PUBLIC SUBMISSION

Anonymous 3

Posted by the **Comptroller of the Currency** on Dec 29, 2025

Comment

I generally agree with the intent to narrow the use of MRAs/MRIAs, as they have been substantially misused in the past, though I firmly believe this proposal as constructed would result in unintended, extreme consequences in the consumer compliance space.

1. Unlike the safety and soundness space, in which examiners would still be able to issue MRAs if an identified practice "could reasonably be expected to, under current or reasonably foreseeable conditions, materially harm the financial condition of the institution", examiners would be constrained to only issuing MRAs/MRIAs in the consumer protection space if consumers have already been harmed (through an observed violation of law). As a result, examiners will be completely powerless to prevent consumer harm, regardless of how injurious and likely the harm may be. As an example, if a bank was quickly approaching the launch date of a new product or initiative and examiners identified numerous deficiencies in the bank's finalized design and controls for the new product/initiative (e.g. clearly deceptive marketing, adverse action notices that mislead on the reason for denial, inaccurate APR calculations, credit policies/procedures that contains provisions that clearly amount to overt discrimination or disparate treatment, credit reporting logic that will result in non-delinquent customers being reported as delinquent, Reg E procedures that don't require provisional credits to be issued in 10 business days for outstanding disputes, etc.), the only tool that examiners could use, under this proposal, would be to "offer informal recommendations". They would be prohibited from requiring the bank to make necessary updates prior to consumers being harmed, and would only be able to require such updates once examiners could point to specific instances of the materialized violations (which, assuming the product/initiative is set to launch after the exam closes, likely wouldn't occur until the earlier of a harmed consumer complaining to the OCC/FDIC or the next exam beginning, which could be years down the line).

2. In recent years, examiners have transitioned away from compliance transaction testing to relying on assessing the design of a bank's CMS and corresponding controls. The rationale behind this transition was that, while any actual violations of law that are occurring may not be identified through such programmatic-level reviews, such violations could still be prevented by such reviews if examiners require any identified

design-level weaknesses be addressed. As a result of this years-long shift towards such programmatic-level reviews, the operating effectiveness of a bank's controls and overarching CMS are rarely evaluated; instead, examiners primarily focus their attention on evaluating the design of such controls and the CMS. However, if 1) examiners are no longer able to require identified design weaknesses in a bank's CMS be updated (as this proposed rule would result in), and 2) they continue to not transaction test as a default practice, this will create a never-before-seen situation where both the design and operating effectiveness of a bank's CMS are never credibly evaluated- as, regardless of how many weaknesses are identified in a bank's controls and CMS during an exam, examiners would be forbidden from lowering the bank's composite compliance rating to a less-than-satisfactory level unless they issue an MRA, which they can't do unless an actual violation of law has been identified, which they won't identify unless they perform transaction testing, which they won't perform unless they predicted before the exam even started that such heightened risk may exist.

I strongly urge the OCC and FDIC to amend this proposal to take into account the above considerations.

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