Petition

Petition to withdraw, stay, or reopen FR Doc. No. 2025-19715, “Prohibition on Use of Reputation Risk by Regulators,” and to comply with the Regulatory Flexibility Act, E.O. 12866, and the Paperwork Reduction Act

1) Introduction and interest

This petition is submitted by an interested party pursuant to the Administrative Procedure Act and the public comment procedures governing rulemaking. The rule titled “Prohibition on Use of Reputation Risk by Regulators” (FR Doc. No. 2025-19715), published October 30, 2025, alters supervisory criteria used by federal financial regulators by prohibiting the use of “reputation risk” as a basis for supervisory, examination, or enforcement actions. The action directly affects the examination environment for thousands of community banks and credit unions and raises novel legal and policy issues regarding safety-and-soundness supervision. We request that the Agency withdraw, stay, or reopen the rule to address multiple procedural deficiencies.

2) Summary of requested relief

- Publish an Initial Regulatory Flexibility Analysis (IRFA) or a properly supported certification under 5 U.S.C. § 605(b); consult with the SBA Office of Advocacy; and, if finalizing, publish a Final Regulatory Flexibility Analysis (FRFA).
- Treat the rule as “significant” under E.O. 12866 § 3(f) and submit it to OIRA for review with an accompanying benefit-cost analysis consistent with Circular A-4.
- Identify and obtain OMB clearance for any new information-collection or recordkeeping requirements under the Paperwork Reduction Act, or certify with specificity that none are required.
- If the Agency relied on good cause to forgo notice-and-comment or immediate effectiveness, rescind that invocation and provide full notice-and-comment with a meaningful opportunity to respond.

3) Regulatory Flexibility Act deficiencies

Legal standard. The RFA requires an IRFA when a rule is expected to have a significant economic impact on a substantial number of small entities, 5 U.S.C. § 603, or, alternatively, a § 605(b) certification supported by a factual basis. Courts require “a statement providing the factual basis for such certification,” and the agency must “undertake an analysis that is sufficiently detailed to support its conclusion.” See Cement Kiln Recycling Coalition v. EPA, 255 F.3d 855, 869 (D.C. Cir. 2001); U.S. Cellular Corp. v. FCC, 254 F.3d 78, 88–89 (D.C. Cir. 2001).

Why the rule triggers the RFA. The rule’s prohibition on using “reputation risk” necessarily affects how regulated institutions are examined and how they align internal risk taxonomies, policies, controls, board reporting, and training with supervisory expectations. Regardless of whether the formal duty is placed on examiners, institutions must routinely adjust to supervisory criteria to avoid adverse findings, MRAs/MRIAs, and rating

downgrades. Those adjustments entail compliance costs that fall disproportionately on small entities.

Small-entity universe. Small entities in banking and credit unions are numerous:
- FDIC-insured institutions: approximately 4,500 banks and thrifts in 2024–2025, the vast majority under $1 billion in assets; thousands meet the banking agencies' small-entity thresholds (historically around $850 million in assets for OCC/FDIC).
- Federally insured credit unions: approximately 4,600 institutions as of 2024, most under $500 million in assets.

These data are reflected in recent FDIC Quarterly Banking Profiles and NCUA industry summaries and demonstrate that "a substantial number of small entities" are directly exposed to supervisory-criteria changes.

Likely compliance burdens. To align with the rule's new supervisory posture, small institutions will reasonably undertake:
- Governance and policy revisions: updating risk appetites, risk taxonomies (removing or redefining "reputational risk"), board charters, and escalation protocols.
- Control adjustments and documentation: amending procedures to reframe control rationales (e.g., third-party risk, account onboarding, high-risk industries) without relying on "reputational risk."
- Training and change management: examiner-facing preparation, internal training for compliance, risk, and business-line staff; updating exam response templates.
- Vendor management alignment: revising third-party risk due diligence questionnaires and SLAs to track new supervisory factors.

Conservative unit costs for small institutions commonly range from 100–300 professional hours for policy, documentation, training, and board materials. At $75–$125/hour fully loaded, that equates to roughly $7,500–$37,500 per institution in year-one costs, with smaller but continuing costs thereafter. Applied across even 3,000 small institutions, first-year private-sector costs plausibly exceed $100 million in the aggregate.

Deficiencies in the rule's RFA treatment. The notice does not appear to provide:
- A quantitative estimate of the number of small entities affected, as required by § 603(b)(3).
- A description of projected reporting, recordkeeping, and other compliance requirements, § 603(b)(4).
- Significant alternatives that accomplish the rule's objectives while minimizing small-entity burdens, § 603(c).
- A factual basis for any § 605(b) certification that the rule will not have a significant economic impact on a substantial number of small entities.

Without such analysis, the Agency has not discharged its obligations under the RFA. The SBA Office of Advocacy should be consulted as required by 5 U.S.C. § 612.

Requested RFA remedy. Withdraw the current final rule or stay its effectiveness; publish an IRFA; consult with SBA Advocacy; and, after considering public comment, publish a FRFA addressing small-entity impacts and alternatives (e.g., phased implementation, safe harbors, supervisory-only application, or alternative formulations that reduce policy and documentation rework).

4) Executive Order 12866 and benefit-cost analysis

Significance. E.O. 12866 deems a rule “significant” if it is likely to have an annual effect on the economy of $200 million or more (modernized threshold) or if it raises novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Order. This rule plainly raises novel issues: it restricts the substantive criteria federal prudential regulators may use in safety-and-soundness supervision, altering longstanding supervisory frameworks and exam manuals that incorporate reputational considerations alongside credit, liquidity, operational, and compliance risk.

The rule is also economically significant in effect. As shown above, compliance and alignment costs borne by thousands of small institutions plausibly exceed nine figures in the aggregate. In addition, the rule can change portfolio choices and third-party relationships by removing a supervisory factor, with potential effects on loss experience and deposit flows.

Deficiency. The notice does not appear to include:
- A statement that OIRA determined the action’s significance under § 3(f) or any OIRA review outcome.
- A benefit-cost analysis consistent with OMB Circular A-4 (2023), including baseline characterization, alternatives, quantification of compliance costs, and assessment of risk and uncertainty.

Requested E.O. 12866 remedy. Submit the rule to OIRA as a significant regulatory action; prepare and publish a transparent benefit-cost analysis; and reopen the record for public comment on that analysis.

5) Paperwork Reduction Act

Legal standard. The PRA requires agencies to seek OMB approval for “information collections” imposed on the public, including “recordkeeping requirements,” 44 U.S.C. §§ 3502(3), 3506(c), 3507; 5 C.F.R. part 1320. Agencies must publish 60- and 30-day notices describing the collection, burden estimates, and request comments on necessity, utility, and burden.

Why PRA likely applies here. Although the rule constrains regulators, it predictably induces or directs institutions to create and maintain revised documentation to demonstrate that control rationales, policies, and exam responses do not rest on “reputation risk” as such. To the extent the rule or accompanying supervisory guidance:
- Requires institutions to amend policies, procedures, or board reports to remove or recharacterize reputation-risk references; and/or

- Requires institutions to maintain or produce records evidencing non-reliance on reputation risk in specific decisions (e.g., account onboarding, third-party due diligence, remediation plans),

those are recordkeeping/reporting obligations that constitute an information collection under the PRA.

Deficiency. The notice does not identify an OMB Control Number, provide 60- or 30-day PRA notices, or estimate incremental burden hours or costs.

Requested PRA remedy. Either (a) publish the required PRA notices and seek OMB approval for any information collection with defensible burden estimates; or (b) clearly and specifically state that the rule imposes no information collection requirements on regulated entities and explain how that conclusion squares with the rule's practical implementation in examinations.

6) APA notice-and-comment and good cause (if invoked)

If the Agency invoked the APA's good cause exception to issue this rule without prior notice-and-comment or to make it immediately effective, that invocation is not justified. Good cause is "narrowly construed" and available only when notice-and-comment is "impracticable, unnecessary, or contrary to the public interest," 5 U.S.C. § 553(b)(B), (d)(3); see Sorenson Commc'ns Inc. v. FCC, 755 F.3d 702, 706–07 (D.C. Cir. 2014); Mack Trucks, Inc. v. EPA, 682 F.3d 87, 93–95 (D.C. Cir. 2012). A generalized desire to swiftly change supervisory posture does not satisfy this standard, particularly where the rule raises significant and novel policy questions and imposes widespread compliance alignment costs. If good cause was invoked, the Agency should rescind that invocation, provide a minimum 60-day comment period, and delay the effective date accordingly.

7) Conclusion

Because the rule has substantial effects on a large population of small financial institutions and raises novel legal and policy issues, the Agency must comply with the RFA and E.O. 12866 and, to the extent it imposes recordkeeping or documentation requirements, the PRA. We therefore request that the Agency:

- Withdraw or stay the rule pending completion of an IRFA/FRFA, OIRA review with a benefit-cost analysis, and any required PRA process; or
- At minimum, reopen the rulemaking for 60 days to receive comment on these analyses and publish a reasoned response.

The Agency should also consult with the SBA Office of Advocacy, consider less burdensome alternatives for small entities, and publish a transparent accounting of expected costs and benefits. These steps will materially improve the rule, enhance its durability, and ensure compliance with governing statutes and executive orders.

Respectfully Submitted,
Citizens Rulemaking Alliance