December 26, 2025

Submission via Electronic Mail

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

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

RE: Docket ID OCC-2025-0142 and FDIC, RIN 3064–AG12 – Prohibition on Use of Reputation Risk by Regulators

Dear Sir or Madam and Ms. Jones:

The Independent Community Bankers of America (ICBA)[1] appreciates the opportunity to provide comments to the Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) on the proposed rule to prohibit the use of reputation risk by the agencies. ICBA and our community bank members support this rulemaking and provide comment through answering the questions detailed in the proposed rule.

Community banks operate most effectively when supervisory expectations are based on clearly defined, objective, and measurable criteria. Traditional risk factors such as credit risk, liquidity risk, interest rate risk, and operational risk can be quantified through established metrics including capital ratios, asset quality measures, liquidity coverage ratios, interest rate sensitivity analysis, and operational loss data. These objective standards allow banks to understand regulatory expectations, measure their performance against concrete benchmarks, and make informed decisions about risk management and resource allocation. Equally important, clearly defined metrics ensure consistency across examination teams and examined entities. Banks in similar circumstances should receive similar supervisory treatment regardless of which examination team conducts the review or in which region they operate. Objective metrics make this consistency possible by providing examiners with uniform standards that can be applied fairly across all institutions.

[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.*

In contrast, reputation risk lacks any consistent definition or measurable criteria. What one examiner perceives as a reputation risk, another may view as a sound business opportunity. What might be considered controversial in one community could be widely accepted in another. This subjectivity makes it impossible for banks to manage to a standard or predict supervisory reactions, and it inevitably leads to inconsistent treatment across institutions and examination teams. When supervisory findings are based on undefined and unmeasurable concepts like reputation risk, banks face an unpredictable regulatory environment that undermines their ability to plan strategically, serve their communities effectively, and allocate resources efficiently. The removal of reputation risk from supervisory frameworks will restore the focus to quantifiable risks that banks can actually measure, manage, and mitigate through sound risk management practices. This approach better serves both safety and soundness objectives and the fair, consistent treatment of regulated institutions.

Although we support the prohibition of reputation risk, we want to ensure that removing it does not chill the exchange of information between regulators and banks. Our members appreciate when an examiner shares valuable insight and perspective on risk management practices, emerging threats, and industry developments. This consultative dialogue is an important component of effective supervision and contributes to the safety and soundness of community banks.

The agencies should clarify that the proposed rule would not prevent examiners from engaging in constructive conversations about business strategy, market conditions, competitive pressures, or customer relationship management, provided such discussions do not cross the line into criticism or adverse action based on reputation risk or prohibited considerations. For example, an examiner should be able to discuss general industry trends, share observations about peer practices, or ask questions about a bank's strategic direction without concern that such dialogue violates the rule. The distinction is that examiners cannot use these conversations to pressure banks to alter lawful business relationships based on reputation concerns or the political, social, cultural, or religious characteristics of customers.

Clear guidance and training for examination staff will be essential to maintain this important consultative relationship while ensuring compliance with the rule's prohibitions. Examiners should understand that they can engage in normal supervisory dialogue and information sharing, but they cannot criticize institutions or create implicit expectations based on reputation risk or prohibited factors. This balance will preserve the valuable aspects of the examiner-bank relationship while eliminating the subjective and potentially discriminatory aspects of reputation risk-based supervision.

Agency Questions

1. Do commenters believe the enumerated prohibitions capture the types of actions that add undue subjectivity to bank supervision? If there are other prohibitions that would be warranted, please identify such prohibitions and explain.

Yes, the enumerated prohibitions appropriately capture the types of actions that add undue subjectivity to bank supervision. The prohibitions address both formal and informal supervisory actions, which is critical since informal examiner feedback and implicit expectations can be as influential as formal enforcement actions. The comprehensive definition of "adverse action," including the catch-all provision, provides appropriate protection without being overly restrictive of legitimate supervisory activities. We do not recommend additional prohibitions, as the current framework, combined with anti-evasion (see question 7 for ICBA concern on anti-evasion language), provides robust protection while preserving regulatory authority over traditional risk factors.

2. Is the definition of "adverse action" in the proposed rule sufficiently clear? Should the definition be broader or narrower? Are there other types of agency actions that should be included in the list of "adverse actions?" Does the catch-all provision at the end of the definition of "adverse action" appropriately capture any agency action that is intended to punish or discourage banks on the basis of perceived reputation risk? Is such catch-all provision sufficiently clear?

The definition of "adverse action" is sufficiently comprehensive and appropriately broad. It correctly recognizes that regulatory influence extends beyond formal enforcement actions to include informal feedback, rating impacts, application processing, and other supervisory actions that can significantly affect institutions.

We particularly support the inclusion of "any action that negatively impacts the institution, or an institution-affiliated party, or treats the institution differently than similarly situated peers" as a catch-all provision. This language is essential to prevent circumvention of the rule through novel or creative supervisory approaches not explicitly enumerated in the rule. The reference to "similarly situated peers" is especially important, as it provides an objective benchmark for identifying disparate treatment that may be based on prohibited reputation risk considerations. However, we recommend clarifying that the focus should be on the effect and basis of the action rather than proving regulatory "intent" to punish or discourage. As drafted, the catch-all provision asks whether an action is "intended to punish or discourage banks on the basis of perceived reputation risk." Requiring proof of examiner intent could:

- Create unnecessary disputes over subjective state of mind
- Make the protection difficult to enforce in practice
- Discourage institutions from challenging questionable actions

We recommend the catch-all focus on whether the action: (1) negatively impacts the institution or treats it differently than peers, and (2) is based on reputation risk rather than traditional risk factors. If an action meets both criteria, it should be prohibited regardless of claimed intent. The burden should be on the agency to demonstrate the action was based on legitimate, quantifiable risk factors, not on the institution to prove improper intent.

With this clarification regarding objective standards rather than subjective intent, the definition of "adverse action" appropriately captures the full range of supervisory actions that could reintroduce subjective reputation risk-based supervision.

3. Are commenters aware of any other uses of reputation risk in supervision or in the agencies' regulations that should be addressed in this rule? If so, please describe such uses and their effects on institutions.

We are not aware of any other uses of reputation risk in supervision or in the agencies' regulations beyond those identified and addressed in the proposed rule. The conforming amendments to OCC regulations at 12 CFR parts 1 and 30, and FDIC regulations at 12 CFR part 364, appear to comprehensively address the regulatory references to reputation risk. We appreciate that the agencies have acknowledged the need for separate joint rulemaking to address references to reputation risk in the identity theft prevention program regulations at 12 CFR parts 41 and 334, and we support the agencies' stated intention to exercise enforcement discretion in those areas without regard to reputation risk until such rulemaking occurs. We encourage the agencies to prioritize that separate rulemaking to ensure complete elimination of reputation risk from all regulatory frameworks. Should any additional regulatory references or supervisory practices involving reputation risk come to light during the implementation of this rule, we urge the agencies to address them promptly through additional rulemaking or guidance to ensure the rule's objectives are fully achieved.

4. Do commenters believe the definition of "reputation risk" should be broadened or narrowed? If so, how should the definition be broadened or narrowed? Please provide the reasoning to support any suggested changes.

Community banks support the proposed definition of "reputation risk" but seek clarification to ensure it does not inadvertently constrain legitimate bank business decisions. Banks must maintain discretion to decline or terminate customer relationships based on traditional risk factors such as credit risk, operational risk, fraud concerns, BSA/AML compliance, or other sound business reasons.

Our concern is that the prohibition could be misapplied against banks for denying services when the denial is based on legitimate, non-discriminatory business reasons.

For example, if a bank declines a loan application due to insufficient creditworthiness or denies an account due to BSA/AML red flags, the bank should not face regulatory scrutiny or adverse action simply because the applicant is affiliated with a particular viewpoint. The rule should

make clear that regulators will evaluate the bank's stated business rationale on its merits, rather than second-guessing legitimate business decisions based on the customer's political profile.

We recommend that the final rule include language confirming that banks retain full discretion to make customer decisions based on traditional risk management principles, and that regulatory review will include a presumption that the stated business reason is legitimate.

5. Do commenters understand what is meant by the phrase "solely on the basis of the third party's involvement in lawful business activities that are perceived to present reputation risk?" Could the agencies word this prohibition more clearly? Should the word "solely" be included? Would it be better to say "solely or partially?"

The word "solely" should be retained. This word provides critical protection for banks making legitimate business decisions. If the rule prohibited actions based "solely or partially" on political views or lawful activities, banks could face regulatory uncertainty even when legitimate risk factors are the primary basis for the decision.

The word "solely" appropriately focuses the prohibition on discriminatory intent while preserving regulatory oversight of traditional risk management. It allows regulators to verify that banks are acting on legitimate business reasons, while preventing them from second-guessing sound business decisions.

6. Are there alternatives to the proposed rule that would better achieve the agencies' objective? If so, please describe any such alternatives.

The proposed regulatory approach is the most effective means to achieve the agencies' objectives and provides the necessary consistency and predictability over time. Codifying these prohibitions in regulation is essential for several reasons:

Future Consistency Across Administrations: Regulatory codification ensures that the elimination of reputation risk-based supervision will remain in effect regardless of changes in agency leadership or political administrations. Relying on guidance documents, bulletins, or examiner training alone would leave supervised institutions vulnerable to rapid policy reversals that could reintroduce the subjective and inconsistent supervision this rule seeks to eliminate.

Legal Certainty for Long-Term Business Planning: Community banks make strategic decisions about products, services, and customer relationships that span multiple years and examination cycles. They need durable, legally enforceable standards that will not shift based on the views of future examiners or agency officials. Regulatory codification provides the legal certainty necessary for sound long-term business planning.

Consistent Treatment Across Examination Teams and Regions: A regulation binding all agency personnel ensures uniform application across different examination teams, districts,

and regions, preventing the reemergence of the inconsistent treatment that characterized reputation risk-based supervision.

Alternative approaches such as guidance, examiner training, or case-by-case determinations would lack the permanence, legal force, and consistency that regulated institutions require. Only regulatory codification can provide durable protection against the return of subjective reputation risk-based supervision in the future. However, regulatory reform can and should be reinforced by examiner training and guidance.

7. Are there changes to the proposed rule that would help restrict the agencies' ability to evade the rule's requirements, including evasion through mislabeling a risk or through using alternative adverse actions? Is there other anti-evasion language that should be included?

We appreciate the agencies' commitment to preventing circumvention of this rule's requirements. The proposed regulation already includes several important anti-evasion provisions, including the "regardless of how the risk is labeled" language in the definition of reputation risk and explicit prohibitions on using BSA/AML supervision or application review processes as pretexts for reputation risk-based actions. These provisions demonstrate thoughtful consideration of how the rule's intent could be undermined.

However, we have concerns about framing this issue as "evasion," which implies intentional bad faith by examiners. This terminology could create unnecessary adversarial dynamics between banks and examination teams, lead to disputes over examiner intent rather than focusing on substantive risk management and make examiners hesitant to address legitimate risks for fear of being accused of evasion. Rather than attempting to anticipate all possible forms of circumvention through increasingly detailed prohibitions, we recommend the rule focus on establishing objective standards for supervisory actions.

Specifically, the rule should emphasize that examiners must articulate specific, traditional risk factors such as credit risk, operational risk, liquidity risk, or BSA/AML compliance concerns when criticizing an institution or requiring changes to business relationships. Supervisory criticisms should be supported by objective evidence of quantifiable risk to safety and soundness or violations of law, not speculation about public perception. When a bank challenges a supervisory action as being based on reputation risk, however labeled, the agency should bear the burden of demonstrating that the action was based on legitimate, traditional risk factors with documentary support. This approach protects against circumvention of the rule's purpose while maintaining constructive examiner-bank relationships focused on substantive risk management rather than disputes over regulatory intent.

8. The proposed definition of "reputation risk" includes risks that could negatively impact public perception of an institution for reasons unrelated to the financial condition of the institution. Should this be broadened to include reasons unrelated to the financial or operational condition of the institution?

Yes, the definition should be broadened to include "financial or operational condition." This change would ensure consistency with other provisions of the rule that explicitly preserve the agencies' authority to supervise operational risk, including cybersecurity, information security, and third-party risk management. Operational issues such as data breaches, system failures, or control weaknesses that present concrete, measurable risks that should be addressed through traditional operational risk supervision, not through subjective assessments of reputation impact. Broadening the definition would close a potential loophole that could allow regulators to reintroduce subjective reputation-based supervision under the guise of operational concerns. This clarification would provide greater certainty that regulators will focus on the actual operational and financial risks rather than speculation about public perception of those risks.

9. Should the list of relationships that would constitute 'doing business with' include additional types of relationships?"

The definition of "doing business with" is appropriately comprehensive. It covers the full range of bank relationships including customer accounts and services, third-party vendor arrangements, charitable and community activities, employment relationships, and includes a necessary catch-all provision for other similar business activities. We do not recommend adding additional specific types of relationships, as doing so might inadvertently suggest that unlisted relationships are excluded from the rule's protections. The current definition, particularly with the catch-all provision for "any other similar business activity that involves a bank client or a third party," provides sufficient breadth to encompass all relevant banking relationships while maintaining clarity.

10. Does the removal of reputation risk create any other unintended consequences for the agencies or their supervised institutions?

We do not believe the removal of reputation risk from supervisory frameworks will create significant unintended negative consequences. Community banks have strong business incentives to protect their reputations and maintain community trust without regulatory pressure. Market discipline, customer feedback, and competitive pressures are far more effective motivators for reputation management than subjective regulatory assessments. Traditional risk supervision, including credit risk, operational risk, liquidity risk, and compliance with BSA/AML, provides regulators with more than adequate tools to address any issues that might also affect an institution's reputation.

We note one potential concern that should be monitored: examiners, in an effort to comply with the new prohibitions, should not become overly cautious about providing constructive feedback on legitimate business and strategic considerations. The rule appropriately prohibits subjective reputation-based criticism and adverse actions, but it should not chill normal examiner-bank dialogue about business strategy, market conditions, or risk management practices. Clear examiner training on the distinction between prohibited reputation risk-based supervision and

permissible discussion of traditional risk factors will be important for successful implementation.

Additionally, banks may experience increased documentation expectations as they demonstrate that customer relationship decisions are based on legitimate business factors rather than prohibited considerations. However, this is a reasonable trade-off for the elimination of subjective reputation risk-based supervision, and most well-managed banks already maintain appropriate documentation of significant business decisions.

On balance, we believe the benefits of removing reputation risk from supervision—including reduced regulatory burden, increased objectivity, elimination of regulatory overreach, and greater consistency across examination teams—far outweigh any potential unintended consequences.

Questions 12-16

These questions focus on the process of this rulemaking and are not substantive to regulation. We find the proposed rule to be clearly written and well-organized. The definitions are specific, the prohibitions are clearly enumerated, and the structure is logical and easy to follow. Thus, we are supportive of this process.

Conclusion

We strongly support this proposed rule and urge the agencies to finalize it promptly. The elimination of reputation risk from supervisory frameworks will improve the objectivity, consistency, and predictability of bank supervision while reducing unnecessary compliance burdens on community banks. By codifying these prohibitions in regulation rather than relying on guidance alone, the agencies will provide durable legal protections that will remain in effect across future administrations and leadership changes. This regulatory certainty is essential for community banks to make sound, long-term business decisions without fear of subjective regulatory second-guessing based on unmeasurable and inconsistent standards.

The proposed rule strikes the appropriate balance by eliminating subjective reputation risk-based supervision while preserving full regulatory authority over traditional, quantifiable risk factors including credit risk, operational risk, liquidity risk, and compliance with all applicable laws. Community banks remain committed to sound risk management, serving their communities responsibly, and maintaining strong reputations through excellent customer service and ethical business practices. Market discipline and competitive pressures provide far more effective incentives for reputation management than subjective regulatory assessments.

We appreciate the agencies' recognition that reputation risk-based supervision has not enhanced safety and soundness, and we look forward to a supervisory framework focused on objective, measurable risks that banks can effectively manage.

Best regards,

/s/

Lance Noggle
SVP Operational Risk, Senior Regulatory Counsel