Comments on Unsafe or Unsound Practices, Matters Requiring Attention
Docket No. OCC-2025-0174 / RIN 3064-AG16

This comment responds to the OCC and FDIC proposed rule defining "unsafe or unsound practice" and revising standards for Matters Requiring Attention (MRAs). I generally support the proposed rule but I would like to see a few adjustments for improved operation and clarity.

Clarity of thresholds

The rule uses two different tests: "likely" for unsafe or unsound practices and "could reasonably be expected" for MRAs, but it does not say how these two tests differ or what facts meet each one. That gap leaves examiners free to decide case-by-case and makes outcomes unpredictable for banks.

I recommend adding a short rule paragraph that (1) explains that "likely" means a higher probability than "could reasonably be expected," (2) gives a few simple examples of objective signs that meet each test (for example, large concentration relative to capital, sudden fall in asset values, repeated control failures for "likely"; plausible adverse scenarios identified by stress testing for "could reasonably be expected"), and (3) requires examiners to note in the ROE or MRA which test they used and the main evidence that led to that choice.

Tailoring by size, complexity, and risk profile

The rule says supervision should be "tailored" to a bank's size, complexity, and risk, but it doesn't explain how to do that or require examiners to show how they applied tailoring. That makes outcomes unpredictable and risks inconsistent treatment.

I suggest the agencies publish simple, non-binding guidance—for example, an illustrative matrix showing asset or complexity bands and how expectations change by band—and require examiners to write a short note in the ROE explaining how they used tailoring for that institution. Treat the matrix as a baseline, not a rigid rule, and allow documented departures when institution-specific facts justify them.

Scope of "banking or banking-related law or regulation"

I recommend adding a definitions subsection to the regulation that (1) identifies high-level statutory categories within scope and (2) permits the agency to publish illustrative examples or clarifications by public notice or supervisory guidance. The

following model language is designed to balance clarity for supervised institutions with administrative flexibility for the agencies:

Suggested regulatory insertion: "Banking or banking-related law or regulation means federal statutes and implementing regulations governing the following categories: (i) deposit-taking; (ii) lending and credit; (iii) fiduciary activities and trust operations; (iv) consumer financial protection statutes and implementing rules; and (v) anti-money-laundering and counter-terrorist financing obligations. The agency may publish, by Federal Register notice or supervisory guidance, illustrative examples of statutes, regulations, and implementing authorities that the agency considers to fall within these categories for purposes of this part. Publication of illustrative examples does not limit the agency's authority to determine in specific cases whether other statutes, regulations, or legal obligations are banking-related under applicable law."

Minimum content for MRAs or ROE paragraphs

The preamble emphasizes clarity and better supervisory records, but the proposed rule does not mandate minimum content for MRAs or ROE paragraphs that rely on the new standards. In practice, MRAs that succinctly state facts, the analytic linkage to the standard, tailored corrective expectations, and objective validation criteria reduce ambiguity and the likelihood of protracted disputes.

I recommend requiring that any MRA or ROE paragraph predicated on these standards include: a concise factual summary; the specific standard applied; a brief analysis linking facts to the probability and materiality threshold used; tailored corrective expectations with anticipated timeframes; and objective verification and validation criteria for closure. I suggest the requirement be framed as a baseline for ordinary matters, with a separate, documented approach for exceptionally complex or systemic matters.

"Generally accepted standards of prudent operation"

The phrase "generally accepted standards of prudent operation" is broad and long-standing. To reduce ambiguity without imposing rigid procedural requirements on examiners, I recommend a lighter, practicable approach: encourage examiners to identify representative sources when doing so is practicable and helpful to the supervised institution, rather than mandating citation in every instance.

Suggested replacement language: When an examiner characterizes conduct as contrary to generally accepted standards of prudent operation, the ROE should, where practicable and helpful to remediation, identify the representative sources relied upon (for example, relevant supervisory handbook sections, industry guidance, or widely recognized professional standards) and provide brief illustrative examples for similarly situated

institutions. This expectation is supervisory guidance intended to improve clarity and remediation effectiveness while preserving examiner discretion in individual cases.

Composite rating downgrades and linkage to MRAs or enforcement

The preamble links material supervisory concerns to ratings, but the proposed regulatory text does not require that every downgrade to a less-than-satisfactory composite rating be paired with an MRA or formal enforcement action. A categorical requirement could create perverse incentives (under-reporting of deterioration or over-use of MRAs) and slow timely supervisory signaling.

I recommend a calibrated transparency baseline rather than an absolute procedural trigger: where a downgrade to a composite supervisory rating of 3 or worse reflects a supervisory determination that the institution engaged in conduct meeting the rule's unsafe or unsound standard or violated a banking-related law or regulation, the downgrade should be accompanied by an MRA meeting the section's standard or by a formal enforcement action. Where a downgrade is driven solely by objective financial deterioration (for example, metric breaches, market losses, or other quantifiable indicators) and not by supervisory findings of unsafe or unsound conduct, the ROE should include a concise, data-driven explanatory paragraph setting out the objective indicators and supporting data.

Nonfinancial risks and the test for material financial harm

Nonfinancial problems — like cyberattacks, vendor failures, or major operational breakdowns — can cause real, rapid financial losses. The rule should make clear how examiners connect those problems to material financial harm before elevating them to MRAs or enforcement actions.

I recommend requiring examiners to document a simple scenario analysis showing how the nonfinancial issue could cause material financial impact (for example: business-interruption days × revenue at risk; loss of a clearing or correspondent relationship; or inability to make critical settlements). If scenario modeling is not feasible, examiners may rely on other documented evidence that plausibly supports material financial risk. This standard should be a supervisory baseline to ensure consistent, transparent escalation decisions.

Crypto, highly speculative instruments, and novel exposures

The proposed text's general prudential standards can reach crypto assets, tokenized instruments, staking/DeFi activities, and certain highly leveraged or illiquid derivatives, but the rule does not identify the objective indicators that make these exposures especially prone to rapid, nonlinear losses or liquidity stress.

I recommend inserting a narrowly tailored clause identifying these categories and listing principal indicators examiners should consider—concentration relative to capital, leverage, liquidity mismatch, custody/settlement weakness, valuation unreliability, and counterparty fragility—and require documentation of the indicators and any mitigants in the ROE. I suggest treating this language as supervisory guidance that triggers heightened documentation and earlier engagement rather than as a prohibition on permissible activities.

Edit for Clarity

I recommend replacing "Is contrary to generally accepted standards of prudent operation" with "That materially deviates from generally accepted standards of prudent operation, taking into account institution size and complexity," and I suggest ensuring the OCC and FDIC texts are verbatim counterparts to avoid divergence.

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