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April 27, 2026

*via Electronic Submission*

Benjamin W. McDonough  
Deputy Secretary  
Board of Governors of the Federal Reserve System  
20th Street and Constitution Avenue NW  
Washington, DC 20551

**RE:** Prohibition on Use of Reputation Risk or Other Supervisory Tools to Encourage or Compel Banking Organizations to Engage in Politicized or Unlawful Discrimination, Docket No. R-1884; RIN 7100-AH17

Dear Deputy Secretary McDonough:

The Independent Community Bankers of America® (ICBA)<sup>1</sup> appreciates the opportunity to comment on the Federal Reserve Board's proposed rule to codify the removal of reputation risk from the Board's supervisory programs. ICBA represents community banks across the country that rely on clear, objective, and consistently applied supervisory standards to serve their customers and communities effectively.

ICBA supports the Board's decision to eliminate reputation risk as a component of supervision and to prohibit supervisory actions that pressure institutions to deny or condition access to financial services based on constitutionally protected activity or otherwise lawful business conduct. Community banks function best in a regulatory environment where supervisory expectations are based on measurable, well-defined risk factors rather than subjective judgments about public perception or political controversy.

### **Importance of Codification and Consistency**

ICBA strongly agrees that codifying the elimination of reputation risk in regulation, rather than relying solely on guidance or examiner training, is essential. Community banks make long-term strategic decisions based on stable regulatory expectations, and codification ensures consistency across Reserve Banks, examination teams, and future supervisory leadership.

ICBA urges the Federal Reserve to align its final rule closely with the Office of the Comptroller of Currency (OCC) and Federal Deposit Insurance Corporation (FDIC) final rule adopted in April 2026 (90 FR 18279), which establishes a comprehensive and enforceable framework for the elimination of

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<sup>1</sup> *The Independent Community Bankers of America® has one mission: to create and promote an environment where community banks flourish. We power the potential of the nation's community banks through effective advocacy, education, and innovation. As local and trusted sources of credit, America's community banks leverage their relationship-based business model and innovative offerings to channel deposits into the neighborhoods they serve, creating jobs, fostering economic prosperity, and fueling their customers' financial goals and dreams. For more information, visit ICBA's website at [icba.org](http://icba.org).*

reputation risk from bank supervision. The OCC/FDIC final rule demonstrates that reputation risk can be removed from supervision through binding regulation without constraining agencies' ability to supervise for traditional safety-and-soundness risks. The OCC and FDIC have moved to eliminate reputation risk from their supervisory frameworks. The Federal Reserve's final rule is the last step needed to complete a consistent, interagency framework. Aligning the Federal Reserve's final rule with the OCC/FDIC approach would promote interagency consistency and reduce regulatory uncertainty for institutions subject to multiple regulators.

### **Definition and Scope of Reputation Risk**

ICBA supports defining reputation risk narrowly to ensure it does not become a proxy for subjective or politicized supervision. ICBA has concerns, however, about the Board's proposed definition, which adopts the language from SR 95-51 and defines reputation risk as "the potential that negative publicity regarding a banking organization's business practices, whether true or not, will cause a decline in the banking organization's customer base, costly litigation, or revenue reductions."

This definition is narrower and potentially less durable than the approach adopted in the OCC/FDIC final rule, which defines reputation risk as "any risk, regardless of how the risk is labeled by the institution or regulators, that an action or activity, or combination of actions or activities, or lack of actions or activities, of an institution could negatively impact public perception of the institution for reasons not clearly and directly related to the financial or operational condition of the institution." The OCC/FDIC definition's "regardless of how the risk is labeled" language is a critical anti-evasion feature that prevents supervisors from reintroducing reputation risk under alternative labels.

ICBA recommends that the Board adopt a definition consistent with the OCC/FDIC framework and explicitly exclude risks that are clearly and directly related to an institution's financial or operational condition, including matters such as cybersecurity, fraud prevention, business continuity, and operational resilience. This clarification preserves the Board's authority to supervise for genuine operational and financial risks while preventing the reintroduction of reputation-based judgments under alternative labels.

### **Scope of the Prohibition: "Encourage or Compel" vs. Broader Standard**

The Board's proposal frames its prohibition as a bar on actions that "encourage or compel" banking organizations to deny or condition financial services. This standard is materially narrower than the standard adopted by the OCC and FDIC. The OCC/FDIC final rule prohibits the agencies from criticizing, formally or informally, or taking adverse action against an institution on the basis of reputation risk. The "criticize or take adverse action" standard is broader and better captures the full range of supervisory conduct that can, in practice, pressure institutions to alter lawful business relationships.

Informal examiner commentary, examination findings, and verbal feedback can carry consequences as significant as formal enforcement actions, even when they fall short of explicit encouragement or compulsion. ICBA recommends that the Board broaden the prohibition to encompass informal supervisory criticism and adverse supervisory actions in addition to formal encouragement or compulsion.

### **Examiner Conduct and Adverse Supervisory Actions**

ICBA also recommends that the Board adopt a clear and comprehensive definition of "adverse action," similar to that used in the OCC/FDIC final rule, to ensure the prohibition applies to the full range of

supervisory tools that can be used, intentionally or unintentionally, to pressure institutions. The OCC/FDIC definition encompasses negative feedback in reports of examination, rating downgrades, denial of licensing applications, imposition of conditions on approvals, capital requirement adjustments, and a catch-all for any action that negatively impacts the institution or treats it differently than similarly situated peers.

Without this specificity, the Board's prohibition risks being read narrowly in a way that leaves significant supervisory pressure points outside its reach. Clear definitions promote consistent application and help examiners and institutions alike understand the boundaries of permissible supervision.

### **Preventing Circumvention and Use of Pretext**

ICBA encourages the Board to include explicit language clarifying that legitimate supervisory authorities, such as BSA/AML compliance, OFAC sanctions enforcement, and statutory application review factors, may not be used as a pretext to address perceived reputation risk or to discourage lawful, but politically disfavored, activities. The OCC/FDIC final rule contains explicit anti-pretext language that is absent from the Board's proposal.

Without explicit anti-pretext protections, subjective considerations risk being reintroduced under alternative supervisory labels. The Board should also adopt the OCC/FDIC "regardless of how the risk is labeled" language within the definition of reputation risk itself as a structural anti-evasion measure.

### **Application Across Agency Personnel**

ICBA supports clarifying that the rule's prohibitions apply to actions influenced by any Board or Reserve Bank personnel, not solely examiners or supervisory staff. The OCC and FDIC modified their final rule from the proposed rule, in response to commenter feedback, to explicitly cover "the OCC or any of its personnel" and "the FDIC or any of its personnel." The Board should adopt parallel language to make clear that bias or subjective judgments, whether from an individual examiner, Reserve Bank leadership, or Board staff, are not a permissible basis for supervisory action.

### **Other References to Reputation Risk in Board Supervisory Materials**

In response to Question 1, ICBA encourages the Board to conduct a thorough review of all examination manuals, guidance documents, and examiner training materials to identify and eliminate remaining references to reputation risk, consistent with the Board's June 2025 announcement. The Board should confirm that these references have been fully removed from the Federal Reserve's examination programs for bank holding companies, state member banks, savings and loan holding companies, and foreign banking organizations. Until any remaining references are formally rescinded, ICBA requests that the Board exercise its enforcement discretion to ensure that reputation risk plays no role in supervisory assessments pending the issuance of conforming amendments.

### **Effects on Community Banks and Supervision**

ICBA does not believe eliminating reputation risk from supervision will undermine safety and soundness or produce negative unintended consequences. Community banks already have strong incentives, through market discipline, customer trust, and competition, to manage reputational concerns appropriately without regulatory pressure.

The proposal is likely to yield meaningful benefits, including improved supervisory consistency, greater transparency for regulated institutions, and more productive examiner-bank dialogue focused on measurable, material risks. The Board should confirm, as the OCC and FDIC did in their final rule, that

the elimination of reputation risk from supervision will not impair the agencies' continued examination for compliance with laws prohibiting discrimination, predatory practices, and fraud, all of which remain fully enforceable through traditional risk and compliance channels.

### **Conclusion**

ICBA supports the Federal Reserve's proposal and the Board's commitment to objective, risk-based supervision. The Board's rulemaking, once finalized, will complete the interagency elimination of reputation risk as a supervisory tool and represents a significant step toward a more predictable, neutral, and consistently applied supervisory framework for community banks and the broader financial system.

To ensure the final rule is durable, enforceable, and consistent with the framework already adopted by the OCC and FDIC, ICBA respectfully urges the Board to strengthen the regulatory text by:

- Adopting a definition of reputation risk consistent with the OCC/FDIC final rule, including the "regardless of how the risk is labeled" anti-evasion language and the exclusion for risks related to the financial or operational condition of the institution;
- Broadening the scope of the prohibition from "encourage or compel" to encompass informal supervisory criticism and adverse actions;
- Including a comprehensive definition of "adverse action" covering the full range of supervisory tools that can pressure institutions;
- Adopting explicit anti-pretext language to prevent the use of BSA/AML, OFAC, or application review authority as a vehicle for reputation risk concerns;
- Extending the prohibition expressly to all Board and Reserve Bank personnel, not solely examiners.

These steps will produce a supervisory framework that is predictable, neutral, and focused on genuine safety-and-soundness concerns, benefiting community banks, their customers, and the broader financial system.

Respectfully submitted,

/s/

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