December 23, 2025

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Attn: Comments—RIN 3064-AG16
Federal Deposit Insurance Corporation
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Re: Unsafe or Unsound Practices, Matters Requiring Attention; Office of the Comptroller of the Currency RIN 1557-AF35, Docket ID OCC-2025-0174; Federal Deposit Insurance Corporation RIN 3064-AG16; 90 Fed. Reg. 48835 (Oct. 30, 2025)

Dear Ladies and Gentlemen:

Better Markets[1] appreciates the opportunity to comment on the proposal from the Office of the Comptroller of the Currency's and the Federal Deposit Insurance Corporation ("OCC" and "FDIC", respectively; collectively, "the Agencies") to provide a restrictive definition of "unsafe and unsound practice" for the purpose of supervisory expectations and assessments and to greatly limit the use of the nonbinding, informal supervisory issue identification and feedback process, i.e., the process for matters requiring attention, or MRAs ("Proposal").[2]

The Proposal ignores lessons learned from over 150 years of federal bank supervision and would destroy federal bank supervision, making future bank crises and bailouts a certainty. Furthermore, the Proposal would have the unintended consequence of inserting the Agencies into the risk management processes of banks, which are private corporations, by creating a supervisory standard that effectively sets risk limits for banks. Better Markets urges the Agencies to rescind

[1] Better Markets is a non-profit, non-partisan, and independent organization founded in the wake of the 2008 financial crisis to promote the public interest in the financial markets, support the financial reform of Wall Street, and make our financial system work for all Americans again. Better Markets works with allies—including many in finance—to promote pro-market, pro-business, and pro-growth policies that help build a stronger, safer financial system that protects and promotes Americans' jobs, savings, retirements, and more.

[2] Unsafe or Unsound Practices, Matters Requiring Attention; Office of the Comptroller of the Currency RIN 1557-AF35, Docket ID OCC-2025-0339; Federal Deposit Insurance Corporation RIN 3064-AG16; 90 Fed. Reg. 48835 (Oct. 30, 2025), https://www.federalregister.gov/documents/2025/10/30/2025-19711/unsafe-or-unsound-practices-matters-requiring-attention.

this misguided proposal that would fully satisfy the interests of the banking industry at the expense of a resilient banking system and American taxpayers.

COMMENTS

I. SETTING A RESTRICTIVE, NARROW DEFINITION OF "UNSAFE OR UNSOUND" PRACTICES AT BANKS BLATANTLY IGNORES OVER 150 YEARS OF NATURAL EVOLUTION OF FEDERAL BANK SUPERVISION.

The history of bank supervision in the US has been covered many times by academics and others.[3] There is no point to reiterate that history here or to provide yet another perspective. Rather, it is critical simply to recognize this history as informing the basis for today's framework of bank supervision. Regardless of the perspective or the conclusions drawn from looking at that history, there is one indisputable fact: the history of bank supervision in the US has included a natural evolution, continuously responding to the changing facts and circumstances of the banking system. Supervision has evolved in response to numerous bank crises, fundamental shifts in the structure of the banking system, massive growth in the sector, and the marriage, separation, and remarriage of bank and nonbank financial activities. The many lessons learned through this history directly inform bank supervision practices and are explicitly ignored by this misguided proposal.

The evolution and changes in supervisory practices and standards always have held the goal of protecting American depositors and taxpayers from the risks inherent in banks. As the banking system has changed – including the laws and regulations that apply to it as well as the environment around it – its risks have changed as well, becoming larger and more complex. A major reason for the changes in supervision, especially over the last five decades, is that banks have grown tremendously in scale and scope. And this trend continues unabated. "Banks" hardly are banks anymore. The largest "banks," which control the majority of the system, are profit-maximizing financial enterprises that engage in a wide range of financial activities that have complex risks, including interconnections with the nonbank financial system.

The environment for banks has changed as well. Risks materialize much more quickly than they did decades ago. For example, the speed and scale of deposit flight at Silicon Valley Bank was unprecedented.[4] And there is significantly more competition from and interconnections with nonbank financial institutions. For example, much has been written about the potential deposit flight to payment stablecoins now that the GENIUS Act has legitimized payment stablecoins,[5] and

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3 *See, e.g.,* Office of the Comptroller of the Currency, "Evolution of Bank Supervision," https://www.occ.gov/about/who-we-are/history/evolution-of-bank-supervision/index-ev-evolution-of-bank-supervision.html; Mitchener, Kris and Jaremski, Matthew (October 2014), "The Evolution of Bank Supervision: Evidence from U.S. States," National Bureau of Economic Research, Working paper series 20603, http://www.nber.org/papers/w20603.

4 Rose, Jonathan (2023), "Understanding the Speed and Size of Bank Runs in Historical Comparison," Federal Reserve Bank of St. Louis, https://research.stlouisfed.org/publications/economic-synopses/2023/05/26/understanding-thespeed-and-size-of-bank-runs-in-historical-comparison.

5 Jacewitz, Stefan A. (2025), "Stablecoins Could Increase Treasury Demand, but Only by Reducing Demand for Other Assets," Federal Reserve Bank of Kansas City, https://www.kansascityfed.org/research/economic-bulletin/stablecoins-could-increase-treasury-demand-but-only-byreducing-demand-for-other-assets/.

bank lending to nonbank financial institutions has grown to over $1.4 trillion this year from under $300 billion just over a decade ago.[6]

The Proposal ignores completely the evolution of supervision and the facts and circumstances that have led to that evolution. Instead, the Proposal asserts a definition of "unsafe or unsound practice" that would destroy the current framework of supervision – which has stood for many decades – and even would destroy the general concept of bank supervision (more on this in the following sections). Indeed, the Proposal would create a non-sequitur type of supervision that is an orthogonal break from supervisory practices and standards that have existed since the federal government started engaging in bank supervision.

Historically, bank supervision in the US started with confirming banks were following the basic regulations that existed at the time and maintaining healthy balance sheets. However, even then there were non-financial factors considered, especially the character and fitness of bank management, as evidenced by instructions from the first Comptroller of the Currency.[7] This evolved over time to include more risks and more thorough supervisory reviews. By the 1960s various stresses in the banking system led to a recognition that not only were the current supervisory methods appropriate but also that federal banking agencies needed expanded legal authority to take stronger enforcement actions. Hence, the Financial Institutions Supervisory Act – which legally expanded enforcement actions - was proposed, broadly supported, and signed into law in 1966, the very bill that prompted former Federal Home Loan Bank Board Chair John Horne to present his standard for "unsafe and unsound" practices (which the Agencies use as the basis for the Proposal).[8]

Along with this recognition of the need for stronger supervision came the recognition that risks should be mitigated *before* they materialize and that supervision should focus on the underlying causes of risks rather than the symptoms. Such "risk-based" supervision already was in existence in the 1970s. Indeed, the OCC's posture of risk-based supervision was clearly detailed in findings from a 1977 assessment by the Government Accountability Office regarding federal bank supervision:

> "The Comptroller of the Currency has developed detailed examination procedures which place greater emphasis on early identification of weaknesses in bank policies, practices, procedures, controls, and audit…In our view, the most important facet of OCC's new examination procedures is that they will center more

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6 Based on data from Federal Reserve's FR Y-9C data collection.

7 *See e.g.,* Mitchener, Kris and Jaremski, Matthew (October 2014), "The Evolution of Bank Supervision: Evidence from U.S. States," National Bureau of Economic Research, Working paper series 20603, http://www.nber.org/papers/w20603.

8 Financial Institutions Supervisory Act of 1966: Hearings on S. 3158 Before the House Comm. on Banking and Currency, 89th Cong., 2d Sess. 49 (1966)

> on identifying the underlying causes of problems rather than on the results of operations."[9]

The posture of risk-based supervision was therefore considered necessary, broadly supported, and implemented 1) even when banks were still mostly community-focused banks, 2) *well before* interstate banking was formalized in 1994,[10] and 3) *well before* the formal reunification of commercial and investment banking in 1999.[11] That is, risk-based supervision was generally accepted as the best way to conduct supervision even before all the consolidation and growth in the banking system. Risk-based supervision therefore evolved along with the growth and complexity of the banking system thereafter, including having to address the risks associated with greater connections with nonbank financial institutions.

Supervisory practices, however, apparently did not keep pace with the rapid evolution of the banking system. Despite the "early identification" intent of risk-based supervision in the years before the Global Financial Crisis ("GFC"), risks were allowed to build up in the banking system that eventually led to the 2008 crash. That was even after the Basel Committee on Bank Supervision in 2004 formalized risk-based supervisory standards internationally through its so-called "pillar 2" standards. The devastation caused by the GFC brought about an urgent recognition that supervision must be stronger and even more risk-focused.

The 2008 crash drove home the lesson that waiting until risky and badly run large banks were already showing the decline their mismanagement caused was often too late given the negative consequences such decline can have for the banking and financial systems and the economy. This recognition brought us to our current supervisory regime, which this proposal would substantially undermine in a short-sighted attempt to give the banking industry greater freedom to increase risks and lower risk management costs, thus further exposing the US economy and taxpayer to the catastrophic harm badly run banks can cause.

Ignoring this history, as the Proposal does, is a reckless action that is a clear and emphatic prioritization of the interest of the banking industry over the public interest. As discussed above, even with the historical strengthening of banking supervision, there have continued to be banking crises. This is not an indication that the evolution of banking supervision has been ineffective; rather, it is an indication that the risks in the banking system are always evolving more quickly than regulations and supervision, which is why both regulations and supervision must at all times be strong and regularly enforced. Moving away from the current risk-based supervisory framework towards the narrow, material-loss-focused supervisory framework of the Proposal would ensure that supervision is moving in the wrong direction in the face of growing risks and – combined with the broad-based weakening of bank regulations – makes it highly likely there will be more large bank failures.

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9 Statement of Elmer B. Staats, Comptroller General of the United States, before the Subcommittee on Financial Institutions, the Committee on Banking, Currency and Housing, and the Subcommittee on Commerce, Consumer and Monetary Affairs of the U.S. House of Representatives (February 1, 1977), https://www.gao.gov/assets/100317.pdf.

10 12 U.S.C. § 1831u (Riegle-Neal Interstate Banking and Branching Efficiency Act, 1994).

11 Public Law 106-102 (Gramm-Leach-Bliley Act, November 12, 1999).

II. THE AGENCIES' INTERPRETATION OF THE HORNE STANDARD DOES NOT FOLLOW LOGIC, LACKS ANY VALID BASIS, AND IS CONTRADICTORY.

The Agencies invoke the Horne standard as the basis for the Proposal. However, in examining the details of the proposed definition of "unsafe and unsound," it is clear that the Agencies instead have developed their own standard that is completely unrelated to the Horne standard.

First, the Horne standard explicitly uses the word "possible" when referring to the consequences of imprudent operations. However, the definition proposed by the Agencies changes this to "likely" consequences without providing any justification for the change. In fact, the Agencies even state that "to qualify as an unsafe or unsound practice under the proposed definition, [material financial harm] also would have to be likely—as opposed to, for example, merely possible," even though the Horne standard refers to "possible consequences." No justification is provided for this direct contradiction of the Horne standard, which the Agencies claim they are using as the basis for the Proposal.

Second, the Agencies focus their definition on "harm to the financial condition of an institution," where "harm" is then defined by the Agencies as "financial losses." The Horne standard, on the other hand, is more expansive and includes "consequences" of "abnormal risk or loss or damage to an institution." The Horne standard, therefore, clearly is aligned with current supervisory standards and not the definition of the Proposal. Additionally, the Agencies take their misguided focus on "harm"/ "financial losses" much further by adding that the harm must be "material."

It is clear the Agencies invoke the Horne standard in the Proposal in an attempt to provide the proposal with some legitimacy, but their direct contradiction to the Horne standard with their proposed definition of "unsafe or unsound" proves they have simply come up with a separate definition that has nothing to do with the Horne standard and satisfies their goal of allowing the industry to take massive risks without oversight.

III. THE AGENCIES' DEFINITION IS AMBIGUOUS, AS THE AGENCIES THEMSELVES ACKNOWLEDGE, AND IS MORE AMBIGUOUS THAN THE BASIS OF THE HORNE STANDARD.

The Agencies' proposed definition is wholly ambiguous and far more ambiguous than the Horne standard or any current supervisory standard. Indeed, in the Proposal even the Agencies themselves acknowledge that they don't have an idea of what "likely" or "material" mean:

> "Moreover, the agencies considered, but did not propose, more precisely defining the requisite likelihood under the proposed definition, such as through a minimum percentage (e.g., 10%, 51%). Instead, the agencies invite comment on whether a minimum percentage likelihood or more precise definition of 'likely' is appropriate."

> "The agencies considered but did not propose to more precisely define the materiality of harm required under the proposed definition, such as through measures of capital or liquidity outflows. Instead, the agencies invite comment on what, if any, more precise measures of material harm are appropriate."

Defining these two terms is fundamental to the Agencies' definition of "unsafe and unsound," and the fact that the Agencies did not define these terms proves just how ambiguous and open for interpretation their proposed definition is. Even if hard thresholds or ranges were set for these terms, as the Agencies suggest, it is left unclear how likelihoods and material losses would be calculated or how marginal cases would be treated when likelihoods and materialities are close to thresholds. The absence of definitions for these terms creates extreme uncertainty and allows for significantly more supervisory discretion than exists today.

Moreover, what may be "unlikely" in one expected environment could be fully expected in another. Given the uncertainty inherent in banking and financial markets, waiting until losses become "likely" is an unnecessarily dangerous approach, particularly for large, systemically important banks. The Agencies have not defined under what economic conditions or expectations "likelihood" will be measured.

Importantly, over time these terms would have to be defined, creating an absolute measure of risk to the safety and soundness of banks. Either the Agencies would define these terms, as suggested in the proposal or the uncertainty among the industry of the undefined terms would drive pressure on the Agencies to define these terms. That is, the industry would continue to challenge and demand sound bases for supervisory conclusions as well as comparability of supervisory findings between institutions, as they do now. If numerical thresholds or ranges were set, then supervision no longer would be necessary, because the definition of "unsafe and unsound" would be an absolute measure and therefore could instead be codified as a regulation rather than a supervisory standard (discussed more below). Perhaps that is the ultimate goal of the Agencies. However, as the 2008 crash clearly demonstrated, regulations cannot adequately keep up with rapid changes in banks' practices and products, which is one reason a forward-looking approach to banking supervision is so obviously needed.

Contrary to the Agencies' proposed definition, the Horne standard is based on the concept of "abnormal," which is a relative measure, not an absolute one. Such a relative measure is more easily interpreted and implemented in the supervisory context, as it can be accomplished through simple comparison among the practices of comparable banks within the banking system. Additionally, a relative measure keeps the concept of "best practices" in the hands of the private sector, rather than putting the onus on the public sector to determine what is meant by terms such as "likely" and "material." That is, by simply looking to the industry for an indication of best practices, the private sector remains as the main determinant of prudent best practices, which allows for the evolution of prudent practices over time as banks change their business models and associated risk management.

IV. THE PROPOSED DEFINITION EFFECTIVELY WOULD DESTROY THE SUPERVISORY PROCESS.

The Proposal makes it explicit that the Agencies do not want the supervisory process and supervisory findings to be based in any way on "policies, procedures, documentation, or internal controls." However, examining and assessing an institution's policies, procedures, documentation, and internal controls is, and always has been, a key function of bank supervision. Those aspects of an institution's operations are the foundation of – and the most direct indicator of – an institution's commitment and ability to manage its risk. And if an institution is unable to manage its risk, then risks will build and could very rapidly lead to the "likely material harm" to banks that the Agencies claim they are trying to prevent. Issues with policies, procedures, documentation, and internal controls are important root causes of risk management weaknesses that lead to substantial financial deterioration at banks.

Therefore, a focus on those elements within the supervisory process is by design, and that focus is intended to capture and correct flaws in risk management operations well before they materialize into material harm to the financial condition of an institution. If the supervisory process only stepped in when material harm already is likely, that would often be too late to prevent the material harm, thereby making the process pointless.

Many times during the history of banking in the US there have been banking crises that came about because supervisors did not fully appreciate underlying problems in firms' risk management practices and did not act early enough to prevent the eventual catastrophic consequences. By the time the issues were recognized, if at all, it already was too late. That is, in all historical banking crises the true likelihood and materiality of the risks were missed virtually every time, even with the attempts catch risks early. So, limiting the supervisory process to only the point at which risks are close to being realized greatly increases the probability – and in fact makes it an almost certainty – that more bank crises will occur.

V. THE PROPOSAL DESTROYS THE CONCEPT OF OVERSIGHT AND IMPLICITLY DIRECTLY INJECTS THE FEDERAL AGENCIES INTO THE DAY-TO-DAY MANAGEMENT OF BANKING ORGANIZATIONS.

The Proposal would destroy the concept of government "oversight" of the banking system and effectively make the Agencies as much part of the risk management process as the banks themselves – i.e., as if the Agencies were part of the so-called "second line of defense" for banks. That is, rather than the risk-based supervision stance of seeking to ensure banks have the necessary and sufficient processes and procedures to manage their own risks effectively, the proposed supervisory standard seeks to determine when a bank is facing a risk that is likely to cause material financial harm. To do this, as discussed above, the terms "likely" and "material" would have to be defined as specific thresholds or ranges. The Agencies, therefore, would essentially be setting the same type of so-called "risk limits" that the risk management function at banks set internally.

Such risk management operations are the role of banks' own internal risk management to determine as private corporations. If this also becomes the responsibility of the Agencies, risk management implicitly would be duplicated between banks' internal risk management function

and the Agencies. That is, the implication would be that 1) there is no distinction between the role of supervision and the role of banks' internal risk management and 2) supervisors would need to be intimately and almost constantly involved in monitoring the buildup of risks at banks – otherwise, it would be impossible for supervisors to know when banks risks have reached the "likely" and "material" thresholds.

VI. THE PROPOSAL WOULD CREATE MORAL HAZARD WITH SUPERVISION.

By implicitly duplicating the loss-prevention responsibility between banks' internal risk management functions and the federal agencies – as discussed in the previous section – banks would have perverse incentives to rely on/ shift their risk management responsibilities to the Agencies' supervisors to identify likely material financial risks and prevent them from materializing. From the perspective of banks, there would be no purpose to developing their own risk management processes, since the Agencies would be setting effective "risk limits" for banks. This same type of moral hazard is seen with capital requirements, where banks simply use the requirements set by the regulatory agencies as a basis for their own internal capital allocation decisions.

Furthermore, if the Agencies would be ignoring "processes, procedures, and documentation," banks would be free to "manage" risk however they like as long as they did not breach the regulatory risk limits. In fact, based on the text of the Proposal, banks could even have no internal risk management processes, procedures, and documentation at all and simply rely on qualitative factors or "management judgement," as long as risks were below the "likely" and "material" thresholds set by the Agencies. And when these risks inevitably become significant loss-causing issues, there would be no ability to conduct a forensic examination of what went wrong and how to avoid it in the future, making it a guarantee such issues would occur again.

VII. THE PROPOSAL ELIMINATES ANY FORWARD-LOOKING RISK ASSESSMENTS AND SHIFTS – AND INDEED LIMITS – THE RISK MANAGEMENT FOCUS TO ONLY MAJOR CLEAR AND PRESENT RISKS THAT ARE TOO SERIOUS FOR THE MRA FRAMEWORK.

As discussed, the Proposal would destroy the current forward-looking supervisory process that seeks to identify and mitigate causes of bad bank management at their root and instead focuses completely on the "symptoms" after issues have materialized. The Proposal also ties the issuance of MRAs to the proposed "unsafe and unsound" standard, limiting the issuance of MRAs to cases of "reasonable expectation" of material financial losses or, shockingly, to cases in which material losses already have been realized. For such cases, MRAs are not appropriate and are grossly insufficient. If there is reasonable expectation of material financial losses or – even worse – material losses already have been realized, then formal enforcement actions would be the appropriate course of action. The Proposed MRA framework is entirely reckless and surely would allow banks to act however they wish without consequences.

It has been recognized repeatedly after banking crises that supervisors should have acted more forcefully – not less forcefully – to have prevented or lessened the crises. The most recent example is with the collapse of Silicon Valley Bank – a collapse so significant that it was considered to be a systemic risk – after which a formal review found that supervisors should have escalated supervisory concerns earlier and more forcefully. There are many other historical examples as well. In fact, the Horne standard was put forth as part of a hearing on the Financial Institutions Supervisory Act of 1966, which expanded bank supervisory authorities, including allowing cease-and-desist orders and the removal of officers, for the purpose of mitigating exactly the type of serious, loss-causing issues the Agencies are proposing as the new standard for basic MRAs. Additionally, a GAO review from 1977 of regulatory agency supervisory practices reached the conclusion that "the Board of Directors, FDIC, the Board of Governors, FRS, and the Comptroller of the Currency establish more aggressive policies for using formal actions."[12]

The proposed MRA framework moves in the opposite direction from lessons that have been learned through numerous bank crises and would basically destroy the ability of supervisors to incentivize banks to correct significant issues before they metastasize into devastating and potentially existential problems. Importantly, it essentially would eliminate the use of formal enforcement actions. That is, if MRAs – which are only the starting point of the supervisory process to incentivize firms to correct issues – are used for cases in which there is a reasonable expectation of material financial losses or when material financial losses already have been realized, then there is no situation in which a formal enforcement action would be used. Therefore, this framework would make losses and a lack of responsibility from bank management a certainty.

CONCLUSION

Better Markets urges the Agencies to rescind the Proposal. We hope these comments are helpful.

Sincerely,

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