American Bankers Association®

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Vice President, Policy
[redacted]

December 29, 2025

Via Electronic Submission

Chief Counsel Office
Attention: Comment Processing Office (Docket ID OCC-2025-0174)
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E-218
Washington, DC 20219

Jennifer M. Jones, Deputy Executive Secretary
Attention: Comments—RIN 3064–AG16
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

RE: The Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC) Notice of Proposed Rulemaking regarding Unsafe or Unsound Practices, Matters Requiring Attention (OCC Docket ID OCC-2025-0174 and FDIC RIN 3064–AG16)

To Whom it May Concern:

The American Bankers Association (ABA)[1] appreciates the opportunity to respond to a proposed rulemaking (Proposal)[2] by the OCC and FDIC (collectively, the Agencies) to define the term "unsafe or unsound practices" 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 attention (MRAs) and other supervisory communications. This is an important Proposal to provide regulatory clarity regarding certain enforcement and supervision standards and focus the attention of supervised institutions and examiners on material financial risks.

ABA supports the Proposal and outlines recommendations in this letter that should be incorporated into the final rule. Regarding unsafe or unsound practices, our recommendations for the final rule include the following: (1) clarifying that isolated or technical incidents do not qualify as "practices"; (2) requiring Agency examiners to provide demonstrable and quantifiable evidence to support the conclusion that material financial harm is "likely"; and (3) tying the materiality standard explicitly to case law. We also recommend revising or removing the Agencies' comments on tailoring as it relates to community banks. ABA also supports the proposed standard for issuing MRAs and recommends the following revisions: (1) requiring that violations of law must be "substantive" rather than technical, isolated, or immaterial; and (2) incorporating our comments regarding "material harm" throughout the Proposal.

Additionally, the final rule should codify the strict parameters applicable to the Agencies informal supervisory communications. We are also seeking clarification whether composite rating downgrades within other rating systems would only occur in cases where the institution receives an MRA that meets

[1] The American Bankers Association is the voice of the nation's $25.1 trillion banking industry, which is composed of small, regional, and large banks that together employ approximately 2 million people, safeguard $19.7 trillion in deposits and extend $13.2 trillion in loans.
[2] See https://www.fdic.gov/board/npr-prohibition-use-reputation-risk-regulators.pdf (October 7, 2025) published at *Federal Register*, Vol. 90 No. 208, 48835 (October 30, 2025).

the standard outlined in the Proposal or an enforcement action pursuant to the Agencies' enforcement authority. Finally, ABA encourages the Agencies to consider other recommendations related to the Proposal, including self-identified acts or practices, MRA closure, coverage of legacy MRAs, and examiner training.

A. Unsafe or Unsound Practices

Definition of Unsafe or Unsound Practice

In the proposed rule, the Agencies would define the term unsafe or unsound practice to mean:

> A practice, act, or failure to act, alone or together with one or more other practices, acts, or failures to act, that:
>
> 1. Is contrary to generally accepted standards of prudent operation; and
> 2. (i) If continued, is likely to:
>
> (A) Materially harm the financial condition of the institution; or
>
> (B) Present a material risk of loss to the Deposit Insurance Fund (DIF); or
>
> (ii) Materially harmed the financial condition of the institution.[3]

ABA supports defining an unsafe or unsound practice and focusing examiners on material financial risks as it will provide clarity and certainty regarding enforcement standards. ABA offers the following recommendations and comments related to the terms in the proposed definition of an unsafe or unsound practice.

- Imprudent practice: ABA supports utilizing the Horne Standard[4] that a practice, act, or failure to act could be considered an unsafe or unsound practice only if it deviates from generally accepted standards or prudent operation (and otherwise meets the proposed definition). ABA suggests that the Agencies clarify that isolated or technical incidents do not qualify as "practices."

  Likely: ABA believes "likely" is the appropriate standard to specify the probability of risk required for a practice, act, or failure to act, to be considered unsafe or unsound practice. We recommend that the final rule require examiners to provide demonstrable and quantifiable evidence to support the conclusion that material financial harm is "likely." It is important that likelihood be based on objective facts and sound reasoning that is consistently applied within and across the Agencies. Additionally, ABA believes the deficiency should be sufficiently clear so that a reasonable person can understand what needs to be remediated.

  In explaining the use of "likely" in the proposed definition, the Proposal states, "However, the conduct must be sufficiently proximate to a material harm to an institution's financial condition to meet the proposed definition."[5] We recommend that the Agencies explain that "sufficiently proximate" requires that the material harm from the conduct must be "imminent" or "near-imminent," as opposed to speculative in nature, to meet this standard.

- Financial condition/Harm/Material harm: ABA agrees with the Agencies that material harm to an institution's financial condition should refer to an institution's capital, asset quality, earnings,

[3] Proposal at 48838.
[4] Proposal at 48837-8.
[5] Proposal at 48838.

liquidity, or sensitivity to market risk,[6] and concurs with the Agencies general interpretation of harm as referring to financial losses.[7] ABA also agrees that the "harm to an institution's financial condition or risk of loss must also be material" and risks of "minor harm to an institutions financial condition, even if imminent would not rise to the level of an unsafe or unsound practice."[8] The materiality standard in the final rule should be tied explicitly to case law[9] defining harm as material if it threatens the financial integrity or stability to the institution sufficient to call into question the ability of the bank to continue to conduct its business.

- Risk of Loss to the DIF: ABA agrees with the Agencies that the proposed definition of unsafe or unsound practice includes a "material risk of loss" to the DIF, which is consistent with the FDIC's current definition.[10]
- Nonfinancial risks impacting financial condition: ABA agrees that, in limited circumstances, a non-financial risk could materially impact an institution's financial condition and appreciates the examples provided in the Proposal.

Tailoring Required

ABA supports the Agencies tailoring their supervisory and enforcement actions based on a risk-based approach that takes the risk profile of each institution into account rather than setting expected thresholds for materiality based on the size of an institution. ABA questions the Agencies' expectation and example provide in the Proposal as it relates to community banks. The Proposal explains that the Agencies "expect that finding an unsafe or unsound practice would be a much higher bar for a community bank than for a larger institution when considered against the overall operations of the institution."[11] The Proposal explains that, as it relates to material harm, the Agencies "would not expect that a particular projected percentage decrease in capital or liquidity that rises to the level of materiality for the largest institutions would necessarily also be material for community banks."[12] This seems counterintuitive. We respectfully request the Agencies remove or revise the example provided above as a risk-based approach would already result in materiality being calibrated based on an institution's risk profile.

B. Matters Requiring Attention

Standard for Issuing a Matter Requiring Attention

In the proposed rule, the Agencies may only issue a matter requiring attention for:

A practice, act, or failure to act, alone or together with one or more other practices, acts, or failure to act, that:

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[6] *Id.*
[7] Proposal at 48839.
[8] *Id.*
[9] See, *Johnson v. Office of Thrift Supervision* (81 F.3d 195, D.C. Circuit 1996). Holding that the practice must pose an abnormal risk to the financial stability or integrity of the institution. Also, see, *Michael v. FDIC* (No. 10-3109, 7th Circuit, 2012). Holding that for a practice to be considered unsafe and unsound, an institution must have either suffered "or will probably" suffer a financial loss.
[10] See FDIC's RMS Manual of Examination Policies, Section 15.1 Formal Administrative Actions, pg. 15.1-4 and 15.1-5 dated March 2024.
[11] Proposal at 48839.
[12] *Id.*

1. (i) Is contrary to generally accepted standards of prudent operation; and
   (ii) (A) if continued, could reasonably be expected to, under current or reasonably foreseeable conditions:
      (1) Materially harm the financial condition of the institution; or
      (2) Present a material risk of loss to the DIF; or
   (B) Has already caused material harm to the financial condition of the institution; or
2. Is an actual violation of a banking or banking-related law or regulation.[13]

ABA supports setting standards for issuing MRAs and offers the following recommendations for the final rule.

- Material harm/Material risk of loss: Since the Proposal states "material harm," "materially harmed," and "material risk of loss" have the same meaning for MRAs as they have for the proposed definition of unsafe or unsound practice,[14] ABA incorporates by reference its comments above regarding necessary clarifications to the definitions of these terms.

- Reasonably foreseeable conditions: ABA supports the Agencies proposal to limit MRAs to when a practice "could reasonably be expected" to cause material financial harm. ABA recommends that the final rule require examiners to provide demonstrable and quantifiable evidence to support the conclusion that material financial harm "could reasonably be expected." It is important that this conclusion be based on objective facts and sound reasoning that is consistently applied within and across the Agencies.

- Violation of a banking or banking-related law or regulation: Under the proposed standard for issuing an MRA, violations of banking or banking-related laws and regulations "must be actual violations of a discrete set of federal and state law or regulation—those related to banking" and would generally include "banking and consumer financial protection laws".[15] ABA recommends that only *federal* banking and banking-related laws for which the Agencies' have primary enforcement and oversight responsibility can form the basis for a MRA.

  ABA recommends that the Agencies add a requirement that violations of law must be "substantive" to differentiate from technical, isolated, immaterial, or less substantive violations.[16] We further recommend that the Agencies define "substantive" in the same manner defined previously by the FDIC: "systemic, recurring, or repetitive errors that represent a failure of the bank to meet a key purpose of the underlying regulation or statute or have resulted in significant harm to consumers or members of a community."[17] This would help ensure that MRAs are not issued based on atypical or anomalous technical violations that do not represent an institution's broader "pattern or practice."

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[13] Proposal at 48840-1.
[14] Proposal at 48841
[15] *Id*.
[16] See OCC's Comptroller Handbook Bank Supervision Process, Version 1.0, June 2018, Supervisory Actions chapter, Violations of Laws and Regulations section, pg.48 – Substantive OCC-identified violations must be cited in an ROE or supervisory letter, whereas less substantive violations may be cited in a separate document (e.g., a list provided to management during the exit meeting. See also the FDIC's Consumer Compliance Examination Manual, II. Consumer Compliance Examinations, II-6.1 Communicating Findings, March 2024, *Violations*, pg. II-6.4 – Level 3 and Level 2 violations are described in the ROE and are listed in order of severity with management's response to each violation.
[17] FDIC's Consumer Compliance Examination Manual, II. Consumer Compliance Examinations, II-6.1 Communicating Findings, March 2024, *Violations*, pg. II-6.4.

- Examiner judgment: The Proposal states, "To determine whether a practice, act, or failure to act, if continued, could reasonably be expected to, under current or reasonably foreseeable conditions, materially harm the financial condition of an institution, the proposed rule relies on examiners' judgment based on *objective facts and sound reasoning*" (emphasis added).[18] It further states the proposed rule "would not permit examiners to issue MRAs that purport to meet the proposed MRA standard as a pretext to force an institution to *comply with the examiner's managerial judgment* instead of the judgment of the institution's own management, in the absence of a reasonable expectation of material harm to the financial condition of the institution" (emphasis added).[19]

  ABA supports this concept and recommends that the final rule requires examiners to provide demonstrable and quantifiable evidence to support conclusions. In addition, ongoing, open communication between examiners and an institution's management team is imperative, especially with hybrid examinations (e.g., partial time on and off site). We encourage the Agencies to re-emphasize their respective communication standards with their examiners through training, as well as revising Agency manuals and guidance, as appropriate.[20]

Informal Supervisory Communications

The Proposal highlights several parameters for Agency examiners providing informal, non-binding suggestions (supervisory communications). For example, the Agencies note that: (1) Agencies would not be permitted to require action plans; (2) institutions are not required to track such informal observations; (3) an institution's management is not required to inform its board of directors; and (4) Agencies cannot criticize an institution's decision not to act in response to such an observation, nor escalate it into an MRA solely based on an institution's decision not to act.[21] ABA recommends that the Agencies codify these clear parameters into the final rule. This would promote clarity and certainty regarding the Agencies' supervision standards and eliminate the ambiguity about what it means to not treat these supervisory communications "in a manner similar to" an MRA as described in the proposed rule.[22]

C. Composite Rating Downgrades

The Proposal indicates that the Agencies expect that any composite rating downgrade under the CAMELS rating system to "less-than-satisfactory" (e.g., "3" rating) would only occur when an institution receives an MRA or an enforcement action based on an unsafe or unsound practice as defined in the proposed rule.[23] ABA seeks clarification if composite rating downgrades within other rating systems[24] would also

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[18] Proposal at 48841.
[19] *Id.*
[20] See OCC's Comptroller Handbook Bank Supervision Process, Version 1.0, June 2018, Risk-Based Supervision Approach chapter, Supervisory Process, Communication section, pg. 40 and the FDIC's FIL-51-206 Reminder on FDIC Examination Findings, dated July 29, 2016.
[21] Proposal at 48841-2.
[22] Proposal at 48849 – OCC § 4.92(c) and FDIC § 305.1(c) *Clarification regarding supervisory observations.* Nothing in paragraph (b) of this section prevents the [OCC/FDIC] from communicating a suggestion or observation 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 [OCC/FDIC] in a manner similar to, a matter requiring attention* (emphasis added).
[23] Proposal at 48842.
[24] Such rating systems include the Uniform Interagency Consumer Compliance Rating System, the Uniform Rating System for Information Technology, and the Uniform Interagency Trust Rating System.

only occur in circumstances in which the institution receives an MRA that meets the standard outlined in the proposed rule or an enforcement action pursuant to the Agencies' enforcement authority.

D. Other Considerations

ABA offers the following recommendations related to the Proposal.

- Exclude self-identified issues with reasonable remediation plans from serving as the basis for an MRA: We recommend that the Agencies codify in the final rule that acts or practices may not form the basis for an MRA if the institution has self-identified the issue and initiated or completed a reasonable action plan or other remediation efforts (as determined by its management team or audit function). This is essential to make sure that institutions are not penalized for proactively identifying and addressing issues internally.
- Establish clear standards for timely MRA closure and conduct a one-time review to close legacy MRAs: The Proposal focuses heavily on MRA issuance but does not discuss MRA closure. For deficiencies that have been fully remediated, ABA believes the Agencies should rely on an institution's internal audit function's validation unless the Agencies have assessed that an institution's internal audit program is unsatisfactory. We encourage the Agencies not to delay the closure of an MRA, including reviewing legacy MRAs that do not meet the new standard. ABA requests that the Agencies commit to a one-time retrospective review of open MRAs. Any open MRA that does not meet the new standard (e.g., based on policy, process, or documentation deficiencies; does not demonstrate a likelihood of material financial harm) should be closed or downgraded to a supervisory communication within ninety (90) days of the final rule.
- Provide comprehensive examiner training to ensure consistent application of new standards: Following adoption of the final rule, the Agencies should provide examiner training on the rule and how the new standards should be applied. Absent these steps, examiners may continue to apply the new standards in an inconsistent way.

E. Conclusion

ABA supports codifying the definition of an unsafe or unsound practice and a standard for issuing matters requiring attention. We appreciate the Agencies' effort to provide clarity and certainty regarding enforcement standards by focusing on material financial risks. We encourage the Agencies to consider the recommendations and enhancements outlined in this letter, and we look forward to continuing the discussion of these matters.

Should you have any questions concerning the foregoing please do not hesitate to contact the undersigned at [redacted]. Thank you again for considering these comments.

Sincerely,

[redacted]

Steven J. Hubbard
Vice President, Policy