

**DEPARTMENT OF THE TREASURY**

**Office of the Comptroller of the Currency**

**12 CFR Part 4**

**[Docket ID OCC-2026-0001]**

**RIN 1557-AF48**

**Bank Appeals Process**

**AGENCY:** Office of the Comptroller of the Currency, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC) is issuing a notice of proposed rulemaking to establish revised procedures and policies for appeals of material supervisory determinations by OCC supervised entities. The proposed changes would reflect the OCC's experience administering the bank appeals process and are intended to enhance the independence and efficiency of the appeals function.

**DATES:** Comments must be received on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

**ADDRESSES:** Comments should be directed to the agency as follows:

Commenters are encouraged to submit comments through the Federal eRulemaking Portal. Please use the title "Bank Appeals Process" to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal – Regulations.gov:*

Go to <https://regulations.gov/>. Enter Docket ID “OCC-2026-0001” in the Search Box and click “Search.” Public comments can be submitted via the “Comment” box below the displayed document information or by clicking on the document title and then clicking the “Comment” box on the top-left side of the screen. For help with submitting effective comments, please click on “Commenter’s Checklist.” For assistance with the *Regulations.gov* site, please call 1-866-498-2945 (toll free) Monday-Friday, 9 a.m.-5 p.m. EST, or e-mail [regulationshelpdesk@gsa.gov](mailto:regulationshelpdesk@gsa.gov).

- *Mail:* Chief Counsel’s Office, Attention: Comment Processing, Office of the Comptroller of the Currency, 400 7th Street, SW, Suite 1E-216, Washington, DC 20219.

- *Hand Delivery/Courier:* 400 7th Street, SW, Suite 1E-216, Washington, DC 20219.

*Instructions:* You must include “OCC” as the agency name and Docket ID “OCC-2026-0001” in your comment. In general, the OCC will enter all comments received into the docket and publish the comments on the *Regulations.gov* website without change, including any business or personal information provided such as name and address information, e-mail addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this action by the following method:

- *Viewing Comments Electronically – Regulations.gov:*

Go to <https://regulations.gov/>. Enter Docket ID “OCC-2026-0001” in the

Search Box and click “Search.” Click on the “Documents” tab and then the document’s title. After clicking the document’s title, click the “Document Comments” tab. Comments can be viewed and filtered by clicking on the “Sort By” drop-down on the right side of the screen or the “Refine Results” options on the left side of the screen. Supporting materials can be viewed by clicking on the “Documents” tab. Click on the “Sort By” drop-down on the right side of the screen or the “Refine Documents Results” options on the left side of the screen checking the “Supporting & Related Material” checkbox. For assistance with the *Regulations.gov* site, please call 1-866-498-2945 (toll free) Monday-Friday, 9 a.m.-5 p.m. EST, or e-mail [regulationshelpdesk@gsa.gov](mailto:regulationshelpdesk@gsa.gov).

The docket may be viewed after the close of the comment period in the same manner as during the comment period.

**FOR FURTHER INFORMATION CONTACT:** Joanne Phillips, Counsel, or Daniel Prieve, Counsel, Chief Counsel’s Office, (202) 649-5490, Office of the Comptroller of the Currency, 400 7th Street, SW, Washington, DC 20219. If you are deaf, hard of hearing or have a speech disability, please dial 7-1-1 to access telecommunications relay services.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background and Policy Objectives**

#### *A. History of the OCC Appeals Process for Material Supervisory Determinations*

The OCC first created a process for the appeal of material supervisory determinations in 1993 under Comptroller Eugene Ludwig.<sup>1</sup> In 1994, Congress passed the Riegle Community Development and Regulatory Improvement Act of 1994<sup>2</sup> (the

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<sup>1</sup> OCC Banking Circular 272, “National Bank Appeals Process” (June 11, 1993).

<sup>2</sup> Pub. L. No. 103-325, section 309, 108 Stat. 2160, 2218.

Riegle Community Act or the Act) which codified the requirement for the OCC, the Federal Deposit Insurance Corporation (FDIC), the Federal Reserve Board of Governors (Board), and the National Credit Union Administration to have internal appeals processes for appeals of material supervisory determinations.<sup>3</sup> The Riegle Community Act based its requirements on the OCC's 1993 process for appeals, and thus the OCC only needed to make minor changes to conform its process to the new requirements.<sup>4</sup> The OCC issued proposed guidance for public comment in 1994 and adopted its final guidance in 1996.<sup>5</sup> The OCC has amended its appeals process three times since then,<sup>6</sup> but these amendments did not make significant structural changes to the process.

*B. Statutory Requirements for Appeals Process*

The Riegle Community Act requires that the OCC establish an independent intra-agency appellate process to review material supervisory determinations made with respect to insured depository institutions that the agency supervises.<sup>7</sup> It further requires that in establishing this independent appellate process, the OCC must ensure that “any appeal of a material supervisory determination by an insured depository institution or insured credit union is heard and decided expeditiously” and that “appropriate safeguards exist for protecting the appellant from retaliation by agency examiners.”<sup>8</sup> The Act clarifies that independent appellate process means “a review by an agency official who does not directly or indirectly report to the agency official who made the material

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<sup>3</sup> 12 U.S.C. 4806.

<sup>4</sup> OCC, “Independent Regulatory Appeals Process,” 59 FR 66067 (December 22, 1994).

<sup>5</sup> OCC, “Independent Regulatory Appeals Process,” 59 FR 66067 (December 22, 1994); OCC, “Independent Regulatory Appeals Process,” 61 FR 7042 (1996).

<sup>6</sup> OCC Bulletin 2002-9, “National Bank Appeals Process” (February 25, 2002); OCC Bulletin 2011-44, “Bank Appeals Process” (November 1, 2011); OCC Bulletin 2013-15, “Bank Appeals Process: Guidance for Bankers” (June 7, 2013).

<sup>7</sup> 12 U.S.C. 4806(a).

<sup>8</sup> 12 U.S.C. 4806(b).

supervisory determination under review.”<sup>9</sup> Finally, the Act requires that the OCC appoint an ombudsman to act as a liaison between the OCC and any affected person with respect to any problem such party may have in dealing with the agency resulting from regulatory activities and to assure that safeguards exist to encourage complainants to come forward and preserve confidentiality.<sup>10</sup>

### *C. Current Process*

The OCC’s current appeals process for supervisory decisions and actions is articulated in OCC Bulletin 2013-15, “Bank Appeals Process: Guidance for Bankers” (2013 Guidance). It provides that the Ombudsman operates independently from the bank supervision process and reports directly to the Comptroller of the Currency. The Ombudsman may report weaknesses in OCC policy to the Comptroller and make recommendations regarding changes in OCC policy. The 2013 Guidance emphasizes that the OCC’s “core policy” for dispute resolution is to resolve disputed items in an informal, amicable manner outside of the formal appeals process. However, the 2013 Guidance further notes that if a bank cannot resolve a dispute through these means, the bank is encouraged to seek a further review of the OCC decision in dispute through the formal appeals process as described in the 2013 Guidance.

Under the 2013 Guidance, banks can appeal any agency supervisory decision or action to the Ombudsman, with several specific exceptions. Appealable matters include, but are not limited to:

- Examination ratings.
- Adequacy of the allowance for credit losses methodology.

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<sup>9</sup> 12 U.S.C. 4806(f)(2).

<sup>10</sup> 12 U.S.C. 4806(d).

- Individual loan ratings.
- Violations of law.
- Shared National Credit (SNC) decisions.
- Fair-lending-related decisions, including referrals to the U.S. Department of Justice or U.S. Department of Housing and Urban Development.
- Licensing decisions.
- Material supervisory determinations such as matters requiring attention, compliance with enforcement actions, or other conclusions in a report of examination (ROE).

The 2013 Guidance also provides specific exceptions from matters that are appealable. Most of these matters have other appeals processes for them (e.g., enforcement-related actions), are not final conclusions, or are time sensitive and cannot be easily undone once they are completed (e.g., the appointment of receivers or conservators). These specific exemptions are:

- Appointments of receivers and conservators.
- Preliminary examination conclusions communicated to the bank before a final ROE or before other written communication from the OCC is issued.
- Any formal enforcement-related actions, including, but not limited to, decisions to (a) seek the issuance of a formal agreement or a cease-and-desist order, or the assessment of a civil money penalty pursuant to section 8 of the Federal Deposit Insurance Act, Pub. L. 81-797 (FDIA) (12 U.S.C. 1818); (b) take prompt corrective action pursuant to section 38 of the FDIA (12 U.S.C. 1831(o)); (c) issue a safety and soundness order pursuant to section 39 of the FDIA (12 U.S.C.

1831p-1); or (d) commence formal investigations pursuant to 12 U.S.C. 481, 1464(d), 1818(n), and 1820(c).

- Formal and informal rulemakings pursuant to the Administrative Procedure Act, Pub. L. 79-404 (APA) (5 U.S.C. 500 et seq.).
- Decisions or recommended decisions following formal and informal adjudications conducted pursuant to the APA (5 U.S.C. 701 et seq.).
- Requests for agency records or information under the Freedom of Information Act covered by 5 U.S.C. 552 or 12 CFR part 4 and submission of information to the OCC that is governed by this statute and this regulation.<sup>11</sup>
- Decisions to disapprove directors and senior executive officers pursuant to section 914 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. 101-73 (12 U.S.C. 1831i).<sup>12</sup>
- Any other agency decisions that are subject to judicial review other than those described in the appealable matters listed above.

Under the 2013 Guidance, while banks may not appeal a decision by the supervisory office to pursue a formal enforcement-related action, banks may appeal any conclusion in an ROE. However, in such circumstances, the appeal is limited to a consideration of whether the examiners appropriately applied agency policies and standards. If a bank disagrees with the agency decision to pursue a formal enforcement action, the bank can contest the action through the administrative process. Once a bank has entered into a formal enforcement action, conclusions regarding the bank's level of compliance with the formal enforcement action are an appealable matter. However, if the

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<sup>11</sup> These issues already have separate appeals processes. *See* 12 CFR 4.15(d).

<sup>12</sup> The appeals process for such decisions is provided by 12 CFR 5.51(f).

OCC determines that the lack of compliance with an existing enforcement action requires an additional enforcement action, the proposed new enforcement action is not appealable, as the bank can contest the action through administrative adjudication.

Banks may seek review of appealable matters by filing a formal appeal with either the appropriate Deputy Comptroller or the Ombudsman. Banks requesting an appeal must file their appeal within 60 days of receipt of the written agency decision in dispute. A formal appeal to the Deputy Comptroller must be filed with the Deputy Comptroller responsible for the division that issued the decision or action in dispute.

Banks filing an appeal with the appropriate Deputy Comptroller must submit information in writing fully describing the matter in dispute and the basis for the bank's disagreement. The appeal must include the supervisory standards that the bank deems were inappropriately applied by OCC officials. To ensure that a bank's board of directors supports the appeal, the bank's president or chief executive officer must submit the appeal and include in the submission the board's approval of the decision to appeal.

Upon receiving the appeal, the Deputy Comptroller is required to contact the bank to discuss the appeals process and to ensure that the Deputy Comptroller has all the information needed. Within seven days of receiving a formal appeal, the Deputy Comptroller shall notify the bank in writing whether the appeal has been accepted. If the Deputy Comptroller directly or indirectly participated in making the decision under review or directly or indirectly reports to the agency official who made the decision under review, the Deputy Comptroller must transfer the appeal to the Ombudsman after advising the appellant. If the Deputy Comptroller accepts an appeal, that official contacts the OCC management official(s) involved in the dispute to submit a written response to



the appeal. In the absence of any extenuating circumstances, the Deputy Comptroller will issue an appeals decision letter within 45 days. If a bank disagrees with the response from the Deputy Comptroller, the bank may further appeal the matter to the Ombudsman within 15 days of receiving the decision letter from the Deputy Comptroller.

The Ombudsman can hear matters filed directly with the Ombudsman's office, appealed from a decision of a Deputy Comptroller, or appealed through an alternative decision making process such as the SNC process or the fair lending referral process. Similar to an appeal filed with a Deputy Comptroller, an appeal filed directly with the Ombudsman must include information in writing fully describing the matter in dispute and the basis for the bank's disagreement and the bank's president or chief executive officer must submit the appeal and include in the submission the bank board's approval of the action. The appeal must include the supervisory standards that the bank deems were inappropriately applied. Upon receiving the appeal, the Ombudsman will contact the bank to discuss the appeals process and supervisory standards related to the issue in dispute and to ensure that the Ombudsman has all relevant materials. Within seven days of receiving a formal appeal, the Ombudsman will notify the bank whether the appeal has been accepted. If the Ombudsman accepts an appeal, he or she will contact the OCC management officials involved in the dispute to submit a written response to the appeal. In the absence of any extenuating circumstances, the Ombudsman will issue a written response to the appeal within 45 days.

For SNC decisions, banks may appeal to the Deputy Comptroller for Large and Global Financial Institutions. The appeal must be filed within 14 days of notification of the decision. Senior bank management must explain why it disagrees with the SNC

decision. The SNC appeals letter must identify the credit, the commitment amount, the disposition, the basis for the bank's disagreement, and any documentation that supports management's position on the matters in dispute. The Deputy Comptroller for Large and Global Financial Institutions will forward a copy of the SNC appeal to the examiner in charge of the agent bank, who must provide his or her formal comments and opinions to the appropriate Deputy Comptroller for Large and Global Financial Institutions within 10 days of receipt of the appeal. An interagency panel consisting of senior credit examiners that are independent of the original voting team will evaluate the appeal and recommend a decision to senior management. Large and Global Financial Institutions normally concludes the entire SNC appeals process within 30 days of receipt. If a bank disagrees with the decision rendered through the SNC appeals process, it may further appeal the matter to the Ombudsman within 30 days of receiving the decision letter.

For matters related to fair lending, when the OCC has made a determination that there is reason to believe an instance or pattern or practice of discrimination exists that will result in either a referral to the U.S. Department of Justice or notification to the U.S. Department of Housing and Urban Development, the relevant Senior Deputy Comptroller will provide written notice to the bank of this finding. Banks may file an appeal to the Ombudsman for reconsideration of this decision within 15 days of the date of this notice.

Currently, as a general matter, decisions and actions in dispute are not stayed during the pursuit of an appeal. In appropriate circumstances, with the prior consent of the Comptroller, the Ombudsman or the appropriate OCC official, upon written request of a bank, may relieve the bank of the obligation to comply with a supervisory decision or action while the supervisory appeal is pending.

After the appropriate OCC official renders a decision on a formal appeal, the Ombudsman will contact the bank to ask whether the bank believes OCC examiners have taken actions against the bank in retaliation for its appeal. The Ombudsman will contact bank management both 60 days after the date of the decision letter and 60 days after completion of the first examination of the appellant bank following its appeal. A bank may also contact the Ombudsman any time during or after the appeal. The Ombudsman will investigate any complaints of retaliation, and, in the absence of extenuating circumstances, the Ombudsman will complete the investigation within 30 days. To prevent future retaliation, the Ombudsman may recommend to the Comptroller that the next examination of the bank exclude personnel involved in the ruling appealed by the bank.

#### *D. Criticism of Current Process*

Though the OCC's appeals process was an innovative step toward fair treatment of regulated institutions at the time of its adoption, over the subsequent 30 years several potential shortcomings have been identified in the process. First, few formal appeals are being brought. Though this fact could indicate that the OCC's focus on informal negotiation of grievances is resolving most issues, the OCC is concerned that this low rate of appeals could be attributable to a sense on the part of OCC supervised entities that the appeals process is not structured to guarantee fair consideration of the matters appealed or a fear that a formal appeal could damage the bank's relationship with its regulator. Indeed, in 2024, the OCC supervised 1,040 institutions and only 11 appeals were filed with the Ombudsman, suggesting that only approximately one percent of OCC supervised institutions availed themselves of the OCC appeals process. Of those appeals,

10 were upheld by the Ombudsman and one was a split decision between the supervisory office and the bank.

An underlying reason for this perception could be that the OCC has not clearly articulated a de novo standard of review for appeals. While other Federal banking agencies such as the FDIC and the Board have clearly articulated standards of review that provide for more even deliberation,<sup>13</sup> the OCC's guidance has remained silent on whether the Ombudsman and Deputy Comptroller will apply a de novo standard of review or whether it will defer to the judgment of the supervisory office and only overruling findings where there is clear error. This 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. This is especially true in regard to certain types of challenges, such as those regarding referrals to the Department of Housing and Urban Development and the Department of Justice of potential fair lending violations. For instance, between 2017 and 2024, the OCC received 12 appeals of such fair lending referrals, and it upheld the supervisory office's decision in every appeal under the current silent standard of review. The silent standard of review also appears to have influenced the outcomes of appeals of shared national credit decisions. At the first appeal level for SNCs, which consists of an interagency panel of three senior credit examiners, between 2021 and 2024 there were 30 appeals of SNC decisions. Of these

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<sup>13</sup> FDIC, "Guidelines for Appeals of Material Supervisory Determinations," 90 FR 33944 (July 18, 2025), stating that "The FDIC has previously noted that this may be considered a de novo standard of review." Federal Reserve System, "Internal Appeals Process for Material Supervisory Determinations and Policy Statement Regarding the Ombudsman for the Federal Reserve System," 85 FR 15177 (March 17, 2020), explaining that the first appeals panel would apply a de novo standard of review and the final review panel will consider whether the decision of the initial review panel is reasonable, though it will not apply a de novo standard of review.

appeals, approximately 80 percent were upheld by the interagency panel of three senior credit examiners.

While it is difficult to create a clear statistic for appeals that combine multiple questions of law and policy into one appeal because the Ombudsman often issues split decisions on such appeals, finding partially in favor of the bank and partially in favor of the OCC, there has been a public perception regarding these appeals as well that the OCC wins the majority of the time because the standard of review does not give appellants a fair chance to challenge the OCC's original supervisory decision.

Thus, there is evidence that the current appeals process's lack of a clearly articulated standard of review and the consequently high percentage of appeals that are found in favor of the OCC is creating a perception among OCC supervised entities that challenging material supervisory determinations, especially in certain areas, will not be fruitful. This perception may be discouraging supervised entities from bringing formal appeals.

## **II. Description of the Proposed Rule and Changes**

### *A. Objectives of Rulemaking and Changes*

The purpose of the proposed rulemaking is to ensure that the OCC's process for appeals of material supervisory determinations provides a meaningful opportunity for supervised entities to challenge OCC decisions and actions. These proposed changes are designed to enhance the independence of the appeals process and the transparency of the OCC's decision-making standards with the goal of increasing regulated entities' confidence in the appeals process and their protections against retaliation for using the process while affording the public an opportunity to provide comments on changes to the

process.

### *B. Proposed Appeals Process*

In general, the appeals process is an informal process that is not subject to the adjudicative provisions of the APA (5 U.S.C. 554, 556-557). Even if the OCC adopts the proposed rule, the OCC would still retain its current policy concerning dispute resolution, which is to resolve disputed issues in an informal, amicable manner. However, if supervised entities cannot resolve disagreements through discussion, they are encouraged to seek a further review of disputed OCC decisions through the OCC's formal appeals process. The appeals process in the proposed rule is detailed below.

### *C. Definitions*

The proposed rule would provide definitions for the key terms used. First, the OCC is proposing to define "Appeals Board" to mean a panel consisting of the chief national bank examiner and two term appointees. However, the OCC invites comments on how the Appeals Board could be composed. For instance, the Appeals Board could also include the Ombudsman or the Chief Counsel. The term appointees, if that option is selected, would be individuals with relevant supervisory experience gained either from working with a financial regulator or from working for a financial institution, law firm, consulting firm, trade group, or other similar organization.<sup>14</sup> Under the proposal, current OCC employees would not be eligible to serve as term appointees to the Appeals Board, though the OCC is also considering alternatives whereby OCC employees from reporting lines separate from the one that rendered the supervisory determination may serve on the Appeals Board. The OCC invites comment on all of these options and suggestions for

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<sup>14</sup> A person will be considered to have such required expertise if the person has significant executive, professional, educational, or regulatory experience in banking supervision.

other ways to compose the Appeals Board.

The OCC is proposing to define “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. De novo standard of review means that the 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.<sup>15</sup> This standard would be designed to bolster confidence in the fairness and independence of the appeals process. The OCC anticipates that both the appellant and the supervisory office involved in the initial decision will still submit arguments in support of their position to the Appeals Board, similar to the current process, but the arguments submitted by both parties will be weighed evenly.

The OCC is proposing to define “substantively involved” to mean someone that directly approved, advised on, or recommended the decision being appealed or a determination underlying the decision being appealed.

The OCC is proposing to define “supervised entity” to mean an entity for which the OCC makes material supervisory determinations. This includes national banks, Federal savings associations, U.S. agencies or branches of a foreign bank, and permitted payment stablecoin issuers and foreign payment stablecoin issuers subject to the OCC’s regulatory authority. An institution-affiliated party of such an entity that is directly affected by an informal enforcement action may also appeal the informal enforcement action. This definition is intentionally broader than the mandate in the Reigle Community Act, which only covers insured depository institutions and insured credit unions. The

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<sup>15</sup> See *Dawson v. Marshall*, 561 F.3d 930, 933 (9th Cir. 2009).

OCC is proposing this broad definition because it believes that uninsured institutions, including uninsured national trust banks, should also have a meaningful opportunity to appeal OCC determinations, and the OCC seeks to enhance the accessibility of its appeals process to those affected by OCC material supervisory determinations.

#### *D. Commencement of Appeal*

Under the proposal, any supervised entity, as defined above, that is affected by an OCC material supervisory determination may file an appeal for review of the determination. An institution-affiliated party of such an entity that is directly affected by an informal enforcement action taken against the individual may also appeal the informal enforcement action, though not other OCC decisions. Outside of this limited right for institution-affiliated parties, only the supervised entity who is the direct subject of a material supervisory determination may appeal the determination. Members of the general public cannot file an appeal of an OCC material supervisory determination, and a financial institution cannot file an appeal of a material supervisory determination directed at another financial institution, with the exception of the procedure for appeals of SNC determinations.

The proposed regulation would define material supervisory determination to mean any final agency or supervisory decision or action, including, but not limited to, the following:

- i. Examination ratings;
- ii. Adequacy of the allowance for credit losses methodology;
- iii. Individual loan ratings;
- iv. Violations of law;



- v. SNC decisions;
- vi. Fair-lending-related decisions, including referrals to the U.S. Department of Justice or U.S. Department of Housing and Urban Development;
- vii. Licensing decisions; and
- viii. Material supervisory determinations such as matters requiring attention, compliance with enforcement actions, or other conclusions in the report of examination (ROE).

This list is not meant to be an exclusive list of matters that supervised entities may appeal. The regulation would further provide that a supervised entity may not appeal:

- i. Appointments of receivers and conservators;
- ii. Decisions related to bidder status or submitted bids on an institution to which the Corporation provides assistance under 12 U.S.C. 1823;
- iii. Preliminary examination conclusions communicated to the bank before a final ROE or other written communication from the OCC is issued;
- iv. Any formal enforcement-related actions, including, but not limited to, decisions to:
  - (A) Seek the issuance of a formal agreement or a cease-and-desist order, or the assessment of a civil money penalty pursuant to 12 U.S.C. 1818;
  - (B) Take prompt corrective action pursuant to 12 U.S.C. 1831(o);
  - (C) Issue a safety and soundness order pursuant to 12 U.S.C. 1831p-1; or
  - (D) Commence formal investigations pursuant to 12 U.S.C. 481, 1464(d) 1818(n), and 1820(c).
- v. Formal and informal rulemakings pursuant to 5 U.S.C. 500 *et seq.*;

- vi. Decisions or recommended decisions following formal and informal adjudications conducted pursuant to 5 U.S.C. 701 *et seq.*;
- vii. Requests for agency records or information under the Freedom of Information Act covered by 5 U.S.C. 552 or 12 CFR part 4 and submission of information to the OCC that is governed by this statute and this regulation;
- viii. Decisions to disapprove directors and senior executive officers pursuant to 12 U.S.C. 1831i;
- ix. Any other agency decisions that are subject to judicial review other than those described as appealable above;
- x. Any decision by the agency that is non-final, other than those described as appealable above;
- xi. Supervisory observations;
- xii. Conclusions in OCC interpretive letters; or
- xiii. Agency decisions that are administrative and do not substantially affect the rights of the supervised entity.

Certain agency decisions that are insignificant or non-final would also not be appealable in the interest of conserving agency resources. Such matters would include issues such as the scheduling for examinations or additional information requests.

The proposed rule adopts both the list of appealable and non-appealable matters from the 2013 Guidance with certain additions and clarifications. Certain items on the lists are mandated by the Riegle Community Act. The Riegle Community Act specifies that material supervisory determination must include examination ratings, the adequacy of loan loss reserve provisions, and loan classifications on loans that are significant to an

institution.<sup>16</sup> The Act further explicitly excludes from the appeals process a determination to appoint a conservator or receiver or a decision to take action pursuant to 12 U.S.C. 1831o, which provides authority for regulators to take prompt corrective action to resolve problems that could impose losses on the deposit insurance fund.<sup>17</sup> The current lists of appealable and non-appealable matters have worked well based on the OCC's supervisory experience and have not faced significant criticism. Thus, the OCC is proposing to generally maintain these lists with certain changes, but the agency invites comment on whether they should be amended to the extent statutorily permissible.

The proposed rule also continues to largely adopt the procedures in the 2013 Guidance concerning appeals when formal enforcement proceedings are pending. That is, under the proposed rule, while supervised entities may not appeal a decision by the supervisory office to pursue a formal enforcement-related action, they may appeal conclusions in the ROE before the commencement of a formal enforcement-related action. This includes determinations and the underlying facts and circumstances that may form the basis of a subsequent formal enforcement action. Once the OCC informs an institution that a formal enforcement-related action has been approved, a supervised entity may not pursue an appeal, except for the limited purpose of challenging whether examiners appropriately followed agency policies and standards in preparing the ROE. Also, once a supervised entity has entered into a formal enforcement action, conclusions regarding the supervised entity's level of compliance with the formal enforcement action are an appealable matter. However, if the OCC determines that the lack of compliance with an existing enforcement action requires an additional enforcement action, the

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<sup>16</sup> 12 U.S.C. 4806(f)(1).

<sup>17</sup> 12 U.S.C. 4806(f)(1)(B).

proposed new enforcement action is not appealable. Remarks in an ROE and other communications about a potential formal enforcement action made prior to a final decision are preliminary and therefore may not be appealed. Individual minimum capital ratios under 12 CFR 3.403 and notices of deficiency under 12 CFR part 30 may be appealed.<sup>18</sup>

The proposed appeals process is not intended to allow appeals that seek to change or modify OCC policies, rules, or legal interpretations. If an appeal would raise a legal question of first impression, the matter would be referred to the Chief Counsel's Office for decision rather than the Appeals Board, as that is the correct forum for legal determinations.

The proposed rule provides that the appeal may be filed with the Deputy Comptroller responsible for the unit that issued the determination in dispute or directly with the Appeals Board. It is at the supervised entity's discretion where to file the initial appeal, though the OCC retains the discretion to escalate an appeal directly to the Appeals Board if there is a risk that delay can harm remediation of a material financial risk or result in costs to the Deposit Insurance Fund. This option is preserved from the existing guidance. The OCC invites comment on whether this option should be maintained. The proposed rule further adopts from the 2013 Guidance the requirement that if the Deputy Comptroller was substantively involved in making the decision under review, he or she must transfer the appeal to the Appeals Board after informing the appellant.

The proposed rule maintains the deadlines from the existing guidance for the

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<sup>18</sup> Only the final order or notice may be appealed, not preliminary determinations or findings.

filing of the appeal, which mandate that the appeal must be filed within 60 days of receipt of the determination in dispute, except for decisions relating to fair lending referrals to the U.S. Department of Justice or notifications to the U.S. Department of Housing and Urban Development, which must be filed within 15 days. The OCC's supervisory experience has shown that this time period is sufficient for banks to prepare and submit appeals. In keeping with the OCC's policy of encouraging informal resolution of disagreements between supervised entities and the OCC, the OCC would still maintain its existing practice of waiving this deadline if an institution is engaged in good faith dialogue with the supervisory office in an attempt to informally resolve the dispute. Also adopted from the 2013 Guidance is the requirement that the appeal must include the supervisory standards that the bank asserts were inappropriately applied by OCC officials. Supervisory standards means statutes, regulations, or articulations of OCC policy in guidance such as the Comptroller's Handbook, bulletins, or interpretive letters. This requirement is not meant to prevent appeals where the specific standard applied is unknown to the bank.

If the appeal is by a financial institution, the president or chief executive officer must submit the appeal and include in the submission the board of the institution's approval of the action. This requirement is adopted from the current guidance and is designed to ensure that the bank's leadership supports the appeal. The OCC is soliciting comment on whether this requirement is necessary.

#### *E. Consideration of Appeal by Deputy Comptroller*

Under the proposed process, the appellant has the choice whether to file the appeal directly with the Appeals Board or to first file it with the Deputy Comptroller of

the division that rendered the decision at issue. The Deputy Comptroller would be required to transfer the appeal directly to the Appeals Board if the Deputy Comptroller substantively involved in making the decision under review. If the Deputy Comptroller determines that such a transfer is necessary, the appellant would be informed.

Under the proposal, the Deputy Comptroller has 45 days from the receipt of the appeal to render his or her decision unless there are extenuating circumstances requiring additional time. This is the same timeframe contained in the 2013 Guidance. If the Deputy Comptroller determines that the filed appeal is incomplete or requires more information from the appellant, the 45 days would not start until the Deputy Comptroller receives a complete appeal. Consistent with the current process, the proposed rule would require that once a complete appeal is received, the Deputy Comptroller would solicit the views of the supervisory office involved in issuing the material supervisory determination. The OCC is soliciting comments on whether this initial appeal to the Deputy Comptroller is a meaningful opportunity for redress that should be maintained as part of the appeals process.

Under the proposal, when considering the matters being appealed, the Deputy Comptroller would apply a de novo standard of review. The OCC is soliciting comments on whether this is the right standard of review to be applied. Though the Deputy Comptroller may use workpapers and materials prepared by the supervisory office, he or she would reach his own conclusions about each issue in dispute and would not give deference to either party. If necessary to render a decision, the 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.

The proposed rule would require the Deputy Comptroller to issue a decision in writing. If the appellant disagrees with the determination of the Deputy Comptroller, the appellant would have the option of further appealing the matter to the Appeals Board. This approach generally follows the process specified in the 2013 Guidance. The appellant would be required to file its appeal to the Appeals Board within 15 days of receiving the written decision from the Deputy Comptroller.

*F. Consideration by the Appeals Board*

The proposed rule would replace the role currently played by the Ombudsman with an Appeals Board consisting of the Chief National Bank Examiner and two term appointees. This change is being proposed to increase confidence in the independence of the decision making on appeals. Under the proposal, the term appointees would not be eligible to have their terms renewed in order to prevent the appointees from being pressured to find in the OCC's favor to secure reappointment. The OCC is also considering other options for how to compose the Appeals Board. For instance, the Board could also include the Ombudsman or the Chief Counsel. It could also be composed of one term appointee and two OCC officials. The term appointees, if that option is selected, would be individuals with relevant banking, regulatory, legal, or supervisory experience gained either from working with a financial regulator, for a financial institution, or in the financial services sector. Under the proposal, current OCC employees would not be eligible to serve as term appointees to the Appeals Board, though the OCC is also considering alternatives whereby OCC employees from reporting lines separate from the one that rendered the supervisory determination may serve on the Appeals Board. The

agency is further considering maintaining the current structure with the Ombudsman as the decision maker. The OCC welcomes comments on what structure would provide the most fairness, independence, and expertise.

Under the proposal, the Appeals Board would be able to consider issues either directly appealed to it or appealed to it after a determination by a Deputy Comptroller. It would also consider appeals referred to it by a Deputy Comptroller who was substantively involved in the material supervisory determination. It would further consider appeals of SNCs, fair lending determinations, and licensing decisions. Regardless of the way the matter comes before the Appeals Board, the Appeals Board would apply a de novo standard of review. As explained above, this means that no deference would be shown to either party. The OCC is soliciting comments on whether this is the correct standard of review for the Appeals Board to apply. On the one hand, this standard of review would provide the most opportunity for appellants to be able to show the merits of their arguments. On the other hand, the supervisory staff who made the initial determination often have more technical expertise regarding the matter than the members of the Appeals Board, so it could introduce more risk of error into the process for the Appeals Board to overturn the supervisory staff without a finding of clear error. The OCC does anticipate continuing to allow the supervisory office that made the original determination to submit arguments and explanation in support of its determination to the Appeals Board, which will weigh the supervisory office's arguments equally with the appellant's arguments.

The Appeals Board would solicit the views of the supervisory office involved in issuing the material supervisory determination and would include in its deliberations their



response to the appellant's arguments. It is envisioned that the Appeals Board would be assisted by its own independent staff who could help review disputed facts and standards. The Appeals Board could also supplement the review record by soliciting the views of other OCC staff, staff of other supervisory agencies, or other sources. When necessary, the Appeals Board would consult subject matter experts from across the OCC. When such consultations occur, the Appeals Board would attempt to use experts who were not substantively involved in the initial decision. If necessary, the Appeals Board or its staff could engage in gathering additional facts or information to verify factual conclusions in the supervisory record. All decisions by the Appeals Board would be reviewed by an OCC attorney for conformance with law and OCC policy. The attorney rendering this opinion would be someone who was not substantively involved in the initial decision.

The Appeals Board's 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. However, the Appeals Board may gather additional evidence as described above. As well, the Appeals Board may permit in its discretion supplementation of the record by either party in the interest of fairness provided the request is timely received by the Appeals Board. Though the OCC recognizes that this introduces the possibility of the Appeals Board overturning the supervisory office's decision based on evidence that the supervisory office did not have available to consider, in some circumstances it is important for the OCC to reach the right conclusion for the bank from a safety and soundness perspective regardless of whether that requires new materials be considered.

If any member of the Appeals Board had been substantively involved in one or

more of the determinations being appealed, the member would be required to observe a recusal. If a member of the Appeals Board is recused and the two remaining members cannot reach a decision, the Comptroller would decide the matter.

Under the proposal, the Appeals Board would issue a written decision within 45 days of receiving the appeal unless there are extenuating circumstances requiring additional time. This is the same timeframe referenced in the 2013 Guidance. Similar to the current process, the written decision would state the reasons for the Appeals Board's conclusion and the evidence it relied upon to reach that conclusion. If the Appeals Board relied on confidential supervisory information from other institutions, that information would be subject to all applicable limits on its disclosure.

The proposal would require a redacted version of the Appeals Board's decision to be published. The OCC envisions that this publication would occur on the OCC's website, as is the current practice. As is the current practice, the decision would be redacted to remove all identifying information about the bank involved but, to the greatest extent possible while still maintaining confidentiality, allow the reader to understand the issues in contention and how the OCC considered those issues. As well, if any member of the Appeals Board chooses to write a dissent, this would also be published in redacted form. These publication requirements would provide transparency into the OCC's decision making process and accountability to regulated entities and the public for the outcomes of appeals. This transparency is important for ensuring that supervisory standards are applied consistently and fairly.

#### *G. Appeals of Shared National Credit Determinations*

The proposed rule would also codify the appeals process for SNCs. It would

generally maintain the current process as contained in the 2013 Guidance, but make revisions as needed to conform to changes such as the establishment of an Appeals Board as the final decision maker.

Under the proposed rule, an agent bank may submit a SNC appeal directly or on behalf of any participant bank. If the agent bank refuses, for whatever reason, to file the appeal on behalf of the bank group, the OCC would accept an appeal from any participating bank. The proposal would require a bank to file a SNC appeal with the regulator that supervises the agent bank. When no agent bank is named, the appeal would need to be filed with the regulator that supervises the bank at which the SNC was reviewed. The proposal would require the agent bank to file the appeal within 14 days of notification by the OCC of the preliminary disposition of the credit. Any participant bank would be allowed to appeal either through the agent bank or on its own within 14 days of receiving the preliminary SNC results from the agent bank. If the agent bank does not provide preliminary results to the participant banks, participant banks would be permitted to file an appeal within 14 days of receiving the official SNC results from the primary regulator. These are the same deadlines for appeal as under the 2013 Guidance. They are designed to provide flexibility for banks to be able to appeal regardless of the communication processes between the agent bank and the participant banks.

The proposed rule would require a SNC appeal to identify the credit, the commitment amount, the disposition, the basis for the bank's disagreement, and any documentation that supports the institution's position on the matters in dispute. This is the same information that is called for by the current guidelines. As under the 2013 Guidance, an interagency panel consisting of senior credit examiners that are independent

of the original voting team would evaluate the appeal and recommend a decision to OCC senior management. Absent extenuating circumstances this independent review team would issue its decision on a SNC appeal within 30 days of receipt of a complete appeal. If a bank disagrees with the independent review team's decision, the rule would permit it to appeal the matter to the Appeals Board within 30 days of receiving the decision letter from the OCC. These are the same timeframes for rendering a decision and for appealing the decision as under the 2013 Guidance, and the OCC's supervisory experience has found them to be largely appropriate for SNC appeals. The Appeals Board would hear SNC appeals under the same procedures, standard of review, and timeframe as it hears all other appeals. It would also apply the same independence requirements for Appeals Board members and for supporting staff.

#### *H. Alternative Procedures*

Under the proposed rule, with a finding of good cause, the Appeals Board would retain the discretion to extend any time limit, either on behalf of the OCC or on behalf of an appellant, or waive any other procedural requirement under the proposed rule. The OCC is proposing this provision to maintain flexibility for the appeals process in recognition of the fact that the proposed procedures might not be appropriate for all situations. For instance, an appeal raising particularly complex issues might require more than 45 days for the Appeals Board to consider. Likewise, it might take an appellant more than 60 days to complete an appeal submission if the applicant needs to consult outside experts on issues under contention. As well, issues outside of the OCC or the appellant's control, such as natural disasters, could affect the party's ability to meet the proposed regulation's deadlines.

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. The OCC is soliciting comments on this approach and on whether an official other than the Comptroller should serve as the decision maker in such situations, for instance, the Chief Counsel or the Ombudsman. Under the current proposal, if all members of the Appeals Board are recused, the Comptroller would decide the matter. However, the OCC is also considering having the Comptroller appoint one or more replacement members of the Appeals Board in these matters. The OCC invites comments on these alternative approaches.

#### *I. Staffing of the Appeals Board*

Under the proposed rule, the Appeals Board will consist of the Chief National Bank Examiner and two term appointees. The term appointees would be individuals not currently employed by the OCC and who have never before served as a term appointee on the Appeals Board. The requirement that the term appointee never before has served as a term appointee on the Appeals Board is to prevent the term appointees from feeling pressured to decide in the OCC's favor in order to be reappointed. These individuals would be required to have relevant experience and expertise, either in government or in the industry. They would be appointed for a one-year term that is not eligible for renewal and would be appointed directly by the Comptroller. The OCC is soliciting comment on whether the term should be longer, such as two -years, three-years, or four-years, and whether if the term is longer, the terms should be staggered so that the term appointees are not all replaced at the same time. The Appeals Board would report directly to the Comptroller to maintain its independence from the lines of business issuing the

supervisory determinations. The OCC is also considering having the term appointees be part-time positions and allowing them to hold outside employment while serving on the Appeals Board. The OCC is also soliciting comments about whether such an arrangement would raise ethical or independence concerns. The OCC is considering and soliciting feedback on what types of external employment should be permitted, if it decides to adopt that option. For instance, it is considering allowing term appointees to work for another government agency or for a consulting firm.

The OCC envisions that the Appeals Board would have OCC staff appointed as necessary to assist with the investigation and analysis of the appeals before it. Such staff would be required to be recused from an appeal if they were substantively involved in the determination being appealed, the same as for members of the Appeals Board itself.

#### *J. Stay of Determinations*

The current guidelines provide that determinations generally will not be stayed during an appeal, though in the appropriate circumstances, the Ombudsman may stay a decision with the prior consent of the Comptroller. The proposed rule would provide more clarity on when a stay will be granted. Specifically, the proposed rule would provide that an appealed material supervisory determination will be stayed if the bank requests a stay and the appropriate Deputy Comptroller or the Appeals Board concludes that:

- i. Delaying the implementation of the material supervisory determination would not result in a risk of immediate financial harm to an OCC supervised institution;
- ii. The material supervisory determination would impose costs on the appellant within the timeframe for the OCC to decide the appeal; and

iii. The public interest would not be harmed by delaying the implementation of the material supervisory determination.

For instance, if the OCC determination requires an appellant to immediately adopt costly compliance measures, the OCC could consider granting a stay if delaying the implementation of corrective actions during the pendency of the appeal would not result in the risk of immediate financial harm to the institution or the public. This is because once an institution has expended the resources on implementing costly systems and processes, it cannot undo those costs if it wins the appeal. This reality can discourage appeals. However, the OCC is cognizant that, depending on the type of potential deficiency, a stay may not be appropriate.

In weighing whether to grant a stay, the OCC would consider the size of the institution and the burden that immediately implementing the appealed determination will have on the appellant's resources. The OCC would require a lower showing of burden from community banks than from larger institutions, with a presumption that stays of decision should mostly be issued for institutions with more limited resources.

The OCC is soliciting feedback on whether these are the right factors for the OCC to consider when determining whether to grant a stay of a decision pending the outcome of the appeal. The OCC is also soliciting feedback on whether to allow the Ombudsman to grant a stay in addition to the Appeals Board.

#### *K. Expedited Appeals*

The proposed rule would provide that when a material supervisory determination relates to or causes an institution to become critically undercapitalized, as defined by 12 U.S.C. 1831o, the review of any appeal of that supervisory determination would be

processed on an expedited basis. For appeals processed on an expedited basis, the appropriate Deputy Comptroller or the Appeals Board would issue its decision in no more than 30 days and would issue the decision in less if the situation demands. The OCC is also considering implementing a shorter timeline than 30 days and is contemplating timelines between 10 and 30 days. The OCC invites comment on the appropriate timeline for expedited appeals.

The expedited appeals process is a change from the 2013 Guidance, which does not adopt expedited treatment for any issue. However, the OCC recognizes that, given the severe outcome of becoming critically undercapitalized, it is important for such issues to be resolved as rapidly as practicable. Notwithstanding the proposal's timeline, situations may arise that would prevent an appeal from being completed before the prompt corrective action framework requires a receivership to be imposed. In these situations, the existence of an outstanding appeal would not prevent the OCC from meeting its statutorily mandated obligation under the prompt corrective action framework to appoint a receiver, in which case an appeal would become moot.

The OCC is soliciting feedback on whether there are other types of decisions that should also be subject to expedited proceedings.

#### *L. Role of the Ombudsman*

The OCC is proposing to change the role of the Ombudsman in the appeals process. Currently, the Ombudsman acts as the decision maker in appeals. As explained above, the proposed rule would replace the Ombudsman with the Appeals Board as the final decision maker for appeals. The Ombudsman's role would shift to acting as an impartial liaison between the appellant and the Deputy Comptroller or the Appeals



Board. This change would allow the Ombudsman to better assist the appellant as the appellant will be more likely to consult the Ombudsman with questions if the Ombudsman is not also the final decision maker. The change would further make the Ombudsman a neutral party in the appeals process and thus allow him to better focus on assisting appellants. It would also dovetail with the Ombudsman's new responsibility under the proposed rule to conduct outreach to supervised institutions after exams to determine their satisfaction with the experience and any issues they may wish to discuss. Institutions are more likely to be open and honest with the Ombudsman during such outreach if the Ombudsman is not the decision maker in any appeal they are considering filing. Under the proposed rule, the Ombudsman's office would be responsible for issuing an annual report to the Comptroller detailing trends and issues it observed through its outreach to institutions after their examinations, assisting banks with navigating the appeals process, and investigating complaints from supervised entities of OCC misconduct. Examples of misconduct that may be investigated by the Ombudsman include: failure to follow OCC procedures for conducting an exam, OCC employees making statements to discourage a bank from exercising its right to appeal, or an OCC examiner soliciting a bribe. If the Ombudsman investigates an allegation that the OCC or its employees engaged in misconduct and failed to follow the law, the Chief Counsel's Office will coordinate with the Ombudsman and will render a final decision on all questions of law.

In this new role, the Ombudsman would be in a unique position to identify and report patterns of issues arising from complaints related to OCC regulatory activities. The Ombudsman could track inquiries and complaints based on relevant characteristics, such

as geographic location, scope, policy implications, and final disposition, to help identify any such trends, including trends that implicate differently sized institutions disproportionately. This tracking will be conducted in a manner designed to preserve confidentiality of the complainant to the maximum extent possible. In its required annual report, the Ombudsman will report findings of patterns of issues to the Comptroller. The Ombudsman will also report any issue stemming from a complaint that is likely to have a significant impact on the OCC's mission or activities. The Ombudsman will compose an annual report, which will be published by the OCC, that will provide information including the number of appeals for the year, the topics of appeals, the average length of time it took to resolve the appeals decided that year, and a summary of the OCC's decisions for the year.

Under the proposed rule, similar to under the 2013 Guidance, the Ombudsman is responsible for preventing the OCC or any of its employees from retaliating against the bank for its appeal. This requirement for the Ombudsman is derived from the Riegle Community Act.<sup>19</sup> To fulfill this mission, the proposed rule would require that after the appropriate OCC official renders a decision on a formal appeal, the Ombudsman will contact the bank to ask whether the bank believes OCC examiners have taken actions against the bank in retaliation for its appeal. The Ombudsman would then contact bank management again 60 days after the date of the decision letter and then 60 days after completion of the first examination of the appellant bank following its appeal. This process is similar to the process under the 2013 Guidance.

Similar to under the current process, the proposed rule also provides that a bank

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<sup>19</sup> 12 U.S.C. 4806(d).

may also contact the Ombudsman at any time during or after the appeal if the bank believes that retaliation has occurred. Under the proposed rule, the Ombudsman's role would be extended to receiving any bank complaints of misconduct by the OCC or its staff beyond just claims of retaliation. The Ombudsman would field complaints not just about OCC employees, but also about the term appointees on the Appeals Board and about contractors and other third-parties interacting with supervised entities on the OCC's behalf. The Ombudsman would assist institutions with issues and questions related to OCC regulatory activities. In doing so, the Ombudsman would operate independently of the supervisory process to ensure that appropriate safeguards exist to encourage complainants to come forward and preserve confidentiality. The Ombudsman may initiate a factual inquiry into complaints of alleged retaliation or complaints of other misconduct or mistakes at any time. In the absence of extenuating circumstances, the Ombudsman will complete the investigation within 30 days.

Similar to the OCC's current structure, the Ombudsman would continue to report directly to the Comptroller in order to preserve his independence.

In cases involving allegations of retaliation, if the Ombudsman finds that retaliation has occurred, the Ombudsman will forward the complaint directly to the Inspector General. Appropriate action, including disciplinary action consistent with OCC policies, will be taken as warranted, and the Ombudsman may recommend to the Comptroller that the next examination of the bank exclude personnel involved in the ruling appealed by the bank. The Comptroller will make the final decision on any such exclusion.

*M. Retaliation and Dissuasion Forbidden*

The proposed rule would provide that neither the OCC nor any employee of the OCC may retaliate against an institution or person for filing an appeal. Retaliation would be defined as any action or decision by the OCC or by OCC employees that causes a supervised entity to be treated differently or more harshly than other similarly situated entities because the supervised entity attempted to resolve a complaint by filing an appeal of a material supervisory determination or utilized any other OCC mechanisms for resolving complaints, including informal discussions with OCC supervisory staff.

The proposed rule further provides that neither the OCC nor any of its employees may discourage a supervised entity from filing an appeal or from otherwise communicating concerns and objections to the OCC through the appeals process, through the Ombudsman's office, or through other channels such as reaching out directly to the Comptroller. The OCC values honest communication and feedback from supervised entities, and any attempt by examiners or others to discourage banks from such communication or to retaliate against banks for such communication is prohibited.

The proposed rule further provides that if the Appeals Board finds in favor of a supervised entity on an appeal, the OCC may not impose a substantially similar decision based on the same underlying facts in future material supervisory determinations. This is to prevent examiners from retaliating against a supervised entity for filing an appeal and to reaffirm the importance of the appeals process. Supervised entities may be discouraged from filing appeals if the OCC does not make it clear that the decision of the Appeals Board will be respected by the supervisory staff and others across the OCC.

### **III. Request for Comments**

The OCC seeks comment on all aspects of the proposed rule, including the

following:

1. Is the definition of supervised entity correct? Is it too broad or too narrow? Are there other groups not included in the definition who should have an opportunity to challenge the OCC's supervisory determinations?

2. Is the composition of the Appeals Board, consisting of the Chief National Bank Examiner and two term appointees, a preferable approach to a single OCC decisionmaker or a board with a different composition? Would a different composition better ensure independence or better promote the confidence of supervised entities in the process's independence and fairness? For instance, the Appeals Board could also be composed of one term appointee and two OCC officials. It could also be composed of three term appointees and no OCC officials.

3. Would removing the Ombudsman's role as the decisionmaker on appeals increase the independence and fairness of the appeals process and the perception of independence and fairness? Would the Appeals Board consisting of the Chief National Bank Examiner and two term appointees, or some other composition, be better positioned to render an impartial decision than the Ombudsman?

4. Does restricting the Appeals Board's term appointees to only serving one term better position them to render fair and impartial decisions than permitting reappointments, which could cause the appointees to feel pressured to find in the OCC's favor to secure reappointment? Are there other provisions that could be placed in appointees' terms or conditions of service that would be effective in positioning them to render fair and impartial decisions and to prevent the term appointees from being pressured to find in the agency's favor? Are there alternatives other than term appointees

that the OCC should consider in determining the composition of the Appeals Board that would be more likely to promote impartial decision-making?

5. What should be the criteria for those selected to serve on the Appeals Board as term appointees in terms of experience and independence? Should the rule further clarify what constitutes relevant experience for serving on the Appeals Board? Should there be a restriction on the Appeals Board being constituted exclusively of ex-OCC employees? Should there be a requirement that the Appeals Board include someone with community banking experience?

6. Are there other changes that would increase the independence of the Appeals Board and prevent the Appeals Board from being predisposed to find in favor of the supervisory office?

7. Should the OCC implement a de novo standard of review as contemplated, or would it be a better use of agency resources to implement a standard of review more deferential to the work already done by the supervisory office? Should the OCC clarify the standard for the burden of proof, and, if so, what should that standard be?

8. Should the OCC maintain the current structure whereby supervised entities have the option to appeal to the appropriate Deputy Comptroller before appealing to the final decision maker (either the Appeals Board or the Ombudsman, depending on the structure ultimately chosen)?

9. Is the list of examples of OCC actions or decisions that can be appealed as material supervisory determinations sufficient, or are there further types of decisions that the OCC should explicitly note can be appealed?

10. Is the list of decisions that are excluded from the appeals process sufficient, or

are there further types of OCC actions or determinations that should be excluded?

11. If one or more members of the Appeals Board is recused from deciding a matter due to conflicts of interest or having participated in the initial decision, and the remaining two members cannot come to a joint decision, how should the OCC decide the matter? Should the Comptroller decide the matter himself? Or should the Comptroller appoint someone else as the replacement such as the Ombudsman, the Chief Counsel, or another term appointee?

12. When discussing the relevant experience required for members of the Appeals Board, the proposed regulation would provide that “a person will be considered to have such required expertise if the person has significant executive, professional, educational, or regulatory experience in banking supervision.” Does this standard need further clarification or refinement? Should the OCC have a more detailed standard, or a more flexible standard? Is there a different standard that would be more appropriate?

13. Are the deadlines proposed for an appellant filing an appeal and the OCC rendering a decision reasonable? Have the current deadlines and timeframes contained in the 2013 Guidance been appropriate?

14. If the OCC does adopt the proposal to replace the Ombudsman with an Appeals Board, is the proposed one-year term the appropriate term length for the term appointees? Or would it work better for the term appointees to have two-year, three-year, or four-year terms? If the OCC does select a term longer than one year, should it stagger the terms so that term appointees do not all change at the same time? Would the frequent staffing changes that such a short term would dictate cause delays in the processing of

matters? Given the high level of expertise required of the members of the Appeals Board, would it be difficult for the OCC to hire the necessary experts for such short durations?

15. Are the expedited procedures for determinations that cause an institution to become critically undercapitalized appropriate? Should the timelines for such matters be longer or shorter? The OCC is considering implementing a shorter timeline and is contemplating timelines between 10 and 30 days. Are there other types of determinations that should also be subject to expedited procedures such as a potential program violation of the Bank Secrecy Act that involves a risk of money laundering or Office of Foreign Asset Controls sanctions violations?

16. Would the proposed rule have any costs, benefits, or other effects that the OCC has not identified? If so, please describe any such costs, benefits, or other effects.

17. Is the proposed definition of “substantively involved” appropriate? Will this definition help ensure independence of the process? Would a different definition be more appropriate?

18. The OCC is considering making the term appointees part-time positions. While the OCC would observe all applicable ethics laws for the term appointees, the agency is considering allowing the term appointees to hold outside employment while serving on the Appeals Board. Would there be a conflict of interest if the term appointees are employed outside of the OCC while serving on the Appeals Board? If the OCC does choose to make the term appointee positions part-time, what restrictions should the OCC place on outside employment? For instance, would a bank be comfortable having its appeal heard by someone who is employed by a competitor? Should the term appointees be permitted to work for another government agency or for a consulting firm?



19. Currently, the proposed rule provides that the Appeals Board can issue a stay of a decision while an appeal of that decision is pending. Should the OCC also give the Ombudsman the ability to issue a stay of a decision pending an appeal?

20. Should appeals of decisions related to licensing applications that cause a delay in the licensing application being decision be considered on an expedited basis?

#### **IV. Expected Effects**

As previously discussed, the OCC believes the proposed rulemaking is necessary to ensure that the OCC's process for appeals of material supervisory determinations provides a meaningful opportunity for supervised entities to challenge OCC decisions and actions. Currently, the standard of review for an appeal is not clear. For example, the OCC's guidance remains silent on whether the Ombudsman and Deputy Comptroller will apply a de novo standard of review or whether they will defer to the judgment of the supervisory office and only overruling findings where there is clear error. The proposed changes are designed to enhance the independence of the appeals process and the transparency of the OCC's decision-making standards with the goal of increasing regulated entities' confidence in the appeals process and their protections against retaliation for using the process while affording the public an opportunity to provide comments on changes to the process.

The proposed rule would move the Ombudsman from the role of decision maker on appeals to the role of a neutral liaison between the OCC and its supervised institutions who are seeking redress. The role of decision maker for appeals would be assigned to a newly created Appeals Board. The proposed rule is soliciting public feedback on how the Appeals Board should be composed, but it is proposing that it be composed of two term

appointees selected by the Comptroller who are not current OCC employees and one OCC employee, possibly the Chief National Bank Examiner.

Another major change in the proposed rulemaking would be the adoption of a formal de novo standard of review. As previously stated, the current guidance is silent on the standard of review.

The proposed rule adopts the list of what is appealable and not appealable from the current guidance with certain additions and clarifications. It maintains the current prohibition on appeals of formal enforcement orders, a determination to appoint a conservator or receiver, or a decision to take action pursuant to 12 U.S.C. 1831, which provides authority for regulators to take prompt corrective action to resolve problems that could impose losses on the deposit insurance fund.

The proposed rule would maintain the current deadlines for submission of the appeal and related materials and the OCC's review of the appeal. The proposal would establish standards for independence for those involved in reviewing the appeal. It would provide for the publication of the final decision and any dissent in writing.

The proposed rule would also expand the role and responsibilities of the Ombudsman. Rather than being the decision maker in the appeals, the Ombudsman would act as a neutral liaison for supervised entities considering filing an appeal or another grievance against the OCC. The Ombudsman would also have the new duty of issuing an annual report to the Comptroller detailing trends and issues it has observed. The Ombudsman would continue to have the duty of reaching out to institutions after they have appealed to determine their satisfaction with the process and whether they believe they have suffered any retaliation for filing the appeal. In addition to this duty,

the proposal would have the Ombudsman reach out to institutions after each examination to determine whether they have grievances or concerns stemming from the examination.

The proposed rule would establish standards for when a stay of a decision would be granted pending an appeal, would clarify the record on review, and would clarify the authority of the Comptroller. In addition, the proposed rule would clarify that neither the OCC nor any of its employees can discourage a supervised entity from filing an appeal or from otherwise communicating concerns or objections to the OCC through the appeals process, through the Ombudsman's office, or through any other channel. As well, the proposed rule further provides that if the Appeals Board finds in favor of a supervised entity on an appeal, the OCC may not impose a substantially similar material supervisory determination based on the same underlying facts in future material supervisory determinations.

### **Affected parties**

#### **OCC-supervised institutions**

The OCC currently supervises approximately 998 national banks and Federal savings associations (banks). Because the proposed rule revises the appeals process for all OCC-regulated banks, the proposed rule would affect all 998 OCC-regulated banks.

In addition, the OCC notes that the proposed rule would cover the appeals of permitted payment stablecoin issuers that will probably fall under OCC supervision in the near future. Because the OCC does not have experience supervising this novel industry, the agency does not believe that it can accurately predict how many stablecoin issuers the OCC will supervise.

### **Legal and Regulatory Baseline**

The baseline for the proposed rule includes the pre-existing review process which is described in the 2013 Guidance. The 2013 Guidance provides a process for appeals for OCC institutions whereby these institutions may appeal to the Ombudsman for a reconsideration of material supervisory determinations. The proposed rule would replace this guidance.

When the OCC evaluates the costs and benefits of the mandates and effects of the proposed rule, the agency evaluates the costs and benefits of the mandates that impose costs beyond those already incurred in the existing process.

The Agency also notes that its evaluation of the proposed rule only evaluates the impact of the differences between the proposed rule and the baseline. That is, the agency does not incorporate possible changes stemming from other OCC guidance or rules when evaluating the impact of this proposed rule. The agency assumes that all other factors, such as the number of possible appeals and the types remain the same.

### **Costs and Benefits**

#### *Appeal rate estimate*

The agency expects that both the OCC and OCC-regulated institutions would be affected by the proposed rule. The agency expects that the OCC would incur costs in setting up the new appeals process and processing new appeals. The agency also expects OCC-regulated institutions would incur costs in making more appeals that they may not have made under the 2013 Guidance, but also may benefit from having a greater number of appeals potentially approved and stays granted due to the proposed rule.

To calculate the costs and benefits of the proposed rule, the agency first estimates the number of new appeals, the expected percentage increase in accepted appeals, and the

percentage of stays granted from appeals due to the proposed rule. The agency expects that the proposed rule would increase the number of appeals that OCC-regulated institutions make because of the proposal's de novo standard of review, the possibility of receiving a temporary stay from filing an appeal, the possibility of receiving expedited review, and the assistance that appellants would receive in making appeals from the newly independent Ombudsman. The agency believes that the increased clarity in the appeals process articulated as well as other changes (e.g., stays) would significantly increase the number of appeals relative to the appeals that would continue to take place under the baseline.

To estimate the number of new appeals, the OCC used information from a survey of regulated financial institutions exploring their desires to make appeals cited in a study by Hill (2015).<sup>20</sup> Hill cited survey data that the OCC believes suggests that OCC-regulated institutions would appeal supervisory determinations at a significantly higher rate than they have historically. The study stated that:

[T]he Alliance of Bankers Associations, in connection with the American Bankers Association, conducted a nation-wide survey questioning banks about their most recent examination. The survey, which received more than 1000 responses, asked banks to rate satisfaction with the most recent examination and results on a 1 to 5 scale with 1 being very satisfied and 5 being very unsatisfied. More than 30% of responding banks were unsatisfied or very unsatisfied. Respondents were also asked to evaluate

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<sup>20</sup> Hill, Julie Andersen (2015): *When Bank Examiners Get It Wrong: Financial Institution Appeals of Material Supervisory Determinations*, Washington University Law Review, pages 1101-1185, volume 92, issue 5.

agreement with the assigned CAMELS rating on the same 1 to 5 scale. That question yielded an average response of 3.38, evidencing some disagreement with examination ratings. Moreover, surveys of credit unions produced similar results. In 2010, the Credit Union National Association conducted a survey in which “27% of respondents reported dissatisfaction with their most recent exam.” Moreover, “one-in-five (21%) [of the responding credit unions] indicated that they wanted to appeal but did not.” “Two-thirds of the credit unions that wanted to appeal indicated they did not appeal for fear of retaliation by examination staff. Nearly the same number indicated they did not appeal because they did not believe it would make a difference in outcome.”<sup>21</sup>

Although Hill cited data on credit unions, the OCC believes that OCC and credit union regulations and supervision are similar enough to justify extrapolating conclusions from credit union survey responses to OCC-regulated institutions. And coupled with Hill’s citing of banks’ general dissatisfaction with examinations and CAMELS ratings, the OCC believes that her study provides a sufficient basis for the agency to expect the revised appeal process in the proposed rule would increase the number of appeals made by OCC-regulated institutions.

The article also stated that the survey responses were voluntary and that responses could be biased toward respondents with grievances that are more likely to complain. Therefore, this analysis expects that the claim that 21 percent of credit unions would appeal could overstate the number of institutions that would like to appeal supervisory

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<sup>21</sup> *Id.* at 1165 -1166.

actions. However, since these percentages of credit unions seeking to appeal are much higher than past appeal rates that the OCC has observed amount OCC-supervised institutions, the OCC takes these statements as reasonable support for believing that the number of appeals could significantly increase due to the proposed rule.

Based on this information, the OCC concludes that it expects the new appeals process would significantly increase the number of appeals. The agency notes that in the past five years, the OCC received only five appeals per year on average. Based on the above articles and subject matter expert (SME) input that also suggests appeals could significantly increase, the agency 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. This represents a much smaller percentage of institutions predicted to appeal than the 21 percent number from the article by Hill (2015) and still represents a large, predicted increase in appeals relative to recent appeal rates.

#### *Appeal success rates*

The OCC assumes that the average appeal would have an equal likelihood of success or failure under then proposed rule because the new appeals system would not defer to supervisory determinations and because the new appeal system would not treat any party preferentially. Therefore, the OCC predicts that 50 percent of appeals would be successful and therefore, there would be 25 successful new appeals per year due to the proposed rule.

The agency notes that this implies that it predicts that the proposed rule would increase the acceptance rate for appeals, as the pre-existing appeals system resulted in appeals that favored supervisors more on average. This would imply that the agency

would expect the percentage of appeals decided in favor of banks would rise from under 50 percent to 50 percent under the proposed rule.

*Possibility that supervisory determinations likely to be successful in appeal would decrease in frequency in response to the new appeals process*

The OCC also wanted to address the possibility that supervisory staff could anticipate which appeals would most likely succeed and cease making supervisory determinations that would be likely to be successfully appealed. In the extreme, the agency could expect that supervision could potentially anticipate nearly all supervisory determinations that would be successfully appealed under the proposed rule and that there could be very few successful appeals following the enactment of the proposed rule.

If the agency expected this to be the most likely scenario to result from the proposed rule, it would revise our numbers to predict 25 appeals without any successful appeals. However, it would then revise the analysis to state that the deterrence of the 25 appeals that would have been approved would have been an effect of the proposed rule. And it would state that even though no appeals were successful in this case, the rule would result in a cost savings to the banks by reducing the number of supervisory determinations that may likely be overturned on appeal.

Therefore, if the proposed rule would result in a decrease in supervisory determinations because examiners anticipate and refrain from making determinations that would be ruled in favor of the bank, the overall conclusion remains the same. In fact, there may be even more cost savings because neither the banks nor the OCC would have to incur costs associated with the appeal process for cases that would likely have been overturned from the new appeals process.



However, the agency would assume for its analysis of expected effects that supervisors would not change the way in which they make supervisory determinations in response to the proposed rule, and the agency believes that its estimate of 50 appeals is more realistic.

For the purpose of the remainder of the analysis, the agency assumes that examiners would not change their decisions as to whether or not they make supervisory determinations in response to the proposed rule. However, the agency notes that our overall cost estimate for the proposed rule would be decreased for each determination that would not be made in response to the proposed rule.

#### *Rate of granted stays*

Finally, to estimate the benefits of stays that would be granted under the proposed rule, the agency assumes that as an upper bound, all appeals would be granted a temporary stay of supervisory actions. Therefore, the OCC predicts that there would be 50 stays granted per year due to the proposed rule. A stay suggests that if the appeal is not overturned, the cost associated with addressing the supervisory determination would be shifted in the future, while for those that are eventually overturned, there would be cost savings associated with not having to start addressing the supervisory determination during the appeals process. On net, the OCC believes the stays would result in a cost savings to the bank.

#### **Effect on the OCC**

Because the proposed rule states that the OCC would incur the costs of hiring two new full time appeals board members, the OCC estimates that this mandate would cause the OCC to incur an expense for these staff of \$730,800 per year ( $\$730,800 = 2 \times$

\$365,400 salaries and benefits for appeals board members).

The agency also expects that the OCC could incur some costs under the proposal to gather new information on certain appeals and obtain additional staff as needed to investigate appeals. Additional resources for appeals would be needed because of the enhanced standard of independent review under the de novo standard of appeal. This is because the de novo standard which requires reviewers to freely consider the matter anew, as if no decision had been rendered below, on the materials in the review record, without deferring to any prior determinations.

To estimate these costs, the agency assumes that the deputy comptroller and Appeals Board would have one staff member allocated to an appeal. The OCC assumes that support staff would separately spend at most 2 full days supporting the appeal to both the deputy comptroller and the appeals board. The analysis assumes that the hourly wage for OCC support staff for appeals would be \$173.75 per hour. Given this wage, the OCC would incur a cost for support staff of \$556,000 ( $\$556,000 = 4 \text{ days} \times 2 \text{ staff} \times 8 \text{ hours} \times \$173.75 \times 50 \text{ appeals}$ ).

Therefore, the OCC calculates that in total the OCC would incur total costs from the proposed rule of \$1,286,800.00 ( $\$1,286,800.00 = \$556,000 + \$730,800$ ).

### **Effect on OCC-regulated banking entities**

#### *Benefits to OCC-regulated banking entities*

#### *Savings from successful appeals*

The OCC expects that OCC regulated entities would result in cost savings due to the increased number of successful appeals. In discussions with internal SMEs with regard to the cost of supervisory actions, the SMEs have suggested that the upward bound

of consulting costs to remediate a matter requiring attention (MRA) could range upwards of several million dollars, depending on the size and complexity of the institution as well as the complexity and the severity of the MRA.

Because supervisory determinations cover a broad range of actions, some of which would be less costly than MRAs for institutions to resolve, the OCC estimates that OCC-regulated entities would save \$1,000,000 in expenditures from resolving a supervisory determination for each successful appeal. The OCC expects that \$1,000,000 would be a conservative estimate that reflects the lower end of the SME range of cost savings for supervisory determinations terminated under appeal

Therefore, since this analysis stated earlier that the OCC expects entities to obtain 25 successful appeals per year, the OCC estimates that total cost savings from the rule would be \$25 million per year ( $\$25 \text{ million} = 25 \times \$1,000,000$ ).

*Savings from delayed expenditures due to granted stays*

The OCC also expects that OCC-regulated entities would benefit from the discounted-time-value of delaying expenditures to comply with supervisory determinations for appeals that are not found in favor of the appellant. The benefit from delaying expenditures would be the difference between \$1,000,000 expenditure that institutions would incur to immediately resolve a supervisory determination and the value of a \$1,000,000 expenditure that would be made following the failure of an appeal.

Since the appeals board and the deputy comptroller each have 45 days to decide on appeals, the OCC assumes that the expenditures would be delayed by roughly 90 days. Therefore, the OCC would like to calculate the value of a \$1,000,000 expenditure 90 days in the future. As stated earlier, the OCC estimates that 25 out of 50 appeals would

receive a stay and be unsuccessful, and therefore, 25 appeals would benefit from delaying expenditures under a stay. If the analysis assumes a discount rate of 7 percent as suggested by OMB, the discounted value of the \$1,000,000 expenditure over the 90 day stay period to regulated entities would be \$24.57 million [ $\$24.57 \text{ million} = 25 \times \$1,000,000 / (1 + (.07 \times (90/360)))$ ]. Therefore, the total savings to regulated institutions from delaying expenditures would be \$429,975 ( $\$429,975 = \$25 \text{ million} - \$24.57 \text{ million}$ )

#### *Costs to OCC-regulated banking entities*

Because the OCC expects the proposed rule to induce OCC-regulated entities to increase the number of appeals entities would make relative to the regulatory baseline, the OCC predicts that, due to the proposed rule, these entities would incur costs in making these additional appeals.

The OCC estimates that entities would incur an average cost of \$100,000 to make an appeal. This would include the costs of internal staff and resources and the hiring of legal representation and any other outside services to make the appeal. Therefore, the OCC expects banks would incur costs of \$5 million ( $\$5 \text{ million} = 50 \times \$100,000$ ) to make new appeals under the proposed rule.

#### **Total impact**

The OCC estimates that the proposed rule would result in an ongoing total yearly net benefit of \$19,143,200. This net benefit reflects the total gross savings to OCC regulated entities of \$25,430,000 due to overturned and delayed supervisory determinations less \$5 million in costs cost incurred from OCC regulated entities appealing 50 supervisory determinations. The OCC would incur total costs of \$1,286,800 from implementing the process articulated in the proposed rule.

## **V. Regulatory Analysis**

### **Paperwork Reduction Act**

The Paperwork Reduction Act of 1995<sup>22</sup> (PRA) states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC has reviewed this proposed rule and determined that it does not create any new or revise any existing collection of information pursuant to the PRA. Accordingly, no PRA submissions to OMB will be made with respect to this proposed rule.

### **Regulatory Flexibility Act**

As part of our analysis, the OCC considers whether the proposed rule would have a significant economic impact on a substantial number of small entities, pursuant to the Regulatory Flexibility Act. The OCC currently supervises approximately 609 small entities, all of which may be impacted by the proposed rule.<sup>23</sup>

In general, the OCC classifies the economic impact on an individual small entity as significant if the total estimated impact in one year is greater than 5 percent of the small entity's total annual salaries and benefits or greater than 2.5 percent of the small entity's total non-interest expense. Furthermore, the OCC considers 5 percent or more of OCC-supervised small entities to be a substantial number. Thus, at present, 30 OCC-

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<sup>22</sup> 44 U.S.C. 3501–3521.

<sup>23</sup> The OCC bases its estimate of the number of small entities on the Small Business Administration's size thresholds for commercial banks and savings institutions, and trust companies, which are \$850 million and \$47 million, respectively. Consistent with the General Principles of Affiliation 13 CFR 121.103(a), the OCC counts the assets of affiliated financial institutions when determining if the OCC should classify an OCC-supervised institution as a small entity. The OCC uses December 31, 2024, to determine size because a "financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year." See footnote 8 of the U.S. Small Business Administration's *Table of Size Standards*.

supervised small entities would constitute a substantial number.

While our analysis concludes that all small OCC-regulated entities would be subject to the proposed rule, the OCC does not believe 30 OCC-supervised small entities would increase their number of appeals nor would any small entity spend over 5 percent of their total annual salaries and benefits or greater than 2.5 percent of the small entity's total non-interest expense to appeal in one year. Accordingly, the proposed rule would not have a significant economic impact on a substantial number of OCC-supervised small entities.

### **Unfunded Mandates Reform Act**

The OCC has analyzed the proposed rule under the factors in the Unfunded Mandates Reform Act of 1995 (UMRA).<sup>24</sup> Under this analysis, the OCC considered whether the proposed rule includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year (\$187 million as adjusted annually for inflation). Pursuant to section 202 of the UMRA,<sup>25</sup> if a proposed rule meets this UMRA threshold the OCC would need to prepare a written statement that includes, among other things, a cost-benefit analysis of the proposal.

The OCC's estimated UMRA cost is a net benefit of \$20,430,000. This net benefit reflects the total gross savings to OCC regulated entities of \$25,430,000 due to overturned and delayed supervisory determinations less \$5 million in costs cost incurred from OCC regulated entities appealing 50 supervisory determinations.

Therefore, the OCC finds that the proposed rule does not trigger the UMRA cost

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<sup>24</sup> 2 U.S.C. 1531 et seq.

<sup>25</sup> 2 U.S.C. 1532.

threshold. Accordingly, the OCC has not prepared the written statement described in section 202 of the UMRA.

### **Riegle Community Development and Regulatory Improvement Act of 1994**

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act of 1994,<sup>26</sup> in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, the OCC must consider, consistent with principles of safety and soundness and the public interest (1) any administrative burdens that the final rule would place on depository institutions, including small depository institutions and customers of depository institutions and (2) the benefits of the final rule. This rulemaking would not impose any reporting, disclosure, or other requirements on insured depository institutions. Therefore, section 302(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 does not apply to this rulemaking.

### **Providing Accountability Through Transparency Act of 2023**

The Providing Accountability Through Transparency Act of 2023<sup>27</sup> requires that a notice of proposed rulemaking include the internet address of a summary of not more than 100 words in length of a proposed rule, in plain language, that shall be posted on the internet website *www.regulations.gov*.

The Office of the Comptroller of the Currency (OCC) is issuing a notice of proposed rulemaking to establish revised procedures and policies for appeals of material supervisory determinations by OCC supervised entities. The proposed changes would

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<sup>26</sup> 12 U.S.C. 4802(a).

<sup>27</sup> 5 U.S.C. 553(b)(4).

reflect the OCC's experience administering the bank appeals process and are intended to enhance the independence and efficiency of the appeals function. The proposed changes would include changing the role of the Ombudsman, establishing an Appeals Board to decide appeals, and clarifying a de novo standard of review.

The proposal and the required summary can be found for the OCC at <https://www.regulations.gov> by searching for Docket ID OCC-2026-0001 and <https://occ.gov/topics/laws-and-regulations/occ-regulations/proposed-issuances/index-proposed-issuances.html>.

### **Executive Order 12866 (as amended)**

Executive Order 12866, titled "Regulatory Planning and Review," as amended, requires the Office of Information and Regulatory Affairs (OIRA), OMB, to determine whether a proposed rule is a "significant regulatory action" prior to the disclosure of the proposed rule to the public. If OIRA finds the proposed rule to be a "significant regulatory action," Executive Order 12866 requires the OCC to conduct a cost-benefit analysis of the proposed rule and for OIRA to conduct a review of the proposed rule prior to publication in the *Federal Register*. Executive Order 12866 defines a "significant regulatory action" to mean a regulatory action that is likely to (1) have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal



or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in Executive Order 12866.

OIRA has determined that this proposed rule is not a significant regulatory action under section 3(f)(1) of Executive Order 12866 and, therefore, is subject to review under Executive Order 12866. The OCC’s analysis conducted in connection with Executive Order 12866 is included above under the “Expected Impacts” section of this document.

### **Executive Order 14192**

Executive Order 14192, titled “Unleashing Prosperity Through Deregulation,” was issued on January 31, 2025. Section 3(a) of Executive Order 14192 requires an agency, unless prohibited by law, to identify at least ten existing regulations to be repealed when the agency publicly proposes for notice and comment or otherwise promulgates a new regulation. In furtherance of this standard, section 3(c) of Executive Order 14192 requires that the new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least ten prior regulations.

Under EO 14192, although the OCC predicts that the OCC and OCC-regulated institutions would incur new expenditures due to the proposed rule, the agency concludes that the proposed rule is deregulatory because it would provide standards for institutions appealing OCC material supervisory determinations to receive a stay during the pendency of the appeal. Since more institutions would be able to receive a stay during their appeal and thus avoid expending resources to comply with OCC determinations that may ultimately be overturned, it would have a minor net cost savings for OCC institutions.

## **List of Subjects in 12 CFR Part 4**

Administrative practice and procedure, Freedom of information, Individuals with disabilities, Minority businesses, organization and functions (Government agencies), Reporting and recordkeeping requirements, Women.

### **Authority and Issuance**

For the reasons set forth in the preamble, the OCC proposes to amend chapter I of title 12 of the Code of Federal Regulations as follows:

#### **PART 4—ORGANIZATION AND FUNCTIONS, AVAILABILITY AND RELEASE OF INFORMATION, CONTRACTING OUTREACH PROGRAM, POST-EMPLOYMENT RESTRICTIONS FOR SENIOR EXAMINERS**

1. The authority citation for part 4 is revised to read as follows:

**Authority:** 5 U.S.C. 301, 552; 12 U.S.C. 1, 93a, 161, 481, 482, 484(a), 1442, 1462a, 1463, 1464 1817(a), 1818, 1820, 1821, 1831m, 1831p-1, 1831o, 1833e, 1867, 1951 *et seq.*, 2601 *et seq.*, 2801 *et seq.*, 2901 *et seq.*, 3101 *et seq.*, 3401 *et seq.*, 4806, 5321, 5412, 5414; 15 U.S.C. 77uu(b), 78q(c)(3); 18 U.S.C. 641, 1905, 1906; 29 U.S.C. 1204; 31 U.S.C. 5318(g)(2), 9701; 42 U.S.C. 3601; 44 U.S.C. 3506, 3510; E.O. 12600 (3 CFR, 1987 Comp., p. 235).

2. Subpart I is added to part 4 to read as follows:

#### **Subpart I – Bank Appeals Process**

Sec.

4.101 Purpose and Scope.

4.102 Definitions

4.103 Commencement of Appeal

4.104 Consideration by Deputy Comptroller

4.105 Consideration by Appeals Board

4.106 Appeals of Shared National Credit Determinations

4.107 Comptroller Authority

4.108 Staffing of Appeals Board

4.109 Stay of Determinations

4.110 Expedited Appeals

4.111 Role of Ombudsman

4.112 Prohibition on Retaliation

4.113 Construction of Time Limits

4.114 Retention of Authority

#### **§ 4.101 Purpose and Scope.**

Pursuant to the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L.103-325, 108 Stat. 2160 (12 U.S.C. 4806), this subpart establishes the process by which the OCC will consider and resolve appeals of material supervisory determinations.

This subpart applies to all appeals of material supervisory determinations by OCC regulated entities, except as provided in this subpart.

#### **§ 4.102 Definitions.**

For purposes of this subpart:

*Appeals Board* means a panel consisting of the chief national bank examiner and two term appointees, as defined in § 4.108.

*Appellant* means the party initiating the appeal of an OCC material supervisory determination.

*De novo standard of review* means 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.

*Review Record* means the record the Appeals Board will use in conducting its review, which shall consist of the material filed by the appellant, the material developed by the OCC in reaching its initial determination, any additional arguments submitted by the supervisory office in responding to the supervised entities appeal, and any materials adduced from supplementation discussed in § 4.105(b) or otherwise permitted or directed by the Appeals Board.

*Shared National Credit* means any loan(s) and/or formal loan commitment(s) extended to a borrower by a supervised institution or any of its subsidiaries and affiliates which aggregates \$20 million or more and:

- (1) Is shared by two or more institutions under a formal lending agreement; or
- (2) A portion of which is sold to one or more institution(s), with the purchasing institution(s) assuming its pro rata share of the credit risk.

*Substantively involved* means directly approved, advised on, or recommended the decision being appealed or a determination underlying the decision being appealed.

*Supervised entity* means an entity for which the OCC makes material supervisory determinations. This includes national banks, Federal savings associations, U.S. agencies or branches of a foreign bank, permitted payment stablecoin issuers and foreign payment stablecoin issuers subject to the OCC's regulatory authority, and an institution-affiliated party, as defined by 12 U.S.C. 1813(u) or 12 U.S.C. 5901(13), of any of the above listed organizations directly affected by an informal enforcement action.

*Supervisory standard* means a statute, law, or statement of OCC policy. Statements of OCC policy include, but are not limited to, standards articulated in the Comptroller's Handbook, the OCC Licensing Manual, OCC issued bulletins, and interpretive letters.

#### **§ 4.103 Commencement of Appeal**

(a) A supervised entity affected by an OCC material supervisory determination may file an appeal for review of the determination.

(b) Except as provided in paragraph (b)(2) of this section, any material supervisory determination may be appealed.

(1) A “material supervisory determination” for purposes of this subpart means any agency or supervisory decision or action, including, but not limited to, the following:

- (i) Examination ratings;
- (ii) Adequacy of the allowance for credit losses methodology;
- (iii) Individual loan ratings;
- (iv) Violations of law;
- (v) Shared National Credit decisions;
- (vi) Fair-lending-related decisions, including referrals to the U.S. Department of Justice or U.S. Department of Housing and Urban Development;
- (vii) Licensing decisions; and
- (viii) Material supervisory determinations such as matters requiring attention, compliance with enforcement actions, or other conclusions in the report of examination.

(2) A supervised entity may not appeal:

- (i) Appointments of receivers and conservators;
- (ii) Decisions related to bidder status or submitted bids on an institution to which the Corporation provides assistance under 12 U.S.C. 1823;
- (iii) Preliminary examination conclusions communicated to the bank before a final report of examination or other written communication from the OCC is issued;
- (iv) Any formal enforcement-related actions, including, but not limited to, decisions to:
  - (A) Seek the issuance of a formal agreement or a cease-and-desist order, or the

assessment of a civil money penalty pursuant to 12 U.S.C. 1818;

(B) Take prompt corrective action pursuant to 12 U.S.C. 1831(o);

(C) Issue a safety and soundness order pursuant to 12 U.S.C. 1831p-1; or

(D) Commence formal investigations pursuant to 12 U.S.C. 481, 1464(d) 1818(n), and 1820(c);

(v) Formal and informal rulemakings pursuant to 5 U.S.C. 500 *et seq.*;

(vi) Decisions or recommended decisions following formal and informal adjudications conducted pursuant to 5 U.S.C. 701 *et seq.*;

(vii) Requests for agency records or information under the Freedom of Information Act covered by 5 U.S.C. 552 or 12 CFR part 4 and submission of information to the OCC that is governed by this statute and this regulation;

(viii) Decisions to disapprove directors and senior executive officers pursuant to 12 U.S.C. 1831i;

(ix) Any other agency decisions that are subject to judicial review other than those described in paragraph (b)(1), of this section;

(x) Any decision by the agency that is non-final, other than those described in paragraph (b)(1), of this section;

(xi) Supervisory observations;

(xii) Conclusions in OCC interpretive letters; or

(xiii) Agency decisions that are administrative and do not substantially affect the rights of the supervised entity.

(c) The appeal may be filed with the Deputy Comptroller responsible for the division that issued the determination in dispute or directly with the Appeals Board.

However, if the Deputy Comptroller was substantively involved in the material supervisory determination, he or she must transfer the appeal to the Appeals Board after informing the appellant. An individual will be considered to have been substantively involved in a material supervisory determination if the individual was personally consulted regarding the issue being determined and provided guidance regarding how it should be resolved. If there is a risk that a delay could harm remediation of material financial risk or impose losses on the Deposit Insurance Fund, the OCC maintains the discretion to elevate the appeal directly to the Appeals Board.

(d) The appeal must be filed within 60 days of receipt of the determination in dispute, except for an appeal of a determination by the OCC that there is reason to believe an instance or 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 or as provided in § 4.106 for Shared National Credits.

(f) A supervised entity may not file an appeal of a material supervisory determination once the OCC informs the supervised entity that it has approved a formal enforcement-related action arising from the determination, except for the limited purpose of challenging whether the OCC appropriately followed agency policies and standards in reaching the determination.

(g) The appeal must include the supervisory standards that the bank asserts were inappropriately applied by OCC officials.

(h) If the appeal is by a financial institution, the institution's president or chief executive officer must submit the appeal and include in the submission the board of the institution's approval of the action.

(i) An institution-affiliated party of a supervised entity, as defined in 12 U.S.C. 1813(u) or 12 U.S.C. 5901(13), may file an appeal of an informal enforcement action that directly affects the institution-affiliated party.

(j) Within seven days of receiving the appeal, the OCC will notify the appellant in writing whether the appeal has been accepted based on the criteria in this subpart.

#### **§ 4.104 Consideration of Appeal by the Deputy Comptroller.**

(a) If the appeal is filed with the appropriate Deputy Comptroller and the Deputy Comptroller determines that he or she does not need to transfer the appeal to the Appeals Board under § 4.103(c), the Deputy Comptroller will render his or her decision on the appeal within 45 days of the receipt of the appeal unless there are extenuating circumstances requiring additional time.

(b) The Deputy Comptroller will solicit the views of the supervisory office involved in issuing the material supervisory determination.

(c) The Deputy Comptroller will apply a de novo standard of review using the review record when considering the matters being appealed.

(d) The Deputy Comptroller will issue his or her decision in writing.

(e) If the appellant disagrees with the determination of the Deputy Comptroller, it may further appeal to the Appeals Board. This appeal must be filed within 15 days of receiving the written decision from the Deputy Comptroller.

#### **§ 4.105 Consideration by the Appeals Board.**

(a) The Appeals Board may consider issues either directly appealed to it, appealed to it after a determination by a Deputy Comptroller under § 4.104, or appealed to it after a determination by the Shared National Credit program under § 4.106. It may also consider



appeals referred to it by a Deputy Comptroller who was substantively involved in making the decision under review.

(b) The Appeals Board will solicit the views of the supervisory office involved in issuing the material supervisory determination. The Appeals Board may also supplement the review record by soliciting the views of other OCC staff, staff of other supervisory agencies, or other sources.

(c) The Appeals Board will apply a de novo standard of review to all matters before it.

(d) If any member of the Appeals Board has been substantively involved in one or more of the determinations being appealed, the member must recuse itself from the matter.

(e) All decisions by the Appeals Board will be reviewed by an OCC attorney for conformance with law and OCC policy. This attorney must be independent from the original determination. The Appeals Board may not reconsider or change OCC interpretations of law or policy.

(f) The Appeals Board will issue a written decision within 45 days of receiving the appeal unless there are extenuating circumstances requiring additional time.

(1) The written decision will state the reasons for the Appeals Board's conclusion and the evidence it relied upon to reach that conclusion. However, if the Appeals Board relied on confidential supervisory information from another institution, that information is subject to all relevant limits on its disclosure.

(2) A redacted version of the Appeals Board's decision will be published.

(3) A redacted version of any dissent from the majority opinion by a member of

the Appeals Board will be published.

(g) If any member of the Appeals Board was substantively involved in the supervisory determination at issue, they must recuse themselves from the deliberations. An individual will be considered to have been substantively involved in a material supervisory determination if the individual was personally consulted regarding the issue being determined and provided guidance regarding how it should be resolved.

#### **§ 4.106 Appeals of Shared National Credit Determinations.**

(a) An agent bank may submit a Shared National Credit appeal directly or on behalf of any participant bank. If the agent bank refuses, for whatever reason, to file the appeal on behalf of the bank group, the OCC will accept an appeal from any participating bank.

(b) A bank must file a Shared National Credit appeal with the regulator that supervises the agent bank. When no agent bank is named, the appeal shall be filed with the appropriate Federal banking agency, as defined in 12 U.S.C. 1813(q), for the bank at which the Shared National Credit was reviewed.

(c) The agent bank shall file a Shared National Credit appeal within 14 days of notification by the OCC of the preliminary disposition of the credit.

(1) Any participant bank can appeal either through the agent bank or on its own within 14 days of receiving the preliminary Shared National Credit results from the agent bank.

(2) If the agent bank does not provide preliminary results, a participant bank may file an appeal within 14 days of receiving the official Shared National Credit results from its from its appropriate Federal banking agency, as defined in 12

U.S.C. 1813(q).

(d) The appeal must identify the credit, the commitment amount, the disposition, the basis for the bank's disagreement, and any documentation that supports the institution's position on the matter(s) in dispute.

(e) An interagency panel consisting of senior credit examiners that are independent of the original voting team will evaluate the appeal and recommend a decision to senior management.

(f) Absent extenuating circumstances, the OCC will issue its decision on a Shared National Credit appeal within 30 days of receipt of a complete appeal.

(g) If a bank disagrees with the OCC's decision, it may appeal the matter to the Appeals Board within 30 days of receiving the decision letter from the OCC.

#### **§ 4.107 Alternative Procedures.**

(a) With a finding of good cause, the Appeals Board may:

(1) Extend any time limit in this subpart, either on behalf of the OCC or on behalf of an appellant; and

(2) Waive any other procedural requirement in this subpart.

(b) If the Appeals Board cannot reach a conclusion on a matter due to a member being recused, then the Comptroller will decide the matter.

(c) If all members of the Appeals Board are recused, the Comptroller will decide the matter.

(d) The Comptroller may overturn any decision by the Appeals Board.

#### **§ 4.108 Staffing of the Appeals Board.**

(a) The Appeals Board will consist of the Chief National Bank Examiner and two

term appointees. The term appointees will be:

- (1) Individuals not currently employed by the OCC and who have never before served as a term appointee on the Appeals Board;
- (2) Individuals with relevant experience and expertise, either in government or in the private sector;
- (3) Appointed for a one-year term that is not eligible for renewal; and
- (4) Appointed directly by the Comptroller.

(b) The Appeals Board will report directly to the Comptroller.

(c) The Appeals Board may have staff appointed as necessary to assist with the investigation and analysis of the appeals before it. Such staff must be recused from a matter if they were substantively involved in the determination being appealed.

(d) The term appointees will be disclosed to the public.

(e) The appellant will be informed which term appointees or other officials are deciding the matter.

#### **§ 4.109 Stay of determinations.**

(a) Appealed material supervisory determinations will be stayed if the appellant requests a stay and the appropriate Deputy Comptroller or the Appeals Board conclude that:

- (1) Delaying the implementation of the material supervisory determination will 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.

(b) In weighing the above considerations, the OCC will take into consideration the size of the institution and the resources necessary to implement the determination, with a lower showing of burden necessary for smaller institutions.

#### **§ 4.110 Expedited Appeals.**

(a) When a material supervisory determination relates to or causes an institution to become critically undercapitalized, as defined by 12 U.S.C. 1831o, the review of any appeal of that supervisory determination will be processed on an expedited basis.

(b) The Comptroller, at his or her discretion, may determine that any appeal must be processed on an expedited basis.

(c) For appeals processed on an expedited basis, the appropriate Deputy Comptroller or the Appeals Board will issue its decision in 30 days.

#### **§ 4.111 Role of the Ombudsman.**

(a) The Ombudsman shall act as an impartial liaison between the appellant and the Deputy Comptroller or the Appeals Board.

(b) The Ombudsman is responsible for preventing retaliation against a bank for its appeal. (1) After the appropriate OCC official renders a decision on a formal appeal, the Ombudsman will contact the bank to ask whether the bank believes OCC examiners have taken actions against the bank in retaliation for its appeal.

(2) The Ombudsman will contact bank management again 60 days after the date of the decision letter and then 60 days after completion of the first examination of the appellant bank following its appeal.

(3) A bank may also contact the Ombudsman any time during or after the appeal

if the bank believes that retaliation has occurred.

(4) The Ombudsman may initiate a factual inquiry into alleged retaliation at any time.

(c) If a bank claims that retaliatory actions have taken place, the Ombudsman will investigate the complaint. In the absence of extenuating circumstances, the Ombudsman will complete the investigation within 30 days.

(d) If the Ombudsman finds that retaliation has occurred:

(1) The Ombudsman will forward the complaint directly to the Department of the Treasury's Office of Inspector General;

(2) Appropriate action, including disciplinary action consistent with OCC policies, will be taken as warranted; and

(3) The Ombudsman may recommend to the Comptroller that the next examination of the bank exclude personnel involved in the ruling appealed by the bank or involved in any retaliation. The Comptroller will make the final decision on any such exclusion.

(e) Thirty days after the conclusion of each examination of a financial institution or service provider, the Ombudsman will reach out to the examined entity for feedback about any issues encountered during the process.

(f) The Ombudsman will be responsible for receiving and investigating complaints from supervised entities alleging misconduct by the OCC staff or a failure of the OCC to follow laws and policy. The Chief Counsel's Office will coordinate with the Ombudsman and will render a final decision on all questions of law. Supervised entities may contact the Ombudsman at any time to informally discuss concerns about OCC

misconduct or to file a formal complaint of misconduct.

(g) The Ombudsman will prepare an annual report for the Comptroller detailing trends it observed in appeals, received complaints, and post-examination outreach.

(h) The Ombudsman will publish an annual report that publicly discloses:

(1) The number of appeals the OCC received for the prior calendar year;

(2) The number of appeals decided;

(3) The average length of time each appeal took to be decided;

(4) The topics of the appeals received for the year; and

(5) The redacted decision for each decided appeal, including any published dissent.

(i) The Ombudsman will report directly to the Comptroller of the Currency.

#### **§ 4.112 Retaliation and Dissuasion Forbidden.**

(a) Neither the OCC nor any employee of the OCC may retaliate against an institution or person for filing an appeal under this subpart.

(b) For purposes of this subpart, “retaliation” or “retaliate” is defined as any action or decision by the OCC or OCC employees that causes a supervised entity to be treated differently or more harshly than other similarly situated supervised entities because the supervised entity attempted to resolve a complaint by filing an appeal of a material supervisory determination or utilized any other OCC mechanisms for resolving complaints, including informal discussions with OCC supervisory staff.

(c) Neither the OCC nor any of its employees may discourage a supervised entity from filing an appeal or from otherwise communicating concerns and objections to the OCC through the appeals process, through the Ombudsman’s Office, or through other

channels.

(d) If the Appeals Board finds in favor of a supervised entity on an appeal and overrules an OCC supervisory determination, the OCC may not impose a substantially similar supervisory determination based on the same underlying facts in future material supervisory determinations.

#### **§ 4.113 Construction of Time Limits.**

In computing any period of time prescribed by this subpart, the date of the act or event that commences the designated period of time is not included. The last day so computed is included unless it is a Saturday, Sunday, or Federal holiday. When the last day is a Saturday, Sunday, or Federal holiday, the period runs until the end of the next day that is not a Saturday, Sunday, or Federal holiday. Intermediate Saturdays, Sundays, and Federal holidays are included in the computation of time.

#### **§ 4.114 Retention of Authority.**

(a) The OCC retains the discretion to waive any provision of this subpart for cause at the discretion of the Comptroller of the Currency.

(b) Nothing in this subpart should be construed to interfere with the OCC's authority to bring an enforcement action against an institution.

(c) Any application or request for approval made to the OCC 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 or unless the OCC determines there is good cause not to stay the consideration of the request for approval pending the decision of the appeal.



(d) Nothing in this subpart subjects (or is intended to subject) any material supervisory determination or any other substantive decision of the OCC to judicial review except as provided in another source of law.

**Jonathan V. Gould,**  
*Comptroller of the Currency.*