ALLIANCE DEFENDING
FREEDOM
FOR FAITH. FOR JUSTICE.

November 25, 2025

The Honorable Travis Hill, Chairman
Federal Deposit Insurance Corporation (FDIC)
Attn: Comments–RIN 3064-AG12
550 17th Street NW
Washington, DC 20429

Via comments@fdic.gov

The Honorable Jonathan V. Gould, Comptroller of the Currency
Office of the Comptroller of the Currency (OCC)
Attn: Comment Processing
400 7th Street SW, Suite 3E-218
Washington, DC 20219

Via regulations.gov

RE: Request for Public Comments Regarding Prohibition on Use of Reputation Risk by Regulators, 90 Fed. Reg. 48,825 (proposed October 30, 2025); RIN 1557-AF34, RIN 3064-AG12; Docket ID: OCC-2025-0142

Dear Chairman Hill and Comptroller Gould,

Alliance Defending Freedom (ADF) respectfully submits the following comment in support of the agencies' proposed rulemaking, "Prohibition on Use of Reputation Risk by Regulators," 90 Fed. Reg. 48,825 (proposed October 30, 2025); RIN 1557-AF34, RIN 3064-AG12; Docket ID: OCC-2025-0142.

ADF is an alliance-building legal organization that advocates for the right of all people to be free to live and speak the truth. ADF is dedicated to protecting the unalienable rights endowed by our Creator. Since its founding in 1994, ADF has handled many legal matters involving federal regulations that exceed an agency's statutory authority and overreach in areas of abortion, gender and sexuality, free speech, religious liberty, and parental rights. ADF has also litigated on behalf of clients who have been debanked for their political or religious views.

ADF appreciates the opportunity to comment on this important proposal. The Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC), collectively referred to here as "the agencies," have proposed a valuable rule that addresses a real and significant issue with how the agencies supervise, examine, and regulate financial institutions. The following comment

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discusses why the proposal is justified and provides answers to questions raised in the Notice of Proposed Rulemaking, as well as recommendations to strengthen the rule.

The first section discusses the justifications for prohibiting the use of reputation risk as part of bank supervision, including some reasons not mentioned in the notice. The second section addresses some of the questions raised by the agencies, proposes modifications to the proposed rule to enhance its effectiveness, and explains why these changes would be beneficial. The third section provides a red-lined version of the sections of the proposal where recommendations for changes were made.

I. Reasons to Prohibit Use of Reputation Risk by Regulators

The proposed rule would prohibit employees of the agencies from using reputation risk as a basis to take adverse action against a financial institution. It would also prohibit the agencies from requiring, prohibiting, encouraging or discouraging a financial institution to enter into, maintain, refuse, or cease a business relationship with a third party, or from encouraging, requiring, or instructing a financial institution to take an adverse action against a customer or potential customer on the basis of that customer's political, social, cultural, or religious views or belief, constitutionally protected speech, or solely on the basis of the customer's involvement in politically disfavored but lawful business activities perceived to present reputation risk.

Removing reputation risk as a regulatory tool is a crucial step in preventing abuse, protecting financial institutions and their customers, and ensuring that the agencies can effectively accomplish their mission of protecting the safety and soundness of financial institutions and the deposit insurance fund. The proposal notes several reasons for this, including:

- Reputation risk's lack of usefulness in improving the safety and soundness of financial institutions or protecting the deposit fund;
- Reputation risk's lack of consistency and its requirement that agency employees predict the future;
- That the use of reputation risk permits employees of the agencies to, explicitly or implicitly, intentionally or unintentionally, give regulatory weight to the employees' personal beliefs, preferences, and prejudices; and
- How reputation risk can result in the agencies encouraging financial institutions to forgo profitable, and therefore stabilizing business, and cause

market distortions due to concern about an agency's perception of reputation risk.

There are also other reasons that buttress the wisdom of prohibiting the use of reputation risk that were not mentioned in the proposal. These include:

- The use of reputation risk can result in regulators being drawn into contentious political battles by enabling an "economic hecklers' veto"; and

- The use of reputation risk can undermine the stability of the banking system because the regulators have lost credibility that the system relies on.

These reasons are discussed in greater detail below.

A. Reasons raised by the agencies

The agencies cite several valid reasons why removing reputation risk is appropriate. These reasons relate to both the unsuitability of reputation risk as a tool for protecting the safety and soundness of regulated financial institutions and the deposit insurance fund, as well as the potential harm that the use of reputation risk can cause. These reasons alone are sufficient to justify the agencies' proposal.

1. Reputation risk's lack of utility

By its very nature, reputation risk is a poor fit for the legitimate purpose of bank supervision, which is to ensure that banks are operated in a manner consistent with the law and maintain financial safety and soundness. At best, reputation risk is redundant with other, more objective, and identifiable risks that relate directly to legality or financial stability. At worst, it opens the door for abuse. Regardless, it gives legal effect to bank supervisors' speculation on matters that are incredibly difficult to predict.

This observation is consistent with academic research. For example, Prof. Julie Hill explains that for reputation risk to be meaningful, it must provide some unique value in protecting bank stability and legal compliance compared to the other tools available to bank supervisors. Otherwise, it is merely redundant. And yet, reputation risk is almost never cited by the agencies as an independent basis for enforcement actions.[1]

The observation is also consistent with the agencies' own experience. In the proposal, the agencies note that the use of reputation risk does not materially

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[1] Julie Hill, *Regulating Bank Reputation Risk*, 54 GA. L. REV. 523, 563-568 (2020).

improve bank examination, supervision, or safety. Given that the benefits of using reputation risk are nonexistent but the costs are very real, as described in greater detail in the proposal and below, prohibiting its use would improve the efficiency of bank regulation.

2. Reputation risk's inconsistency

The agencies also note that the use of reputation risk introduces unpredictability and subjectivity into the supervisory process.[2] This is consistent with academic research, which reaches similar conclusions.[3] Substituting the regulated entity's judgment on how business relationships will be perceived by the public with the judgment of a handful of regulators is unwise and leads to an unpredictable regulatory environment. Some stakeholders may view a bank's relationship with certain organizations as an asset, even though others view it as a liability. As researchers have noted, regulators are not well-positioned to decide which views to prioritize among an entity's various stakeholders.[4] Limiting regulators to policing a bank's risk to more traditional, quantifiable risk channels, such as credit risk, market risk, liquidity risk, interest rate risk, and operational risk, will provide more consistency and predictability. It will also enable agencies and financial institutions to make more effective use of their resources by focusing on the factors most directly related to financial stability.

3. Reputation risk and the risk of bias and abuse

The agencies recognize that the use of reputation risk could lead to examiners encouraging or discouraging banks to maintain relationships with customers based on the examiner's preferences.[5] This is completely true and has given rise to several unfortunate examples of agency employees abusing their power.

A few examples of this type of abuse have been made public. The most egregious example involved the FDIC's efforts to force its supervised institutions to stop facilitating refund anticipation loans (RALs). Although the FDIC had a decades-long relationship with institutions offering RALs, the FDIC, driven by the agency's leadership, engaged in a campaign to end the involvement of its supervised entities in RALs in 2011 and 2012, despite RALs being legal then and now.[6] Internal

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[2] 90 Fed. Reg. at 48,826–27.
[3] Hill, *supra* note 1, at 584–91.
[4] Hill, *supra* note 1, at 531.
[5] 90 Fed. Reg. at 48,827.
[6] *See generally* OFF. OF INSPECTOR GEN., FED. DEPOSIT INS. CORP., REPORT NO. OIG-16-001, REPORT OF INQUIRY INTO THE FDIC'S SUPERVISORY APPROACH TO REFUND

communications and notes indicate FDIC employees knew the agency could not legally require the banks to stop facilitating RALs without a hearing and that victory at such a hearing was unlikely.[7] The FDIC was also well aware that it was unlikely to succeed in litigation efforts to require the institutions to exit the RAL market.[8]

Yet the FDIC pressured three institutions to exit the RAL business because some within the agency's leadership found the practice distasteful. The tactics used were extreme: abusive threats by an FDIC employee, disclosing nonpublic information to a competitor, and a 400-examiner-strong horizontal review of an institution that had refused to exit the RAL business.[9] In its report, the OIG called the horizontal review "an unprecedented use of resources on a horizontal review, affecting a single bank, during the aftermath of the financial crisis, in a year where 92 other banks failed."[10] Reputation risk was regularly cited as a reason the banks should stop facilitating RALs. This vague and subjective criterion provided the FDIC with ammunition to pursue these regulated entities despite the lack of legal cause.

Another example of reputation risk providing a basis for agency efforts is the FDIC's attempt to end payday lending. While investigating the FDIC's actions related to DOJ's Operation Choke Point, the OIG identified two instances when the FDIC pressured institutions to stop providing ACH processing for payday lenders. The primary concern cited by the FDIC in these efforts was reputation risk.[11] According to the OIG report, one institution told the FDIC directly that it was disappointed that the FDIC was able to pressure the institution to terminate its relationship with a payday lender based solely on potential reputation risk.[12] The field office supervisor acknowledged in an email, "[i]n the end, we are getting them

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ANTICIPATION LOANS AND THE INVOLVEMENT OF FDIC LEADERSHIP AND PERSONNEL (Feb. 2016).
[7] *Id.* at 55.
[8] *Id.*
[9] *Id.* at 64–77.
[10] *Id.* at 73.
[11] OFF. OF INSPECTOR GEN., FED. DEPOSIT INS. CORP., REPORT NO. AUD-15-008, THE FDIC'S ROLE IN OPERATION CHOKE POINT AND SUPERVISORY APPROACH TO INSTITUTIONS THAT CONDUCTED BUSINESS WITH MERCHANTS ASSOCIATED WITH HIGH-RISK ACTIVITIES iii (Sept. 2015).
[12] *Id.* at 27.

out of [ACH processing for a payday lender] through moral persuasion and as you know from a legal perspective we don't have much of a position, if any."[13]

These instances show the danger of allowing agency officials to give their animus for certain legal activities legal force via reputation risk. Removing reputation risk as a regulatory option can help prevent, or at least dissuade, such efforts at abuse in the future. Doing so will not only help protect banks and their customers from abuse of the law, but can also help protect the economy from distortion.

4. Reputation risk and economic distortion

The agencies acknowledge that the use of reputation risk can change institutions' behavior to suit regulators' preferences rather than what makes economic sense for the institution.[14] They also note that such distortion could arise from agency staff using reputation risk to pick winners and losers.[15]

The agencies cite research showing that banks targeted by regulators to cut off controversial industries did reduce their service to those industries.[16] The agencies also note that the targeted industries were able to establish substitute relationships with non-targeted banks and therefore did not experience a lasting decline in performance, albeit while incurring search and transition costs.[17]

If anything, the agencies underplay the risk of economic distortion caused by the use of reputation risk regulation, at least in certain industries.

To illustrate the potential economic effects of the abuse of reputation risk, consider the FDIC's campaign to prevent banks from providing RALs directly or working with non-bank lenders that provide RALs, despite RALs being legal.

RALs were disfavored by activists and certain policymakers within the government. A coordinated effort by the IRS and the FDIC to undermine the viability of the RAL market for banks led to the largest banks withdrawing from the RAL market, which

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[13] *Id.*
[14] 90 Fed. Reg. at 48,830–31.
[15] *Id.* at 48,827.
[16] *Id.* at 48,831 *citing* Kunal Sachdeva et al., *Defunding Controversial Industries: Can Targeted Credit Rationing Choke Firms?,* 172 J. FIN. ECON. 104133 (2025).
[17] *Id.*

significantly reduced the product's availability.[18] However, three smaller banks remained in the market, something the FDIC was unwilling to tolerate.

As described in an FDIC OIG report, the FDIC's leadership determined to persuade the last FDIC-regulated banks supporting RALs to exit the business.[19] What began as persuasion quickly turned to coercion, however, as the FDIC downgraded banks' exam ratings, denied banks business opportunities, and threatened to weaponize the supervision process to impose maximum pain on banks that worked with RAL providers, despite the relationships being profitable for the banks.[20]

The FDIC's coercion worked, and all remaining banks exited the RAL market.[21] The FDIC's actions deprived a legal and profitable industry, as well as its customers, of access to bank support, which in turn led to the temporary disappearance of the RAL industry.[22] The FDIC's actions ultimately harmed the financial condition of the banks, and ironically, their reputations as well.[23] The use of reputation risk as a pretext to impose the regulators' personal preferences on the market weakened the very banks the FDIC was supposed to protect, deprived RAL customers of a useful product, and may have caused economic distortion in the households that benefited from RAL products.

While RALs were admittedly a niche product, and other regulatory efforts played a significant role in their temporary demise, the use of reputation risk as a pretext for regulatory abuse was the final nail in the coffin. This illustrates that, in certain situations, the use of reputation risk can lead to significant market distortion.

B. Additional Reasons to Prohibit the Use of Reputation Risk

There are several reasons not cited by the agencies in the proposal that justify prohibiting the use of reputation risk. Among them is the risk that the agencies, even if they use reputation risk in an even-handed manner, will be drawn into political controversies and end up enforcing an "economic heckler's veto," and that

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[18] Andrew T. Hayashi, *The Effects of Refund Anticipation Loans on Tax Filing and EITC Takeup* (June 6, 2016), Virginia Law and Economics Research Paper No. 2016-9, available at SSRN: https://ssrn.com/abstract=2801591 or http://dx.doi.org/10.2139/ssrn.2801591.
[19] FDIC OIG Report No. OIG-16-001, *supra* note 6.
[20] *Id.*
[21] *Id.*
[22] Hayashi, *supra* note 18.
[23] FDIC OIG Report No. OIG-16-001, *supra* note 6, at ii.

the use of reputation risk will undercut the credibility of the regulators and the stability of the financial system that relies on that credibility. These reasons, standing alone, would also justify the proposed rule.

1. *Preventing bank regulation from enforcing an "economic heckler's veto"*

The use of reputation risk could force agencies into contentious political struggles, even if the agencies strove rigorously to be non-political. The reason is that under the logic of reputation risk, it is irrelevant if a bank, its customer, or partner is doing something illegal or wrong. All that matters is that there is something about the action or party that alienates other constituents of the bank in a way that results in actual or potential economic loss. A natural corollary of this fact is that the more economic power a constituent of the bank has, the more their opinions matter for the purpose of reputation risk. Put differently, reputation risk is not concerned with who is right, but rather who is rich. [24]

Regulating based on reputation risk can result in regulators being forced to enforce a secondary boycott. Assume an economically powerful constituency, such as a large customer or investor, or a group of customers or investors ("A"). Assume A has economic leverage over a bank ("B") and that B also does business with a customer ("C"). If A dislikes and wishes to harm C it could threaten to use its economic leverage to harm B unless B drops its relationship with C.[25]

B would face a difficult choice on its own in the scenario above, and absent some legal prohibition, such as civil rights law, may choose to cut ties with C to protect its economic condition. However, the logic of reputation risk would require regulators to also take note of, and potentially take action based on the threat that A's animus towards C may pose to B's economic condition if A has more economic power over B than C does. This would further increase the risk of B continuing a relationship with C, because B needs to consider not only the economic risk of alienating A but also the regulatory cost that might be imposed by the regulator. Further, a regulator could not decline to invoke reputation risk in contentious situations while using it in others without being arbitrary in its enforcement of the rules.

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[24] Br. of Financial & Business Law Scholars as Amici Curiae in Support of Pet. at 27–28 (filed Jan. 10, 2024), *Nat'l Rifle Ass'n v. Vullo*, 602 U.S. 175 (2024).
[25] *Id*. at 28.

Financial services have been weaponized by private actors for political reasons in the past.[26] Therefore, the concern that regulators may be forced to *de facto* support the side of a political controversy that has greater economic power cannot be dismissed. The risk that the logic of reputation risk would force regulators to choose between strengthening an economic heckler's veto or enforcing rules arbitrarily is another strong reason to prohibit the use of reputation risk.

2. Prohibiting the use of reputation risk will protect the agencies' reputations and the economy

As Professor Julie Hill notes, bank stability relies in part on the reputation of regulators for competence and fairness. The use and historic abuse of reputation risk threaten this reputation. If regulators are perceived as playing favorites, or if their enforcement is viewed as being focused on political objectives rather than safety and soundness, it could erode their moral and legal authority. This, in turn, could reduce confidence in the broader banking system.[27] Prohibiting regulators from playing the role of "proctor of public opinion"[28] will help protect the agencies' standing with the public and the broader economy.

As described above, there are ample reasons for removing reputation risk as a tool of bank supervision. While the proposal represents a significant improvement over the status quo, it could be further refined to better achieve its goal. The next section provides a more detailed discussion of these refinements.

II. Suggestions to Help Improve the Rule

While the agencies' proposed rule represents a significant improvement over the status quo, there are areas where it can be further enhanced. The first improvement is to consistently apply the prohibition on using reputation risk to justify adverse actions, ensuring that lawful business activities receive the same protection as speech, belief, and views. A second enhancement would be to clarify that the prohibition on using reputation risk applies to lawful political or religious activities

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[26] Brian Knight & Trace Mitchell, *Private Policies and Public Power: When Banks Act as Regulators Within a Regime of Privilege*, 13 N.Y.U. J. L. & LIBERTY 66, 67–69 (2019) (Collecting examples); *See also* Br. of Financial & Business Law Scholars, *supra* note 24, at 28–31 (Discussing pressure placed on American banks by Arab states to cut ties with Israeli and Jewish customers in the 1970s).
[27] Hill, *supra* note 1, at 592–97.
[28] *Gulf Fed. Sav. & Loan Ass'n v. Fed Home Loan Bank Bd.*, 651 F.2d 259, 265 (5th Cir. 1981).

as well as views and beliefs. A third enhancement is prohibiting the agencies from taking adverse actions based on the preferences or animus of any agency official, rather than just the supervisor of a particular institution. Finally, the prohibition on reputation risk should be expanded to include issues related to the institution's financial condition. These refinements will help what is already a solid proposal truly achieve its goal of preventing regulatory abuse and returning the focus of supervision and examination to where it belongs, the economic stability of the bank.

A. Prohibiting the Use of Reputation Risk to Justify Adverse Actions Based on Legal Business Activity

The agencies propose to prohibit an adverse action being taken against a bank solely on the basis of reputation risk related to a person or entity's involvement in politically disfavored but lawful business activities.[29] While a significant improvement over the status quo, requiring that reputation risk be the *sole* basis invites abuse and gamesmanship on the part of agency staff, who could invoke a de minimis or pretextual reason other than reputation risk to justify the adverse action, even if those reasons on their own would not justify such an action. The proposal should extend the prohibition on the use of reputation risk to commercial relationships.

As discussed above, there are numerous reasons why the use of reputation risk is counterproductive and prone to abuse.[30] These factors militate against the use of reputation risk in evaluating commercial relationships as much as they do when evaluating questions of belief, view, or religious practice. Regulators cannot predict the effect a commercial client's activity may have on a bank's financial stability any better than they can with a political or religious client. And as history has unfortunately shown, regulators have been known to abuse their power to suppress legal commerce with which they disagree.[31] As such, they should not be expected, or permitted, to use it when evaluating a bank's relationship with a lawful commercial partner.

If anything, codifying a strong prohibition against the use of reputation risk in a commercial context is *more* important because the constitutional protections against regulatory abuse that exist in the context of speech or religious activity would be less likely to apply. As such, providing explicit and binding limitations on the staff

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[29] 90 Fed. Reg. at 48,833; 90 Fed. Reg. at 48,835.
[30] *Supra* section I.
[31] FDIC OIG Report No. OIG-16-001, *supra* note 6; FDIC OIG Report No. AUD-15-008, *supra* note 11.

of the agencies is necessary to conserve Agency resources, focus staff attention, and prevent misuse of agency power.

B. Expanding the Prohibition on Reputation Risk to Include Activities Motivated by Political, Cultural, and Religious Beliefs in All Cases

While the proposed rule protects against the use of reputation risk based on religious, political, or cultural activities that a supervisor disagrees with or disfavors,[32] it does not prohibit the use of reputation risk aimed at political or religious activities in all cases. Proposed sections 12 CFR § 4.91(c) and 12 CFR § 302.100(c) do not prohibit the agencies from ordering a regulated institution to terminate or initiate relationships with a person or entity on the basis of perceived reputation risk arising from the person or entity's political, cultural, or religious activities.[33]

The proposed rule should be modified to extend the prohibition on using reputation risk to encompass lawful political and religious activities in all cases. While preventing a supervisor from using reputation risk to give their animus legal force is important, it is not sufficient. As discussed above, the logic of reputation risk could result in even a neutral regulator being compelled to provide regulatory support to an economic heckler's veto.[34] The agencies should not allow themselves to be placed in that position, nor should the targets of the heckler's veto have to worry that the attacks against them will benefit from the weight of the regulatory system.

C. Expanding the Prohibition on Adverse Action Based on Agency Official Animus to All Agency Officials

Proposed sections 12 CFR § 4.91(f) and 12 CFR § 302.100(f) prohibit the agencies from taking action against an institution with the intent to punish or discourage individuals or groups from engaging in lawful political, cultural, or religious activities, speech, or for political reasons, or related to lawful business activities that the supervisor responsible for the entity disagrees with or disfavors.[35]

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[32] Proposed section 12 CFR §4.91(f), 90 Fed. Reg. 48,834; Proposed section 12 CFR § 302.100(f), 90 Fed. Reg. at 48,835.
[33] 90 Fed. Reg. at 48,834; *id.* at 48,835.
[34] *Supra* section I.B.1.
[35] 90 Fed. Reg. at 48,834; *id.* at 48,835.

This is a valuable improvement over the status quo, but it is incomplete. The proposal should be amended to prohibit actions motivated by the disagreement or disapproval of any agency official or employee. Such a change would address situations where senior officials within an agency pressure supervisory staff to punish or discourage supervised institutions because of the senior official's animus. Given that there are known examples of this occurring in the past, such as the FDIC targeting RALs, it is essential to explicitly rule out that possibility going forward.[36]

D. Truly Restricting the Use of Reputation Risk

In the proposal, the agencies ask whether the definition of reputation risk should exclude issues related to the operational condition of an institution, in addition to the institution's financial condition.[37] This would result in more agency activity motivated by reputational risks being permitted. The agencies should not make that change because doing so would increase the risk that the agencies engage in ineffectual and potentially abusive conduct under the aegis of reputation risk.

Instead, the agencies should remove the financial condition prong from the definition of reputation risk, such that reputation is not a justification under any circumstances.

For the reasons discussed by the agencies in the proposal[38] as well as the additional reasons above,[39] reputation risk is an ineffective tool to accomplish legitimate regulatory ends. At best, it is duplicative. At worst, it invites abuse. Reputation risk is unnecessary for the agencies to protect the safety and soundness of financial institutions or police their compliance with the law because the agencies have adequate authority under other criteria, such as operational risk, financial risk, and legal risk, to engage with institutions as needed.

Removing the "financial condition" prong of the definition of reputation risk would make clear that reputational risk is not an independent basis for the agencies to take an adverse action under any circumstances. This clarity would help prevent abuse and focus the agencies on more effective methods of pursuing their statutory objectives.

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[36] *See* FDIC OIG Report No. OIG-16-001, *supra* note 6.
[37] 90 Fed. Reg. at 48,829.
[38] *Id.* at 48,826–27.
[39] *Supra* section I.

At a minimum, the definition of reputation risk should not be changed to exclude issues relating to a bank's operational conditions from its coverage.

III. Proposed Language Changes

The agencies' proposed rule is a major improvement over the status quo. As discussed above, some refinement would improve the final rule significantly. The text below provides recommended changes to the final rule language to maximize the benefit of the proposal.

Proposed 12 CFR §4.91 - 90 FR 48833

(c) The OCC will not require, instruct, or encourage an institution, or any employee of an institution, to terminate a contract with, discontinue doing business with, sign a contract with, initiate doing business with, modify the terms under which it will do business with a person or entity, or take any action or refrain from taking any action on the basis of **perceived reputation risk that might arise due to** the person's or entity's political, social, cultural, or religious views or beliefs, **or lawful actions motivated by such 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~~.

90 FR 48834

(f) The OCC will not take 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~~ **an OCC official** disagrees with or disfavors.

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Reputation risk means 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 condition of the institution~~.

Proposed 12 CFR §302.100 - 90 FR 48835

(c) The FDIC will not require, instruct, or encourage an institution, or any employee of an institution, to terminate a contract with, discontinue doing business with, sign a contract with, initiate doing business with, modify the terms under which it will do business with a person or entity, or take any action or refrain from taking any action on the basis of **perceived reputation risk that might arise due to** the person's or entity's political, social, cultural, or religious views or beliefs, **or lawful actions motivated by such 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~~.

(f) The FDIC will not take 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~~ **an FDIC official** disagrees with or disfavors.

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Reputation risk means 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 condition of the institution~~.

IV. Conclusion

The agencies are to be commended for recognizing that reputation risk is a poor tool of bank supervision that does not make banks safer, distracts both regulators and banks, invites abuse, and threatens the reputation and effectiveness of the regulators themselves. The proposal, as written, is a significant improvement over the status quo. The refinements described in this letter, if adopted, will make it even more effective as a means to protect banks, bank regulators, and the public that relies on both.

Thank you for your consideration.

Respectfully Submitted,

/s/ Brian Knight
Brian Knight
Senior Counsel, Corporate Engagement
Alliance Defending Freedom