BANK POLICY INSTITUTE

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: *Prohibition on Use of Reputation Risk by Regulators (RIN 1557-AF34 and RIN 3064-AG12)*

Ladies and Gentlemen:

The Bank Policy Institute supports the OCC and FDIC's NPR on the *Prohibition on Use of Reputation Risk by Regulators*. The NPR would prohibit the regulators from criticizing or taking adverse action against a supervised institution on the basis of reputation risk. The NPR would also prohibit the agencies from taking any supervisory or adverse action against institutions designed to punish or discourage persons engaged in certain lawful activities with which the agencies may disagree with or disfavor.[1] In addition, the NPR would prohibit regulators from requiring, instructing, or encouraging a supervised institution to close accounts—or refrain from providing or modifying any products or services—on the basis of reputation risk or a person's political, social, cultural, or religious views.

Removal of reputation risk from the risks that the regulators evaluate is a necessary and common-sense change. We also share the view that regulators should not require, instruct, or

[1] See Prohibition on Use of Reputation Risk by Regulators , 90 Fed. Reg. 48,825, 48,834–35 (Oct. 30, 2025) (prohibiting the agencies from taking "any supervisory action or other adverse action against an institution, a group of institutions, or the institution-affiliated parties of any institution that is designed to punish or discourage an individual or group from engaging in any lawful political, social, cultural, or religious activities, constitutionally protected speech, or, for political reasons, lawful business activities that the supervisor disagrees with or disfavors").

encourage an institution to close accounts, initiate accounts, or refrain from providing services on the basis of, among other things, political, social, cultural or religious views.[2]

As noted in the NPR, "the agencies recognize the importance of a bank's reputation," and indeed, U.S. bank management and directors routinely exercise independent business judgment, including defining, measuring, and monitoring these kinds of risks. Reputation risk became a significant factor in examination only in the 1990s, when the banking regulators moved toward risk-focused regulation.[3] Since that time, reputation risk became prevalent in examiner handbooks and guidance, guidelines and regulations. It was not until this year that the agencies began removing references to reputation risk from examination handbooks.[4]

BPI has previously expressed concerns about the elevation of reputation risk as part of the supervisory framework and how it has allowed the examination process to proscribe bank activities. In effect, the supervisory focus on reputation risk has shifted the role of examination from evaluating the financial condition of the firm and protecting depositors (and ultimately the Deposit Insurance Fund and taxpayers) to opining on ordinary course business decisions regarding strategic and operational considerations that are within the purview of the institution.[5]

BPI has also expressed concern about customer account closures caused by overreaching anti-money laundering and reputation risk regimes. Although much of bank examination process occurs in secret, certain public information demonstrates how bank

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[2] BPI has previously endorsed the removal of reputation risk from examination handbooks. See, e.g., BPI, BPI Response to OCC's Decision to Cease Examinations for Reputation Risk (Mar. 20, 2025), https://bpi.com/bpi-response-to-occs-decision-to-cease-examinations-for-reputation-risk; BPI, How and Why Are Regulators Protecting the Reputations of Banks? (Jan. 10, 2020), https://bpi.com/how-and-why-are-regulators-protecting-the-reputations-of-banks.

[3] See, Julie A. Hill, Regulating Bank Reputation Risk, 54 Ga. L. Rev. 543.

[4] See, e.g., Press Release, FRB, Federal Reserve Board Announces that Reputational Risk Will No Longer Be a Component of Examination Programs in its Supervision of Banks (June 23, 2025), https://www.federalreserve.gov/newsevents/pressreleases/bcreg20250623a.htm#:~:text=Press%20Release,June%2023%2C%202025; Letter from FDIC Acting Chairman Travis Hill to Representative Dan Meuser (Mar. 24, 2025), https://aboutblaw.com/bhDr; OCC Bulletin 2025-4, Bank Supervision: Removing References to Reputation Risk (Mar. 20, 2025), https://www.occ.gov/news-issuances/bulletins/2025/bulletin-2025-4.html.

[5] Supra note 2.

regulators can use their evaluation of reputation risk to coerce regulated entities to end their relationships with disfavored businesses.[6]

Finally, as the preamble to the NPR notes, use of reputation risk as the basis for supervisory criticism increases subjectivity in banking supervision, making it a difficult area to regulate in a consistent way to add meaningful value to the regulatory system. Because bank regulators have, and will continue to have, broad powers over the traditional risk channels, citations to reputation risk are not necessary.

For these reasons, we support the agencies finalizing the NPR without delay.[7]

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BPI appreciates the opportunity to share our views with the OCC and FDIC through this letter. If you have any questions, please contact Gregg Rozansky, by email at gregg.rozansky@bpi.com.

Respectfully Submitted,

/s/

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Senior Vice President
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*Bank Policy Institute*

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[6] See, e.g., NRA v. Vullo, 602 U.S. 175 (2024).

[7] The preamble of the NPR is clear that the proposed rule focuses only on prohibitions on regulator action, not banks' decisions or decision-making processes, which are matters of business judgment. (See, e.g., "[t]he proposed rule would not alter or affect the ability of an institution to make business decisions regarding its customers or third party arrangements and to manage them effectively, consistent with safety and soundness and compliance with applicable laws.") Accordingly, this letter does not address bank decision-making processes, as we understand that any consideration of bank decision-making processes is outside the scope of this NPR.