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Supervisory appeals: OCC proposed rule vs. FDIC guidelines

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The Office of the Comptroller of the Currency issued a notice of proposed rulemaking that would change its supervisory appeals process. We compare the OCC proposal with the recently finalized FDIC guidelines for supervisory appeals.

On February 17, 2026, the Office of the Comptroller of the Currency (OCC) issued a notice of proposed rulemaking (NPR) to establish revised procedures and policies for appeals of material supervisory determinations by OCC supervised entities. The OCC NPR was issued less than a month after the Federal Deposit Insurance Corporation (FDIC) adopted updates to its guidelines for appeals of material supervisory determinations.

The table below analyzes the similarities and differences between the appeals frameworks in the OCC NPR and the FDIC guidelines.

<table>
<tr><th rowspan="2">Process</th><th colspan="2">Agency rulemaking</th></tr>
<tr><th>OCC NPR[1]</th><th>FDIC guidelines[2]</th></tr>
<tr><td>Matters eligible for appeal</td><td>Material supervisory determinations including but not limited to:
1. Examination ratings
2. Adequacy of the allowance for credit losses methodology
3. Individual loan ratings
4. Violations of law
5. Matters requiring attention, determinations regarding compliance with enforcement actions and other conclusions in a report of examination
6. Fair lending-related decisions, including referrals to other agencies for potential violations
7. Shared National Credit (SNC) exam decisions
8. Licensing decisions</td><td>Material supervisory determinations including but not limited to:
1. Examination ratings
2. Appropriateness of loan loss reserve provisions
3. Loan and asset classifications, if the amount in dispute exceeds 10% of the bank's capital
4. Violations of law or regulation that may affect the capital, earnings, or operating flexibility of an institution, or affect the nature and level of supervisory oversight accorded an institution
5. Matters requiring attention, determinations regarding compliance with enforcement actions and 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 (PCA) purposes of an institution
6. Determinations regarding a bank's compliance with conditions imposed through the supervision or application processes</td></tr>
<tr><td></td><td colspan="2">Of note: The OCC NPR includes licensing decisions among the appealable actions, which is consistent with its existing procedures (the 2013 OCC guidelines).[3] The FDIC is not a chartering authority, but its most similar power is the ability to provide deposit insurance, which is not subject to the appeals process in the FDIC guidelines.

In addition, while the OCC NPR, consistent with the 2013 OCC guidelines, permits appeal of all individual loan ratings and SNC decisions, the FDIC guidelines only permit appeals of larger loan ratings decisions and do not address SNC decisions at all.

Finally, while the OCC NPR would (and the 2013 OCC guidelines do today) allow appeals of any finding of a violation of law, the FDIC's guidelines are much more limiting.</td></tr>
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<tr><th>OCC NPR[1]</th><th>FDIC guidelines[2]</th></tr>
<tr><td>Matters ineligible for appeal</td><td>Actions that are subject to a separate adjudicatory or appeals process, including:
1. Decisions to appoint a conservator or receiver and related decisions
2. Formal enforcement actions, rulemakings and adjudications conducted under the Administrative Procedure Act
3. Agency decisions that are administrative
4. Decisions to disapprove directors or senior executive officers and other agency decisions subject to separate judicial review
5. Preliminary examination findings communicated before issuance of a final Report of Examination or other written supervisory determination
6. Requests for agency records or information under the Freedom of Information Act (FOIA)</td><td>Actions that are subject to a separate adjudicatory or appeals process, including:
1. Decisions to appoint a conservator or receiver and related decisions
2. Formal enforcement actions and decisions
3. Determinations for which other avenues to appeal exist
4. Facts and circumstances underlying pending or proposed formal enforcement actions by the FDIC, including those based on unsafe or unsound banking practices or issues related to the institution’s AML/CFT program or sanctions compliance
5. Decisions to take prompt corrective action (PCA) pursuant to section 38 of the FDI Act (12 U.S.C. § 1831o)</td></tr>
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Process	Agency rulemaking	
	OCC NPR[1]	FDIC guidelines[2]
	Of note: The list of actions that are ineligible for appeal under the OCC NPR is more granular than that in the FDIC guidelines. That said, the two guidelines would be generally aligned as many of the actions excluded under the OCC NPR would not likely meet the definition of "material supervisory determination." For example, in the case of preliminary examination findings or agency administrative decisions, which the FDIC guidelines do not mention. Similarly, the FDIC guidelines broadly exclude decisions for which another appeal avenue already exists, while the OCC NPR enumerates several of these types of matters, such as FOIA decisions. Given the apparent differences in drafting philosophies at the agencies, it is perhaps worth noting that PCA determinations, which have their own separate appeal process at both agencies, are explicitly not allowed to be appealed under the FDIC guidelines, while the OCC NPR is silent on the matter. Our bottom line is that, as a practical matter, despite the difference in wording, the matters ineligible for appeal are quite similar. Additionally, it is worth noting that while neither agency permits an appeal of a decision to undertake enforcement action, the OCC NPR permits a bank to appeal certain underlying examination findings for the limited purpose of contesting whether examiners appropriately followed agency policies and standards in developing the finding. This is consistent with the 2013 OCC Guidance. Practically, this is important as institutions facing potential enforcement actions are often those most likely to pursue an appeal.	

Process	Agency rulemaking	
	OCC NPR[1]	FDIC guidelines[2]
Appeal reviewer	The OCC NPR includes two routes for appealing material supervisory determinations: 1. ***Deputy Comptroller review***: A bank may elect to appeal to the Deputy Comptroller of the supervisory division that issued the determination. If the Deputy Comptroller was substantively involved in the underlying decision, the appeal must be transferred directly to the Appeals Board. 2. ***Appeals Board***: Alternately, the bank may appeal directly to the Appeals Board. The Board is proposed to be composed of the Chief National Bank Examiner and two non-OCC employee members appointed by the Comptroller for non-renewable terms of one year. The term appointees would be individuals with relevant banking, regulatory, legal or supervisory experience. Notably, under the proposal, current OCC employees would not be eligible to serve as term appointees to the Appeals Board.	Banks must file appeals with the director of the division that made the finding at issue. The Division Director will conduct an independent review of the challenged material supervisory determination. If the bank disagrees with the decision of the Division Director, they may appeal it to the Office of Supervisory Appeals (OSA). Appeals to the OSA are heard by a panel of three reviewing officials hired by the FDIC for fixed terms, with at least one panel member required to have bank supervisory experience and at least one required to have banking sector experience. Current FDIC employees are not eligible to serve on the panel, nor are current employees of insured depository institutions or their affiliates. However, current government employees with relevant experience may serve on a part-time basis.
	Of note: The OCC is soliciting comment on alternatives for Appeals Board composition, such as including the Ombudsman or Chief Counsel, or having it comprise one term appointee and two OCC officials. The agency is further considering maintaining the current structure with the Ombudsman as the decision-maker. The Appeals Board, as proposed, would consist of one group of individuals who would hear all appeals. By contrast, the FDIC guidelines contemplate a pool of individuals in the OSA, from which three will be selected to hear a given appeal. Both agencies, however, envision having non-agency personnel serve on their respective boards.	

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<tr><td>Eligible institutions</td><td>National banks, federal savings associations, federal branches or agencies of foreign banks and payment stablecoin issuers regulated by the OCC. Additionally, an institution-affiliated party (IAP)directly affected by an informal enforcement action may also appeal that action.</td><td>Insured state nonmember banks, industrial loan companies, state savings associations and insured branches of foreign banks.</td></tr>
<tr><td></td><td colspan="2">Of note: While the OCC proposal would allow an IAP to file an appeal if they were directly affected by an informal enforcement action, in practice this would seldom occur as the OCC has very rarely, if ever, brought informal enforcement actions against individuals. Further, it would be an uncommon scenario for an informal action against a bank to affect an IAP in a manner that would support an appeal.</td></tr>
<tr><td>Timing of appeals and hearings</td><td>60 days from receipt of the supervisory determination.[4]

If the bank first seeks review by the Deputy Comptroller, it may further appeal the Deputy Comptroller’s determination to the Appeals Board within 15 days of receiving the Deputy Comptroller’s written decision.</td><td>60 days from receipt of the supervisory determination.

After the Director issues a determination, the bank has 30 days to appeal to the OSA. If the Director refers the matter directly to the OSA, the appeal proceeds without a separate filing by the bank.

Following receipt of a notice of appeal (or referral), the OSA convenes a three-member panel to consider the matter. The panel will generally meet to hear the appeal within 90 days.</td></tr>
<tr><td>Standard of review</td><td>De novo</td><td>De novo</td></tr>
<tr><td></td><td colspan="2">Of note: The OCC NPR’s inclusion of a de novo standard is a significant departure from the 2013 OCC guidelines, which do not specify a standard of review. In the NPR, the OCC states that 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.”</td></tr>
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Process	Agency rulemaking	
	OCC NPR[1]	**FDIC guidelines**[2]
Scope of review	The Deputy Comptroller or Appeals Board may, in its discretion, request that the record be supplemented, including through further fact-finding or visiting the appellant on-site.	Review is limited to the facts and circumstances existing at or prior to the time the material supervisory determination was made, even if those facts are discovered later. The OSA does not consider events occurring after the determination, including corrective actions taken by the institution, or arguments seeking to change or modify FDIC policy or rules.
	Of note: The OCC NPR would permit additional information to be gathered to supplement the record of the appeal, though the NPR states that Appeals Board review will "generally be limited to the facts and circumstances as they existed prior to, or at the time the material supervisory determination was made." By contrast, while the FDIC may permit an appellant to supplement the record with additional information about circumstances that existed at the time of the supervisory determination, it explicitly prohibits consideration of subsequent developments.	
Burden of proof	Unspecified. The OCC is requesting comment on whether it should clarify the standard for the burden of proof, and what it should be.	Rests with the appealing bank.
	Of note: While both agencies would utilize a *de novo* standard of review, the two are not currently aligned on what the burden of proof will be. The FDIC guidelines are clear that the burden of proof rests with the appealing bank, but it is unclear just how high this burden is. Given the *de novo* standard of review, the burden of proof that the FDIC is utilizing is likely closer to a "preponderance of the evidence" standard, as opposed to a higher standard of proof. Whether the OCC has a similar conception of the standard an appellant bank must meet to succeed in an appeal is unclear from the OCC NPR.	

Process	Agency rulemaking	
	OCC NPR[1]	FDIC guidelines[2]
Timing of decision	*Deputy Comptroller Review*: 45 days. *Appeals Board*: 45 days of receiving the appeal unless there are extenuating circumstances requiring additional time.	*Division Director*: 45 days. *OSA Panel*: The OSA three-person panel will notify the bank in writing of its decision within 45 days after the panel meets to consider the appeal. The panel meeting must occur within 90 days of either (i) the filing of the appeal with the Office or (ii) referral of the appeal by the Division Director.
	Of note: The timeline for decisions by the OSA is much longer than that allowed for Appeals Board decisions under the OCC NPR.	
Standards for staying supervisory actions pending appeal	A stay will be granted if the bank requests a stay and the Deputy Comptroller or the Appeals Board concludes that: 1. Delaying the implementation of the material supervisory determination would not result in a risk of immediate financial harm to an OCC supervised institution; 2. The material supervisory determination would impose costs on the appellant within the timeframe for the OCC to decide the appeal; and 3. The public interest would not be harmed by delaying the implementation of the material supervisory determination.	A stay may be granted subject to conditions, including time limitations, where appropriate, if a bank requests a stay in writing and includes 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. The Division Director will then provide the bank with the reason(s) for their decision in writing, which should include a weighing of potential harms.
	Of note: The OCC NPR's standard for granting of stays is more clearly articulated than that in the FDIC guidelines and may be more difficult to meet. The 2013 OCC guidelines say only that supervisory decisions are generally not stayed pending appeal, but stays may be granted upon request.	
Publication of decision	Will publish redacted decisions (including any dissent).	Will publish redacted decisions.

Process	Agency rulemaking	
	OCC NPR[1]	FDIC guidelines[2]
Anti-retaliation provisions	Included	Included
Other	Under the proposal, if the Appeals Board cannot reach a conclusion on a matter due to a member being recused, then the Comptroller would decide the matter.	

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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[1] OCC, "Bank Appeals Process," Notice of Proposed Rulemaking, RIN 1557-AF48 (Feb. 17, 2026), https://www.federalregister.gov/public-inspection/2026-03086/bank-appeals-process.

[2] FDIC, guidelines for Appeals of Material Supervisory Determinations, 91 Fed. Reg. 3184 (Jan. 26, 2026).

[3] OCC Bulletin 2013-15 (June 7, 2013).

[4] An appeal of a determination by the OCC that there is reason to believe an instance, pattern or practice of discrimination exists requiring either a referral to the U.S. Department of Justice or notification to the U.S. Department of Housing and Urban Development must be filed within 15 days.