



Federal Deposit Insurance Corporation

550 17th Street NW, Washington, D.C. 20429-9990

MEMORANDUM

TO: The Board of Directors

FROM: Harrel M. Pettway, General Counsel
Legal Division

DATE: May 23, 2023

RE: Final Rule: Interagency Revisions to Uniform Rules of Practice and Procedure and FDIC's General Rules of Procedure

Recommendation: Staff recommends that the Board of Directors (Board) approve and authorize for publication in the *Federal Register*, the attached Final Rule. The Final Rule contains amendments to the Interagency Uniform Rules of Practice and Procedure at 12 C.F.R. Part 308, subpart A, § 308.1-308.41 (Uniform Rules) and the General Rules of Procedure at 12 C.F.R. Part 308, subpart B, § 308.101-308.107 (Local Rules) to modernize and to improve the efficiency and fairness of enforcement proceeding practices and procedures.

Summary: The attached Final Rule updates and modernizes the Uniform Rules that apply to formal administrative enforcement proceedings brought by the FDIC, the Office of the Comptroller of the Currency (OCC), Federal Reserve Board of Governors (FRB), and the National Credit Union Administration (NCUA) (collectively, Agencies). The Final Rule allows the use of electronic communications and technology in all aspects of administrative hearings and increases the efficiency and fairness of administrative adjudications. The Final Rule also updates and modernizes the Local Rules that only apply to enforcement actions brought by the FDIC. The updated Rules will take effect October 1, 2023.

Discussion:

I. Background

In October 2021, the Board approved the Interagency Notice of Proposed Rulemaking (NPR) to revise the Uniform Rules and Local Rules. The NPR was published in the Federal Register on April 12, 2022. The NPR updated the formal administrative hearing rules of practice and procedure for the Agencies. The FDIC did not receive any comments on the proposed changes. The OCC and the NCUA each received two comments on the NPR. They are resolving those comments internally without any required changes to the Uniform Rules.

II. Description of the Final Rule

A. Interagency Changes to Part 308, Subpart A – Uniform Rules¹

The Agencies are updating the Uniform Rules to address technological conveniences and accepted legal practices. The Final Rule allows electronic signatures and electronic submissions of legal filings, permits proceedings to be held by remote means, and modernizes definitions and language. Also, legal counsel may produce documents electronically in lieu of an in-person inspection of paper documents. Certain filing deadlines were slightly extended to account for the increasing volume and complexity of information involved with formal enforcement hearings. Additionally, the Final Rule makes other minor or technical changes to clarify where filings should be made and to reflect the FDIC's current internal organization and delegations.

¹ The changes will indirectly affect Part 308, subparts C-I, L-N, and U, as those subparts incorporate, in full or in part, the Uniform and Local Rules. These subparts contain rules and procedures for other types of proceedings such as disapproval of acquisition of control, and assessment of civil money penalties for filing late Call Reports.

The new provisions include: requiring counsel to review and comply with the Uniform Rules; clarifying that a producing party must pay for the costs of its responses to discovery requests; and if an electronic presentation is required for a hearing that a party pays for its share, unless the parties agree otherwise.

B. FDIC Changes to Part 308, Subpart B – Local Rules

The changes to the FDIC's Local Rules are more substantive than the changes to the Uniform Rules. The revisions reflect the current processes and procedures routinely ordered by the administrative law judges and mirror procedures followed in the federal court system. There are new provisions relating to the modern concept of proportional discovery, electronically stored information, requirements for a joint discovery plan, and disclosure of expert witness testimony. All of these provisions were adopted into the Federal Rules of Civil Procedure between 1993 and 2015, and promote cooperation, fairness, and transparency.

Currently the only material difference between the Agencies' local rules is that the OCC and FRB permit enforcement counsel to take sworn testimony during the discovery period. The FDIC and NCUA's local rules only permit document discovery. In order to more closely align with the OCC and FRB's local rules, the Final Rules amends the FDIC's Local Rules to permit limited depositions during formal discovery by stipulation of the parties or upon a showing of good cause.

Conclusion: The Final Rule would update and modernize the Uniform Rules and Local Rules.

Staff recommends that the Board approve the attached Final Rule, which is substantially the same as the Proposed Rule adopted by the FDIC Board in October 2021, for publication in the *Federal Register*.

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** Because this matter generally involves legal rules and procedures for formal administrative actions, the Divisions of Risk Management Supervision (RMS), Depositor and Consumer Protection (DCP), and Complex Institution Supervision & Resolution (CISR) were only consulted on the provisions adding depositions to the FDIC's formal discovery procedures.