United States Senate
WASHINGTON, DC 20510

February 5, 2026

The Honorable Jonathan Gould
Comptroller of the Currency
Office of the Comptroller of the Currency
400 7th Street SW
Washington, D.C. 20219

The Honorable Travis Hill
Chairman
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, D.C. 20429

Dear Comptroller Gould and Chairman Hill:

We write to request that the Office of the Comptroller of the Currency (OCC) and Federal Deposit Insurance Corporation (FDIC) withdraw the recently proposed rule to define "unsafe or unsound practice," which would limit the agencies' ability to initiate enforcement actions against banks that take excessive risks or otherwise operate in a dangerous manner. The proposed rule would also silence supervisors, who are able to identify and communicate risks to banks early—before they fester and become much bigger problems. Weakening enforcement and supervisory tools will shield banks from accountability, fuel hazardous risk-taking on Wall Street, and leave consumers and businesses more exposed to the economic pain inflicted by bank failures and financial crises.

Strong Bank Oversight Promotes Economic Growth

Banks play a critical role in our economy, extending credit to businesses and households, operating the payments system, and issuing deposits. Given the importance of these functions, and the resulting government assistance banks receive (e.g., federal deposit insurance and access to Federal Reserve liquidity), they are publicly chartered and are subject to a more stringent supervisory and regulatory framework than other private companies. Bank failures can harm more than just the bank's private shareholders. They can harm depositors, taxpayers, and economic growth. Weak bank oversight contributed to the 2008 financial crisis, which caused the most severe economic recession since the Great Depression.[1]

One tool Congress granted the banking agencies to ensure banks operate prudently is the authority to police "unsafe or unsound" practices or conditions.[2] The agencies may take enforcement actions against banks that engage in unsafe or unsound conduct, including terminating federal deposit insurance, issuing cease and desist orders, implementing asset caps,

[1] Financial Crisis Inquiry Commission, "The Financial Crisis Inquiry Report," January 2011, https://fcic-static.law.stanford.edu/cdn_media/fcic-reports/fcic_final_report_full.pdf.
[2] 12 U.S.C. § 1818.

requiring divestitures, limiting activities, and levying civil money penalties.[3] This structure makes the definition of "unsafe or unsound" vital. Since at least the 1960s, the agencies and courts have generally interpreted "unsafe or unsound" to mean any action or lack of action "contrary to generally accepted standards of prudent operation, the possible consequences of which, if continued, would be abnormal risk of loss or damage."[4] This definition, and similar interpretations, allows the banking agencies to step in early and force remediation of dangerous conduct before such conduct spirals into a larger problem that threatens the viability of the bank or causes other harm to bank customers.

The Proposed Rule Would Undermine Supervision and Enforcement Authorities

The proposed rule would severely narrow the definition of "unsafe or unsound," from any action or lack of action "contrary to generally accepted standards of prudent operation, the possible consequences of which, if continued, would be abnormal risk of loss or damage" to any action or lack of action "that is contrary to generally accepted standards of prudent operation; and if continued, is *likely* to *materially* harm the financial condition of the institution; or present a material risk of loss to the Deposit Insurance Fund; or *materially* harmed the financial condition of the institution."[5] This narrower definition would limit the agencies' ability to use the critical supervisory and enforcement tools tied to this definition.

First, the proposed definition would allow examiners to take action only if it is "likely," not merely possible or plausible, that the bank's imprudent conduct will cause harm. The agencies do not define whether "likely" means a 51% chance or some other quantitative threshold. At best, this standard would seem to prohibit examiners from addressing risky behaviors that could very plausibly cause damage. It could also result in examiners ignoring tail risks, which have a low likelihood of occurring but would cause catastrophic harm. Examiners would have to wait until harm becomes evident, at which point it would likely be too late to prevent the bad outcome. At worst, the standard will not be administrable, because there is often no way to precisely quantify the likelihood that an imprudent act or practice will directly lead to some quantifiable harm. Examiners would have their hands tied until something goes wrong. Oftentimes risky behavior is profitable in the short term. Banks were highly profitable in the early 2000s as they were inflating the subprime housing bubble.[6] Bank examiners stood aside as risks built up in the system because banks looked healthy on the surface. This proposed rule would double down on the "wait until something breaks" approach, leaving the economy more exposed to another crash.

Second, the proposed definition would allow examiners to act only if they determine that the likely harm or risk of loss is "material," and the proposed rule fails to even set clear expectations for assessing materiality. Again, the effect of this change would be to prohibit use of these supervisory and enforcement tools preemptively, addressing problems before they fester and turn

[3] 12 U.S.C. § 1818(a), (b), (i).
[4] Federal Deposit Insurance Corporation and Office of the Comptroller of the Currency, Federal Register Notice, "Unsafe or Unsound Practices, Matters Requiring Attention," October 30, 2025, https://www.federalregister.gov/documents/2025/10/30/2025-19711/unsafe-or-unsound-practices-matters-requiring-attention.
[5] *Id.*
[6] Federal Deposit Insurance Corporation, "Quarterly Banking Profile: Fourth Quarter 2006," https://www.fdic.gov/analysis/quarterly-banking-profile/qbp/2006dec/qbp.pdf.

into bigger issues that cause harm. Congress created these authorities with the goal of ensuring banks are operating safely and soundly, not to let banks take whatever risks they want until something goes seriously wrong. This change could have especially troubling implications in the case of large bank supervision. Given the sheer size of a Wall Street bank, waiting for the likelihood of a "material" harm to develop could be catastrophic and put the entire economy at risk. In addition, the materiality standard is primarily framed in terms of direct impact on the bank itself, not the broader financial system. If a bank was manufacturing and distributing toxic financial products (e.g., subprime mortgage backed securities) to other financial institutions, but didn't have "material" exposure to those risks itself, examiners would be unable to turn off the spigot of risk at its source.

Third, in addition to these severe policy flaws, the proposed rule is inconsistent with the plain meaning of the law. Congress placed explicit qualifiers on regulators' ability to exercise certain authorities regarding the likelihood and materiality of financial loss or damage in the same section of the Federal Deposit Insurance Act. Congress put no such qualifiers on the phrase "unsafe or unsound." For example, a bank that knowingly engages in an unsafe or unsound practice *and* knowingly or recklessly causes a substantial loss could be subject to the highest tier of civil money penalties.[7] The "unsafe or unsound" conduct and the magnitude of the loss are two distinct concepts. In the same subsection, if the bank recklessly engages in unsafe or unsound conduct that is also part of a pattern of misconduct, the bank could be subject to the middle tier of civil money penalties even if the action does not or is not "likely" to cause "more than a minimal loss" to the bank.[8] In this instance, the "unsafe or unsound" conduct is again distinct from the likelihood or magnitude of financial loss. Other provisions in 12 U.S.C. § 1818 similarly conflict with the proposed definition.[9] Congress clearly did not intend for the phrase "unsafe or unsound" itself to require "likely" or "material" harm.

Finally, the proposed rule goes so far as to limit examiners' ability to issue formal supervisory communications to banks regarding risks, referred to as "matters requiring attention."[10] These formal supervisory communications are not enforcement actions. They are intended to raise issues with bank management and boards early, before they fester into more serious problems that could warrant enforcement actions. Preventing supervisors from formally warning banks about issues until those issues have metastasized demonstrates how thoroughly the proposed rule would disarm examiners.

2023 Bank Failures Underscore the Need for Supervisory Improvements, Not Backsliding

In the wake of the second, third, and fourth largest bank failures in U.S. history in 2023, it is certainly appropriate to revisit the supervisory and enforcement framework. But the post-mortem analyses of these failures paint a picture of slow, bureaucratic, and ineffective supervision – not a

[7] 12 U.S.C. § 1818(i)(2)(C).
[8] 12 U.S.C. § 1818(i)(2)(B).
[9] See, for example, 12 U.S.C. § 1818(e)(1). Unilaterally adding the qualifiers "likely" and "material" to the definition of "unsafe or unsound" would make the statutory clauses in (B)(i) and (ii) redundant.
[10] Federal Deposit Insurance Corporation and Office of the Comptroller of the Currency, Federal Register Notice, "Unsafe or Unsound Practices, Matters Requiring Attention," October 30, 2025, https://www.federalregister.gov/documents/2025/10/30/2025-19711/unsafe-or-unsound-practices-matters-requiring-attention.

group of regulators over-identifying "unsafe and unsound" practices. Instead, risks were identified, but the banking agencies did not expeditiously require remediation.

For example, the Federal Reserve identified "foundational shortcomings" in Silicon Valley Bank's (SVB) liquidity risk management as early as 2021 and formally downgraded the bank's supervisory rating more than six months prior to its failure.[11] But regulators did not act quickly enough to address those shortcomings—and the bank failed in 2023. The primary issue was not examiners' ability to identify financial risk, it was their failure to remediate these deficiencies through forceful supervisory and enforcement action fast enough. Had the currently proposed definition of "unsafe or unsound" practice been in place at the time, regulators may not have even identified the "foundational shortcomings" at play.

Indeed, it was the first Trump Administration that created the lax supervisory culture that contributed to these supervisory failures. Former Vice Chair for Supervision Randy Quarles stated in 2018 that changing bank supervision culture at the Fed "will be the least visible thing I do and it will be the most consequential thing I do."[12] The Fed's SVB post-mortem confirmed this impact: "staff approached supervisory messages, particularly supervisory findings and enforcement actions, with a need to accumulate more evidence than in the past, which contributed to delays and in some cases led staff not to take action."[13]

The second Trump Administration is now using these failures to justify even more pernicious changes to bank supervision. Instead, the agencies should ensure that bank examiners are able to quickly identify and remediate risks before they turn into larger issues. To the extent there are bureaucratic or other hurdles that inhibit swift action, they should be streamlined. In any event, further tying examiners' hands will lead to more bank failures, bailouts, and economic harm, not less.

Conclusion

This concerning policy has not been proposed in isolation. The Trump Administration has worked to shutter the Consumer Financial Protection Bureau, rescinded big bank enforcement actions, drastically cut the staff of the banking regulators, and loosened critical post-2008 financial crisis safeguards designed to prevent another economic disaster.[14] This is a toxic mix that leaves small businesses, communities, and households more exposed to the harms of another financial crash at a time when Americans are already struggling to afford everyday expenses. The proposal should be withdrawn and your agencies should reverse course before it is too late.

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[11] Board of Governors of the Federal Reserve System, "Review of the Federal Reserve's Supervision and Regulation of Silicon Valley Bank," April 28, 2023, pg. 6,https://www.federalreserve.gov/publications/files/svb-review-20230428.pdf.

[12] The Wall Street Journal, "Banks Get Kinder, Gentler Treatment Under Trump," Lalita Clozel, December 12, 2018, https://www.wsj.com/articles/banks-get-kinder-gentler-treatment-under-trump-11544638267.

[13] Board of Governors of the Federal Reserve System, "Review of the Federal Reserve's Supervision and Regulation of Silicon Valley Bank," April 28, 2023, pg. 11, https://www.federalreserve.gov/publications/files/svb-review-20230428.pdf.

[14] Letter from Senators Elizabeth Warren and Jack Reed to Federal Reserve Vice Chair for Supervision Michelle Bowman, Comptroller of the Currency Jonathan Gould, and Federal Deposit Insurance Corporation Acting Chairman Travis Hill, December 4, 2025, https://www.banking.senate.gov/imo/media/doc/letter_to_banking_agencies_re_credit_risk.pdf.

Sincerely,

Elizabeth Warren
Ranking Member
Committee on Banking,
Housing, and Urban Affairs

Jack Reed
United States Senator

Chris Van Hollen
United States Senator

Richard Blumenthal
United States Senator

Sheldon Whitehouse
United States Senator