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

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

December 29, 2025

Re: Unsafe or Unsound Practices, Matters Requiring Attention (OCC Docket ID OCC-2025-0174; FDIC RIN 3064-AG16)

To whom it may concern,

The Independent Community Bankers of America (ICBA)[1] and its members appreciate the opportunity to comment on the notice of proposed rulemaking (NPR or proposal) regarding unsafe or unsound practices and matters requiring attention issued by the Office of the Comptroller of the Current (OCC) and the Federal Deposit Insurance Corporation (FDIC) (collectively, the Agencies).

ICBA is supportive of the Agencies' efforts to bring greater transparency and accountability to the supervisory process, and encourages the Agencies to consider the following recommendations while working toward a final rule:

- clarify definitions and standards for key concepts to provide a more consistent understanding of the terms, while avoiding rigid quantitative thresholds that would unduly limit the appropriate exercise of judgment by supervisory staff,

[1] The Independent Community Bankers of America® has one mission: to create and promote an environment where community banks flourish. We power the potential of the nation's community banks through effective advocacy, education, and innovation. As local and trusted sources of credit, America's community banks leverage their relationship-based business model and innovative offerings to channel deposits into the neighborhoods they serve, creating jobs, fostering economic prosperity, and fueling their customers' financial goals and dreams. For more information, visit ICBA's website at icba.org.

- formalize the commitment to tailoring by including a more fulsome discussion in the final rule,
- guard against unintended constraints on matters requiring attention (MRAs) by maintaining the Agencies' abilities to address emerging risks,
- appropriately tailor the scope of this rulemaking to satisfy administrative law requirements so that a final rule is able to provide long-lasting regulatory relief, and
- approach this effort on an interagency basis with the Board of Governors of the Federal Reserve System (Federal Reserve Board) to ensure alignment across all the federal banking regulators and consistent treatment for all institutions.

ICBA appreciates the Agencies' efforts to put safeguards around examiner and supervisor discretion. However, it is important that the Agencies remain able to address novel or unexpected safety and soundness issues as they arise in order to prevent contagion from spreading in the financial system. The Agencies must carefully balance the important benefits of providing transparency, accountability, and clearly defined standards with the need for flexibility to address issues that may arise suddenly and pose a threat to the banking system.

I. ICBA recommends the Agencies adjust language in the proposed definition to provide additional clarity.

The Agencies propose to define an "unsafe or unsound practice" as:

> a practice, act, or failure to act, alone or together with one or more other practices, acts, or failures to act, that:
>
> (1) Is contrary to generally accepted standards of prudent operation; and
>
> (2)(i) If continued, is likely to—
>
> (A) Materially harm the financial condition of the institution; or
>
> (B) Present a material risk of loss to the Deposit Insurance Fund; or
>
> (ii) Materially harmed the financial condition of the institution.[2]

ICBA is providing feedback on several aspects of this definition that we believe will increase clarity and ensure consistent implementation among examiners and across institutions.

Question 12: Is the agencies' use of the term "generally accepted standards of prudent operations," as described in this proposal, appropriate for making safety and soundness determinations? Are there other terms the agencies should consider using instead?

The term "generally accepted standards of prudent operations" is vague and leaves open the question of what rises to the level of a generally accepted standard, who would be the arbiter of this standard, and what would qualify as a deviation from said standard. The Agencies could provide needed clarity by including a safe harbor or including a rebuttable presumption regarding when institutions may be presumed to satisfy this prong of the definition, potentially including examples of or references to basic, generally agreed upon standards.

Additionally, ICBA urges the Agencies to ensure that this language does not open the door for examiners to apply heightened expectations that would be appropriate for the largest, most

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[2] Proposal at 48849.

sophisticated banks inappropriately to community banks which have a very different business model and much lower risk profile. Further clarification in any rule finalizing the proposal and subsequent guidance around supervisory expectations would help the regulated industry understand the contours of this prong.

Question 5: Is "likely" the appropriate standard to specify the probability of risk required for a practice, act, or failure to act, to be considered an unsafe or unsound practice? Is another term more appropriate, e.g., "reasonably foreseeable," "could reasonably," "imminent," "abnormal probability"? Should the agencies specify a minimum percentage of likelihood? If so, what would be an appropriate minimum percentage of likelihood? Should the agencies consider a standard that does not imply an assessment of a forward-looking probability?"

The term "likely" is ambiguous and leaves banks without certainty regarding supervisory expectations and open to overly cautious interpretations. "Reasonably foreseeable," a term frequently used in other legal contexts, may be more understandable and therefore more appropriate for this circumstance. We would not support assigning percentages to what could in many cases be a qualitative assessment rather than a quantitative determination.

Questions 4, 6, 7, 8, 23 and 24 raise issues regarding the definition of "material harm".

ICBA believes that the definition of the term "material harm" should not be overly narrow, as the banking system may benefit from the ability of examiners to raise concerns regarding novel or evolving risks. Discussion in the final rule that provides examples and nonexamples of material harm would provide helpful information for both supervisory staff and banks regarding the contours of this factor. Such an approach would be preferable to language setting forth specific numerical standards.

When analyzing whether a practice presents "a material risk of loss to the DIF," the supervisory staff should take into account factors impacting how challenging it would be to resolve the institution in question, including the size of the institution compared to the size of the DIF and the complexity of the institution's corporate structure.

II. The Agencies should further clarify tailoring language in the final rule to ensure their aim to right-size community bank supervision is clearly and consistently implemented.

ICBA and its members are very supportive of the Agencies' efforts to appropriately tailor regulations and supervisory approaches for community banks. These institutions operate at a different scale than large banks and pose less risk to the banking system, and supervision should be proportionately tailored.

Question 22: How should the agencies tailor the framework for community banks? For example, should there be different standards for institutions of different sizes and complexity? Please explain.

ICBA appreciates the Agencies' efforts to right-size community bank regulation. However, as currently set forth in the proposed regulatory text, the bar for an unsafe or unsound practice could be interpreted as being much higher for large banks than for community banks. This is because the size of a large bank's balance sheet means that the financial impact of a practice would have to be enormous in order to be financially material for such an institution and therefore be deemed unsafe and unsound. Therefore, ICBA requests that the Agencies elaborate on the tailoring language to provide additional clarity and ensure proper implementation. This could take the form of regulatory text stating that the Agencies shall ensure that supervisory expectations and requirements are proportionate to community banks' lower level of complexity and risk to the banking system. Alternatively, the Agencies could tailor the framework by establishing tiers based on asset size and complexity and thereby ensuring that the concepts of material harm would be appropriately scaled across community banks, midsize banks, and large banks.

ICBA recommends that the Agencies also provide examiner training and oversight programs to ensure consistent application of any final rule.

Finally, ICBA encourages the Agencies to update processes for banks to appeal supervisory determinations, such as by finalizing the FDIC's recent proposal to establish a new office to replace the Supervision Appeals Review Committee.[3] This is an important mechanism to ensure accountability and fairness for all regulated entities.

III. The FDIC and OCC, in coordination with the Federal Reserve Board of Governors, should finalize uniform standards for MRAs.

ICBA appreciates the FDIC and OCC's efforts to enhance the transparency of supervisory determinations by placing appropriate guardrails on examiners' discretion to issue MRAs. We agree with the FDIC and OCC that the current framework is flawed because:

1. the Agencies each apply their different standards for matters requiring attention and matters requiring board attention (collectively, MRAs or "matters requiring correction");
2. examiners frequently issue matters requiring correction to communicate deficiencies beyond those that are central to, or relevant to, an institution's financial condition;
3. examiners are not required to find that a practice is likely, or reasonably can be expected, to materially harm the financial condition of the institution;
4. institutions must address practices described in matters requiring correction regardless of whether the institution's board of directors and management consider the examiner's concerns to be accurate or important enough to prioritize;
5. the Agencies' expansive definition and application matters requiring correction has resulted in a proliferation of supervisory criticisms for immaterial procedural, documentation, or other deficiencies that distract management from conducting business and that do not clearly improve the financial condition of institutions; and
6. that failure to correct matters requiring correction escalates into enforcement actions.[4]

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[3] FDIC, Notice of Guidelines for Appeals of Material Supervisory Determinations, 90 FR 33942 (July 18, 2025), https://www.govinfo.gov/content/pkg/FR-2025-07-18/pdf/2025-13506.pdf. *See also* Letter from ICBA to the FDIC (Sept. 16, 2025), https://www.icba.org/documents/45248/1180442/CommentsontheFDICsProposedGuidelinesforAppealsofMaterialSupervisoryDeterminations.pdf/ddd66646-c0dc-a56a-8efd-2a66c06a621f?t=1762537736363.

[4] Proposal at 48840.

Given the numerous deficiencies in the current framework, ICBA believes it is necessary to finalize uniform standards for MRAs. We agree the proposed rule would remedy many of the concerns community bankers have with the current framework.

The proposed rule provides that the FDIC and OCC could only issue an MRA:

> for a practice, act, or failure to act, alone or together with one or more other practices, acts, or failures to act, that (1)(i) is contrary to generally accepted standards of prudent operation; and (ii)(A) if continued, could reasonably be expected to, under current or reasonably foreseeable conditions, (1) materially harm the financial condition of the institution; or (2) present a material risk of loss to the DIF; or (B) has already caused material harm to the financial condition of the institution; or (2) is an actual violation of a banking or banking-related law or regulation.[5]

For concerns that do no rise to the level of an MRA, the FDIC and OCC propose agency examiners may informally provide non-binding suggestions to enhance an institution's policies, practices, condition, or operations, but would not be permitted to require an institution to submit an action plan to incorporate examiners' supervisory observations or track the institution's adoption or implementation of examiner suggestions.[6] If an institution's condition deteriorates following a supervisory communication, the underlying circumstances could form the basis of an MRA or enforcement action, but only if the criteria for an MRA or enforcement action are satisfied, and not solely on the basis of failing to respond to the supervisory communication.[7]

ICBA appreciates the FDIC and OCC setting forth a proposed standard for MRAs that is separate from the proposed standard for informal supervisory communications, therefore providing a meaningful distinction between MRAs and informal supervisory communications. Under the current standard, because the Agencies routinely conflate informal supervisory communications with MRAs, the volume of MRAs has significantly increased in recent years. Because MRAs require corrective action, examiners have increasingly used MRAs to compel corrective actions instead of making informal recommendations or observations to banks and their management. By providing separate standards for MRAs and informal supervisory communications, the proposal strikes an appropriate balance that allows examiners to share their expertise with management and the board of directors while leaving decisions regarding the implementation of recommendations to the institution.

IV. The Agencies should ensure uniform standards for MRAs do not unduly constrain examiners from addressing problem banks or escalating supervisory findings, when necessary.

While ICBA is generally supportive of the proposal, ICBA encourages the FDIC and OCC to ensure any finalized uniform standards for MRAs do not impair examiners' abilities to take necessary and appropriate supervisory actions against problem banks. As demonstrated in the FDIC's post-failure reviews of Signature Bank of New York, there are clear instances where the

[5] Proposal at 48841.
[6] Proposal at 48841-48842.
[7] Proposal at 48842.

FDIC and OCC should have the ability to take swift action to escalate and enforce their supervisory recommendations to prevent or slow bank failures and/or stop unsafe and unsound practices. Any proposed changes to MRAs should not carry the unintended consequences of hindering the FDIC and OCC's abilities to remediate problems that, if left unaddressed, could harm the DIF, the financial system at large, shareholders, depositors, or their communities.

The FDIC's April 28, 2023 internal report on the agency's supervision of Signature Bank of New York illustrates this need.[8] The report underscores the importance of MRAs as a subset of supervisory recommendations, and recommends the FDIC further study some of the contributing factors that led to the bank's failure. The report specifically recommends the FDIC "evaluate the SR and MRBA escalation process for situations involving repeat recommendations, and define paths for progressive enforcement when bank management in unable or unwilling to effectively address chronic problem areas."[9] As explained in that report, the FDIC:

> identified recurring liquidity risk management and other weaknesses, made numerous [supervisory recommendations] including Matters Requiring Board Attention (MRBAs), and devoted significant resources to evaluating SBNY operations and risks . . . Given the recurring liquidity control weaknesses, SBNY's unrestrained growth, and management's slow response to address findings, it would have been prudent to downgrade the Management component rating to "3" (i.e. needs improvement) as early as the second half of 2021 . . . [but] [t]he FDIC's communication of examination results to SBNYs' board and management was often not timely.[10]

With these concerns in mind, we offer the following views on the Agencies' specific requests for comment on questions related to MRAs:

Question 14: The proposal would allow the agencies to issue MRAs based on "reasonably foreseeable conditions." Is "reasonably foreseeable" the right standard? As an example, at what point in Silicon Valley Bank's timeline would an MRA for weaknesses in interest rate risk management have been (1) appropriate and (2) permissible under the proposal? If another standard would be more appropriate, please explain.

ICBA supports the FDIC and OCC applying a "reasonably foreseeable" element to the uniform standard for MRAs. Reasonable foreseeability is a standard that can be informed by conditions known to an institution and/or examiners, as well as conditions the average banker should anticipate.

However, ICBA urges the FDIC and OCC to provide more clarification around what the Agencies consider to be "generally accepted standards of prudent operation." As proposed, this language is vague and does not make clear whether the Agencies would apply this element in the context of a bank's own history of prudent operations, or in the context of a

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[8] *S*ee FDIC, FDIC's Supervision of Signature Bank (April 28, 2023), https://www.fdic.gov/news/press-releases/2023/pr23033a.pdf
[99] *Id.* at 42.
[10] *Id*. at 3.

bank's peers or an industry standard. The FDIC and OCC should supply additional language to clarify that the FDIC and OCC will determine "generally accepted standards of prudent operation" based on a framework that is tailored to the size and complexity of the institution. Here, the FDIC and OCC should expressly recognize that community banks will not be held to the same "generally accepted standards of prudent operation" as banks that are magnitudes their size, and should consider whether tiers would be helpful to assign specific standards for institutions of similar size and complexity.

Question 18: Under the proposal, the agencies could cite violations of banking and banking-regulated laws or regulations as MRAs. Is "banking and banking-related" the right universe? Should the agencies provide additional clarity on what constitutes banking and banking-related laws? If so, what should be included? Should the agencies limit the scope of banking and banking-related laws to federal banking and banking-related law? Why or why not?

While it is not necessary for the FDIC and OCC to provide a comprehensive list of all state and federal laws that could constitute the universe of laws or regulations under the proposed standard, it would be helpful for the Agencies to publish a list of categories of laws the Agencies will generally consider to constitute "banking and banking related laws and regulations," as well as categories of laws that are likely to fall outside the proposed universe. For example, the FDIC and OCC should specify whether securities laws, tax laws, data and privacy laws, antidiscrimination and civil rights laws, and consumer protection laws would be considered "banking and banking related laws and regulations."

Question 21: To what extent should the agencies use MRAs to address banks that are vulnerable to potential economic or other shocks? For example, before the Federal Reserve began raising interest rates in 2022, or shortly after it began raising interest rates, at what point, if any, would it have been appropriate for a banking agency to issue MRAs to institutions that were vulnerable to a rise in interest rates? Does the proposal appropriately allow MRAs in such cases, if applicable? Under the proposal, are there other supervisory tools to address such risks?

The FDIC's post-failure review report for Signature Bank identified several scenarios where MRBAs could be issued even if the underlying deficiencies were too premature to be reflected in the institution's financial condition and performance ratios. These examples included: (1) emerging issues in which the board needs to be more proactive in establishing policy and risk management parameters; (2) policy weaknesses that, if left unaddressed, could increase the institution's risk profile or adversely affect the condition of the institution; (3) ineffective management; and (4) repeat examination recommendations or regulatory, audit or risk management criticisms that have escalated in importance.[11] This list could provide the FDIC and OCC a useful framework for articulating scenarios where banks may be vulnerable to shocks.

V. The FDIC and OCC should limit the scope of this rulemaking to ensure it withstands judicial scrutiny.

[11] FDIC's Supervision of Signature Bank, *supra* n.8 at 17-18.

ICBA supports the FDIC and OCC's efforts to reform supervision and facilitate consistency across the Agencies' extensive supervisory framework. However, some of the topics for which the FDIC and OCC seek comment in this proposal are better suited for separate notice and comment rulemakings. ICBA urges the Agencies to avoid process concerns by limiting the scope of this rulemaking to topics for which there is logical outgrowth, in order to ensure that a final rule would survive judicial scrutiny and provide long-lasting regulatory relief for community banks. ICBA recommends the FDIC and OCC initiate separate rulemaking on any additional topics, as discussed further below:

Question 11: Should the proposed definition of unsafe or unsound practice apply to uses of the term beyond section 8 of the FDI Act? If yes, what provisions should be included? For example:

- *— Tier 2 and Tier 3 Civil Money Penalty provisions (12 U.S.C. 93, 504, 1817, 1972).*
- *— Capital standards in 12 U.S.C. 1464(t).*
- *— Definition of institution-affiliated party in 12 U.S.C. 1813(u).*
- *— Grounds for appointing a conservator or receiver in 12 U.S.C. 1821(c)(5).*

Any changes to the proposed definition of unsafe or unsound practice beyond section 8 of the FDI Act should be subject to separate notice and comment rulemaking. With only two of three primary federal regulators participating in this rulemaking, the FDIC and OCC should not use the current rulemaking as a vehicle to advance changes to regulations that have not been addressed by the current proposal and that could result in deep inconsistencies between regulators. To ensure supervisory parity and legal clarity for community banks, the FDIC and OCC should work with the Federal Reserve Board to develop a joint approach to topics beyond section 8 of the FDI Act.

Question 19: Should the agencies provide additional clarity on the interplay between MRAs and CAMELS ratings? If so, how? AND

Question 20: Should the agencies require any downgrade to a CAMELS composite rating of 3 or below to be accompanied by an MRA or enforcement action? Are there instances in which, for example, general economic conditions or idiosyncratic risk factors could cause financial deterioration without evidence of objectionable practices, acts, or failures to act? Could such a provision incentivize issuing more MRAs? Please explain.

While there may be instances where the issuance of an MRA coincides with a downgrade in CAMELS ratings, or the decision to issue a CAMELS composite rating of 3 or below, ICBA opposes tying required downgrades to the issuance of an MRA, particularly if the Agencies have not engaged in separate rulemaking to specifically address CAMELS concerns.

Question 25: How should the proposed regulation interact with the Interagency Guidelines Establishing Safety and Soundness Standards promulgated under 12 U.S.C. 1831p-1 (e.g., 12 CFR part 30) (Safety and Soundness Standards)? Should the agencies similarly revise the Safety and Soundness Standards in a manner consistent with the proposed regulation? Should a violation of the Safety and Soundness standards be considered a violation of banking or banking-related law or regulation for purposes of the proposed regulation?

The FDIC and OCC should not make revisions to the Interagency Guidelines Establishing Safety and Soundness Standards without participation from the Board of Governors of the Federal Reserve System. The Interagency Guidelines that were promulgated by all three primary federal regulators should only be revised by all three primary federal regulators.

VI. The Agencies should consider whether additional interagency cooperation is necessary to ensure parity among community banks.

ICBA applauds the FDIC and OCC for recognizing the need to issue a joint proposal regarding their standard for issuing matters requiring correction "[t]o ensure supervision efforts are appropriately focused on material financial risks and increase consistency in supervisory criticisms."[12] However, ICBA is concerned that because this effort does not include the Federal Reserve Board, some community banks will be subject to different standards based on charter. ICBA is not alone in our view that this issue requires alignment among all of the prudential Agencies. Members of Congress have also urged standards for MRAs "should be uniform across the OCC, Federal Reserve and FDIC" because "fragmented interpretations can create confusion for financial institutions, particularly around expectations for remediation, severity of findings, and regulatory consequences."[13] Unless the Federal Reserve Board of Governors joins this effort, some community banks will continue to be subject to different standards than others for determining what constitutes an unsafe and unsound practice, and examiners' communications of matters requiring correction. Prior to finalizing this proposal, ICBA encourages the FDIC and OCC to work with the Federal Reserve Board to determine whether there are areas in which all three agencies agree reforms can be achieved, and whether an interagency re-proposal is necessary to satisfy the FDIC and OCC's desired consistency in supervisory criticisms across the entirety of the community banking industry.

Conclusion

ICBA supports the Agencies' efforts to enhance transparency and bring clarity to the supervisory framework, and appreciates the opportunity to provide comment on this proposal. Should you wish to discuss these positions further, please contact the undersigned at [redacted] or [redacted]

Sincerely,

[redacted]
Jenna Burke,
EVP, General Counsel, Government Relations and Public Policy

[redacted]
Amy Ledig
VP, Capital, Accounting, and Finance Policy

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[12] Proposal at 48840.
[13] Letter from Sen. Britt *et al*. to Federal Banking Supervisors (Aug. 6, 2025), https://www.britt.senate.gov/wp-content/uploads/2025/08/Sen.-Britt-Letter-MRA.pdf.