeals, the FDIC adopted revised Guidelines that restored the SARC as the final level of review of material supervisory determinations made by the FDIC.⁷

II. July 2025 Proposal

² 12 U.S.C. 4806(a).

³ 12 U.S.C. 4806(f)(2).

⁴ *See* 12 U.S.C. 4806(b).

⁵ *See* 60 FR 15923 (Mar. 28, 1995).

⁶ *See* 86 FR 6880 (Jan. 25, 2021).

⁷ *See* 87 FR 30942 (May 20, 2022).

In July 2025, the FDIC proposed to re-establish an Office of Supervisory Appeals as the final level of review of material supervisory determinations made by the FDIC, replacing the SARC in the appellate process.⁸ The FDIC noted that reinstating the Office would promote and enhance the independence of the appeals process and ensure requisite expertise of reviewing officials. The proposed structure of the Office was largely consistent with that of the previous Office. The FDIC also proposed certain other enhancements to the Guidelines to reflect its experience administering the supervisory appeals process.

Structure of the Office and Reviewing Officials

Similar to the previous Office established in 2021, the FDIC proposed to establish the Office as a standalone office independent of the Divisions that make supervisory determinations. The proposed Office would be staffed by reviewing officials with relevant experience, serving on term appointments. The proposed Office would report directly to the FDIC Chairperson's Office and would be granted delegated authority from the Board to consider and resolve appeals.

In the proposal, the FDIC reiterated its commitment to hiring individuals with bank supervisory or examination experience. The FDIC recognized this experience can be achieved through both government and industry experience. Therefore, the FDIC proposed to consider former bankers and other former industry professionals with relevant experience to serve as reviewing officials. Reviewing officials, as employees of the FDIC, were proposed to be part-time, intermittent employees who have been cleared for conflicts of interest and would be subject to the FDIC's requirements for confidentiality. The FDIC also proposed to consider employees with relevant experience from other government agencies to serve as reviewing officials on a part-time basis through interagency agreement(s). Under the proposal, current FDIC employees would

⁸ See 90 FR 33942 (July 18, 2025).

not be eligible to serve in these roles.

The proposal provided that a panel of three reviewing officials would be assigned to consider each appeal submitted to the Office, with at least one member of any panel required to have bank supervisory experience.

Legal Support for the Office

The proposal provided that the Legal Division would provide counsel to the Office and generally advise the Office on FDIC policies and rules. To promote independence, the Office would be advised by legal staff that were not involved in making the material supervisory determinations under review.

The proposal stated that if an appeal seeks to change or modify FDIC policies or rules, or raises a policy matter of first impression, the Legal Division would provide notice, along with a written explanation, to the Office. Afterwards, the Legal Division would refer the matter to the Chairperson's Office.

In addition, the Legal Division would review decisions of the Office for consistency with applicable laws, regulations, and policies of the FDIC prior to their issuance. If the Legal Division determines that an Office decision is contrary to a law, regulation, or FDIC policy, the Legal Division would notify the Chairperson's Office of the matter and the Office would be required to revise the decision to conform with relevant laws, regulations, or policies. The Legal Division would not exercise supervisory judgment or opine on the merits of an appeal.

The FDIC proposed that if an appeal raises procedural questions, including whether issues raised by the institution are eligible for review, the appropriate Division Director or the Office would refer such questions to the Legal Division. The Legal Division would determine whether an appeal, or an issue raised in an appeal, is eligible for review. The Legal Division would provide notice, with a written explanation, to the Office if an appeal, or an issue raised in an appeal, is deemed ineligible for review.

Burden of Proof and Standard of Review

Under the proposal, the burden of proof as to all matters at issue in the appeal, including timeliness of the appeal if timeliness is at issue, would rest with the institution.

The proposed Guidelines did not change the standard of review for the Division Director. Consistent with the current Guidelines, the Division Director would review the material supervisory determination for consistency with applicable laws, regulations, and policy, and make his or her own supervisory determination without deferring to the judgments of either party.⁹ The Division Director would have discretion to consider examination workpapers and other materials developed by staff during an examination.

Under the proposal, the Office would review the appeal for consistency with the policies (including regulations, guidance, policy statements, examination manuals, and other written publications) of the FDIC and the overall reasonableness of, and the support offered for, the positions advanced. The proposed standard of review for the Office aligned with the Division Director's standard of review, specifying that the Office would make its determination without deferring to the judgments of either party. This standard of review was intended to underscore the independence of the Office's review, subject to the reasonableness of the support for the positions advanced by both parties.

The proposal also limited the scope of the Office's review to the facts and circumstances as they existed prior to, or at the time the material supervisory determination was made, even if later discovered, and no consideration would be given to any facts or circumstances that occur or corrective action taken after the determination was made. The Office also would not consider aspects of an appeal that seek to change or modify FDIC policy or rules. Therefore, under the proposal, the Office could not overturn a material supervisory determination if the result of such a decision would be

⁹ The FDIC has previously noted that this may be considered a *de novo* standard of review, but lays out with more specificity the actual considerations to be applied. *See* 87 FR 64034, 64038 (Oct. 21, 2022).

inconsistent with the policies of the FDIC.

Formal Enforcement-Related Actions

Section 309 of the Riegle Act, which required the establishment of an appellate process, provides that “[n]othing in this section shall affect the authority of an appropriate Federal banking agency...to take enforcement or supervisory action.”¹⁰ To clarify how the appellate and enforcement processes interact, the proposed Guidelines included certain provisions specifically addressing the appealability of formal enforcement actions and determinations underlying formal enforcement actions. However, as explained in the proposal, the FDIC has encountered issues in administering the enforcement provisions of the current Guidelines.

First, as evidenced by comments, the current Guidelines’ enforcement-related provisions have been confusing to some institutions, leading to some uncertainty as to which determinations are subject to appeal. Second, the Guidelines provide for a piecemeal appeal in some instances by allowing 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. Third, in many instances, the facts underlying an enforcement action are relevant factors to other material supervisory determinations (such as ratings downgrades), but an institution that seeks to appeal such determinations is unable to include such facts as part of the record in an appeal. In addition, the FDIC noted that because many enforcement actions result in a stipulated order, an institution may not receive an independent review of some supervisory determinations. Given these concerns, the FDIC requested comment on the provisions of the proposed Guidelines relating to formal enforcement-related actions and decisions and how they might be addressed in the context of material supervisory determinations that an institution seeks to appeal.

¹⁰ 12 U.S.C. 4806(g).

Role of the Ombudsman

The Ombudsman serves as a non-voting member of the SARC. The Ombudsman also serves as a neutral liaison between the FDIC and institutions, as provided by section 309 of the Riegle Act.¹¹ Because the FDIC sees value in the Ombudsman's perspective, the proposal allowed the Ombudsman to submit views to the panel for consideration. In addition, the proposed Guidelines retained provisions regarding the Office of the Ombudsman's neutral oversight of the process and its role in monitoring the supervisory process for retaliation.

Ex Parte Communications

The proposal included a provision on sharing of information, requiring that information considered by the Office be timely shared with both parties to the appeal, subject to applicable legal limitations on disclosure. This proposed provision would apply to materials submitted to the Office by either the relevant Division or the appealing institution. The Ombudsman would also oversee the sharing of information considered by the Office in connection with an appeal.

III. Discussion of Comments and Final Guidelines

The FDIC received a total of eight comment letters in response to the proposal. Commenters included several trade organizations, a law firm, a public interest group, and a financial holding company. Nearly all commenters expressed support for the proposal but recommended changes to specific aspects of the appellate process, as discussed in greater detail below. A few commenters expressed support for legislative proposals that would amend the statutory framework underlying the appellate process. One such commenter noted that the proposal would represent an appropriate step to strengthen the appellate process until legislation is enacted.

The FDIC is adopting the Guidelines generally as proposed, with certain changes

¹¹ See 12 U.S.C. 4806(d).

discussed below to address commenters' feedback.

Reviewing Official Qualifications and Staffing

Commenters generally supported the FDIC's proposal to staff the Office with reviewing officials that have bank supervisory or examination experience, as well as former bankers and other industry professionals. Multiple commenters agreed that each panel should include at least one reviewing official with bank supervisory experience. One commenter suggested that the FDIC exclude individuals who lack bank supervisory or examination experience, stating that specific training and experience is necessary to make supervisory decisions.

A few commenters recommended requiring each panel to include at least one reviewing official with industry experience, and one commenter recommended requiring community bank experience in particular. These commenters suggested that ensuring a diversity of perspectives on panels would promote fairness and instill confidence in the Office's independence. The FDIC generally agrees that a diversity of perspectives on panels is valuable. Furthermore, one motivation behind the establishment of the Office is to ensure that reviewing officials have relevant experience with the supervisory process, and industry experience, along with supervisory or examination experience, can provide valuable experience with the supervisory process. Accordingly, the final Guidelines provide that each three-member panel will include at least one reviewing official with bank supervisory or examination experience and at least one reviewing official with industry experience, generally defined as having worked at a bank or for a company that provides services to banks or banking-related services.

In the event that (A) there are one or more vacancies among reviewing officials or (B) one or more reviewing officials are unavailable (such as due to a health event), resulting in an inability to form a three-member panel, the FDIC Chairperson may (1) authorize the Office to conduct business temporarily with fewer than three members or

(2) appoint one or more officials to serve as reviewing officials on a temporary basis, for a time period not to exceed 120 days. In such a scenario, the FDIC expects to fill any vacancy as expeditiously as possible.

The FDIC appreciates the suggestion to require community bank experience specifically but is sensitive to the need to balance relevant experience with permitting a broad pool of potential applicants. Nonetheless, given that historically the vast majority of banks that have filed appeals have been community banks, the FDIC will view community bank experience favorably in considering applicants with industry experience.

One commenter suggested that the appealing institution should be provided with information about the panel members to allow the institution to raise any concerns about the independence of panel members. The FDIC generally agrees that transparency with respect to the backgrounds of reviewing officials has value. Accordingly, the final Guidelines state that background information on the Office's reviewing officials will be published on the FDIC's website. The FDIC expects that this information will include a summary of the panelists' qualifications and employment experience.

The commenter also recommended that the FDIC use best efforts to exclude current federal banking agency employees who serve in supervisory or enforcement functions, assuming this does not narrow the pool of applicants to a degree that the Office cannot be adequately staffed. The FDIC plans to primarily staff the Office by recruiting externally, and believes this will best promote the independence of the Office's review, but retains the ability to employ current employees of federal banking agencies who are not current FDIC employees.

Conflicts of Interest

One commenter suggested the FDIC clearly articulate the specific criteria and conflicts of interests that would disqualify an individual from serving on a panel. The

commenter also recommended a three-year prohibition of any individual who was a former FDIC examiner and a prohibition on any individual from serving on a panel if they have worked as an examiner for or at the appealing institution.

FDIC employees are generally prohibited by statute and regulation from participating in matters that will have a direct and predictable effect on their financial interests or financial interests imputed to the employee.¹² In addition, subject to a determination by the agency, employees are prohibited from participating in any matter involving specific parties which affects the financial interests of a household member or where a person with whom the employee has a business or close personal relationship is, or represents, a party.¹³ These same conflict of interest restrictions will apply to the Office's reviewing officials. The FDIC also anticipates that reviewing officials may need to recuse themselves from particular cases where an apparent conflict of interest would undermine the perceived independence of the review, and FDIC ethics officials will be available to aid in those decisions.

The FDIC declines to impose a three-year prohibition on serving in the Office for former FDIC examiners and a permanent prohibition from serving on a panel if the individual has worked as an examiner for or at the appealing institution. Although these measures could enhance independence to some degree, they also would constrain staffing of the Office and its panels, and the Office's panels are expected to reflect a variety of views and perspectives. In some cases, however, the circumstances of an individual's prior relationship with an appealing institution may warrant recusal.

Authority of the Office

One commenter suggested that the Office may not be able to provide meaningful relief to institutions because it must decide matters in a manner consistent with FDIC

¹² See 18 U.S.C. 208; 5 CFR 2635.402.

¹³ See 5 CFR 2635.502.

policy, which could be outdated or inconsistently applied. The commenter stated that this reinforces the perception that the appeals process is not truly independent. The supervisory appeals process has long played a role in enhancing the consistency of bank supervision, for example, across the FDIC's Regional Offices. The Office will have a clear role in addressing inconsistent application of FDIC policies, as the Office will be specifically tasked under the final Guidelines with reviewing determinations for "consistency with the policies . . . of the FDIC." Thus, if an institution believes that supervisory staff has inconsistently applied examination or other standards, it may seek review of the matter through the supervisory appeals process. By contrast, the Office's role will not be to address instances where an FDIC policy should be updated.

Formulation of policy on behalf of the FDIC is the role of the Board of Directors and, as appropriate, individuals acting under the Board's delegated authority. Appeals seeking to change or modify FDIC policies or rules should be referred to the FDIC Chairperson's office for further consideration, and the final Guidelines retain this requirement.

Material Supervisory Determinations Eligible for Appeal

One commenter suggested the FDIC should permit appeals of determinations relating to resolution plans, compliance with commitments and conditions imposed through supervision or application processes, and compliance with or remediation of issues covered in an informal enforcement action. In addition, the commenter recommended including procedural matters in the definition of "material supervisory determination" so that the Office may review matters for procedural fairness in the examination process.

The FDIC agrees with the suggestion to include, in the definition of "material supervisory determination," determinations as to compliance with informal enforcement actions. The final Guidelines clarify that such determinations are appealable. For example, if examiners are evaluating whether an institution has complied with an

outstanding Memorandum of Understanding, those determinations as to compliance will be appealable under the Guidelines.

The FDIC also agrees that “material supervisory determination” should expressly include determinations as to compliance with conditions imposed through the supervision or application processes. Examiners’ evaluation of compliance with such conditions may have important consequences for an institution and is likely material. The final Guidelines clarify that such determinations are appealable. However, if the FDIC determines that an institution’s failure to comply with such conditions warrants formal enforcement action, the provisions of the Guidelines relating to enforcement actions apply and may preclude a supervisory appeal in some cases.

Decisions relating to resolution plans are not supervisory in nature and require different areas of expertise, and therefore, those decisions are not being included in the list of determinations that are eligible for review. In addition, there are fewer determinations regularly being made in the resolution context for open institutions, which may prove challenging with respect to ensuring that the panel includes officials with the necessary expertise.¹⁴

With respect to the suggestion to include procedural fairness of examinations in the definition of “material supervisory determinations” subject to appeal under the Guidelines, the FDIC notes that it already provides multiple avenues to raise such concerns. Institutions are encouraged to raise concerns of procedural fairness with the Division Director through the informal review process described in FIL-51-2016, the FDIC’s Office of the Ombudsman, or the appropriate FDIC Regional Ombudsman.

The list of material supervisory determinations eligible for review under the final Guidelines includes a conforming update to address a change in supervisory terminology

¹⁴ The commenter specifically mentioned determinations made as to a resolution plan’s credibility under 12 CFR 360.10. As described in frequently asked questions issued in April 2025, the FDIC does not expect to make credibility determinations regarding plan submissions under this regulation.

recently proposed by the FDIC. The Guidelines have historically permitted appeals of “matters requiring board attention,” which are used to inform an institution about the FDIC’s views concerning changes needed in the institution’s practices, operations, or financial condition. In a recent proposal relating to bank supervision, the FDIC proposed, among other things, to use the term “matters requiring attention” and discontinue using the term “matters requiring board attention.”¹⁵ The final Guidelines expressly permit appeals of “matters requiring board attention” and “matters requiring attention” to accommodate both current supervisory terminology as well as the proposed terminology.

Formal Enforcement-Related Provisions - Comments

The FDIC received a number of comments on the provisions of the Guidelines relating to formal enforcement actions and their underlying facts and circumstances. As discussed below, most of these comments recommended different ways the FDIC should expand institutions’ opportunities to appeal supervisory determinations when there is a related enforcement action.

One commenter suggested that when an institution receives notice that the FDIC is considering an enforcement action, the FDIC should provide a four-week window for the institution to challenge relevant supervisory determinations through the appeals process and pause the enforcement action until the Office has issued a decision. The commenter argued that the FDIC’s strong interest in exercising its enforcement powers should be weighed against an institution’s interest in an independent review of supervisory determinations.

Two commenters recommended that supervisory appeals should be permitted to proceed even while a formal enforcement action is being considered or pending. One of these commenters stated that formal enforcement actions cannot serve as a substitute for the supervisory appeals process because administrative law judges defer to examiners’

¹⁵ 90 FR 48835, 48840 (Oct. 30, 2025).

conclusions. This commenter also stated that this approach would ensure banks have the right to meaningful reviews of material supervisory determinations as intended by the Riegle Act and allow for due process. Another commenter suggested that the Guidelines' definition of "material supervisory determination" should continue to exclude formal enforcement-related actions and decisions, but not the underlying facts and circumstances.

Two commenters stated that the FDIC should not exclude determinations or the underlying facts and circumstances that form the basis of a recommended or pending formal enforcement action from appeal.

Two commenters suggested that the FDIC adopt a process for expedited review of determinations when appropriate, such as consequential matters or determinations that result in an institution becoming critically undercapitalized for Prompt Corrective Action purposes. One of these commenters suggested that expedited review could take the form of a "special petition" that banks could submit directly to the Office, and that the Office would have discretion to review on an expedited basis. The commenter explained that this would protect institutions from enforcement actions based on findings that would have been overturned by an independent panel. Another commenter recommended allowing resolution of a supervisory appeal before any enforcement action is taken.

Two other commenters addressed the provisions of the Guidelines allowing an extension of the 120-day and 90-day timeframes where appeal rights are suspended while the FDIC is pursuing a formal enforcement action. The commenters stated that extensions of these time periods should only be permitted with the institution's consent, as matters capable of waiting over 120 days to resolve may be good candidates for the appeals process and do not justify special procedures to suspend appeal rights.

Formal Enforcement-Related Provisions - Final Guidelines

The FDIC appreciates the commenters' recommendations and believes there is

value in expanding institutions' appellate rights to allow appeals in certain cases where an enforcement action is proposed or pending. The FDIC believes that this will benefit the Office's evaluation of appeals of examination ratings in particular, as the facts underlying formal enforcement actions are often relevant to ratings decisions. As described below, the final Guidelines will permit the facts and circumstances that form the basis for certain formal enforcement actions to be in scope for consideration by the Office as part of an appeal of a material supervisory determination. The formal enforcement action itself will not be appealable under the Guidelines; formal enforcement actions are contested through the administrative enforcement process defined by section 8 of the Federal Deposit Insurance Act.

When the FDIC provides an institution with material supervisory determinations that form the basis of certain proposed formal enforcement actions, the institution will have an opportunity to appeal the determinations. Specifically, the FDIC will allow the facts and circumstances underlying a proposed formal enforcement action to be in scope for appeals to the Office if the proposed enforcement action is *not* based, in whole or in part, on: (1) unsafe or unsound practices under section 8 of the Federal Deposit Insurance Act, or (2) violations of laws or regulations relating to an institution's anti-money laundering and countering the financing of terrorism (AML/CFT) program or the institution's sanctions compliance.¹⁶ Enforcement actions brought under those authorities are more likely to raise concerns related to safety and soundness or financial crimes that involve a degree of urgency, whereas enforcement actions brought under other authorities are less likely to involve concerns that need to be addressed urgently. The FDIC also expects to issue a final rule in the coming months that defines the term "unsafe or unsound practice" for purposes of section 8 of the Federal Deposit Insurance Act in a

¹⁶ Facts and circumstances underlying enforcement actions that are brought under multiple authorities will not be appealable if one of those authorities is mentioned above.

manner that ensures any such actions will satisfy a materiality threshold. The FDIC seeks to balance deeming more appeals eligible through the agency's appeal process with the practical challenges associated with allowing the facts and circumstances underlying certain types of enforcement actions to be appealed. The FDIC also seeks to establish bright line criteria, focusing on the authorities under which appeals are brought, rather than more subjective criteria that would result in significant uncertainty regarding which appeals would be appealable.

If an institution appeals a supervisory determination that forms the basis for a proposed formal enforcement action, the appeal will be considered on an expedited basis under a schedule determined by the Office. As a general matter, the FDIC expects to delay the initiation of the enforcement action until the conclusion of the appeal, but there may be certain circumstances in which the FDIC will pursue a simultaneous enforcement action.¹⁷ The FDIC will also require an institution subject to a potential enforcement action to sign an agreement to toll a relevant statute of limitations. If the institution fails to do so upon a request by the FDIC, the facts and circumstances underlying the enforcement action will no longer be eligible to be considered as part of an appeal.

Consistent with the current SARC guidelines, if supervisory appeal rights are suspended due to a notice of a formal enforcement action, the FDIC must move forward with the formal enforcement action within specified time frames or supervisory appeal rights will be reinstated. These time frames will be consistent with the time frames that currently apply to the suspension and reinstatement of appeal rights under the Guidelines.

Burden of Proof and Standard of Review

Commenters generally supported the standards of review and burden of proof in the proposal. One commenter was supportive of the proposed standard of review that

¹⁷ A potential example of when the FDIC might pursue a simultaneous enforcement action is if a bank appeals a ratings downgrade, and the facts underlying the enforcement action play a small role in the ratings downgrade.

would underscore the independence of the Office's review by specifying that the Office will not defer to the judgment of either party. However, this commenter recommended the FDIC clarify that appealing institutions be permitted to challenge an examiner's view of reasonableness and that the FDIC set specific parameters around "reasonableness." The commenter further recommended that the FDIC clarify that material supervisory determinations will not be based on a bank's non-conformance with non-binding agency guidance or supervisory expectations.

Commenters also asked for further clarification regarding the burden of proof. One commenter stated that it was consistent with appellate practice to place the burden of proof on the appealing institution, but asked that the final Guidelines clarify that the standard of proof is preponderance of evidence to align with generally accepted administrative law principles and to avoid giving undue deference to examiners' conclusions.

Two commenters believed the burden proof in appeals should be on the FDIC. One commenter believed that placing the burden of proof on the appealing institution means the appeal cannot succeed unless the examiners are clearly wrong. The commenter suggested the initial burden should be placed on the FDIC to show the FDIC has legal authority to make the supervisory determination, the officials who made the determination were acting within such authority, and their findings are consistent with that authority, with an opportunity for bank rebuttal. Another commenter stated that placing the burden of proof on the appealing institution is not required by statute and is unnecessarily prescriptive since the process is not governed by the Administrative Procedure Act or other judicial review procedure. This commenter stated that placing the burden of proof on the appealing institution discourages appeals because it makes it more unlikely that institutions obtain favorable decisions.

The FDIC appreciates the opportunity to clarify the standard of review for the

Office's decisions. The Office will review the appeal for consistency with the policies (including regulations, guidance, policy statements, examination manuals, and other written publications) of the FDIC and the overall reasonableness of, and the support offered for, the positions advanced. The Office will make an independent supervisory determination and will not defer to the judgments of either party.

The FDIC is not changing the burden of proof, which is consistent with appellate proceedings and generally requires the appellant to establish that the decision being appealed was in error. The FDIC is not adopting a preponderance of the evidence standard in the Guidelines, but the agency does view a preponderance of the evidence standard as generally consistent with how the SARC has historically decided appeals and the Guidelines.

Information Sharing Provisions

Commenters generally supported the information sharing provisions in the proposal. However, commenters provided some suggestions to enhance transparency. One commenter suggested the FDIC prohibit all *ex parte* communications with the Office during an appeal and require any such communications that inadvertently occur to be made available to both parties in writing on a timely basis. The disclosure of such communications is generally consistent with past practice, but the FDIC agrees that it is useful for the Guidelines to explicitly address any potential communication concerning an appeal that might occur. The final Guidelines therefore require that any *ex parte* communications concerning the substance of an appeal between the Office and supervisory staff be shared in writing. If there are any redactions to any communications shared with an appealing institution to avoid improper disclosure, the reasons for the redactions will be provided to the appealing institution.

The commenter also suggested the FDIC clarify the timing of when information considered by the Office will be shared with both parties and to ensure that both parties

receive all information on a timely basis prior to the issuance of the Office's decision, with the opportunity to rebut any factually incorrect or misleading information. The final Guidelines retain, without change, the requirement from the proposal that materials concerning an appeal submitted to the Office will be shared with the other party to the appeal on a timely basis. The FDIC expects that materials will be shared with sufficient time to allow the parties to prepare for an oral presentation to the Office panel, if oral presentation is requested, or before the panel meets to consider the appeal.

One commenter suggested that an appealing institution should receive any information that a State regulatory authority provides the FDIC. State regulators are not a party to the FDIC's appeals process and their regulatory information may be governed by a variety of State laws and rules. The FDIC does not have authority to commit to disclosure of such information in all cases. However, if the relevant Division provides information on the State regulator's views to the Office as part of its submission, that information will be shared with an appealing institution in the same manner as other appeal materials.

New Evidence

One commenter recommended the final Guidelines clarify that the Office should review any relevant evidence, including evidence that was not available at the time of the Division Director's consideration of the appeal or evidence that formed the basis of the Division Director's decision. The commenter believed this clarification is consistent with fundamental principles of fairness and due process. Excluding new evidence, subject to limited exceptions, is generally consistent with appellate processes. The proposal, which provided that new evidence could be submitted if approved by the reviewing panel and with a reasonable time for the Division Director to review and respond, strikes an appropriate balance. This promotes the Office's role as an appellate body while allowing for the introduction of new evidence in cases where it may be particularly critical to the

outcome. The FDIC therefore adopts this provision as proposed.

Supervisory Stays

One commenter supported allowing an institution to request a stay of a supervisory decision or action while a supervisory appeal is pending, but recommended that the Office, rather than the Division Director, decide the request for a stay when an appeal is pending with the Office. The commenter believed allowing the Office to decide stay requests would enhance independence. While the FDIC is sympathetic to the perspective that the Office would enhance independence, the FDIC is leaving such decisions to the Division Director, as that decision to grant a stay of a supervisory determination while an appeal is pending is ultimately a matter of supervisory judgment.

The same commenter suggested the FDIC lay out the basis for analyzing stay requests. While the FDIC is not laying out a formal analytical framework, the FDIC is adding a provision to the Guidelines providing that the analysis will include a weighing of potential harms. For example, granting a stay of a supervisory decision while an institution's appeal is pending may present safety and soundness concerns if an important risk to the institution is not being adequately addressed. However, leaving a supervisory determination in place while an appeal is ongoing may have detrimental consequences for the institution, such as potential negative market reactions in the event of a restatement of a bank's Call Report or changes in deposit classifications resulting from a downgrade to CAMELS ratings.

Legal Division's Role

Commenters expressed some concerns about the role of the FDIC Legal Division in the proposed Guidelines. One commenter suggested that the proposal weakened the independence of the Office and made the Legal Division the ultimate appellate authority by authorizing the Legal Division to require the Office to revise its draft decisions and to decide procedural questions without providing notice and opportunity to be heard to an

appealing institution. The commenter stated that the Office should be the highest appellate authority and should itself decide all procedural issues.

The FDIC does not believe the proposed role of the Legal Division undermines the Office's independence. It is expected that the Office will exercise independent judgment in deciding appeals, but will do so within the bounds of applicable laws and regulations, as well as policy established by the FDIC's Board of Directors. The Legal Division's role is to ensure that the Office's decisions fall within those bounds, and as explained in the proposal, the Legal Division will not exercise supervisory judgment or opine on the merits of appeals. This aspect of the Guidelines will be adopted as proposed.

The FDIC appreciates, however, that many procedural questions may warrant collaboration with the Office. Thus, the final Guidelines state that procedural questions will be referred to the Legal Division for resolution, but also provide that the Legal Division will consult with the Office on such matters.

In addition, the same commenter recommended that nothing should be submitted to the Office by the Legal Division without notice to the appealing institution and an opportunity for the institution to respond. The FDIC is not adopting this suggestion. Where the Legal Division advises the Office on the FDIC's policies and rules, such advice will be covered by attorney-client privilege. Furthermore, the FDIC's historic practice has been that the SARC is advised by Legal staff who were not involved in making the determinations at issue, and the agency plans to ensure the same with respect to the Office to promote independence from those involved in the determinations. Where the Legal Division decides a procedural request or concludes that an issue raised in an appeal is ineligible for review under the Guidelines, the decision will be provided to the institution.

Another commenter focused on Legal's role in determining that an issue raised in

an appeal is ineligible for review. The proposal provided that, in such cases, the Legal Division would provide notice, with a written explanation, to the Office. To increase transparency, the commenter suggested that such action should be accompanied by a written determination accessible to the appealing institution. The FDIC agrees, and the final Guidelines provide that notice and a written explanation will be provided to both the Office and the appealing institution in such cases.

Publication of Decisions and Annual Reports

Commenters agreed with the proposal to publish the Office's decisions in summary or redacted form. One commenter recommended that the final Guidelines specify that the Office's final decision will include the reasoning of the panel and, where applicable, an opportunity for any dissenters on the panel to include a brief statement of reasoning. This commenter also recommended the Office's decision be provided to the appealing institution before publication with a right to object to publication on grounds of inadequate redaction. The commenter stated that the FDIC should never publish a decision from the Office that cannot be sufficiently anonymized.

Consistent with past FDIC practice, appellate decisions will include the rationale for the panel's decision. This could include a dissenting view. The FDIC strives to ensure that decisions are redacted sufficiently to ensure that the bank cannot be identified, given the sensitive nature of the supervisory determinations they contain, and agrees that it may be beneficial to consider an appealing institution's feedback on suggested redactions before publishing the Office's decisions. For this reason, the final Guidelines provide that recommended redactions to the decision will be shared with the appealing institution prior to publication to allow the institution to raise any potential concern that the redactions are insufficient to avoid its identification. If such concerns are raised, the Office and supporting staff will work with the institution in an effort to address any such concerns.

In addition, one commenter suggested that the FDIC's annual reports provide anonymized data regarding the number of appeals and the outcomes, as well as the number of appeals involving matters requiring board attention (by subject and Region). Another commenter recommended the FDIC periodically review and publish summary data on the Office's decisions with appropriate redactions in order to promote transparency and learning. The FDIC values transparency and will consider this feedback in defining a reporting process that promotes transparency. In addition to continuing to publish redacted decisions, the FDIC will explore additional transparency measures, including reporting of data on the number of appeals decided and their outcomes.

Waiver Authority

The proposal provided that the Office, with the concurrence of the Legal Division, would have discretion to waive any provision of the Guidelines for good cause. The final Guidelines are tailoring this waiver authority, reflecting the status of the Office as an independent office. Specifically, the final Guidelines state that the Office, with the Legal Division's concurrence, may waive for good cause deadlines or procedural requirements concerning the administration of appeals. This is intended to provide necessary flexibility to address unusual circumstances that may arise in handling appeals. Waiver authority will not, however, extend to provisions such as the qualifications of reviewing officials, the standard of review, or the types of determinations that may be appealed, which define the basic structure of the appellate process.

Retaliation

One commenter appreciated the FDIC's affirmation of its policy prohibiting examiner retaliation and encouraged the FDIC to continue monitoring for retaliation and to provide clear guidance on how to report concerns. Another commenter believed the FDIC should provide further clarity on the prohibition against examination retaliation.

This commenter stated that the FDIC should clearly articulate procedures for educating examination staff about the types of action that constitute retaliation and the associated penalties. The commenter also recommended that any disciplinary actions taken should be communicated to supervisory and examination staff to serve as a deterrent.

As discussed in the proposal, the Ombudsman will exercise neutral oversight of the supervisory process and will monitor the process for retaliation. The FDIC appreciates the suggestions made by commenters and remains committed to its policy on the prohibition of examiner retaliation. Institutions should continue to contact the Ombudsman with any concerns regarding examination retaliation, as outlined in the Guidelines. The FDIC is adopting the provisions regarding the prohibition on examiner retaliation as proposed.

Confidential Supervisory Information

One commenter requested the FDIC allow an institution to disclose confidential supervisory information to outside counsel or third-party advisors when considering whether to appeal a material supervisory determination. Disclosing supervisory information to an institution's outside counsel regarding an appeal is part of the attorney-client relationship and is consistent with part 309 of the FDIC's regulations. With respect to consultants or other advisers, an institution should follow existing processes for disclosing such information.

Inspector General Review

One commenter recommended that the FDIC's Office of Inspector General (OIG) perform a regular, formal review of the Office to substantiate its independence, and that such findings should be reviewed and approved by the FDIC's Board annually and made available to the public. The FDIC OIG is an independent office that conducts audits, evaluations, investigations, and other reviews of FDIC programs and operations. The FDIC's Board generally does not instruct the OIG to initiate reviews or audits.

Transition

Commenters expressed a variety of views about how the FDIC should transition appellate review from the SARC to the new Office. One commenter recommended the FDIC establish the Office on an expedited basis, while another commenter recommended the FDIC provide clear communication to institutions about the transition and provide opportunities for institutions to give feedback. The FDIC agrees that FDIC-supervised institutions need clear communication regarding the transition from the SARC to the Office to understand the entity that will hear potential supervisory appeals, and thus the FDIC will notify the public once the Office is operational.

Examination Process

Two commenters suggested the FDIC make certain changes to the examination process to promote transparency and fairness and strengthen communication. One commenter encouraged the FDIC to permit institutions to respond to adverse findings before formal issuance. Another commenter suggested the FDIC should provide regular interim updates from on-site examiners and subject-matter experts during the course of an examination, with an opportunity for the institution to respond to adverse findings and correct factual errors, plus an opportunity for review by an independent and disinterested decisionmaker (such as the Ombudsman). In addition, this commenter believed the supervisory process would benefit from a more thorough, transparent explanation of findings so that institutions can make reasoned determinations whether to appeal. Although examination procedures are generally outside the scope of the proposal, which focused on the supervisory appeals process, the FDIC will consider commenters' recommendations for future enhancements to the examination process.

Regulatory Review

The Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget has reviewed this proposal and determined that it does not

constitute a “significant regulatory action” for purposes of Executive Order 12866.

For the reasons set out in the preamble, the Federal Deposit Insurance Corporation’s Board of Directors adopts the Guidelines for Appeals of Material Supervisory Determinations as set forth below.

Guidelines for Appeals of Material Supervisory Determinations

A. Introduction

Section 309(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (Public Law No. 103-325, 108 Stat. 2160) (Riegle Act) requires the Federal Deposit Insurance Corporation (FDIC) to establish an independent intra-agency appellate process to review material supervisory determinations made at insured depository institutions that it supervises. The Guidelines for Appeals of Material Supervisory Determinations (Guidelines) describe the types of determinations that are eligible for review and the process by which appeals are considered and decided.

B. Reviewing Officials

The Office of Supervisory Appeals (Office) is staffed with reviewing officials, hired for fixed terms, who have bank supervisory or examination experience or other relevant experience. Reviewing officials consider and decide appeals submitted to the Office in panels of three reviewing officials selected by the Office who have no conflicts of interest with respect to the appeal or the parties to the appeal. At least one reviewing official on a panel must have bank supervisory or examination experience, and at least one must have industry experience (generally defined as having worked at a bank or for a company that provides services to banks or banking-related services).

In the event a three-member panel cannot be formed, due to one or more vacancies or due to the unavailability of one or more reviewing officials, the FDIC

Chairperson may (1) authorize the Office to conduct business temporarily with fewer than three members or (2) appoint one or more officials to serve as reviewing officials on a temporary basis, for a time period not to exceed 120 days. In the latter case, a temporary reviewing official may still participate in the final decision of any appeal in which the appeal is received and a hearing is held before the end of the 120-day period but the final decision is not issued until after the 120-day period ends.

Background information on the Office's reviewing officials is published on the FDIC's website. Current government employees with relevant experience may serve on a part-time basis. However, current FDIC employees are not eligible. Current employees of insured depository institutions or their affiliates are also not eligible.

C. Institutions Eligible to Appeal

The Guidelines apply to the insured depository institutions that the FDIC supervises (i.e., insured State nonmember banks, insured branches of foreign banks, and state savings associations), and to other insured depository institutions for which the FDIC makes material supervisory determinations.

D. Determinations Subject to Appeal

An institution may appeal any material supervisory determination pursuant to the procedures set forth in these Guidelines.

(1) Material supervisory determinations include:

(a) CAMELS ratings under the Uniform Financial Institutions Rating System;

(b) IT ratings under the Uniform Rating System for Information Technology;

(c) Trust ratings under the Uniform Interagency Trust Rating System;

(d) CRA ratings under the Revised Uniform Interagency Community

Reinvestment Act Assessment Rating System;

(e) Consumer compliance ratings under the Uniform Interagency Consumer Compliance Rating System;

- (f) Registered transfer agent examination ratings;
- (g) Government securities dealer examination ratings;
- (h) Municipal securities dealer examination ratings;
- (i) Determinations relating to the appropriateness of loan loss reserve provisions;
- (j) Classifications of loans and other assets in dispute the amount of which, individually or in the aggregate, exceeds 10 percent of an institution's total capital;
- (k) Determinations relating to violations of a statute or regulation, including the severity of a violation, that may affect the capital, earnings, or operating flexibility of an institution, or otherwise affect the nature and level of supervisory oversight accorded an institution;
- (l) Truth in Lending Act (Regulation Z) restitution;
- (m) Filings made pursuant to 12 CFR 303.11(f), for which a request for reconsideration has been granted, other than denials of a change in bank control, change in senior executive officer or board of directors, or denial of an application pursuant to section 19 of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1829 (which are contained in 12 CFR part 308, subparts D, L, and M, respectively), if the filing was originally denied by the Director, Deputy Director, or Associate Director of the Division of Depositor and Consumer Protection (DCP), the Division of Risk Management Supervision (RMS), or the Division of Complex Institution Supervision and Resolution (CISR);
- (n) Decisions to initiate informal enforcement actions (such as memoranda of understanding) and determinations regarding an institution's level of compliance with an informal enforcement action;
- (o) Determinations regarding the institution's level of compliance with a formal enforcement action; however, if the FDIC determines that the lack of compliance with an existing formal enforcement action requires an additional formal enforcement action, the

proposed new enforcement action is not appealable;

(p) Matters requiring board attention or matters requiring attention;

(q) Determinations regarding an institution's compliance with conditions imposed through the supervision or application processes; and

(r) Any other supervisory determination (unless otherwise not eligible for appeal) that may affect the capital, earnings, operating flexibility, or capital category for prompt corrective action purposes of an institution, or that otherwise affects the nature and level of supervisory oversight accorded an institution.

(2) Material supervisory determinations do not include:

(a) Decisions to appoint a conservator or receiver for an insured depository institution, and other decisions made in furtherance of the resolution or receivership process, including but not limited to determinations pursuant to 12 CFR parts 370, 371, and 381, and 12 CFR 360.10 of the FDIC's rules and regulations;

(b) Decisions to take prompt corrective action pursuant to section 38 of the FDI Act, 12 U.S.C. 1831o, although the determinations upon which such actions are based (such as loan classifications) are appealable, provided they otherwise qualify;

(c) Determinations for which other appeals procedures exist (such as determinations of deposit insurance assessment risk classifications and payment calculations);

(d) Formal enforcement actions and decisions, which for purposes of these Guidelines include a referral to the Attorney General for violations of the Equal Credit Opportunity Act (ECOA) or a notice to the Secretary of Housing and Urban Development (HUD) for violations of ECOA or the Fair Housing Act (FHA); and

(e) Facts and circumstances underlying pending or proposed formal enforcement actions for which the institution has been provided written notice that the action is based on: (1) unsafe or unsound practices for purposes of section 8 of the Federal Deposit

Insurance Act; (2) violations of laws or regulations relating to the institution's anti-money laundering and countering the financing of terrorism (AML/CFT) program or the institution's sanctions compliance; or (3) violations for which an institution fails to sign an agreement to toll a relevant statute of limitations, if requested to do so by the FDIC. Notice under this paragraph does not suspend or otherwise affect a pending request for review or appeal that was previously submitted.

(3) Additional appeal rights:

(a) In the case of notice of an enforcement action under paragraph (2)(e), the FDIC must issue an Order of Investigation, issue a Notice of Charges, or provide the institution with a draft consent order within 120 days of such a notice, or the most recent submission of information from the institution, whichever is later, or appeal rights will be made available pursuant to these Guidelines. If the FDIC timely provides the institution with a draft consent order and the institution rejects the draft consent order in writing, the FDIC must issue an Order of Investigation or a Notice of Charges within 90 days from the date on which the institution rejects the draft consent order in writing or appeal rights will be made available pursuant to these Guidelines. The FDIC may extend these periods, with the approval of the FDIC Chairperson, after the FDIC notifies the institution that the relevant Division Director is seeking formal authority to take an enforcement action.

(b) Written notification will be provided to the institution within 10 days of a determination that appeal rights have been made available under this section.

(c) The relevant FDIC Division and the institution may mutually agree to extend the timeframes in paragraph (a) of this section if the parties deem it appropriate.

(4) If the FDIC provides an institution written notice of a proposed formal enforcement action other than an action under paragraph (2)(e), any supervisory appeal involving the facts and circumstances underlying the proposed formal enforcement action

will be considered on an expedited basis under a schedule determined by the Office.

E. Good-Faith Resolution

An institution should make a good-faith effort to resolve any dispute concerning a material supervisory determination with the on-site examiner and/or the appropriate Regional Office. The on-site examiner and the Regional Office will promptly respond to any concerns raised by an institution regarding a material supervisory determination. Informal resolution of disputes with the on-site examiner and the appropriate Regional Office is encouraged, but seeking such a resolution is not a condition to filing a request for review with the appropriate Division, either DCP, RMS, or CISR, or to filing a subsequent appeal with the Office under these Guidelines. An institution may also avail itself of the Ombudsman to attempt to reach an agreeable outcome.

F. Filing a Request for Review with the Appropriate Division

(1) An institution may file a request for review of a material supervisory determination with the Division that made the determination, either the Director, DCP, the Director, RMS, or the Director, CISR (Director or Division Director), 550 17th Street NW, Room F-4076, Washington, DC 20429, within 60 calendar days following the institution's receipt of a report of examination containing a material supervisory determination or other written communication of a material supervisory determination. Requests for review also may be submitted electronically. To ensure confidentiality, requests should be submitted through securemail.fdic.gov, directing the message to DirectorReviewRequest@fdic.gov. A request for review must be in writing and must include:

(a) A detailed description of the issues in dispute, the surrounding circumstances, the institution's position regarding the dispute and any arguments to support that position (including citation of any relevant statute, regulation, policy statement, or other authority), how resolution of the dispute would materially affect the institution, and

whether a good-faith effort was made to resolve the dispute with the on-site examiner and the Regional Office; and

(b) A statement that the institution's board of directors or senior management has considered the merits of the request and has authorized that it be filed. Senior management is defined as the core group of individuals directly accountable to the board of directors for the sound and prudent day-to-day management of the institution. If an institution's senior management files an appeal, it must inform the board of directors of the substance of the appeal before filing and keep the board of directors informed of the appeal's status.

(2) Within 45 calendar days after receiving a request for review described in paragraph (1) of this section, the Division Director will:

(a) Review the appeal, considering whether the material supervisory determination is consistent with applicable laws, regulations, and policy, make his or her own supervisory determination without deferring to the judgments of either party, and issue a written determination on the request for review, setting forth the grounds for that determination; or

(b) Refer the request for review to the Office for consideration as an appeal under Section G and provide written notice to the institution that the request for review has been referred to the Office.

(3) No appeal to the Office is allowed unless an institution has first filed a timely request for review with the appropriate Division Director.

(4) In any decision issued pursuant to paragraph (2)(a) of this section, the Director will inform the institution of the 30-day time period for filing with the Office and will provide the mailing and e-mail addresses for any appeal the institution may wish to file.

(5) The Division Director may request guidance from the Legal Division as to procedural or other questions relating to any request for review.

G. Appeal to the Office

An institution that does not agree with the written determination rendered by the Division Director may appeal that determination to the Office within 30 calendar days after the date of receipt of that determination. Failure to file within the 30-day time limit may result in denial of the appeal by the Office.

1. Filing with the Office

An appeal to the Office will be considered filed if the written appeal is received by the FDIC within 30 calendar days after the date of receipt of the Division Director's written determination or if the written appeal is placed in the U.S. mail within that 30-day period. An acknowledgment of the appeal will be provided to the institution, and copies of the institution's appeal will be provided to the Office of the Ombudsman and the appropriate Division Director. Copies of all relevant materials related to an appeal will be provided to the Office of the Ombudsman.

2. Contents of Appeal

The appeal should be labeled to indicate that it is an appeal to the Office and should contain the name, address, and telephone number of the institution and any representative, as well as a copy of the Division Director's determination being appealed. If oral presentation is sought, that request should be included in the appeal. If expedited review is requested, the appeal should state the reason for the request. Only matters submitted to the appropriate Division Director in a request for review may be appealed to the Office. Evidence not presented for review to the Division Director is generally not permitted; such evidence may be submitted to the Office only if approved by the reviewing panel and with a reasonable time for the Division Director to review and respond. The institution should set forth all of the reasons, legal and factual, why it disagrees with the Division Director's determination. Nothing in this appellate process shall create any discovery or other such rights.

3. Burden of Proof

The 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.

4. Submission from the Division Director

The Ombudsman and the Division Director may submit views regarding the appeal to the Office within 30 calendar days of the date on which the appeal is received by the Office.

5. Oral Presentation

The Office will, if a request is made by the institution or by FDIC staff, allow an oral presentation. The panel may hear oral presentations in person, telephonically, electronically, or through other means agreed upon by the parties. If an oral presentation is held, the institution and FDIC staff will be allowed to present their positions on the issues raised in the appeal and to respond to any questions from the panel.

6. Consolidation, Dismissal, and Rejection

Appeals based upon similar facts and circumstances may be consolidated for expediency. An appeal may be dismissed by the Office if it is not timely filed, if the basis for the appeal is not discernable from the appeal, or if the institution moves to withdraw the appeal. The Office will decline to consider an appeal if the institution's right to appeal is not yet available under section D(3), above.

7. Scope of Review and Decision

The panel is an appellate body and makes independent supervisory determinations. The panel reviews the appeal for consistency with the policies (including regulations, guidance, policy statements, examination manuals, and other written publications) of the FDIC and the overall reasonableness of, and the support offered for, the positions advanced. The panel makes its own supervisory determination without deferring to the judgments of either party. The panel's review is limited to the facts and

circumstances as they existed prior to, or at the time the material supervisory determination was made, even if later discovered, and no consideration is given to any facts or circumstances that occur or corrective action taken after the determination was made. The panel may not consider any aspect of an appeal that seeks to change or modify existing FDIC rules or policy, and may not overturn a material supervisory determination if the result of such a ruling would be inconsistent with the policies of the FDIC. The panel will notify the institution, in writing, of its decision concerning the disputed material supervisory determination(s) within 45 days after the date the panel meets to consider the appeal, which meeting will be held within 90 days after either the date of the filing of the appeal or the date that the Division Director refers the appeal to the Office.

8. Role of the Legal Division

The Legal Division provides counsel to the Office and generally advises the Office on FDIC policies and rules. This function will not include any staff involved in making any supervisory determinations being appealed. If an appeal seeks to change or modify FDIC policies or rules, or raises a policy matter of first impression, the Legal Division will provide notice, along with a written explanation, to the Office, and then, after such notice is provided, refer the matter to the Chairperson's Office.

The Legal Division reviews decisions of the Office for consistency with applicable laws, regulations, and policies of the FDIC prior to their issuance. If the Legal Division determines that a decision is contrary to a law, regulation, or policy of the FDIC, the Legal Division will notify the Chairperson's Office of the matter, and the Office will revise the decision to conform with relevant laws, regulations, or policies.

If an appeal raises procedural questions, including whether issues raised by the institution are eligible for review, the appropriate Division Director or the Office will refer such matters to the Legal Division for resolution, in consultation with the Office.

The Legal Division may determine whether an appeal, or an issue raised in an appeal, is ineligible for review. The Legal Division will provide notice, with a written explanation, to the Office and the appealing institution of the resolution of the procedural request or if an appeal, or an issue raised in an appeal, is deemed ineligible for review.

9. Sharing of Appeal Materials

Materials concerning an appeal submitted to the Office by either the relevant Division or an appealing institution, including any communication concerning the substance of appeal between the Office and supervisory staff, will be shared with the other party to the appeal, subject to applicable legal limitations on disclosure, on a timely basis. The Office will provide the reasons for any redactions to the appealing institution. The Ombudsman will verify that both parties have received these materials.

H. Publication of Decisions

Decisions of the Office are published as soon as practicable, and the published decisions are redacted to avoid disclosure of the name of the appealing institution and any information exempt from disclosure under the Freedom of Information Act and the FDIC's document disclosure regulations found in 12 CFR part 309. Proposed redactions to decisions of the Office will be shared with the appealing institution prior to publication to allow the institution to raise any potential concern that the redactions are insufficient to avoid its identification. Published SARC or Office decisions may be cited as precedent in appeals to the Office. Annual reports on the Office's decisions and Division Directors' decisions with respect to institutions' requests for review of material supervisory determinations also will be published.

I. Appeal Guidelines Generally

Appeals to the Office are governed by these Guidelines. The Office, with the concurrence of the Legal Division, retains discretion to waive for good cause deadlines or procedural requirements concerning the administration of appeals under these Guidelines.

Supplemental rules governing the Office's operations may be adopted.

Institutions may request extensions of the time period for submitting appeals under these Guidelines from either the appropriate Division Director or the Office, as appropriate. If a filing under these Guidelines is due on a Saturday, Sunday, or a Federal holiday, the filing may be made on the next business day.

Institutions may request a stay of a supervisory action or determination from the Division Director while an appeal of that determination is pending. The request must be in writing and include the reason(s) for the stay. The Division Director has discretion to grant a stay and will generally decide whether to grant a stay within 21 days of receiving the institution's request, providing the institution with the reason(s) for his or her decision in writing, which should include a weighing of potential harms. A stay may be granted subject to conditions, including time limitations, where appropriate.

J. Limitation on Agency Ombudsman

Except as otherwise provided by these Guidelines, the subject matter of a material supervisory determination for which either an appeal to the Office has been filed, or a final Office decision issued, is not eligible for consideration by the Ombudsman.

K. Coordination with State Regulatory Authorities

In the event that a material supervisory determination subject to a request for review is the joint product of the FDIC and a State regulatory authority, the Director, DCP; the Director, RMS; or the Director, CISR, as appropriate, will promptly notify the appropriate State regulatory authority of the request, provide the regulatory authority with a copy of the institution's request for review and any other related materials, and solicit the regulatory authority's views regarding the merits of the request before making a determination. In the event that an appeal is subsequently filed with the Office, the Office will notify the institution and the State regulatory authority of its decision. Once the Office has issued its determination, any other issues that may remain between the

institution and the State regulatory authority will be left to those parties to resolve.

L. Effect on Supervisory or Enforcement Actions

Except as provided in these Guidelines, the use of the procedures set forth in these Guidelines by any institution will not affect, delay, or impede any formal or informal supervisory or enforcement action in progress during the appeal or affect the FDIC's authority to take any supervisory or enforcement action against that institution.

M. Effect on Applications or Requests for Approval

Any application or request for approval made to the FDIC by an institution that has appealed a material supervisory determination that relates to, or could affect the approval of, the application or request will not be considered until a final decision concerning the appeal is made unless otherwise requested by the institution.

N. Prohibition on Examiner Retaliation

FDIC policy prohibits any retaliation, abuse, or retribution by an agency examiner or any FDIC personnel against an institution. Such behavior against an institution that appeals a material supervisory determination constitutes unprofessional conduct and will subject the examiner or other personnel to appropriate disciplinary or remedial action. In light of this important principle, the Ombudsman will monitor the supervision process following an institution's submission of an appeal under these Guidelines. The Ombudsman will report to the Board on these matters periodically.

Institutions that believe they have been retaliated against are encouraged to contact the Regional Director for the appropriate FDIC region. Any institution that believes or has any evidence that it has been subject to retaliation may file a complaint with the Director, Office of the Ombudsman, Federal Deposit Insurance Corporation, 3501 Fairfax Drive, Suite E-2022, Arlington, Virginia, 22226, explaining the circumstances and the basis for such belief or evidence and requesting that the complaint be investigated and appropriate disciplinary or remedial action taken. The Office of the

Ombudsman will work with the appropriate Division Director to resolve the allegation of retaliation.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, January 22, 2026.

Jennifer M. Jones,

Deputy Executive Secretary.

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