Americans for Financial Reform Education Fund

Chief Counsel's Office
Attention: Comment Processing
Office of the Comptroller of the Currency
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Jennifer M. Jones
Deputy Executive Secretary
Attention: Comments—RIN 3064-AG16
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

December 23, 2025

Re: Unsafe or Unsound Practices, Matters Requiring Attention (Docket Nos.: OCC–2025–0174; FDIC RIN 3064-AG16)

To whom it may concern:

Americans for Financial Reform Education Fund (AFREF) is deeply concerned that the proposed Office of the Comptroller (OCC) and Federal Deposit Insurance Corporation (FDIC) rule will hamstring bank supervision by narrowing unsafe or unsound practices and matters requiring attention (MRAs) only to cases of clear legal violations or near-term quantifiable losses, instead of allowing supervisors to address emerging risks before they snowball into failures and bailouts.[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.

This joint notice of proposed rulemaking would distort and weaken federal bank supervision by converting supervision from a forward-looking, prophylactic function into a reactive and loss-confirming process. More dangerously, this deregulation comes when emerging banking risks are increasing and becoming more difficult to detect using simple "material loss" thresholds.

The agencies' stated rationale—that examiners and institutions should "prioritize material financial risks" and pay less attention to "policies, process, documentation, and other nonfinancial risks"[2]—misunderstands the core design of bank supervision. For example, according to the Federal Reserve

[1] Department of the Treasury. Office of the Comptroller of the Currency (OCC) and Federal Deposit Insurance Corporation (FDIC). Notice of Proposed Rulemaking. Unsafe or Unsound Practices, Matters Requiring Attention. 90 Fed. Reg. 208. October 30, 2025 at 48835 et. seq.
[2] *Ibid.* at 48836.

Board, safety-and-soundness supervision exists because "no set of rules can anticipate every possible risk and failure to manage that risk," and because examiners must assess not only losses already realized, but also whether the institution can recognize, manage, and control emerging risks before they metastasize into solvency and liquidity events.[3]

AFREF urges the agencies to withdraw this proposal and preserve examiners' ability to identify, escalate, and remediate governance, operational, compliance, and risk-management weaknesses before they become material harms to the viability of the insured depository institution. This is especially critical at large and complex institutions where small supervisory blind spots can become systemic externalities. Advancing this proposal would reduce the bank resiliency and increase the likelihood and severity of financial crises that pose significant risks to the real economy, communities, and families.

I. The proposal conflicts with how bank supervision and "safety and soundness" have long been defined

Bank supervision is not limited to identifying accounting losses after the fact. The Federal Reserve explains that examiners "work to understand banks' operations, major risks, how well banks manage those risks and whether banks have sufficient financial and managerial resources," and require corrective action when banks do not manage risk well.[4] The same Federal Reserve explanation makes the central point this proposal attempts to override: that safety and soundness supervision fills the gap between regulations that establish the rules banks must follow and the evolving nature of emerging risks."[5]

Likewise, the Federal Reserve Bank of St. Louis emphasizes that safety and soundness supervision exists to prevent problems—by evaluating not only current performance, but whether risk controls, governance, and management practices are adequate to withstand adverse conditions.[6] The Chicago Fed describes safety and soundness examinations as a "risk-focused approach" that includes examination of a bank's "financial condition, operational controls, risk management practices, and compliance with banking regulations."[7]

But this proposal treats concerns related to "policies, process, documentation, and other nonfinancial risk" merely as distractions, rather than as some of the leading indicators that supervision is designed to test. In the real world, governance failures, internal-control weaknesses, poorly modeled risk management, weak liquidity contingency planning, operational outages, and compliance breakdowns can often be the mechanism by which stress events trigger financial losses, bank runs, and crises. Moreover, these procedural systems and adequate governance are critical for institutions to withstand economic stress while maintaining consumer protection and fair lending law compliance during periods of economic stress.[8] How will the OCC and the FDIC ensure that struggling depository institutions continue to comply with consumer protection and fair lending laws

[3] Board of Governors. Federal Reserve Board. "Understanding Federal Reserve Supervision." Accessed December 2025.
[4] *Ibid.*
[5] *Ibid.*
[6] Federal Reserve Bank of St. Louis. "Federal Reserve Safety and Soundness." Accessed December 2025.
[7] Federal Reserve Bank of Chicago. "Safety and Soundness." Accessed December 2025.
[8] OCC. "Semiannual Risk Perspective." Spring 2024 at 8.

during economic stress events if the regulators do not evaluate the quality and durability of procedural safeguards the institutions have put into place?

II. The proposed definition of "unsafe or unsound practice" is too narrow and undermines preventive supervision

The proposal would dangerously narrow the definition of "unsafe or unsound practice" solely to conduct that is contrary to prudent operation, has already "materially harmed" or is "likely" to materially harm the institution's financial condition, or present a material risk of loss to the Deposit Insurance Fund (DIF).[9] The proposed approach is not merely narrow; it is conceptually misguided. Bank supervision is not an exercise in quantifying odds, and it is not credible—much less prudent—to suggest that examiners should be required to translate emerging governance failures, control weaknesses, liquidity vulnerabilities, or model-risk problems into a numerical probability threshold before they can be treated as unsafe or unsound. In practice, insisting on a "minimum probability" invites delay, gamesmanship, and litigation risk around what is inherently a judgment-intensive, forward-looking supervisory function—precisely when the point of supervision is to intervene early, while remediation is still feasible and before vulnerabilities are compounded.

The agencies emphasize that "likely" is a higher bar than "possible" and are even inviting comments about considering the possibility of tying "likely" to a minimum percentage probability before unsafe or unsound practices or failures become worthy of supervisory attention.[10] This approach will make practices that possibly undermine safety and soundness less likely for supervisors to detect and allow these possible shortcomings to undermine the stability of individual banks and the financial system. The danger of using probabilities to establish thresholds for regulatory action is that it effectively acknowledges that regulators will fail to prevent some portion of bank failures. If the threshold for likely is 50 percent, over time the regulators will miss half of all bank safety and soundness shortcomings that lead to collapse. Did the agencies consider the costs to the depositors, customers, creditors, taxpayers, and the economy to bank failures caused by these unlikely and thus unforeseen safety and soundness problems? What is an acceptable number and percentage of bank failures the agencies are prepared to allow by narrowing their supervision solely to practices that are likely to undermine safety and soundness?

Unsafe or unsound practices have long been defined on the basis of whether "the action or lack of action" creates an "abnormal risk or loss or damage"[11]—not whether the risk has already crossed a "material loss" threshold nor whether it can be expressed as a percentage probability. And the practical consequence of the proposal's "likely" gatekeeper would be to encourage banks to carry growing vulnerabilities—unhedged interest-rate risk, unstable funding, weak controls, or poor governance—so long as those weaknesses have not yet produced large realized losses.

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[9] 90 Fed. Reg. 208 at 48838

[10] *Ibid.*

[11] "In determining what may be considered an unsafe or unsound practice under section 8 of the FDI Act, some courts have looked to a standard articulated by John Horne, then Chairman of the Federal Home Loan Bank Board (FHLBB) (Horne Standard), during congressional hearings related to the Financial Institutions Supervisory Act of 1966 (Act of 1966), which is the source of the agencies cease-and-desist authority in section 8(b) of the FDI Act. 13 Specifically, Chairman Horne Stated: Generally speaking, an "unsafe or unsound practice" embraces any action, or lack of action, which is contrary to generally accepted standards of prudent operation, the possible consequences of which, if continued, would be abnormal risk or loss or damage to an institution, its shareholders, or the agencies administering the insurance funds." 90 Fed. Reg. 208 at 48837

But banking crises rarely announce themselves on a slow, linear timeline. They build quietly, and then a stress catalyst—interest rate moves, a downgrade, a rumor, a counterparty default, a market liquidity freeze, a tweet[12]—can turn a manageable weakness into a run or an insolvency event almost overnight. By the time material harm is provable or "likely" or undeniable under the newly deteriorated conditions, the window for effective supervisory intervention has already collapsed to hours or days, leaving regulators with only emergency options and the public facing the fallout.

III. The MRA changes would institutionalize supervisory delay and weaken escalation

The proposed rule would prevent agencies from issuing Matters Requiring Attention (MRA) to banks except to communicate narrow supervisory issues. MRAs are the core communication between banking supervisors and institutions and their corporate leadership. The proposed rule would only all agencies to issue MRAs for actual violations of banking law or regulation or for practices that are contrary to prudent operation that either have *already* caused material harm or that "could reasonably be expected to" cause material harm to the institution or present a material risk of loss to the DIF.[13] The agencies also emphasize that "supervisory observations" may be communicated only if the communication is not—and is not treated "in a manner similar to"—an MRA.[14]

This is not a neutral clarification. MRAs are an essential tool to translate supervisory findings into board-level accountability, remediation, and follow-up. Constraining MRAs risks making supervision structurally late—particularly for interest rate risk, liquidity risk, and funding concentration risks, where institutions can appear stable until the last moment before collapse.

The proposal itself invites this problem through the "current or reasonably foreseeable conditions" framing, which can treat visible vulnerabilities as non-actionable until the shock actually hits. Under a strict "likely harm" approach, key vulnerabilities at Silicon Valley Bank could have remained outside the MRA pathway until very near failure—even though the weaknesses could have and should have been observable well before the run that precipitated its failure.[15] The lesson of 2023 is not that supervisors had too many tools; it is that modern bank runs and confidence shocks compress response time, making early supervisory escalation and remediation more important—not less.

Just as importantly, the proposal's attempt to demote governance and control issues—including audit practices, succession planning, or risk management process—into "non-binding" or "supervisory" observations that cannot be communicated like MRAs is a recipe for institutionalized inaction.[16] If an item cannot be tracked and cannot be treated like an MRA, it becomes easier for banks—especially large, complex banks—to defer remediation until a weakness manifests itself as a

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[12] Yerushalmy, Jonathan. "'The first Twitter-fuelled bank run': how social media compounded SVB's collapse." *The Guardian*. March 16, 2023.

[13] 90 Fed. Reg. 208 at 48841

[14] *Ibid.* at 48841 to 48842

[15] Steele, Graham. "Remarks By Assistant Secretary for Financial Institutions Graham Steele at the Americans for Financial Reform Education Fund." July 25, 2023; Steele, Graham. "Remarks by Assistant Secretary for Financial Institutions Graham Steele at the George Washington University Law School Business & Finance Law Program." January 18, 2024.

[16] 90 Fed. Reg. 208 at 48841

quantifiable loss. That is precisely backward for safety and soundness supervision, which is built to test whether management can recognize, measure, monitor, and control risk *before* the loss event.

IV. The proposal is mismatched to systemic risk and "too big to fail" realities

The proposed rule would weaken supervision, leading to a more unstable financial system. The agencies frame the proposal as improving focus and consistency. But for the financial system, the relevant question is not only whether a particular bank can absorb a given loss in isolation; it is also what happens when correlated exposures and confidence shocks propagate across institutions—especially in a system still dominated by large and complex firms.

Recent legal and economic scholarship emphasizes that a purely microprudential frame routinely misses system-wide vulnerabilities. University of Michigan professors Jeremy Kress and Jeffrey have described how microprudential tools can overlook interconnections and correlated risks, and point to the post-2008 period and the recent regional bank crisis as evidence that stability requires a more explicitly macroprudential orientation.[17]

This matters because when large institutions fail, the public repeatedly bears the downside—through emergency support, systemic risk exceptions, and broader economic fallout—while private actors capture upside in normal times. The proposal would contribute to that same dynamic by narrowing the pipeline through which supervisors can identify unsafe practices early, escalate them to boards, and ensure timely remediation.

V. The "tailoring" mandate invites softer supervision when stronger supervision is warranted

The proposal would require the OCC and FDIC to "tailor" supervisory and enforcement actions and MRAs based on size, complexity, activities, and other factors the agencies deem appropriate. While supervision is already risk-based and proportionate in practice, codifying an affirmative tailoring requirement in this context risks becoming a deregulatory lever—particularly for the largest institutions, where the social cost of under-regulation/supervision is highest.

Conclusion

This proposal is the type of "non-headline-grabbing changes and an opaque relaxation of supervisory rigor" that former Federal Reserve Governor Daniel Tarullo warned would undermine bank resilience and build financial fragility into the system.[18] The proposal would weaken bank supervision at a moment when overlapping risks demand more supervisory flexibility, not less. Supervision exists because rules and loss thresholds cannot keep pace with evolving risk.

For these reasons, the agencies should withdraw the proposal. At minimum, the final rule must be rewritten to preserve the forward-looking, preventive character of supervision and to enable the

[17] Kress, Jeremy and Jeffrey Zhang. "The macroprudential myth." *Georgetown Law Journal*. Vol. 112. 2024.

[18] Daniel K. Tarullo, Daniel K. Federal Reserve Board Governor. "Taking the Stress Out of Stress Testing." Remarks at Americans for Financial Reform Conference on Big Bank Regulation Under the Trump Administration. Washington, D.C. May 21, 2019.

federal banking agencies to effectively identify, escalate, and remediate unsafe practices before they become bank failures, DIF losses, or system-wide instability.

Sincerely,

Americans for Financial Reform Education Fund