December 29, 2025

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

Federal Deposit Insurance Corporation
Jennifer Jones, Deputy Executive Secretary
Attention: Comments – RIN 3064-AG12
550 17th Street NW
Washington, DC 20429

Re: Prohibition on Use of Reputation Risk by Regulators (Docket ID OCC-2025-0142; RIN 3064-AG12)

Dear Chairman Hill and Comptroller Gould,

The Free Speech Coalition ("FSC"), the nonpartisan trade association representing the legal adult industry with over thirty years of advocacy experience, submits this comment on the Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC) Notice of Proposed Rulemaking on the Prohibition on Use of Reputation Risk by Regulators (the "Proposed Rule"). The FSC commends the agencies for proposing to codify the elimination of reputation risk from their supervisory frameworks and strongly supports this reform.[1]

The Proposed Rule directly responds to years of advocacy and evidence-based testimony that the FSC and its members have brought to Congress and federal banking regulators, demonstrating that the misuse of reputation risk as a supervisory tool has unfairly debanked and continues to threaten the financial stability of Americans engaged in lawful business activities in the adult industry. This comment provides additional perspective grounded in the FSC's advocacy efforts since 2023, congressional submissions, and proprietary research documenting systematic banking discrimination against the adult industry.

---

[1] Office of the Comptroller of the Currency & Federal Deposit Insurance Corporation, Prohibition on Use of Reputation Risk by Regulators, Docket ID OCC-2025-0142, RIN 3064-AG12 (Oct. 7, 2025).

I. THE FSC'S ADVOCACY EFFORTS AND EVIDENCE OF DEBANKING

A. Comprehensive research documenting systemic banking discrimination

Since 2023, the FSC has undertaken a comprehensive evidence-gathering initiative to document and raise awareness of debanking practices targeting the adult industry. In 2023, the FSC surveyed more than 600 adult industry workers and businesses and released its report *Financial Discrimination and the Adult Industry* (the "Banking Discrimination Report").[2] The report found that nearly two out of three people who earn money in the adult industry have lost a bank account or financial tool due to their work, and nearly 40 percent reported an account closure within the past year.

The Banking Discrimination Report further notes that loss of basic banking services is the most common manifestation of financial discrimination and that this discrimination falls disproportionately on women and LGBTQ+ workers in the industry. Many respondents reported that they had no significant source of income other than their adult-industry work, meaning that sudden loss of banking access threatens their ability to secure housing, pay bills, and provide for their families. Even the FSC itself—a 501(c)(6) trade association—is cited in public materials as having struggled to maintain stable banking relationships because of stigma associated with the adult industry.

Collectively, these data show that more than two-thirds of those working in the adult industry, most of whom are individual creators and small businesses, have been victims of discriminatory policies and practices by financial institutions. FSC materials emphasize that millions of Americans now earn money through adult platforms and that debanking has had severe consequences for their ability to pay rent, make payroll, and meet basic obligations.

B. Direct congressional engagement and formal testimony

FSC has engaged directly with Congress through written statements, in-person meetings, and participation in hearings to explain the specific ways debanking harms lawful adult businesses and workers. FSC's 2023 Annual Report highlights that the organization "brought FSC members to Washington D.C. to put a human face on" financial discrimination and banking harms. FSC has met with dozens of bipartisan offices to explain how reputational concerns, rather than material financial risks, drive account closures and denials.

In February 2024, FSC submitted a formal Statement for the Record to the House Committee on Financial Services in connection with the hearing "Oversight of the Financial Crimes

[2] Free Speech Coalition, Financial Discrimination and the Adult Industry Report (2023).

Enforcement Network (FinCEN) and the Office of Terrorism and Financial Intelligence (TFI)." That statement describes the widespread loss of bank accounts by adult workers and businesses, details how misinterpretation of FinCEN guidance contributes to debanking, and urges Congress to direct regulators to clarify that lawful adult-oriented work is not presumptively "high risk."[3]

In 2025, FSC amplified these concerns as the Senate Committee on Banking, Housing, and Urban Affairs held a hearing on "Investigating the Real Impacts of Debanking in America," at which lawmakers and witnesses discussed the OCC's debanking review and harms experienced by disfavored but lawful industries, including adult entertainment. FSC's advocacy ensured that adult industry debanking was included in congressional scrutiny of reputational risk driven account closures.

C. Regulatory engagement and issue framing

FSC's advocacy has consistently focused on demonstrating that banking discrimination against the adult industry arises from reputational risk, not material financial risk. In its February 2024 House Financial Services Committee statement, FSC explains that banks are applying FinCEN guidance in an overbroad manner, categorizing all adult businesses and workers as inherently "high risk" and closing accounts absent individualized risk assessments. FSC's materials emphasize that FinCEN itself has clarified that the Bank Secrecy Act (BSA) does not require termination of a customer relationship upon filing a Suspicious Activity Report and that customers should not be treated as uniformly high-risk solely based on their industry.

FSC has framed these issues directly in discussions with federal banking agencies and lawmakers, underscoring that banks often cite regulatory expectations and reputational concerns, rather than concrete credit, liquidity, or operational risk, as reasons for debanking adult industry customers. This is precisely the dynamic the Proposed Rule seeks to address by prohibiting the use of reputation risk as a supervisory tool.

II. THE PROPOSED RULE'S ALIGNMENT WITH FSC ADVOCACY PRIORITIES

A. Addressing reputation risk as a pretext for discrimination

The FSC strongly supports the Proposed Rule's comprehensive prohibition on using "reputation risk" as a basis for supervisory criticism or adverse actions. The Proposed Rule defines reputation risk as the risk that an action or activity could negatively impact public perception of an institution "for reasons unrelated to the current or future financial condition of the institution,"

---

[3] Free Speech Coalition, Statement for the Record, House Committee on Financial Services, (Feb. 14, 2024).

and it concludes that this risk is "not measurable or predictable" and not effective in identifying safety and soundness concerns.

The Proposed Rule would prohibit the agencies from criticizing or taking adverse action against an institution based on a person or entity's political, social, cultural, or religious views or beliefs, constitutionally protected speech, or solely because the person is engaged in politically disfavored but lawful business activities perceived to present reputation risk. This language squarely covers lawful adult industry activities that have historically been deemed "reputationally risky" despite the absence of evidence of increased financial risk, directly advancing the concerns documented in FSC's Banking Discrimination Report.

B. Eliminating supervisory discretion that enables discrimination

FSC has repeatedly noted that the concept of reputation risk invites subjective judgments and bias, allowing supervisors to pressure banks to exit relationships with stigmatized but lawful customers. The Proposed Rule responds by clearly defining "adverse action" to include negative supervisory feedback, downgrades of ratings, enforcement actions, denial or conditioning of applications, and other heightened requirements that are intended to force a bank to address perceived reputation risk.

By explicitly prohibiting agency staff from formally or informally requiring, instructing, or encouraging banks to terminate or avoid relationships on reputation grounds, the Proposed Rule meaningfully limits the supervisory discretion that has been cited by banks to justify debanking adult industry customers. This structure provides the clarity and predictability FSC has long sought in its congressional and regulatory advocacy.

C. Alignment with Executive Order 14331

Executive Order 14331, *Guaranteeing Fair Banking for All Americans*, directs federal banking regulators to ensure fair access to banking and warns that the use of reputation risk can enable politicized or unlawful debanking. The Proposed Rule explicitly invokes Executive Order 14331 and notes that codifying the elimination of reputation risk from supervisory frameworks is necessary to prevent "regulatory overreach and abuse."[4]

OCC's broader implementation of the Executive Order includes its review of "debanking" practices at large banks, which identified adult entertainment as among the sectors affected by restrictions or denials of service, often tied to reputational concerns.[5] FSC's advocacy has been central in ensuring that adult industry experiences are part of that national conversation, and the Proposed Rule represents a concrete regulatory response to those concerns.

[4] Executive Order No. 14331, Guaranteeing Fair Banking for All Americans, (Aug. 7, 2025).

[5] Office of the Comptroller of the Currency, OCC Releases Preliminary Findings from Its Review of Large Banks' Debanking Activities (Dec. 9, 2025).

III. SPECIFIC RECOMMENDATIONS FOR STRENGTHENING THE PROPOSED RULE

A. Ensure clear application to FinCEN guidance

FSC recommends that the agencies include clarifying language regarding the interaction between the Proposed Rule and existing FinCEN guidance on BSA/AML risk management. FSC's 2024 Statement for the Record explains that banks frequently cite FinCEN advisories on human trafficking and related "red flags" as justification for blanket avoidance of the adult industry, even when there is no specific evidence of illicit conduct by an individual customer.

FinCEN has previously issued statements emphasizing a risk‑based approach and cautioned that entire categories of customers should not be treated as uniformly high‑risk solely because of their industry. To ensure the Proposed Rule is not undermined, OCC and FDIC should clarify in accompanying guidance that lawful adult industry status, standing alone, does not constitute a BSA/AML red flag and that supervisory criticism may not be based on generalized, reputation‑driven assumptions about trafficking or exploitation.

B. Address payment‑processor and third‑party discrimination

FSC's public materials and advocacy emphasize that discrimination often occurs not only at depository institutions but also at merchant banks, payment processors, card networks, and fintech platforms, which may deny or terminate service to adult industry customers due to perceived reputational concerns. While the Proposed Rule applies to OCC‑ and FDIC‑supervised institutions, the agencies retain authority to address risks arising from third‑party relationships and bank‑fintech partnerships.

In implementing the Proposed Rule, the agencies should make clear that banks may not rely on third‑party policies that themselves are grounded in prohibited reputation‑risk rationales when deciding whether to provide or terminate services. This would help prevent circumvention of the rule through delegation of reputational decisions to payment processors or other intermediaries.

C. Establish remedial and reinstatement procedures

Many FSC members report that once an account is closed based on reputational concerns, they struggle to find any replacement banking relationship, even after they provide documentation of lawful operations and compliance. To ensure that the Proposed Rule produces meaningful relief, FSC recommends that OCC and FDIC encourage institutions to identify customers whose accounts were closed or services denied solely on reputation grounds and to offer those customers a path to reinstatement, subject to standard, risk‑based underwriting.

The agencies might also consider incorporating expectations, in guidance or supervisory manuals, that where an examiner identifies past actions that would have been prohibited under the rule, banks should remediate those harms where feasible, including by notifying affected customers of their ability to reapply.

D. Provide transparency and accountability mechanisms

FSC's ability to document patterns of debanking has depended on collecting narratives and survey data from affected workers and businesses. To support robust enforcement of the Proposed Rule, the agencies should establish or publicize complaint channels enabling individuals and businesses to report suspected reputation risk-based denials or closures at supervised institutions.

Public facing complaint processes and periodic reporting on complaint trends would allow regulators, Congress, and advocacy organizations to monitor whether debanking of lawful, disfavored industries, including the adult industry, declines after implementation of the Proposed Rule, and to identify any institutions that persist in relying on impermissible rationales.

IV. THE MATERIAL IMPACT OF THE PROPOSED RULE

A. Economic and social benefits

The adult industry contributes substantially to the U.S. economy and supports millions of individual workers, performers, content creators, and small businesses in the United States. FSC's Banking Discrimination Report documents that loss of banking access disrupts the ability of these individuals and entities to maintain payroll, pay rent, manage taxes, save for retirement, and access credit and insurance.

Survey respondents described being forced into cash-only arrangements, losing access to payment platforms, and being unable to obtain basic checking or merchant accounts, which exacerbates vulnerability to theft and exploitation and undermines long-term financial stability. Restoring fair access to banking through the elimination of reputation risk-based supervision would allow adult industry workers and businesses to build credit histories, obtain loans, and participate more fully in the mainstream financial system, with attendant benefits for their families and communities.

B. Safer and more effective financial regulation

The OCC and FDIC note in the Proposed Rule that there is no evidence that using reputation risk as a supervisory category has improved safety and soundness or prevented losses. Instead, the agencies conclude that traditional risk categories such as credit, market, operational, and BSA/AML risk, are adequate to identify and address real threats to institutions and the financial system.

For the adult industry, banking access enhances, rather than undermines, law enforcement and regulatory objectives. FSC has publicly emphasized that keeping lawful adult work within the regulated financial system helps distinguish between legal and illegal activity and provides financial information that can aid in identifying human trafficking and other crimes. Driving lawful adult industry participants out of the banking system through reputational debanking frustrates these goals, whereas the Proposed Rule will align supervisory practices with both safety and soundness and desired public policy outcomes that protect the banking system from bad actors.

V. ADDRESSING CONCERNS ABOUT BANKING DISCRIMINATION

The agencies' own analysis underscores that reputation risk is inherently subjective, "not measurable or predictable," and not a reliable proxy for safety and soundness concerns. The continued use of this concept invites arbitrary and politicized decision making, particularly against disfavored but lawful industries such as adult entertainment.

FSC's evidence shows that adult industry workers and businesses across the United States pay taxes and comply with applicable regulations, yet still face systematic account closures and service denials based not on concrete financial risk but on stigma and anticipated public reaction. The Proposed Rule addresses this by preserving robust supervisory tools grounded in traditional risk categories while explicitly prohibiting actions based solely on reputational considerations tied to a customer's lawful speech, beliefs, or business activities.

CONCLUSION

FSC has devoted significant resources to educating Congress and federal banking regulators about the severe and widespread impacts of debanking on the legal adult industry, including original research, Statements for the Record, and direct engagement with lawmakers and agency officials. These efforts have documented that banking discrimination against the adult industry is systematic, economically harmful, and rooted in reputation risk rather than material financial concerns.

The Proposed Rule represents a critical opportunity to correct this problem. By codifying the elimination of reputation risk from OCC and FDIC supervisory frameworks, the agencies will help restore fair access to banking for millions of Americans engaged in lawful work, improve the effectiveness and objectivity of supervision, and support broader national efforts, as reflected in Executive Order 14331, to prevent politicized or unlawful debanking. FSC respectfully urges the agencies to finalize the Proposed Rule and to adopt the additional clarifications and implementation recommendations described in this comment.

Thank you for your consideration.

Respectfully submitted,

[redacted]

Alison Boden
Executive Director
Free Speech Coalition