FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1267; FR ID 109572]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before December 20, 2022. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *nicole.ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1267.

Title: FCC Anti-Harassment Intake Form.

Form Number: FCC Form 5632.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households; Federal Government.

Number of Respondents and Responses: 5 respondents; 5 responses.

Estimated Time per Response: 3 hours.

Frequency of Response: One-time reporting requirement.

Obligation to Respond: Voluntary. Statutory authority for these collections is contained in the *Civil Rights Act of 1964* section 7, as amended, 42 U.S.C. 2000e; *Age Discrimination in Employment act of 1967* (ADEA), 29 U.S.C. 621–634; *Americans with Disabilities Act of 1990* (ADA), as amended, 42 U.S.C. 12101–12213; *Rehabilitation Act of 1973,* as amended, 29. U.S.C. 501 *et seq.*

Total Annual Burden: 18 hours.

Total Annual Cost: $4,050.

Privacy Act Impact Assessment: The FCC's Office of Workplace Diversity (OWD) uses the ServiceNow platform to maintain EEO complaints, including harassment complaints. The Privacy Impact Assessment (PIA) for ServiceNow is posted on the FCC's Privacy Act at *https://www.fcc.gov/managing-director/privacy-transparency/privacy-act-information.*

Nature and Extent of Confidentiality: Confidentiality of information will be provided in accordance with the Privacy Act. The Commission is not requesting respondents to submit confidential information to the Commission. If the Commission requests respondents to submit information which respondents believe is confidential, respondents may request confidential treatment of such information pursuant to section 0.459 of the Commission's rules, 47 CFR 0.459.

Needs and Uses: FCC employees and related individuals may seek a forum through the Anti-Harassment Program for inquiry and resolution of harassment claims by completing FCC Form 5632.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2022–22911 Filed 10–20–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

RIN 3064–ZA20

Guidelines for Appeals of Material Supervisory Determinations

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice and request for comment.

SUMMARY: The Federal Deposit Insurance Corporation proposes to amend its Guidelines for Appeals of Material Supervisory Determinations, expanding and clarifying the role of the agency's Ombudsman. The proposal also would require that materials considered by the Supervision Appeals Review Committee be shared with both parties to the appeal, subject to applicable legal limitations on disclosure, and would allow insured depository institutions to request a stay of a material supervisory determination while an appeal is pending.

DATES: Written comments must be received by the FDIC on or before November 21, 2022 for consideration.

ADDRESSES: Interested parties are invited to submit written comments, identified by RIN 3064–ZA20, by any of the following methods:

- *Agency Website: https://www.fdic.gov/resources/regulations/federal-register-publications/.* Follow the instructions for submitting comments.
- *Email: comments@FDIC.gov.* Include ''Guidelines for Appeals of Material Supervisory Determinations—RIN 3064–ZA20'' in the subject line of the message.
- *Mail:* James P. Sheesley, Assistant Executive Secretary, Attention: Comments—RIN 3064–ZA20, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery/Courier:* Guard station at the rear of the 550 17th Street NW building (located on F Street NW) on business days between 7:00 a.m. and 5:00 p.m. (EST).
- *Public Inspection:* Comments received, including any personal information provided, may be posted without change to *https://www.fdic.gov/resources/regulations/federal-register-publications/.* Commenters should submit only information that the commenter wishes to make available publicly. The FDIC may review, redact, or refrain from posting all or any portion of any comment that it may deem to be inappropriate for publication, such as irrelevant or obscene material. The FDIC may post only a single representative example of identical or substantially identical comments, and in such cases will generally identify the number of identical or substantially identical comments represented by the posted example. All comments that have been redacted, as well as those that have not been posted, that contain comments on the merits of this notice will be retained in the public comment file and will be considered as required under all

applicable laws. All comments may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Sheikha Kapoor, Senior Counsel, Legal Division, 202–898–3960, *skapoor@fdic.gov;* James Watts, Counsel, Legal Division, 202–898–6678, *jwatts@fdic.gov.*

SUPPLEMENTARY INFORMATION: The Federal Deposit Insurance Corporation (FDIC) is proposing to amend its Guidelines for Appeals of Material Supervisory Determinations (Guidelines), expanding and clarifying the role of the FDIC's Ombudsman in the supervisory appeals process. The FDIC is proposing to add the Ombudsman to the Supervision Appeals Review Committee (SARC) as a non-voting member. This is intended to further balance the perspectives reflected in the composition of the SARC, as the Ombudsman is independent of the supervision function and has experience in resolving disputes between insured depository institutions (IDIs) and the FDIC. In addition, the Ombudsman would monitor the supervision process following an institution's submission of an appeal under the Guidelines. The proposal also would require materials considered by the SARC to be shared with both parties to the appeal, subject to applicable legal limitations on disclosure and oversight by the Ombudsman, and would allow IDIs to request a stay of a material supervisory determination while an appeal is pending.

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.[1] The statute 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.'' [2] 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.[3]

In 1995, the FDIC adopted Guidelines for Appeals of Material Supervisory Determinations to implement section 309(a). At that time, the FDIC's Board of Directors established the SARC to consider and decide appeals of material supervisory determinations.[4] The Board has modified the composition of the SARC over the years, but as of 2021, the SARC included: one inside member of the FDIC's Board of Directors (serving as Chairperson); one deputy or special assistant to each of the other inside Board members; and the General Counsel as a non-voting member.

In January 2021, the FDIC adopted Guidelines that replaced the SARC as the final level of review in the appellate process with a standalone office within the FDIC, designated the Office of Supervisory Appeals (Office).[5] After appealing a material supervisory determination to the relevant Division Director, an IDI would have had the option to appeal to the Office. If a material supervisory determination was appealed to the Office, a three- or five-member panel of reviewing officials would consider the appeal and issue a written decision to the IDI. The Guidelines did not provide for additional review beyond the Office.

Earlier this year, the FDIC revised the Guidelines by restoring the SARC as the final level of review of material supervisory determinations made by the FDIC.[6] The revised Guidelines reconstituted the SARC as it existed in 2021. The FDIC decided to restore the SARC based on the agency's longstanding practice of ensuring Board-level review of material supervisory determinations, noting that this promotes both independence and accountability in the appellate process. Board-level review ensures accountability for the FDIC's supervisory determinations remains with the FDIC's Board of Directors, consistent with sound corporate governance principles. In addition, the FDIC noted that restoring the SARC structure addressed certain staffing concerns inherent in the Office's structure that threatened to hinder the effectiveness of the appellate process going forward.

The revised Guidelines also included procedural changes to reflect the restoration of the SARC structure, such as granting specific authorities to the SARC Chairperson. The FDIC also eliminated a provision that had been added specifically to accommodate an independent Office of Supervisory Appeals, which required communications between the Office and either supervisory staff or the appealing IDI, including materials submitted to the Office for review, to be shared with the other party to the appeal.

While the revised Guidelines were effective on May 17, 2022, the FDIC invited comments on all aspects of the revised Guidelines. The FDIC specifically asked for comments regarding the inclusion of the Ombudsman's perspective in the supervisory appeals process and for other ways to enhance the process while remaining consistent with the Ombudsman's role as a neutral liaison between supervised IDIs and the FDIC. The comment period closed on June 21, 2022.

II. Discussion of Comments

The FDIC received comment letters from a think tank, a financial holding company, a trade association, and a joint comment letter from six trade associations. The commenters raised a number of concerns with the restoration of the SARC structure. A commenter also raised concerns with the standard of review for SARC decisions and recommended a stay of supervisory actions while an appeal is pending. These comments are discussed in further detail below.

Restoration of SARC Structure

Commenters generally disagreed with the restoration of the SARC structure and the FDIC's conclusion that this would enhance the independence of the appellate process. A think tank indicated that the return to the SARC structure would not further the independence of decision making because SARC members, as FDIC leadership, have an ongoing relationship with supervisory staff and must show trust and support for the same staff whose judgment is being questioned. The commenter further stated that if FDIC board members are setting the agency's regulatory and supervisory tone, they could find themselves questioning their own policy initiatives. Along these same lines, a trade association indicated that the appellate process will be less independent if the FDIC's Board has control over the outcome.

Commenters also raised the concern that the SARC structure may not provide the intended balancing of perspectives, given the current composition of the FDIC's Board. The commenters noted that Congress

[1] 12 U.S.C. 4806(a).

[2] 12 U.S.C. 4806(f)(2).

[3] 12 U.S.C. 4806(b).

[4] 60 FR 15923 (Mar. 28, 1995).

[5] 86 FR 6880 (Jan. 25, 2021).

[6] 87 FR 30942 (May 20, 2022).

provided for a bipartisan Board of five Senate-confirmed members, but the FDIC's Board is currently comprised of an acting Chairman and two outside members, all from the same political party.

Some commenters recommended that the FDIC restore the Office of Supervisory Appeals. These commenters believed that the Office of Supervisory Appeals provided for greater independence in decision-making and that inspired confidence on the part of supervised institutions. These commenters also raised concerns with the process used to restore the SARC structure, noting that the FDIC has historically modified the Guidelines after soliciting comment. A joint comment letter from several trade associations stated that the FDIC did not sufficiently explain why the Office of Supervisory Appeals structure could or should no longer function. The comment further stated that the FDIC should have considered alternative solutions if staffing the Office of Supervisory Appeals was an issue.

Ombudsman's Role

As noted above, the FDIC solicited comment on including the Ombudsman's perspective in the supervisory appeals process and ways to enhance the process while remaining consistent with the Ombudsman's role as a neutral liaison between IDIs and the FDIC. Commenters supported expanding the Ombudsman's role in the appeals process. A trade association stated that it was a strong proponent of the FDIC's Office of the Ombudsman, explaining that Ombudsmen are experienced professionals specifically trained in resolving disputes between bankers and regulators. The commenter further stated that the Ombudsmen advocate for a fair and impartial process at the FDIC, are most familiar with both sides of the dispute, and would be a valuable source of information that would benefit appeals panel discussions. The commenter ''strongly urge[d] the role of the Ombudsmen be clarified and expanded.'' A financial holding company also contrasted the FDIC's appellate process with that of the OCC, noting that the OCC allows national banks to appeal disputes directly to an Ombudsman who operates independently from the supervision process and reports directly to the head of the agency.

Communications

The revised Guidelines eliminated a provision that was added specifically to accommodate the Office of Supervisory Appeals. This provision required that any communications between the Office and supervisory staff be in writing and shared with an appealing IDI, subject to limitations on disclosure. Commenters stated that the requirement to share *ex parte* information with both parties is a fundamental right to assure that both parties are aware of the information shared with the decision-maker and have an opportunity to respond to that information. Another commenter stated that the FDIC's elimination of this provision rendered the appeals process less effective, suggesting that it is a reason banks do not utilize the appeals process.

Standard of Review

A commenter recommended that the FDIC adopt a *de novo* standard of review, asserting that this would be consistent with the standard adopted by the Board of Governors of the Federal Reserve System in its supervisory appeals process. The commenter stated that no deference should apply to an examiner's interpretation of the law or factual findings, and explained that a more robust *de novo* standard of review would increase institutions' confidence in the process.

Stay of Material Supervisory Determinations

A financial holding company recommended that the FDIC stay supervisory actions during an appeal because supervisory determinations can have consequences for an institution, such as removing an institution from expedited processing of applications. The commenter stated that the FDIC should at least implement a mechanism whereby a bank could be relieved of such burdens while an appeal is pending. The commenter noted that the OCC's process allows the Ombudsman or the appropriate OCC official, upon written request of the bank, to relieve the bank of an obligation to comply with a supervisory decision or action while an appeal is pending.[7]

III. Proposed Guidelines

The FDIC appreciates the comments and further recommendations to enhance the informal appellate process consistent with the statute. Based on these recommendations, the FDIC is proposing to further amend the Guidelines to address commenters' concerns, as discussed in further detail below.

SARC Structure

Review of material supervisory determinations by a Board-level committee such as the SARC promotes greater accountability in the supervisory appeals process. Ultimate responsibility for the FDIC's supervision function is vested in the agency's Board of Directors by statute, and the SARC structure ensures that the Board remains accountable for the agency's supervisory determinations. Accordingly, the FDIC's longstanding practice has been to ensure Board-level review of material supervisory determinations with a panel also including other senior officials. The Guidelines governing the Office allowed for reliance on individuals with previous supervisory experience recruited from outside the FDIC and hired for intermittent service on a time-limited contract basis to make final supervisory determinations on behalf of the FDIC.

Hiring individuals from outside the agency represented a significant departure from the FDIC's established approach for over 25 years of reliance on a Board-level committee and undermines accountability for these supervisory determinations. Moreover, it is fundamentally inconsistent with how the other financial regulators have carried out their responsibilities under the Riegle Act. While there is some diversity of approach among the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, and the National Credit Union Administration, all of these agencies utilize full-time internal staff or Board members to carry out their appeals processes. The Office of the Comptroller of the Currency allows supervisory appeals to be decided by its Ombudsman, the National Credit Union Administration allows appeals to a committee of senior staff or directly to its Board of Directors, and the Board of Governors of the Federal Reserve System utilizes panels of staff from the Federal Reserve Banks and the Board of Governors.

Review of material supervisory determinations by the SARC also promotes independence from the usual supervisory or examination channels in a manner consistent with the Riegle Act. As provided by the statute, independent review means review ''by an agency official who does not directly or indirectly report to the agency official who made the material supervisory determination under review.'' [8] Members of the FDIC's Board of Directors (and their special assistants or deputies) are agency officials independent from the staff that carry out day-to-day supervisory responsibilities. They also bring important knowledge

[7] *See* OCC Bulletin 2013–15.

[8] 12 U.S.C. 4806(f)(2).

and experience with current applicable laws, regulations, and policies when they consider appeals.

In terms of timing, comment was not solicited prior to restoring the SARC structure because, at that time, there were no pending appeals, and the new Office had not yet been utilized in any cases. The FDIC sought to avoid a situation in which an appeal might be filed while these Guidelines and the appropriate appeals structure were under review. As indicated in the May 2022 notice, taking action quickly minimized the potential for confusion among IDIs with respect to the process they must follow in the event they wish to appeal a material supervisory determination. While the FDIC's primary reason for restoring the SARC structure was promoting independence and accountability in the process, it noted that staffing considerations also favored a return to the SARC structure. Commenters sought additional detail on these considerations. The FDIC had engaged in extensive efforts to recruit reviewing officials to staff the Office of Supervisory Appeals, extending the application postings for these positions in an attempt to develop a broad pool of applicants. Three reviewing officials were hired, but this would have been insufficient to provide for the minimum three-member panel if an individual were unable to participate in the review of an appeal due to a conflict of interest or illness, leaving the Office unable to function.

The FDIC is mindful, however, of the commenters' concerns regarding the need for a balance of perspectives to be reflected in the appellate process, and agrees that more should be done to achieve that balance. Adding the Ombudsman to the SARC may help to address this balance because the Ombudsman has a longstanding role as a neutral advocate for a fair and impartial process, as recognized by the commenters. The Ombudsman does not have any ongoing relationship with, or oversight responsibility for, the agency's supervision function, and including the Ombudsman's perspective may enhance independence and address perceptions of fairness.

The FDIC is proposing to add the Ombudsman to the SARC as a non-voting member in order to minimize any potential for conflict with the Ombudsman's statutory role. Under the Riegle Act, the Ombudsman acts as liaison between the agency and any affected person, and assures that safeguards exist to encourage complainants to come forward and preserve confidentiality.[9] The FDIC's Ombudsman has a longstanding commitment to neutrality that could be compromised if the Ombudsman were to serve as a voting member of the SARC. If the Ombudsman were a voting member, he or she might decide a matter against the institution, and this possibility could affect IDIs' willingness to utilize the Ombudsman's services.[10] Serving as a non-voting member of the SARC would allow the Ombudsman to remain independent of the supervision function. As a non-voting member, the Ombudsman would be expected to attend SARC meetings, participate in discussions, and offer views, opinions, and advice to the SARC during its deliberations based on the Ombudsman's perspective as a neutral advocate for a fair process, and as a party independent of the supervisory process. The FDIC believes the Ombudsman's participation in the SARC as a non-voting member would balance the views reflected in the committee's membership and give appealing IDIs greater confidence in the fairness and integrity of the process. The Ombudsman would also have access to all materials reviewed by the SARC, as explained below.

The FDIC recognizes that adding the Ombudsman to the SARC could cause IDIs to reconsider whether they should share confidential information with the Ombudsman, given that the Ombudsman could be involved in deciding a potentially related supervisory appeal. The Guidelines provide a mechanism to address this by allowing a SARC member to designate a member of his staff to serve on the SARC on his or her behalf. However, the authority to designate a staff member, found in section B of the current Guidelines, limits designation to ''the most senior member'' of the SARC member's staff. This may not be appropriate if, for example, the Ombudsman's senior staff has also been involved in dispute resolution efforts. The FDIC proposes to broaden this authority to allow a SARC member to designate any member of his or her staff within the member's area of responsibility. For example, if the Ombudsman were unable to serve as a SARC member with respect to a particular appeal because of information learned from meeting with the institution, he or she might designate a Regional Ombudsman who has not been involved in the matter to serve on the SARC instead.

Consistent with the proposed addition of the Ombudsman to the SARC as a non-voting member, the FDIC also proposes to make certain conforming changes to other provisions of the Guidelines. Specifically, section G.4 of the Guidelines currently permits both the Division Director and the Ombudsman to submit views regarding the appeal to the SARC. The FDIC proposes to eliminate the reference to the Ombudsman in this provision in the event the Ombudsman becomes a member of the SARC, as it would no longer be necessary to provide a separate mechanism for including the Ombudsman's perspective in the process. For the same reason, the FDIC proposes to eliminate current section J of the Guidelines, which states that the subject matter of a material supervisory determination is not eligible for consideration by the Ombudsman.

The FDIC also is proposing to amend section G.1 of the Guidelines to require copies of all relevant materials related to an appeal to be provided to the Office of the Ombudsman. This change would ensure that the Ombudsman is aware of all pertinent information and can provide neutral oversight of the process.

Commenters also expressed concern about possible retaliatory actions if an IDI submits a supervisory appeal. Due to these concerns, the FDIC is proposing to amend the Guidelines to require the Ombudsman to monitor the supervisory process following an IDI's submission of an appeal. The Ombudsman will be expected to report to the Board on these matters periodically. The FDIC believes these enhancements to the process may alleviate some IDIs' concerns regarding potential retaliation.

[9] 12 U.S.C. 4806(d). The FDIC notes that the OCC Ombudsman's role in deciding supervisory appeals predates the enactment of the Riegle Act (which also required the appointment of an Ombudsman). The House Conference Report accompanying the legislation stated:

Some of the Federal banking agencies have in place procedures to settle disputes between the agency and a financial institution that may satisfy the requirements of this provision. In addition, some agencies, for example, the Comptroller of the Currency, may already have appointed an ombudsman to hear appeals. Nothing in this section is intended to interfere with such existing programs.

H.R. Conf. Rep. 103–652 at 171. The FDIC also notes that the Ombudsmen at the Board of Governors of the Federal Reserve System and the National Credit Union Administration are not involved in decision making for appeals.

[10] The FDIC has previously recognized that making decisions with respect to supervisory appeals would result in some tension with the Ombudsman's statutory role as a liaison between supervised institutions and the agency. *See* 69 FR 41479, 41481 (July 9, 2004).

Communications

The FDIC understands the commenters' concerns regarding the elimination of the provision of the Guidelines that generally required communications between the Office of Supervisory Appeals and supervisory staff to be shared with the appealing institution. While the FDIC believes that the existing provision was too broad for use in the SARC structure,[11] it agrees that basic notions of fairness support a requirement that both parties to the appeal are aware of the information considered by the decision-maker. The FDIC therefore proposes to add a provision to the Guidelines, section G.8, requiring that all materials considered by the SARC are shared with both parties to the appeal, subject to applicable legal limitations on disclosure.[12] The Ombudsman would verify that both parties have received all materials considered by the SARC.

Standard of Review

As noted above, a commenter recommended that the FDIC adopt a *de novo* standard of review, asserting that this would be consistent with the standard adopted by the Board of Governors of the Federal Reserve System in its supervisory appeals process. In 2021, the FDIC amended the Guidelines to provide that the Division Director's standard of review would be substantially similar to the standard of review employed by the Federal Reserve's initial review panels.[13] The FDIC explained that under this standard, the Division Director would have discretion to consider examination workpapers and other materials developed by staff during an examination, but would make an independent supervisory determination, without deferring to the judgments of either party.[14] This standard of review remains unchanged in the current Guidelines.

The FDIC believes that the standards of review set forth in its process are consistent with those used by the Federal Reserve, in that neither standard provides that the decision maker will defer to the judgment of agency staff that made the material supervisory determination under review. The Federal Reserve's initial review panels review determinations for consistency ''with applicable laws, regulations, and policy, and supported by a preponderance of the evidence in the record . . . the panel shall make its own supervisory determination and shall not defer to the judgment of the Reserve Bank staff that made the material supervisory determination.'' [15] This is similar to the FDIC's review by a Division Director, in which the Director considers ''whether the material supervisory determination is consistent with applicable laws, regulations, and policy, [and] make[s] his or her own supervisory determination without deferring to the judgments of either party.'' This approach may be considered a *de novo* standard of review but lays out with more specificity the actual considerations to be applied.

Neither agency's process provides for a *de novo* standard at the final level of review. Rather, the Federal Reserve's final review panels ''determine whether the decision of the initial review panel is reasonable . . . and whether there has been a clear error of judgment.'' [16] Similarly, the SARC reviews an appeal ''for consistency with the policies, practices, and mission of the FDIC and the overall reasonableness of, and the support offered for, the positions advanced.''

Stay of Material Supervisory Determinations

As noted above, a financial holding company recommended that the FDIC stay supervisory actions during an appeal because supervisory determinations can have consequences for an institution, such as removing an institution from expedited processing of applications. The commenter stated that the FDIC should at least implement a mechanism whereby a bank could be relieved of such burdens while an appeal is pending. The commenter noted that the OCC's process allows the Ombudsman or the appropriate OCC official, upon written request of the bank, to relieve the bank of an obligation to comply with a supervisory decision or action while an appeal is pending.[17]

The FDIC has previously stated that IDIs may request a stay of supervisory actions from the appropriate Division Director during the pendency of an appeal,[18] but agrees that it would be useful to address this aspect of the process expressly in the Guidelines. There may be situations where a stay is appropriate to mitigate consequences of a determination during appellate review. Amending the Guidelines to expressly permit IDIs to request a stay of an action or determination would better ensure that IDIs are aware of the ability to request a stay. The FDIC therefore proposes to amend the Guidelines to allow an IDI to request a stay of a supervisory action or determination from the appropriate Division Director while its appeal is pending. The request must be in writing and include the reasons for the stay. The Division Director would have discretion to grant a stay, and would generally decide whether a stay is granted within 21 days of receiving the IDI's request. The Division Director could grant a stay subject to certain conditions where appropriate; for example, a stay could be time-limited.

Request for Comment

The FDIC invites comment on this proposal, particularly the role of the Ombudsman, sharing of appeal materials, and the ability of an IDI to request a stay of a supervisory action.

For the reasons set out in the preamble, the Federal Deposit Insurance Corporation proposes to adopt 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 (Pub. L. 103–325, 108 Stat. 2160) (Riegle Act) required 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 will be considered and decided. The procedures set forth in these Guidelines establish an appeals process for the review of material supervisory determinations by the Supervision Appeals Review Committee (SARC).

[11] The provision could have been read broadly, for example, to require the sharing of all communications about pending or ongoing enforcement actions in the event a bank were to file a supervisory appeal.

[12] For example, the disclosure of confidential supervisory information and certain other types of information is restricted under 12 CFR part 309. Thus, to the extent that materials shared with the SARC include such confidential supervisory information relating to another IDI, for example, that material could be redacted.

[13] 86 FR 6880, 6883 (Jan. 25, 2021).

[14] *Id.*

[15] *See* Board of Governors of the Federal Reserve System Supervision Letter 20–28, section B.7. The Board noted that this approach may be considered a *de novo* standard of review. *See* 85 FR 15175, 15177 (Mar. 17, 2020).

[16] *See* Board of Governors of the Federal Reserve System Supervision Letter 20–28, section B.16.

[17] *See* OCC Bulletin 2013–15.

[18] *See* 82 FR 34522, 34526 (July 25, 2017).

B. SARC Membership

The following individuals comprise the three (3) voting members of the SARC: (1) One inside FDIC Board member, either the Chairperson, the Vice Chairperson, or the FDIC Director (Appointive), as designated by the FDIC Chairperson (this person would serve as the Chairperson of the SARC); and (2) one deputy or special assistant to each of the inside FDIC Board members who are not designated as the SARC Chairperson. The General Counsel and the Ombudsman are non-voting members of the SARC. The FDIC Chairperson may designate alternate member(s) to the SARC if there are vacancies so long as the alternate member was not involved in making or affirming the material supervisory determination under review. A member of the SARC may designate and authorize a member of his or her staff within the member's area of responsibility related to cases before the SARC to act on his or her behalf.

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 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 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) or the Division of Risk Management Supervision (RMS);

(n) Decisions to initiate informal enforcement actions (such as memoranda of understanding);

(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; and

(q) 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 parts 370, 371, and 381, and § 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. 1831*o;*

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

(d) Formal enforcement-related actions and decisions, including determinations and the underlying facts and circumstances that form the basis of a recommended or pending formal enforcement action.

(3) A formal enforcement-related action or decision commences, and becomes unappealable, when the FDIC initiates a formal investigation under 12 U.S.C. 1820(c) (Order of Investigation), issues a notice of charges or a notice of assessment under 12 U.S.C. 1818 or other applicable laws (Notice of Charges), provides the institution with a draft consent order, or otherwise provides written notice to the institution that the FDIC is reviewing the facts and circumstances presented to determine if a formal enforcement action is merited under applicable statutes or published enforcement-related policies of the FDIC, including written notice of a referral to the Attorney General pursuant to 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). Such notice may be provided in the transmittal letter accompanying a Report of Examination. For the purposes of these Guidelines, remarks in a Report of Examination do not constitute written notice that the FDIC is reviewing the facts and circumstances presented to determine if a proposed enforcement action is merited. Commencement of a formal enforcement-related action or decision will not suspend or otherwise affect a pending request for review or appeal that was submitted before the commencement of the formal enforcement-related action or decision.

(4) Additional Appeal Rights:

(a) In the case of any written notice from the FDIC to the institution that the FDIC is determining whether a formal enforcement action is merited, 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 SARC Chairperson, after the FDIC notifies the institution that the relevant Division Director is seeking formal authority to take an enforcement action.

(b) In the case of a referral to the Attorney General for violations of the ECOA, beginning on the date the referral is returned to the FDIC, the FDIC must proceed in accordance within paragraph (a), including within the specified timeframes, or appeal rights will be made available pursuant to these Guidelines.

(c) In the case of providing notice to HUD for violations of the ECOA or the FHA, beginning on the date the notice is provided, the FDIC must proceed in accordance within paragraph (a), including within the specified timeframes, or appeal rights will be made available pursuant to these Guidelines.

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

(e) The relevant FDIC Division and the institution may mutually agree to extend the timeframes in paragraphs (a), (b), and (c) if the parties deem it appropriate.

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 the Division of Complex Institution Supervision and Resolution (CISR), or to filing a subsequent appeal with the SARC under these Guidelines.

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), 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 SARC 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 SARC.

(3) No appeal to the SARC will be 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 SARC and will provide the mailing address for any appeal the institution may wish to file.

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

G. Appeal to the SARC

An institution that does not agree with the written determination rendered by the Division Director may appeal that determination to the SARC 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 SARC.

1. Filing With the SARC

An appeal to the SARC 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. The appeal should be sent to the address indicated on the Division Director's determination being appealed, or sent via email to *ESS_Appeals@fdic.gov.* 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 SARC 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 SARC. Evidence not presented for review to the Division Director is generally not permitted; such evidence may be submitted to the SARC only if approved by the SARC Chairperson 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 the SARC administrative 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 Division Director may submit views regarding the appeal to the SARC within 30 calendar days of the date on which the appeal is received by the SARC.

5. Oral Presentation

The SARC will, if a request is made by the institution or by FDIC staff, allow an oral presentation. The SARC 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 SARC.

6. Consolidation, Dismissal, and Rejection

Appeals based upon similar facts and circumstances may be consolidated for expediency. An appeal may be dismissed by the SARC 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 SARC will decline to consider an appeal if the institution's right to appeal is not yet available under section D(4), above.

7. Scope of Review and Decision

The SARC will be an appellate body and will make independent supervisory determinations. The SARC will review the appeal for consistency with the policies, practices, and mission of the FDIC and the overall reasonableness of, and the support offered for, the positions advanced. The SARC's review will be 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 will be given to any facts or circumstances that occur or corrective action taken after the determination was made. The SARC will not consider any aspect of an appeal that seeks to change or modify existing FDIC rules or policy. The SARC, after consultation with the Legal Division, will refer any appeals that raise policy matters of first impression to the Chairperson's Office for its consideration. The SARC will notify the institution, in writing, of its decision concerning the disputed material supervisory determination(s) within 45 days after the date the SARC 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 SARC.

8. Other Communications

Materials considered by the SARC will be shared with both parties to the appeal, subject to applicable legal limitations on disclosure. The Ombudsman will verify that both parties have received all materials considered by the SARC.

H. Publication of Decisions

Decisions of the SARC will be published as soon as practicable, and the published decisions will be 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. In cases in which redaction is deemed insufficient to prevent improper disclosure, published decisions may be presented in summary form. Published SARC decisions may be cited as precedent in appeals to the SARC. Annual reports on the SARC'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 SARC will be governed by these Guidelines. The SARC, with the concurrence of the Legal Division, will retain discretion to waive any provision of the Guidelines for good cause. Supplemental rules governing the SARC'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 SARC Chairperson, 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 from the appropriate Division Director a stay of a supervisory action or determination 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. The Division Director may grant a stay subject to conditions, including time limitations, where appropriate.

J. 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 SARC, the SARC will notify the institution and the State regulatory authority of its decision. Once the SARC 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.

K. Effect on Supervisory or Enforcement Actions

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.

L. 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.

M. Prohibition on Examiner Retaliation

The FDIC has an experienced examination workforce and is proud of its professionalism and dedication. 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, VA 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, on October 18, 2022.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2022–22946 Filed 10–20–22; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting; Notice of Meeting Held With Less Than Seven Days Advance Notice

TIME AND DATE: 10:00 a.m. on Tuesday, October 18, 2022.

PLACE: The meeting was held in the FDIC Board Room, 550 17th Street NW, Washington, DC, and was webcast to the public.

MATTERS TO BE CONSIDERED: Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors met in open session at 10:00 a.m. on Tuesday, October 18, 2022 to consider the matters listed below. Prior to the meeting, the Board of Directors unanimously determined that the matter ''Memorandum and resolution re: Advanced Notice of Proposed Rulemaking entitled 'Resolution-Related Resource Requirements for Large Banking Organizations.' '' be added to the discussion agenda with less than seven days' notice to the public, and that no earlier notice of the addition was possible than that given on Friday, October 14.

Summary Agenda

Disposition of Minutes of a Board of Directors' Meeting Previously Distributed.

Memorandum and resolution re: Final Rule on Assessments—Amendments to Incorporate Troubled Debt Restructuring Accounting Standards Update.

Memorandum and resolution re: Designated Reserve Ratio for 2023.

Summary report of actions taken pursuant to authority delegated by the Board of Directors.

Discussion Agenda

Memorandum and resolution re: Final Rule on Assessments, Revised Deposit Insurance Assessment Rates.

Memorandum and resolution re: Advanced Notice of Proposed Rulemaking entitled ''Resolution-Related Resource Requirements for Large Banking Organizations.''

Memorandum and resolution re: Proposed Amendments to the Guidelines for Appeals of Material Supervisory Determinations.

CONTACT PERSON FOR MORE INFORMATION: Requests for further information concerning the meeting may be directed to Debra A. Decker, Executive Secretary of the Corporation, at 202–898–8748.

Dated at Washington, DC, on October 18, 2022.

Federal Deposit Insurance Corporation.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2022–22967 Filed 10–20–22; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

TIME AND DATE: 11:23 a.m. on Tuesday, October 18, 2022.

PLACE: The meeting was held in the Board Room located on the sixth floor of the FDIC Building located at 550 17th Street NW, Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED: The Board of Directors of the Federal Deposit Insurance Corporation met to consider matters related to the Corporation's supervision, corporate, and resolution activities. In calling the meeting, the Board determined, on motion of Director Michael J. Hsu (Acting Comptroller of the Currency), seconded by Director Rohit Chopra (Director, Consumer Financial Protection Bureau), and concurred in by Acting Chairman Martin J. Gruenberg, that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b (c)(2), (c)(4), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10).

CONTACT PERSON FOR MORE INFORMATION: Requests for further information concerning the meeting may be directed to Debra A. Decker, Executive Secretary of the Corporation, at 202–898–8748.

Dated this the 18th day of October, 2022.

Federal Deposit Insurance Corporation.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2022–22968 Filed 10–20–22; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington DC 20551–0001, not later than November 21, 2022.

A. Federal Reserve Bank of Kansas City (Jeffrey Imgarten, Assistant Vice