October 3, 2025

MEMORANDUM TO: Board of Directors

FROM: Ryan Billingsley, Director
Division of Risk Management Supervision

SUBJECT: Notice of Proposed Rulemaking Regarding Unsafe or Unsound Practices, Matters Requiring Attention

Summary:

Federal Deposit Insurance Corporation (FDIC) staff presents to the FDIC Board of Directors (FDIC Board) the attached notice of proposed rulemaking (proposal) for approval and requests authorization of its publication in the *Federal Register*. The proposal would revise the FDIC's regulations to define the term "unsafe or unsound practice" for purposes of section 8 of the Federal Deposit Insurance Act (12 U.S.C. § 1818) and revise the supervisory framework for the issuance of matters requiring board attention (referred to as "matters requiring attention" (MRAs) in the proposed rule) and other supervisory communications. These proposed revisions would be issued jointly by the FDIC and Office of the Comptroller of the Currency (OCC) (collectively, Agencies). The proposal aims to provide regulatory clarity and certainty for supervised institutions, and to enable supervised institutions and examiners to focus attention on more significant issues at the institutions.

Concur:

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Matthew P. Reed
General Counsel

Recommendation:

FDIC staff presents to the FDIC Board the attached proposal for approval and requests authorization of its publication in the *Federal Register* with a 60-day public comment period.

Discussion:

I. Background

Unsafe or Unsound Practices

The Agencies exercise their enforcement and supervisory authorities to ensure that supervised institutions and institution-affiliated parties refrain from engaging in unsafe or unsound practices. Currently, there is no statutory or regulatory definition of what constitutes an "unsafe or unsound practice," and courts and administrative tribunals have provided different definitions of that term.

Supervisory Recommendations

As part of the examination and visitation process, the Agencies communicate deficiencies that rise to the level of an MRA, but the Agencies have different standards for communicating those deficiencies. The FDIC's current practice is to issue "supervisory recommendations," including "matters requiring board attention" (MRBAs), to communicate weaknesses in an institution's operations, governance, or risk management practices, or compliance with banking-related laws and regulations. These supervisory tools are designed to promote timely corrective action to strengthen supervised institutions' overall safety and soundness and to promote the implementation of an effective compliance management system.

The FDIC currently uses MRBAs to inform an institution's board of directors and senior management of the FDIC's views about changes needed in the institution's practices, operations, or financial condition and to address significant violations of laws and regulations. The FDIC reviews the status of MRBAs in subsequent examinations or through offsite monitoring to ensure progress and remediation. Other supervisory recommendations do not carry the same weight as MRBAs; however, the FDIC expects management to consider and respond to them and to implement corrective action as appropriate.

II. Description of the Proposal

The proposal would create a definition of the term "unsafe or unsound practices," for purposes of supervisory and enforcement actions under 12 U.S.C. 1818, in the Agencies' regulations. The proposed rule would also create a framework for the Agencies' supervisory communications to their supervised institutions.

Unsafe or Unsound Practices

The proposed rule would establish the following standard for citing unsafe or unsound practices under 12 U.S.C. 1818:

> An "unsafe or unsound practice" is a practice, act, or failure to act, alone or together with one or more other practices, acts, or failures to act, that:
>
> - Is contrary to generally accepted standards of prudent operation; and
> - Either
>   - If continued, is likely to—
>   - Materially harm the financial condition of the institution; or
>   - Present a material risk of loss to the Deposit Insurance Fund; or
>   - Materially harmed the financial condition of the institution.

The proposed definition would focus institution and examiner attention on practices that are likely to materially harm to an institution's financial condition, providing the institution's board of directors and management additional flexibility to enact day-to-day decisions based on their business judgment and risk tolerance. This change would provide greater consistency for institutions and institution-affiliated parties.

The proposed implementation of the definition of "unsafe or unsound practice" would only apply to the Agencies' supervisory and enforcement activities prospectively. Moreover, the proposed definition would not apply to the Agencies' other rulemaking activities or authorities. Furthermore, the proposal explains that the Agencies will tailor their supervisory and enforcement actions under 12 U.S.C. 1818 (as well as their issuance of MRAs) based on the capital structure, riskiness, complexity, activities, asset size, and any financial risk-related factor that the Agencies deem appropriate.

Supervisory Communications

Under the proposed rule, the Agencies would only be able to issue an MRA for a practice, act, or failure to act, alone or together with one or more other practices, acts, or failures to act, that (1) could reasonably be expected to become an unsafe or unsound practice (as defined under the proposed regulation) under current or reasonably foreseeable conditions, or (2) is an actual violation of a banking or banking-related law or regulation.

The Agencies intend for the "could reasonably be expected to, under current or reasonably foreseeable conditions" element in the proposed MRA standard to present a lower standard than does the "likely" element in the proposed "unsafe or unsound practice" standard.

Additionally, the Agencies expect that any downgrade in an institution's composite supervisory rating to less-than-satisfactory would only occur in circumstances in which the institution receives an MRA that meets the standard outlined in the proposed rule or an enforcement action under the Agencies' enforcement authority, including an enforcement action based on an unsafe or unsound practice as defined in the proposed rule. By connecting the assignment of a less-than-satisfactory composite rating to the issuance of MRAs or enforcement actions, the Agencies would generally ensure a less-than-satisfactory composite rating is tied to a potential material harm to the institution's financial condition, potential material risk of loss to the Deposit Insurance Fund, actual material harm to the institution's financial condition, or actual violations of certain laws and regulations.

The proposal also clarifies that the Agencies may communicate suggestions and observations to an institution orally or in writing to enhance an institution's policies, practices, condition, or operations as long as the communication is not, and is not treated by the agency in a manner similar to, an MRA.

Conclusion:

FDIC staff presents to the FDIC Board the attached Notice of Proposed Rulemaking for approval and requests authorization of its publication in the *Federal Register* with a 60-day public comment period.

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