Americans for Financial Reform Education Fund

Chief Counsel's Office
Attention: Comment Processing
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E-218
Washington, DC 20219

Deputy Executive Secretary Jennifer M. Jones
Attention: Comments–RIN 3064–AG12
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

December 22, 2025

Re: Prohibition on Use of Reputation Risk by Regulators: Department of the Treasury Docket ID OCC-2025-0142; Department of the Treasury RIN 1557-AF34; Federal Deposit Insurance Corporation RIN 3064-AG12

To whom it may concern:

Americans for Financial Reform Education Fund (AFREF) has significant concerns with the Office of the Comptroller of the Currency (OCC) and Federal Deposit Insurance Corporation (FDIC) joint proposed rule Prohibition on Use of Reputation Risk by Regulators.[1] AFREF is a nonpartisan and nonprofit coalition founded by more than 200 civil rights, consumer, labor, investor, faith-based, and civic and community groups and is dedicated to advocating for policies that shape a financial sector that serves workers, communities and the real economy, and provides a foundation for advancing economic and racial justice that includes critical banking supervision regulations that can expose people and the financial system to excessive risks.

Banking regulators have long considered—and should continue to consider—the reputational risks posed by a depository institution's business activities that can erode public confidence that ultimately poses risks to the safety and soundness of an insured depository institution. They have included widespread abuses of their own customers contrary to consumer protection laws, persistent failures to protect consumers from predatory practices of third parties like payday lenders, failure to maintain adequate enforcement of anti-money laundering and sanctions laws, and dangerous entanglements with risky business partners. It can be difficult or impossible to disaggregate these reputational risks from material business risks and institutional safety and soundness. The proposed rule would eliminate needed supervisory flexibility to monitor and enforce emerging reputational risks that can precipitate safety and soundness concerns. Regulators must have the

[1] Department of the Treasury. Office of the Comptroller (OCC) of the Currency and Federal Deposit Insurance Corporation (FDIC). Proposed Rule. Prohibition on Use of Reputation Risk by Regulators. 90 Fed. Reg. 208. October 30, 2025 at 48825 et seq.

ability to intercede on reputational risks in a timely manner to prevent these issues from undermining safety and soundness and posing systemic financial risks.

The proposed rule claims that the use of reputation risk in supervision wastes resources, provides no "material value from a safety and soundness perspective," and "can be a pretext for restricting law-abiding individuals' and businesses' access to financial services."[2] The proposal fails to justify any of these assertions with specific evidence or data; it contains definitions and requirements that are vague, arbitrary, and lacking in practical and legal justification, making it confusing for examiners to implement and difficult for regulators to enforce; and it lacks sufficient guidance to the banking industry regarding the appropriate role reputational considerations should play going forward. The agencies also fail to consider any costs associated with the proposal.

Supervisory agencies have formally considered reputational risk for decades and concluded that it played a significant role in prominent examples of bank instability.

Since the 1990s, in the wake of the savings and loan crisis, bank regulators across administrations have formally recognized how a bank's reputation can impact its safety and soundness.[3] Banking is a business that relies on community, shareholder, and depositor trust. The erosion of customer trust due to reputational damage is one of the most common causes of bank runs and insolvency. High profile examples of bank instability in which reputational damage played a key role include: Riggs Bank's near-failure and acquisition in 2000;[4] the Global Financial Crisis in 2008;[5] the Wells Fargo fake accounts scandal in 2016;[6] Credit Suisse's failure in 2023;[7] and the collapse of Silicon Valley Bank, Silvergate Bank, and Signature Bank in 2023, which exhibited clear signs of reputational risk from crypto industry turmoil, according to reports by the FDIC[8] and the New York Department of Financial Services.[9]

Despite bank regulators' long acknowledgement and documentation of the role that reputation risk plays in causing bank instability, the agencies justify the proposal by asserting the "ineffectiveness of using reputation

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[2] *Ibid.* at 48826.

[3] *See* e.g., Board of Governors of the Federal Reserve System. "Supervisory Policy and Guidance Topics." Accessed December 2025; Federal Financial Institutions Examination Council. "Joint Statement on Managing the LIBOR Transition." 2020; Department of the Treasury. OCC. "Comptroller's Handbook; Safety and Soundness: Corporate and Risk Governance." Version 2.0. July 2019. Updated March 20, 2025. Note that 'reputation' and 'reputational' risk were present in numerous places throughout these documents, but these words have been systematically removed, redacted, or stricken during the course of 2025. Their inclusion in such a range of supervisory documents released over decades reflects the prominence of reputation risk and considerations in bank supervision across administrations.

[4] OCC. [Press release]. "Comptroller Hawke Directs Review of Agency's Handling of Bank Secrecy Act Compliance at Riggs Bank N.A." News Release 2004-43. June 3, 2004.

[5] Walter, Ingo. "Chapter 10: Reputational Risk and the Financial Crisis." In: Pinedo, M. and Walter, I. (eds). *Global Asset Management: Strategies, Risks, Processes, and Technologies*. Palgrave Macmillan: New York. 2013.

[6] Tayan, Brian. "The Wells Fargo Cross-Selling Scandal." Harvard Law School Forum on Corporate Governance. February 6, 2019.

[7] Swiss Financial Market Supervisory Authority. [Press release]. "FINMA publishes report and lessons learned from the Credit Suisse crisis." December 19, 2023.

[8] FDIC. "FDIC's Supervision of Signature Bank." April 28, 2023.

[9] New York State Department of Financial Services. "Internal Review Of The Supervision And Closure Of Signature Bank." April 28, 2023.

risk to improve the safety and soundness of supervised institutions."[10] The proposal makes several other sweeping claims, including that: "supervision for reputation risk has been inconsistent and has at times reflected individual perspectives rather than data-driven conclusions;"[11] "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 by lawful business activities;"[12] and that "examiners use reputation risk to choose winners and losers among market participants and industries."[13] Yet, they do not cite any evidence of the purported ineffectiveness, or how the use of reputation considerations otherwise undermine effective bank supervision. Will the agencies provide any evidence or resources to support the undocumented claims in the proposal?

Supervisors often use reputation risk as a component of broader risk assessments and actions, and disentanglement may not always be possible.

The proposal acknowledges that reputation risk has been a significant risk factor identified in the course of bank supervision, included in about 10 percent of all Matters Requiring Attention (MRAs) issued by the OCC from 2017-2024.[14] The proposal also acknowledges that "many of these MRAs were not solely due to reputation risk,"[15] but nonetheless, the regulatory text would prohibit supervisors from taking various supervisory actions "on the basis of reputation risk."[16]

The proposal is not clear about the meaning of taking an action on the "basis" of reputation considerations—more specifically, whether supervisors would be expected or prohibited from issuing MRAs where reputation risk is one among multiple types of identified risks. For example, if a supervisor determined that a bank activity represents both credit risk and reputation risk rising to the level of an MRA, should they issue an MRA describing only the credit risk or instead issue no MRA? What should a supervisor do if they determine the risks are not easily separable or that a credit risk is exacerbated by reputation risk?

The agencies' economic analysis says "*one could expect* that removing reputation risk would result in significant cost savings for institutions that had to respond to reputation risk-related MRAs" [emphasis added].[17] The statement reflects the ambiguity of the proposed prohibitions, which do not clarify if reputation risk can be a component of a supervisory action and what supervisors should do if they determine that reputation risk is a component of their risk assessment.

The proposal's definitions and prohibitions raise more questions than they answer and would be confusing for examiners to implement and impossible for regulators to enforce.

The agencies claim they "have not seen evidence that reputation risk can be a primary driver of an institution being in unsafe or unsound condition," but in the next sentence, that reputation risk can be identified as "a

[10] 90 Fed. Reg. 208 at 48827.
[11] *Ibid.* at 48826.
[12] *Ibid.* at 48827.
[13] *Ibid.*
[14] *Ibid.* at 48830.
[15] *Ibid.*
[16] *Ibid.* at 48833; Subpart G§4.91(a) and (b).
[17] *Ibid.* at 48830.

root cause of harm that has impacted a supervised institution's financial condition" when paired with other risks.[18] Do the agencies not believe that prohibiting examiners from considering a potential "root cause of harm" could impair their analysis? What guidance do the agencies plan to provide to allow regulated institutions to account for reputation considerations as part of their business strategies?

The agencies then claim the proposal's definition of reputation risk is "not intended to capture risks posed by public perceptions of the institution's current or future financial condition because such perceptions relate to risks other than reputation risk."[19] Supervisors consider reputational risk because it is either directly financially material or alerts them to other risks that impact the institution's current or future financial condition. Do the agencies have any evidence that there has ever been a supervisory action taken—or there is a documented pattern of supervisory actions—based in whole or in part on reputation risk that was not intended to address the institution's current or future financial condition or compliance with legal obligations, such as consumer protection, anti-money laundering, or sanctions laws?

Additionally, the agencies state that 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."[20] This leaves the door open for banks to incorporate reputation risk into their risk management and business practices, but restricts examiners from considering the same factors. How will examiners be able to form a holistic view of a bank's risks and risk management practices if they are not able to consider all risks from the bank's perspective? Are examiners meant to police banks' own use of reputation risk in their risk management and business practices? How could they do so without considering reputation risk or broaching the topic?

The proposal states that supervisors would be prohibited from "Disapproving a proposed member of a board of directors on the basis of an unsubstantiated pretense where the true reason is reputation risk." How would the agencies determine the true reason for the disapproval is reputation risk? Is it not a violation for an examiner to ever bring any action under a false pretense? Who would judge the unsubstantiated or substantiated nature of the claim in the above example? What test or metric would regulators use to determine an alleged pretense was unsubstantiated? Will examiners need to prove that they did not consider reputation risk in their assessment?

The proposal recognizes that the consideration of reputation risk plays a key role in preventing illicit finance and money laundering, and thus carves out these topics from the rule's prohibition, noting that "there is a risk that BSA/AML focused supervisory actions could indirectly address reputation risk."[21] Why did the agencies select these particular topics to carve out from the prohibition, and not others?

The agencies note that the proposal would "prohibit supervisors from using BSA and anti-money laundering concerns as a pretext for reputation risk."[22] Do the agencies have evidence that supervisors use BSA and anti-money laundering concerns as a pretext for reputation risk? How would the agencies establish if a supervisor used BSA and anti-money laundering concerns as a pretext for reputation risk?

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[18] *Ibid.* at 48827.
[19] *Ibid.* at 48828.
[20] *Ibid.* at 48827.
[21] *Ibid.* at 48828.
[22] *Ibid.*

The economic analysis fails to substantiate the purported benefits of the proposal and does not consider a range of potential costs

The "agencies recognize the importance of a bank's reputation," but insist that "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."[23] Indeed, reputational risk is often convolved with other risks and examiners are alerted by reputational risk considerations to other areas that could lead to financial instability. Have the agencies considered how the removal of reputational risk could lead to increased incidence of illegal and risky activities that might be flagged by reputation risk monitoring and create costs for banks and for society?

The agencies claim that "examining for reputational risk diverts resources that could be better spent on other risks...that are more easily quantified and addressed through regulatory intervention."[24] Do the agencies have any evidence to suggest that removing reputational risk will increase—and not decrease—the efficiency of supervision, noting that a significant proportion of MRAs are partially based on reputation risk? How have the agencies determined that reputation risk is less "easily quantified and addressed through regulatory intervention"[25]?

Have the agencies considered any potential costs imposed by the removal of reputation risk in supervision, such as higher incidence of bank failures and fraud, worsening service for customers, and capital flight to banks and other lenders in jurisdictions with adequate supervision of reputation risk? Have the agencies considered what costs might have been incurred from 2017-2024 if all of the MRAs issued by the OCC that mentioned reputation risk were not issued?

The agencies did not seem to consider any alternatives to the proposal

The agencies note that "supervising for reputation risk as a standalone risk adds substantial subjectivity to bank supervision and can be abused." Did the agencies consider any ways to prevent potential abuse—or to decrease the subjectivity—of supervising for reputation risk as a standalone risk rather than eliminating the concept?

The agencies might arrive at a more workable regulation by identifying—if possible— any documented abusive uses of reputation risk in supervision, and designing narrow policies targeting those instances.

The agencies should withdraw and reconsider their proposal to clarify what specific problem they are trying to solve, consider the full range of costs associated with constraining the use of reputation risk in supervision, and develop a rule that can achieve the purported goals while recognizing the importance of reputation risk in bank safety and soundness and risk management, and providing clear and unambiguous instructions for supervisors.

Sincerely,
Americans for Financial Reform Education Fund

[23] *Ibid.* at 48826.
[24] *Ibid.*
[25] *Ibid.*