April 20, 2026

Via Electronic Submission
Office of the Comptroller of the Currency
400 7th Street, SW, Suite 1E-216
Washington, D.C. 20219
Attention: Chief Counsel's Office, Comment Processing
Docket ID OCC-2026-0001; RIN 1557-AF48

Re: Notice of Proposed Rulemaking: Bank Appeals Process

Ladies and Gentlemen:

The Bank Policy Institute,[1] the American Association of Bank Directors,[2] and the Independent Community Bankers of America[3] appreciate the opportunity to comment on the Office of the Comptroller of the Currency's proposal (the "NPR" or the "proposal") to revise its

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1 The Bank Policy Institute is a nonpartisan public policy, research, and advocacy group that represents universal banks, regional banks, and the major foreign banks doing business in the United States. The Institute produces academic research and analysis on regulatory and monetary policy topics, analyzes and comments on proposed regulations, and represents the financial services industry with respect to cybersecurity, fraud, and other information security issues.

2 The American Association of Bank Directors is a non-profit organization that represents the interests of bank directors throughout the United States. Founded in 1989, the American Association of Bank Directors is the only trade group in the United States devoted solely to bank directors and their information, education, and advocacy needs.

3 The Independent Community Bankers of America® has one mission: to create and promote an environment where community banks flourish. We power the potential of the nation's community banks through effective advocacy, education, and innovation. As local and trusted sources of credit, America's community banks leverage their relationship-based business model and innovative offerings to channel deposits into the neighborhoods they serve, creating jobs, fostering economic prosperity, and fueling their customers' financial goals and dreams. For more information, visit ICBA's website at icba.org.

policies and procedures for appealing material supervisory determinations.[4] We support the OCC's objectives to enhance the "independence of the appeals process and the transparency of the OCC's decision-making" and believe that the proposed amendments reflect thoughtful improvements to what today is unfortunately a seldom-used formal appeals process.[5]

As the NPR notes, supervised entities rarely avail themselves of the current OCC appeals process, which has remained unaltered since 2013.[6] Based on experience, banks believe there is little likelihood of success in appealing a material supervisory determination and that the risk of adverse consequences, including retaliation, from within the agency (whether real or perceived) too often outweighs any likely benefit of pursuing an appeal. This experience is supported by an oft-cited survey, which found that supervised entities would like to appeal material supervisory determinations more often than they do.[7] We agree that, in order to offer OCC-supervised institutions a "meaningful opportunity . . . to challenge OCC decisions and actions," the appeals process must be reformed.[8] Importantly, in an effort to enhance the independence of the supervisory appeals process, the NPR would establish a *de novo* standard of review for material supervisory appeals and would create a new appeals board (the "Appeals Board") that would take on the role currently served by the OCC's Ombudsman in adjudicating appeals.[9]

These welcome changes, along with the important recommended refinements discussed below, would bolster the banking industry's confidence in the impartiality and consistency of the "independent intra-agency appellate process" mandated by Section 309(a) of the Riegle

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4 This appeals process is mandated by Section 309(a) of the Riegle Community Development and Regulatory Improvement Act of 1994. Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. No. 103-325, § 309, 108 Stat. 2160 (codified as amended at 12 U.S.C. § 4806).

5 Bank Appeals Process, Office of the Comptroller of the Currency, 91 Fed. Reg. 7163, 7166 (Feb. 17, 2026) (hereinafter "NPR").

6 NPR, at 7164–66. *See also* Julie Andersen Hill, *When Bank Examiners Get It Wrong: Financial Institution Appeals of Material Supervisory Determinations*, 92 Wash. U. L. Rev. 1101 (2015) (showing that federal financial institution regulators' appeals processes are seldom used and lack effectiveness).

7 In a survey with over 1,000 responses from banks across the United States, 30 percent of respondent banks were unsatisfied or very unsatisfied with their most recent examination and results, suggesting that many banks that are dissatisfied do not seek recourse through the appeals process. Andersen Hill, *When Bank Examiners Get It Wrong*, at 1165–66.

8 NPR, at 7166. Supervised entities are entities "for which the OCC makes material supervisory determinations." Proposed § 4.102 ("Supervised entity").

9 NPR, at 7168, 7170; Proposed § 4.105.

Community Development and Regulatory Improvement Act of 1994 (the "Riegle Act").[10] These recommendations include:

- Adopting the proposed *de novo* standard of review and clarifying that the application of that standard encompasses an independent determination of applicable law and policy applied to independent findings of fact based on an appropriately scoped record (*e.g.*, no *ex parte* communications).
- Adopting measures to foster the independence and expertise of the Appeals Board, such as selecting voting members who are not otherwise currently or recently employed at the OCC, strengthening conflict of interest protections, adding five to six members to the Appeals Board to enable the Appeals Board to establish panels of three members ("Panels") to hear appeals, and appointing members to three-year terms.
- Clarifying and simplifying the rules regarding commencing an appeal, including by allowing senior bank management to authorize an appeal and clarifying the scope of appealable "material supervisory determinations."
- Strengthening the proposed process for hearing and deciding appeals, including by prohibiting *ex parte* communications, clarifying that appellants are permitted to supplement the review record, and providing banks with a reasonable amount of time to appeal prior to commencement of an enforcement action premised on a material supervisory determination.
- Implementing additional protections to strengthen the Ombudsman's role as an impartial liaison.
- Revising the Shared National Credit ("SNC") appeals process, including by clarifying how ratings will apply consistently, sharing the OCC's logic for both pass and non-pass rated facilities, and facilitating communication between participant banks and the OCC.

[10] Riegle Community Development and Regulatory Improvement Act, § 309(a) (codified as amended at 12 U.S.C. § 4806(a)).

I. The OCC should adopt the proposed *de novo* standard of review and clarify that the application of that standard encompasses an independent determination of the facts and of applicable law and policy.

a. The OCC should adopt the proposed *de novo* standard of review.

We support the OCC's proposal that the Appeals Board and the Deputy Comptroller review appeals *de novo*, without deference to either party or to the previous decision.[11] We agree that the *de novo* standard would give appellants greater confidence that the appeals process is fair and independent. As the NPR acknowledges, the "lack of a clear standard, coupled with the fact that the OCC appeals process finds in favor of the supervisory office the majority of the time, has led to a perception that filing a formal appeal is not worth the resources and risk of retaliation because there is a low chance of success."[12]

The adoption of the *de novo* review standard, and the resulting possibility that members of the Appeals Board will comprehensively review any given material supervisory determination, will prompt examination and supervision staff to take added care that they have thoroughly considered, and explained the basis for, their decisions. It will also strengthen supervised entities' confidence that material supervisory determinations are well-supported and correct and that, when they do disagree with a decision, appealing would be worthwhile.

b. The OCC should clarify that the *de novo* review standard encompasses independent determination of the facts, and of applicable law and policy.

The NPR proposes to define the *de novo* standard of review to mean:

> a standard of review that is not deferential to either party and that does not defer to the determinations of either party. This standard of review does not defer to the previous decision but freely considers the matter anew, as if no decision had been rendered below, on the materials in the review record.[13]

Although implied in the NPR's non-deferential framing of what *de novo* review means, the final rule on the OCC's supervisory appeals process (the "Final Rule") should explicitly clarify that the Appeals Board's *de novo* review encompasses independent findings of fact and

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[11] Proposed §§ 4.104-105.

[12] NPR, at 7166.

[13] Proposed § 4.102 ("De novo standard of review").

independent determinations of applicable law and policy that do not defer to either party or to the determinations below.[14]

First, the OCC should explicitly address that the Appeals Board or Deputy Comptroller, as appropriate, may make their own findings of fact based on the record. For example, the Appeals Board or Deputy Comptroller may weigh the evidence presented in the record in an appeal and determine what is more likely than not to be true based on that evidence. Such findings of fact may then influence the decision of the Appeals Board or Deputy Comptroller whether or not to overturn a material supervisory determination.

The OCC should also clarify that, if an appeal involves questions as to the proper application of law or regulation (*e.g.*, not merely matters that are procedural in nature), the Appeals Board or Deputy Comptroller would, under the proposed *de novo* standard of review, be able to consider the appellant's and the OCC staff's legal arguments and come to its own conclusion. Even recognizing that the function of the Appeals Board or Deputy Comptroller is not to "reconsider or change OCC interpretations of law or policy" or consider a "legal question of first impression," the appeals process should provide the Appeals Board with broad authority to determine whether relevant law or policy was properly applied to a set of facts in an appeal.[15]

For example, OCC-cited violations of law included in a report of examination ("ROE") or supervisory letter may form the basis of a material supervisory determination.[16] If examination or supervision staff cite a supervised entity for a violation of law and have identified deficient

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[14] Findings of fact are "determination[s] by a judge, jury, or administrative agency of a fact supported by evidence in the record." Finding of fact, Black's Law Dictionary (12th ed. 2024).

[15] NPR, at 7168. Proposed § 4.105(e). The OCC should also define what a "legal question of first impression" is. The OCC should adopt the well-understood meaning of this phrase, as provided by Black's Law Dictionary:

> **Case of first impression** (1806) A case that presents the court with an issue of law that has **not** previously been decided by **any** controlling legal authority in that jurisdiction.
>
> "If the case is the first of the kind, a case of first impression, the decision is not of great weight until supported by subsequent decisions. In a case of first impression, there is by definition **a total lack of precedent**; and there can also be only an imperfect foresight of the results to which the new decision may lead." Eugene Wambaugh, The Study of Cases § 60, at 56 (2d ed. 1894).

Case, Black's Law Dictionary (12th ed. 2024) (emphasis in original and added).

[16] Proposed § 4.103(b)(1).

practices that contributed to the violation, the Appeals Board or the Deputy Comptroller should be able to overrule those OCC-cited violations and/or deficiencies on the basis that the Appeals Board or Deputy Comptroller concludes that the deficient practices do not constitute a violation of law.

Further, the Appeals Board or Deputy Comptroller need not find that the prior determination was clearly erroneous or that there was an abuse of discretion. In fact, under the *de novo* standard, the Appeals Board need not make any findings with respect to the prior determination, as the entire matter, including factual, legal, and supervisory determinations, should be treated as if no previous decision had been made.[17]

c. The Appeals Board should have access to external advice when needed.

When reviewing appeals, including the proper application of law or regulation, the Appeals Board may, from time to time, determine that it needs external technical support or expertise. This may include the support of external counsel. Recognizing that the OCC's in-house counsel serves as counsel to examination and supervision staff involved in making supervisory determinations, the Appeals Board should have resources made available to it to be able to retain external counsel, as the Appeals Board deems necessary, to ensure a more independent and fair process.

d. The Final Rule should clarify that neither party has the burden of proof.

The NPR asks whether the OCC should clarify the standard for the burden of proof and, if it is clarified, what that standard should be.[18] We recommend that the Final Rule clarify that neither the appellant nor the OCC staff will have the burden of proof. The Deputy Comptroller

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[17] Proposed § 4.102 ("De novo standard of review").

Such clarifications are important because, in some members' experience, prior OCC consideration of appeals has focused solely on whether staff adhered to agency policies and procedures in developing the challenged findings, rather than on whether the criteria for the supervisory determination have been met. Such a narrow focus would leave little opportunity for appellants to challenge factual errors, flawed determinations, or discretionary conclusions relating to, *e.g.*, safety and soundness and, thereby, frustrate the purpose of the proposal.

For example, if the OCC finalizes the standards for matters requiring attention proposed in its Unsafe or Unsound Practices, Matters Requiring Attention NPR, the Final Rule should make clear that the Appeals Board or Deputy Comptroller is permitted to reach a different conclusion in relation to the examination or supervision staff's factual findings or discretionary conclusions that a given factual scenario under review meets the OCC's definition of a matter requiring attention. Unsafe or Unsound Practices, Matters Requiring Attention, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, 90 Fed. Reg. 48,835, 48,840–41 (Oct. 30, 2025).

[18] NPR, at 7172 (Question 7).

or Appeals Board reviewing an appeal should consider the facts and application of laws, regulations, policies, and procedures as if they were in the same position, *ab initio*, as the examiner or supervisor who made the material supervisory determination. This approach would help to ensure that the Deputy Comptroller or the Appeals Board's review is truly *de novo*.

II. The Final Rule should adopt measures to strengthen the independence and expertise of the Appeals Board.

a. The Appeals Board should consist only of members not otherwise currently or recently employed at the OCC.

To strengthen the independence of the Appeals Board, the Appeals Board's voting members should include only individuals recruited from outside of the OCC. The NPR states that the OCC is considering alternatives whereby OCC employees from reporting lines separate from the one that rendered the supervisory determination may serve on the Appeals Board.[19] Although this alternative could meet the OCC's minimum statutory obligation to establish an "independent appellate process" that comprises "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,"[20] such an alternative would not adequately protect the appellate process from institutional influence and would not engender confidence in the independence of the process among supervised entities.

There is robust academic literature that employment within an organization can strongly influence an individual's identity and perspective.[21] In this context, this literature suggests that employees, even in reporting lines separate from the one that rendered the material supervisory determination or an employee to whom those employees report, may be more likely than non-employees appointed to the Appeals Board to identify with the OCC decisionmaker who was responsible for making the appealed material supervisory determination in question. This shared identity may make current or recent OCC employees

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19 *Id.* at 7168.

20 12 U.S.C. § 4806(a), (f)(2).

21 *See, e.g.*, Ola Nordhall, Julia Hörvallius, Mathilda Nedelius & Igor Knez, *Employees' Experiences of Personal and Collective Work-Identity in the Context of an Organizational Change*, Front. Psychol. (2025), https://pmc.ncbi.nlm.nih.gov/articles/PMC11948747/pdf/fpsyg-16-1382271.pdf (summarizing the literature on personal and collective work identity and noting that the more an individual identifies with an organization, "the stronger will his/her values, norms, acceptance and loyalty to the organization be" and that the "[p]erception of the organization's success as one's own success implies that one feels personally affected if the organization is doing well or not").

less capable than non-employees of performing a bona fide, independent *de novo* review and assessment. Therefore, an Appeals Board including current employees or recently departed employees would not meaningfully address industry concerns regarding the impartiality of the supervisory process as described in the preamble to the NPR or serve the NPR's stated objective of increasing "confidence in the independence of the decision making on appeals."[22]

Moreover, appointing existing OCC employees to the Appeals Board as voting members would create difficulty in the administration of supervisory appeals, as having such employees on the Appeals Board will likely result in increased recusals. Recusals can be disruptive and potentially delay appeals. The increased likelihood of recusals that may result from OCC employees serving on the Appeals Board would make appointments of such employees even more undesirable.

Further, appointing only external members as voting members would also more closely align with the approach recently adopted by the Federal Deposit Insurance Corporation (the "FDIC"), which prohibits current FDIC employees from serving in its Office of Supervisory Appeals.[23] We agree with the FDIC that such a policy is "best [for] promot[ing] the independence" of supervisory appeals.[24]

b. The CNBE should serve as a resource available to the Appeals Board rather than as a member of the Appeals Board.

The Chief National Bank Examiner (the "CNBE") should serve as a resource available to the Appeals Board rather than as a member of the Appeals Board because the CNBE is better suited to serving as an advisor. The CNBE is the head of the Office of the Chief National Bank Examiner, which is tasked with "provid[ing] support to bank supervision" and with managing "the development and administration of supervisory data, systems, reports, and analytics."[25] The CNBE has complete access to OCC examination records and is in frequent contact with examination and supervision staff. The CNBE, therefore, may offer a helpful perspective to the

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22 NPR, at 7168.

23 Guidelines for Appeals of Material Supervisory Determinations, Federal Deposit Insurance Corporation, 91 Fed. Reg. 3184, 3191 (Jan. 26, 2026) (hereinafter "FDIC Guidelines").

24 *Id*. at 3186. For the same reasons, the Ombudsman or other OCC executives should not serve as voting Appeals Board members. They too could be seen (fairly or not) as aligned with the agency's perspective.

25 *Office of the Chief National Bank Examiner*, Office of the Comptroller of the Currency, https://www.occ.treas.gov/about/who-we-are/organizations/office-of-the-chief-national-bank-examiner/index-office-of-the-chief-national-bank-examiner.html (last accessed Mar. 18, 2026).

voting members of the Appeals Board and could act as a sounding board for their ideas and questions.

However, the CNBE should not serve as a member of the Appeals Board because of the potential, or perceived potential, for the CNBE to be unable to provide an independent view. The CNBE would have access to OCC records and examination and supervision staff, and an indirect ability to influence supervision staff, in his or her day-to-day role, outside of the CNBE's proposed role on the Appeals Board. Meanwhile, Appeals Board members who are not otherwise OCC employees also have access to OCC records and examination and supervision staff, but they would only have this access in the context of their role as a neutral arbiter.

Further, the CNBE is also generally an examiner who has risen through the ranks of the OCC. Although the CNBE's access and experience likely provide the CNBE with deep insights, which would enhance the CNBE's ability to be a productive advisory member of the Appeals Board, that same background militates towards excluding the CNBE from the Appeals Board as a voting member because such experience and access likely creates strong institutional affiliation. This likely strong institutional affiliation puts pressure on the CNBE's partiality and ability to address issues independently and *de novo*.[26]

c. The OCC should enhance the Appeals Board's conflict of interest protections and require a one-year cooling-off period.

Many of the potential appointees to the Appeals Board are likely to have previously worked at the OCC or within the financial services industry, given that these individuals have directly relevant experience. While the OCC should prioritize appointing members to the Appeals Board with sufficient expertise, the OCC should implement additional safeguards to strengthen the Appeals Board's independence. In particular, the OCC should require former OCC staff to observe a one-year cooling-off period before they are eligible for appointment to the Appeals Board.

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[26] If the OCC retains the CNBE on the Appeals Board, the OCC should implement appropriate safeguards to help ensure that the CNBE exercises independent judgment. As discussed further below, the OCC should prohibit *ex parte* communications and make any inadvertent *ex parte* communications available to both parties. In addition, the OCC should ensure that the CNBE only acts upon information presented to the Appeals Board.

d. The Appeals Board should include a pool of five to six members.

i. Having only three members on the Appeals Board is potentially impractical and may lead to less independent judgments.

The NPR proposes including three members on the Appeals Board.[27] Under this proposal, the loss of a single member for reasons such as illness or recusal[28] would leave the Appeals Board with only two members to decide appeals. The proposed structure is problematic for a few reasons.

First, recusals of Appeals Board members may arise with some frequency. Second, if the OCC decides to hire Appeals Board members as part-time employees, such members may not always be available to hear an appeal, again increasing the chances that the Appeals Board will often have two members hearing a case. Moreover, if one of the independent members is absent and the OCC does decide to keep the CNBE as a member of the Appeals Board, the CNBE would play an outsized role in deciding the matter, which is contrary to the OCC's stated goal of enhancing confidence in the appeals process's independence.

In addition, when one member is absent, the two remaining members may disagree, resulting in a tie and no final resolution of the matter. In such ties, the Comptroller would determine the matter.[29] Frequently relying on the Comptroller to break these ties would discard many of the intended benefits of establishing an independent body to render such decisions.

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[27] As proposed, the Appeals Board would consist of the CNBE and two term appointees, who are not OCC staff and have not previously served as term appointees. Proposed § 4.108. The term appointees would serve for one year. *Id.*

[28] Under the NPR, Appeals Board members must recuse themselves if they have been "substantively involved in one or more of the determinations being appealed" or if they were "substantively involved in the supervisory determination at issue," meaning that they were "personally consulted regarding the issue being determined and provided guidance regarding how it should be resolved." Proposed § 4.105(d), (g). *See also* Proposed § 4.103(c).

In addition to this recusal requirement, the Final Rule should confirm that Appeals Board members will be subject to conflict of interest rules generally applicable to OCC employees. *See OCC Ethics Rules*, Office of the Comptroller of the Currency, https://careers.occ.gov/careers/apply/occ-ethics-rules-a-plain-english-guide.html (last accessed Apr. 15, 2026). Moreover, to the extent potential conflicts of interest are not covered by these generally applicable rules, the Final Rule should explicitly incorporate broader conflict of interest principles into the recusal decision, such as a member's reasonably likely substantive or policy-oriented bias.

[29] Proposed § 4.107(b).

Finally, the NPR states that introducing the proposed process could significantly increase the number of material supervisory determinations appealed each year.[30] Because an increased number of material supervisory determinations are likely to be appealed, it may be even more difficult or impossible for an Appeals Board of only three members to be available and not recused for every case.

ii. Including a pool of five to six members is more workable.

The OCC should redefine the Appeals Board as a body consisting of a pool of five to six members from which three members are selected to serve on a Panel, which should be a separate defined term under the Final Rule.[31] This change would help to ensure that the Appeals Board always has three members available to serve on a Panel who are not conflicted out of hearing the appeal. Always having three members to hear an appeal is important for encouraging deliberation, ensuring a diversity of viewpoints, and avoiding the occurrence of ties in decision-making between the two remaining members. It would also avoid the risk of outsized influence by the CNBE (if retained as a member) or by the Comptroller as the tie-breaker. In addition, a larger pool would enable the OCC to select panelists with complementary expertise to review each appeal.[32]

iii. If a Panel of three members cannot be formed, the Appeals Board should have the authority to appoint another member on a temporary basis.

While it may be rare with a pool of five to six members, situations may arise when only two members are available to serve on a Panel. In these situations, the Comptroller should be authorized to appoint one or more individuals, subject to the independence, experience, and

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30 The NPR states that the OCC "estimates that appeals could increase by 50 appeals per year if five percent of OCC regulated banks make an appeal each year under the new process." NPR, at 7174.

31 The NPR defines Appeals Board as "a panel consisting of the chief national bank examiner and two term appointees." Proposed § 4.102 ("Appeals Board"). If the CNBE is retained as a member of the Appeals Board, the OCC could include an additional alternate, such as a Deputy Comptroller within the Office of the CNBE, to fill in for the CNBE when the CNBE cannot hear a case.

If necessary given the size of the Appeals Board, we support the OCC hiring Appeals Board members on a part-time basis and compensating members per appeal or on an hourly basis.

32 If the OCC declines to create a pool of members, at minimum the OCC should appoint alternate member(s) to step in as needed.

qualification considerations discussed herein, to serve on the Appeals Board on a temporary basis.[33]

iv. The OCC should appoint members with complementary expertise to each Panel to ensure a diversity of perspectives.

If the OCC adopts the suggestion to create a five- to six-member Appeals Board, the OCC should seek to appoint members with distinct backgrounds to make the Appeals Board better equipped to decide the appeals that come before it. Having a member on a given Panel with experience specific to the appellant's institution type would allow this member to provide helpful insight to the other panelists as they consider the appeal. In particular, in the case of a five- to six-member Appeals Board, the OCC should seek at least (1) one member with industry experience relating to mid-sized and/or large institutions; (2) at least one member with industry experience relating to community banks; and (3) at least one member with a legal background focused on administrative enforcement actions and/or relevant supervisory experience.[34] Where a member has specific experience particularly relevant to an appeal, that member should be on the Panel that hears the appeal. For example, when a mid-sized bank initiates an appeal, the member with mid-sized and/or large institution experience should sit on the Panel that hears the appeal, absent recusal or unavailability.[35]

e. Once a candidate from the pool of qualified candidates is chosen to serve on an Appeals Board, he or she should serve for three years.

Instead of the proposed one-year terms, appointees should serve for three years, and the appointees' terms should be staggered. These terms would not be renewable, which would address the OCC's concern about members finding in the OCC's favor to secure reappointment.[36] Staggered, non-renewable three-year terms would allow for greater continuity, for members to gain more experience, and for improved administrability, while continuing to avoid the concerns raised by the OCC.

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[33] The FDIC takes a similar approach. The FDIC Chairperson may authorize its Office of Supervisory Appeals to operate with fewer than three members temporarily or appoint officials on a temporary basis for no more than 120 days. FDIC Guidelines, at 3191.

[34] Requiring one member with relevant supervisory experience would more closely align the OCC's approach with that of the FDIC. *Id.*

[35] However, the appellant should have the opportunity to preemptively challenge the selection of a member to a given Panel if the appellant feels that the member should have been recused.

[36] NPR, at 7168.

Allowing appointees to serve for three years would enhance the Appeals Board's efficacy because it would allow the appointees to develop a deeper body of expertise based on their experience hearing prior cases than if appointees served for only one year. For example, under this approach, members of the Appeals Board would likely become more familiar with the substance of the material supervisory determinations most frequently appealed and the Appeals Board's own internal processes. This experience would allow appointees to act more efficiently and make better-informed decisions on the appeals before it.[37]

Further, a three-year term would enhance continuity because it would allow appointees to serve generally for at least two examination cycles, which typically last for 12 to 18 months. With one-year terms, a single term may not fully align with even a single exam cycle. The continuity afforded by longer terms would be beneficial because it would promote greater consistency and institutional knowledge in the review of appeals.

Three-year terms would also reduce the administrative burden on the OCC. With three-year terms, the OCC would not have to repopulate the Appeals Board every year, which would give the OCC more time to identify and onboard suitable replacements and would lower the risk of depleting the pool of qualified candidates.

Finally, three-year terms would reduce the frequency with which members hear appeals that extend beyond their term. If members are replaced every year, they may frequently hear appeals that have not concluded before their terms have expired. Less frequent occurrence of this problem would reduce the burden on the OCC, which otherwise would need to consider whether to extend a member's term on a case-by-case basis or have a new Appeals Board member hear an appeal partway through.

f. If the Final Rule retains the Comptroller's authority to override Appeals Board decisions, the OCC should implement additional due process safeguards.

The NPR proposes allowing the Comptroller to overturn "any decision by the Appeals Board."[38] The NPR also proposes that the Comptroller would retain "discretion" to waive any of the provisions in the Final Rule. In our view, frequent use of the discretionary power to override could negate many of the independence benefits of the Appeals Board. We urge the OCC to seriously consider whether this override authority is needed at all.

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[37] Among arbitrators, "training as well as experience in alternative dispute resolution . . . is invaluable" in developing the skills required to be a great arbitrator. Neil Carmichael, *What Makes a Great Arbitrator?*, Am. Arb. Assn. (June 28, 2019), https://adr.org/news-and-insights/what-makes-a-great-arbitrator/.

[38] Proposed § 4.107(d).

However, if the Final Rule retains the Comptroller's authority to overturn the Appeals Board's decisions, the Final Rule should clarify that the Comptroller may overturn the Appeals Board's decision only when the Comptroller finds that the Appeals Board's decision was a clear error. Limiting the ability of the Comptroller to overturn a decision by the independent Appeals Board is critical to durably achieving the goals of the NPR (*i.e.*, an independent review of material supervisory determinations) and providing supervised entities with confidence in the independence of the appeals process.

In addition, when the Comptroller does overturn the Appeals Board's decision on the basis of clear error, the Comptroller should be required to do so within a given timeframe, such as within 60 days following the Appeals Board's decision, to avoid prolonged uncertainty for supervised entities regarding the outcome of an appeal. After this 60-day period, Appeals Board decisions should become final, and the Comptroller should not have the power to overturn, alter, modify, or otherwise change such final decisions.

Moreover, the Final Rule should require the Comptroller to explain in writing why he or she decided to overturn the decision of the Appeals Board, and to promptly provide such information to both parties. The OCC should also publish this written explanation, with appropriate redactions reviewed and approved by the supervised entity prior to publication. Requiring prompt, written, and public (appropriately redacted) explanations for any Comptroller decision would bolster transparency and consistency in the appeals process. It ensures that if the extraordinary step of overturning the Appeals Board is taken, the rationale is clear to both the affected supervised entity and the industry at large, supporting confidence in the appeals process. It would also help promote disciplined, consistent exercise of the Comptroller's authority.

III. The Final Rule should clarify and simplify the rules regarding commencing an appeal.

a. Senior bank management should be able to authorize appeals.

Under the proposed rule, the NPR would require appeals by financial institutions to be submitted by the institution's President or Chief Executive Officer ("CEO"), accompanied by evidence that the appeal has been specifically authorized by the institution's board of directors.[39] The OCC asks whether requiring the board to approve the decision to appeal is necessary.[40]

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[39] Proposed § 4.103(h).

[40] NPR, at 7168.

We believe it is not. Instead, the OCC should allow a member of senior management to approve and submit the appeal, with prior notice to the board, as management and the board deem appropriate. This approach would better align with the approach taken by the FDIC, acknowledge the board's oversight role, and remove obstacles that make the proposed process of appealing overly onerous.[41]

Consistent with its oversight role, the board of directors may delegate the authority to make a wide range of substantive decisions to management, and the types of decisions that corporate law specifically requires the board to approve are only those that rise to a very high level of significance.

> [T]he board itself [is] required only to authorize the [corporation's] most significant corporate acts or transactions: mergers, changes in capital structure, fundamental changes in business, appointment and compensation of the CEO, etc. . . . [While] ordinary business decisions that are made by officers and employees deeper in the interior of the organization can [also] affect the welfare of the corporation and its ability to achieve its various strategic and financial goals . . . [regarding these decisions, the board has a duty to] assur[e itself] that information and reporting systems exist . . . that are reasonably designed to provide . . . to the board itself timely, accurate information . . . .[42]

Boards may delegate many decisions because "the law recognizes that corporate boards . . . cannot themselves manage the operations of the firm, but may satisfy their obligations by thoughtfully appointing officers, establishing or approving goals and plans, and monitoring performance."[43]

Requiring the board to approve the day-to-day decision whether to appeal, especially when the decision is not highly significant to the institution as a whole (such as the appeal of an

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[41] Under the FDIC Guidelines, the institution's board of directors *or* senior management must consider the request and authorize it to be filed. If the senior management files the appeal, it must inform the board of the substance of the appeal before filing it and keep the board informed of its status. FDIC Guidelines, at 3193.

[42] Such acts or transactions include mergers, changes in capital structure, fundamental changes in business, and appointment and compensation of the CEO. *In re Caremark Intern. Deriv. Litig.*, 698 A.2d 959, 968, 970 (Del. Ch. 1996).

[43] *See Grimes* v. *Donald*, No. CIV. A. 13358, 1995 WL 54441, at *8 (Del. Ch. Jan. 11, 1995), *aff'd*, 673 A.2d 1207 (Del. 1996).

SNC rating for an individual loan), would be unduly burdensome on the board, and would weaken the supervised entity's functional willingness to appeal despite its right to do so.

Instead, the determination whether to file an appeal should be left to senior management.[44] Enabling appeals to be initiated by senior management without the legal requirement to first seek board authorization would underscore that exercise of the appeal right

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[44] Careful tailoring of the express approval requirements imposed by banking law is an issue that arises frequently and must be addressed to ensure that bank boards can effectively discharge their oversight responsibilities without becoming overburdened, distracted from their core functions, unable to attract qualified directors, or be effectively required to serve in a full-time capacity. *See* Letter from Gregg Rozansky and David Baris, Bank Policy Institute and American Association of Bank Directors to James P. Sheesley, Assistant Executive Secretary, Federal Deposit Insurance Corporation 3, 8–12 (Feb. 9, 2024), https://www.fdic.gov/system/files/2024-06/2023-guidelines-establishing-standards-for-corporate-governance-3064-af94-c-051.pdf (arguing that excessive board-level requirements can blur the line between board oversight and management, increase director-liability concerns, deter qualified directors from serving, and effectively turn board service into a full-time role); Bank Policy Institute, Guiding Principles for Enhancing U.S. Banking Organizational Corporate Governance 3, 11–19 (2021), https://bpi.com/wp-content/uploads/2021/01/BPI-Guiding-Principles-on-Enhancing-Banking-Organization-Corporate-Governance.pdf (noting that prior work identified hundreds of requirements directed at bank boards, emphasizing that governance practices should be tailored to the institution's circumstances, warning that excessive board involvement in day-to-day affairs can impair objective oversight and create uncertainty as to the respective roles of boards and management, urging regulators to align requirements with boards' core oversight functions, and cautioning that greater personal-liability exposure may deter qualified directors from board service); Letter from Gregg Rozansky, The Clearing House (predecessor organization to the Bank Policy Institute), et al. to Ann E. Misback, Board of Governors of the Federal Reserve System 1, 4–6 (Feb. 15, 2018), 20180215_tch_aabd_-sifma-comment_letter_on_board_effectiveness-proposal.pdf (supporting elimination of unnecessary requirements for board "approval, action or review" so boards can focus on oversight of strategy and other principal responsibilities, warning against prescriptive, one-size-fits-all expectations that can impair board effectiveness, and advocating for clearly distinguishing the role of the board from the role of management, and clearly and consistently describing the role of the board as one of oversight).

The OCC itself has recognized that the day-to-day management of a bank's operations is properly within management's ambit and that, in contradistinction, the board is responsible for setting overall direction and for oversight. *See* Office of the Comptroller of the Currency, OCC Director's Book: Role of Directors for National Banks and Federal Savings Associations 14–15 (Nov. 2020), https://www.occ.gov/publications-and-resources/publications/banker-education/files/pub-directors-book.pdf ("The board's role in the governance of the bank is clearly distinct from management's role. The board is responsible for the overall direction and oversight of the bank—but is not responsible for managing the bank day-to-day. The board should oversee and hold management accountable for meeting strategic objectives within the bank's risk appetite."). The OCC's statements regarding the role of the board support the notion that the OCC should carefully tailor the express approval requirements it imposes on bank boards to ensure that bank boards can effectively discharge their oversight responsibilities without becoming overburdened or distracted from their core oversight function. Accordingly, in line with the need for careful tailoring, the OCC should permit bank boards to delegate the decision to appeal a material supervisory determination to senior management to prevent the appeals process from unduly burdening bank boards and weakening bank boards' ability to effectively carry out their oversight function.

provided by the OCC is not an extraordinary action, and would be consistent with the NPR's goal of encouraging supervised entities to avail themselves of the appeals process more frequently.

b. The OCC should clarify the scope of appealable "material supervisory determinations."

The NPR defines "material supervisory determination" by listing several agency or supervisory decisions or actions that are considered material supervisory determinations.[45] Rightfully, rather than limit the definition to the list of decisions or actions listed, the OCC notes that the definition "includ[es], but [is] not limited to" the enumerated examples.[46] The OCC should explicitly include certain additional items as examples of appealable determinations to confirm that they fall under the definition of material supervisory determination.

Binding decisions should be considered appealable material supervisory determinations.[47] For example, if the OCC retains 12 C.F.R. Part 30, Appendix D (the "Heightened Standards") in any form, the OCC should clarify that the decision to subject an institution below the final asset threshold to the Heightened Standards would constitute a material supervisory determination.[48] Subjecting a supervised entity to the Heightened Standards would impose significant, required changes on the supervised entity. Such a decision is, therefore, appropriately classified as a material supervisory determination and should be appealable.

Similarly, while the supplementary information accompanying the proposal indicates that a notice of deficiency under 12 C.F.R. Part 30, and individual capital ratios imposed under 12 C.F.R. § 3.403, would be appealable, these actions are not contained in the rule's examples of appealable "material supervisory determinations."[49] It would be helpful for the Final Rule to explicitly include them as material supervisory determinations.

Further, disapprovals of proposed directors or senior executive officers from serving at a bank should also be explicitly identified in the Final Rule as material supervisory determinations

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45 Proposed § 4.103(b)(1).

46 *Id.*

47 In contrast, non-binding supervisory observations would not be appealable. Proposed § 4.103(b)(2)(xi).

48 *See* OCC Guidelines Establishing Heightened Standards for Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches; Technical Amendments, Office of the Comptroller of the Currency, 90 Fed. Reg. 61,084; 12 C.F.R. pt. 30 app. D.

49 *See* Proposed § 4.103(b)(1).

subject to appeal.[50] At a minimum, the OCC should clarify how the appeal of such disapprovals as contemplated by 12 C.F.R. 5.51(f) interacts with the proposed appeals process.

c. IAPs should be allowed to appeal informal enforcement actions.

We support the OCC's proposal to allow IAPs of supervised entities to file an appeal of an informal enforcement action that directly affects the IAP.[51] Informal enforcement actions may have serious consequences for IAPs. Moreover, actions impacting IAPs are subject to the same risks of institutional predispositions as the OCC's other actions. For these reasons, they should have recourse to challenge the OCC's decision in an independent and formal manner. The Final Rule should make clear that IAPs' appeals must focus only on the informal enforcement action's impact on them, not the impact on the supervised entity, and that the IAP's appeal does not impact appeals regarding the supervised entity itself, if it has also appealed a related material supervisory determination. The Final Rule should also clarify that IAPs' right to appeal an informal enforcement action should not narrow existing avenues that IAPs have to challenge material supervisory determinations.

IV. The OCC should strengthen the proposed process for hearing and deciding appeals.

a. The OCC should prohibit *ex parte* communications.

The OCC should prohibit oral and written *ex parte* communications during an appeal and require any inadvertent *ex parte* communications to be memorialized in writing and made available to both the Appeals Board and the appellant on a timely basis prior to the issuance of a decision. This requirement would help ensure that the appellant is aware of the information shared with the decisionmaker and has time to respond to this information before a decision is reached.[52] Procedural fairness requires that all substantive communications be shared with the appellant.

This prohibition would be especially important if the OCC retains the CNBE on the Appeals Board, even as an advisory member. The CNBE has extensive access to examination and supervision staff and exam reports, and therefore would be in a position to receive

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50 *See* 12 C.F.R. § 5.51.

51 Proposed § 4.103(i).

52 For example, the NPR proposes that the Appeals Board will solicit the views of the supervisory office involved in issuing the material supervisory determination and may supplement the record by soliciting the views of other OCC staff. Proposed § 4.105(b). *See also* Proposed § 4.104(b) ("The Deputy Comptroller will solicit the views of the supervisory office involved in issuing the material supervisory determination."). These views would be *ex parte* communications and should be provided to the appellant.

information before and/or during an appeal without apprising the appellant of the information received.

b. The OCC should clarify that appellants are permitted to supplement the review record.

In its preamble, the NPR notes that the Appeals Board may allow supplementation of the record "by either party in the interest of fairness provided the request is timely received."[53] However, Proposed § 4.105(b) provides only that the Appeals Board may "solicit[] the views of other OCC staff, staff of other supervisory agencies, or other sources."[54] The reference to "other sources" is potentially vague and fails to capture clearly that the Appeals Board may solicit the views of the appellant.

The NPR does not explicitly provide appealing supervised entities with an opportunity to request submission of additional information to the Appeals Board. However, because the Appeals Board may only consider information in the record when considering an appeal, the OCC should clarify in the Final Rule that the appellant may request to supplement the record and should have a reasonable amount of time to supplement the record. Supplementation would help to ensure that the Appeals Board has access to all relevant information when considering an appeal so that the "OCC [can] reach the right conclusion for the bank from a safety and soundness perspective."[55]

For example, relevant facts may have become known only after the material supervisory determination was made or after the supervised entity initiated its appeal. Such information may only be available to the Appeals Board if the appellant can supplement the review record.

In addition, the OCC should institute a presumption in favor of allowing the supervised entity to supplement the record, as long as the Appeals Board has a reasonable amount of time to review the supplemental information before reaching a decision.[56]

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53 NPR, at 7169.

54 Proposed § 4.105(b).

55 NPR, at 7169.

56 In addition to explicitly allowing the parties to supplement the review record, the OCC should consider making it mandatory for certain information to be part of the record. For example, under the OCC's proposal to establish a new notice and consultation framework for certain AML/CFT actions, the OCC would provide written notice to FinCEN before initiating an action, and FinCEN would have an opportunity to provide input. Such input should be required to be part of the record in appeals of related material supervisory determinations. Anti-Money Laundering and Countering the Financing of Terrorism

Finally, BPI, AABD, and ICBA support the NPR's suggestion that the Appeals Board or Deputy Comptroller could conduct some additional fact-finding to supplement the factual record where necessary.[57] To come to the correct conclusion regarding the facts underlying a decision, it may be appropriate for the Appeals Board to seek additional information.

c. The OCC should provide banks with four weeks' notice prior to the OCC informing the supervised entity that it has approved a formal enforcement-related action.

Under the NPR, a supervised entity generally may not file an appeal of a material supervisory determination after the OCC notifies the supervised entity that it is commencing a formal enforcement-related action arising from the determination.[58] Once notified, the supervised entity may appeal only to challenge whether the OCC followed its policies and standards in reaching the determination.[59] We support the OCC's decision to retain this opportunity to appeal even after the OCC has notified the supervised entity of an impending enforcement action.

To ensure that supervised entities have enough time to consider whether to appeal a material supervisory determination, the OCC should, however, not be permitted (except in exigent circumstances) to commence an enforcement action, and thereby extinguish supervised entities' ability to appeal on related issues, until supervised entities have had four weeks to consider whether to appeal a material supervisory determination. The OCC's practice of waiving the deadline "if an institution is engaged in good faith dialogue with the supervisory office in an attempt to informally resolve the dispute" is helpful.[60] But, to provide clearer expectations, the Final Rule should provide that supervised entities have at least four weeks'

Programs, Office of the Comptroller of the Currency, 91 Fed. Reg. 18304, Proposed § 21.21 (Apr. 10, 2026).

[57] NPR, at 7169 ("If necessary, the Appeals Board or its staff could engage in gathering additional facts or information to verify factual conclusions in the supervisory record."). *Id.* at 7168 ("[T]he Deputy Comptroller may, in his or her discretion, request that the record be supplemented, including through further fact-finding or sending staff to visit the appellant on site and gather further information.").

As acknowledged by the NPR, fact-finding relates to adding information to the record and is distinct from making findings of fact.

[58] Proposed § 4.103(f).

[59] *Id.*

[60] NPR, at 7168.

notice regarding material supervisory determinations before the OCC can commence an enforcement action and extinguish supervised entities' ability to appeal on related issues.[61]

The suggested four-week notice period would help to alleviate some concerns regarding potential lack of meaningful notice and the feasibility of considering an appeal. For example, a supervised entity may be in the process of reviewing an ROE and deliberating about whether to appeal regarding a conclusion in the ROE when its ability to appeal is terminated by an enforcement action. Even where a 15-Day Letter ("15-Day Letter") follows the ROE, 15 days may not be sufficient time to deliberate regarding an appeal. Moreover, a supervised entity may not realize a material supervisory determination could lead to an enforcement action until they receive a 15-Day Letter and may then have insufficient time to consider whether an appeal would be worthwhile. In some instances, the supervised entity may have been examined but may not yet have received the ROE before the OCC notifies the supervised entity of the commencement of an enforcement action. As a result, the supervised entity will no longer have the opportunity to appeal regarding findings in the ROE that form the basis for the enforcement action and will be required to spend significant time and resources on an enforcement action it believes is unwarranted before it can appeal.

In addition, where the institution opts to seek an appeal within the four-week window, there should be no enforcement action taken until the Appeals Board has reached a conclusion regarding the appeal. This delay in potential enforcement would yield a net positive benefit because it may avoid costly litigation over an incorrectly issued material supervisory determination.

d. The OCC should address the relationship between the appeals process and 15-Day Letters in the Final Rule.

The OCC should also further clarify the relationship between the appeals process and 15-Day Letters. In particular, when a supervised entity's appeal is outstanding and relates to issues that may give rise to an enforcement action, the OCC should not be able to issue a 15-Day Letter arising from the appealed matters.

Further, the Final Rule should clarify that a bank may appeal material supervisory determinations giving rise to a 15-Day Letter during the 15-day period, and the OCC should allow for a stay of the 15-Day Letter process until the Appeals Board has made a decision regarding the appealed issue. This will allow supervised entities to avail themselves of the Appeals Board's review with respect to potentially wrongfully decided material supervisory

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[61] The OCC may provide for certain exceptions to this four-week window, such as where the OCC determines that delay would pose imminent risk of material financial harm to an institution or the Deposit Insurance Fund. However, the OCC should explicitly list these exceptions in the Final Rule.

determinations before such material supervisory determinations result in potentially wasteful and deleterious enforcement actions.

Finally, the OCC should confirm that, except in rare circumstances, it will provide a 15-Day Letter prior to initiating any enforcement actions. Confirming this general approach to 15-Day Letters would be particularly important if the OCC does not provide the four-week notice discussed above. Otherwise, the OCC could effectively cut off the supervised entities' ability to appeal by initiating an enforcement action without meaningful notice.

e. The OCC should provide specific procedures that apply when a supervised entity has already appealed an action that has become the subject of an enforcement action.

The NPR does not sufficiently address how the Appeals Board will handle appeals that become the subject of an enforcement action while the appeal is pending. The OCC should clarify that, if a supervised entity has already appealed a material supervisory determination that becomes a basis for an enforcement action while the appeal is pending, the Appeals Board will consider the appeal on an expedited basis pursuant to the final version of Proposed § 4.110. The OCC should also confirm that it will delay any final decision on the enforcement action until the appeal has concluded, unless delay would pose an immediate risk of material financial harm or impose losses on the Deposit Insurance Fund.

f. When considering whether to stay a determination, the OCC should evaluate the costs to a supervised entity on both a relative and an absolute basis.

The NPR proposes that an appealed material supervisory determination may be stayed if the appellant requests a stay and the appropriate Deputy Comptroller or the Appeals Board concludes that delaying implementation of the material supervisory determination would not result in the risk of immediate financial harm to the supervised entity, the material supervisory determination would impose costs on the supervised entity within the time it would take the Appeals Board to decide the appeal, and the public interest would not be harmed by delaying implementation.[62] The OCC also proposes that it will consider the size of the institution and resources necessary to implement the material supervisory determinations when evaluating whether to grant a stay.[63]

We agree that the OCC should provide for stays of material supervisory determinations where appropriate, and agree that financial harm and immediate cost are relevant

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62 Proposed § 4.109.

63 *Id.*

considerations. The OCC should evaluate the financial harm and costs to a supervised institution on both a relative and an absolute basis. The costs to a larger institution may be equally immediate and avoidable, even if a larger institution may more easily absorb these costs. In the interest of fairness and efficiency, the OCC should seek to minimize avoidable costs for all supervised entities.

We suggest the OCC adopt a general policy of favoring stays when the criteria in the Final Rule are met in order to avoid potentially requiring supervised entities to comply with possible erroneous material supervisory determinations.

g. The Final Rule should clarify what consideration of "whether the OCC followed agency policies and procedures" entails.

Further, in the Final Rule, the OCC should clarify what it means by "whether the OCC appropriately followed agency policies and standards in reaching the determination."[64] For example, the OCC should clarify whether a supervised entity could challenge a decision on the basis that the staff that issued a material supervisory determination did not follow the OCC's "standards" even if the challenge is not purely procedural.

The OCC should also clarify the standard for reviewing such policies and standards. "Appropriate" means "especially suitable or compatible."[65] Whether the examination and supervision staff's decision was suitable for, or compatible with, OCC policies and standards is an amorphous standard that leaves the Appeals Board with very little analytical purchase.

Instead, the Appeals Board should review such determinations for whether the OCC made an error in applying agency policies and standards, abused its discretion in applying such policies and standards, or acted arbitrarily or capriciously with respect to such policies and standards. These standards have well-understood meanings that encompass more limited reviews than a *de novo* review, but that provide the Appeals Board with the analytical framework necessary to make consistent, well-reasoned decisions. Accordingly, the Final Rule should adopt the foregoing standards (*i.e.*, error, abuse of discretion, and arbitrary and capricious) with respect to agency policies and standards as a basis for appealing material supervisory determinations.

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64 Proposed § 4.103(f).

65 *Appropriate*, Merriam-Webster, https://www.merriam-webster.com/dictionary/appropriate (last accessed Apr. 6, 2026).

h. We support supervised entities having the option to appeal to the appropriate Deputy Comptroller before appealing to the Appeals Board.

We support the NPR's proposal to give supervised entities the option to appeal to the appropriate Deputy Comptroller before appealing to the Appeals Board, even after the Deputy Comptroller may have ruled against the supervised entity.[66] This structure permits a more informal level of review prior to an appeal to the Appeals Board, while maintaining the Appeals Board's authority to review all appeals. This informal route may permit supervised entities and the OCC to conserve limited time and resources through the less prescriptive process to the Deputy Comptroller, while also being consistent with and supporting the OCC's objective for ongoing dialogue between supervised entities and the OCC on supervisory matters.

V. The OCC should implement certain additional protections to strengthen the Ombudsman's role as an impartial liaison.

We support the NPR's proposal to make the Ombudsman an "impartial liaison between the appellant and the Deputy Comptroller or the Appeals Board."[67] However, the OCC should make revisions to enhance the Ombudsman's effectiveness in this new role.

a. The Final Rule should afford the Ombudsman discretion to decide how and when to contact supervised entities after examinations.

The NPR proposes that the Ombudsman contact supervised entities 30 days after the conclusion of each examination to receive feedback regarding the examination process.[68] Supervised entities, especially larger supervised entities, are likely to undergo several examinations every year, in addition to ongoing supervision reviews, and responding to the Ombudsman's communications for each examination could consume substantial resources. The OCC should allow the Ombudsman to decide how to most efficiently receive feedback to minimize the administrative burden on supervised entities. For example, the Ombudsman could seek feedback as part of the form letter sent to supervised entities after their annual ROE that supervised entities may, but are not required to, fill in and send back to the OCC.[69] The Ombudsman could also conduct outreach only when feedback is particularly important, or could focus outreach on the Ombudsman's most pressing questions. Allowing the Ombudsman

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66 Proposed § 4.104(e).

67 Proposed § 4.111(a).

68 Proposed § 4.111(e).

69 To reinforce deterrence, this feedback and the Ombudsman's retaliation findings could be summarized, in anonymized form, in the Ombudsman's annual report.

to determine the timing and method of post-examination outreach would still capture valuable input while avoiding survey fatigue or unnecessary burden on supervised entities.

b. The OCC should incorporate additional protections to reduce the risk of retaliation and other adverse consequences.

Instead of depending solely on feedback to the Ombudsman from supervised entities to address potential retaliation and other potential adverse consequences, the OCC should give the Ombudsman additional responsibilities to strengthen the Ombudsman's role as a protection against retaliation. Ensuring that the Ombudsman is able to effectively monitor and reduce the risk of retaliation is crucial because, as Treasury Secretary Bessent has observed, "[c]oncern about retaliation makes the existing supervisory appeals options more theoretical than real."[70] We agree with the proposal that the Ombudsman be tasked with monitoring the examination activity with respect to a supervised entity following the supervised entity's appeal.

For example, the Final Rule could require that the Ombudsman automatically review any instance where a supervised entity filed an appeal and subsequently received materially harsher supervisory treatment, beyond what would ordinarily be expected in the circumstances and that the Ombudsman be given authority to mediate if a supervised entity feels that OCC staff are acting punitively due to an active appeal.

VI. The OCC should make certain revisions to the SNC appeals process.

a. The OCC should clarify how it will ensure consistent results for participant banks.

We support the proposal that agent banks and participant banks may appeal SNC determinations. However, we also believe that the ratings should be consistent across banks. The OCC should clarify how appeals will be handled in a manner that leads to consistent results for all banks, even if the bank is OCC-supervised but did not join in the appeal or if the bank is not supervised by the OCC. In this vein, the OCC should collaborate with the FDIC and the Board of Governors of the Federal Reserve System (the "Federal Reserve") to ensure consistent results.[71]

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[70] Scott Bessent, *Treasury Secretary Scott Bessent Remarks before the American Bankers Association*, Dep't of the Treasury (Apr. 9, 2025), https://home.treasury.gov/news/press-releases/sb0078.

[71] In addition to coordinating with the FDIC and the Federal Reserve regarding consistent ratings, the OCC should collaborate with the FDIC and the Federal Reserve to implement consistent communications and procedural practices, including the practices we suggest in Sections VI.b-d.

b. As part of the results distribution process, the OCC should share its risk rating logic for both pass and non-pass rated facilities.

To better facilitate a bank's decision to appeal SNC determinations, the OCC should share its risk rating logic for both pass and non-pass rated facilities as part of the results distribution process.[72] Providing the rationale for both pass and non-pass ratings would increase banks' confidence in the fairness of SNC examinations and likely reduce the number of unnecessary appeals, because banks will only appeal if they believe the decision was erroneous. Moreover, to improve clarity and provide a solid foundation for any appeal(s), the OCC should enhance its explanations of non-pass credits to provide details such that banks clearly understand the logic behind the ratings determination.

c. The Final Rule should align the SNC appeals process in the Final Rule and existing appeals instructions.

In the NPR, the OCC contemplates that the agent bank would send SNC results to participant banks and details the process for appealing SNC determinations.[73] The OCC should ensure consistency between the SNC appeals process in the Final Rule and in the letter accompanying SNC results that provides instructions to all participating banks on appeals (the "Interagency SNC Results Distribution Letter"). Moreover, absent unique circumstances, the OCC (or the appropriate Federal banking agency) should send the Interagency SNC Results Distribution Letter and SNC results directly to participant banks, rather than to the agent bank.[74]

d. The OCC should facilitate communication with participant banks regarding appeals decisions.

The OCC should encourage communication between the OCC and participant banks regarding Appeals Board decisions on SNC appeals. For example, the OCC should express that participant banks may seek additional dialogue with the OCC following an appeals decision if unresolved questions about the appeals decision remain.[75]

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[72] *See* Proposed § 4.106.

[73] *See id.*

[74] *See* Proposed § 4.106(c).

[75] Similarly, it would be helpful for the Appeals Board to provide details on each point that appealing banks put forth after the relevant Panel has made a decision regarding their appeals.

The Bank Policy Institute, the American Association of Bank Directors, and the Independent Community Bankers of America appreciate the opportunity to comment on the proposal. If you have any questions, please contact the undersigned at Gregg.Rozansky@BPI.com, dbaris@aabd.org, and jenna.burke@icba.org.

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