Banking and Finance Law Daily Wrap Up, PRUDENTIAL REGULATION—ABA, Better Markets comment on proposed safety and soundness changes, (Jan. 5, 2026)

Banking and Finance Law Daily Wrap Up

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By Nora Macaluso

The banking trade group largely supported the Trump administration rulemaking, while Better Markets said it would “completely destroy bank supervision.”

The American Bankers Association proposed some changes to the Trump administration’s proposal to define an “unsafe or unsound practice” and establish uniform standards for supervisory agencies examining banks’ practices, but the group said it generally supports the proposal from the Office of the Comptroller of the Currency and Federal Deposit Insurance Corporation. Better Markets, on the other hand, said the plan would “completely destroy bank supervision” and urged the agencies to rescind it.

The OCC and FDIC in October issued a joint notice of proposed rulemaking that, among other things, would attempt to define the term "unsafe or unsound practice" under section 8 of the Federal Deposit Insurance Act. It would apply to all OCC-supervised institutions. Acting FDIC Chairman Travis Hill at the time promoted the proposed rulemaking as a refocusing of bank supervision away from process concerns and toward the detection of fundamental financial risks (see *Banking and Finance Law Daily*, Oct. 8, 2025)).

ABA comments. The ABA said in its comment letter that the proposal would “provide regulatory clarity” and “focus the attention of supervised institutions and examiners on material financial risks.” The banking group recommended that the agencies, in crafting a definition, clarify “that isolated or technical incidents do not qualify as ‘practices,’” to require examiners “to provide demonstrable and quantifiable evidence to support the conclusion that material financial harm is ‘likely,’” and to link the material standard explicitly to case law. “We also recommend revising or removing the Agencies' comments on tailoring as it relates to community banks,” the ABA said in a comment letter.

The proposal would also make changes to the process for matters requiring attention (MRAs.) The ABA said that while it supports the proposed standard for issuing MRAs, the agencies should require “that violations of law must be ‘substantive’ rather than technical, isolated, or immaterial,” and suggested changes and clarifications around the standard.

Better Markets comments. Better Markets, meanwhile, took a dim view of the plan in its comment letter. “The proposal to define ‘unsafe or unsound’ bank practices from the Federal Deposit Insurance Corporation and Office of the Comptroller of the Currency is a short-sighted attempt to give banks the freedom to take massive risks and lower their risk management costs,” said Phillip Basil, director of economic growth and stability at Better Markets.

The plan “ignores completely the evolution of supervision and the facts and circumstances that have led to that evolution,” Better Markets said in a comment letter. Risks such as those that led to the collapse of Silicon Valley Bank, the potential shift to payment stablecoins, and bank lending to nonbanks are among recent changes to the environment for banks, the letter said.

“The Proposal makes it explicit that the Agencies do not want the supervisory process and supervisory findings to be based in any way on ‘policies, procedures, documentation, or internal controls,’” Better Markets said. “However, examining and assessing an institution’s policies, procedures, documentation, and internal controls is, and always has been, a key function of bank supervision. Those aspects of an institution’s operations are the foundation of – and the most direct indicator of – an institution’s commitment and ability to manage its risk.”

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The industry needs stronger supervision, along with “recognition that risks should be mitigated before they materialize and that supervision should focus on the underlying causes of risks rather than the symptoms,” Better Markets said.

“The 2008 crash drove home the lesson that waiting until risky and badly run large banks were already showing the decline their mismanagement caused was often too late given the negative consequences such decline can have for the banking and financial systems and the economy,” Better Markets said in its letter. “This recognition brought us to our current supervisory regime, which this proposal would substantially undermine in a short-sighted attempt to give the banking industry greater freedom to increase risks and lower risk management costs, thus further exposing the US economy and taxpayer to the catastrophic harm badly run banks can cause.”

Companies: American Bankers Association; Better Markets

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