



April 27, 2026

Submitted Via FederalReserve.gov

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

Re: Docket No. R-1884: Prohibition on Use of Reputation Risk or Other Supervisory Tools To Encourage or Compel Banking Organizations To Engage in Politicized or Unlawful Discrimination

Dear Mr. McDonough:

America First Legal Foundation (“AFL”) submits this comment in support of the Board of Governors’ (“the Board”) proposed rule to codify the removal of reputation risk from the Board’s supervisory programs and to prohibit the Board from encouraging or compelling Board-supervised banking organizations to deny or condition the provision of banking or other financial products or services on constitutionally protected political or religious beliefs, associations, speech, or conduct, or on involvement in politically disfavored but lawful business activities perceived to present reputation risk.¹

I. Statement of interest.

America First Legal Foundation is a national, nonprofit legal organization dedicated to defending the constitutional rights of all Americans, challenging government overreach, and holding government agencies and private corporations accountable for unlawful discrimination or attempts to suppress constitutionally protected activities. AFL is uniquely positioned to comment on this proposed rule because it engages in litigation and investigative work that combats the type of discriminatory conduct that leads to politically motivated debanking.

AFL has brought landmark lawsuits challenging illegal discrimination across multiple sectors of American life. In the corporate arena, AFL has filed numerous federal lawsuits against corporations challenging ideologically motivated discrimination

¹ Prohibition on Use of Reputation Risk or Other Supervisory Tools To Encourage or Compel Banking Organizations to Engage in Politicized or Unlawful Discrimination, 91 Fed. Reg. 9499 (Feb. 26, 2026).

carried out under the banner of "diversity, equity, and inclusion" ("DEI").² In many instances, these DEI policies were encouraged or even mandated by federal government regulators.³ In the financial services context, AFL sued Ally Financial for engaging in ideologically driven discriminatory employment practices, resulting in a favorable settlement.⁴ Subsequently, Ally removed all DEI commitments from their SEC filings.⁵

AFL has also been at the forefront of challenging the weaponization of government power against citizens who hold politically disfavored viewpoints. AFL's investigations and litigation exposed a coordinated, whole-of-government approach to censorship of political speech and surveillance of political dissent.⁶ For instance, AFL successfully sued to disband the Department of Homeland Security's "Homeland Intelligence Experts Group" ("HIEG"), a partisan advisory committee that was planning ways to monitor, silence, and classify conservative and religious Americans as domestic terrorists.⁷

AFL has consistently defended Americans' constitutional freedoms of speech and association, which are threatened by politically motivated debanking. AFL has filed and won cases on behalf of legislative caucuses, students, journalists, and everyday citizens who have been targeted for expressing disfavored viewpoints.⁸

² *Miller v. Bausch Health Cos., Inc.*, No. 1:25-cv-25890 (S.D. Fla. Dec. 15, 2025); *In re Target Corp. Sec. Class Action Litig.*, No. 0:25-cv-4380 (D. Minn. Nov. 19, 2025); *Beneker v. CBS Studios, Inc.*, No. 2:24-cv-1659 (C.D. Cal. Apr. 21, 2025); see also *Victory — U.S. District Court Denies IBM's Motion to Dismiss America First Legal Lawsuit Challenging Illegal Race and Sex Discrimination*, AM. FIRST LEGAL (Mar. 26, 2025), <https://perma.cc/EQ8R-BSFB>.

³ See, e.g., *MAJOR VICTORY — America First Legal Wins Lawsuit Against the FCC as Fifth Circuit Adopts Argument Challenging Illegal Biden-Era Race and Sex Data Mandate*, AM. FIRST LEGAL (May 19, 2025), <https://perma.cc/P9LS-Z7EG>; *America First Legal Urges White House to Block Unlawful Consumer Financial Protection Bureau Rule Mandating Race and Sex Data in Mortgage Applications*, AM. FIRST LEGAL (Feb. 4, 2026), <https://perma.cc/Y8FQ-5CKY>.

⁴ *Smith v. Ally Fin., Inc.*, No. 3:24-cv-529 (W.D.N.C. Apr. 02, 2025); *America First Legal Secures Settlement in Employment Discrimination Case Against Ally Financial*, AM. FIRST LEGAL (Apr. 3, 2025), <https://perma.cc/N9GG-MZ99>.

⁵ *VICTORY — Ally Bank Removes DEI Initiatives from Public Filings; Another Major Corporation Retreats from Illegal DEI*, AM. FIRST LEGAL (Apr. 7, 2025), <https://perma.cc/43FV-FWSY>.

⁶ *MAJOR VICTORY — Trump Administration Declassifies the Biden Administration's Secret Domestic Surveillance and Censorship Strategy, Following America First Legal Request*, AM. FIRST LEGAL (Apr. 18, 2025), <https://perma.cc/3MLU-JYML>; *Biden-Era Censorship Industrial Complex*, AM. FIRST LEGAL, <https://perma.cc/76ZV-87VR>; *Online Censorship — CDC*, AM. FIRST LEGAL, <https://perma.cc/LW34-XR5R>.

⁷ *Homeland Intelligence Experts Group*, AM. FIRST LEGAL, <https://perma.cc/YV6M-YWZQ>.

⁸ See, e.g., *VICTORY — America First Legal Obtains Six-Figure Settlement for Clients in Lawsuit Against Montgomery County Public Schools for First Amendment Violations*, AM. FIRST LEGAL (June 25, 2025), <https://perma.cc/DF6C-8BM2>; *MAJOR VICTORY: America First Legal Prevails in Lawsuit to Protect the South Carolina Freedom Caucus' Right to Free Speech*, AM. FIRST LEGAL (June 13, 2023), <https://perma.cc/QVW2-GG72>; see also *S.W. v. Loudoun Cnty. Sch. Bd.*, No. 1:25-cv-1536 (E.D. Va. Feb. 24, 2026).

This breadth of experience — spanning the issue spectrum of corporate accountability, regulatory overreach, government-directed discrimination, and the defense of constitutional liberties — puts AFL in a unique position to comment on the Board's proposal to eliminate reputation risk as a supervisory tool and to protect individuals and businesses from being denied financial services based on their protected beliefs or lawful activities. AFL supports this proposed rule because it advances several principles that are foundational to the America First legal philosophy: protecting constitutional rights, limiting government overreach, and eliminating subjective regulatory tools that can be weaponized for political purposes.

II. The proposed rule protects rights guaranteed by the Constitution.

The proposed rule addresses one of the most insidious forms of government-directed discrimination: the use of vague “reputation risk” standards to pressure banking organizations into denying financial services to individuals and businesses based on their political or religious beliefs, or their involvement in lawful but politically disfavored activities. This practice, referred to as “debanking,” poses a threat to Americans’ ability to exercise their constitutionally protected rights without fear of losing access to the financial system. Most prominently, debanking was used against the sitting President of the United States, Donald J. Trump, in 2021 to punish him for contesting irregularities in the 2020 election.⁹

Many other prominent individuals were deplatformed during the Biden Administration for expressing unfavorable political views. These individuals include current Small Business Administrator and former U.S. Senator Kelly Loeffler,¹⁰ former Governor of Kansas Sam Brownback,¹¹ prominent CEO and political activist Mike Lindell,¹² and former National Security Advisor General Michael Flynn,¹³ among others.

Like other discriminatory, subjective federal standards, “reputation risk” is another lever the government has used to coerce companies into taking action against ideas and political opinions it doesn't like.¹⁴ AFL has shown how these standards work against Americans and are fundamentally a tool of suppression.¹⁵

⁹ See generally *Trump v. J.P. Morgan Chase Bank, N.A.*, No. 1:26-cv-21106 (S.D. Fla. Apr. 7, 2025).

¹⁰ Press Release, U.S. Small Bus. Admin., Administrator Loeffler Announces Action to End Debanking (Aug. 27, 2025), <https://perma.cc/JXM3-8T7X> (“I was debanked”).

¹¹ Jon Brown, *Chase Bank Allegedly Shuttters Bank Account of Religious Freedom Nonprofit, Demands Donor List*, FOX BUS. (Oct. 13, 2022), <https://perma.cc/JW32-63C8>.

¹² Cheryl Teh, *One of MyPillow CEO Mike Lindell's Banks Has Cut Ties with Him a Month After Citing Him as A 'Reputation Risk,'* BUS. INSIDER (Feb. 14, 2022), <https://perma.cc/3FBN-DY2W>.

¹³ Luke Gentile, *Chase Bank Apologizes for Michael Flynn Credit Card Cancellation Letter Sent in 'Error,'* WASH. EXAMINER (Sept. 1, 2021), <https://perma.cc/X8ZM-W55Y>.

¹⁴ See, e.g., AM. FIRST LEGAL, REDACTED HIEG MEETING MINUTES 17 (2024), <https://perma.cc/E9PT-VBNH> (HIEG discussing using corporate America as a tool to obtain intelligence on and exert pressure against politically disfavored Americans).

¹⁵ See, e.g., *EXCLUSIVE — New Docs from Disbanded DHS Deep State Group Reveal the Biden Admin Views Trump Supporters as “Domestic Terrorism Threat,”* AM. FIRST LEGAL (June 21, 2024) (expansion

When regulatory agencies are given subjective standards like “reputation risk,” the result is a de facto mechanism for the government to coerce private financial institutions into cutting off services to individuals and organizations whose views are politically disfavored. It gives the government plausible deniability: the standard is so nebulous that any decision under it is unreviewable and responsibility for any fallout is absolved, thereby obviating Constitutional concerns.

While the government is already prohibited from using corporations as instrumentalities for Constitutional violations,¹⁶ in practice, such claims can be difficult to prove. The proposed rule acknowledges that “the decision regarding whether or not to [provide financial services] rests with the banking organization” and explicitly prohibits the Board from using “reputation risk as a component of its examination programs or in materials used for the supervision of banking programs.”¹⁷ This language appropriately preserves the independence of banking organizations while removing the Board's thumb from the scale.

The proposed rule’s language bolsters its goal of safeguarding Constitutional rights by specifically enumerating many of the rights guaranteed under the First Amendment.¹⁸ By listing each of these categories independently, the proposed rule ensures that the Board’s supervisory apparatus cannot be directed, whether explicitly or through indirect pressure, toward penalizing the exercise of any of these fundamental rights.

The proposed rule’s explicit prohibition on the Board encouraging or compelling banking organizations to deny services based on constitutionally protected political or religious beliefs, associations, speech, or conduct is precisely the type of safeguard that is needed. By enacting this prohibition as a regulation rather than merely a policy statement, the Board would ensure that future supervisory staff cannot quietly resurrect reputation risk as a tool to penalize disfavored viewpoints.¹⁹

III. The proposed rule effectively eliminates a subjective regulatory mechanism susceptible to political weaponization.

As discussed above, subjective regulatory mechanisms, like “reputation risk,” lend themselves to political weaponization. The proposed rule eliminates the subjective regulatory mechanism at issue and ensures that any attempt to restore it must go

of domestic terrorism definition to allow targeting of politically disfavored Americans), <https://perma.cc/T62R-Z7P3>.

¹⁶ See, e.g., *Nat’l Rifle Ass’n of Am. v. Vullo*, 602 U.S. 175, 191–92 (2024) (coercion of third-party regulated entities to punish disfavored speech offends the First Amendment).

¹⁷ 91 Fed. Reg. at 9504.

¹⁸ *Id.* (“...based on their constitutionally protected political or religious beliefs, associations, speech, or conduct...”).

¹⁹ See generally Exec. Order No. 13891, 84 Fed. Reg. 55235 (Oct. 19, 2019).

through the APA rulemaking process. As the Board itself has recognized, “reputation risk can be difficult to quantify and communicate, making it challenging for firms to remedy identified concerns.”²⁰ This inherent subjectivity is precisely what rendered reputation risk susceptible to misuse as a tool for viewpoint discrimination.

“Reputation risk” was defined 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.”²¹ Under this formulation, virtually any relationship or activity that generates public controversy could be flagged as a supervisory concern, regardless of its legality or the constitutional protections surrounding it.

Similar vague, subjective government standards have been manipulated to advance political agendas. Lawful energy producers, firearms dealers and manufacturers, and religious organizations have all faced pressure from the financial system due to perceived “reputation risk” — not because they violated any law, but because their activities were controversial in certain political environments.²² Similarly, when banking examiners apply the amorphous concept of reputation risk, they exercise vast discretionary power that can easily be directed against lawful industries that may attract politically motivated “negative publicity.” As the Board points out, the proposed rule is not intended solely to protect the exercise of Constitutional rights but also to prevent the Board from targeting “politically disfavored but lawful business activity.”²³ Americans are entitled to engage in lawful activity, no matter how politically unpopular it might be.

By eliminating reputation risk from the supervisory toolkit, the proposed rule forecloses the possibility that examiners could use this vague and subjective concept to pressure banking organizations into terminating or declining relationships based on the constitutionally protected characteristics of their customers. The Board’s further commitment to “train examiners to help ensure this change is implemented consistently across Board-supervised banking organizations” demonstrates that the rule is designed not merely as a paper prohibition but as a genuine operational reform.²⁴

Eliminating reputation risk and preserving the remaining objective risk categories will promote consistency, transparency, and fairness across all Board-supervised institutions. This is good regulatory policy and good governance.

²⁰ 91 Fed. Reg. at 9500.

²¹ *Id.* at 9504.

²² Catherine Muccigrosso, *Fed Report Faults Bank of America, Wells Fargo and Others over Divisive ‘Debanking,’* CHARLOTTE OBSERVER (Dec. 11, 2025), <https://perma.cc/KJK7-ZECE>.

²³ 91 Fed. Reg. at 9504

²⁴ *Id.* at 9499.

IV. The proposed rule aligns the Federal Reserve with President Trump’s America First agenda.

On August 7, 2025, President Donald J. Trump signed an executive order entitled “Guaranteeing Fair Banking for All Americans” (“the Order”).²⁵ The Order declares that practices like debanking “are incompatible with a free society,” that “no American should be denied access to financial services because of their constitutionally or statutorily protected beliefs, affiliations, or political views,” and finds that bank regulators themselves “have used supervisory scrutiny and other influence over regulated banks to direct or otherwise encourage politicized or unlawful debanking activities.”²⁶ The Order goes on to direct that “banking decisions must instead be made based on individualized, objective, and risk-based analyses.”²⁷

To address these harms, the Order directs each “appropriate Federal banking regulator” to “remove the use of reputation risk or equivalent concepts that could result in politicized or unlawful debanking” from guidance, manuals, and supervisory materials.²⁸

The Federal Reserve’s proposed rule directly implements these directives and aligns the Board with President Trump’s order. The proposed rule itself acknowledges a “recent Executive Order” that “raised concerns regarding debanking based on political or religious beliefs or lawful business activities.”²⁹ As discussed above, the proposed rule would codify the removal of reputation risk from the Board’s supervisory programs. It would prohibit the Board from encouraging or compelling Board-supervised banking organizations to engage in politically motivated debanking. The other federal banking regulators, the Federal Deposit Insurance Corporation and the Comptroller of the Currency, have already adopted a final rule based on the Order.³⁰ AFL encourages the Board to move swiftly to codify these safeguards further and urges the Board to finalize this rule promptly to ensure that the protections it affords are durable and enforceable.

The elimination of reputation risk from the Board’s supervisory programs, coupled with the explicit prohibition on government-directed debanking based on protected beliefs or lawful activities, represents a significant step toward achieving President Donald J. Trump’s goal of restoring fairness, objectivity, and constitutional fidelity in the federal banking regulatory framework.

²⁵ Exec. Order No. 14331, 90 Fed. Reg. 38925 (Aug. 12, 2025).

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* at 38926.

²⁹ 91 Fed. Reg. at 9500.

³⁰ Prohibition on the Use of Reputation Risk by Regulators, 91 Fed. Reg. 18279 (Apr. 10, 2026).

VI. Conclusion.

For the foregoing reasons, America First Legal strongly supports the proposed rule and urges the Board to finalize it without delay.

Respectfully submitted,

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America First Legal Foundation