[BILLING CODE:]

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 4

OCC- 2025-0174

RIN 1557-AF35

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 305

RIN 3064-AG16

Unsafe or Unsound Practices, Matters Requiring Attention

AGENCY: Office of the Comptroller of the Currency, Treasury, and the Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC) propose to define the term "unsafe or unsound practice" for purposes of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) and to revise the supervisory framework for the issuance of matters requiring attention and other supervisory communications.

DATES: Comments must be received by [INSERT 60 DAYS FROM DATE OF PUBLICATION].

ADDRESSES: Comments should be directed to the agencies as follows:

OCC: Commenters are encouraged to submit comments through the Federal eRulemaking Portal. Please use the title "Unsafe or Unsound Practices, Matters Requiring Attention" to facilitate the

organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—"Regulations.gov":*

  Go to *https://regulations.gov/*. Enter Docket ID "OCC- 2025-0174" in the Search Box and click "Search." Public comments can be submitted via the "Comment" box below the displayed document information or by clicking on the document title and then clicking the "Comment" box on the top-left side of the screen. For help with submitting effective comments, please click on "Commenter's Checklist." For assistance with the *Regulations.gov* site, please call 1-866-498-2945 (toll free) Monday–Friday, 9am–5pm ET or e-mail *regulationshelpdesk@gsa.gov*.

- *Mail*: Chief Counsel's Office, Attention: Comment Processing, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

- *Hand Delivery/Courier*: 400 7th Street, SW, Suite 3E-218, Washington, DC 20219.

  Instructions: You must include "OCC" as the agency name and "Docket ID OCC- 2025-0174" in your comment. In general, the OCC will enter all comments received into the docket and publish the comments on the *Regulations.gov* website without change, including any business or personal information provided such as name and address information, e-mail addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

  You may review comments and other related materials that pertain to this action by any of the following methods:

- *Viewing Comments Electronically – Regulations.gov:*

  Go to *https://regulations.gov/*. Enter Docket ID "OCC- 2025-0174" in the Search box and click "Search." Click on the "Dockets" tab and then the document's title. After clicking the document's title, click the "All Comments on Docket" tab. Comments can be viewed and filtered by clicking on the "Sort By" drop-down on the right side of the screen or the "Refine Comments Results" options on the left side of the screen. Supporting materials can be viewed by clicking on the "Docket Documents" tab. Click on the "Sort By" drop-down on the right side of the screen or the "Refine Results" options on the left side of the screen checking the "Supporting & Related Material" checkbox. For assistance with the *Regulations.gov* site, please call 1-866-498-2945 (toll free) Monday–Friday, 9am–5pm ET, or e-mail *regulationshelpdesk@gsa.gov*.

The docket may be viewed after the close of the comment period in the same manner as during the comment period.

FDIC: The FDIC encourages interested parties to submit written comments. Please include your name, affiliation, address, email address, and telephone number(s) in your comment. You may submit comments to the FDIC, identified by RIN **3064-AG16**, by any of the following methods:

- *Agency Web Site:* https://www.fdic.gov/federal-register-publications. Follow instructions for submitting comments on the FDIC's website.
- *E-mail:* *comments@FDIC.gov*. Include RIN **3064-AG16** in the subject line of the message.
- *Mail:* Jennifer M. Jones, Deputy Executive Secretary, Attention: Comments - RIN 3064-AG12, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429.

- *Hand Delivery/Courier:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street NW building (located on F Street NW) on business days between 7am and 5pm.

Public Inspection: Comments received, including any personal information provided, may be posted without change to https://www.fdic.gov/federal-register-publications. Commenters should submit only information they wish to make available publicly. The FDIC may review, redact, or refrain from posting all or any portion of any comment that it may deem to be inappropriate for publication, such as irrelevant or obscene material. The FDIC may post only a single representative example of identical or substantially identical comments, and in such cases will generally identify the number of identical or substantially identical comments represented by the posted example. All comments that have been redacted, as well as those that have not been posted, that contain comments on the merits of this notice will be retained in the public comment file and will be considered as required under all applicable laws. All comments may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT:

OCC: Eden Gray, Assistant Director, Allison Hester-Haddad, Special Counsel, Marjorie Dieter, Counsel, Harry Naftalowitz, Attorney, Chief Counsel's Office, 202-649-5490, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability, please dial 7-1-1 to access telecommunications relay services.

FDIC: Division of Risk Management Supervision: Audia Brittany, Chief, Exam Support Section, (703) 254-0801, baudia@fdic.gov; Legal Division, Seth P. Rosebrock, Assistant General Counsel, (202) 898–6609, srosebrock@fdic.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

The OCC and the FDIC (collectively, the agencies) exercise their enforcement and supervision authority to ensure that supervised institutions[1] refrain from engaging in unsafe or unsound practices. To that effect, the agencies believe it is important to promote greater clarity and certainty regarding certain enforcement and supervision standards by defining them by regulation. Moreover, the agencies believe it is critical that examiners and institutions prioritize material financial risks over concerns related to policies, process, documentation, and other nonfinancial risks and that their enforcement and supervision standards further that prioritization.

Specifically, pursuant to the provisions of section 8 of the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1818), the agencies are authorized to take enforcement actions against depository institutions[2] and institution-affiliated parties[3] that have engaged in an "unsafe or unsound practice." As described in section II.A of this SUPPLEMENTARY INFORMATION, the agencies are proposing to define by regulation the term "unsafe or unsound practice" for purposes of section 8 of the FDI Act. The proposed implementation of the definition of "unsafe or unsound practice" would apply to the agencies' supervisory and enforcement activities prospectively only. Moreover, it would not apply to the agencies' rulemaking activities or authority.

---

[1] For purposes of this SUPPLEMENTARY INFORMATION, the term "institution" refers to insured depository institutions and any other institutions subject to supervision or enforcement by the agencies. The scope of the proposed rule is discussed below.

[2] A depository institution generally refers to an insured depository institution as defined in 12 U.S.C. 1813(c)(2); any national banking association chartered by the OCC, including an uninsured association; or a branch or agency of a foreign bank. Refer to specific provisions of 12 U.S.C. 1818 regarding their applicability to a specific institution. *See* 12 U.S.C. 1818(b)(4)–(5).

[3] *See id.* 1813(u).

In addition, the agencies are proposing to establish uniform standards for purposes of their communication of certain supervisory concerns. The agencies each communicate deficiencies that rise to the level of a matter that requires attention from an institution's board of directors and management, but the agencies have different standards for when the agency may communicate these deficiencies.[4] As described in section II.B of this SUPPLEMENTARY INFORMATION, the agencies are proposing to establish uniform standards for when and how the agencies may communicate matters requiring attention (MRAs) as part of the supervision and examination process, consistent with their underlying statutory authorities. The proposal also clarifies that the agencies may communicate other nonbinding suggestions to institutions orally or in writing to enhance an institution's policies, practices, condition, or operations as long as the communication is not, and is not treated by the agency in a manner similar to, an MRA.

II. Description of the Proposed Rule

A. Unsafe or Unsound Practices

Based on the agencies' supervisory experience and as a matter of policy, the agencies propose implementing a definition of "unsafe or unsound practice" for purposes of section 8 of the FDI Act that would focus on material risks to the financial condition of an institution and would generally require that an imprudent practice, act, or failure to act, if continued, would be likely to materially harm the institution's financial condition. Taking into account statutory text, legislative history, and case law, the agencies believe that the proposed regulatory definition fits within the authority Congress granted to the agencies to take enforcement actions based on

[4] Specifically, as discussed in more detail below, the OCC has procedures for the communication of matters requiring attention (MRAs). The FDIC communicates matters requiring board attention (MRBAs).

unsafe or unsound practices under section 8 of the FDI Act.[5] The agencies believe this change will provide greater consistency for institutions and institution-affiliated parties and appropriately focus supervisory and institution resources on the most critical financial risks to institutions and the financial system.

The term "unsafe or unsound practice" appears in section 8 of the FDI Act for purposes of the agencies' enforcement authority. The statute does not define the term unsafe or unsound practice. An unsafe or unsound practice may serve as a ground for several types of enforcement actions under provisions of section 8 of the FDI Act. These include involuntary termination of deposit insurance by the FDIC,[6] a cease-and-desist order,[7] a temporary cease-and-desist order,[8] the removal and prohibition of an institution-affiliated party,[9] or a Tier 2 or Tier 3 civil money

[5] *See Groos Nat'l Bank v. OCC*, 573 F.2d 889, 897 (5th Cir. 1978) ("The phrase 'unsafe or unsound banking practice' is widely used in the regulatory statutes and in case law, and one of the purposes of the banking acts is clearly to commit the progressive definition and eradication of such practices to the expertise of the appropriate regulatory agencies.").

[6] 12 U.S.C. 1818(a)(2)–(3) ("If the [FDIC] Board of Directors determines that an insured depository institution or the directors or trustees of an insured depository institution have engaged or are engaging in unsafe or unsound practices in conducting the business of the depository institution . . . the [FDIC] Board of Directors may issue an order terminating the insured status of such depository institution effective as of a date subsequent to such finding.").

[7] *Id.* 1818(b)(1) ("If, in the opinion of the appropriate Federal banking agency, any insured depository institution, depository institution which has insured deposits, or any institution-affiliated party is engaging or has engaged, or the agency has reasonable cause to believe that the depository institution or any institution-affiliated party is about to engage, in an unsafe or unsound practice in conducting the business of such depository institution . . . the agency may issue and serve upon the depository institution or the institution-affiliated party an order to cease and desist from any such . . . practice.").

[8] *Id.* 1818(c)(1) ("Whenever the appropriate Federal banking agency shall determine that . . . the unsafe or unsound practice or practices . . . or the continuation thereof, is likely to cause insolvency or significant dissipation of assets or earnings of the depository institution, or is likely to weaken the condition of the depository institution or otherwise prejudice the interests of its depositors prior to the completion of the proceedings conducted pursuant to paragraph (1) of subsection (b) of this section, the agency may issue a temporary order requiring the depository institution or such party to cease and desist from any such . . . practice and to take affirmative action to prevent or remedy such insolvency, dissipation, condition, or prejudice pending completion of such proceedings.").

[9] *Id.* 1818(e) (Subject to additional requirements, "[w]henever the appropriate Federal banking agency determines that any institution-affiliated party has, directly or indirectly . . . engaged or participated in any unsafe or unsound practice in connection with any insured depository institution or business institution . . . the appropriate Federal banking agency may suspend such party from office or prohibit such party from further participation in any manner in the conduct of the affairs of the depository institution . . . .").

penalty.[10] Most enforcement provisions in section 8 of the FDI Act also include other potential grounds, such as a violation of law or a breach of fiduciary duty, which are not affected by the proposed regulatory definition.

The ordinary meaning of the term "unsafe," as defined by the dictionaries most commonly used at the time section 8 of the FDI Act was enacted, is a sufficient degree of risk of sufficient harm, injury, or damage to make a situation not safe.[11] They defined the term "unsound" as a sufficient degree of actual harm, injury, or damage to make a thing not sound.[12]

In determining what may be considered an unsafe or unsound practice under section 8 of the FDI Act, some courts have looked to a standard articulated by John Horne, then Chairman of the Federal Home Loan Bank Board (FHLBB) (Horne Standard), during congressional hearings related to the Financial Institutions Supervisory Act of 1966 (Act of 1966), which is the source of the agencies cease-and-desist authority in section 8(b) of the FDI Act.[13] Specifically, Chairman Horne stated:

> Generally speaking, an "unsafe or unsound practice" embraces any action, or lack of action, which is contrary to generally accepted standards of prudent operation, the possible consequences of which, if continued, would be abnormal risk or loss

---

[10] *Id.* 1818(i) ("[A]ny insured depository institution which, and any institution-affiliated party who . . . recklessly engages in an unsafe or unsound practice in conducting the affairs of such insured depository institution . . . which practice is part of a pattern of misconduct; causes or is likely to cause more than a minimal loss to such depository institution; or results in pecuniary gain or other benefit to such party, shall forfeit and pay a civil penalty of not more than $25,000 for each day during which such . . . practice . . . continues . . . . [A]ny insured depository institution which, and any institution-affiliated party who knowingly . . . engages in any unsafe or unsound practice in conducting the affairs of such depository institution; . . . and knowingly or recklessly causes a substantial loss to such depository institution or a substantial pecuniary gain or other benefit to such party by reason of such . . . practice . . . shall forfeit and pay a civil penalty in an amount not to exceed the applicable maximum amount determined under subparagraph (D) for each day during which such . . . practice . . . continues.").

[11] *See, e.g.*, 16 J.A. Simpson & E.S.C. Weiner, Oxford English Dictionary 355–66 (2d ed. 1989) (safe); 19 *id.* at 180 (unsafe).

[12] *See, e.g.*, 16 *id.* at 50–52 (sound); 19 *id.* at 206 (unsound).

[13] *See, e.g., Gulf Fed. Sav. & Loan Assoc. of Jefferson Parish v. Fed. Home Loan Bank Bd.*, 651 F.2d 259, 264 (5th Cir. 1981) ("The authoritative definition of an unsafe or unsound practice, adopted in both Houses, was a memorandum submitted by John Horne"). Chairman Horne's articulation of what constitutes an unsafe or unsound practice was read into the record in both chambers of Congress. *See* 112 Cong. Rec. 25008, 26474 (1966) (remarks of Rep. Thomas W.L. Ashley and Sen. Absalom W. Robertson).

> or damage to an institution, its shareholders, or the agencies administering the insurance funds.[14]

Representative Patman further described the authority added in the Act of 1966 as "aimed specifically at actions impairing the safety or soundness of . . . insured financial institutions" and providing the agencies with "flexible tools [that] relate strictly to the insurance risk and to assure the public . . . sound banking facilities."[15]

Courts reviewing cases brought by the agencies have grappled with the meaning of "unsafe or unsound practice" in section 8 of the FDI Act and have reached different conclusions as to how to apply it. For example, some courts have applied the Horne Standard without further elaboration on what the standard entails.[16] Other courts have explained that section 8 of the FDI Act applies to practices that have a "reasonably direct effect on an [institution]'s financial soundness"[17] or "threaten the financial integrity" of the institution.[18] Other courts have required that unsafe or unsound practices cause "abnormal risk to the financial stability of the . . . institution,"[19] "abnormal risk of financial loss or damage,"[20] or "reasonably foreseeable undue risk."[21]

The lack of a federal statutory definition for the term "unsafe or unsound practice" has resulted in enforcement actions and supervisory criticisms for concerns not related to material

---

[14] 112 Cong. Rec. 26474.
[15] *Id.* at 24984 (remarks of Rep. Wright Patman).
[16] *See, e.g.*, *Greene Cnty. Bank v. FDIC*, 92 F.3d 633, 636 (8th Cir. 1996) (quoting *First Nat'l Bank of Eden, S.D. v. Dep't of Treas., OCC*, 568 F.2d 610, 611 n.2 (8th Cir. 1978)); *Doolittle v. NCUA*, 992 F.2d 1531, 1538 (11th Cir. 1993) (quoting *Nw. Nat'l Bank, Fayetteville, Ark. v. Dep't of Treas.*, 917 F.2d 1111, 1115 (8th Cir. 1990)) (construing the term unsafe or unsound practice as applied to a credit union).
[17] *Gulf Fed. Sav. & Loan Assoc. of Jefferson Parish.*, 651 F.2d at 264.
[18] *Johnson v. OTS*, 81 F.3d 195, 204 (D.C. Cir. 1996) (quoting *Gulf Fed. Sav. & Loan Assoc. of Jefferson Parish.*, 651 F.2d at 267).
[19] *In re Seidman*, 37 F.3d 911, 928 (3d Cir. 1994); *see also id.* at 932 (stating that "[a]n unsafe or unsound practice has two components: (1) an imprudent act (2) that places an abnormal risk of financial loss or damage on a banking institution").
[20] *Michael v. FDIC*, 687 F.3d 337, 352 (7th Cir. 2012) (citing *In re Seidman*, 37 F.3d at 932).
[21] *Blanton v. OCC*, 909 F.3d 1162, 1172 (D.C. Cir. 2018) (quoting *Landry v. FDIC*, 204 F.3d 1125, 1138 (D.C. Cir. 2000)).

financial risks. The agencies believe that the proposed regulatory definition faithfully reflects the intent of the standard as enacted by Congress and aligns with the interpretations of the term unsafe or unsound practice within section 8 of the FDI Act by most federal courts. The proposed regulatory definition would also provide a consistent nationwide standard to provide greater clarity for institutions and institution-affiliated parties.

The agencies believe that the proposed definition of the term unsafe or unsound practice is also important to appropriately focus institution and examiner attention on practices that are likely to materially harm an institution's financial condition, providing the institution's board of directors and management additional flexibility to enact day-to-day decisions based on their business judgment and risk tolerance. The proposed definition reflects the agencies' judgment and experience that their supervisory resources are best focused on practices that are likely to materially harm an institution's financial condition, such as risks that are more likely than other risks to lead to material financial losses, bank failures, and instability in the banking system.[22] For the same reasons, the agencies believe that practices that are likely to materially harm the financial condition of an institution are critical for an institution's board of directors and management to address.

In addition, lack of clarity regarding the scope of the term unsafe or unsound practice among examiners could lead to inconsistent application of the terms in communicating supervisory findings.[23] The proposed definition of an unsafe or unsound practice should ensure

[22] In March 2023, several insured depository institutions with total consolidated assets of $100 billion or more, including Silicon Valley Bank, experienced significant withdrawals of uninsured deposits in response to underlying material weaknesses in their financial position and failed. The agencies believe these failures highlight the need for the agencies to allocate supervisory resources with a focus on material financial risks.

[23] In addition to enforcement actions under section 8 of the FDI Act, the agencies identify unsafe or unsound practices as supervisory findings in other communications, including reports of examination, supervisory letters, MRAs, and informal enforcement actions. These identified unsafe or unsound practices sometimes establish a record for a later enforcement action under section 8 of the FDI Act. The agencies' identification of an unsafe or unsound

consistency in identifying practices as unsafe or unsound only where they are likely to materially harm the financial condition of an institution, are likely to present a material risk of loss to the Deposit Insurance Fund (DIF), or have materially harmed the financial condition of the institution. This definition should focus institution and examiner attention on core financial risks facing an institution and otherwise provide the institution's board of directors and management the flexibility to enact decisions based on their business judgment and risk tolerance.

Therefore, as explained further below, in the proposed rule, the agencies would define the term unsafe or unsound practice to mean a practice, act, or failure to act, alone or together with one or more other practices, acts, or failures to act, that (1) is contrary to generally accepted standards of prudent operation; and (2)(i) if continued, is likely to (A) materially harm the financial condition of the institution; or (B) present a material risk of loss to the DIF; or (ii) materially harmed the financial condition of the institution.

Imprudent act. Consistent with the Horne Standard, a practice, act, or failure to act under the proposed definition would have to be contrary to generally accepted standards of prudent operation to be considered an unsafe or unsound practice.[24] The agencies acknowledge that an essential role of institutions is to identify, measure, incur, and manage risk. The agencies do not intend to take enforcement actions under section 8 of the FDI Act for prudent operations that result in risk-taking. A practice, act, or failure to act could only be considered an unsafe or unsound practice if it deviates from generally accepted standards of prudent operation (and otherwise meets the proposed definition).

---

practice is distinct from standards for safety and soundness that the agencies are required to issue pursuant to 12 U.S.C. 1831p-1. *See* 12 CFR parts 30, 364.

[24] *See, e.g.*, *Michael*, 687 F.3d at 352 (citing *Van Dyke v. FRB*, 876 F.2d 1377, 1380 (8th Cir. 1989)); *Frontier State Bank Okla. City, Okla. v. FDIC*, 702 F.3d 588, 604 (10th Cir. 2012) (citing *Simpson v. OTS*, 29 F.3d 1418, 1425 (9th Cir. 1994)); *De la Fuente v. FDIC*, 332 F.3d 1208, 12222 (9th Cir. 2003) (citing *Simpson*, 29 F.3d at 1425).

Likely. To qualify as an unsafe or unsound practice under the proposed definition, it also would have to be likely—as opposed to, for example, merely possible—that the practice, act, or failure to act, if continued, would materially harm the financial condition of the institution or present a material risk of loss to the DIF. The agencies believe that including the term "if continued" is important to allow for identification of an unsafe or unsound act or failure to act before it impacts an institution's financial condition. However, the conduct must be sufficiently proximate to a material harm to an institution's financial condition to meet the proposed definition.[25] The agencies do not intend to identify unsafe or unsound acts or failures to act by extrapolating from deficient conduct that could potentially result in, alone or in combination with other factors or events, material harm to the financial condition of an institution but is not likely to do so. 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.

Financial condition. An unsafe or unsound practice would include a practice, act, or failure to act that, if continued, is likely to materially harm the financial condition of an institution. The agencies believe that harm to financial condition includes practices, acts, or failures to act that are likely to directly, clearly and predictably impact an institution's capital, asset quality, earnings, liquidity, or sensitivity to market risk.

Risk of Loss to the Deposit Insurance Fund. An unsafe or unsound practice would also include a practice, act, or failure to act that, if continued, is likely to negatively affect an

[25] Additionally, under the proposal, practices, acts, or failures to act that have already caused material harm to the financial condition of the institution would not have to meet the "likely" standard, as there would be certainty with respect to the harm.

institution's ability to avoid FDIC receivership and present a material risk of loss to the DIF as a result of the failure. For example, the failure of an institution to implement appropriate contingency funding arrangements might not pose a risk of material harm to the financial condition of the institution, but could impair the institution's liquidity under stress and thus present an increased risk to the DIF. In other words, the proposed definition would capture a practice, act, or failure to act that materially increases the probability that an institution would fail and impose a material risk of loss to the DIF.

Harm. The proposed standard focuses on material harm to financial condition, and the agencies generally interpret harm to refer to financial losses. Therefore, to be an unsafe or unsound practice, a practice, act, or failure to act generally must have either caused actual material losses to the institution or must be likely to cause material loss or other negative financial impacts to the institution.[26] Conversely, that a practice, act, or failure to act caused actual but non-material financial losses to the institution is insufficient to meet the proposed standard.[27]

Nonfinancial risks impacting financial condition. The agencies also acknowledge that, in limited circumstances, other practices, acts, or failures to act may be captured because, if continued, they are likely to cause material harm to an institution's financial condition. For example, the term unsafe or unsound practice could include critical infrastructure or cybersecurity deficiencies that are so severe as to, if continued, be likely to result in a material disruption to the institution's core operations that prevent the institution, its counterparties, and its customers from conducting business operations and, in turn, be likely to cause material harm

[26] *See Landry*, 204 F.3d at 1138.
[27] *See Johnson v. OTS*, 81 F.3d at 204.

to the financial condition of the institution. The standard would not include risks to the institution's reputation unrelated to financial condition.[28]

Material harm. Under the proposed definition, to be considered an unsafe or unsound practice, the likely harm to an institution's financial condition or risk of loss to the DIF must also be material. Risks of minor harm to an institution's financial condition, even if imminent, would not rise to the level of an unsafe or unsound practice.[29] Instead, the agencies will consider the likely harm to an institution's financial condition to be material if it would materially impact the institution's capital, asset quality, liquidity, earnings, or sensitivity to market risk,[30] or would materially impact the risk that an institution fails and causes a loss to the DIF. Going forward, the agencies expect that it would be rare for an institution to exhibit unsafe or unsound practices, as defined in the proposed rule, based solely on the institution's policies, procedures, documentation or internal controls, without significant weaknesses in the institution's financial condition (*i.e.*, weaknesses that caused material harm to the financial condition of the institution, or were likely to materially harm the financial condition of the institution or likely to present material risk of loss to the DIF). 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.

---

[28] *See Gulf Fed. Sav. & Loan Assoc. of Jefferson Parish,* 651 F.2d at 264–65 ("Approving intervention under the [FHLBB]'s "loss of public confidence" rationale would result in open-ended supervision. . . . The Board's rationale would permit it to decide, not that the public has lost confidence in Gulf Federal's financial soundness, but that the public may lose confidence in the fairness of the association's contracts with its customers.").

[29] *See, e.g.*, *id.* at 259 (an institution with $75 million in assets did not engage in an unsafe or unsound practice when it misrepresented the calculation of interest rates on loans, which could have resulted in an $80,000 loss to the institution—a loss of far less than 1% of the institution's total assets).

[30] *See, e.g.*, *Blanton*, 909 F.3d at 1172–73 (an institution-affiliated party engaged in an unsafe or unsound practice by permitting a customer to overdraft more than $2 million over two months, with outstanding overdrafts at one point totaling nearly 65% of the institution's Tier 1 capital, even though the institution's capital levels were critically deficient).

Tailoring required. The proposal also explains that the agencies will tailor their supervisory and enforcement actions under 12 U.S.C. 1818 (as well as their issuance of MRAs, as discussed further below) based on the capital structure, riskiness, complexity, activities, asset size, and any financial risk-related factor that the agencies deem appropriate. This includes tailoring with respect to the requirements or expectations set forth in such actions as well as whether, and the extent to which, such actions are taken. As such, the agencies expect that finding an unsafe or unsound practice would be a much higher bar for a community bank than for a larger institution when considered against the overall operations of the institution. For example, as applied to the threshold for material harm, the agencies would not expect that a particular projected percentage decrease in capital or liquidity that rises to the level of materiality for the largest institutions would necessarily also be material for community banks. The agencies invite comment on whether the agencies should provide additional specificity. Generally, because unsafe or unsound practices by institution-affiliated parties must, if continued, be likely to materially harm the financial condition of an institution, the same tailored standard would, going forward, apply to practices, acts, or failures to act by institution-affiliated parties of the institution.

For these reasons, the agencies propose to define the term unsafe or unsound practice to mean a practice, act, or failure to act, alone or together with other practices, acts, or failures to act, that (1) is contrary to generally accepted standards of prudent operation; and (2)(i) if continued, is likely to (A) materially harm the financial condition of an institution; or (B) present a material risk of loss to the DIF; or (ii) materially harmed the financial condition of the institution.

B. Matters Requiring Attention

The agencies are proposing to establish uniform standards for examiners' communication of MRAs. Under the proposed rule, an examiner would be permitted to issue an MRA to address certain risks to the financial condition of an institution and violations of banking or banking-related laws or regulations.

Through various statutory examination and reporting authorities, Congress has conferred upon the agencies the authority to exercise visitorial powers and examination authorities with respect to supervised institutions.[31] The Supreme Court has indicated support for a broad reading of certain visitorial powers.[32] Examination and visitorial powers of the agencies facilitate early identification of supervisory concerns that may not rise to a violation of law, unsafe or unsound practice, or breach of fiduciary duty under section 8 of the FDI Act. These powers provide the agencies with authority to issue MRAs and supervisory ratings.[33]

The OCC's current practice is to use MRAs to communicate concerns about an institution's "deficient practices."[34] A deficient practice is a practice, or lack of practice, that (1) "deviates from sound governance, internal control, or risk management principles and has the potential to adversely affect the bank's condition, including financial performance or risk profile, if not addressed," or (2) "results in substantive noncompliance with laws or regulations, enforcement actions, or conditions imposed in writing in connection with the approval of any applications or other requests by the [institution]."[35] The purpose of an MRA, unlike other forms of supervisory communications, is to bring a deficient practice to the attention of the institution's board of directors and management to ensure they address the deficiency. An MRA is not

[31] 12 U.S.C. 481, 1463, 1464, 1820, 1867, 3105(c), 5412(b).
[32] *See, e.g., Cuomo* v. *Clearing House Ass'n,* 557 U.S. 519 (2009); *United States* v. *Gaubert,* 499 U.S. 315 (1991); *United States* v. *Phila. Nat'l Bank,* 374 U.S. 321 (1963).
[33] *See* 12 U.S.C. 481, 1463, 1820(b), 1867, 3105(c), 5412(b).
[34] OCC, Comptroller's Handbook, "Bank Supervision Process" at 46 (March 2025).
[35] *Id.* at 134.

intended to serve as a vehicle for examiners to recommend best practices or enhancements to already acceptable standards. When the OCC communicates an MRA to an institution, it includes a corrective action stating what management or the board of directors must do to address the concern and eliminate the cause.[36] An institution is expected to develop an action plan to detail how it intends to correct the root causes of deficiencies rather than symptoms.[37] Although an institution has discretion to develop an adequate action plan as it deems appropriate, the OCC retains the ultimate authority to determine the method and timeframe for corrective action. The actions that an institution's board of directors and management take or agree to take in response to concerns in MRAs are factors in the OCC's decision to pursue an enforcement action and the severity of that action.[38]

The OCC tracks an institution's MRAs, including whether they are open, closed, past due, or pending validation. Current OCC policies require that MRAs must remain open until an institution has implemented, and examiners have verified and validated that the institution has consistently adhered to, an effective corrective action.[39] Validation requires the institution to demonstrate the corrective action is effective over a reasonable period, which may vary and is based on the sustainability of the corrected practice, not the institution's condition.[40]

For matters that do not warrant an MRA, examiners may offer informal recommendations to the board of directors and management related to potential policy enhancements or best

---

[36] *Id.* at 46.
[37] *Id.* at 38.
[38] OCC, Policies and Procedures Manual: PPM 5310-3, "Bank Enforcement Actions and Related Matters" at 3 (May 25, 2022), available at https://www.occ.gov/news-issuances/bulletins/2023/bulletin-2023-16.html.
[39] "Verification" is the process by which the OCC confirms that an institution has implemented the agreed upon corrective actions to address a deficient practice described in an MRA. "Validation" is the process by which the OCC confirms the effectiveness and sustainability of corrective actions that an institution has implemented.
[40] The OCC must determine through examination or review of audit reports and work papers that the institution's corrective actions are sustainable.

practices.[41] Recommendations do not require specific corrective action or follow-up by examiners, and the OCC does not include recommendations in formal written communications to institutions, such as a report of examination.

The FDIC's current practice is to issue Supervisory Recommendations, including Matters Requiring Board Attention (MRBAs), as part of its supervisory process to communicate weaknesses in a bank's operations, governance, or risk management practices.[42] These supervisory tools are designed to promote timely corrective action and to strengthen institutions' overall safety and soundness.

MRBAs are used to inform an institution of the FDIC's views about changes needed in its practices, operations, or financial condition to help institutions prioritize their efforts to address examiner concerns, identify emerging problems, and correct deficiencies before the institution's condition deteriorates.[43] Boards of directors are expected to oversee management's development and implementation of corrective measures and to ensure timely resolution of the matters. The FDIC reviews the status of MRBAs in subsequent examinations or through offsite monitoring to ensure progress and remediation. The FDIC tracks and categorizes MRBAs to enable the agency to analyze and identify trends related to risk supervision findings.

Other Supervisory Recommendations are issued to highlight deficiencies or weaknesses that warrant management's attention but do not rise to the level of MRBAs. These recommendations are intended to promote sound governance, risk management, and operational practices and, if left unaddressed, may escalate into more significant supervisory concerns.

---

[41] OCC, Comptroller's Handbook, "Bank Supervision Process" at 46.
[42] *See* Statement of the FDIC Board of Directors on the Development and Communication of Supervisory Recommendations, available at https://www.fdic.gov/about/governance/recommendations.html.
[43] *See* FDIC, Risk Management Manual of Examination Policies, Report of Examination Instructions (last updated April 2024), at 16.1-8.

Although these Supervisory Recommendations do not carry the same weight as MRBAs, management is expected to consider and respond to them and to implement corrective action as appropriate.

The agencies each apply their different standards for MRAs and MRBAs (collectively, matters requiring correction) to require institutions to align their conduct with supervisory expectations. But a common denominator of the agencies' current practices for supervisory criticisms is that examiners frequently issue matters requiring correction to communicate deficiencies beyond those that are central to, or in many cases that are directly relevant to, an institution's financial condition. The agencies do not currently require examiners to find that a practice is likely, or reasonably can be expected, to materially harm the financial condition of the institution. In practice, an institution must address the practices described in a matter requiring correction, regardless of whether the institution's board of directors and management consider the examiner's concerns to be accurate or important enough to prioritize. The agencies' expansive definition and application of matters requiring correction has resulted in a proliferation of supervisory criticisms for immaterial procedural, documentation, or other deficiencies that distract management from conducting business and that do not clearly improve the financial condition of institutions. In addition, in the agencies' supervisory experience, failure to correct a deficient practice communicated in a matter requiring correction often eventually results in an enforcement action.

To ensure supervision efforts are appropriately focused on material financial risks and increase consistency in supervisory criticisms, the agencies are issuing this joint proposal

regarding their standard for issuing matters requiring correction, which would be in the form of MRAs.[44]

The proposed rule would provide that the agencies may only issue an MRA for a practice, act, or failure to act, alone or together with one or more other practices, acts, or failures to act, that (1) (i) is contrary to generally accepted standards of prudent operation; and (ii) (A) if continued, could reasonably be expected to, under current or reasonably foreseeable conditions, (*1*) materially harm the financial condition of the institution; or (*2*) present a material risk of loss to the DIF; or (B) has already caused material harm to the financial condition of the institution; or (2) is an actual violation of a banking or banking-related law or regulation.

Under the proposed rule, the phrases "materially harm the financial condition of an institution," "materially harmed the financial condition of an institution," and "material risk of loss to the Deposit Insurance Fund" would have the same meaning for MRAs as they would have for the proposed definition of unsafe or unsound practice. The proposed MRA standard would accordingly focus supervisory and institution resources on material financial risks. Similar to the proposed definition of an unsafe or unsound practice, practices, acts, or failures to act that are captured by the proposed MRA standard would, in the vast majority of cases, relate directly to risks of material harm to the financial condition of an institution or violations of certain laws and regulations. Material financial risks will, in the vast majority of cases, relate directly, clearly and predictably to an institution's capital, asset quality, earnings, liquidity, or sensitivity to market risk. Additionally, the proposed standard for an MRA, like the proposed definition of an unsafe or unsound practice, would cover a practice, act, or failure to act that, "if continued," has the potential to materially harm the financial condition of an institution.

[44] For the FDIC, MRAs would replace MRBAs.

As proposed, examiners could communicate an MRA for a practice, act, or failure to act that, if continued, could reasonably be expected to, under current or reasonably foreseeable conditions, (A) materially harm the financial condition of an institution or (B) present a material risk of loss to the DIF. The agencies intend for the "could reasonably be expected to, under current or reasonably foreseeable conditions" element in the proposed MRA standard to present a lower bar than does the "likely" element in the proposed unsafe or unsound practice standard.

To determine whether a practice, act, or failure to act, if continued, could reasonably be expected to, under current or reasonably foreseeable conditions, materially harm the financial condition of an institution, the proposed rule relies on examiners' judgments, based on objective facts and sound reasoning. The proposal would not permit examiners to issue MRAs based on potential future conditions that are possible but not reasonably foreseeable. Nonetheless, "reasonably foreseeable" does not necessarily mean the most likely future outcome and could include a range of possible outcomes. For example, in late 2022, the agencies could have considered it "reasonably foreseeable" that the federal funds rate and other market interest rates would rise considerably, and an institution's vulnerability to a significant rise in interest rates could have been grounds for an MRA. However, the proposal would not permit examiners to issue MRAs that purport to meet the proposed MRA standard as a pretext to force an institution to comply with an examiner's managerial judgment instead of the judgment of the institution's own management, in the absence of a reasonable expectation of material harm to the financial condition of the institution.

Under the proposed MRA standard, violations of banking or banking-related laws and regulations must be actual violations of a discrete set of federal and state law or regulation—those related to banking. This would generally include banking and consumer financial

protection laws, but would not include laws and regulations outside of the banking and consumer finance context, such as tax laws.[45] Moreover, the agencies would not issue an MRA solely to address an institution's policies, procedures, or internal controls, unless those policies, procedures, or internal controls otherwise satisfied the regulatory standard for an MRA, even if those policies, procedures, or internal controls could lead to a violation of law or regulation.

Accordingly, under the proposed rule, examiners could issue an MRA for a practice, act, or failure to act related to a violation of law or regulation only if (1) the examiner identified actual violations of a banking or banking-related law or regulation (as opposed to, for example, bank policies, procedures, or programs that could lead to violations of such laws or regulations) or (2) the practice, act, or failure to act meets the MRA standard in the proposed rule relating to material financial harm.

As discussed above, the agencies will tailor their issuance of MRAs based on the capital structure, riskiness, complexity, activities, asset size, and any financial risk-related factor that the agencies deem appropriate. This includes tailoring with respect to the requirements or expectations set forth in such actions as well as whether, and the extent to which, such actions are taken.

The agencies also recognize that a more targeted use of MRAs, as proposed in this rule, may benefit from complementary changes to the agencies' MRA verification and validation procedures to ensure MRAs are lifted as soon as practicable after the institution completes corrective actions. The agencies note that, under current practices, MRAs are often kept outstanding for a prolonged period of time after an institution has fully completed its remediation

[45] Banking and consumer financial protection laws include the enumerated consumer laws under the Consumer Financial Protection Act, 12 U.S.C. 5481(12), only with respect to institutions for which the agencies have supervisory or enforcement authority under such laws under 12 U.S.C. 5515–5516.

of the underlying practice, act, or failure to act because examiners seek to see demonstrated sustainability of the remediation before an MRA is closed. This practice has the potential to distract an institution's board of directors and management, as well as examiners, by inflating the number of MRAs based on practices, acts, or failures to act that have already been remediated. The agencies invite comment on ways in which the agencies can improve their respective MRA verification and validation policies and procedures.

Informal Supervisory Communications

For concerns that do not rise to the level of an MRA, agency examiners may informally provide non-binding suggestions to enhance an institution's policies, practices, condition, or operations.[46] The OCC refers to these communications as "supervisory observations." For example, examiners could offer suggestions on ways to enhance an institution's external audit practices, succession planning, or risk management processes. Given that these supervisory communications are not binding, the agencies would not be permitted to require an institution to submit an action plan to incorporate examiners' supervisory observations. Examiners would not be permitted, and the institution would not be required, to track the institution's adoption or implementation of examiner suggestions. Although examiners would be permitted to informally make such supervisory communications to the institution's board of directors, the institution's management would not be required to present the supervisory communications to the institution's board of directors. In addition, the agencies would not be permitted to criticize an institution for declining to remediate a concern or weakness identified by such a supervisory communication or to escalate the communication into an MRA on the sole basis of an institution's lack of adoption of an examiner's suggestion offered in multiple examination cycles.

[46] Supervisory observations are separate and distinct from requirements that the agencies impose in connection with an application, notice, or other request, including through a condition imposed in writing under 12 U.S.C. 1818.

If an institution's condition deteriorates following a supervisory communication, the circumstances underlying the supervisory communication could later be the basis for an MRA or enforcement action, but only if the criteria for an MRA or enforcement action under the proposal are satisfied, and not solely on the basis of failing to respond to the supervisory communication. This framework would allow examiners to share their expertise with management and the board of directors about potential enhancements while leaving decisions regarding the implementation of any enhancements to the institution.

In addition, the agencies would also be permitted to include supervisory communications in a report of examination to explain changes in ratings. For example, if a bank is downgraded from a "1" to a "2" in a particular CAMELS component, the agency may explain this downgrade, and such an explanation would constitute a "supervisory communication." As noted above, such an explanation would not impose any binding requirement on an institution to remediate any weakness identified, and the agency could not further downgrade the institution solely on the basis of failing to remediate such a weakness.

C. Composite Ratings Downgrades

The agencies believe that the changes to the standards for unsafe or unsound practices and MRAs in the proposed rule are important to prioritize material financial risks and compliance with banking and banking-related laws and regulations. In furtherance of the agencies' goal to prioritize attention on material financial risks and legal compliance, the agencies also expect that any downgrade in an institution's composite supervisory rating to less-than-satisfactory[47] would only occur in circumstances in which the institution receives an MRA

[47] This refers to an institution's composite rating under the Uniform Financial Institution Rating System (UFIRS). Currently, the UFIRS incorporates six individual component ratings: capital, asset quality, management, earnings, liquidity, and sensitivity to market risk. The UFIRS also incorporates a composite rating, which functions as an

that meets the standard outlined in the proposed rule or an enforcement action pursuant to the agencies' enforcement authority, including an enforcement action based on an unsafe or unsound practice as defined in the proposed rule.[48] In the case of an insured depository institution, a composite rating of "3" in the CAMELS rating systems is generally considered "less-than-satisfactory."[49] A downgrade to a less-than-satisfactory composite supervisory rating can have significant regulatory and statutory consequences for an institution.[50] By connecting the assignment of a less-than-satisfactory composite rating to the issuance of MRAs and enforcement actions, the agencies would generally ensure a less-than-satisfactory composite rating is tied to a potential material harm to the institution's financial condition, potential material risk of loss to the DIF, actual material harm to the institution's financial condition, or actual violations of certain laws and regulations. Although section 8 of the FDI Act provides for grounds for an enforcement action based on a violation of law, the agencies expect that they would not downgrade an institution's composite rating to less-than-satisfactory based only on a violation of law, unless such practice, act, or failure to act that results in the violation of law also is likely to cause material harm to the financial condition of the institution, is likely to present a material risk of loss to the DIF, or has caused material harm to the institution's financial condition, as the agencies propose under the unsafe or unsound practice definition.

xx. Request for Comments

---

overall assessment of the financial institution. The composite rating generally bears a close relationship to the component ratings assigned, but the composite rating is not derived by computing an arithmetic average of the component ratings. For federal branches and agencies of foreign banks, this refers to the institution's composite rating under the rating system applicable to federal branches and agencies of foreign banks.

[48] The agencies would not necessarily expect to issue a new MRA or take an additional enforcement action before further downgrades in an institution's composite rating unless the additional downgrade was based on new concerns or there is further deterioration in the institution's condition.

[49] OCC, Comptroller's Handbook, "Bank Supervision Process" at 71.

[50] For example, a less-than-satisfactory composite rating may limit an institution's ability to engage in interstate mergers, establish a de novo interstate branch, or control or hold an interest in certain subsidiaries. *See* 12 U.S.C. 24a, 36(g), 1831u, 1843(m).

The agencies request feedback on all aspects of the proposed rule, including:

Question 1: What effect would the proposed rule have on the agencies' ability to address misconduct by institutions under their enforcement and supervisory authority? What effect would the proposed rule have on the agencies' ability to address misconduct by institution-affiliated parties under their enforcement and supervisory authority?

Question 2: Does the proposed definition of unsafe or unsound practice appropriately capture the types of objectionable practices, acts, or failures to act that should be captured? Please explain.

Question 3: Does the proposed definition of unsafe or unsound practice provide the agencies with adequate authority to proactively address risks that could cause a precipitous decline in an institution's financial condition, such as a liquidity event or a cybersecurity incident?

Question 4: Other than "material," are there terms that the agencies should consider to specify the magnitude of the risk required for a practice, act, or failure to act, to be considered an unsafe or unsound practice, e.g. "abnormal," "significant," or "undue"?

Question 5: Is "likely" the appropriate standard to specify the probability of risk required for a practice, act, or failure to act, to be considered an unsafe or unsound practice? Is another term more appropriate, e.g. "reasonably foreseeable," "could reasonably," "imminent," "abnormal probability?" Should the agencies specify a minimum percentage of likelihood? If so, what would be an appropriate minimum percentage of likelihood? Should the agencies consider a standard that does not imply an assessment of a forward-looking probability?

Question 6: Should the agencies consider specifying one or more quantitative measurements to define or exemplify "material harm" to the financial condition of the institution?

Question 7: Should the agencies define "materially" in the regulation? If so, how?

Question 8: Should the agencies define harm to the financial condition of an institution in the regulation? If so, how? Should this include specific indicators or thresholds, or adverse effects to capital, liquidity, or earnings?

Question 9: Section 8 of the FDI Act uses the term "unsafe or unsound practice" numerous times and in different contexts. Should the proposed definition of unsafe or unsound practice apply to all uses of the term within section 8 of the FDI Act? If not, what provisions should be excluded? Should the agencies have a uniform definition for purposes of section 8, as proposed, or should there be nuances depending on the context?

Question 10: Should the proposed definition of unsafe or unsound practice apply to other uses of the term or references to section 8 of the FDI Act within Title 12 of the CFR? If so, what provisions should be included? What, if any, effect would the proposed definition have on the agencies' ability to engage in rulemaking?

Question 11: Should the proposed definition of unsafe or unsound practice apply to uses of the term beyond section 8 of the FDI Act? If yes, what provisions should be included? For example:

- *Tier 2 and Tier 3 Civil Money Penalty provisions (12 U.S.C. 93, 504, 1817, 1972).*
- *Capital standards in 12 U.S.C. 1464(t).*
- *Definition of institution-affiliated party in 12 U.S.C. 1813(u).*
- *Grounds for appointing a conservator or receiver in 12 U.S.C. 1821(c)(5).*

Question 12: Is the agencies' use of the term "generally accepted standards of prudent operations," as described in this proposal, appropriate for making safety and soundness determinations? Are there are other terms the agencies should consider using instead?

Question 13: Other than "could reasonably be expected," are there terms that the agencies should consider to specify the probability of risk required for a practice, act, or failure to act, to be communicated as an MRA, e.g. "could possibly," "could foreseeably," "would"? Is this standard sufficiently distinct from the likelihood requirement for unsafe or unsound practices so as to convey a lower bar?

Question 14: The proposal would allow the agencies to issue MRAs based on "reasonably foreseeable conditions." Is "reasonably foreseeable" the right standard? As an example, at what point in Silicon Valley Bank's timeline would an MRA for weaknesses in interest rate risk management have been (1) appropriate and (2) permissible under the proposal? If another standard would be more appropriate, please explain.

Question 15: If the agencies adopt the proposed standard for the issuance of an MRA, how should the agencies determine when to close an MRA? Should the agencies provide additional clarity in a final rule? Are there unique verification and validation concerns associated with the proposed standard that the agencies should consider? Should verification and validation procedures be tailored for different types of institutions, considering factors like the sophistication of an institution and the frequency of examinations? Should there be a limit (e.g., one or two quarters; one examination cycle) to the duration that an MRA may remain open after an institution corrects the practice resulting in the MRA? If an MRA is not remediated for a certain period of time, what steps should the agencies take?

Question 16: Should the proposal provide any clarity around timeframes for remediating MRAs? If so, should small institutions (and those with limited resources) be provided with longer timeframes to address MRAs? Should institutions with more severe vulnerabilities (such as 5-rated institutions) be provided shorter timeframes?

Question 17: Should the proposed standard for issuing MRAs also apply to issuing violations of law? Why or why not? If a different standard should apply, please describe the standard and explain why. If the agencies did not use MRAs for violations of law, how should the agencies approach violations of law?

Question 18: Under the proposal, the agencies could cite violations of banking and banking-regulated laws or regulations as MRAs. Is "banking and banking-related" the right universe? Should the agencies provide additional clarity on what constitutes banking and banking-related laws? If so, what should be included? Should the agencies limit the scope of banking and banking-related laws to federal banking and banking-related law? Why or why not?

Question 19: Should the agencies provide additional clarity on the interplay between MRAs and CAMELS ratings? If so, how?

Question 20: Should the agencies require any downgrade to a CAMELS composite rating of 3 or below to be accompanied by an MRA or enforcement action? Are there instances in which, for example, general economic conditions or idiosyncratic risk factors could cause financial deterioration without evidence of objectionable practices, acts, or failures to act? Could such a provision incentivize issuing more MRAs? Please explain.

Question 21: To what extent should the agencies use MRAs to address banks that are vulnerable to potential economic or other shocks? For example, before the Federal Reserve began raising interest rates in 2022, or shortly after it began raising interest rates, at what point,

if any, would it have been appropriate for a banking agency to issue MRAs to institutions that were vulnerable to a rise in interest rates? Does the proposal appropriately allow MRAs in such cases, if applicable? Under the proposal, are there other supervisory tools to address such risks?

Question 22: How should the agencies tailor the framework for community banks? For example, should there be different standards for institutions of different sizes and complexity? Please explain.

Question 23: Should the proposal tie material harm to the financial condition of an institution more specifically to the impact of a practice, act or failure to act on the institution's capital? Should there be a higher standard for large banking organizations compared to all other banking organizations? Should the potential or actual harm to an institution's financial condition be tied to the capital standards in the prompt correction action framework set forth in 12 U.S.C. 1831o?

Question 24: Should the proposed regulation tie material harm to the financial condition of an institution more specifically to the impact of a practice, act or failure to act on the institution's liquidity? Should there be a threshold for a liquidity event, such as an outflow of a hypothetical percentage of an institution's short-term deposits or other short-term liabilities over a defined period?

Question 25: How should the proposed regulation interact with the Interagency Guidelines Establishing Safety and Soundness Standards promulgated under 12 U.S.C. 1831p-1 (e.g., 12 CFR part 30) (Safety and Soundness Standards)? Should the agencies similarly revise the Safety and Soundness Standards in a manner consistent with the proposed regulation? Should a violation of the Safety and Soundness standards be considered a violation of banking or banking-related law or regulation for purposes of the proposed regulation?

Question 26: What additional steps should the agencies consider to reform supervision, consistent with the goals of the proposal? The agencies have an extensive supervisory framework including examination manuals, regulations, guidance, and internal procedures governing how banks are supervised. What modifications to these various documents are warranted? How should the agencies sequence these actions?

III. Expected Effects

As previously discussed, the agencies propose to revise the framework for communicating MRAs to supervised insured depository institutions (IDIs) to focus on practices, acts, or failures to act that, if continued, could reasonably be expected to, under current or reasonably foreseeable conditions, (A) materially harm the financial condition of an institution or (B) present a material risk of loss to the DIF, or violations of a banking or banking-related law or regulation. The proposal would provide a consistent nationwide standard for the issuance of MRAs to promote greater clarity for IDIs and IDI-affiliated parties.

This analysis utilizes all regulations and guidance applicable to IDIs supervised by the agencies, as well as information on the financial condition of supervised IDIs as of the quarter ending June 30, 2025, as the baseline to which the effects of the proposed rule are estimated.

Scope

The proposal, if adopted, would not impose any obligations on supervised IDIs, and supervised IDIs would not need to take any action in response to this rule. The proposal, if adopted, would require the agencies to revise their current practices regarding the identification and communication of examination findings. Therefore, the agencies would be the only entities directly affected by the proposal.

The proposal would indirectly affect supervised IDIs through examinations and reports of examination (ROEs) conducted by the agencies. All IDIs subject to examinations by the agencies as of June 30, 2025 could be indirectly affected proposal. Only a subset of IDIs are examined every year, therefore the proposed rule could indirectly affect a subset of supervised IDIs each year.

Costs and Benefits

The following sections discuss qualitatively some indirect benefits and indirect costs of the proposal.

Indirect Benefits to IDIs

The proposal, if adopted, would pose two types of indirect benefits to supervised IDIs: 1) reductions in, or more efficient use of, costs to comply with findings from ROEs, and 2) possible increases in proceeds from the provision of banking products and services. By raising the standard against which an IDI's action, or inaction, is assessed to be eligible for an MRA, IDIs may experience lower volumes of examination findings, particularly MRAs. Further, by potentially reducing the number of examination findings not related to material risks to the financial condition of the IDI, the proposed rule may enable IDIs that do receive MRAs to more effectively address those risks. Finally, by enacting a consistent definition of conditions that merit the use of MRAs across the agencies, the proposed rule may improve clarity and reduce uncertainty of ROE findings, relative to the baseline. Such reductions in findings and increases in clarity may reduce compliance costs or increase the efficiency with which compliance costs are expended by IDIs to respond to ROE findings. The agencies do not have the information necessary to quantify such potential indirect benefits.

Negative feedback from regulators during the examination process may discourage IDIs from taking part in activity and could result in reduced provision of banking products and services. To the extent that matters requiring the attention of an institution's board of directors and management are currently identified and used in a way that raises potential chilling effects by, the proposal could result in fewer such effects relative to the baseline. A reduction in chilling effects could enable IDIs to provide financial products and services to entities that they would not have otherwise. The FDIC does not have the data necessary to quantify this potential benefit.

Indirect Costs to IDIs

If adopted the proposed rule may reduce the volume of examination findings communicated to IDIs and this could pose certain indirect costs. To the extent that the proposed rule, if adopted, delayed the identification of material risks to the financial condition of an IDI, such entities could incur higher costs to resolve such issues, associated losses, and in extreme cases, failure. However, as previously discussed, the agencies believe that proposed definition of unsafe and unsound better prioritizes the identification and communication of such risks. Therefore, the agencies believe that such costs are unlikely to be substantial. Moreover, it is also possible that under the proposal risks to IDIs and risks of IDI failures could decrease significantly, because under the proposal IDI management and examiners would prioritize the identification and remediation of issues that could result in material financial loss to IDIs.

IV. Alternatives Considered

The agencies considered leaving the current regulatory framework unchanged. However, as previously discussed, the current methods for communicating certain supervisory examination findings can promote confusion or not appropriately focus supervisory and institution resources

on the most critical financial risks to institutions and the financial system. Therefore, the agencies believe that the proposal is more appropriate.

V. Regulatory Analysis

Paperwork Reduction Act

The Paperwork Reduction Act of 1995[51] (PRA) states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The agencies have reviewed this proposed rule and determined that it does not create any information collection or revise any existing collection of information. Accordingly, no PRA submissions to OMB will be made with respect to this proposed rule.

Regulatory Flexibility Act

The Regulatory Flexibility Act[52] (RFA) requires an agency to consider the impact of its proposed rules on small entities. In connection with a proposed rule, the RFA generally requires an agency to prepare an Initial Regulatory Flexibility Analysis (IRFA) describing the impact of the rule on small entities, unless the head of the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities and publishes such certification along with a statement providing the factual basis for such certification in the *Federal Register*. An IRFA must contain: (1) a description of the reasons why action by the agency is being considered; (2) a succinct statement of the objectives of, and legal basis for, the proposed rule; (3) a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply; (4) a description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of

[51] 44 U.S.C. 3501–3521.
[52] *Id.*

the classes of small entities that will be subject to the requirements and the type of professional skills necessary for preparation of the report or record; (5) an identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap with, or conflict with the proposed rule; and (6) a description of any significant alternatives to the proposed rule that accomplish its stated objectives.

1. OCC

The OCC currently supervises 1,012 institutions (commercial banks, trust companies, Federal savings associations, and branches or agencies of foreign banks),[53] of which approximately 609 are small entities under the RFA.[54]

In general, the OCC classifies the economic impact on an individual small entity as significant if the total estimated impact in one year is greater than 5 percent of the small entity's total annual salaries and benefits or greater than 2.5 percent of the small entity's total non-interest expense. Furthermore, the OCC considers 5 percent or more of OCC-supervised small entities to be a substantial number, and at present, 30 OCC-supervised small entities would constitute a substantial number. Therefore, since the proposed rule would affect all OCC-supervised institutions, a substantial number of OCC-supervised small entities would be impacted.

[53] Based on data accessed using the OCC's Financial Institutions Data Retrieval System on September 8, 2025.
[54] The OCC bases its estimate of the number of small entities on the Small Business Administration's size thresholds for commercial banks and savings institutions, and trust companies, which are $850 million and $47 million, respectively. Consistent with the General Principles of Affiliation, 13 CFR 121.103(a), the OCC counted the assets of affiliated financial institutions when determining if it should classify an OCC-supervised institution as a small entity. The OCC used average quarterly assets in December 31, 2024 to determine size because a "financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year." *See* footnote 8 of the U.S. Small Business Administration's *Table of Size Standards*.

This proposed rulemaking imposes no new mandates, and thus no direct costs, on affected OCC-supervised institutions. Therefore, the proposed rule would not have a significant economic impact on a substantial number of small entities.

2. FDIC

Generally, the FDIC considers a significant economic impact to be a quantified effect in excess of 5 percent of total annual salaries and benefits or 2.5 percent of total noninterest expenses. The FDIC believes that effects in excess of one or more of these thresholds typically represent significant economic impacts for FDIC-insured institutions.

The FDIC believes that the proposed rule will not have a significant economic impact on a substantial number of small entities[55] because the proposed rule will not pose reporting, recordkeeping and other compliance requirements[56] on small, FDIC-supervised IDIs. However, the proposed rule could present significant indirect benefits to small, FDIC-supervised IDIs. Therefore, the FDIC is presenting an Initial Regulatory Flexibility Act Analysis in this section.

Reasons Why This Action Is Being Considered

The lack of a consistent nationwide standard about the scope of the term unsafe or unsound practice, as interpreted by the courts, has caused uncertainty for institutions and institution-affiliated parties.[57] The proposed regulatory definition would provide a consistent

[55] SBA defines a small banking organization as having $850 million or less in assets, where an organization's "assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year." *See* 13 CFR 121.201 (as amended by 87 FR 69118, effective December 19, 2022). In its determination, the "SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates." *See* 13 CFR 121.103. Following these regulations, the FDIC uses an insured depository institution's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the insured depository institution is "small" for the purposes of the RFA.

[56] 5 U.S.C. 603(b)(4)

[57] *See*, e.g., *Calcutt v. FDIC*, 37 F.4th 293, 325 (6th Cir. 2022), *rev'd on other grounds*, 598 U.S. 623 (2023) (citing *Seidman*, 37 F.3d at 926–27) ("[Twelve U.S.C. 1818] does not define an 'unsafe or unsound practice,' and the term is interpreted flexibly."); *id*. at 353–57 (Murphy, J., dissenting) (discussing circuit split and reliance on legislative history as opposed to plain text); *see also Greene Cnty. Bank*, 92 F.3d at 636.

nationwide standard to reduce burden and provide greater clarity for institutions and institution-affiliated parties.

Policy Objectives

The policy objectives are to promote greater clarity and certainty regarding enforcement and supervision standards so that examiners and IDIs prioritize material financial risks to IDIs and avoid unnecessary regulatory burden.

Legal Basis

Pursuant to the provisions of section 8 of the FDI Act (12 U.S.C. 1818), the FDIC is authorized to take enforcement actions against depository institutions,[58] and institution-affiliated parties[59] that have engaged in an "unsafe or unsound practice." Under this authority, the FDIC is proposing to define by regulation the term "unsafe or unsound practice" for purposes of section 8 of the FDI Act. For a more detailed discussion of the proposed rule's legal basis please refer to section A. Unsafe or Unsound Practices, within Section II of the preamble.

Description of the Rule

The agencies propose implementing a definition of unsafe or unsound practice for purposes of section 8 of the FDI Act that would focus on material risks to the financial condition of an IDI and require the likelihood that an imprudent practice, act, or omission, if continued, would pose a material risk to the IDI's financial condition. The agencies are also proposing to establish uniform standards for examiners' communication of MRAs. Under the proposed rule, an examiner would be permitted to issue an MRA to address certain risks to the financial

[58] A depository institution generally refers to an insured depository institution as defined in 12 U.S.C. 1813(c)(2); any national banking association chartered by the OCC, including an uninsured association; or a branch or agency of a foreign bank. Refer to specific provisions of 12 U.S.C. 1818 regarding their applicability to a specific institution. *See* 12 U.S.C. 1818(b)(4)–(5).
[59] *See id*. 1813(u).

condition of an institution. For a more detailed description of the proposal please refer to section A. Unsafe or Unsound Practices, within Section II of the preamble.

Small Entities Affected

The proposal, if adopted, would not impose any obligations on small, FDIC-supervised entities, and supervised entities would not need to take any action in response to this rule. The proposal, if adopted, would require the FDIC to revise their current practices regarding the communication of IDI examination findings. Therefore, the FDIC would be the only entity directly affected by the proposal.

The proposal would indirectly affect small, FDIC-supervised IDIs through examinations and reports of examinations conducted by the agencies. As of the quarter ending June 30, 2025, the FDIC supervised 2,808 IDIs, of which 2,085 are small entities for the purposes of the RFA.[60] Only a subset of small, FDIC-supervised IDIs are examined every year, therefore the proposed rule could indirectly affect a subset of small, FDIC-supervised IDIs each year.

Cost and Benefits

To estimate the expected effects of the proposal, this analysis considers all relevant regulations and guidance applicable to these institutions, as well as information on the financial condition of all IDIs as of the quarter ending June 30, 2025.

The proposal, if adopted, would pose two types of indirect benefits to small, FDIC-supervised IDIs: 1) reductions in, or more efficient use of, costs to comply with findings from ROEs, and 2) possible increases in proceeds from the provision of banking products and services. By raising the standard against which an IDI's action, or inaction, is assessed to be eligible for an MRA, IDIs may experience lower volumes of examination findings, particularly

[60] FDIC Call Report Data, June 30, 2025.

MRAs. Further, by potentially reducing the number of examination findings not related to material risks to the financial condition of the IDI, the proposed rule may enable IDIs that do receive MRAs to more effectively address those risks. Finally, by enacting a consistent definition of conditions that merit the use of MRAs across agencies the proposed rule may improve clarity and reduce uncertainty of ROE findings, relative to the baseline. Such reductions in findings and increases in clarity may reduce compliance costs or increase the efficiency with which compliance costs are expended by IDIs to respond to ROE findings. The agencies do not have the information necessary to quantify such potential indirect benefits.

Negative feedback from regulators during the examination process may discourage IDIs from taking part in activity and could result in reduced provision of banking products and services. To the extent that matters requiring the attention of an institution's board of directors and management are currently identified and used in a way that raises potential chilling effects by, the proposal could result in fewer such effects relative to the baseline. A reduction in chilling effects could enable IDIs to provide financial products and services to entities that they would not have otherwise. The FDIC does not have the data necessary to quantify this potential benefit. Moreover, it is also possible that under the proposal risks to small, FDIC-supervised IDIs and risks of IDI failures could decrease significantly, because under the proposal IDI management and examiners would prioritize the identification and remediation of issues that could result in material financial loss to IDIs.

FDIC cannot quantitatively estimate the indirect effects that small, FDIC-supervised IDIs are likely to incur if the proposed rule were adopted. However, in the four quarters ending June 30th, 2025, 5 percent of total annual salaries and benefits or 2.5 percent of total noninterest expenses amounts to $139,850 and $124,175, respectively, for the median small, FDIC-

supervised institution.[61] The indirect benefits that a small, FDIC-supervised institution could realize as a result of the proposed rule would depend on changes in the volume of findings of examination and the compliance costs to address those examination findings, relative to the baseline. The proposed rule would establish a definition of unsafe or unsound that would result in issuances of MRAs only where a practice, act, or failure to act that, if continued, could reasonably be expected to, under current or reasonably foreseeable conditions, materially harm the financial condition of an institution. The FDIC believes that it is plausible that the proposed rule, if adopted, could pose indirect benefits to FDIC-supervised IDIs that exceed $139,850 and $124,175 a year for a substantial number of small, FDIC-supervised IDIs.

The FDIC invites comments on all aspects of the supporting information provided in this RFA section, and in particular, whether the proposed rule would have any significant effects on small entities that the FDIC has not identified?

OCC Unfunded Mandates Reform Act

The OCC has analyzed the proposed rule under the factors in the Unfunded Mandates Reform Act of 1995 (UMRA).[62] Under this analysis, the OCC considered whether the proposed rule includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year ($187 million as adjusted annually for inflation). Pursuant to section 202 of the UMRA,[63] if a proposed rule meets this UMRA threshold, the OCC would need to prepare a written statement

[61] FDIC Call Report Data, June 30, 2025.
[62] 2 U.S.C. 1531 *et seq.*
[63] *Id.* 1532.

that includes, among other things, a cost-benefit analysis of the proposal. The UMRA does not apply to regulations that incorporate requirements specifically set forth in law.

This proposed rulemaking imposes no new mandates—and thus no direct costs—on affected OCC-supervised institutions. The OCC, therefore, concludes that the proposed rule would not result in an expenditure of $187 million or more annually by state, local, and tribal governments, or by the private sector. Accordingly, the OCC has not prepared the written statement described in section 202 of the UMRA.

Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act of 1994, 12 U.S.C. 4802(a), in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, the agencies will consider, consistent with principles of safety and soundness and the public interest: (1) any administrative burdens that the proposed rule would place on depository institutions, including small depository institutions and customers of depository institutions; and (2) the benefits of the proposed rule. The agencies request comment on any administrative burdens that the proposed rule would place on depository institutions, including small depository institutions, and their customers, and the benefits of the proposed rule that the agencies should consider in determining the effective date and administrative compliance requirements for a final rule.

Providing Accountability Through Transparency Act of 2023

The Providing Accountability Through Transparency Act of 2023, 12 U.S.C. 553(b)(4), requires that a notice of proposed rulemaking include the internet address of a summary of not

more than 100 words in length of a proposed rule, in plain language, that shall be posted on the internet website www.regulations.gov.

The Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation propose to define the term "unsafe or unsound practice" for purposes of 12 U.S.C. 1818 and to revise the supervisory framework for the issuance of Matters Requiring Attention and other supervisory communications.

The proposal and the required summary can be found at *https://www.regulations.gov* by searching for Docket ID OCC-2025-0174.

Executive Order 12866

Executive Order 12866, titled "Regulatory Planning and Review," as amended, requires the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget to determine whether a proposed rule is a "significant regulatory action" prior to the disclosure of the proposed rule to the public. If OIRA finds the proposed rule to be a "significant regulatory action," Executive Order 12866 requires the agencies to conduct a cost-benefit analysis of the proposed rule. Executive Order 12866 defines "significant regulatory action" to mean a regulatory action that is likely to (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

OIRA has deemed that this proposed rule is an economically significant regulatory action under Executive Order 12866 and, therefore, is subject to review under Executive Order 12866. The agencies' analysis conducted in connection with Executive Order 12866 is set forth below.

1. OCC

The OCC currently supervises 1,012 national banks, federal savings associations, trust companies and branches and agencies of foreign banks (collectively, banks). This proposed rule would apply to all OCC-supervised institutions. The OCC expects that OCC-supervised institutions would have both direct and indirect benefits as well as indirect costs as a result of this proposal.

Specifically, the proposed rule would result in several direct benefits to OCC-supervised institutions, namely, significant cost and time savings to institutions because they would have fewer MRA issuances and enforcement actions (collectively, issues) to address going forward. Banks can incur significant direct costs arising from issues. For example, some banks hire external consultants, for which hourly rates can range from between $300 and $1,200 an hour for top tier firms[64,65] to $150 to $300 an hour for lower tier firms. And financial advisory firms may charge $250 to $550 per hour.[66,67] To the extent that there may be less need for consultants, banks will directly benefit from consultant cost savings.

In addition to consultant fees, banks incur other direct costs to successfully address issues

---

[64] *See* Clancy Fossum, Embark, *What Are The Fees & Hourly Rates Of Accounting Consulting Firms?* (Nov. 13, 2019), https://blog.embarkwithus.com/what-are-the-fees-hourly-rates-of-accounting-consulting-firms#:~:text=in%20each%20category.-,Big%204%20Firms,global%20footprints%2C%20and%20charge%20accordingly.&text=Although%20Big%204%20fees%20in,be%20aware%20of%20before%20proceeding.

[65] *See* Consulting Mavericks, *Average Consulting Rates By Industry* , https://consultingmavericks.com/start/other/average-consulting-rates-by-industry/ (last visited Sept. 26, 2025).

[66] Note, these price ranges are as of 2019 economy prices.

[67] Financial advisory firms offer a wide range of services to clients that could be useful for MRA remediation. However, they typically do not provide traditional accounting services and do not sign off on opinions or certifications the way accounting firms do.

and pay any associated penalties. These costs may include increased hiring and retention of appropriately qualified employees, training for existing employees, time expenditure of employees (which may include time spent addressing the underlying issue, time by management and the board to review and approve changes made, time spent working with external consultants, time conducting internal audit verification, and time spent in partnership with the OCC in ongoing follow up communications and possibly examinations specific to the issue), updating processes and procedures, and addressing the underlying issue itself. If the issue has to do with bank systems or infrastructure, these costs could include technology costs, which could be very costly expenditures. If banks do not remediate issues in a timely fashion, they may also incur additional fines and penalties on top of the costs to remediate the issue itself. [68,69]

While it would be difficult to precisely quantify the overall aggregate annual direct cost savings to OCC supervised institutions, the OCC expects that this proposal would result in an immediate and material cost savings to affected institutions, easily ranging from hundreds of millions to billions of dollars saved annually in aggregate. In addition to the significant direct cost savings from no longer needing to address issues, banks could potentially experience several indirect benefits, including clarity and consistency regarding MRA or enforcement concerns and less staffing turnover.

Regarding direct costs, this proposed rulemaking imposes no new mandates, and thus no direct costs, on affected OCC-supervised institutions. Regarding indirect costs, fewer issues may

---

[68] *See* Perry Menezes et al., CSO Online, *How Financial Institutions Can Reduce Security and Other Risks from MRAs* | CSO Online (Aug. 29, 2023), https://www.csoonline.com/article/650386/how-financial-institutions-can-reduce-security-and-other-risks-from-mras.html#:~:text=MRAs%20are%20expensive,has%20not%20done%20its%20job.

[69] According to a 2021 survey by Better Market, the largest U.S. banks have incurred almost $200 billion in aggregate fines and penalties over the previous 20 years from the time of the survey. *See* BIP. Monticello Consulting Group, *Building Regulatory Resilience: A Deeper Look into Consent Orders & MRAs* (Apr. 20, 2021), https://www.monticellocg.com/blog/2021/04/20/building-regulatory-resilience-a-deeper-look-into-consent-orders-mras#_ftn2.

lead to delayed identification of material risks, which could include higher costs to resolve such issues, associated losses, and in extreme cases, failure. Nevertheless, those risks should be low because the proposed definition endeavors to more effectively prioritize the identification of material financial risks (*i.e.*, those most likely to cause significant stress) and therefore to lower the risk of bank failure. Accordingly, it is also possible that under the proposal risks to banks and risks of bank failures could decrease significantly, because under the proposal bank management and bank examiners would prioritize the identification and remediation of issues that could result in material financial loss to banks. Ultimately, the net effect will be dependent upon agency policies and oversight and responses by bank management to this proposal.

Overall, the OCC expects that the combined effects of the proposed rule's changes to result in net direct impact of a significant cost savings to all OCC-supervised institutions, easily ranging from hundreds of millions to several billion dollars in aggregate. There are also no explicit mandates in the proposal for affected institutions. How the proposal is executed and bank responses to the execution will ultimately determine the net impact over the longer term.

2. FDIC

This analysis utilizes all regulations and guidance applicable to FDIC-supervised IDIs, as well as information on the financial condition of IDIs as of the quarter ending June 30, 2025, as the baseline to which the effects of the proposed rule are estimated.

Scope

The proposal, if adopted, would not impose any obligations on FDIC-supervised IDIs, and supervised IDIs would not need to take any action in response to this rule. The proposal, if adopted, would require the FDIC to revise their current practices regarding the identification and

communication of examination findings. Therefore, the FDIC would be the only entity directly affected by the proposal.

The proposal would indirectly affect FDIC-supervised IDIs through examinations conducted by the FDIC, and the resulting ROEs. All FDIC-supervised IDIs are subject to examination by the FDIC. As of the quarter ending June 30, 2025 the FDIC supervised 2,808 IDIs.[70] However, only a subset of IDIs are examined every year, therefore the proposed rule could indirectly affect a subset of FDIC-supervised IDIs each year.

Annual Effect on the Economy or Adverse Effect

The proposal, if adopted, would pose two types of indirect benefits to FDIC-supervised IDIs: 1) reductions in, or more efficient use of, costs to comply with findings from ROEs, and 2) possible increases in proceeds from the provision of banking products and services. By raising the standard against which an FDIC-supervised IDI's action, or inaction, is assessed to be eligible for an MRA, IDIs may experience lower volumes of examination findings, particularly MRAs. Further, by potentially reducing the number of examination findings not related to material risks to the financial condition of the IDI, the proposed rule may enable IDIs that do receive MRAs to more effectively address those risks. Finally, by enacting a consistent definition of conditions that merit the use of MRAs across the agencies, the proposed rule may improve clarity and reduce uncertainty of ROE findings, relative to the baseline. Such reductions in findings and increases in clarity may reduce compliance costs or increase the efficiency with which compliance costs are expended by FDIC-supervised IDIs to respond to ROE findings. The FDIC does not have the information necessary to quantify such potential indirect benefits.

[70] FDIC Call Report data, June 30, 2025.

Negative feedback from regulators during the examination process may discourage FDIC-supervised IDIs from taking part in activity and could result in reduced provision of banking products and services. To the extent that matters requiring the attention of an institution's board of directors and management are currently identified and used in a way that raises potential chilling effects, the proposal could result in fewer such effects relative to the baseline. A reduction in chilling effects could enable FDIC-supervised IDIs to provide financial products and services to entities that they would not have otherwise. The FDIC does not have the data necessary to quantify this potential benefit. Moreover, it is also possible that under the proposal risks to IDIs and risks of IDI failures could decrease significantly, because under the proposal IDI management and examiners would prioritize the identification and remediation of issues that could result in material financial loss to IDIs.

If adopted the proposed rule may reduce the volume of examination findings communicated to FDIC-supervised IDIs and this could pose certain indirect costs. To the extent that the proposed rule, if adopted, delayed the identification of material risks to the financial condition of an IDI, such entities could incur higher costs to resolve such issues, associated loses, and in extreme cases, failure. However, as previously discussed, the FDIC believe that the proposed definition of unsafe and unsound better prioritizes the identification and communication of such risks. Therefore, the FDIC believe that such costs are unlikely to be substantial.

FDIC cannot quantitatively estimate the indirect effects that FDIC-supervised IDIs are likely to incur if the proposed rule were adopted. However, assuming that all FDIC-supervised IDIs are subject to a bank examination once every 18 months the proposed rule would only need to pose $53,419 in indirect benefits, on average, to FDIC-supervised IDIs to result in an annual

economic effect in excess of $100 million.[71] Based on the preceding analysis the FDIC believes that the proposed regulatory action could plausibly result in an annual effect on the economy of $100 million or more. However, the FDIC does not believe that the proposed rule will adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

Serious Inconsistency

The FDIC does not believe the proposed regulatory action would create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Currently, the FDIC and OCC use distinct terminology to identify and communicate deficiencies that rise to the level of a matter that requires attention from an institution's board of directors and management. The agencies are proposing to jointly revise the terminology and thresholds for the issuance of MRAs in their supervisory programs. Therefore, the FDIC believes that this regulatory action would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency, but rather would remove existing inconsistencies.

Material Alternation

The FDIC does not believe the proposed regulatory action would materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. The proposed regulatory action does nothing to alter entitlements, grants, user fees, or loan programs or the rights and obligations of the recipients of such programs.

Novel Legal or Policy Issues

The FDIC does not believe the proposed regulatory action would raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in

[71] $100,000,000 / (2,808 / 1.5) = $53,418.80.

Executive Order 12866. The FDIC has experience in conducting examinations of the safety and soundness of IDIs and communicating their findings in a variety of ways since its inception. Further, IDIs have an existing mandate to operate in a safe and sound manner.[72] Therefore, this proposed regulatory action does not raise any novel legal or policy issues.

Executive Order 14192

Executive Order 14192, titled ‘‘Unleashing Prosperity Through Deregulation,’’ requires that an agency, unless prohibited by law, identify at least 10 existing regulations to be repealed when the agency publicly proposes for notice and comment or otherwise promulgates a new regulation with total costs greater than zero. Executive Order 14192 further requires that new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least ten prior regulations. The agencies anticipate that the proposed rule will not be a regulatory action for purposes of Executive Order 14192.

List of Subjects

12 CFR Part 4

Administrative practice and procedure, Freedom of information, Individuals with disabilities, Minority businesses, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Women.

12 CFR Part 305

Banks, Banking; Organization and functions (Government agencies)

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[72] 12 CFR 364 establishes standards for safety and soundness for supervised institutions.

Authority and Issuance

For the reasons set out in the preamble, the OCC proposes to amend chapter I of title 12 of the Code of Federal Regulations as follows:

PART 4—ORGANIZATION AND FUNCTIONS, AVAILABILITY AND RELEASE OF INFORMATION, CONTRACTING OUTREACH PROGRAM, POST-EMPLOYMENT RESTRICTIONS FOR SENIOR EXAMINERS

1. Revise the authority citation for part 4 to read as follows:

Authority: 5 U.S.C. 301, 552; 12 U.S.C. 1, 93a, 161, 481, 482, 484(a), 1442, 1462a, 1463, 1464, 1467a, 1817(a), 1818, 1820, 1821, 1831m, 1831p-1, 1831o, 1833e, 1867, 1951 et seq., 2601 et seq., 2801 et seq., 2901 et seq., 3101 et seq., 3102(b), 3401 et seq., 3501(c)(1)(C), 5321, 5412, 5414; 15 U.S.C. 77uu(b), 78q(c)(3); 18 U.S.C. 641, 1905, 1906; 29 U.S.C. 1204; 31 U.S.C. 5318(g)(2), 9701; 42 U.S.C. 3601; 44 U.S.C. 3506, 3510; E.O. 12600 (3 CFR, 1987 Comp., p. 235).

2. Revise the Table of Contents for part 4 to read as follows:

Subpart G – Enforcement and Supervision Standards

4.91 Prohibitions.

4.92 Enforcement and Supervisory Standards

3. Add section 4.92 to read as follows:

§ 4.92 Enforcement and Supervisory Standards

(a) *Unsafe or unsound practices*. For purposes of the OCC's supervisory and enforcement activities under 12 U.S.C. 1818, an "unsafe or unsound practice" is a practice, act, or failure to act, alone or together with one or more other practices, acts, or failures to act, that:

(1) is contrary to generally accepted standards of prudent operation; and

(2) (i) if continued, is likely to—

(A) materially harm the financial condition of the institution; or

(B) present a material risk of loss to the Deposit Insurance Fund; or

(ii) materially harmed the financial condition of the institution.

(b) *Matters Requiring Attention.* The OCC may only issue a matter requiring attention to an institution for a practice, act, or failure to act, alone or together with one or more other practices, acts, or failures to act, that:

(1) (i) is contrary to generally accepted standards of prudent operation; and

(ii) (A) if continued, could reasonably be expected to, under current or reasonably foreseeable conditions,

(*1*) materially harm the financial condition of the institution; or

(*2*) present a material risk of loss to the Deposit Insurance Fund; or

(B) materially harmed the financial condition of the institution; or

(2) is an actual violation of a banking or banking-related law or regulation.

(c) *Clarification Regarding Supervisory Observations.* Nothing in paragraph (b) of this section prevents the OCC from communicating a suggestion or observation orally or in writing to enhance an institution's policies, practices, condition, or operations as long as the communication is not, and is not treated by the OCC in a manner similar to, a matter requiring attention.

(d) *Tailored Application Required*. The OCC will tailor its supervisory and enforcement actions under 12 U.S.C. 1818 and issuance of matters requiring attention based on the capital structure, riskiness, complexity, activities, asset size and any financial risk-related factor that the OCC deems appropriate. Tailoring required by this paragraph (d) includes tailoring with respect to the requirements or expectations set forth in such actions as well as whether, and the extent to which, such actions are taken.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

Authority and Issuance

For the reasons set out in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation proposes to add part 305 to title 12 of the Code of Federal Regulations as follows:

4. Add part 305, consisting of § 305.1, to read as follows:

PART 305— ENFORCEMENT AND SUPERVISION STANDARDS

Sec. 305.1 Enforcement and supervision standards.

Authority: 12 U.S.C. 1818, 1819(a) (Seventh, Eighth, and Tenth), 1831p-1.

§ 305.1 Enforcement and supervision standards

(a) *Unsafe or unsound practices*. For purposes of the FDIC's supervisory and enforcement activities under 12 U.S.C. 1818, an "unsafe or unsound practice" is a practice, act, or failure to act, alone or together with one or more other practices, acts, or failures to act, that:

(1) Is contrary to generally accepted standards of prudent operation; and

(2) (i) If continued, is likely to—

(A) Materially harm the financial condition of the institution; or

(B) Present a material risk of loss to the Deposit Insurance Fund; or

(ii) Materially harmed the financial condition of the institution.

(b) *Matters requiring attention.* The FDIC may only issue a matter requiring attention to an institution for a practice, act, or failure to act, alone or together with one or more other practices, acts, or failures to act, that:

(1)(i) Is contrary to generally accepted standards of prudent operation; and

(ii)(A) If continued, could reasonably be expected to, under current or reasonably foreseeable conditions,

(*1*) Materially harm the financial condition of the institution; or

(*2*) Present a material risk of loss to the Deposit Insurance Fund; or

(B) Materially harmed the financial condition of the institution; or

(2) Is an actual violation of a banking or banking-related law or regulation.

(c) *Clarification regarding supervisory observations.* Nothing in paragraph (b) of this section prevents the FDIC from communicating a suggestion or observation, orally or in writing, to enhance an institution's policies, practices, condition, or operations as long as the communication is not, and is not treated by the FDIC in a manner similar to, a matter requiring attention.

(d) *Tailored application required*. The FDIC will tailor its supervisory and enforcement actions under 12 U.S.C. 1818 and issuance of matters requiring attention based on the capital structure, riskiness, complexity, activities, asset size and any financial risk-related factor that the FDIC deems appropriate. Tailoring required by this paragraph (d) includes tailoring with respect to the requirements or expectations set forth in such actions as well as whether, and the extent to which, such actions are taken.

Jonathan V. Gould,

Comptroller of the Currency.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC on [Date].

Jennifer M. Jones,

Deputy Executive Secretary.

BILLING CODE 6714-01-P