Federal Deposit Insurance Corporation

MEMO

DATE:	April 7, 2026
TO:	The Board of Directors
FROM:	Matthew P. Reed General Counsel
RE:	Final Rule on Prohibition on Use of Reputation Risk by Regulators

RECOMMENDATION

Staff recommends that the FDIC's Board of Directors (Board) approve the attached final rule to be issued jointly with the Office of the Comptroller of the Currency (collectively, the agencies). Through this final rule, the agencies would codify the removal of reputation risk from their supervisory programs.

BACKGROUND

Banking regulators' use of the concept of reputation risk as a basis for supervisory criticisms increases subjectivity in banking supervision without adding material value from a safety and soundness perspective or ensuring greater compliance with the law. Although staff recognizes the importance of a bank's reputation, most activities that could negatively impact an institution's reputation do so through traditional risk channels (e.g., credit risk, market risk, and operational risk, among others) on which supervisors already focus and already have sufficient authority to address. To improve the efficiency and effectiveness of their supervisory programs, the FDIC and OCC have removed reputation risk from their supervisory frameworks. This final rule would codify the change in the agencies' regulations.

This change would also respond to concerns expressed in Executive Order 14331, Guaranteeing Fair Banking for All Americans,[1] that the use of reputation risk can be a pretext for restricting law-abiding individuals' and businesses' access to financial services on the basis of political or religious beliefs or lawful business activities.

Experience has shown that the use of reputation risk in the supervisory process does not increase the safety and soundness of supervised institutions because supervisors have little ability to predict *ex ante* whether or how certain activities or customer relationships present reputation risks that could threaten the safety and soundness of an institution. In contrast, risks like credit

[1] 90 Fed. Reg. 38,925 (Aug. 7, 2025).

risk and liquidity risk are more concrete and measurable and allow examiners to assess more objectively a banking institution's financial condition. Assessments of these risks may reflect perceptions of a bank's financial condition consistent with objective principles.

Unlike evaluation of objective, measurable risks, examining for reputation risk is overly subjective. This subjectivity has led to inconsistent supervision that at times reflected individual perspectives rather than data-driven results. The use of reputation risk can result in agency examiners implicitly or explicitly encouraging institutions to restrict access to banking services on the basis of examiners' personal views of a group's or individual's political, social, cultural, or religious views or beliefs, constitutionally protected speech, or politically disfavored but lawful business activities. This can result in unfair treatment of different groups and impermissible restrictions on a group's or individual's ability to access financial services. Denying lawful businesses access to financial services can further have negative effects on the economy by hindering the growth of these lawful businesses and consequently interfering with the job formation and the economic activity their operations could generate.

OCTOBER 2025 PROPOSAL

On October 7, 2025, the agencies approved a notice of proposed rulemaking that would codify the elimination of reputation risk from their supervisory programs. The rule did not propose to alter or affect the ability of an institution to make business decisions regarding its customers or third-party arrangements and to manage them effectively, consistent with safety and soundness and compliance with applicable laws.

The agencies proposed to prohibit formal or informal criticism or taking adverse action against an institution on the basis of reputation risk. The agencies proposed to define "reputation risk" as the risk that an action or activity, or combination of actions or activities, or lack of actions or activities, of an institution could negatively impact public perception of the institution for reasons not clearly and directly related to the financial condition of the institution.

In addition, the agencies proposed to prohibit requiring, instructing, or encouraging an institution to close an account, to refrain from providing an account, product, or service, or to modify or terminate any product or service on the basis of a person or entity's political, social, cultural, or religious views or beliefs, constitutionally protected speech, or solely on the basis of politically disfavored but lawful business activities perceived to present reputation risk.

The agencies further proposed to prohibit taking any supervisory action or other adverse action against an institution, a group of institutions, or the institution-affiliated parties of any institution that is designed to punish or discourage an individual or group from engaging in any lawful political, social, cultural, or religious activities, constitutionally protected speech, or, for political reasons, lawful business activities that the supervisor disagrees with or disfavors.

The proposed rule's prohibitions would not have affected requirements intended to prohibit or reject transactions or accounts associated with Office of Foreign Assets Control-sanctioned persons, entities, or jurisdictions. The prohibitions also would not have affected the agencies' authority to enforce the requirements of the provisions of United States Code title 31, chapter 53, subchapter II regarding reporting on monetary transactions. However, the proposal would have prohibited the agencies from using Bank Secrecy Act and anti-money laundering concerns as a pretext for reputation risk.

The proposed rule also included one conforming amendment to the safety and soundness standards set forth in part 364 of the FDIC's regulations to eliminate references to reputational risk.

SUMMARY OF COMMENTS

Commenters included government entities, members of Congress, industry trade groups, nonprofits, financial institutions, businesses, and individuals. Although the agencies received comments both supporting and opposing the proposed rule, the majority of comment letters expressed support. Many commenters urged the agencies to adopt the proposed rule because they perceived reputation risk to be ill-suited as a supervisory tool. These commenters expressed concern that reputation risk is subjective and hard to measure in a predictable or quantitative fashion.

In contrast, other commenters opposed the proposed rule and stated that examination for reputation risk is necessary to support bank safety and soundness. However, such commenters did not recommend an actionable method that the agencies could adopt for accurately measuring reputation risk.

Some commenters stated that damage to a bank's reputation can cause substantial financial harm to a bank, citing the spring 2023 bank failures, which they believe were caused by reputational harms to the financial institutions involved. However, the concerns that caused the public to cease doing business with those institutions were not the types of concerns that would fall under the definition of reputation risk in the final rule, and for which the agencies would be prevented from supervising. Indeed, the spring 2023 failures served as examples of the types of material financial risks on which regulators and institutions need to focus and from which they can be distracted by reputation risk concerns.

DISCUSSION OF FINAL RULE

Staff recommends the Board adopt the rule as proposed in October 2025, with two minor modifications discussed below that are intended to address concerns raised by commenters.

Modification to Definition of "Reputation Risk"

As noted above, the agencies proposed to define "reputation risk" as the risk that an action or activity, or combination of actions or activities, or lack of actions or activities, of an institution could negatively impact public perception of the institution for reasons not clearly and directly related to the financial condition of the institution. The agencies specifically requested comment on whether the definition of "reputation risk" should also include a reference to the "operational condition" of the institution.

Commenters were divided on this issue, with some asserting that the agencies might rely on operational risks as a basis for taking adverse action when that action is actually based on reputation risk. Other commenters viewed an express reference to operational risk as preserving the agencies' authority to supervise operational risk management.

Staff recommends that the definition of "reputation risk" include a reference to the operational condition of the institution. Operational risk is a significant concern, and operational issues such as a cyberattack or a natural disaster could have a direct impact on customers' willingness to do business with an institution.

Accordingly, the final rule would define "reputation risk" as "any risk, regardless of how the risk is labeled by the institution or regulators, that an action or activity, or combination of actions or activities, or lack of actions or activities, of an institution could negatively impact public perception of the institution for reasons not clearly and directly related to the financial or operational condition of the institution."

Modification to Prohibition of Supervisory Action Discouraging Lawful Activities

As noted above, the proposed rule included a prohibition against any supervisory action or other adverse action against an institution, a group of institutions, or the institution-affiliated parties of any institution that is designed to punish or discourage an individual or group from, among other things, engaging in lawful activities that the supervisor disagrees with or disfavors.

Some commenters requested that the language of this prohibition be expanded to cover all agency personnel, not just those involved in supervising banks. Another commenter suggested that the prohibition should be extended to prohibit any attempt to discourage lawful political or religious activity, regardless of what the bank supervisory staff may think about the activity.

The agencies did not intend this provision to be read narrowly to only cover the views of supervisory staff. Thus, the prohibition in the final rule would cover actions designed to punish or discourage an individual or group from engaging in lawful activities that the agency or any of its personnel disagrees with or disfavors. This change clarifies that bias from any individual at the agency is not a permissible basis for agency action.

***

In addition to the changes discussed above, there are select provisions of the rule where staff believes that clarification of the agencies' expectations in the final rule's preamble would be appropriate.

Actions Taken "Solely" on the Basis of Involvement in Politically Disfavored But Lawful Business Activities Perceived to Present Reputation Risk

The proposed rule provided that the agencies will not require, instruct, or encourage an institution or its employees to terminate a contract with, discontinue doing business with, sign a contract with, initiate doing business with, or modify the terms under which it will do business with a person or entity on the basis of the person or entity's political, social, cultural, or religious views or beliefs, constitutionally protected speech, or "solely" on the basis of the person's or entity's involvement in politically disfavored but lawful business activities perceived to present reputation risk. The agencies specifically requested comment on the use of "solely" in this prohibition, and whether it should be removed from the proposed rule.

Some commenters felt the word "solely" should be maintained because banks could otherwise face regulatory uncertainty even when legitimate risk factors are the primary basis for the decision. Other commenters were concerned that the term "solely" could be read to imply that reputation risk could be considered, just not as a stand-alone risk.

The word "solely" was included in the proposed rule to provide the ability for regulators to discourage activities that may implicate safety and soundness through traditional risk channels but also involve a legitimate business activity that might be politically disfavored. Staff believes it is important to maintain this flexibility. Therefore, this prohibition in the final rule would retain the word "solely." However, the preamble would state that where an agency action appears to have some impermissible reputation risk considerations underlying it, but proports to be based largely on permissible concerns, the agencies would consider whether the agency action might violate the rule's anti-evasion provisions.

Actions Taken Based on Protected Views and Beliefs

Commenters also stated that it was unclear whether references to "views and beliefs" in the proposed rule would extend to actions based on those views or beliefs. Some commenters recommended extending the prohibitions to cover such actions. Staff does not believe that the prohibitions should be extended in this manner, because an action motivated by a protected view or belief might raise legitimate concerns relating to permissible risk factors, and expanding the prohibition could thus prevent the agencies from addressing permissible risk factors. However, the preamble would communicate that although agency actions designed solely to discourage or punish a given view or belief are impermissible, the agencies are not prevented from considering actions that relate to permissible risk factors (e.g., creditworthiness or other permissible risk

factors such as market risk) solely because those actions stem, in whole or in part, from a political, social, cultural, or religious view or belief.

CONCLUSION

Staff recommends that the Board approve the attached final rule for publication in the *Federal Register*, with an effective date 60 days after publication.

Staff contacts:

Sheikha Kapoor, Assistant General Counsel, (202) 898-3960
James Watts, Counsel, (202) 898-6678