



FEDERAL DEPOSIT INSURANCE CORPORATION

Guidance on Referrals for Potential Criminal Enforcement

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of general policy.

SUMMARY: This document describes the Federal Deposit Insurance Corporation's (FDIC) plans to address criminally liable regulatory offenses under the recent executive order on fighting overcriminalization in Federal regulations.

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SUPPLEMENTARY INFORMATION:

On May 9, 2025, the President issued Executive Order (E.O.) 14294, Fighting Overcriminalization in Federal Regulations (90 FR 20363; May 14, 2025). Section 7 of E.O. 14294 provides that within 45 days of the order, and in consultation with the Attorney General, each agency should publish guidance in the *Federal Register* describing its plan to address criminally liable regulatory offenses.

Consistent with that requirement, the FDIC advises the public that by May 9, 2026, the agency, in consultation with the Attorney General, will provide to the Director of the Office of Management and Budget (OMB) a report containing (1) a list of all criminal regulatory offenses¹ enforceable by the FDIC or the Department of Justice (DOJ); and (2) for each such criminal regulatory offense, the range of potential criminal penalties for a violation and the applicable mens rea standard² for the criminal regulatory offense.

¹ "Criminal regulatory offense" means a Federal regulation that is enforceable by a criminal penalty. E.O. 14294, sec. 3(b).

² "Mens rea" means the state of mind that by law must be proven to convict a particular defendant of a particular crime. E.O. 14294, sec. 3(c).

As a practical matter, the FDIC does not generally make referrals of criminal regulatory offenses to the DOJ. To the extent that information is uncovered during the agency's supervisory activities that could suggest potential violations of criminal laws, the FDIC's practice is to refer such information to the Office of the Inspector General for the FDIC (FDIC-OIG). The FDIC-OIG then evaluates the information and determines whether a criminal referral to DOJ may be warranted. Where warranted, the FDIC-OIG's office makes referrals to DOJ based upon violations of Federal criminal statutes; the FDIC is not aware of the FDIC-OIG having made any referral to DOJ based upon a criminal regulatory offense in the past 10 years. Nonetheless, the FDIC commits to establishing procedures consistent with the E.O. for any future referral to DOJ involving a potential criminal regulatory offense.

This document announces a general policy, subject to appropriate exceptions and to the extent consistent with law, that when the FDIC is deciding whether to refer alleged violations of criminal regulatory offenses to DOJ, officers and employees of the FDIC should consider the following factors:

- the harm or risk of harm, pecuniary or otherwise, caused by the alleged offense;
- the potential gain to the putative defendant that could result from the offense;
- whether the putative defendant held specialized knowledge or expertise, or was licensed in an industry related to the rule or regulation at issue; and
- evidence, if any is available, of the putative defendant's general awareness of the unlawfulness of his conduct as well as his knowledge or lack thereof of the regulation at issue.

This general policy is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Dated at Washington, DC on June 23, 2025.

Matthew P. Reed,

Acting General Counsel.

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