Banking and Finance Law Daily Wrap Up, PRUDENTIAL REGULATION—State AGs, BPI weigh in on proposed safety and soundness rules, (Jan. 6, 2026)

Banking and Finance Law Daily Wrap Up

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By Steven Melendez

BPI praised the move by federal regulators to define 'unsafe or unsound practice,' while the attorneys general cautioned it could risk 'disastrous consequences' for consumers.

Attorneys general for 15 Democratic-led states, plus the District of Columbia, condemned a proposal by the Office of the Comptroller of the Currency (OCC) and Federal Deposit Insurance Corporation (FDIC) to narrowly define "unsafe or unsound practice," while the Bank Policy Institute (BPI) mostly praised the proposed rule for focusing bank examinations on fundamental issues.

"This proposal would bring supervision back to the fundamentals: material risks that threaten a bank's financial health and the stability of the banking system," said Greg Baer, president and CEO of BPI in a statement.

Background. In October 2025, the OCC and FDIC issued a notice of proposed rulemaking that would define the term "unsafe or unsound practice" as it appears in section 8 of the Federal Deposit Insurance Act. The phrase currently has no official definition (see *Banking and Finance Law Daily*, Oct 8, 2025). Acting FDIC Chairman Travis Hill at the time touted the proposed rule for focusing bank supervision on fundamental financial risk rather than process issues.

Republican senators on the Senate Banking Committee had previously sent a letter to the Federal Reserve Board, OCC, and FDIC with concerns about the process for bank examiners designating Matters Requiring Attention (MRA), which they said lacked legal foundation and uniformity, leading to inconsistent application. The FDIC and OCC proposed rulemaking also included setting uniform standards for communicating MRAs, as well as non-binding observations during bank examinations.

The proposed rulemaking has previously drawn comment from the American Bankers Association (ABA), with ABA President Rob Nichols saying the group welcomes efforts to "focus the attention of supervised institutions and examiners on material financial risks," and Better Markets, which called the proposed changes "a short-sighted attempt to give banks the freedom to take massive risks and lower their risk management costs" (see *Banking and Finance Law Daily*, Jan. 5, 2026).

Comments from state AGs. The state AGs, in a comment submitted in response to the proposed rulemaking, cited overhauls to bank supervision in the wake of the Great Recession and argued that the proposal "risks disastrous consequences for everyday Americans at a time of significant financial disruption and uncertainty in the country's markets."

They called upon the FDIC and OCC to abandon or "significantly revise" the proposed rulemaking. The proposed rulemaking, they warned, would shift examiners away from addressing issues that "could potentially result in" harm and bank conduct that presents risk but does not "deviate from generally accepted standards." Proactive supervision is essential to safeguard not only the banks themselves but consumers who rely on them by spotting "significant risks" early on, the attorneys general argued.

The proposed rulemaking also does not address potential issues related to the rise of cryptocurrency, the emergence of private credit and its relationship to banks, or the surge in investment into artificial intelligence, they argued. "In short, the United States is currently experiencing innovations, new products, and speculation in

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its banking and financial markets," according to the attorneys general. "The proposed rule's attempt to reign in bank supervision at this economic moment is indefensible and risks financial calamity."

The proposal also does not take into account the state of the Consumer Financial Protection Bureau, where the acting Director "has provided notice to courts that the CFPB will lack funding within a matter of months, thereby ceasing operations," according to the AGs. The CFPB is charged with ensuring bank compliance with consumer protection laws and regulations, and the proposed rule will further focus other regulators on financial harm only, they argued.

Comments from BPI. BPI indicated in a comment submitted to the OCC and FDIC that it "strongly supports" the proposed rulemaking, saying the rule should be "adopted without delay."

Existing interpretations of "unsafe or unsound" practices have led "examiners to focus on process and immaterial issues" rather than "material financial risks," the group argued, limiting the effectiveness of examiners and diverting limited bank resources. The 2023 failure of Silicon Valley Bank (SVB) demonstrates the results of regulators focusing on non-financial risks while not addressing financial concerns, according to BPI.

The group also suggested clarifying the proposed rule to further focus on practices that could cause material financial harm to the bank in question or "a material risk of loss" to the FDIC's Deposit Insurance Fund. BPI also suggested codifying that the FDIC and OCC cannot criticize an institution for failing to implement suggestions from supervisory communications or escalate supervisory communications to MRAs without solid reason to do so. The group also suggested clarifying that MRAs are not themselves binding orders.

"For too long, supervision has strayed beyond its legal remit, encouraging examiners to focus on process and immaterial issues rather than material risks," said Baer. "MRAs have been driven by process and preferences rather than safety and soundness."

The agencies also should make changes to the CAMELS rating system used to assess bank stability, according to BPI, which warned that failure to make such updates could effectively circumvent the limits on bank examination in the proposed rulemaking.

Companies: American Bankers Association; Bank Policy Institute; Better Markets

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