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Proposal and Comment Information

Title: Prohibition on Use of Reputation Risk or Other Supervisory Tools to Encourage or Compel Banking Organizations to Engage in Politicized or Unlawful Discrimination, R-1884

Comment ID: FR-2026-0002-01-C03

Submitter Information

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I appreciate the Board's effort to clarify supervisory limits through the removal of "reputation risk." However, several operative provisions of the proposed rule would benefit from additional definition to avoid interpretive overbreadth and unintended supervisory consequences.

Subsection (b) provides that the Board shall not "encourage or compel" banking organizations to deny or condition services based on protected beliefs or lawful activities perceived to present reputation risk. While "compel" conveys a reasonably clear standard, "encourage" is undefined and susceptible to broad interpretation. In a supervisory context, the term could be construed to encompass informal guidance, advisory dialogue, or routine discussions of risk exposure. Absent clarification, supervisory personnel may reasonably err on the side of avoiding discussion of foreseeable downstream risks, even where such discussion relates to governance, legal risk, or safety-and-soundness considerations. Clarifying that the prohibition applies to coercive or directive supervisory conduct, rather than to ordinary supervisory dialogue, would reduce this interpretive uncertainty.

Subsection (c) prohibits the use of reputation risk as a component of "examination programs" or in "materials used for the supervision of banking organizations." Neither phrase is defined. As drafted, these terms could plausibly extend beyond formal rating frameworks and supervisory findings to encompass internal memoranda, training materials, or written communications prepared in the course of supervision. Such ambiguity risks creating uncertainty regarding what may be documented or discussed in supervisory practice. Defining these terms to apply to formal evaluative frameworks and supervisory determinations would better align the rule's implementation with its stated objective of increased clarity.

The proposal also does not address how reputational considerations that remain relevant to governance, legal exposure, or operational risk will be treated in practice. If such considerations continue to inform supervisory judgments but are subsumed within other risk categories, the practical effect may be reduced transparency rather than increased objectivity. Expressly clarifying the relationship between reputational exposure and recognized safety-and-soundness risk channels would enhance the rule's internal coherence.

Finally, the proposal asserts that removal of reputation risk may expand market access opportunities but does not provide analysis regarding the scope of affected industries, the historical prevalence of reputation-based supervisory findings, or potential downstream financial stability implications. Similarly, the discussion of resource reallocation and reduced regulatory burden would benefit from greater specificity concerning the extent of prior supervisory reliance on reputation risk and the mechanism by which anticipated efficiency gains are expected to occur. Additional analytical detail in these areas would strengthen the proposal's reasoned foundation.

Thank you for the opportunity to submit this comment.