

April 27, 2026

Via <https://www.federalreserve.gov/apps/proposals/>

Benjamin W. McDonough
Deputy Secretary of the Board
Board of Governors of the Federal Reserve System
Marriner S. Eccles Federal Reserve Board Building
20th St. & Constitution Ave. NW
Washington, DC 20551

**RE: “Prohibition on Use of Reputation Risk or Other Supervisory Tools To Encourage or Compel Banking Organizations To Engage in Politicized or Unlawful Discrimination,”
Docket ID R-1884, RIN 7100-AH17**

Dear Deputy Secretary McDonough:

We write to offer comment on the Board of Governors of the Federal Reserve System’s proposed rule, “Prohibition on Use of Reputation Risk or Other Supervisory Tools To Encourage or Compel Banking Organizations To Engage in Politicized or Unlawful Discrimination” (“Proposed Rule”).¹ Rachel Morrison is a Fellow at the Ethics and Public Policy Center (EPPC), director of EPPC’s Administrative State Accountability Project (ASAP), and a former attorney with the Equal Employment Opportunity Commission. Eric Kniffin is an EPPC Fellow, member of EPPC’s ASAP, and a former attorney in the U.S. Department of Justice’s (DOJ) Civil Rights Division. Samuel Lucas is a legal associate with ASAP.

The Federal Reserve System Board supervises various types of banking organizations. This rule seeks to codify the removal of reputation risk from the Board’s supervisory programs² by adopting a regulation that states that the Board “shall not use reputation risk as a component of its examination programs or in materials used for the supervision of banking organizations.”³ The Board has defined and would continue to define “reputation risk” as “the potential that negative publicity regarding a banking organization’s business practices, whether true or not, will cause a decline in the customer base, costly litigation, or revenue reductions.”⁴ We rely on this definition in our public comment.

Under the Proposed Rule, the Board would be prohibited “from encouraging or compelling Board-supervised banking organizations to deny or condition the provision of banking or other

¹ 91 Fed. Reg. 9499 (Feb. 26, 2026), <https://www.federalregister.gov/d/2026-03818>.

² *Id.* at 9499.

³ *Id.* at 9500.

⁴ *Id.*

financial products or services to an individual or business based on their constitutionally protected political or religious beliefs, associations, speech, or conduct, or based on involvement by the individual or business in politically disfavored but lawful business activities perceived to present reputation risk.”⁵

In support, the Proposed Rule cites President Trump’s August 7, 2025, executive order on “Guaranteeing Fair Banking for All Americans,” which directs the agencies to “remove the use of reputation risk or equivalent concepts that could result in politicized or unlawful debanking.”⁶ That order explains that “[b]ank regulators have used supervisory scrutiny and other influence over regulated banks to direct or otherwise encourage politicized or unlawful debanking activities.”⁷ As a result of this pressure from bank regulators, certain individuals and businesses have been subject to debanking based on “political affiliations, religious beliefs or lawful business activities.”⁸

The executive order states that “no American should be denied access to financial services because of their constitutionally or statutorily protected beliefs, affiliations, or political views, and to ensure that politicized or unlawful debanking is not used as a tool to inhibit such beliefs, affiliations, or political views.”⁹ Instead, banking decisions should be made based on “individualized, objective, and risk-based analyses.”¹⁰ **We agree. And for the reasons below we support the prohibition on use of reputation risk by the Board.**

I. There Are Many Reasons to Prohibit the Use of Reputation Risk

There are many reasons why the Board should prohibit use of reputation risk.

First, as other federal agencies have found, reputation risk does not work. The National Credit Union Administration (NCUA) has found that using reputation risk “can lead to inconsistency and subjectivity in the examination and supervision process, without adding material value from a safety and soundness perspective.”¹¹ The Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC) likewise found that reputational risk “diverts bank and agency resources from more salient risks without adding material value from a safety and soundness perspective.”¹²

One of the reasons that reputation risk does not work is because it involves so much guesswork. As one agency explained, supervisors “have little ability to predict *ex ante* whether or how certain activities or customer relationships present reputation risks that could threaten the

⁵ *Id.* at 9499.

⁶ Exec. Order 14331, *Guaranteeing Fair Banking for All Americans*, 90 Fed. Reg. 38925 (Aug. 7, 2025), <https://www.federalregister.gov/d/2025-15341>.

⁷ *Id.* (discussing “Operation Chokepoint”).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ NCUA, *Prohibition on Use of Reputation Risk by NCUA*, 90 Fed. Reg. 48409, 48409 (Oct. 21, 2025), <https://www.federalregister.gov/d/2025-19623>.

¹² OCC/FDIC, *Prohibition on Use of Reputation Risk by Regulators*, 90 Fed. Reg. 48825, 48826 (Oct. 30, 2025), <https://www.federalregister.gov/d/2025-19715>.

safety and soundness of an institution.”¹³ Agencies have found that using reputation risk “has not resulted in consistent or predictable assessments of material financial risk.”¹⁴ In fact, there is zero clear evidence that focusing on banking organizations’ reputations has protected them from losses or improved their performances.¹⁵

Federal agencies are generally delegated authority under the theory that agencies can bring professional expertise to bear on important matters of public policy. But here, reputation risk relies on the ability of agency supervisors to accurately predict the future. But there is no reason to think that this is within agency supervisors’ competence. As the OCC and FDIC explained in their recent proposal to eliminate reputation risk, the agencies’ supervisors “have not been able to accurately predict the public’s reaction to business decisions made by institutions.”¹⁶

Second, reputation risk is dangerous because it is subject to bias and abuse. Because there is no way to tell the future, encouraging the use of reputation risk inevitably encourages agency supervisors to rely on their own subjective judgements about what most people think and how they might act. Because supervisors wield enormous practical power, even informal ‘suggestions’ rooted in reputation risk can amount to de facto compulsion, especially for smaller institutions; codifying this prohibition will help cabin such informal pressure.

Other agencies have already flagged these concerns. In the words of the OCC and FDIC, reputation risk “adds substantial subjectivity to bank supervision and can be abused.”¹⁷ It is inherently subjective and has “proven nearly impossible to assess or quantify with accuracy.”¹⁸ As the NCUA explained, because reputation risk “is ambiguous and lacks measurable criteria,” it leaves too much “open to interpretation” and “could reflect individual perspectives rather than data-driven conclusions.”¹⁹ Reputation risk *by its very nature* “introduces the potential for political or other biases into the supervisory process.”²⁰

Examining for reputation risk leaves the door open for decisionmakers to—implicitly or explicitly, unintentionally or intentionally—encourage banking organizations to restrict access to financial services “on the basis of examiners’ personal views of a group’s or individual’s political, social, cultural, or religious views or beliefs, constitutionally protected speech, or politically disfavored but lawful business activities.”²¹ This can result in “unfair treatment of different groups and impermissible restrictions on a group’s or individual’s ability to access financial services.”²²

¹³ 90 Fed. Reg. at 48826; *see also* 90 Fed. Reg. at 48410 (The NCUA “has not seen evidence of reputation risk being a primary driver of unsafe or unsound conditions, or posing a material risk to the National Credit Union Share Insurance Fund (Share Insurance Fund).”).

¹⁴ 90 Fed. Reg. at 48826.

¹⁵ *See id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*; *see also* Julie Hill, *Regulating Bank Reputation Risk*, 54 Ga. L. Rev. 523, 584-91 (2020).

¹⁹ 90 Fed. Reg. at 48409.

²⁰ *Id.*

²¹ *Id.*; 90 Fed. Reg. at 48827.

²² 90 Fed. Reg. at 48827.

This concern is not hypothetical.²³ In effect, reputation risk empowers unelected agency examiners to pick winners and losers based on arbitrary and subjective considerations, not concrete, objective criteria.

Third, pressuring banking organizations to consider reputational risk hurts their ability to accomplish their primary mission. Reputation risk’s inconsistency and subjectivity results in a negative net impact on banking organizations and undermines the stability of the banking industry.²⁴

As the Proposed Rule notes, “reputation risk can be difficult to quantify and communicate, making it challenging for firms to remedy identified concerns.”²⁵ Reputation risk can create confusion and be time-consuming to assess for both agencies and the banking organizations.²⁶ Analyzing reputation risk diverts resources away from core financial and operational risks.

Reputational risk can also open the door to an “economic heckler’s veto.” An economically powerful entity, such as a customer or investor, may identify certain beliefs, speech, or activity as reputationally unfavorable. This practice can thereby give outsized weight to those who already have economic or financial power.²⁷

Fourth, the reputation risk assessment can be weaponized: it may become a pretext for government targeting of disfavored political views, religious beliefs and lawful business activities. By focusing on “reputation” instead of illegal behavior, agencies can encourage and coerce banking organizations to restrict individuals’ and businesses’ access to financial services on the basis of protected political views, religious beliefs, or lawful activities.

Fifth, eliminating reputation risk provides many benefits. As the Proposed Rule indicates, allowing the Board to focus on traditional, quantifiable risks—like credit risk, market risk, liquidity risk, interest rate risk, and operational risk—means key decisions will be characterized with more clarity, consistency, objectivity, and predictability.²⁸ By allowing the Board to focus “on core financial risks,” it “would facilitate greater precision in supervisory decision making.”²⁹ This reduces the risks that bias, abuse, and coercion will color the decisions of the Board and examiners. It would help prevent economic distortion to the financial market and U.S. economy by placing a thumb on the scale against certain individuals and organizations.

²³ See, e.g., OIG, FDIC, Report 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), https://www.fdicoinv.gov/sites/default/files/reports/2022-08/OIG-16-001_0.pdf; OIG, FDIC, Report No. AUD-15-008, The FDIC’s Role In Operation Choke Point and Supervisory Approach to Institutions that Conducted Business with Merchants Associated with High-Risk Activities (Sept. 2015), <https://www.fdicoinv.gov/sites/default/files/reports/2022-08/15-008AUD.pdf>.

²⁴ See Hill, *supra* note 19, at 592-97.

²⁵ 91 Fed. Reg. at 9500.

²⁶ 90 Fed. Reg. at 48409.

²⁷ See generally Br. of Financial & Business Law Scholars as Amici Curiae in Support of Pet. at 27-28 (filed Jan. 10, 2024), *Nat’l Rifle Ass’n v. Vullo*, 602 U.S. 175 (2024) (discussing how even a neutral application of reputation risk could lead to an “economic heckler’s veto”).

²⁸ 91 Fed. Reg. at 9501-02.

²⁹ *Id.* at 9500.

Eliminating reputation risk also helps protect free speech and religious liberty by eliminating agencies' consideration of First Amendment protected speech and actions—whether political, social, cultural, or religious.

Sixth, the elimination of reputation risk does not prohibit consideration of a banking organization's safety and soundness. Indeed, the Proposed Rule makes this clear: Even without reputation risk, the Board is still able to consider traditional risk channels, “such as credit risk, market risk, liquidity risk, operational risk, and legal risk, with an emphasis on core, material financial risks.”³⁰ These risks are more concrete and easier to measure than reputation risk, allowing the Board to more objectively assess a banking organization's safety, soundness, and financial condition.

Seventh, nothing in these regulations prohibits a banking organization from making its own determinations about reputation risk. Banking organizations would remain free to use any factors they see fit when deciding whether to end any business relationships, so long as they do not use criteria not otherwise prohibited by law. Banking organizations are better positioned than the Board to make these assessments. And, as the Proposed Rule clarifies, it “would not alter the Board's expectation that Board-supervised banking organizations maintain strong risk management to promote safety and soundness and compliance with applicable laws and regulations.”³¹ Banking organizations remain free to “manage their businesses and make independent decisions regarding their customers,” such as “whether or not to make a loan or to open, close, or maintain an account, provide any other financial product or service, or modify the terms of any financial product or service rests with the banking organization.”³²

Finally, prohibiting the use of reputation risk aligns with the following executive orders issued by President Trump, whose efforts have already led to voluntary reform by major U.S. banks.³³

- EO 14331, “Guaranteeing Fair Banking for All Americans,” directs agencies to “remove the use of reputation risk or equivalent concepts that could result in politicized or unlawful debanking.”³⁴
- EO 14219, “Ensuring Lawful Governance and Implementing the President's ‘DOGE’ Deregulatory Initiative,” directs agencies to rescind regulations including those that are “not authorized by clear statutory authority,” “impose significant costs upon private parties that are not outweighed by public benefits,” and “impose undue burdens on small business and impede private enterprise and entrepreneurship.”³⁵ Reputation risk is not clearly authorized by Congress, imposes significant costs and burdens upon banking organizations and others, and is not outweighed by public benefit.

³⁰ 91 Fed. Reg. at 9500.

³¹ *Id.*

³² *Id.*

³³ See Press Release, 1792 Exchange Commends Major Banks for Adding Protections for Religious and Political Beliefs, 1792 Exchange (Sept. 22, 2025), <https://1792exchange.com/press-releases/1792-exchange-commends-major-banks-for-adding-protections-for-religious-and-political-beliefs/>.

³⁴ 90 Fed. Reg. 38925 (Aug. 7, 2025), <https://www.federalregister.gov/d/2025-15341>.

³⁵ 90 Fed. Reg. 10583 (Feb. 19, 2025), <https://www.federalregister.gov/d/2025-03138>.

- EO 14190 on “Eradicating Anti-Christian Bias” seeks to “protect the religious freedoms of Americans and end the anti-Christian weaponization of government.”³⁶ To the extent that agencies have used reputation risk in ways that target Christians or disfavored religious beliefs, eliminating reputation risk will help prevent such government abuses.
- EO 14173, “Ending Illegal Discrimination and Restoring Merit-Based Opportunity,” seeks to end illegal preferences and discrimination, including under “the guise of so-called ‘diversity, equity, and inclusion’ (DEI).”³⁷ Eliminating reputation risk helps ensure that banking decisions are based on “individualized, objective, and risk-based analyses,” not disfavored lawful religious beliefs, affiliations, or political views.

II. Suggestions for Improvement

We are grateful for the opportunity to provide comment on this Proposed Rule. In response to the request for comment, we propose the following modifications to strengthen the proposed regulations and ensure that there are no loopholes.

Proposed § 262.9(a)(5) *Reputation risk* is the potential that negative publicity regarding a banking organization’s business practices or customers, whether true or not, will cause a decline in the banking organization's customer base, costly litigation, alienation of stakeholders, or revenue reductions.

Proposed § 262.9(c) *Prohibition on use of reputation risk*. The Board shall not use reputation risk as a component of its examination programs, ~~or~~ in materials used for the supervision of banking organizations, or in enforcement actions.

Conclusion

For the reasons above and in light of our suggestions for improvements, we urge the Board to finalize the Proposed Rule and prohibit the use of reputation risk.

Sincerely,

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³⁶ 90 Fed. Reg. 9365 (Feb. 6, 2025), <https://www.federalregister.gov/d/2025-02611>.

³⁷ 90 Fed. Reg. 8633 (Jan. 21, 2025), <https://www.federalregister.gov/d/2025-02097>.