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December 29, 2025

BY ELECTRONIC
SUBMISSION & EMAIL

Office of the Comptroller of the Currency
via: Federal eRulemaking Portal

Federal Deposit Insurance Corporation
via: comments@fdic.gov

Letter in Opposition to Proposed Rule on Unsafe or Unsound Practices, Matters Requiring Attention (OCC-2025-0174 (OCC) & RIN 3064-AG16 (FDIC))

To whom it may concern:

Less than twenty years removed from the Great Recession, the most significant financial crisis since the Great Depression, active supervision of state and national banks remains a vital tool to protect the safety, stability, and soundness of financial markets in the United States. Yet in the face of nearly two decades of relative prosperity, economic growth, and the avoidance of any major catastrophe, the Office of the Comptroller of the Currency (the "OCC") and the Federal Deposit Insurance Corporation (the "FDIC") propose to overhaul bank supervision in a manner that risks disastrous consequences for everyday Americans at a time of significant financial disruption and uncertainty in the country's markets. We, the undersigned attorneys general for New York, Arizona, California, Colorado, Connecticut, the District of Columbia, Hawaii, Illinois, Maryland, Massachusetts, Minnesota, New Jersey, New Mexico, Oregon, Rhode Island, and Vermont (the "State AGs"), therefore oppose the proposed rule and urge the OCC and the FDIC to abandon it entirely or, at minimum, significantly revise it.

I. The Proposed Rule Risks Harm to Millions By Narrowing Bank Oversight at a Moment Significant Disruption and Financial Risk

The proposed rule improperly narrows future supervisory focus on unsafe or unsound practices for which material financial harm is present or imminent. For example, conduct that presents risk but does not "deviate from generally accepted standards" will no longer trigger examination findings,[1] conduct that "could potentially result in" harm will not be treated as unsafe or unsound,[2] and harm that does not represent a "material" loss or is not "likely to cause material loss" will not be required to be redressed.[3] These limitations are contrary to the core of bank supervision, which is "to ensure banks stay on the road and comply with the rules, especially as conditions shift and new risks emerge."[4] Indeed, scholars have found that closely supervised banks tend to experience steadier income and fewer loan losses, making them more resilient during times of stress, when contagion risks are greatest.[5] Yet the proposed rule risks financial calamity by prohibiting examiners from focusing on significant threats to the financial health of individual banks or the banking system which are not yet imminent. More troublingly, the proposed rule does not even attempt to address several threats to the wider economy that are materializing:

<u>Cryptocurrency</u>. Over this past year, the integration of cryptocurrency and crypto-adjacent products and services into the country's banking and financial systems has proceeded at a rapid clip, encouraged by legislative action such as the "GENIUS" Act,[6] public encouragement by federal officials,[7] and regulatory easing of prior restrictions.[8] This integration has continued notwithstanding recent and disastrous events, including the "crypto winter" of 2022 during which values of various crypto assets plunged by nearly three-quarters and major crypto entities failed or were embroiled in illegality.[9] Thankfully, the banking system was insulated from the events of 2022, in no small part because of the wall between the financial and cryptocurrency markets that existed at the time. Recent developments have torn down that wall and are eerily reminiscent of the lead-up to the Great Recession, where Congress subsequently found that "our regulators actively embraced deregulation, pushed for lower capital standards, ignored calls for greater consumer protections and allowed the companies they supervise to use complex financial instruments to manage risk that neither they nor the companies really understood."[10] In the face of these developments, scaling back overall bank supervision and limiting findings to actual material harm rather than potential harm from unknown and new products courts disaster.

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1 OCC & FDIC, *Unsafe or Unsound Practices, Matters Requiring Attention*, 90 F.R. 48835, 48838 (Oct. 30, 2025) (hereinafter, the "Proposed Rule").

2 *Id*.

3 *Id*. at 48839.

4 Michael S. Barr, Member. Bd. of Gov. of the Federal Reserve System, *The Case for Strong, Effective Banking Supervision* at 4 (Nov. 18, 2025).

5 Beverly Hirtle, Anna Kovner, and Matt Plosser, *The Impact of Supervision on Bank Performance*, 75 Journal of Finance 2765, 2798–99 (2020), *available at* https://doi.org/10.1111/jofi.12964.

6 Pub. L. No. 119-27 (2025).

7 The White House, *Crypto*, *available at* https://www.whitehouse.gov/crypto/.

8 *See, e.g.*, OCC, *OCC Confirms Bank Authority to Hold Certain Crypto-Assets as Principal for Purposes of Paying Crypto-Asset Network Fees* (Nov. 18, 2025), *available at* https://www.occ.gov/news-issuances/news-releases/2025/nr-occ-2025-108.html.

9 *See, e.g.*, Organization for Economic Cooperation and Development, *Lessons from the Crypto Winter* (Dec. 14, 2022), *available at* https://www.oecd.org/content/dam/oecd/en/publications/reports/2022/12/lessons-from-the-crypto-winter_37bf4b9e/199edf4f-en.pdf.

10 S. Rep. 111-176, at 40 (Apr. 30, 2010).

Private Credit. Another development in financial markets is the rise of private credit through which hedge funds, private equity firms, and other nonbanks offer loans to corporate entities, often in competition with state and national banks. The Federal Reserve Bank of Boston has estimated that the market for private credit has grown in real terms from about $46 billion in 2000 to roughly $1 trillion in 2023.[11] Unlike bank loans, however, loans made in private markets lack "transparency in a largely unregulated, unscrutinized industry."[12] But to a significant extent, private credit firms depend on borrowing funds from traditional banks.[13] And traditional banks have begun to partner with private credit firms to fund their lending more directly.[14] As a consequence, there are concerns that a higher-than-expected uptick in defaults could expose traditional banks to substantial losses.[15] This, again, is reminiscent of the leadup to the Great Recession, in which "[g]aps in the regulatory structure allowed these risks and products to flourish outside the view of those responsible for overseeing the financial system."[16] Limiting federal supervision of banks' relationships with the private credit market solely to risks that "directly, clearly, and predictably" impact banks' financial condition recreates prior gaps.

Artificial Intelligence Investment. Finally, the past few years have seen enormous investment of resources and capital expenditures to build out infrastructure that supports ongoing development of artificial intelligence, including large language models such as ChatGPT and Gemini.[17] As many economic experts have observed, the current pace of spending on development, including spending financed by bank loans, is vastly outpacing concrete expectations for future revenue generation.[18] These developments, again, retrace paths taken in the lead-up to the Great Recession while ignoring history, including warnings by Mr. Horne that unsafe and unsound practices include those that lead to "over-concentration of loans to speculative builders."[19] The proposed rule does not provide a framework for grappling with these potential calamities.

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11 Jose Fillat, Mattia Landoni, John D. Levin, and J. Christina Wang, *Could the Growth of Private Credit Pose a Risk to Financial System Stability?*, Fed. Reserve Bank of Boston (May 21, 2025), *available at* https://www.bostonfed.org/publications/current-policy-perspectives/2025/could-the-growth-of-private-credit-pose-a-risk-to-financial-system-stability.aspx.

12 Elisabeth de Fontenay, *The Promise and Perils of Private Credit*, Duke Law (Sep. 30, 2025), *available at* https://law.duke.edu/news/promise-and-perils-private-credit.

13 Viral V. Acharya, Nicola Cetorelli, and Bruce Tuckman, *Where Do Banks End and NBFIs Begin?*, Fed. Reserve Bank of N.Y. Staff Reports, no. 1119, at 11–12 (Sept. 2024), *available at* https://doi.org/10.59576/sr.1119.

14 *Id.* at 12; *see also* Fang Cai and Sharjil Haque, *Private Credit: Characteristics and Risks*, Bd. Of Governors of the Fed. Reserve Sys.: FEDS Notes (Feb. 23, 2024), *available at* https://www.federalreserve.gov/econres/notes/feds-notes/private-credit-characteristics-and-risks-20240223.html.

15 Admin. Off. of the U.S. Courts, *Report Pursuant to Section 202(E) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203 (2010)* at 29 (July 2025), *available at* https://www.uscourts.gov/sites/default/files/document/dodd-frank-report-2025.pdf; Fillat, Landoni, Levin, and Wong, *supra*.

16 S. Rep. 111-176 at 43.

17 Goldman Sachs Research, *AI: In a Bubble?* (Oct. 22, 2025), *available at* https://www.goldmansachs.com/pdfs/insights/goldman-sachs-research/ai-in-a-bubble/report.pdf.

18 Alex Knapp, *Capital Spending on AI May Be Vastly Outpacing Potential Revenue*, Forbes (Sep. 26, 2025), *available at* https://www.forbes.com/sites/the-prototype/2025/09/26/capital-spending-on-ai-may-be-vastly-outpacing-demand/.

19 112 Cong. Rec. 26472, 26474 (Oct. 13, 1996).

In short, the United States is currently experiencing innovations, new products, and speculation in its banking and financial markets. The proposed rule's attempt to reign in bank supervision at this economic moment is indefensible and risks financial calamity.

II. The Proposed Rule Risks Repeating Past Errors

Modern banking supervision traces its roots to the Great Recession, the most severe financial recession in the United States since the Great Depression. Congress found that the Great Recession was caused in significant part by reckless subprime mortgage lending[20] among the nation's state and national banks that substantially accelerated at a time when states' ability to legislate against predatory lending had been "effectively gutted"[21] by aggressive preemption of state lending laws.[22] The Great Recession, as Congress also found, resulted from "the failure of the federal banking and other regulators to address significant consumer protection issues" that led to the Great Recession and, with it, "millions of . . . lost jobs," the loss of "trillions of dollars in net worth" for American consumers, and the loss of "retirement, college, and other savings."[23]

To remedy these shortcomings, Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010[24] to "strengthen[] the supervision of large complex financial organizations."[25] In connection with these efforts, Congress found that historically "being under the supervision of a federal prudential regulator" had not ensured strong compliance or sound underwriting practices, as significant "gaps in supervision" existed.[26] Yet the proposed rule, which rewrites the rules of bank supervision and limits the ability to address misconduct through enforcement, does not grapple at all with Congress's findings in the wake of the Great Recession, instead looking more than forty years back in time, when the Federal Deposit Insurance Act was enacted.[27] As one important example, the proposed rule limits supervision and enforcement authority over unsafe or unsound practices to those that are "likely" to "materially harm the financial condition" of supervised banks.[28] But in 2010, Congress found that an excessive focus on banks' financial conditions "allowed" significant "deterioration in underwriting standards" to "take place" by over-emphasizing banks' bottom-lines over prudent practice, such as the relaxation of standards "to prevent" banks from being "priced out of the market."[29]

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20 *See generally* Fin. Crisis Inquiry Commission, *Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States* at 67–80 (2011), *available at* https://fcic-static.law.stanford.edu/cdn_media/fcic-reports/fcic_final_report_full.pdf.

21 Nicolas Bagley, *The Unwarranted Regulatory Preemption of Predatory Lending Laws*, 79 N.Y.U. L. REV. 2274, 2275 (2004).

22 Congressional Research Service, *Federal Preemption in the Dual Banking System* at 14 n.136, R45726 (May 17, 2019), *available at* https://sgp.fas.org/crs/misc/R45726.pdf (collecting citations).

23 S. Rep. 111-176, at 9.

24 Pub. L. No. 111-203 (2010).

25 S. Rep. 111-176, at 2.

26 *Id*. at 3, 14.

27 Proposed Rule at 48837.

28 *Id*. at 48838.

29 S. Rep. 111-176, at 14.

Beyond failing to grapple at all with Congress's recent commands regarding bank supervision, the proposed rule also misstates history. In particular, the proposed rule purports to formulate its definition of unsafe or unsound practices based on the testimony of John Horne, the Chairman of the Federal Home Loan Bank Board at the time of enactment of the FDI Act.[30] Yet the proposed rule repeatedly misses the mark. For example, the proposed rule states that a practice is not unsafe or unsound unless it is "likely" to materially harm the financial condition of a state or national bank, expressly clarifying that harms that are "merely possible" are not sufficient to create an unsafe or unsound practices.[31] Yet in his testimony, Mr. Horne explained that practices whose "possible consequences" included "risk or loss or damage to an institution" would be within the scope of unsafe or unsound practices.[32] Similarly, the proposed rule defines "harm" to mean that which has "caused actual material losses" or "must be likely to cause material loss,"[33] while Mr. Horne included "risk" of losses to the FDIC's insurance fund as sufficient.[34]

III. The Proposed Rule Weakens Effective Supervision and Enforcement

The purpose of bank supervision is, fundamentally, to promote a safe, sound, and efficient banking system that supports a strong economy.[35] The purpose is not to protect the banks themselves; rather, it is to protect everyday Americans who rely on banks for deposit, safekeeping, and transmission of money.[36] To accomplish the goal of protecting ordinary consumers, effective bank supervision includes "verifying that banks are operating soundly and identifying and addressing weaknesses before they threaten the solvency of particular banks and possibly spread through the financial system."[37] This process inherently is proactive; effective supervision does not wait until problems emerge but attempts to identify and neutralize significant risks. And if problems do emerge from unsafe or unsound practices, the OCC and the FDCI have enforcement authority to address such problems, including by issuing cease-and-desist letters[38] or demanding civil money penalties[39] from covered institutions engaged in unsafe or unsound practices.

The benefits of effective bank supervision are legion. For example, recent bank supervision identified issues with potentially illegal overdraft fees and led to consumer refunds of

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30 *See, e.g.*, Proposed Rule at 48837.

31 *Id*. at 48838.

32 112 Cong. Rec. at 26474.

33 Proposed Rule at 48839.

34 Federal Reserve, *About the Fed* (2025), *available at* https://www.federalreserve.go/aboutthefed.htm.

35 112 Cong. Rec. at 26474.

36 *See, e.g.*, *Grant v. Fritz*, 201 N.W.2d 188, 194 (Iowa Sup. Ct. 1972) ("The chief purpose of state supervision (of banks) is to protect and safeguard the public in its relation to the bank as depositors."); *Youmaans v. Hanna*, 160 N.W. 705, 714 (N.D. Sup. Ct. 1916) ("The purpose of bank supervision is clearly to protect the depositors and the public."); *Leary v. Capitol Trust Co.*, No. 238 A.D. 661, 663 (N.Y. App. Div. 1933) ("A primary purpose of official supervision is to effectuate" the "safety of deposits" and transmission of money).

37 Barr, *supra*, at 3.

38 12 U.S.C. § 1818(b)(1).

39 *Id*. § 1818(i).

nearly $250 million.[40] Similarly proactive supervision identified and addressed risks related to increasing defaults in mortgage markets related to the Covid-19 pandemic and student-loan market disruptions.[41] Meanwhile, research has demonstrated that banks subject to increasing supervisory oversight are safer and remain just as profitable as other peer financial institutions.[42]

The proposed rule, however, abandons a proactive approach in favor of one that triggers supervisory warnings only where a practice both "deviates from generally accepted standards of prudent operation" and is "likely to result in material harm to banks.[43] It bars future examiners from identifying as unsafe or unsound practices those that "could potentially result in" harm to banks or consumers[44] or those for which harm is "imminent" but not necessarily material to the state or national bank itself.[45] And the proposed rule applies this same narrow standard of what constitutes an unsafe or unsound practice to the OCC's and the FDIC's ability to bring enforcement actions for such practices, thereby hindering both the ability to proactively prevent unsafe or unsound practices and the ability to remedy such practices when they occur. Remarkably, however, the proposed rule offers no justification for these new limits.

IV. The Proposed Rule Fails to Account for Current Developments

The proposed rule also fails to account for contemporary developments in federal banking supervision and enforcement, most notably the current efforts to effectively shutter the Consumer Financial Protection Bureau ("CFPB"). Congress, in enacting Dodd-Frank, sought to "reduce regulatory gaps in supervision."[46] As part of this legislation, the CFPB was created and assigned "exclusive authority" to supervise large banks' compliance with federal consumer financial laws and protections[47] and discretionary authority to supervise other banks' compliance with the same.[48] Yet the current acting director of the CFPB has provided notice to courts that the CFPB will lack funding within a matter of months, thereby ceasing operations.[49]

The proposed rule not only fails to acknowledge these developments but by its terms codifies the absence of any federal banking supervisor responsible for consumer protection. Specifically, it provides that future examiners may cite as matters requiring attention only potential violations of laws "related to banking."[50] It then clarifies in a footnote that such laws will include consumer protections "only with respect to institutions for which the [OCC or the FDIC] have

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40 Consumer Financial Protection Bureau, *Supervisory Highlights: Issue 37* at 5 (Winter 2024).

41 Consumer Financial Protection Bureau, *Supervisory Highlights, Mortgage Servicing Edition* at 33 (Spring 2024); Consumer Financial Protection Bureau, *Supervisory Highlights: Special Edition Student Lending* (Winter 2024)..

42 *See generally* Hirtle, Kovner, and Plosser, *supra*.

43 Proposed Rule at 48838.

44 *Id*.

45 *Id*. at 48839.

46 S. Rep. 111-176 at 25.

47 12 U.S.C. § 5515(b)(1).

48 *Id*. § 5516(c).

49 Notice of Potential Lapse in Appropriations, ECF No. 145, *NTEU v. Vought*, No. 25 Civ. 381 (D.D.C. 2025).

50 Proposed Rule at 48841.

supervisory or enforcement authority."[51] In other words, the proposed rule confirms what the current Chair of the Federal Reserve told Congress earlier this year: "all the authority for examiners actions in the consumer space" were assigned "to the CFPB" and, in the CFPB's absence, "no other federal regulator" is ensuring that the country's biggest banks are adhering to the law.[52]

The absence of any primary supervisor responsible for compliance with consumer protection laws will be exacerbated by the proposed rule's myopic focus on supervision solely for risks of financial harm. Effective bank supervision long has focused on non-financial risks, such as risks to a banks' reputation. "Reputation assumes special importance in banking because asymmetric information, the qualitative-asset-transformation made by banks, and the supply of payment and risk management services" by banks create increased system risks.[53] To account for these significant risks, more than thirty years ago, the Federal Reserve identified six "primary risks" that must be included in effective bank supervision, including "reputational risk."[54] Federal Reserve governors have likewise long recognized that "supervisors have a duty to see that all risks are fully understood, even those risks that, like reputational risk, are unquantifiable or have not fully emerged."[55] And the OCC's own handbook has, for more than a decade, emphasized that "minimum standards" of risk governance must include those accounting for "reputational risk."[56] Yet in a single line that is unsupported by any argument or citation, the proposed rule now announces that standards for non-financial risks in supervision "would not include risks to the institution's reputation."[57] This proposed revision to longstanding practice is indefensible standing alone, but even more so in light of the lack of any alternative federal supervisory work.

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51 *Id*. at 48841 & n.45.

52 Reuters, *Fed Chair Says No Agency Outside CFPB Tasked with Consumer Protection* (Feb. 11, 2025), *available at* https://finance.yahoo.com/video/fed-chair-says-no-agency-180043064.html.

53 Franco Fiordelisi, Maria-Gaia Soana, and Paola Schwizer, *The Determinants of Reputational Risk in the Banking Sector*, 37 J. of Banking & Fin. 1359 (May 2013), *available at* sciencedirect.com/science/abs/pii/S0378426612001197.

54 Federal Reserve, *Rating the Adequacy of Risk Management Processes and Internal Controls*, SR 95-51 (Nov. 14, 1995), *available at* federalreserve.gov/supervisionreg/srletters/SR95551.htm. Earlier this year, the Federal Reserve, without comment, removed references to reputational risk in this and other supervisory material.

55 Sarah Bloom Raskin, Member, Bd. of Gov. of the Federal Reserve System, *Reflections on Reputation and its Consequences* (Feb. 28, 2013).

56 OCC, *Heightened Standards for Large Financial Institutions*, 79 Fed. 54518, 54528 (Sep. 11, 2014).

57 Proposed Rule at 48839.

For all the above reasons, the OCC and FDIC should abandon the proposed rule and recommit to vigorous supervision of the banking system and financial markets.

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