December 22, 2025

***Via comments@FDIC.gov* and *Federal eRulemaking Portal***

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**RE:** OCC/FDIC Proposed Rule, Prohibition on Use of Reputation Risk by Regulators, Docket ID OCC-2025-0142, RIN 1557-AF34, RIN 3064-AG12; NCUA Proposed Rule, Prohibition on the Use of Reputation Risk by NCUA, Docket ID NCUA-2025-0972, RIN 3133-AF67

Dear Chairman Hill, Comptroller Gould, and Secretary Conyers-Ausbrooks:

We write to offer comment on two related proposed rules that would prohibit the use of reputation risk by regulators at the Office of the Comptroller of the Currency (OCC) and Federal Deposit Insurance Corporation (FDIC)[1] and by the National Credit Union Administration (NCUA),[2] respectively. Rachel Morrison is a Fellow at the Ethics and Public Policy Center (EPPC), director of EPPC's Administrative State Accountability Project (ASAP), and a former attorney with the Equal Employment Opportunity Commission. Samuel Lucas is a legal associate with ASAP.

Because the rules are related and most of our comments are relevant to both, we address

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[1] OCC/FDIC, Prohibition on Use of Reputation Risk by Regulators, 90 Fed. Reg. 48825 (Oct. 30, 2025), https://www.federalregister.gov/d/2025-19715.

[2] NCUA, Prohibition on Use of Reputation Risk by NCUA, 90 Fed. Reg. 48409 (Oct. 21, 2025), https://www.federalregister.gov/d/2025-19623.

both rules in a single comment.

## I. The Proposed Rules Would Prohibit Use of Reputation Risk by the Agencies

These rules address how the OCC, FDIC, and NCUA (collectively, "the agencies") supervise, examine, and regulate financial institutions. Specifically, the agencies propose to "codify the elimination of reputation risk from their supervisory programs."[3] "Reputation risk" is defined as " any risk, regardless of how the risk is labeled by the institution or [the agencies], that an action or activity, or combination of actions or activities, or lack of actions or activities, of an institution could negatively impact public perception of the institution for reasons unrelated to the current or future financial condition of the institution."[4]

These rules would prohibit the agencies from "criticizing or taking adverse action against an institution" on the basis of reputation risk and from "requiring, instructing, or encouraging an institution to close an account, to refrain from providing an account, product, or service, or to modify or terminate any product or service on the basis of a person or entity's political, social, cultural, or religious views or beliefs, constitutionally protected speech, or solely on the basis of politically disfavored but lawful business activities perceived to present reputation risk."[5]

These changes are proposed in response to President Trump's August 7, 2025, executive order on "Guaranteeing Fair Banking for All Americans," which directs the agencies to "remove the use of reputation risk or equivalent concepts that could result in politicized or unlawful debanking."[6] The order explains that "[b]ank regulators have used supervisory scrutiny and other influence over regulated banks to direct or otherwise encourage politicized or unlawful debanking activities."[7] As a result certain individuals and business have been subject to debanking based on "political affiliations, religious beliefs or lawful business activities."[8]

The order states that "no American should be denied access to financial services because of their constitutionally or statutorily protected beliefs, affiliations, or political views, and to ensure that politicized or unlawful debanking is not used as a tool to inhibit such beliefs, affiliations, or political views."[9] Instead, banking decisions should be made based on "individualized, objective, and risk-based analyses."[10] **We agree. And for the reasons below we support the prohibition on use of reputation risk by the agencies.**

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[3] 90 Fed. Reg. at 48825; *see also* 90 Fed. Reg. at 48409.

[4] 90 Fed. Reg. at 48414; 90 Fed. Reg. at 48828. The OCC and FDIC regulations would define "reputation risk" as "any risk, regardless of how the risk is labeled by the institution or regulators, that an action or activity, or combination of actions or activities, or lack of actions or activities, of an institution could negatively impact public perception of the institution for reasons <u>not clearly and directly related to the financial condition of the institution</u>." 90 Fed. Reg. at 48834.

[5] 90 Fed. Reg. at 48414; 90 Fed. Reg. at 48825.

[6] Exec. Order 14331, Guaranteeing Banking for All Americans, 90 Fed. Reg. 38925 (Aug. 7, 2025), https://www.federalregister.gov/d/2025-15341.

[7] *Id.* (discussing "Operation Chokepoint").

[8] *Id.*

[9] *Id.*

[10] *Id.*

## II. There Are Many Reasons to Prohibit Use of Reputation Risk

There are many reasons why the agencies should prohibit use of reputation risk.

**First,** reputation risk does not work. We agree with the agencies that using reputation risk as a basis for supervisory criticisms "can lead to inconsistency" and "increases subjectivity" "without adding material value from a safety and soundness perspective."[11] The agencies are directed by Congress to assess the safety and soundness of financial institutions[12]; Congress did not direct the agencies to assess reputation risk.

As the OCC and FDIC admit, in their experience "the use of reputation risk in the supervisory process does not increase the safety and soundness of supervised institutions because supervisors have little ability to predict *ex ante* whether or how certain activities or customer relationships present reputation risks that could threaten the safety and soundness of an institution."[13] Similarly, the NCUA "has not seen evidence of reputation risk being a primary driver of unsafe or unsound conditions, or posing a material risk to the National Credit Union Share Insurance Fund (Share Insurance Fund)."[14] In short, use of reputation risk "has not resulted in consistent or predictable assessments of material financial risk."[15] There is zero clear evidence that focusing on institutions' reputations have protected them from losses or improved their performances.[16]

Moreover, reputation risk relies on agency supervisors' accurate predictions of the future. As the OCC and FDIC explain, agencies' supervisors "have not been able to accurately predict the public's reaction to business decisions made by institutions."[17] A financial institution's relationship with certain individuals and organizations can be viewed both favorably or disfavorably by different stakeholders. When agencies use reputation risk, they put their thumb on the scales of which stakeholders' views should take precedence and be prioritized. This is inappropriate.

**Second,** reputation risk is subject to bias and abuse. We agree with the OCC and FDIC that "supervising for reputation risk as a standalone risk adds substantial subjectivity to bank supervision and can be abused."[18] Reputation risk requires an assessment of public opinion and evaluation of how that public opinion could affect an institution. This is inherently subjective and has "proven nearly impossible to assess or quantify with accuracy."[19] As the NCUA explains, because reputation risk "is ambiguous and lacks measurable criteria," it leaves too much "open to interpretation" and "could reflect individual perspectives rather than data-driven conclusions. "[20]

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[11] 90 Fed. Reg. at 48409; 90 Fed. Reg. at 48826.

[12] *See* 12 U.S.C. § 1; 12 U.S.C. § 1811 et seq.; 12 U.S.C. § 1786.

[13] 90 Fed. Reg. at 48826.

[14] 90 Fed. Reg. at 48410.

[15] 90 Fed. Reg. at 48826.

[16] *See id.*

[17] *Id.*

[18] *Id.*

[19] *Id.*; *see also* Julie Hill, *Regulating Bank Reputation Risk*, 54 Ga. L. Rev. 523, 584-91 (2020).

[20] 90 Fed. Reg. at 48409.

Reputation risk by its nature "introduces the potential for political or other biases into the supervisory process."[21]

Examining for reputation risk leaves the door open for agency examiners to—implicitly or explicitly, unintentionally or intentionally—encourage institutions to restrict access to financial services "on the basis of examiners' personal views of a group's or individual's political, social, cultural, or religious views or beliefs, constitutionally protected speech, or politically disfavored but lawful business activities."[22] This can result in "unfair treatment of different groups and impermissible restrictions on a group's or individual's ability to access financial services."[23] This concern is not hypothetical.[24]

In effect, reputation risk empowers unelected agency examiners to pick winners and losers based on arbitrary and subjective whims, not concrete, objective criteria.

**Third,** reputation risk has many costs. In addition to those already identified, it "can lead to confusion and is time-consuming to measure" for both the agencies and the financial institutions.[25] Analyzing reputation risk diverts resources away from core financial and operational risks.

It can also open the door to an "economic heckler's veto" by any economically powerful entity, such as a customer or investor, which has economic leverage over an institution and perceives its beliefs, speech, or activity as reputationally disfavorable. In practice, it gives outsized weight to those who already have economic or financial power.[26]

Reputation risk's inconsistency and subjectivity can also have a negative impact on financial institutions and undermine stability of the banking industry.[27]

**Fourth,** reputation risk can be a pretext for government targeting of disfavored political views, religious beliefs and lawful business activities. By focusing on "reputation" instead of illegal behavior, agencies can encourage and coerce institutions to restrict individuals' and businesses' access to financial services on the basis of protected political views, religious beliefs, or lawful activities. This is wrong.

**Fifth,** eliminating reputation risk provides many benefits. Allowing agencies to focus on traditional, quantifiable risk—like credit risk, market risk, liquidity risk, interest rate risk, and

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[21] *Id.*

[22] *Id.*; 90 Fed. Reg. at 48827.

[23] 90 Fed. Reg. at 48827.

[24] *See, e.g.*, OIG, FDIC, Report No. OIG-16-001, Report of Inquiry into the FDIC's Supervisory Approach to Refund Anticipation Loans and the Involvement of FDIC Leadership and Personnel (Feb. 2016), https://www.fdicoig.gov/sites/default/files/reports/2022-08/OIG-16-001_0.pdf; OIG, FDIC, Report No. AUD-15-008, The FDICc's Role In Operation Choke Point and Supervisory Approach to Institutions that Conducted Business with Merchants Associated with High-Risk Activities (Sept. 2015), https://www.fdicoig.gov/sites/default/files/reports/2022-08/15-008AUD.pdf.

[25] 90 Fed. Reg. at 48409.

[26] *See generally* Br. of Financial & Business Law Scholars as Amici Curiae in Support of Pet. at 27-28 (filed Jan. 10, 2024), *Nat'l Rifle Ass'n v. Vullo*, 602 U.S. 175 (2024) (discussing how even a neutral application of reputation risk could lead to an "economic heckler's veto").

[27] *See* Hill, *supra* note 19, at 592-97.

operational risk—will provide more clarity, consistency, objectivity, and predictability. It will also minimize the potential for bias, abuse, and coercion by the agencies. It will help prevent economic distortion to the financial market and U.S. economy by placing a thumb on the scale against certain individuals and organizations.

Eliminating reputation risk also helps protect free speech and religious liberty by eliminating agencies' consideration of First Amendment protected speech and actions—whether political, social, cultural, or religious.

**Sixth**, the elimination of reputation risk does not prohibit consideration of an institution's safety and soundness. The agencies are still able to consider traditional risk channels, such as credit risk, market risk, operational risk, liquidly risk, and interest rate risk. These risks are more concrete and easier to measure, allowing agencies to more objectively assess an institution's safety, soundness, and financial condition.

**Seventh**, nothing in these regulations prohibits a financial institution from making its own determinations about reputation risk and determining whether to end any business relationships (not otherwise prohibited by law). Financial institutions are better positioned than the agencies to make these assessments.

**Finally,** prohibiting the use of reputation risk aligns with the following executive orders issued by President Trump, whose efforts have already led to voluntary reform by major U.S. banks.[28]

- EO 14331, "Guaranteeing Fair Banking for All Americans," directs agencies to "remove the use of reputation risk or equivalent concepts that could result in politicized or unlawful debanking."[29]

- EO 14219, "Ensuring Lawful Governance and Implementing the President's 'DOGE' Deregulatory Initiative," directs agencies to rescind regulations including those that are "not authorized by clear statutory authority," "impose significant costs upon private parties that are not outweighed by public benefits," and "impose undue burdens on small business and impede private enterprise and entrepreneurship."[30] Reputation risk is not clearly authorized by Congress, imposes significant costs and burdens upon financial institutions and others, and is not outweighed by public benefit.

- EO 14190 on "Eradicating Anti-Christian Bias" seeks to "protect the religious freedoms of Americans and end the anti-Christian weaponization of government."[31] To the extent that reputation risk has been used as a pretext by the agencies to target Christians or disfavored religious beliefs, eliminating reputation risk will help prevent government abuses against Christians and other religious groups.

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[28] *See* Press Release, *1792 Exchange Commends Major Banks for Adding Protections for Religious and Political Beliefs, 1792 Exchange* (Sept. 22, 2025), https://1792exchange.com/press-releases/1792-exchange-commends-major-banks-for-adding-protections-for-religious-and-political-beliefs/.

[29] 90 Fed. Reg. 38925 (Aug. 7, 2025), https://www.federalregister.gov/d/2025-15341.

[30] 90 Fed. Reg. 10583 (Feb. 19, 2025), https://www.federalregister.gov/d/2025-03138.

[31] 90 Fed. Reg. 9365 (Feb. 6, 2025), https://www.federalregister.gov/d/2025-02611.

- EO 14173, "Ending Illegal Discrimination and Restoring Merit-Based Opportunity," seeks to end illegal preferences and discrimination, including under "the guise of so-called 'diversity, equity, and inclusion' (DEI)."[32] Eliminating reputation risk helps ensure that banking decisions are based on "individualized, objective, and risk-based analyses," not disfavored lawful religious beliefs, affiliations, or political views.

## III. Suggestions for Improvements

We are grateful for the opportunity to provide comment on the agencies' welcome proposals. We provide the following suggestions for improvements for the agencies' consideration.

Currently, proposed regulations 12 CFR § 4.91(c), 12 CFR § 302.100(c), and 12 CFR § 791.22(c) prohibit actions based on reputation risk "on the basis of the person's or entity's political, social, cultural, or religious views or beliefs, constitutionally protected speech, or … politically disfavored but lawful business activities."[33] While there is a reference to a person's or entity's political, social, cultural, or religious views or beliefs, there is no reference to lawful activities based on those views or beliefs. As is, it is unclear whether the reference to views and beliefs would extend to actions based on those views or beliefs. As such, **the agencies should clarify that the prohibition on reputation risk extends to consideration of "lawful activities based on political, social, religious, and cultural views or beliefs."**

This is consistent with the reference to "lawful business activities" and proposed regulations 12 CFR § 4.91(f), 12 CFR § 302.100(f), and 12 CFR § 791.22(g) related to supervisor disagreement or disfavor, which explicitly mention "lawful political, social, cultural, or religious activities."[34]

Some may argue that political, social, cultural, or religious activities are not the same as activities based on political, social, cultural, or religious views and beliefs. For instance, a religious organization firing an employee who does not align with its religious mission is an action based on religious views, but some may not consider it a religious activity. To avoid any such issues, **we propose modifying this provision so that it covers "lawful activities based on political, social, cultural, or religious views or beliefs."**

The OCC and FDIC regulations 12 CFR § 4.91(c) and 12 CFR § 302.100(c) (but not the NCUA regulation 12 CFR § 791.22(c)) refer to actions taken "*solely on the basis* of the person's or entity's involvement in politically disfavored but lawful business activities."[35] **The OCC and FDI should delete the qualifier "solely on the basis."** Adding the qualifier opens the door for consideration of reputation risk when the action is taken *in part* (but not soley) on the basis of the person's or entity's involvement in politically disfavored but lawful business activities. As explained above, there is no need to consider reputation risk at all.

**The agencies should also prohibit adverse actions based on preferences or animus of *any* agency employee, not just supervisors.** Currently proposed regulations 12 CFR § 4.91(f), 12

[32] 90 Fed. Reg. 8633 (Jan. 21, 2025), https://www.federalregister.gov/d/2025-02097.

[33] 90 Fed. Reg. at 48833, 48836; 90 Fed. Reg. at 48414.

[34] 90 Fed. Reg. at 48834-35; 90 Fed. Reg. at 48414.

[35] 90 Fed. Reg. at 48833, 48836 (emphasis added). *Cf.* 90 Fed. Reg. at 48414.

CFR § 302.100(f), and 12 CFR § 791.22(g) only discuss disagreement or disfavor by agency supervisors.[36] This is a welcome and important step, but it is not sufficient to prohibit the agencies from taking adverse action based on the preferences or animus of agency employees other than the supervisor. Indeed, senior agency officials have been known to pressure supervisors to punish or discourage financial institutions based on the senior official's disagreement or disfavor with the lawful activities of an individual or institution.[37]

Finally, **the agencies should eliminate the financial condition language from the definition of reputation risk.** As written, the financial condition language in proposed regulations 12 CFR § 4.91(g), 12 CFR § 302.100(g), and 12 CFR § 791.22(h) gives an exception to the prohibition against use of reputation risk. But as discussed above, reputation risk does not work and is subject to abuse even when related to the financial condition of an institution. Agencies are already able to consider the financial condition of an institution through other existing means, such as through operational risk, financial risk, and legal risk. These means are more effective than reputation risk.

To address these concerns and eliminate loopholes for consideration of reputation risk, we propose the following modifications to the proposed regulations:

**OCC:** Proposed 12 CFR § 4.91[38]

> (c) The OCC will not require, instruct, or encourage an institution, or any employee of an institution, to terminate a contract with, discontinue doing business with, sign a contract with, initiate doing business with, modify the terms under which it will do business with a person or entity, or take any action or refrain from taking any action ~~on the basis of~~ based on reputation risk related to the person's or entity's political, social, cultural, or religious views or beliefs, lawful activities based on political, social, cultural, or religious views or beliefs, constitutionally protected speech, or ~~solely on the basis of~~ the person's or entity's involvement in politically disfavored but lawful business activities ~~perceived to present reputation risk~~.
>
> (f) The OCC will not take any supervisory action or other adverse action against an institution, a group of institutions, or the institution-affiliated parties of any institution that is designed to punish or discourage an individual or group from engaging in any lawful activities based on political, social, cultural, or religious views or beliefs ~~activities~~, constitutionally protected speech, or, for political reasons, lawful business activities that the supervisor or any other OCC employee disagrees with or disfavors.
>
> (g) *Reputation risk* means any risk, regardless of how the risk is labeled by the institution or regulators, that an action or activity, or combination of actions or activities, or lack of actions or activities, of an institution could negatively impact public perception of the institution ~~for reasons not clearly and directly related to the financial condition of the institution.~~

[36] 90 Fed. Reg. at 48834-35; 90 Fed. Reg. at 48414.

[37] *See, e.g.*, OIG, FDIC, Report No. OIG-16-001, Report of Inquiry into the FDIC's Supervisory Approach to Refund Anticipation Loans and the Involvement of FDIC Leadership and Personnel (Feb. 2016), https://www.fdicoig.gov/sites/default/files/reports/2022-08/OIG-16-001_0.pdf.

[38] 90 Fed. Reg. at 48834.

**FDIC:** Proposed 12 CFR § 302.100[39]

(c)The FDIC will not require, instruct, or encourage an institution, or any employee of an institution, to terminate a contract with, discontinue doing business with, sign a contract with, initiate doing business with, modify the terms under which it will do business with a person or entity, or take any action or refrain from taking any action ~~on the basis of~~ based on reputation risk related to the person's or entity's political, social, cultural, or religious views or beliefs, lawful activities based on political, social, cultural, or religious views or beliefs, constitutionally protected speech, or ~~solely on the basis of~~ the person's or entity's involvement in politically disfavored but lawful business activities ~~perceived to present reputation risk~~.

(f) The FDIC will not take any supervisory action or other adverse action against an institution, a group of institutions, or the institution-affiliated parties of any institution that is designed to punish or discourage an individual or group from engaging in any lawful activities based on political, social, cultural, or religious views or beliefs ~~activities~~, constitutionally protected speech, or, for political reasons, lawful business activities that the supervisor or any other FDIC employee disagrees with or disfavors.

(g) *Reputation risk* means any risk, regardless of how the risk is labeled by the institution or regulators, that an action or activity, or combination of actions or activities, or lack of actions or activities, of an institution could negatively impact public perception of the institution ~~for reasons not clearly and directly related to the financial condition of the institution~~.

**NCUA:** Proposed 12 CFR § 791.22[40]

(c) The NCUA will not require, instruct, or encourage an institution, or any employee of an institution, to terminate a contract with, discontinue doing business with, sign a contract with, initiate doing business with, modify the terms under which it will do business with a person or entity, or take any action or refrain from taking any action ~~on the basis of~~ based on reputation risk related to the person's or entity's political, social, cultural, or religious views or beliefs, lawful activities based on political, social, cultural, or religious views or beliefs, constitutionally protected speech, or ~~on the basis of~~ the person or entity's involvement in politically disfavored but lawful business activities ~~based on reputation risk~~.

(g) The NCUA will not take any supervisory action or other adverse action against an institution, a group of institutions, or the institution-affiliated parties of any institution that is designed to punish, discourage, or encourage an individual or group from engaging in any lawful activities based on political, social, cultural, or religious views or beliefs ~~activities~~ or lawful business activities, constitutionally protected speech, or, for political reasons, lawful business activities that the supervisor or any other NCUA employee disagrees with or disfavors.

(h)(5)[41] "Reputation risk" means any risk, regardless of how the risk is labeled by the institution or the NCUA, that an action or activity, or combination of actions or activities, or lack of actions or activities, of an institution could negatively impact public perception of the institution ~~for reasons unrelated to the current or future financial condition of the institution~~.

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[39] 90 Fed. Reg. at 48835.

[40] 90 Fed. Reg. at 48414.

[41] The proposed rule appears to inadvertently list "reputation risk" as § 791.22(4) instead of § 791.22(5); "Institution" is also listed as § 791.22(4). 90 Fed. Reg. at 48414.

## Conclusion

For the reasons above and in light of our suggestions for improvements, we urge the agencies to finalize the proposed rules and prohibit use of reputation risk by the agencies.

Sincerely,

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