Mr. Jonathan V. Gould
Comptroller of the Currency
Attn: Chief Counsel's Office
Re: Comment Processing
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E-218
Washington, D.C. 20219

Mr. Travis Hill
Acting Chairman
Federal Deposit Insurance Corporation
Attn: Ms. Jennifer M. Jones
Deputy Executive Secretary
Re: Comments—RIN 3064-AG12
550 17th Street NW
Washington, D.C. 20429

December 20, 2025

Re: OCC-2025-0142; RIN 3064-AG12

Dear Comptroller Gould and Acting Chairman Hill,

Thank you for the opportunity to comment on the proposed rule, "Prohibition of Reputation Risk by Regulators" ("Proposed Rule").[1] The Proposed Rule would eliminate reputational risk as a supervisory factor for regulators' evaluations of financial institutions to prohibit banks from evaluating the reputational risk customers could pose.[2] In recent years, banks used reputation risk to unfairly close customer accounts; this topic is increasingly a focus of legislators and regulators.[3] While I applaud the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation's ("the Agencies'") attempts to ensure consumers have equitable access to banking services, I have concerns about the potential consequences of the Proposed Rule's implementation and the rule's drafting context. Additionally, I believe the Agencies should consider existing regulatory authorities to advance the Proposed Rule's goals. Therefore, I ask that you take steps to moderate the Proposed Rule and further safeguard American consumers.

I.   Background

Under existing supervisory frameworks, the Federal Reserve, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation evaluate banks using several criteria, including reputation risk.[4] Reputation risk is the risk generated by a bank's involvement in or business with a party that could harm the reputation of the bank or the financial industry.[5] Banks use reputation risk and other supervisory criteria to assess their customers and business decisions.[6] Reputation risk assessments have tangible impacts on consumers and small

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[1] Prohibition on Use of Reputation Risk by Regulators, 90 Fed. Reg. 48825 (proposed Oct. 30, 2025) (to be codified at 12 C.F.R. pts. 1, 4, 30).
[2] *Id.*
[3] *Investigating the Real Impacts of Debanking in America*: *Hearing Before the S. Comm. on Banking, Hous., and Urb. Affs.*, 119th Cong. (2025) (statement of Sen. Elizabeth Warren, Ranking Member, S. Comm. on Banking, Hous., and Urb. Affs.).
[4] Prohibition on Use of Reputation Risk by Regulators, 90 Fed. Reg. at 48825.
[5] *Id.*
[6] *Id.*

businesses: when a bank identifies a risk, it can close the consumer's account, through a process known as "debanking."[7]

II.   Basis of the Proposed Rule

The Proposed Rule would prohibit regulators from using reputational risk to examine financial institutions.[8] The Proposed Rule explains reputation risk's subjectivity: bank "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."[9] However, the Rule is overly focused on one class of activities: political speech. In Executive Order 14331, this Administration asserts that regulators and banks use debanking to undermine conservative political free speech.[10] The Order even asserts that banking institutions and regulators have together "weaponized a politicized regulatory state."[11] This political assertion is the basis of the Proposed Rule. The Administration has little foundation for the claims that debanking is a political tool: just 35 of the more-than-8,000 consumer debanking reports filed with the CFPB referenced the terms "conservative" or "politics."[12] To be clear, no individual should be de-banked, due to their political affiliation, race, national origin, or any other protected class. This rule should focus on the millions of American consumers and small businesses who are harmed by subjective debanking measures.

III.   Actions Needed to Support Consumers

Efforts related to banking reform and de-banking should center around consumers. The Proposed Rule asked commenters to consider whether there are "alternatives to the proposed rule that would better achieve the Agencies' objective."[13] The Proposed Rule fails to address transparency and due process in consumer de-baking, the inaccurate Artificial Intelligence ("AI") algorithms driving the reputational risk calculations, and the important role that the CFPB plays to hold banks responsible for unfair and discriminatory business practices." The Proposed Rule also could unintentionally hamstring banks' ability to detect scams or other risks.

a.   Due Process and Transparency

The Proposed Rule takes no steps to address the lack of transparency and due process for consumers subjected to de-banking.[14] While financial institutions contend that reputational reviews are conducted deliberately, data suggests otherwise. According to Consumer Financial Protection Bureau ("CFPB") data, over 8,056 customers reported to CFPB that their banks

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[7] Ron Lieber & Tara Siegel Bernard, *Why Banks Are Suddenly Closing Down Customer Accounts*, N.Y. TIMES (June 3, 2024), https://www.nytimes.com/2023/11/05/business/banks-accounts-close-suddenly.html.
[8] Prohibition on Use of Reputation Risk by Regulators, 90 Fed. Reg. at 48825.
[9] *Id.*
[10] Guaranteeing Fair Banking for All Americans, Exec. Order No. 14331, 90 Fed. Reg. 38925 (Aug. 12, 2025).
[11] *Id.* at § 1.
[12] Ross Kerber, *Just 35 Complaints of Debanking Cite Political Bias Despite Trump Order*, REUTERS (Aug. 19, 2025, 12:08 PM ET), https://www.reuters.com/legal/transactional/just-35-complaints-debanking-cite-political-bias-despite-trump-order-2025-08-19/.
[13] Prohibition on Use of Reputation Risk by Regulators, 90 Fed. Reg. at 48825.
[14] *Id.*

improperly closed their accounts without notice, justification, or any process for appeal or reinstatement.[15] The largest number of these claims came from former JPMorgan Chase and Wells Fargo customers.[16] Without access to bank accounts, individuals and small businesses struggle to pay their rents, mortgages, car payments, and other essentials. Consumers also report delays receiving their funds after account closures and face challenges opening accounts with other banks.[17] "Debanked" consumers range from small business owners to bank executives, who neither displayed any risk indicators, nor were involved fraud.[18] The sheer volume of debanked consumers raises questions about the actual review system banks undertake when they close accounts. "Debanked" consumers should be able to access information from banks to understand what led to the bank's choice to close their accounts and to understand how this choice may impact their future financial security. Debanked consumers should also have an opportunity for redress if the bank made an error in closing their account. The Proposed Rule fails to address these key elements.

b. Regulation of Artificial Intelligence

Reports suggest that there may be a common culprit for rise in debanking: AI algorithms.[19] Big banks employ AI models to assess customers' background information and transactional histories; these models can then issue a determination to the bank on whether a consumer poses a reputational risk to the bank. AI algorithms are trained by human data, which means that just like humans, algorithms can be biased.[20] Statistical discrimination results in algorithmic profiling, which without proper oversight, can result in debanking.[21] While AI programmers recommend these suggestions be reviewed by a human moderator, that level of oversight is likely not happening at the banks.[22] And because the banks' decisions are not reviewable and are not subject to disclosure, the scale of this problem is unknown.

Instead of focusing on the need for human review, the Proposed Rule contends that the best way to eliminate inconsistency in debanking is to entirely eliminate reputational risk as a review factor.[23] The Proposed Rule acknowledges that banks would need to invest in resources to properly train staff and to acquire risk-monitoring models to improve the review process' accuracy, but instead of encouraging banks to make those investments, the Proposed Rule instead proposes that big banks should sacrifice all review systems purely to cut costs.[24] But this fails to recognize that algorithmic assessments are likely here to stay, and the same models, if not reviewed by a trained human, will make the same mistakes when used by banks to assess other risk factors. Instead, the Proposed Rule should encourage investment in human capital, prescribe

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[15] Lieber & Bernard, *supra* note 7.

[16] SUPP. MEMORANDUM FROM MINORITY STAFF OF S. COMM. ON BANKING, HOUS., AND URB. AFFS. ON ANALYSIS OF CFPB CONSUMER COMPLAINTS RELATED TO DEBANKING (Feb. 4, 2025).

[17] Lieber & Bernard, *supra* note 7.

[18] *Id.*

[19] Lieber & Bernard, *supra* note 7.

[20] Shuping Li, Note, *Algorithmic Financial Regulation: Limits of Computing Complex Adaptive Systems*, 12 AM. U. BUS. L. REV. 209, 244–45 (2024).

[21] *Id.*

[22] *Id.*

[23] Prohibition on Use of Reputation Risk by Regulators, 90 Fed. Reg. at 48825.

[24] Prohibition on Use of Reputation Risk by Regulators, 90 Fed. Reg. 48825 (proposed Oct. 30, 2025) (to be codified at 12 C.F.R. pts. 1, 4, 30).

standards for AI-models that are involved in risk assessments, and require banks to be transparent in how their models are trained and reviewed.

c. Support for the Consumer Financial Protection Bureau

The Administration's actions to curtail and eliminate the CFPB's regulatory and enforcement powers are antithetical to the goals outlined in the Proposed Rule. CFPB is an important advocate to prevent institutions from taking advantage of American consumers, of all political ideologies, particularly after they have been debanked. CFPB collects debanking reports and provides insight into the secretive process. These reports are not only essential to consumers, but also to legislators and regulators who look to hold financial institutions accountable.

CFPB has directly taken on debanking. In fact, in January of this year, CFPB published a Notice of Proposed Rulemaking ("NPR") that would prohibit financial institutions from inserting clauses within contracts of adhesion that force consumers to surrender their due process rights, restrain consumers' free speech rights, or otherwise impinge upon consumers' Constitutional rights.[25] Such clauses often serve as the banks' basis for debanking.[26] CFPB is also spearheading investigations into banks who engage in debanking.[27] If this Administration is truly concerned with debanking and political free speech, the NPR and the investigations conducted by CFPB would be appropriate avenues for redress. Yet, on May 15, 2025, following the change in Administration, the NPR was rescinded.[28] Today, the Administration is blocking the Federal Reserve from funding the CFPB, and contends that it will be shuttered by the beginning of 2026.[29] These actions have effectively frozen the debanking investigations at CFPB.[30]

If the Administration wants to curtail debanking, attempts to undermine the CFPB's work are misguided. CFPB holds the authority to take on big banks who unfairly debank consumers. While the Agencies should consider measures to adjust how banks evaluate reputational risk, these measures must be paired with support for CFPB's regulatory and enforcement work.

d. Reputation Risk Assessments and Scam Prevention

Finally, the Agencies also ask commenters to consider whether "the removal of reputation risk [may] create any other unintended consequences for the agencies or their supervised institutions."[31] I am concerned that by abandoning reputational risk entirely, banks will lose the ability to detect emerging threats, including cryptocurrency-based scams.

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[25] Prohibited Terms and Conditions in Agreements for Consumer Financial Products or Services (Regulation AA), 90 Fed. Reg. 3566, proposed Jan. 14, 2025 (rescinded May 15, 2025).

[26] *Id.*

[27] Jake Pearson, *Trump Wants to Crack Down on "Debanking," but He's Dismantling a Regulator That Was Doing Just That*, PROPUBLICA, (Sep. 9, 2025, at 5:00 ET), https://www.propublica.org/article/trump-debanking-executive-order-cfpb-discrimination-banking.

[28] Prohibited Terms and Conditions in Agreements for Consumer Financial Products or Services (Regulation AA), 90 Fed. Reg. at 3566.

[29] Notice of Def., *Natl. Treasury Emp. Union v. Vought*, No. 25-5091 (D.D.C. Nov. 10, 2025).

[30] Pearson, *supra* note 26.

[31] Prohibition on Use of Reputation Risk by Regulators, 90 Fed. Reg. at 48825.

At a time where cryptocurrency scams affecting older Americans are on the rise, regulators need to exercise caution to ensure banks are adequately equipped to identify and to respond to fraud. The Federal Bureau of Investigation's 2024 Internet Crime Report revealed that in 2024 Americans lost $9.3 billion to cryptocurrency-related fraud, a sixty-six percent increase over 2023 losses.[32] The largest share of losses was among older adults over sixty. The Federal Trade Commission's Consumer Sentinel database reported similar numbers for 2024.[33] Due to underreporting, the problem is likely much larger. Banks need tools to identify and respond to fraud, and risk evaluations are an important tool that can help banks identify bad actors. Thus, it is crucial that the Agencies balance proposals to eliminate reputational risk assessments with tools to help banks to respond to fraud.

IV.   Conclusion

Thank you for the opportunity to comment on the Proposed Rule. Debanking is a serious problem for American consumers and small businesses; it should be addressed by federal regulators. However, if the Agencies truly want to ensure Americans can maintain equitable access to financial institutions, I encourage the Agencies to consider the supplemental approaches outlined above.

Sincerely,

Alison Council
J.D. Candidate, Class of 2028
American University Washington College of Law
Junior Editor, AUWCL Legislation and Policy Brief [34]

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[32] FED. BUREAU OF INVESTIGATIONS, INTERNET CRIME REP. 35 (2024), https://www.ic3.gov/AnnualReport/Reports/2024_IC3Report.pdf.
[33] FED. TRADE COMM'N, A SCAMMY SNAPSHOT OF 2024 (2024), https://www.ftc.gov/system/files/ftc_gov/images/csn-scammy-snapshot-2024.png.
[34] This comment reflects my opinions alone and not those of AUWCL or the AUWCL Legislation and Policy Brief staff.