

## MEMO

**TO:** The Board of Directors

**FROM:** Matthew P. Reed  
General Counsel

**DATE:** October 7, 2025

**RE:** Notice of Proposed Rulemaking on Prohibition on Use of Reputational Risk by Regulators

## RECOMMENDATION

Staff recommends that the FDIC's Board of Directors (Board) authorize publication of the attached notice of proposed rulemaking (NPR, proposed rule, or the proposal), to be issued jointly with the Office of the Comptroller of the Currency (collectively, the agencies), with a 60-day comment period. Through this proposed rule, the agencies would codify the removal of reputation risk from their supervisory programs.

## POLICY OBJECTIVES AND BACKGROUND

Banking regulators' use of the concept of reputational risk as a basis for supervisory criticisms increases subjectivity in banking supervision without adding material value from a safety and soundness perspective. 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 its supervisory program, the FDIC has removed reputation risk from its supervisory framework. This proposed 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*,<sup>1</sup> 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 risk and liquidity risk are more concrete and measurable and allow examiners to more

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<sup>1</sup> 90 Fed. Reg. 38,925 (Aug. 7, 2025).

objectively assess a banking institution's financial condition. Assessments of these risks may reflect perceptions of a bank's financial condition consistent with objective principles.

The agencies have not clearly explained how banks should measure the reputation risk from different activities, business partners, or clients, nor have the agencies clearly articulated the criteria for which activities, business partners, or clients are deemed to present reputation risk. Without clear standards, the agencies' supervision for reputation risk has been inconsistent and has at times reflected individual perspectives rather than data-driven conclusions.

Examining for 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.

## **LEGAL AUTHORITY**

The Board of Directors has statutory authority to administer the affairs of the FDIC, which includes a framework for bank supervision.<sup>2</sup> Further, the Board has the authority to prescribe rules and regulations as it may deem necessary to carry out the provisions of the Federal Deposit Insurance Act.<sup>3</sup>

## **DESCRIPTION OF THE PROPOSED RULE**

The FDIC has removed reputation risk from its supervisory framework, and the proposal would codify this change in its regulations. The proposed rule would not 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 proposed rule would prohibit the agencies from criticizing, formally or informally, or taking adverse action against an institution or any employee of an institution on the basis of reputational risk. In addition, under the proposal, the agencies would be prohibited from requiring, instructing, or encouraging an institution or its employees to refrain from contracting with or to terminate or modify a contract with a third party, including an institution-affiliated party, on the basis of reputation risk. The agencies also could not require, instruct, or encourage an institution or its employees to refrain from doing business with or to terminate or modify a business relationship with a third party, including an institution-affiliated party, on the basis of reputation risk. The proposed rule would also prevent the agencies from requiring, instructing, or encouraging an institution to enter into a contract or business relationship with a third party on the basis of reputation risk.

The proposed rule would further prohibit the agencies from requiring, instructing, or

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<sup>2</sup> 12 U.S.C. 1819(a), 1820(a).

<sup>3</sup> 12 U.S.C. 1819(a)(Tenth), 1820(g).

encouraging an institution or an employee of an institution to terminate a contract with, discontinue doing business with, or modify the terms under which it will do business with a person or entity on the basis of the person's or entity's political, social, cultural, or religious views or beliefs, constitutionally protected speech, or solely on the basis of the third party's involvement in politically disfavored but lawful business activities perceived to present reputation risk.

The proposed rule's prohibitions would not affect requirements intended to prohibit or reject transactions or accounts associated with Office of Foreign Assets Control-sanctioned persons, entities, or jurisdictions. Such prohibitions and rejections would not be based specifically on "the person's or entity's political, social, cultural, or religious views or beliefs, constitutionally protected speech, or politically disfavored but lawful business activities perceived to present reputation risk." The prohibition also would not affect 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.<sup>4</sup> However, due to the broad nature of Bank Secrecy Act (BSA)<sup>5</sup> and anti-money laundering (AML) supervision, there is a risk that BSA/AML focused supervisory actions could indirectly address reputation risk. The proposal would prohibit the agencies from using BSA and anti-money laundering concerns as a pretext for reputation risk. In addition, although the agencies would continue to consider the statutory factors required with respect to certain applications,<sup>6</sup> the proposal would prohibit the agencies from using these provisions as a pretext for reputation risk, as described in this proposal, in making determinations regarding such applications.

"Adverse action," as defined by the proposed rule, would include the provision of negative feedback, including a report of examination, a memorandum of understanding, verbal feedback, or an enforcement action. A denial of a filing pursuant to part 303 of the FDIC's regulations or an imposition of a capital requirement above the minimum ratios would constitute an "adverse action" under the proposed rule, as would any burdensome requirements placed on an approval, the introduction of additional approval requirements, or any other heightened requirements on an activity or change.

The term "doing business with" in the proposed rule is intended to be construed broadly and to include both business relationships with bank clients and with third-party service providers

The proposed rule would define "reputational risk" as the risk that an action or activity, or combination of actions or activities, or lack of actions or activities, of an institution or its employees could negatively impact public perception of the institution for reasons unrelated to the current or future financial or operational condition of the institution.

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<sup>4</sup> 15 U.S.C. 5311 *et seq.*

<sup>5</sup> *Id.*

<sup>6</sup> *See, e.g.,* 12 U.S.C. 1816 (requiring the FDIC to consider, among other things, the "general character and fitness of the management of the depository institution" in an application for deposit insurance); 12 U.S.C. 1817(j)(2)(B) (requiring the agencies to "conduct an investigation of the competence, experience, integrity, and financial ability of each person named" as a proposed acquirer of an institution following a notice of a proposed change in control of a depository institution).

The proposed rule would make one conforming amendment to the safety and soundness standards set forth in part 364 of the FDIC's regulations. References to reputational risk would be eliminated.

In addition, part 334 of the FDIC's regulations concerning certain identify theft prevention programs required by the Fair and Accurate Credit Transaction Act of 2003 refers to reputation risk. The proposal would note that the FDIC intends to make changes to part 334 in a separate, joint rulemaking with the OCC and other federal agencies in the future.

## **REQUEST FOR COMMENTS**

The agencies request comment on all aspects of the proposed rule, including specific comments on the proposed prohibitions, definitions, other uses of reputation risk that should be addressed, alternatives to the proposed rule, unintended consequences, and unidentified costs, benefits, or other effects.

## **CONCLUSION**

Staff recommends that the Board approve the attached Notice of Proposed Rulemaking for publication in the *Federal Register* for a comment period of 60 days.

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