



December 29, 2025

The Honorable Travis Hill, Chairman
Federal Deposit Insurance Corporation (FDIC)
Attn: Comments—RIN 3064-AG12
550 17th Street NW
Washington, DC 20429

Submitted via comments@fdic.gov

The Honorable Jonathan V. Gould, Comptroller of the Currency
Office of the Comptroller of the Currency (OCC)
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Submitted via regulations.gov

RE: Request for Public Comments Regarding Prohibition on Use of Reputation Risk by Regulators, 90 Fed. Reg. 48,825 (proposed Oct. 30, 2025); RIN 1557-AF34, RIN 3064-AG12; Docket ID: OCC-2025-0142

Chairman Hill and Comptroller Gould,

Landmark Legal Foundation (“Landmark”) respectfully submits the following comment in support of the agencies’ proposed rulemaking, “Prohibition on Use of Reputation Risk by Regulators,” 90 Fed. Reg. 48,825 (proposed Oct. 30, 2025); RIN 1557-AF34, RIN 3064-AG12; Docket ID: OCC-2025-0142.

Landmark is a national public-interest law firm committed to preserving the principles of limited government, separation of powers, federalism, and promoting an originalist construction of the Constitution.

Landmark appreciates the opportunity to comment on the proposed rule as submitted by the Federal Deposit Insurance Corporation (FDIC) and the Office of the Comptroller of Currency (OCC). This action is designed to codify the Administration’s recent policy to prohibit regulators from using the subjective reputation risk standard when supervising banks to ensure their safety

and soundness, protect consumers, and maintain stability in the U.S. financial system.¹ Landmark believes this proposed rule is necessary to guard against the well-documented misuse of “reputational risk” to disadvantage lawful businesses and activities that some regulators disfavor for political or other constitutionally protected reasons.

Subjective Standards, Like the Reputational Risk Standard, are Easily Abused

The problem of debanking is real, with several high-profile cases of abuse by federal regulators coming to light over the last decade. In each case, subjective standards, like the reputational risk standard, provide financial regulators with unprecedented regulatory power that at a minimum chills, and in many cases, shuts down lawful business activity.

A December 2025 report issued by the House Committee on Financial Services documents the Biden Administration’s efforts to debank digital assets.² According to the House report, in early 2023, federal banking regulators signaled a coordinated shift toward heightened scrutiny of the digital asset ecosystem, echoing broader White House concerns.³ In a joint statement, the Federal Reserve, FDIC, and OCC emphasized perceived risks associated with crypto-asset activities, particularly those involving open or decentralized networks and stablecoins, which regulators warned could create run risk and deposit outflows.⁴ Although the agencies nominally stated that banks were not prohibited or discouraged from serving lawful crypto-related customers, they simultaneously cast doubt on whether such activities could ever adequately satisfy safety and soundness, consumer protection, and compliance expectations.⁵ This ambiguity—combined with repeated public warnings from regulators and financial stability officials—left banks without clear, objective standards and encouraged widespread risk aversion.⁶ The result was not tailored supervision based on demonstrable financial risk, but a de facto chilling effect on lawful activity driven by regulatory skepticism and reputational concerns rather than transparent, rule-based guidance.

In addition, recent findings by OCC demonstrate how reliance on “reputational risk” has led large banks to restrict access to financial services for lawful industries and individuals based not on safety and soundness, but on perceived public, political, or activist scrutiny. Between 2020 and 2023, OCC observed that banks adopted public and nonpublic policies requiring heightened reviews or outright restrictions for entire sectors because of how relationships might “appear” to the public or whether activities aligned with a bank’s stated values.⁷ These restrictions commonly targeted industries such as energy production, coal, firearms, private prisons, payday lending, tobacco, adult entertainment, political organizations, and digital asset businesses—often justified by concerns about media attention, controversy, or reputational harm rather than legal

¹ 90 Fed. Reg. 48,825.

² Staff of H. Comm. on Fin. Serv., 119th Cong., *Operation Choke Point 2.0: Biden’s Debanning of Digital Assets* (Dec. 2025).

³ *Id.* at 9-10.

⁴ Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation & Office of the Comptroller of the Currency, *Joint Statement on Crypto-Asset Risks to Banking Organizations* 1 (Feb. 2, 2023), <https://www.fdic.gov/news/press-releases/2023/pr23002a.pdf>.

⁵ *Id.*

⁶ *Id.*

⁷ Off. of the Comptroller of the Currency, *Preliminary Findings from the OCC’s Review of Large Banks’ Debanning Activities* (Dec. 2025).

compliance or financial risk.⁸ Some banks extended this approach to individual customers, triggering enhanced scrutiny based solely on negative press or public controversy.⁹ OCC’s review underscores that reputational risk has become a proxy for subjective value judgments and political considerations, resulting in *de facto* debanking of lawful activities without transparent, objective, or safety-and-soundness-based justification.

A 2016 report by FDIC’s Office of Inspector General (OIG) provides another illustration of the dangers of allowing regulators to rely on vague, extra-statutory concepts—such as reputational risk or “moral suasion”—rather than objective safety and soundness standards. OIG found that, although refund anticipation loans (RALs) were lawful banking products offered for decades, FDIC leadership became determined to force banks out of the business based on evolving and largely undocumented concerns, not demonstrable financial risk.¹⁰ Without issuing formal guidance, FDIC officials pressured examiners to downgrade institutions, altered examination narratives, rejected risk-mitigation plans despite contrary evidence, and pursued aggressive enforcement actions even while acknowledging high litigation risk.¹¹ These actions caused reputational harm, increased insurance assessments, and imposed significant costs on supervised institutions, despite a lack of examination-based evidence that RALs threatened safety and soundness.¹² OIG concluded that the episode reflected serious deficiencies in transparency, accountability, and supervisory restraint—and warned of the need to prevent similar abuses in the future.¹³ This history underscores why regulators should not be permitted to invoke subjective concepts like reputational risk as a standalone basis for determining whether a bank is safe and sound.¹⁴

Reputational Risk is an Ineffective Tool for Assessing a Bank’s Safety and Soundness

In addition to being ripe for abuse, Landmark submits that reputational risk is a poor tool for financial regulators to use to ensure the safety and soundness of the nation’s banks.

As Professor Julie Andersen Hill has explained in her debanking scholarship, reputational risk is inherently ill-suited to regulation because it is typically derivative of other, more concrete risks, like credit quality, liquidity, and even legal violations.¹⁵ And, as even regulators admit,

⁸ *Id.*

⁹ *Id.*

¹⁰ Off. of Inspector Gen., Fed. Deposit Ins. Corp., 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); *See also The FDIC’s Targeting of Refund Anticipation Loans: Hearing Before the Subcomm. on Oversight and Investigations of the H. Comm. on Fin. Serv.*, No. 114-79 (Mar. 16, 2016).

¹¹ Off. Of Inspector Gen., Fed. Deposit Ins. Corp., 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).

¹² *Id.*

¹³ *Id.*

¹⁴ Bank regulators are known to disguise vague and abusive reputational risk standards by describing them as voluntary “best practices.” One president of a large regional banking group described the practice to Landmark to be framed as follows. “You don’t have to do this, but be aware that your review score is based in part on adherence to ‘best practices.’” Thus, what is officially voluntary becomes functionally required.

¹⁵ Julie Andersen Hill, *Regulating Bank Reputational Risk*, 54 Ga. L. Rev. 523, 584–92 (2020).

reputational risk is inherently difficult to identify, measure, or predict.¹⁶ Reputational harm may stem from misinformation, rapidly shifting public sentiment, or the conduct of third parties—factors regulators cannot reliably foresee or control.¹⁷ Even when reputational issues trigger liquidity stress, regulators already have tools to address liquidity risk directly, again rendering reputational risk analysis largely superfluous.¹⁸

Hill warns that assessing reputational risk arising from lawful third-party relationships is especially fraught with difficulties.¹⁹ Whether negative perceptions of a customer or industry will transfer to a bank depends on multiple uncertain steps, including public sentiment, stakeholder reactions, and whether perceived harms are offset by other benefits.²⁰ As Hill explains, any industry or customer may become controversial at some point, making comprehensive regulatory monitoring impractical and speculative.²¹ Bank failure reports rarely cite reputational risk as a causal factor, and there is scant evidence that reputational concerns tied to lawful third parties have caused material bank losses, let alone runs or systemic instability.²²

Finally, Hill argues that regulators are poorly positioned to weigh competing reputational tradeoffs. Banks serve diverse stakeholder groups with differing and sometimes conflicting values, and reputational outcomes may vary sharply depending on local communities and customer bases. Banks, which engage directly with their stakeholders and can conduct market analysis, are better equipped than distant regulators to assess and manage these risks.

Reputational Risk is a Creature of Administrative Discretion Without Specific Statutory Authorization

A review of federal banking statutes provides no reference to the term “reputation risk.”²³ The National Bank Act charges the OCC with “assuring the safety and soundness of, and compliance with laws and regulations, fair access to financial services, and fair treatment of customers” by supervised institutions.²⁴

Similarly, the Federal Deposit Insurance Act provides the FDIC with authority to supervise and examine state nonmember banks for safety and soundness.²⁵ And the Federal Reserve Act contains no reference to reputational risk as a supervisory concern.²⁶

Reputational risk entered federal banking supervision not through legislative action, but through administrative policy choices made by the agencies themselves. In the late 1980s and 1990s, the

¹⁶ *Id.* at 585.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 586.

²⁰ *Id.* at 586-92.

²¹ *Id.*

²² *Id.* at 588.

²³ Julie Andersen Hill, *Governmental Debunking*, Tex. A&M L. Rev. (forthcoming 2026) (manuscript at 41).

²⁴ 12 U.S.C. § 1(a).

²⁵ 12 U.S.C. §§ 1811 *et seq.*, 1819(a), 1820(a).

²⁶ 12 U.S.C. § 226.

OCC and other financial regulators adopted risk-based supervisory frameworks.²⁷ In 1995, the OCC formalized this shift with its “supervision by risk” examination program, which emphasized nine categories of risk, including reputational risk.²⁸ During the same period, the FDIC likewise incorporated reputational risk into its examination manuals and supervisory guidance.²⁹

The administrative origins of reputational risk supervision underscore why codifying its elimination through formal rulemaking is essential. Because reputational risk was never statutorily mandated, future agency leadership could theoretically reintroduce it through guidance or informal policy changes unless its prohibition is firmly established in regulation.

Recommended Improvements to the Proposed Rule

First, FDIC and OCC should strengthen the proposal by prohibiting adverse supervisory actions based on reputational risk altogether, including in the evaluation of a bank’s lawful commercial relationships, rather than barring such actions only when reputational risk is the sole stated basis. Limiting the prohibition to “sole reliance” invites pretext and gamesmanship, allowing staff to cite minimal or unrelated factors to justify outcomes driven by reputational concerns. As previously mentioned, reputational risk is inherently subjective, difficult to predict, and prone to misuse, whether applied to political, religious, or commercial activity, and history shows it can be wielded to suppress lawful but disfavored commerce. Because regulators are no better positioned to forecast the reputational impact of a commercial client than of a political or religious one—and because constitutional safeguards are weaker in the commercial context—the need for clear, binding limits is even greater. Codifying a robust prohibition would conserve agency resources, focus supervision on objective safety-and-soundness risks, and guard against abuse of regulatory power.

Second, while the proposed rule would limit the use of reputation risk based on a supervisor’s personal disagreement with or disfavor toward an individual’s religious, political, or cultural activities, it would not fully prevent agencies from taking action against persons or entities on the basis of perceived reputation risk tied to lawful political or religious conduct. The rule should be strengthened to extend the prohibition to all lawful political and religious activities. Simply preventing supervisors from formalizing their personal policy preferences is insufficient, as the logic of reputation risk could still compel regulators to act against lawful conduct. Agencies should ensure that neither regulators nor the targets of reputational pressure are forced to bear the consequences of such influence.

Third, the agencies should amend proposed 12 C.F.R. § 4.91(f) and 12 C.F.R. § 302.100(f) to prohibit supervisory actions motivated by the disagreement or disapproval of any agency official or employee, not merely the views of the assigned supervisor. While the proposal meaningfully improves existing protections by barring actions intended to punish or discourage lawful political, cultural, religious, or business activity, it leaves open a critical gap where senior officials may exert pressure on supervisory staff to achieve outcomes driven by personal or institutional animus. Given documented instances of such conduct in the past—most notably the

²⁷ 90 Fed. Reg. 48,825, 48,826 n.2 (Oct. 30, 2025).

²⁸ *Id.*

²⁹ *Id.*

FDIC's targeting of RALs—it is essential to close this loophole and expressly preclude adverse actions motivated by the views or preferences of any agency personnel.

Fourth, the agencies should remove the “financial condition” prong from the definition of reputation risk and make clear that reputational considerations cannot serve as an independent basis for supervisory action under any circumstances. Expanding the definition to include operational issues would only increase the risk of ineffective or potentially abusive regulatory interventions. Reputation risk is redundant at best and prone to misuse at worst, as the agency already has ample authority to address safety, soundness, operational, financial, and legal risks. Eliminating reputational risk as a regulatory justification would reduce opportunities for abuse, focus agency resources on meaningful oversight, and provide clear boundaries for supervisory conduct.

Conclusion

Landmark applauds the agency for taking this crucial step to address the problem of debanking by prohibiting regulators from using reputation risk as a basis for supervising our nation’s banks. This policy recognizes a fundamental principle: all Americans should have access to the financial system so long as they are engaged in lawful political, cultural, religious, or expressive activities. By ensuring that lawful conduct—regardless of public opinion or political sensitivity—cannot be used to justify denial of banking services, the agency is protecting both the integrity of the financial system and the constitutional freedoms of all individuals.

Thank you for your consideration of these comments. If we can be of further assistance or answer any questions you may have, please contact us at [REDACTED] or at [REDACTED].

Sincerely,

Richard P. Hutchison, Esq.

Landmark Legal Foundation