

Unsafe or Unsound Practices, Matters Requiring Attention (OCC/FDIC)

RIN: 3064-AG16

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Comment

The Christian Employers Alliance (CEA) submits this comment in response to the OCC and FDIC's proposed rule defining "unsafe or unsound practice" for purposes of Section 8 of the Federal Deposit Insurance Act.

CEA supports the agencies' effort to establish an objective, financially grounded definition of unsafe or unsound practices. The proposed materiality standard appropriately refocuses supervisory authority on genuine threats to financial condition rather than on subjective or ideological concerns.

In previous years regulators have stretched the concept of "unsafe or unsound practice" to include alleged reputational effects associated with lawful but politically disfavored customers or industries—most notably in the 2016 guidance pressuring institutions to consider the "reputation risk" of servicing Second Amendment organizations. Such expansiveness allowed regulators to signal disapproval of lawful industries and subtly pressure banks to sever relationships.

CEA offers the following recommendations to ensure the rule fulfills its intended purpose:

1. Explicitly reject the use of ideological, political, religious, social, or cultural considerations in determining unsafe or unsound practices.

The definition should affirmatively state that non-financial, subjective, or viewpoint-based concerns cannot constitute an unsafe or unsound practice.

2. Clarify that "material risk" must be tied to objective, demonstrable impacts on solvency, liquidity, capital, operations, or compliance—not reputational theories.

Without explicit language, some may attempt to smuggle reputation-based considerations into the new definition under the guise of "operational risk."

3. Ensure consistency with the parallel reputation-risk prohibitions.

The agencies should state that the new definition does not permit any indirect reintroduction of reputation-risk concepts that the agencies are simultaneously prohibiting under RIN 3064-AG12.

4. Require transparent examiner documentation.

Any supervisory determination that a practice is unsafe or unsound should be accompanied by:

- a written explanation,

- citations to objective financial risk, and
- a clear demonstration of materiality.

This level of transparency will prevent arbitrary or ideologically motivated supervisory actions.

By adopting a clear, objective definition of unsafe and unsound practices, the OCC and FDIC can significantly reduce the risk of politically motivated debanking and enhance the integrity of the supervisory process. CEA respectfully urges the agencies to finalize the rule with the improvements listed above.

Respectfully submitted,

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