



MEMORANDUM

To: Hon. Scott Bessent, Secretary, US Department of the Treasury
Hon. Jonathan Gould, Comptroller of the Currency
Hon. Travis Hill, Chairman (Acting), FDIC

From: Andrew Langer, Director, Center for Regulatory Freedom, CPAC Foundation

Date: December 29, 2025

Re: Comments to US Department of the Treasury, Notice of Proposed Rulemaking, “Unsafe or Unsound Practices, Matters Requiring Attention,” Docket #FDIC-2025-0714, Fed. Reg. 2025-19711, Published October 30, 2025

Below are comments of the American Conservative Union Foundation's (d/b/a. Conservative Political Action Coalition Foundation) (hereinafter “CPAC Foundation”) Center for Regulatory Freedom (hereinafter “CRF”), in response to the US Department of the Treasury Notice of Proposed Rulemaking, “Unsafe or Unsound Practices, Matters Requiring Attention,” Docket #FDIC-2025-0714, Fed. Reg. 2025-19711, published October 30, 2025.

CRF is a project of the CPAC Foundation, a non-profit, non-partisan 501(c)(3) research and education foundation. Our mission is to inject a common-sense perspective into the regulatory process, to ensure that the risks and costs of regulations are fully based on sound scientific and economic evidence, and to ensure that the voices, interests, and freedoms of Americans, and especially of small businesses, are fully represented in the regulatory process and debates. Finally, we work to ensure that regulatory proposals address real problems, that the proposals serve to ameliorate those problems, and, perhaps most importantly, that those proposals do not, in fact, make public policy problems worse.

Introduction

The Center for Regulatory Freedom (“CRF”) submits these comments in response to the joint Notice of Proposed Rulemaking issued by the Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency regarding the definition of “unsafe or unsound

practices” and the standards governing Matters Requiring Attention. CRF is a policy organization dedicated to promoting economic growth, individual liberty, and the rule of law through regulatory restraint, transparency, and accountability. CRF has a longstanding interest in ensuring that federal financial regulators exercise their supervisory and enforcement authorities in a manner consistent with statutory limits, sound economic principles, and constitutional norms.

CRF welcomes the agencies’ recognition that bank supervision must be anchored in material financial risk rather than subjective, non-financial considerations. Over time, supervisory practices have drifted away from their core safety-and-soundness mission toward increasingly expansive and informal forms of regulatory control. This has imposed significant costs on regulated institutions, distorted market behavior, and undermined confidence in the neutrality and predictability of the federal banking regulatory framework.

In recent years, regulated financial institutions have responded not only to statutes and formal regulations, but also to ambiguous supervisory signals, informal guidance, and examiner expectations that lack clear legal grounding. The cumulative effect has been to incentivize defensive, risk-averse behavior unrelated to actual financial condition. This dynamic has contributed to the growing phenomenon commonly referred to as “debanking,” in which individuals, small businesses, and lawful industries are denied access to financial services not because they present material credit or operational risk, but because they are perceived as regulator-disfavored.

CRF is particularly concerned that vague supervisory concepts—such as reputational risk, amorphous governance expectations, or speculative future harms—have been used to justify intrusive supervisory actions without the procedural safeguards associated with formal rulemaking or enforcement. When these concepts are operationalized through tools such as MRAs, ratings pressure, or informal supervisory communications, they effectively function as binding mandates, even though they lack statutory definition or judicially reviewable standards.

The proposal correctly acknowledges that safety-and-soundness supervision must prioritize material risks to a bank’s financial condition, including capital adequacy, liquidity, asset quality, earnings, and sensitivity to market risk. By seeking to define “unsafe or unsound practices” and to cabin the use of MRAs to circumstances involving genuine financial risk or actual legal violations, the agencies take an important step toward restoring clarity, discipline, and proportionality to the supervisory process.

CRF also views this proposal against the historical backdrop of prior episodes in which regulators used supervisory leverage to advance policy objectives untethered from financial risk, most notably during the Operation Choke Point era. That episode demonstrated how informal pressure, combined with vague risk frameworks, can be used to achieve ideological outcomes without congressional authorization or public accountability. The lingering effects of that experience continue to shape bank behavior today.

While CRF supports the direction of the proposal, it emphasizes that definitional clarity alone is insufficient unless accompanied by a genuine commitment to constrain supervisory discretion in practice. Without clear guardrails, even well-intentioned standards risk being eroded through expansive interpretation, uneven application, or re-labeling of non-financial concerns as prudential risks. The success of this rulemaking will therefore depend on how rigorously its principles are applied and enforced internally by the agencies.

Accordingly, CRF submits these comments to underscore the importance of tying supervisory and enforcement actions to demonstrable, material financial harm; to explain how debanking has emerged as a regulatory artifact rather than a market outcome; and to recommend additional safeguards to ensure that banking regulation remains focused on safety, soundness, and the protection of the financial system—not the pursuit of social, political, or ideological objectives.

Executive Summary

The Center for Regulatory Freedom (“CRF”) submits these comments in response to the joint Notice of Proposed Rulemaking issued by the Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency addressing the definition of “unsafe or unsound practices” and the standards governing Matters Requiring Attention. CRF supports the agencies’ stated objective of restoring clarity, discipline, and proportionality to bank supervision by anchoring supervisory and enforcement actions to material financial risk and actual violations of law.

For too long, supervisory practices have relied on vague, non-statutory concepts and informal tools that expand regulatory discretion while diminishing transparency and accountability. The resulting uncertainty has distorted bank behavior, encouraged defensive over-compliance, and contributed to the growing problem of debanking—where individuals and lawful businesses are denied access to financial services based not on creditworthiness or financial risk, but on perceived regulatory or political sensitivities. The proposal represents an important opportunity to correct these structural flaws and reaffirm the proper limits of prudential regulation.

CRF’s comments focus on the following key points:

- **Debanking is a regulatory artifact, not a market outcome.**
The increasing exclusion of individuals, small businesses, and lawful industries from the banking system reflects incentives created by supervisory discretion, reputational risk frameworks, and informal enforcement mechanisms, rather than sound risk management or consumer protection.
- **Vague supervisory concepts have distorted bank risk assessment.**
Undefined notions such as reputational risk and examiner expectations encourage banks to avoid entire categories of customers to mitigate regulatory exposure, undermining individualized risk analysis and reducing access to financial services.
- **Operation Choke Point illustrates the dangers of politicized supervision.**
The historical use of informal regulatory pressure to achieve ideological objectives demonstrates how unchecked supervisory tools can be misused, even absent formal rules or statutory authority. The legacy of that episode continues to influence bank behavior today.
- **Defining “unsafe or unsound practices” is essential to restoring the rule of law.**
By limiting the definition to conduct that is imprudent and likely to cause material financial harm or risk to the Deposit Insurance Fund, the proposal helps ensure that enforcement authority is exercised consistently with congressional intent.
- **Matters Requiring Attention must be constrained to material financial risk or actual legal violations.**
MRAs have increasingly functioned as de facto enforcement actions without due process. The proposal’s effort to narrow their use is critical to preventing informal rulemaking through supervision.

- **Supervisory ratings and enforcement escalation should follow, not precede, demonstrable risk.**
Tying ratings downgrades and supervisory consequences to clearly defined standards reduces arbitrary outcomes and enhances predictability for regulated institutions.
- **Guardrails are necessary to ensure lasting reform.**
Without clear limits on how non-financial concerns are characterized and enforced, supervisory discretion may simply be exercised through new labels rather than genuinely restrained.

In conclusion, CRF supports the agencies' effort to reorient bank supervision toward material financial risk, statutory compliance, and objective standards. To be effective, however, the final rule must clearly foreclose the use of supervisory tools as vehicles for ideological, reputational, or political regulation. Properly implemented, the proposal can help restore confidence in the neutrality of financial regulation, improve access to banking services, and reaffirm that prudential supervision exists to promote safety and soundness—not to direct lawful economic activity.

Section I: Debanking as a Policy Problem and the Regulatory Origins of Financial Exclusion

The phenomenon commonly described as “debanking” has emerged over the past decade as a serious and growing policy concern with significant implications for economic participation, financial stability, and regulatory legitimacy. Increasingly, individuals, small businesses, and entire categories of lawful economic activity report difficulty accessing basic financial services such as deposit accounts, payment processing, and credit facilities. These exclusions are often abrupt, opaque, and unaccompanied by any allegation of unlawful conduct or demonstrable financial risk, raising fundamental questions about how and why such outcomes have become widespread within a heavily regulated banking system.

In a functioning and competitive financial marketplace, banks have strong incentives to broaden access to financial services and to manage risk through individualized underwriting and monitoring rather than categorical exclusion. Financial institutions profit from diversified customer bases, stable deposit inflows, and long-term commercial relationships. As a result, the systematic termination or refusal of accounts for lawful customers is not a natural market outcome, nor is it best explained by neutral risk management considerations. Instead, the prevalence of debanking reflects structural incentives created by the regulatory environment in which banks operate.

Over time, federal banking supervision has drifted away from its core safety-and-soundness mission and toward an increasingly expansive conception of risk that extends well beyond financial condition. Supervisory frameworks have come to encompass reputational, social, and political considerations that lack objective metrics, clear statutory grounding, or predictable limits. When such considerations are incorporated into examinations and supervisory communications, they fundamentally alter the risk calculus faced by regulated institutions.

Banks experience supervisory discretion not as abstract policy guidance, but as a concrete set of incentives and penalties that shape day-to-day decision-making. Examiner feedback, supervisory criticisms, and informal communications carry real consequences, including the risk of ratings downgrades, prolonged Matters Requiring Attention, heightened scrutiny, and eventual

enforcement escalation. In this context, even nonbinding supervisory signals are rationally interpreted by institutions as directives that must be addressed to avoid regulatory harm.

When supervisory standards are vague or indeterminate, banks respond by minimizing exposure to activities or customers perceived to be disfavored by regulators. Rather than conducting individualized assessments of creditworthiness, operational risk, or compliance controls, institutions may conclude that the safest course is to exit entire categories of business that attract heightened supervisory attention. This dynamic transforms supervision into a powerful, if indirect, mechanism for shaping credit allocation and access to financial services.

The elevation of “reputation risk” as a supervisory concern has been especially influential in driving this behavior. Unlike traditional prudential risks—such as credit risk, liquidity risk, or market risk—reputation risk is inherently subjective and difficult to quantify. When deployed as a regulatory concept, it allows examiners to substitute judgment and perception for financial analysis, creating uncertainty about what conduct is permissible and what relationships are acceptable.

Because reputation risk lacks clear boundaries, its application varies widely across institutions, examination teams, and supervisory cycles. This inconsistency compounds regulatory uncertainty and encourages institutions to overcomply as a defensive measure. Banks quickly learn that the absence of a clear standard means that any relationship deemed controversial or politically sensitive may become a supervisory liability, regardless of its financial characteristics.

The result is the exclusion of lawful economic actors from the regulated banking system based not on individualized risk, but on generalized regulatory aversion. Small businesses operating in politically sensitive industries, entrepreneurs with unconventional profiles, and individuals engaged in lawful but controversial activities are disproportionately affected. These outcomes reflect regulatory signaling rather than neutral market discipline, and they undermine the principle that access to financial services should be governed by objective criteria.

Debanking also has broader distributional consequences. When banks adopt categorical exclusions, they reduce competition and consumer choice, particularly in communities already facing barriers to financial inclusion. Concentration of services among fewer providers raises costs, limits innovation, and entrenches inequality—outcomes that run counter to the stated goals of financial regulation and consumer protection.

Importantly, debanking does not eliminate economic activity; it merely displaces it. Customers excluded from traditional banking channels often turn to less regulated or entirely unregulated alternatives, including shadow financial services and informal payment mechanisms. This migration increases opacity, weakens oversight, and concentrates risk outside the prudential perimeter, undermining financial stability rather than enhancing it.

The problem is exacerbated by the role of informal supervisory tools, particularly Matters Requiring Attention. Although MRAs are formally described as supervisory communications rather than enforcement actions, they operate as binding obligations in practice. Institutions are expected to remediate MRAs promptly and comprehensively, often at significant cost, regardless of whether the underlying issue involves material financial risk.

When MRAs are issued based on speculative concerns, procedural deficiencies, or non-financial considerations, they amplify incentives for debanking. Banks internalize supervisory preferences over time, adjusting compliance programs and customer selection criteria to avoid future criticism. This process gradually embeds regulatory aversion into institutional policy, even in the absence of explicit regulatory mandates.

The lack of clear standards governing MRAs further undermines accountability and due process. Institutions have limited ability to contest examiner judgments, and supervisory determinations are rarely subject to meaningful review. Faced with this asymmetry of power, banks rationally choose preemptive exclusion as the least risky response to regulatory uncertainty.

Debanking thus reflects a self-reinforcing feedback loop within the supervisory system. Vague expectations lead to overcompliance; overcompliance becomes normalized; and that normalization, in turn, justifies further supervisory intervention. Over time, this process narrows the scope of permissible banking activity without congressional authorization or transparent rulemaking.

This dynamic is fundamentally inconsistent with the principles underlying prudential regulation. Safety-and-soundness supervision was designed to protect depositors, ensure institutional resilience, and safeguard the financial system—not to serve as a mechanism for advancing social, political, or ideological objectives through indirect means.

The agencies themselves have acknowledged that supervisory attention has increasingly focused on procedural, documentation, and governance issues that do not clearly relate to financial condition. Such an approach diverts management and examiner resources away from genuine risks to capital, liquidity, and earnings, while encouraging form-over-substance compliance.

By contrast, a supervisory framework grounded in material financial risk promotes better outcomes for both institutions and regulators. When banks understand that adverse supervisory actions are tied to demonstrable threats to financial condition, they can allocate compliance resources more effectively and make business decisions with greater confidence and transparency.

Reducing debanking therefore requires more than aspirational commitments to inclusion or fairness. It requires structural reform of the incentives embedded in supervision—particularly the narrowing of supervisory discretion and the elimination of non-financial risk categories as bases for adverse action.

The proposal under consideration represents an important acknowledgment of these realities. By seeking to define unsafe or unsound practices and to constrain the issuance of MRAs, the agencies implicitly recognize that unchecked discretion has produced unintended and harmful consequences for access to financial services.

Absent such reform, debanking will persist as a rational response to regulatory uncertainty. Addressing the problem requires reasserting that banking supervision must be rooted in objective, material financial risk and actual legal violations, rather than subjective judgments or ideological preferences. Only then can access to financial services be governed by markets and law, rather than regulatory fear.

Section II: Operation Choke Point and the Dangers of Politicized Financial Supervision

Operation Choke Point stands as a cautionary example of how financial regulation can be repurposed to achieve policy outcomes untethered from statutory authority or material financial risk. Initiated during the previous decade, the program relied on coordinated pressure from federal agencies to discourage banks from providing financial services to certain lawful industries deemed politically disfavored. Rather than prohibiting these industries through legislation or formal rulemaking, regulators leveraged supervisory tools to induce private institutions to sever relationships.

At its core, Operation Choke Point did not operate through transparent enforcement actions or adjudicated findings of illegality. Instead, it functioned through informal guidance, supervisory communications, and implied threats of heightened scrutiny. Banks were left to infer that continued relationships with targeted industries would expose them to supervisory risk, reputational concerns, and potential enforcement escalation, even in the absence of any evidence of unsafe or unsound practices.

The industries affected by Operation Choke Point were not accused of being financially unsound or systemically risky. Rather, they were categorized as “high risk” based on political judgments, public controversy, or moral disapproval. This categorization blurred the distinction between legitimate prudential oversight and policy-driven regulation, transforming safety-and-soundness supervision into a vehicle for ideological enforcement.

Banks responded rationally to these incentives. Faced with ambiguous but credible regulatory pressure, institutions concluded that the safest course was to terminate relationships wholesale rather than attempt to defend them on financial grounds. The absence of clear standards or procedural safeguards meant that maintaining lawful customers carried asymmetric downside risk, while severing ties carried little regulatory cost.

The architecture of Operation Choke Point was particularly troubling because it bypassed traditional mechanisms of accountability. There were no published rules defining prohibited conduct, no opportunity for affected parties to contest supervisory judgments, and no meaningful avenue for judicial review. The regulatory burden was imposed indirectly, through pressure applied to intermediaries, rather than directly on the regulated or targeted entities themselves.

Although Operation Choke Point was ultimately disavowed and formally terminated, the supervisory tools and conceptual frameworks that enabled it were never fully dismantled. The episode demonstrated how vague risk categories, when combined with informal supervisory authority, can be used to reshape private behavior without legislative approval. The lessons of that period remain highly relevant to contemporary banking supervision.

In the years since Operation Choke Point, many of the same dynamics have resurfaced under different labels. Concepts such as reputational risk, governance expectations, and environmental or social considerations have increasingly been incorporated into supervisory discussions, often without clear statutory grounding or financial metrics. While framed as prudential concerns, these concepts frequently mirror the same discretionary mechanisms that characterized Operation Choke Point.

The persistence of these mechanisms has contributed directly to modern debanking practices. Banks, having internalized the lessons of Operation Choke Point, are acutely sensitive to regulatory signals—explicit or implicit—regarding disfavored activities. Even absent a formal program, the memory of prior supervisory retaliation encourages institutions to err on the side of exclusion rather than engagement.

This regulatory legacy has had a chilling effect on lawful economic activity. Financial institutions now routinely assess not only the financial risk of a customer, but also the likelihood that the relationship will attract supervisory scrutiny. In doing so, banks effectively act as proxies for regulatory policy, filtering access to financial services based on anticipated regulatory reactions rather than objective risk assessments.

Operation Choke Point also illustrates how reputational risk can be transformed from an internal management consideration into an external regulatory cudgel. During the program, banks were warned that associations with certain industries could harm their standing with regulators or the public, even if those associations posed no financial threat. This framing encouraged institutions to conflate regulatory approval with reputational acceptability.

The absence of materiality thresholds during Operation Choke Point further exacerbated its effects. Minor or speculative concerns were treated as sufficient grounds for supervisory pressure, despite their lack of connection to capital adequacy, liquidity, or earnings. This approach distorted the purpose of prudential regulation and expanded supervisory reach far beyond its intended scope.

Critically, Operation Choke Point demonstrated how informal supervisory tools can function as de facto enforcement mechanisms. Examiner communications, supervisory letters, and examination findings carried consequences indistinguishable from formal enforcement actions, yet lacked the procedural protections associated with enforcement. This erosion of due process remains a central concern in modern supervision.

The episode also revealed the dangers of regulatory opacity. Because supervisory pressure was applied behind closed doors, the public and affected parties had little visibility into how or why financial access was being restricted. This opacity shielded regulators from accountability while imposing real economic costs on targeted industries and consumers.

The current proposal implicitly acknowledges these failures by seeking to define and constrain the use of supervisory authority. By clarifying what constitutes an unsafe or unsound practice and limiting the circumstances under which MRAs may be issued, the agencies recognize the need to prevent supervision from drifting into informal policymaking.

However, the lessons of Operation Choke Point counsel that definitional reforms must be robust and enforceable. Without clear guardrails, supervisory discretion can simply be exercised through new terminology or rebranded risk categories. The mere absence of a named program does not eliminate the underlying incentives for regulatory overreach.

A supervisory framework grounded in material financial risk provides the most effective safeguard against a recurrence of Operation Choke Point–style practices. When adverse supervisory actions are tied to demonstrable threats to financial condition or actual legal

violations, regulators are constrained from using prudential tools to pursue extraneous policy goals.

The proposal's emphasis on materiality, likelihood of harm, and clear linkage to financial condition is therefore a necessary corrective. It reaffirms that safety-and-soundness supervision exists to protect the banking system and depositors, not to regulate lawful economic activity through indirect pressure.

Operation Choke Point serves as a reminder that regulatory power, when exercised without clear limits, can undermine both economic freedom and financial stability. Preventing its reemergence—whether in name or in practice—requires a supervisory regime that is transparent, disciplined, and firmly anchored in statutory authority and material financial risk.

Section III: Re-Anchoring “Unsafe or Unsound Practices” to Material Financial Risk and Statutory Authority

The concept of an “unsafe or unsound practice” has long served as a cornerstone of federal banking supervision and enforcement. Properly understood, it functions as a backstop authority that allows regulators to intervene when conduct threatens the financial integrity of an institution or the stability of the banking system. When untethered from material financial risk, however, the concept becomes elastic and susceptible to misuse, enabling supervisory actions that extend well beyond congressional intent.

Historically, safety-and-soundness supervision has been grounded in objective assessments of capital adequacy, asset quality, earnings, liquidity, and sensitivity to market risk. These financial indicators provide a measurable framework for evaluating institutional resilience and identifying genuine threats to depositor protection and systemic stability. The erosion of this framework has coincided with the expansion of supervisory attention to non-financial considerations that lack clear metrics or limiting principles.

The absence of a clear regulatory definition of “unsafe or unsound practice” has contributed significantly to this drift. Without defined boundaries, supervisory determinations have increasingly relied on examiner judgment, internal guidance, and evolving expectations rather than on demonstrable financial harm. This ambiguity creates uncertainty for regulated institutions and weakens the predictability of the supervisory process.

In practice, the lack of definitional clarity has allowed practices to be labeled unsafe or unsound even when their connection to financial condition is remote or speculative. Procedural deficiencies, documentation gaps, and governance preferences have at times been elevated to the level of prudential violations despite posing no meaningful threat to capital, liquidity, or earnings. Such an approach dilutes the gravity of safety-and-soundness findings and diverts attention from genuine risks.

The proposed rule's effort to define unsafe or unsound practices represents an important step toward restoring discipline to this area of supervision. By requiring that a practice be both imprudent and likely to cause material financial harm or risk to the Deposit Insurance Fund, the proposal reasserts the principle that enforcement authority must be tied to concrete financial consequences rather than abstract concerns.

Materiality is a critical component of this framework. Not every risk, deficiency, or unfavorable outcome warrants supervisory intervention. Prudential regulation depends on prioritization, distinguishing between issues that are consequential to an institution's financial condition and those that are incidental. A materiality threshold ensures that supervisory resources are directed toward matters that genuinely threaten safety and soundness.

Equally important is the proposal's emphasis on likelihood rather than mere possibility. Banking inherently involves risk-taking, and many practices carry some theoretical risk under extreme or unforeseeable conditions. Treating speculative or highly attenuated risks as unsafe or unsound invites excessive intervention and undermines the role of management judgment. The proposed standard appropriately requires a reasonable expectation of harm.

By anchoring unsafe or unsound practices to material financial risk, the proposal also reinforces the separation between prudential supervision and policy regulation. Banking regulators are not tasked with evaluating the social desirability of lawful economic activity, nor with advancing policy objectives unrelated to financial stability. A clear definition helps prevent the use of safety-and-soundness authority as a substitute for legislative action.

The absence of such boundaries has contributed to the expansion of reputational and ideological considerations within supervision. When non-financial concerns are framed as prudential risks, they can be enforced without the transparency or accountability associated with formal rulemaking. Defining unsafe or unsound practices limits the ability to repackage these concerns as financial threats.

This definitional discipline also protects the integrity of enforcement actions. When unsafe-or-unsound findings are reserved for conduct that genuinely threatens financial condition, they carry greater credibility and legitimacy. Overuse of the label for minor or speculative issues risks desensitizing institutions and diminishing respect for supervisory authority.

The proposal further recognizes that supervisory intervention must be proportionate and tailored. Materiality is not a static concept; it depends on an institution's size, complexity, and risk profile. A practice that poses a material threat to a large, complex institution may be immaterial for a smaller community bank. Embedding this principle helps avoid one-size-fits-all supervision.

Reasserting statutory limits is particularly important given the breadth of consequences associated with unsafe-or-unsound determinations. Such findings can trigger enforcement actions, civil penalties, management removals, and ratings downgrades. The gravity of these consequences underscores the need for clear, objective standards governing their use.

A disciplined definition also enhances due process. When institutions understand the criteria that will be applied, they are better positioned to assess risk, allocate compliance resources, and engage constructively with supervisors. Predictability is essential to a stable regulatory environment.

The proposal's approach aligns with the original purpose of safety-and-soundness authority: protecting depositors and the financial system from material harm. By refocusing supervision on tangible financial risks, it helps ensure that regulatory power is exercised consistently with congressional intent.

Ultimately, re-anchoring the concept of unsafe or unsound practices is essential to restoring confidence in the banking regulatory framework. Without clear limits, supervisory discretion can expand incrementally, reshaping the financial system through informal pressure rather than democratic processes. The proposed definition is therefore not merely a technical adjustment, but a necessary reaffirmation of the rule of law in banking supervision.

Section IV: Matters Requiring Attention and the Risks of Informal Rulemaking Through Supervision

Matters Requiring Attention have become one of the most consequential tools in the modern supervisory framework, despite their ostensibly informal status. While MRAs are described as supervisory communications rather than enforcement actions, their practical effect on regulated institutions is often indistinguishable from binding regulatory mandates. This disconnect between form and function has contributed to regulatory overreach and undermined the transparency and accountability of bank supervision.

In theory, MRAs are intended to draw management and board attention to deficiencies that warrant prompt remediation. In practice, however, MRAs frequently dictate specific corrective actions, impose timelines, and condition supervisory outcomes on compliance. Institutions understand that failure to resolve an MRA can lead to ratings downgrades, heightened scrutiny, and eventual enforcement escalation, regardless of whether the underlying issue involves material financial risk.

The expansion of MRAs beyond core safety-and-soundness concerns has blurred the line between supervision and regulation. Examiners have increasingly used MRAs to address procedural, governance, and documentation issues that do not clearly threaten an institution's financial condition. When such matters are elevated to supervisory imperatives, they function as de facto rules imposed without notice-and-comment procedures.

This dynamic is especially problematic because MRAs lack the procedural safeguards associated with formal enforcement actions. Institutions generally have limited ability to challenge the substance of an MRA, and supervisory determinations are not subject to meaningful judicial review. The result is a system in which significant regulatory obligations can be imposed without clear statutory authority or due process.

The informal nature of MRAs also obscures accountability. Because MRAs are often developed through examiner judgment and internal supervisory guidance, it can be difficult to determine whether a particular requirement reflects agency policy, examiner preference, or evolving supervisory norms. This opacity undermines consistency across institutions and examination cycles.

Over time, the cumulative effect of expansive MRA usage has been to shift regulatory decision-making from public rulemaking to private supervision. Policies that would traditionally require formal adoption have instead been implemented through supervisory expectations enforced on an institution-by-institution basis. This approach fragments the regulatory landscape and disadvantages institutions that lack the resources to navigate supervisory ambiguity.

The risks of this approach are compounded when MRAs are tied to non-financial considerations. When reputational, social, or ideological concerns are embedded in supervisory communications, MRAs become tools for indirect policy enforcement. Institutions respond by altering behavior to align with perceived regulatory preferences rather than objective risk assessments.

The proposal's effort to constrain the issuance of MRAs to circumstances involving material financial harm or actual legal violations is therefore a critical reform. By limiting MRAs to clearly defined categories of concern, the agencies seek to restore their intended role as focused supervisory tools rather than broad instruments of control.

Requiring a demonstrable connection between an MRA and material financial risk reinforces the primacy of safety and soundness. It ensures that supervisory intervention is justified by tangible threats to capital, liquidity, earnings, or stability, rather than by speculative or subjective considerations. This alignment promotes more effective risk management and supervision.

The proposal also appropriately distinguishes between binding supervisory actions and non-binding supervisory observations. Examiners possess valuable expertise and should be able to share insights and recommendations with institutions. However, those recommendations should not carry implicit mandates or serve as a basis for adverse supervisory consequences if they are not adopted.

Clarifying this distinction protects managerial discretion and preserves the role of bank boards and management in making business judgments. It also prevents the escalation of examiner suggestions into enforcement-like obligations absent a clear showing of material risk or legal violation.

Constraining MRAs further enhances regulatory predictability. When institutions understand the criteria for MRA issuance, they can better anticipate supervisory expectations and allocate compliance resources accordingly. Predictability reduces incentives for overcompliance and defensive debanking behavior.

The proposal's emphasis on closing MRAs once remediation is complete is equally important. Prolonged retention of MRAs after underlying issues have been addressed perpetuates regulatory uncertainty and diverts attention from current risks. Timely closure reinforces the credibility of the supervisory process.

Reforming the use of MRAs is essential to preventing informal rulemaking through supervision. Without clear limits, supervisory tools can be used to impose policy preferences incrementally and without accountability. The proposal represents an important step toward reestablishing appropriate boundaries between supervision and regulation.

By anchoring MRAs to material financial risk and actual legal violations, the agencies can preserve the utility of supervisory communications while safeguarding against overreach. Such discipline is necessary to maintain the legitimacy of bank supervision and to ensure that regulatory power is exercised in a manner consistent with statutory authority and the rule of law.

Section V: Recommendations to Restore Discipline, Transparency, and Statutory Fidelity in Bank Supervision

The proposed rule represents a meaningful opportunity to correct long-standing distortions in the supervisory framework and to restore confidence that banking regulation is being administered in a principled, lawful, and economically grounded manner. To ensure that the final rule achieves these objectives in practice, CRF offers the following recommendations. Each is designed to reinforce the proposal's core emphasis on material financial risk, prevent informal policymaking through supervision, and safeguard against the reemergence of debanking and other unintended consequences.

First, the agencies should expressly codify that reputational, ideological, or political considerations alone cannot justify supervisory or enforcement action: The final rule should make clear that reputational risk, standing alone, does not constitute a prudential risk and may not serve as an independent basis for findings of unsafe or unsound practices, issuance of MRAs, ratings downgrades, or enforcement escalation. Without such clarity, reputational concerns may continue to function as a proxy for subjective or ideological judgments, undermining the rule's core purpose.

Explicitly excluding reputational or ideological considerations would provide a critical safeguard against supervisory overreach. It would ensure that prudential regulation remains focused on protecting financial stability rather than shaping lawful economic behavior. Clear language on this point would also reduce uncertainty for institutions and help prevent the reintroduction of Operation Choke Point–style pressures under new labels.

Second, the agencies should require a documented and demonstrable nexus between any unsafe-or-unsound finding and material financial harm: To preserve the integrity of safety-and-soundness authority, the final rule should require supervisors to clearly articulate how the identified practice threatens capital, liquidity, earnings, asset quality, or sensitivity to market risk, or poses a material risk to the Deposit Insurance Fund. Conclusory assertions or speculative chains of causation should be insufficient.

Requiring this nexus would reinforce analytical rigor and promote consistency across supervisory teams. It would also improve accountability by ensuring that adverse findings can be evaluated against objective financial criteria, rather than resting on subjective impressions or evolving supervisory norms.

Third, MRAs should be strictly limited to matters involving material financial risk or actual violations of banking law: The final rule should affirm that MRAs are not appropriate vehicles for addressing procedural preferences, best-practice recommendations, or speculative future risks that lack a reasonable expectation of material harm. This limitation is essential to preventing MRAs from functioning as de facto rulemaking tools.

By narrowing the scope of MRAs, the agencies can restore their intended role as targeted supervisory communications rather than broad instruments of control. This reform would reduce incentives for overcompliance, free institutional resources to focus on genuine risks, and enhance the legitimacy of supervisory actions.

Fourth, the agencies should prohibit supervisory escalation based solely on an institution's decision not to adopt examiner suggestions: Non-binding supervisory observations and recommendations play a valuable role in information-sharing, but they must remain truly optional. The final rule should make explicit that an institution's refusal to adopt examiner suggestions, absent material financial risk or legal violation, cannot serve as the basis for MRAs, ratings downgrades, or enforcement actions.

This clarification would preserve the proper balance between supervisory insight and managerial discretion. It would also prevent examiner preferences from hardening into enforceable mandates through repetition or implicit pressure.

Fifth, the agencies should establish clear and timely standards for MRA closure once remediation is complete: Prolonged retention of MRAs after underlying issues have been addressed perpetuates supervisory leverage and distorts institutional incentives. The final rule should require that MRAs be closed promptly upon verification that corrective actions have been implemented and are effective.

Clear closure standards would enhance predictability and fairness in supervision. They would also reduce the risk that MRAs are used to exert ongoing influence over institutions long after the original concern has been resolved.

Sixth, supervisory ratings downgrades should be explicitly tied to qualifying MRAs or formal enforcement actions: Because ratings downgrades carry significant regulatory and commercial consequences, they should not be based on informal concerns or minor deficiencies. The final rule should reaffirm that a less-than-satisfactory composite rating is appropriate only where there is a qualifying MRA or enforcement action grounded in material financial risk or actual legal violation.

This linkage would reinforce proportionality in supervision and ensure that ratings accurately reflect institutional condition rather than supervisory preference. It would also enhance transparency and consistency across institutions.

Seventh, the agencies should strengthen internal examiner discipline and consistency to prevent circumvention of the final rule: Even well-crafted rules can be undermined through inconsistent application or relabeling of disfavored considerations. The agencies should commit to internal training, guidance, and oversight mechanisms that ensure examiners apply the final rule faithfully and uniformly.

Such measures are essential to preventing supervisory discretion from migrating to adjacent concepts or informal practices. Consistent internal discipline will be critical to sustaining the reforms contemplated by the proposal and maintaining confidence in the supervisory process.

CRF supports the agencies' effort to re-anchor bank supervision in material financial risk, statutory authority, and objective standards. The recommendations outlined above are intended to strengthen the final rule, close avenues for informal policymaking, and ensure that prudential regulation serves its intended purpose. Properly implemented, these reforms can help restore access to financial services, reduce regulatory uncertainty, and reaffirm that banking supervision operates within the rule of law rather than through discretionary or ideological pressure.

Conclusion

The joint proposal issued by the Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency represents a significant and overdue effort to restore clarity, discipline, and statutory fidelity to the bank supervisory framework. By seeking to define “unsafe or unsound practices” and to constrain the use of Matters Requiring Attention, the agencies acknowledge that unchecked supervisory discretion has produced distortions that undermine both financial access and regulatory legitimacy.

As these comments have explained, the rise of debanking is not the result of neutral market forces, but of regulatory incentives that encourage institutions to prioritize supervisory comfort over individualized risk assessment. Vague concepts, informal enforcement mechanisms, and reputational or ideological considerations have combined to restrict access to financial services for lawful individuals and businesses without demonstrable safety-and-soundness justification. Left unaddressed, these dynamics will continue to erode trust in the regulated banking system.

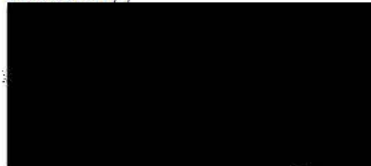
The historical experience of Operation Choke Point underscores the dangers of allowing prudential supervision to become a vehicle for indirect policy enforcement. That episode demonstrated how informal pressure, when coupled with ill-defined risk categories, can achieve outcomes that Congress neither authorized nor debated. The present proposal offers an opportunity to ensure that such practices do not reemerge under different labels or through subtler mechanisms.

Re-anchoring supervisory authority to material financial risk is essential to preserving the integrity of safety-and-soundness regulation. When adverse supervisory actions are tied to objective threats to capital, liquidity, earnings, or the Deposit Insurance Fund, regulators can intervene decisively where needed while avoiding intrusion into lawful economic activity. Clear standards promote better supervision, stronger institutions, and more efficient allocation of regulatory resources.

For these reforms to succeed, however, the final rule must be implemented with rigor and restraint. Definitions must be enforced as limits, not treated as aspirational guidance. Matters Requiring Attention must remain targeted supervisory tools rather than informal mandates, and non-financial considerations must not be repackaged as prudential risks. Without such discipline, the same incentives that produced debanking and supervisory overreach will persist.

CRF therefore urges the agencies to adopt the proposal with the additional safeguards outlined in these comments. Doing so will help restore predictability, transparency, and fairness to the supervisory process, expand access to financial services, and reaffirm that banking regulation is grounded in law, economics, and material risk—not discretion, ideology, or regulatory fear.

Sincerely,



Andrew M. Langer
Director
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