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Banks Should Stay Disciplined As OCC, FDIC Ease Oversight

By **Cristina Diaz, Carlton Greene and Anand Sithian** (September 23, 2026, 5:56 PM EDT)


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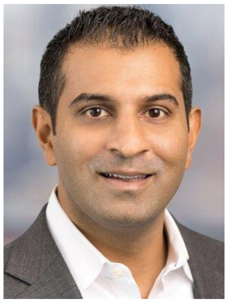
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On Aug. 27, the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corp. jointly issued a final rule that, for the first time, gives the term "unsafe or unsound practice" a binding regulatory definition.[1] With it came a uniform standard for matters requiring attention, also known as MRAs, and revised OCC examination manuals.[2]

The Federal Reserve did not join the rulemaking, but has adopted comparable standards through guidance. What that means for holding companies and state-chartered institutions is addressed below.[3] The regulation takes effect Nov. 2, and the revised OCC examination manuals took effect upon their issuance on Aug. 27.

For boards, general counsel, and risk and compliance leaders, the headlines suggest clarity and potential relief. However, while the rule does change what federal bank examiners may require to bring enforcement, it does not change the standards of prudent risk management that a bank is held to, the discretion that examiners keep over ratings, or the exposure that sits with state supervisors, the holding company, and individual officers and directors.

This article explains what changed and how to consider responding.

What Changed

TIER	STANDARD	WHAT IT REQUIRES
Unsafe or unsound practice	Contrary to generally accepted standards of prudent operation and (1) if continued, is likely to materially harm the bank's financial condition or present a material risk of loss to the Deposit Insurance Fund, or (2) has already materially harmed the bank's financial condition[4]	Formal enforcement, including cease-and-desist orders
Matter requiring attention	Contrary to generally accepted standards of prudent operation and harm of the same kind could reasonably be expected under current or foreseeable conditions or has already occurred; or an actual violation of banking or banking-related law or regulation[5]	Corrective action, examiner validation and board reporting
Supervisory observation	A weakness below the MRA standard[6]	Informal feedback, with no action plan and no board reporting required

The rule creates two standards and three tiers of supervisory communication. Financial institutions should be aware of three key points.

First, materiality is assessed on a financial basis. Harm is measured against capital, asset quality, earnings, liquidity and market risk; reputational concerns alone are not sufficient to support a finding. Nonfinancial risks still count when their consequences are financial. This bar could be met by a serious cybersecurity breach that produces litigation, restitution or deposit flight.

However, materiality is not applied as a uniform standard under the final rule — rather, it is tailored to the institution. What constitutes material harm for a large, complex bank will not necessarily meet that threshold for a community bank.[7]

Second, this definition of unsafe or unsound practice is only applicable to banks, not institution-affiliated parties. In a reversal of the original version of the rule proposed in October 2025, the new definition does not apply to individuals.

For officers and directors, "unsafe or unsound" retains its long-standing meaning from case law: in substance, conduct that departs from prudent standards and creates an abnormal risk of loss, with no requirement of likely material financial harm. A director or officer's personal exposure did not narrow under the final rule.[8]

Third, an MRA can also be issued for any violation of banking or banking-related law, with no materiality test.[9] Examiners may use this path for weaknesses that they used to frame as risk management concerns.

Furthermore, by framing these as violations, rather than weaknesses, these determinations can carry civil money penalties. The agencies have said they intend, as a matter of supervisory discretion, to reserve that path for substantive violations: those that "demonstrate a pattern or are systemic"; have "a more than minimal adverse impact on an institution's financial condition, the accuracy of the institution's books and records, or its customers"; require "more than minimal restitution to make the recipients whole"; or "involve insider misconduct or self-dealing."[10]

An OCC proposal that was published Sept. 1, with comments due Oct. 1, would codify that position in a regulation.[11]

The OCC has revised its manuals to put these new standards into practice.[12] Pursuant to these manual revisions, lookbacks — the historical file reviews that have dominated remediation budgets — would now be the exception.

To mandate a lookback, examiners now need specified grounds and senior regulatory approval, must weigh cost against benefit, and, going forward, will be expected in the ordinary course to let the bank do the review itself, as opposed to mandating an independent consultant. Reviews tied to suspicious activity reporting will generally be capped at one year.[13]

This relief is specific to the OCC. The Consumer Financial Protection Bureau's authority over larger banks is not affected,[14] and the Financial Crimes Enforcement Network, the U.S. Department of Justice, the Office of Foreign Assets Control and state authorities are not bound by the manual.[15]

A review scoped to the OCC's one-year cap narrows what the OCC demands. It does not narrow the bank's exposure to FinCEN (which has six years from a transaction to assess a civil penalty and two more to sue on it), to OFAC (which has a 10-year window to act) or to the DOJ. Therefore, a decision to not look further back should be documented and made with counsel.

MRAs going forward can also be validated and closed on a shorter timetable. An MRA can close once remediation is in place and validated, with no sustainability holding period, and an enforcement action can end at substantial compliance.[16]

For FDIC-supervised institutions, the rule also changes the FDIC's long-standing examination practice. For examination reports issued after Aug. 31, the FDIC will no longer use the "matters requiring board attention" or "supervisory recommendations" classifications, the two categories through which it has historically communicated findings, but will instead use the single MRA category under the new rule.[17]

Considerations for Financial Institutions in Light of Regulatory Changes

Under the new standards, most findings will now be observations with no required action plan, no board reporting and no formal examiner validation requirements.

The issue management frameworks built over the last decade may at first glance appear mismatched to the current state; however, banks — particularly large complex institutions — may determine that it is in their best interest to recalibrate these frameworks as opposed to making wholesale changes.[18] They should consider the following actions.

Continue tracking observations.

Banks may wish to continue tracking observations, even though it is not required. An observation cannot be escalated just because the bank did not act on it.[19]

However, examiners keep full discretion over CAMELS ratings, and the management rating in particular may be affected by outstanding observations, whether from a single observation or a group of observations considered collectively.[20]

Document the decision to remediate, tailor or accept.

Banks may also wish to assess each observation against the bank's approved risk appetite, and under the new framework, three responses are available. Banks may:

- Remediate the matter as recommended by examiners;
- Tailor the remediation, agreeing with the concern but implementing remediation suited to the bank, which the manuals expressly permit;[21] or
- Accept the risk, concluding, within the approved risk appetite, that no action is warranted.

A record of why the bank chose its course is its best protection if a finding is revisited under a different standard.

Banks should continue to address sustainability.

The OCC can no longer hold an MRA open to test whether a need for remediation endures. However, repeat findings now must be labeled as such, and they invite escalation.[22]

Sustainability testing therefore remains a priority, whether it is completed by an independent compliance testing function or by internal audit, provided the function validating the remediation is not the one that implemented it.

Redesign board reporting around fiduciary oversight.

The rule removes the requirement to present observations to the board. However, directors' oversight duties under Delaware law, the OCC's heightened standards for larger banks and public company disclosure controls all operate independent of supervisory requirements.[23]

Periodically summarizing observation themes, the decisions taken and the items the bank chose not to pursue will keep the board's oversight record documented. Because such a summary may be discoverable, banks may wish to frame decisions as risk determinations against the approved risk appetite and to conduct any analysis of potential violations of law — and of the related legal exposure — under privilege.

Why the Governance Discipline Is Worth Keeping

Supervisory philosophy has historically shifted with agency leadership, and administrations change. The rule itself is durable: The agencies are bound by their own regulations, and undoing one typically requires notice and comment.[24] The manuals, however, are not, and examiner practice will move faster than the Federal Register in either direction.

A bank that stops tracking observations and faces a differently oriented examination team in the future will be reconstructing the intervening dialogue from institutional memory. A bank that keeps its documentation discipline will be in a better position during future exams, regardless of the administration and supervisory approach.

Two additional considerations strengthen the case for documentation discipline for many organizations. The Federal Reserve adopted similar standards to those in the new OCC-FDIC rule, but only by guidance, so holding company relief is the least durable aspect of the change in supervisory posture. The Federal Reserve also assesses a holding company's risk management itself, and that assessment reflects how the organization tracks and resolves supervisory feedback.

If the bank has a state supervisor, the state's approach has not changed. That includes the New York Department of Financial Services, which supervises some of the largest U.S. banking organizations through their New York-chartered banks, as well as many foreign bank branches.[25] State supervisors flagged this divergence in the rulemaking and asked the agencies to wait for the Federal Reserve prior to issuing a final rule. The agencies did not.[26]

Where a federal examiner would log an observation, a state examiner may write a formal finding on the same facts, and that finding informs the Federal Reserve's holding company assessment. For New York-chartered institutions, it's the NYDFS record, not the narrowed federal one, that will continue to define the examination approach.

Conclusion

The final rule narrows the range of conduct that regulators may require institutions to remediate. However, it does not explicitly alter the standards of prudent risk management to which institutions remain subject.

Institutions may appropriately avail themselves of the relief the rule provides but should give attention to maintaining a record of how each supervisory concern was evaluated and resolved. The record is what will render the relief durable as supervisory approaches evolve over time.

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[1] Unsafe or Unsound Practices, Matters Requiring Attention, 91 Fed. Reg. 56,004 (Sept. 1, 2026): https://www.federalregister.gov/documents/2026/09/01/2026-17823/unsafe-or-unsound-practices-matters-requiring-attention. The Final Rule is effective November 2, 2026; the manuals apply on issuance. Cease-and-desist authority for unsafe or unsound practices dates from the Financial Institutions Supervisory Act of 1966, 12 U.S.C. § 1818(b): https://www.law.cornell.edu/uscode/text/12/1818.

[2] OCC Bulletin 2026-41: https://www.occ.gov/news-issuances/bulletins/2026/bulletin-2026-41.html; PPM 5310-3, Bank Enforcement Actions and Related Matters: https://www.occ.gov/news-issuances/news-releases/2026/ppm-5310-3.pdf; PPM 5400-11, Matters Requiring Attention (published for the first time): https://www.occ.gov/news-issuances/news-releases/2026/ppm-5400-11.pdf.

[3] Bd. of Governors of the Fed. Reserve Sys., Statement of Supervisory Operating Principles (rev. Apr. 2026) https://www.federalreserve.gov/supervisionreg/files/statement-of-supervisory-operating-principles-20260430.pdf (MRAs and MRIAs confined to deficiencies presenting a "significant probability of significant harm;" SR 13-13 amended to reinstate nonbinding supervisory observations). The statement is guidance adopted outside notice-and-comment; the board has not announced a rulemaking.

[4] Final Rule https://www.federalregister.gov/documents/2026/09/01/2026-17823/unsafe-or-unsound-practices-matters-requiring-attention 91 Fed. Reg. at 56,021, 56,022 (to be codified at 12 C.F.R. §§ 4.92(b), 305.1(b) (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"); OCC Bulletin 2026-

40 https://www.occ.treas.gov/news-issuances/bulletins/2026/bulletin-2026-40.html (materiality measured against capital, asset quality, earnings, liquidity, and sensitivity to market risk). The agencies chose "likely," over alternatives such as "reasonably foreseeable," and quantitative thresholds, and confirmed they will not extrapolate from merely possible harms. The definition focuses on the financial materiality of consequences, not on the risk category (e.g., financial vs. nonfinancial risk).

[5] Final Rule https://www.federalregister.gov/documents/2026/09/01/2026-17823/unsafe-or-unsound-practices-matters-requiring-attention, 91 Fed. Reg. at 56,021, 56,022 (to be codified at 12 C.F.R. §§ 4.92(c), 305.1(c) (an MRA may issue 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").

[6] Final Rule https://www.federalregister.gov/documents/2026/09/01/2026-17823/unsafe-or-unsound-practices-matters-requiring-attention 91 Fed. Reg. at 56,021, 56,022 (to be codified at 12 C.F.R. §§ 4.92(g), 305.1(g)).

[7] Final Rule https://www.federalregister.gov/documents/2026/09/01/2026-17823/unsafe-or-unsound-practices-matters-requiring-attention, 91 Fed. Reg. at 56,021, 56,022 (to be codified at 12 C.F.R. §§ 4.92(e), 305.1(e)). See also Final Rule https://www.federalregister.gov/documents/2026/09/01/2026-17823/unsafe-or-unsound-practices-matters-requiring-attention, 91 Fed. Reg. at 56,015 ("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. Similarly, while the agencies may consider increased classified assets in a particular business line as a result of the institution's imprudent practices to warrant an MRA at the largest institutions, the agencies may consider a community bank's asset quality less granularly and consider the overall asset portfolio at the institution level.").

[8] Final Rule https://www.federalregister.gov/documents/2026/09/01/2026-17823/unsafe-or-unsound-practices-matters-requiring-attention, 91 Fed. Reg. at 56,007 & n.16 (institution-affiliated parties excluded; enforcement against individuals continues under prior standards and controlling appellate case law). The agencies were concerned that a uniform standard could leave individual misconduct at a large institution unaddressed. The standard applicable to individuals remains the formulation courts have applied since the Financial Institutions Supervisory Act of 1966: conduct "contrary to generally accepted standards of prudent operation, the possible consequences of which, if continued, would be abnormal risk or loss or damage to an institution." See, e.g., Gulf Fed. Sav. & Loan Ass'n v. FHLBB, 651 F.2d 259, 264 (5th Cir. 1981); Seidman v. OTS, 37 F.3d 911, 926-32 (3d Cir. 1994). Removal and prohibition actions against individuals also require separate statutory showings of misconduct, effect, and culpability. 12 U.S.C. § 1818(e) https://www.law.cornell.edu/uscode/text/12/1818. See also FIL-53-2026 https://www.fdic.gov/news/financial-institution-letters/2026/implementation-final-rule-unsafe-or-unsound-practices ("[e]nforcement actions against institution-affiliated parties are not impacted by part 305").

[9] Final Rule https://www.federalregister.gov/documents/2026/09/01/2026-17823/unsafe-or-

unsound-practices-matters-requiring-attention, 91 Fed. Reg. at 56,021, 56,022 (to be codified at 12 C.F.R. §§ 4.92(c), 305.1(c); 12 U.S.C. § 1818(i)(2) https://www.law.cornell.edu/uscode/text/12/1818 (civil money penalties for violations of law or regulation).

[10] Final Rule https://www.federalregister.gov/documents/2026/09/01/2026-17823/unsafe-or-unsound-practices-matters-requiring-attention, 91 Fed. Reg. at 56,012-56,013.

[11] Final Rule https://www.federalregister.gov/documents/2026/09/01/2026-17823/unsafe-or-unsound-practices-matters-requiring-attention, 91 Fed. Reg. at 56,012-56,013 ("the agencies intend to exercise their supervisory discretion to issue MRAs for violations only in response to substantive violations") listing the points noted above as the indicia for substantive violations; Violations of Laws or Regulations https://www.federalregister.gov/documents/2026/09/01/2026-17822/violations-of-laws-or-regulations, 91 Fed. Reg. 56,074 (proposed Sept. 1, 2026) (comments due Oct. 1, 2026); FDIC Statement on the Implementation of Part 305, at 2, 4. The FDIC has not joined the proposed codification.

[12] PPM 5310-3 § I https://www.occ.gov/news-issuances/news-releases/2026/ppm-5310-3.pdf, at 4 (escalation and tailoring); id. § IV, at 9 (corrective actions must not "elevate the bank's process and procedure over substance").

[13] PPM 5400-11 § III.B, at 11. https://www.occ.gov/news-issuances/news-releases/2026/ppm-5400-11.pdf. A lookback requires objective facts supporting substantial consumer harm, a systemic pattern, widespread fraud or books-and-records inaccuracies, or other exceptional circumstances, plus deputy comptroller approval; SAR-related lookbacks are limited to one year absent special circumstances; an independent consultant may be required only where examiners lack documented confidence in management, the bank concealed the concern, or exceptional circumstances exist.

[14] 12 U.S.C. § 5515 https://www.law.cornell.edu/uscode/text/12/5515 (CFPB authority over insured depository institutions exceeding $10 billion in assets).

[15] 31 U.S.C. § 5321(b)(1)https://www.law.cornell.edu/uscode/text/31/5321 (six-year period from the date of the transaction to assess a civil penalty); 31 U.S.C. § 5321(b)(2) https://www.law.cornell.edu/uscode/text/31/5321 (two-year period to commence an action to recover an assessed penalty, running from the later of assessment or a final criminal judgment on the same transaction); 31 U.S.C. § 5322 https://www.law.cornell.edu/uscode/text/31/5322 (criminal penalties); 50 U.S.C. §§1705(d) https://www.law.cornell.edu/uscode/text/50/1705, 4315(d) https://www.law.cornell.edu/uscode/text/50/4315 (10-year limitations period for civil and criminal sanctions violations, as extended by the 21st Century Peace through Strength Act, Pub. L. No. 118-50, div. D, § 3111 (2024), applicable to violations not time-barred at enactment).

[16] PPM 5400-11 § III.C https://www.occ.gov/news-issuances/news-releases/2026/ppm-5400-11.pdf, at 12 (examiners "must not delay closing an MRA to assess the sustainability of the corrective action"); PPM 5310-3 § https://www.occ.gov/news-issuances/news-releases/2026/ppm-5310-3.pdf VII, at 12 (substantial compliance); FDIC, Formal and Informal Enforcement Actions Manual (rev. Sept. 2025) (permitting termination of an order where the institution "has achieved at least substantial compliance with the order").

[17] See FDIC, FIL-53-2026 https://www.fdic.gov/news/financial-institution-

letters/2026/implementation-final-rule-unsafe-or-unsound-practices, Implementation of the Final Rule on Unsafe or Unsound Practices; Matters Requiring Attention (Aug. 27, 2026), and the accompanying FDIC Statement on the Implementation of Part 305.

[18] OCC Bulletin 2026-40 https://www.occ.treas.gov/news-issuances/bulletins/2026/bulletin-2026-40.html (as risk increases, the materiality threshold decreases and the assessment becomes more granular).

[19] PPM 5400-11 § I.F, at 7 https://www.occ.gov/news-issuances/news-releases/2026/ppm-5400-11.pdf.

[20] "Well managed" status, which conditions financial holding company activities and expedited application processing, turns on the management and composite ratings of the depository institutions. 12 U.S.C. § 1843(l)(1) https://www.law.cornell.edu/uscode/text/12/1843; 12 C.F.R. § 225.2(s) https://www.ecfr.gov/current/title-12/chapter-II/subchapter-A/part-225/subpart-A/section-225.2. PPM 5400-11 § I.F, at 7 https://www.occ.gov/news-issuances/news-releases/2026/ppm-5400-11.pdf ("examiners can use the information underlying supervisory observations to support assigned ratings"); FDIC Statement on the Implementation of Part 305, at 4 (supervisory observations support "supervisory assessments and, potentially, supervisory ratings").

[21] PPM 5400-11 § III.A https://www.occ.gov/news-issuances/news-releases/2026/ppm-5400-11.pdf, at 8 (corrective actions state what must be done "at a minimum" without prescribing the method).

[22] PPM 5400-11 § III.A https://www.occ.gov/news-issuances/news-releases/2026/ppm-5400-11.pdf, at 8-9 (repeat designation); PPM 5310-3 § I, at 4 https://www.occ.gov/news-issuances/news-releases/2026/ppm-5310-3.pdf.

[23] In re: Caremark Int'l Inc. Derivative Litig., 698 A.2d 959 (Del. Ch. 1996); 12 C.F.R. pt. 30, app. D (heightened standards, unamended) https://www.ecfr.gov/current/title-12/chapter-I/part-30.

[24] United States ex rel. Accardi v. Shaughnessy, 347 U.S. 260 (1954).

[25] State-chartered banks are examined jointly or alternately with the Federal Reserve (member banks) or the FDIC (nonmember banks); state-licensed foreign bank branches are examined under the interagency FBO program, SR 00-14 https://www.federalreserve.gov/supervisionreg/srletters/SR0014.htm. Federal branches are OCC-supervised and within the rule, 12 U.S.C. § 3102. https://www.law.cornell.edu/uscode/text/12/3102. NYDFS has announced no change to findings practice or its enforcement posture.

[26] Conference of State Bank Supervisors, Comment Letter (Dec. 29, 2025) https://www.csbs.org/csbs-unsafe-unsound-comment-letter (warning of an "inconsistent supervisory outcome" between state member and nonmember banks and urging delay until the Federal Reserve aligned).