Petition

I. Introduction and request for action

This petition challenges procedural defects in the final rule titled "Unsafe or Unsound Practices; Matters Requiring Attention" (FR Doc. No. 2025-19711). As described in the Federal Register notice, the rule codifies and elevates the MRA framework so that failure to timely remediate MRAs or to meet prescribed remedial expectations is deemed an unsafe or unsound practice subject to formal enforcement.

By formalizing MRAs as enforceable obligations with prescribed plans, timetables, governance expectations, and periodic reporting, the rule creates information collection, recordkeeping, and disclosure requirements for regulated institutions. The Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501–3521, thus applies, requiring an OMB-approved information collection with burden estimates and a prior 60-day public notice. The Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 601–612, likewise applies because the rule has a significant economic impact on a substantial number of small entities (thousands of community banks). The Unfunded Mandates Reform Act (UMRA), 2 U.S.C. §§ 1501–1571, may also apply if aggregate private-sector expenditures exceed the annually adjusted threshold.

We respectfully request that the Agency:
- Publish a 60-day PRA notice, prepare and submit an Information Collection Request to OMB, and suspend implementation of any affected provisions until OMB issues a control number.
- Withdraw any 5 U.S.C. § 605(b) certification and publish an Initial Regulatory Flexibility Analysis (IRFA), reopen the record for comment on small-entity impacts and alternatives, and upon completion of a Final Regulatory Flexibility Analysis (FRFA) adopt small-entity accommodations.
- Reassess whether UMRA § 202 applies, and if so, publish the required written statement of costs, benefits, and alternatives, or explain why the threshold is not met with supporting data.

I. Background: What the rule does

The rule's title and summary reflect a shift from purely supervisory communications to enforceable, generally applicable requirements. In practice, MRAs typically require an institution to:
- Develop and submit written remediation plans with milestones.
- Provide periodic progress reports to examiners.
- Elevate the issue to the board or a board committee, with board oversight and attestations.
- Maintain internal tracking and documentation systems to evidence remediation.

The final rule's premise—treating failures to timely remediate MRAs as "unsafe or unsound"—makes those obligations binding and enforceable as a matter of law, rather than merely advisory. That shift triggers the procedural safeguards addressed below.

I. Paperwork Reduction Act deficiency

A. The rule contains “collections of information” that require OMB clearance.

- The PRA defines “collection of information” to include agency requirements for answers to identical questions posed to, or recordkeeping/third-party disclosure imposed on, ten or more persons. 44 U.S.C. § 3502(3); 5 C.F.R. § 1320.3(c).
- When a rule of general applicability requires regulated entities to prepare written plans, maintain records, report progress, or provide board-level attestations in response to a defined supervisory trigger (an MRA), it creates a standardized reporting/recordkeeping obligation across the regulated population. That is a collection of information.

B. The “audit/investigation” carve-out does not apply to generally applicable rules.

- The PRA’s exemption for information obtained “during the conduct of a civil action, administrative action, or investigation (including an administrative audit)” covers case-specific examiner requests in a particular examination. 5 C.F.R. § 1320.4.
- But when an agency promulgates a generally applicable rule prescribing standardized written remediation plans, periodic progress reporting, and board-level documentation whenever an MRA is issued, those obligations are not case-specific requests “during” an audit; they are rule-based collections that apply prospectively to ten or more institutions. Thus, the exemption does not apply.

C. Practical burdens illustrate why PRA review is necessary.

Public supervisory materials from the banking agencies indicate that MRAs are a routine output of examinations and often require written remediation plans and periodic updates. Community banks routinely receive multiple MRAs annually across risk areas (credit, liquidity, BSA/AML, operational resilience, third-party risk). A conservative burden scenario for small institutions would be:

- 3 MRAs per institution per year on average;
- 120 internal staff hours per MRA to scope, draft, implement, and document a written remediation plan; 20 board/committee hours for oversight and attestation; and $15,000 in external advisory/legal services for complex MRAs;
- For 2,000–3,000 small banks, this implies 720,000–1,080,000 staff hours annually plus $90–$135 million in external costs, before counting periodic progress reporting and internal recordkeeping.

These are precisely the kinds of recurring burdens PRA requires agencies to quantify, minimize, and justify through public comment and OMB review. 44 U.S.C. § 3506(c); 5 C.F.R. §§ 1320.5–.8.

D. Requested PRA remedy

- Publish a 60-day notice under 44 U.S.C. § 3506(c)(2)(A) describing each information collection (e.g., MRA remediation plan content, reporting frequency, board documentation), target population, frequency, and estimated burden.
- Submit an Information Collection Request to OMB under 5 C.F.R. § 1320.10, and defer enforcement of any affected requirements until an

OMB control number is issued and displayed, as required by 44 U.S.C. § 3512.

I. Regulatory Flexibility Act deficiency

A. The rule has a significant economic impact on a substantial number of small entities.

- Under SBA size standards for depository institutions, a large share of national banks and federal savings associations qualify as “small entities” (assets up to approximately $850 million).
- MRAs typically require institutions to stand up compliance workstreams, engage consultants, and dedicate scarce board time—costs that are proportionally higher for small community banks with lean staffing. The conservative burden illustration above (hundreds of thousands of hours and nine-figure external costs in the aggregate) indicates material impacts.

B. A 605(b) “no significant impact” certification would be unsupported.

- Agencies sometimes assert that such rules “merely clarify existing practice” and therefore impose no new costs. That is not accurate here. By codifying MRAs as enforceable unsafe/unsound obligations, the rule raises the legal stakes, standardizes documentation and reporting expectations, and predictably increases scope, formality, and frequency of information production—especially where board-level governance and attestations are specified.
- The RFA requires an Initial Regulatory Flexibility Analysis (IRFA) unless the agency properly certifies, with factual support, that there will not be a significant economic impact on a substantial number of small entities. 5 U.S.C. § 605(b), § 603. The record lacks the necessary data and analysis.

C. The Agency must analyze less burdensome small-entity alternatives. 5 U.S.C. § 603(c).

At a minimum, the IRFA/FRFA should consider:

- Thresholds or safe harbors under which MRAs at well-rated small institutions are treated as advisory unless there is demonstrable consumer harm or safety-and-soundness risk.
- Extended remediation timelines and reduced reporting frequency for small entities.
- Standardized, short-form remediation templates to minimize drafting time.
- Allowing consolidation of multiple MRAs into a single plan where appropriate.
- Board-level oversight scaled to bank size (e.g., management-level attestations for low-risk MRAs at small banks).

D. Requested RFA remedy

- Withdraw any 605(b) certification, publish an IRFA with quantified small-entity impacts and alternatives, reopen the comment period for at least 60 days, and upon completion adopt small-entity accommodations in a Final Regulatory Flexibility Analysis.

V. UMRA considerations

UMRA requires a written statement of costs/benefits and alternatives if a rule includes a “Federal private sector mandate” with annual expenditures of at least the inflation-adjusted threshold (approximately $200 million in recent years). 2 U.S.C. § 1532. By converting MRAs into enforceable duties with standardized remediation planning, periodic reporting, and board-level documentation across thousands of institutions, aggregate private-sector costs could plausibly meet or approach the threshold, particularly in years with elevated supervisory findings.

If the Agency concluded UMRA does not apply or the threshold is not met, it should provide supporting data and reasoning. If the threshold may be met, the Agency should produce the required written statement and consider less costly alternatives.

VI. Conclusion and requested Agency actions

For the reasons above, the rule, as finalized, presents material procedural deficiencies:

- Paperwork Reduction Act: The rule imposes generally applicable information collections (remediation plans, periodic reporting, board documentation) that require OMB clearance following a 60-day public notice. The audit/investigation exemption does not apply to these rule-based, standardized obligations.

- Regulatory Flexibility Act: The rule has significant economic impacts on a substantial number of small entities. An IRFA is required, and the Agency must analyze and adopt small-entity alternatives.

- UMRA: The Agency should reassess applicability and, if warranted, prepare the required written statement or provide a data-based explanation for inapplicability.

Accordingly, we respectfully request that the Agency:

1) Publish the PRA 60-day notice and submit an ICR to OMB; suspend enforcement of the affected provisions until an OMB control number is issued.
2) Publish an IRFA, reopen the record for at least 60 days, and adopt small-entity alternatives in a FRFA.
3) Reevaluate UMRA applicability and, if the threshold may be met, issue the written statement and consider lower-cost alternatives.

We appreciate the Agency’s attention to these procedural safeguards and stand ready to provide additional data and small-entity perspectives to inform the required analyses.

Respectfully,
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