

Statement by FDIC Chairman Jelena McWilliams on the Request for Comment on Changes to Supervisory Appeals Process

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In 1994, Congress passed the Riegle Community Development and Regulatory Improvement Act, which, among other provisions, required each federal banking agency and the National Credit Union Administration to establish an independent intra-agency appellate process to review material supervisory determinations.¹ The FDIC implemented this requirement by creating the Supervisory Appeals Review Committee (SARC), which has reviewed appeals ever since.

Over the years, the FDIC has made revisions and improvements to the SARC and the appeals process. Most recently, in 2017, the FDIC Board adopted revised guidelines, which, among other changes, expanded the circumstances under which banks may appeal a material supervisory determination. Since the revised guidelines were implemented, nine appeals have been filed with the SARC out of 18,413 exams, an average of approximately three appeals per year. Similarly, as discussed in the FDIC Office of Inspector General's 2012 report, "[a] total of 23 appeals were filed with the SARC during the 5-year period ended December 31, 2011. Of this number, one appeal was partially sustained. The remaining appeals were either denied or lacked grounds for an appeal to the SARC."² Over the next five years, from January 2012 through December 2016, 17 appeals were filed. Overall, in more than 13 years since January 2007, 50 appeals were filed out of 111,516 exams.³

The FDIC has a highly professional workforce and a deep bench of highly trained, experienced examiners. While I would like to believe that the low number of past appeals is indicative of a meeting of the minds between our examiners and the banks they examine, I consider it my duty to ensure that the appeals process is robust, fair, and independent. Therefore, in 2019, I instructed FDIC staff to undertake a review of our appeals process to determine what is working and what can be improved. Between October and December, the FDIC Ombudsman hosted a series of in-person listening sessions across the country, as well as a webinar, and received a number of helpful suggestions.

Today, the FDIC Board of Directors approved a proposal that would replace the SARC with a new Office of Supervisory Appeals. The new Office would be an independent, standalone unit within the FDIC, with final authority to decide supervisory appeals. The Legal Division would provide counsel to the Office as warranted, and would ensure decisions were limited to resolving supervisory disputes and not establishing new policy (which remains the exclusive purview of the FDIC Board of Directors). The FDIC would recruit external candidates to staff the Office, focusing on individuals with direct experience with the examination process, such as retired bank examiners, who would likely serve staggered, time-limited, nonpermanent terms.

The proposed new Office is designed to achieve several critical goals. The intent of the proposed Office first and foremost is to promote an independent, consistent appeals process. By recruiting

externally, the FDIC anticipates attracting impartial candidates who are less likely to have established relationships with individuals involved in the supervisory process. Imposing time-limited terms decreases the likelihood officials would serve in furtherance of longer-term career goals. Establishing a standalone Office whose sole function is resolving appeals ensures the reviewing officials will have the capacity to review each case with the proper attention and diligence, particularly should the volume of appeals increase. Recruiting individuals with experience with the examination process promotes the goal of ensuring that reviewing officials have the proper expertise to understand the range of issues that might be presented in appeals. Furthermore, while the FDIC currently has controls in place to promote consistency in examinations,⁴ a more robust appeals process with an independent body will further help ensure that examiners are applying policies consistently.

The proposal retains a number of aspects of the existing appeals process. For example, the burden of proof would continue to rest with the bank. The FDIC does not expect or intend the proposed changes to result in an avalanche of appeals. Rather, the proposal seeks to establish a fair, independent process for a bank to appeal material supervisory decisions. Such an appeals process is key to promoting consistency among examiners across the country, ensuring accountability at the agency, and, ultimately, maintaining stability and public confidence in the nation's financial system.

¹This process is separate and distinct from the formal enforcement process under Section 8 of the Federal Deposit Insurance Act.

²FDIC Office of the Inspector General, *The FDIC's Examination Process for Small Community Banks*, AUD-20-011, August 2012, at <https://www.fdicioig.gov/sites/default/files/publications/12-011AUD.pdf>.

³Total appeals includes a number of appeals that were not decided upon because the appeal was withdrawn by the institution, the issues were found not to be appealable, or the institution closed. Total exams includes safety and soundness, trust, information technology, Bank Secrecy Act, consumer protection, and Community Reinvestment Act examinations conducted by FDIC as primary federal supervisor.

⁴For example, all examination findings are subject to at least one layer of review for consistency with FDIC policy.