



October 1, 2026

Chief Counsel's Office
Attn: Comment Processing
Office of the Comptroller of the Currency
400 7th Street SW, Suite 1E-216
Washington, DC 20219

Re: Violations of Laws or Regulations (September 1, 2026), 91 FR 56074, Docket ID OCC-2026-0529, RIN 1557-AF56

Dear Ladies and Gentlemen:

Better Markets appreciates¹ the opportunity to comment on the Office of the Comptroller of the Currency's ("OCC") proposal ("Proposal")² to limit violation-based Matters Requiring Attention ("MRAs") to "substantive" violations, establish a "technical violation" category for violations addressed without enforcement action or an MRA, and exclude noncompliance with the guidelines in the appendices to 12 CFR part 30 from both categories. The OCC states that the Proposal "would establish a legally binding limit on the OCC's ability to issue an MRA in response to a violation of a law or regulation."

Better Markets strongly opposes the Proposal. The OCC has not identified a problem that requires the rulemaking, has not supported its impact analysis with sufficient evidence, and has proposed binding restrictions on supervisory responses without adequately explaining how they would support timely correction and the OCC's statutory responsibilities. We urge the OCC to withdraw the Proposal. At a minimum, the OCC should reopen the comment period and re-propose with a supported evidentiary record.

A. The Agency Has Provided the Public an Insufficient Comment Period

The 30-day comment period provided for this Proposal denies the public adequate time to fully consider it, given the breadth and public significance of the changes proposed. The Proposal includes significant changes to the supervisory framework for OCC-supervised institutions, which warrant at least a 60-day comment period.

The OCC has provided less time for public participation than it afforded on the companion rulemaking. The proposal that became the final rule on unsafe or unsound practices and MRAs was published on October 30, 2025, with a comment period running to December 29, 2025, sixty

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 See Office of the Comptroller of the Currency. Notice of Proposed Rulemaking. *Violations of Laws or Regulations*. 91 FR 56074 (September 1, 2026), Docket ID OCC-2026-0529, available at: <https://www.federalregister.gov/documents/2026/09/01/2026-17822/violations-of-laws-or-regulations>.

days.³ This Proposal, which the OCC itself describes as establishing “a legally binding limit” on its supervisory authority, received half that. The OCC offers no explanation for the difference. It should extend or reopen the comment period (by at least 30 additional days) to ensure the public participation required by the Administrative Procedure Act (“APA”) is meaningful rather than perfunctory.

B. The OCC Has Not Made the Case that the Proposal Is Necessary

The OCC announced the Proposal on August 27, 2026, the same day it released two revised policies and procedures manuals governing enforcement actions and MRAs, one of which the OCC made public for the first time.⁴ Those manuals direct examiners to prioritize material financial risk, tailor supervisory responses, and confine corrective action to essential deficiencies. They attempt to accomplish everything the Proposal describes as its core purpose.

The OCC does not adequately explain why binding regulatory restrictions are necessary in addition to the manuals. The preamble asserts that the rule “would prioritize examiners’ and institutions’ attention on substantive violations” and provide “clarity regarding, and consistent application of, MRA standards.”⁵ However, the manuals already provide that direction, and the OCC does not identify any respect in which examiners have failed to follow them. The Comptroller has stated that the purpose of these actions is to “codify the agency’s return to risk-based supervision, helping to ensure that its more reasonable, intentional approach to bank supervision endures.”⁶ That is a statement about binding future Comptrollers beyond the term of the current one, not about improving supervision today.

The Proposal’s codification approach could impose significant costs. A regulation that limits the agency’s own supervisory tools gives supervised institutions additional grounds to contest or formally appeal examiner findings. The OCC should assess whether these binding restrictions would encourage challenges to the classification of violations, delay corrective action, or divert examiner resources from addressing deficiencies to defending supervisory judgments.

³ See Office of the Comptroller of the Currency & Federal Deposit Insurance Corporation, *Unsafe or Unsound Practices, Matters Requiring Attention*, Notice of Proposed Rulemaking, 90 FR 48835 (October 30, 2025) (with public comments due on December 29, 2025), available at: <https://www.federalregister.gov/documents/2025/10/30/2025-19711/unsafe-or-unsound-practices-matters-requiring-attention>.

⁴ See Office of the Comptroller of the Currency. News Release 2026-72, *OCC Acts to Improve Transparency and Consistency to Bank Enforcement and Supervisory Standards* (August 27, 2026), available at: <https://www.occ.gov/news-issuances/news-releases/2026/nr-occ-2026-72.html> (announcing the Proposal together with revised PPM 5310-3), *Bank Enforcement Actions and Related Matters*, available at: <https://www.occ.gov/news-issuances/news-releases/2026/ppm-5310-3.pdf>, and PPM 5400-11, *Matters Requiring Attention*, available at: <https://www.occ.gov/news-issuances/news-releases/2026/ppm-5400-11.pdf>. The companion final rule is Office of the Comptroller of the Currency & Federal Deposit Insurance Corporation, *Unsafe or Unsound Practices and Matters Requiring Attention*. Final Rule. 91 FR 56004 (September 1, 2026), available at: <https://www.federalregister.gov/citation/91-FR-56004>.

⁵ *Supra* 2 at 56075 (the distinction “would prioritize examiners’ and institutions’ attention on substantive violations”); *id.* at 56078 (anticipating “clarity regarding, and consistent application of, MRA standards”).

⁶ See OCC News Release 2026-72, *supra* 4 (statement of Comptroller Jonathan Gould).

Even if the rule does not make every MRA judicially reviewable, its constraints could affect supervisory appeals and institutions' willingness to cooperate with examiners. The agency has not adequately explained why codification's asserted benefits outweigh these risks.

Banking industry counsel have already identified the potential for judicial challenges. A law firm that represents some of the largest banks has advised clients that the binding framing of the MRA final rule "strengthens the argument that an MRA constitutes 'final agency action' subject to judicial review."⁷ Although that conclusion is not settled, the Proposal would create additional binding limits against which institutions could challenge violation-based MRAs. The OCC should address the potential for increased litigation and administrative disputes and explain how it would preserve timely corrective action while those disputes are pending.

The Proposal also addresses only one piece of the OCC's broader supervisory framework. Supervisory findings, MRAs, follow-up, escalation, and enforcement actions operate as a continuum through which examiners identify deficiencies, require corrective action, evaluate remediation, and determine whether stronger action is warranted. Much of that process necessarily depends on expert supervisory judgment and agency procedures rather than fixed regulatory triggers. However, the OCC proposes to impose a binding regulatory restriction on one point in that continuum (the circumstances in which a violation may support an MRA) without establishing a corresponding rule-based framework governing when findings should be escalated, how remediation should be evaluated, or when enforcement should follow. The Proposal does not explain why selectively imposing rigidity at the MRA stage of the supervisory process would produce greater consistency rather than gaps, delay, and disputes over classification.

C. The OCC's Impact Analysis Does Not Support the Proposal

The OCC's impact analysis does not establish that the Proposal would improve the OCC's supervision. The agency anticipates only "de minimis" aggregate annual direct cost savings, while acknowledging that narrowing the MRA standard could delay identifying the root causes of violations, increase remediation costs, and allow similar violations to recur. Nevertheless, it concludes that the Proposal would benefit safety and soundness and that its indirect costs would also be de minimis. The OCC does not adequately explain the evidentiary or empirical basis for those judgments or reconcile its conclusion with the risks it expressly identifies.⁸

The APA requires an agency to examine relevant information and articulate a satisfactory explanation connecting the facts to its decision. An agency acts arbitrarily when it fails to consider an important aspect of the problem or offers an explanation contrary to the evidence before it.

⁷ See Sullivan & Cromwell, "OCC and FDIC Adopt Final Rule Defining 'Unsafe or Unsound Practice' and Limiting Issuance of Matters Requiring Attention" (September 11, 2026), available at: <https://www.sullcrom.com/insights/memo/2026/September/OCC-FDIC-Adopt-Final-Rule-Defining-Unsafe-Unsound-Practice-Limiting-Issuance-Matters-Requiring-Attention>.

⁸ *Supra* 2 at 56078-79.

These requirements apply to decisions that weaken existing protections.⁹ Consistent with the courts' interpretation of the APA, the OCC must explain why the acknowledged risks are acceptable.

The agency should also identify the supervisory evidence supporting its expectation that reduced MRA authority would improve outcomes. That evidence should address how often violations initially considered minor reveal broader deficiencies, how follow-up contributes to identifying those deficiencies, and whether reduced follow-up increases recurrence. The absence of new compliance mandates does not establish the absence of costs from weaker supervision. Costs borne by customers, depositors, and the financial system are relevant to evaluating a change in supervisory policy even when banks spend less addressing examination findings.

D. The Proposal Would Weaken Corrective Action and Compound Other Restrictions on Supervision

The proposed treatment of technical violations illustrates the problem. Under the Proposal, the OCC generally would not track whether a bank corrected such a violation or require the bank to confirm correction. It also would restrict examiners' ability to prescribe corrective action, subject to actions required by law.¹⁰ In Better Markets' view, this would substantially weaken accountability. Identifying a violation and directing compliance are insufficient if supervisors cannot reliably determine whether the problem was resolved or whether it reflects a broader control failure.

At a fundamental level, the Proposal confuses compliance with laws and regulations with bank supervision. While determining whether a bank has violated a law or regulation is an important component of assessing compliance, prudential supervision (particularly supervision of financial risks) is a distinct and statutorily required component of OCC supervision. Congress requires the OCC to supervise for safety and soundness, including by establishing standards governing internal controls, information systems, internal audit systems, credit underwriting, interest rate exposure, asset growth, and other operational and managerial matters.¹¹

⁹ See *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (agency action is arbitrary and capricious where the agency "entirely failed to consider an important aspect of the problem" or offered an explanation "that runs counter to the evidence before the agency"); *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515–16 (2009) (a "more detailed justification" is required when a "new policy rests upon factual findings that contradict those which underlay its prior policy"); *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221–22 (2016) (unexplained inconsistency with prior policy is a reason to hold agency action arbitrary and capricious).

¹⁰ *Supra* 2 at 56077.

¹¹ See 12 U.S.C. § 1831p-1(a). Congress likewise authorizes OCC examiners to conduct a "thorough examination of all the affairs" of a national bank, 12 U.S.C. § 481, and separately recognizes violations of law and "unsafe or unsound practices" as independent grounds for corrective action. See 12 U.S.C. § 1818(b).

Consistent with those statutory responsibilities, supervisors assess whether a bank's governance, controls, risk management, and operations are safe and sound and identify weaknesses before they result in legal or regulatory violations or negative financial implications. A framework that permits examiners to identify a violation but restricts their ability to require remediation of the control weaknesses or practices that produced it reduces supervision to merely assessing whether the bank has complied with legal or regulatory requirements. That supervisory approach is difficult to reconcile with Congress's statutory framework for forward-looking prudential supervision.

The Proposal's treatment of the safety and soundness guidelines raises additional concerns about timely supervisory intervention. Proposed § 4.92(j) excludes noncompliance with the guidelines in the appendices to 12 CFR part 30 from both substantive and technical violations.¹² Those guidelines implement section 39 of the Federal Deposit Insurance Act and address weaknesses in internal controls, internal audit, information systems, loan documentation, credit underwriting, interest rate exposure, asset growth, and compensation. The Proposal points to existing mechanisms, including the compliance-plan process under § 30.3, and explains that guideline noncompliance may support an MRA when it meets the separate safety-and-soundness criteria. However, identifying these remaining authorities does not establish that they adequately support early intervention. The OCC should explain how examiners would secure and verify timely correction of guideline deficiencies before they satisfy the material-harm criteria for an MRA, when examiners should invoke the compliance-plan process, and why these mechanisms would adequately replace the supervisory follow-up foreclosed by the Proposal.

As Better Markets explained in our December 23, 2025, comment letter on unsafe or unsound practices and MRAs¹³, supervision must address the underlying causes of risk before those risks produce significant harm. A framework that restricts intervention based on the apparent severity of individual findings can obscure weaknesses that become dangerous through repetition, accumulation, or changing conditions.

The OCC should also assess this Proposal alongside its other supervisory initiatives. Better Markets' April 20, 2026 supervisory appeals comment letter explained how expanded opportunities to contest findings could encourage delay and significantly undermine examiner authority.¹⁴ Better Markets' August 17, 2026 comment letter on the Federal Financial Institutions

¹² *Supra* 2 at 56080 (proposed 12 CFR § 4.92(j)); *see also id.* at 56077 (proposing "to explicitly exclude noncompliance with the guidelines set forth in the OCC's Safety and Soundness Standards from the definitions of substantive and technical violations").

¹³ *See* Better Markets, Comment Letter on *Unsafe or Unsound Practices and Matters Requiring Attention*, Docket ID OCC-2025-0174, RIN 1557-AF35, RIN 3064-AG16, 90 FR 48835 (December 23, 2025), at 3–4, available at: <https://bettermarkets.org/wp-content/uploads/2025/12/Better-Markets-Comment-Letter-FDIC-OCC-Unsafe-Unsound-Practices.pdf>.

¹⁴ *See* Better Markets, Comment Letter on *Bank Appeals Process*, Docket ID OCC-2026-0001 (April 20, 2026), at 4–5, available at: <https://bettermarkets.org/wp-content/uploads/2026/04/Better-Markets-Comment-Letter-OCC-Bank-Appeals-Process.pdf>; *see also* Christopher Appel, "The OCC Wants to Put Bankers in Charge of Supervising Bankers. What Could Go Wrong?" (May 4, 2026), available at: <https://bettermarkets.substack.com/p/the-occ-wants-to-put-bankers-in-charge>.

Examination Council’s proposed revisions to the CAMELS rating system likewise explained that requiring “material financial risk” or “observable deterioration” before management, governance, and risk-management weaknesses can affect a rating would convert supervision from an early-warning system into a rearview mirror, because governance failures precede financial deterioration, often by years, as they did at Silicon Valley Bank.¹⁵ This Proposal would add new grounds for disputing whether a legal violation qualifies for an MRA. Together with narrower unsafe-or-unsound-practice standards, these changes risk making findings harder to issue and corrective action harder to secure. Evaluating each restriction in isolation would miss an important consequence of the agency’s broader policy.

The Proposal also raises questions about consistency between the OCC’s and FDIC’s supervisory frameworks. The agencies’ joint MRA final rule already announced a policy of limiting violation-based MRAs to substantive violations.¹⁶ This Proposal would convert that policy into a regulatory restriction for only the OCC. Differences in follow-up authority also warrant examination: the joint final rule explains that the FDIC may issue an MRA when a subsequent examination or visitation finds that an institution failed to remediate an “other violation” as directed. The OCC should explain whether its proposed framework preserves comparable authority and, if not, why that difference is justified. It should also assess whether differences in binding constraints and follow-up practices could create incentives for institutions to seek a different charter or supervisor.

E. The OCC Has Not Reconciled the Proposal with Its Statutory Authority

Section 8(b) of the Federal Deposit Insurance Act authorizes the OCC to proceed against an institution that “is violating or has violated, or...is about to violate, a law, rule, or regulation,” and to require the institution “to take affirmative action to correct the conditions resulting from any such violation.”¹⁷ Congress did not condition the OCC’s authority to address violations of law on a materiality threshold. The statute expressly draws **no distinction between substantive and technical violations**, and it contemplates corrective action beyond the bare cessation of the violation, including restitution, restrictions on growth, and “such other action as the banking

¹⁵ See Better Markets, Comment Letter on Proposed Revisions to the Uniform Financial Institutions Rating System, Docket No. OCC-2026-0562 (August 17, 2026), at 7–9, available at: <https://bettermarkets.org/wp-content/uploads/2026/08/Better-Markets-Comment-Letter-CAMELS.pdf>; see also Better Markets, Press Release, Statement of Christopher Appel, “Regulators’ Proposal To Weaken Bank Management Supervision Leaves Main Street Exposed” (August 17, 2026), available at: <https://bettermarkets.org/newsroom/regulators-proposal-to-weaken-bank-management-supervision-leaves-main-street-exposed/>.

¹⁶ *Supra* 4.

¹⁷ 12 U.S.C. § 1818(b)(1).

agency determines to be appropriate.”¹⁸ The OCC’s examination authority is also unqualified: examiners are directed to “make a thorough examination of all the affairs of the bank.”¹⁹

An MRA is an ordinary supervisory step that can precede and reduce the need for enforcement under section 8. The Proposal would provide by regulation that, for an entire category of legal violations, the OCC “may not direct an institution...to take any action other than to correct the technical violation or such other actions as are required by law.”²⁰ Better Markets recognizes that section 8(b) is permissive and that the OCC has discretion over how and when to use its enforcement tools.

That discretion does not relieve the OCC of its obligation to justify binding restrictions on supervisory responses. Although formal enforcement would remain available, the Proposal would restrict examiners’ ability to require corrective measures through ordinary supervision when a violation is treated as technical. The OCC has not adequately explained why these restrictions would improve compliance or how examiners would address underlying weaknesses before they produce recurring or more consequential violations. The restrictions could leave examiners choosing between limited supervisory correction and formal enforcement when a proportionate intermediate response would better serve the institution and the public.

The OCC should efficiently prioritize its supervisory resources. However, there is a difference between an agency choosing how to allocate examiner attention and an agency binding itself and its successors to narrower supervisory responses to legal noncompliance. Before finalizing, the OCC must reconcile that categorical limitation with sections 8(b) and 39 of the Federal Deposit Insurance Act and 12 U.S.C. § 481, and explain why a binding rule, rather than the exercise of supervisory judgment, is the appropriate means of setting priorities.²¹

F. The OCC Must Address Reasonable Alternatives and Significant Objections

The OCC should consider retaining examiner discretion while addressing claims of excessive burden through targeted examiner training, internal review, and proportionate remediation requirements. These measures would allow the agency to prioritize consequential deficiencies while preserving its ability to investigate apparent control failures and verify

¹⁸ 12 U.S.C. § 1818(b)(6)(A)–(F).

¹⁹ 12 U.S.C. § 481.

²⁰ *Supra* 2 at 56080 (“The OCC may not direct an institution that commits a technical violation to take any action other than to correct the technical violation or such other actions as are required by law.”).

²¹ *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412–13 (2024) (courts must independently determine the meaning of statutes administered by agencies and the boundaries of any authority Congress has delegated).

correction. The OCC should explain why this alternative would not achieve its stated objectives without imposing binding restrictions on MRA authority.²²

These objections concern the Proposal's central rationale and practical consequences. Under the APA, the OCC must consider relevant comments and provide a reasoned response to significant objections before finalizing the rule.²³ General assurances about clarity, prioritization, or reduced burden would not address the specific concerns identified here.

Better Markets recommends that the OCC withdraw the Proposal. If it chooses to proceed, it must substantiate its conclusions, address the consequences for timely correction and supervisory effectiveness, and explain its rejection of reasonable alternatives.

Sincerely,



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²² *Supra 9 State Farm*, 463 U.S. at 46–51 (agency must consider obvious alternatives within the ambit of the existing standard); *see also Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 30–33 (2020).

²³ 5 U.S.C. § 553(c); *Ohio v. EPA*, 603 U.S. 279, 292–93 (2024) (agency must offer a reasoned response to significant comments); *Perez v. Mortgage Bankers Ass'n*, 575 U.S. 92, 96 (2015).