

December 24, 2025

*Via Electronic Submission and Electronic Delivery*

Chief Counsel's Office, Attention: Comment Processing  
Office of the Comptroller of the Currency  
400 7th Street SW, Suite 3E-218  
Washington, DC 20219

Jennifer M. Jones, Deputy Executive Secretary  
Attention: Comments—RIN 3064-AG16  
Federal Deposit Insurance Corporation  
550 17th Street NW  
Washington, DC 20429

**Re: Notice of Proposed Rulemaking – Unsafe or Unsound Practices, Matters Requiring Attention (Docket ID: OCC-2025-0174, RIN: 1557-AF35 | RIN: 3064-AG16).**

To Whom It May Concern:

The Consumer Bankers Association (CBA)<sup>1</sup> appreciates the opportunity to comment on the notice of proposed rulemaking to define the term “unsafe or unsound practice” for purposes of section 8 of the Federal Deposit Insurance Act and to revise the supervisory framework for the issuance of matters requiring attention (MRAs) and other supervisory communications. CBA commends the Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC) for undertaking this rulemaking and strongly supports the agencies’ efforts to promote clarity, consistency, and transparency within the supervisory process.

CBA has long advocated for supervisory expectations that are risk-focused, objective, and appropriately tailored. By anchoring the definition of “unsafe or unsound practice” in the likelihood of material harm to an institution’s financial condition or a material risk of loss to the Deposit Insurance Fund, the proposal establishes a clear and objective standard that examiners from both agencies can apply with greater uniformity nationwide. Providing a clear definition of “safety and soundness” will help to ensure that institutions can identify and address the most relevant and pressing issues.

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<sup>1</sup> The Consumer Bankers Association is a member-driven trade association, and the only national financial trade group focused exclusively on retail banking—banking services geared toward consumers and small businesses. As the recognized voice on retail banking issues, CBA provides leadership, education, research, and federal representation for its members. CBA members operate in all 50 states. They include the nation’s largest bank holding companies as well as regional and super-community banks. Eighty-three percent of CBA’s members are financial institutions holding more than \$10 billion in assets.

We also appreciate the proposal’s focus on aligning supervisory attention with substantive risk.<sup>2</sup> Under the current framework, examinations have at times placed disproportionate emphasis on process-oriented or documentation issues that bear little relationship to an institution’s actual risk profile. This dynamic can divert both management focus and board oversight away from real—rather than perceived—safety and soundness issues, spawning unnecessary expenditures of time, attention, and resources. By centering supervisory findings on material financial risk, the proposed rule appropriately rebalances the examination process and supports the agencies’ efforts to foster a more effective, risk-based supervisory system.

CBA also welcomes the establishment of uniform criteria for issuing MRAs.<sup>3</sup> Consistency in supervisory expectations is essential to promoting an efficient and predictable examination environment. The proposal’s requirement that MRAs be reserved for practices that could reasonably be expected to result in material financial harm provides a meaningful standard that preserves early identification of emerging risks while ensuring that supervisory tools are used for their intended purpose. Importantly, the proposal also reinforces the distinct roles of MRAs and enforcement actions by ensuring that the latter remain tied to a substantiated finding of an unsafe or unsound practice.

We further endorse the proposal’s emphasis on tailoring supervisory expectations to the relevant institution. Materiality thresholds necessarily vary based on a particular institution’s size, complexity, business model, capital position, and risk characteristics. Reflecting this proportionality in regulations will enhance both the relevance and the effectiveness of supervisory evaluations. At the same time, we need supervisory parity across institutions of varying size, complexity, business model, capital position, and risk characteristics so no one can game the rules. Likewise, the clarification regarding composite ratings—that downgrades should occur only when findings meeting the proposed standard are present or when enforcement actions are warranted—is a welcome improvement. Ratings carry significant operational and strategic consequences, and those consequences should correspond to material issues.

The agencies’ specific requests for comment as to whether greater specificity should be sought around materiality, specifically, the use of “material harm” and “materially,” in the proposed regulation acknowledges a perhaps unavoidable tension between focusing on what matters most while preserving supervisory discretion and flexibility for changing circumstances. One approach for consideration would be the joint issuance by the agencies of follow-on guidance or answers to frequently asked questions providing concrete—but generic or otherwise anonymous—examples where an unsafe or unsound

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<sup>2</sup> Further, we recommend that the Agencies’ consider the Federal Reserve’s [November 18 Supervisory Operating Principles](#), specifically regarding reliance on satisfactory Internal Audit validation to close out MRAs quicker and test sustainability through ongoing monitoring.

<sup>3</sup> While not the subject of this Proposed Rule, we would support further adoption of this criteria by other FFIEC regulators. Doing so would be consistent with existing statutory requirements that these agencies coordinate, see e.g., 12 U.S.C. § 5515(b)(2).

practice as otherwise defined under the proposed regulation unequivocally meets the various thresholds of materiality. Such guidance would give financial institutions (and examiners) insight into the current focus of the agencies, engendering greater uniformity among supervised institutions as to core concerns.

For much the same reasons, we believe that follow-on guidance also should offer additional clarification with specific examples of “generally accepted standards of prudent operation,” including with respect to novel activities. Because these and other activities have not been widely adopted, they would lack generally accepted standards by which to assess their safety and soundness. The proposed rule states the definition applies prospectively. However, leaving legacy MRAs open that do not meet the new safety and soundness standard creates a two-tiered supervisory environment. We recommend that the Agencies consider a retrospective review of all open MRAs, so that existing MRAs that are not consistent with the new definition are administratively closed or downgraded.

Some stakeholders have expressed concern with the proposed rule’s standard of causation, namely, that a practice, act, or failure “could reasonably be expected to” effect the requisite harm for an MRA to be issued. We believe that this standard for an MRA appropriately supports forward-looking supervision, and the continued availability of MRAs for violations of law or regulation ensures accountability for compliance. This standard for issuing an MRA makes additional sense when viewed alongside the standard for finding the existence of an unsafe or unsound practice, which requires the practice, act, or failure to act in that instance to be “likely to” effect the requisite harm. In other words, issuing an MRA for prospective harm requires less certainty as to the outcome of the practice, act, or failure to act than does the more severe finding of an unsafe or unsound practice. Thus, in our view, the standard of causation for issuing an MRA is both appropriate and proportional to that for finding an unsafe or unsound practice.

We note, however, that the requirement that a practice, act, or failure to act, “if continued,” be “likely” to effect the requisite harm may warrant further clarity. The usage of “if continued,” for example, would require predicting a given practice, act, or failure to act to any number of scenarios, the actual occurrence of which should rest rather on what is reasonably foreseeable.

Relatedly, the meaning of the phrase “likely to . . . [p]resent a material risk of loss to the Deposit Insurance Fund” (the “DIF”) in defining an unsafe or unsound practice may be superfluous. Any practice, act, or failure to act that is likely to present a material risk of loss to the DIF would be likely to materially harm the financial condition of an institution. Because actual loss to the DIF necessarily requires an institution to have failed, that institution would, by definition, have experienced material harm to its financial condition and so would be independently covered by the proposed regulation. Similarly, the phrase with respect to issuance of an MRA, “could reasonably be expected



to . . . [p]resent a material risk of loss to the Deposit Insurance Fund" may also be duplicative.

Because the proposed rule would, if adopted, represent a significant change for examiners, we respectfully recommend that the agencies modernize and strengthen their appeals processes for MRAs and supervisory findings. We applaud the FDIC for its proposed Guidelines for Appeals of Material Supervisory Determinations and believe that a clear—and effective—path to challenge exam-based supervisory findings is more important than ever to help to ensure that decisions after the effective date of the proposed rule are objective, timely, and consistent with the proposal's risk-based framework. An effective appeals system should include, among other things, a meaningful stay of disputed MRAs and related rating implications during the pendency of an appeal absent critical safety-and-soundness concerns; a standard of review that permits de novo consideration of disputed legal and policy questions; and a burden on the agency to substantiate that the challenged finding meets the proposed rule's materiality and likeliness thresholds.

CBA views this proposal as a significant and constructive modernization of the supervisory framework. By clearly defining when supervisory action is warranted and ensuring that expectations are risk-based and appropriately tailored, the rule will enhance the effectiveness of supervision and support strong, resilient banking institutions. We urge the agencies to finalize the proposal promptly.

We thank you for your consideration of these comments. CBA would be happy to discuss these issues further and provide any additional information that would be helpful to staff of the OCC and the FDIC.

Sincerely,

Rachel Ross  
Vice President and Associate General Counsel, Consumer Bankers Association  
[Redacted]