Online Lenders Alliance

December 29, 2025

Office of the Comptroller of the Currency
Chief Counsel's Office
Attention: Comment Processing
400 7th Street, SW, Suite 3E-218
Washington, DC 20219

Jennifer M. Jones
Deputy Executive Secretary
Attention: Comments—RIN 3064-AG16
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
VIA ELECTRONIC SUBMISSION

Re: Unsafe or Unsound Practices, Matters Requiring Attention Docket ID OCC-2025-0174/ RIN 3064-AG16

Dear Sirs and Madams:

The Online Lenders Alliance (OLA) is pleased to submit comments in response to the Office of the Comptroller of the Currency's (OCC) and Federal Deposit Insurance Corporation's (FDIC) (collectively the Agencies) Notice of Proposed Rulemaking (NPRM) regarding their proposed rule defining "unsafe or unsound practice" under section 8 of the Federal Deposit Insurance Act (FDIA). OLA appreciates the opportunity to provide its members' perspective on this topic.

<u>About OLA and its Members</u>

OLA represents the growing industry of innovative companies that develop and deploy pioneering financial technology, including proprietary underwriting methods, sophisticated data analytics and non-traditional delivery channels, to offer online consumer loans and related products and services. OLA's members include online lenders, vendors and service providers to lenders, consumer reporting agencies, payment processors and marketing firms.

Fintech companies have pioneered innovative and modern online techniques for advertising and marketing, preventing and managing fraud risk, underwriting and managing credit risk, servicing loans, and conducting compliant collection activities in a manner that is fair and transparent to consumers seeking to obtain a loan or a line of credit online. Online lenders provide benefits to consumers, particularly those in underserved communities, with fast, safe, and convenient choices.

OLA is leading the way to improve consumer protections, with a set of standards that ensure borrowers are fully informed, fairly treated, and able to use lending products responsibly. To accomplish this, OLA members voluntarily agree to hold themselves to a set of Best Practices, a set of rigorous standards above and beyond current legal and regulatory requirements. OLA members, the industry, and any partners with whom OLA members work use these standards to stay current on the changing legal and regulatory landscape.

OLA Best Practices cover all facets of the industry, including advertising and marketing, privacy, payments, and mobile devices. Most importantly, OLA Best Practices are designed to help consumers make educated financial decisions by ensuring that the industry fully discloses all loan terms in a transparent, easy-to-understand manner.[1]

Much of the innovation undertaken by OLA members has given consumers greater access to financial services and products across multiple applications and platforms in a safe and accessible manner. This is especially the case when it comes to access to capital, as the ability to find and secure credit is often a determining factor in a consumer's financial wellbeing. Online lenders provide benefits to consumers, particularly those in underserved communities, with fast, safe, and convenient choices that simply are not available through traditional lending markets.

Bank-Fintech Relationships

Consumers' use of the internet and mobile technology for financial services and products has accelerated over the last decade, requiring financial institutions to leverage constantly evolving technologies. Lacking technical know-how to market, service, and collect loans electronically, banks routinely rely on third party fintech companies to deliver financial services more broadly, more efficiently, and with less risk to consumers and to the banks themselves. Many fintech firms have spent years developing innovative, proprietary technologies and analytics for these specific tasks, which enable banks to deploy their own capital more efficiently. As a result, banks can provide broader access to credit for consumers and small businesses and obtain greater portfolio risk diversification.

Nonbank technology providers offer expertise in an array of services that are particularly beneficial to smaller community banks and other financial institutions that work with underserved communities. These bank-fintech relationships create opportunities for borrowers outside of the bank's traditional footprint. Borrowers of lesser credit quality, including thin-file or no-file consumers, can benefit from the greater use of non-traditional credit information successfully utilized by fintech firms.

According to a Morning Consult Survey, a large plurality of consumers who had borrowed from a fintech company saw their credit scores increase 12 months after taking out their loan. In the same survey, lower- and middle-income groups saw the largest net improvements, while Black and Hispanic consumers reported the highest gains in credit scores.

In a comment letter to the FDIC, the Center for Financial Services Innovation characterized the improvement to credit scores through bank-fintech collaborations as a "win-win-win" for all involved, including consumers. Banks win because they can originate credit to a broader and deeper segment of the consumer market. Third-party fintech service providers win by demonstrating their effectiveness in helping banks reach new consumers. Consumers win because they "get access to high-quality credit that they otherwise would not. In addition, these relationships can allow "smaller and more rural banks to broaden the set of products and services they can offer to their communities."[2]

The FDIC echoed these settlements in proposed examination guidance for third-party lending programs, stating:

> "Third-party lending arrangements may provide institutions with the ability to supplement, enhance, or expedite lending services for their customers. Engaging in third-party lending arrangements may also enable institutions to lower costs of delivering credit products and to achieve strategic or

[1] Online Lenders Alliance Best Practices, https://onlinelendersalliance.org/best-practices/
[2] CFSI Comment Letter on Proposed Guidance for Third-Party Lending (Oct. 27, 2016), https://cfsinnovation.org/research/cfsi-comment-letter-on-proposed-guidance-for-third-party-lending/.

profitability goals."[3]

Despite their substantial promise, bank-fintech arrangements face significant obstacles, including an antiquated regulatory patchwork structure that is ill-suited to today's rapidly changing digital landscape. Regulators have at times been overly cautious about innovation and have communicated the rules of engagement inconsistently. This has led to uncertainty that discourages institutions from engaging in new and creative uses of these techniques, ultimately limiting the availability of credit to consumers. The regulatory framework has a sizable influence over innovations that will be critical to the success of fintech. Policymakers need to ensure the rules do not impede innovations that otherwise could meet the financial needs of consumers. As the agencies consider how their supervision and enforcement practices should evolve, it is important to consider their impact on innovative business models like those employed by fintech companies

Standards should recognize today's technological needs by offering flexibility and space to innovate. This will provide companies of all sizes with the ability to take a risk-based approach to innovation, tailoring what best works for their own business models, practices and customer needs. This is particularly critical for startup companies, enabling them to devote limited resources to expanding their products and services instead of focusing on burdensome compliance with prescriptive rules unfit for their risk profiles. This also makes it easier for firms to operate securely across various jurisdictions and enter new markets.

Through these efforts, fintech companies working as third-party vendors for banks can play an important role in building a more inclusive financial system for consumers. OLA encourages regulators to continue considering a policy framework that enables innovators to interact with each other using collaborative relationships.

The Need for an Evolving Unsafe or Unsound Practices Standard

The current regulatory interpretation of "unsafe or unsound" practices as used in Section 8 of the FDIA provides regulators with broad authority to address problematic banking practices. However, the statute does not provide a precise or operational definition of the terms, nor does it link those terms to measurable standards, prudential benchmarks, or specific risk categories. This lack of specificity creates sizable legal and practical ambiguity that affects both institutions and supervisory entities. As a result, institutions must rely on supervisory interpretations, which vary by context and evolve over time.

This overreliance on supervisory discretion has led to an inconsistent application of safety and soundness standards. Similar practices may be deemed acceptable in one supervisory instance but criticized in another. This variability can produce uneven enforcement outcomes that complicate an institution's efforts to assess their regulatory risk exposure.

This has been exacerbated over time as the concepts of safety and soundness have expanded beyond traditional prudential risks. Originally tied to core banking risks (credit, liquidity, capital adequacy, management competence), the scope of what constitutes an "unsafe or unsound" practice has gradually expanded to encompass a broad array of emerging areas including cybersecurity, third-party relationships, model risk, and even consumer harm. Because the statute never delineated boundaries, this expansion, while sometimes justified, increases ambiguity and leaves institutions uncertain about supervisory expectations in new or evolving risk areas.

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[3] FDIC, Proposed Guidance: Examination Guidance for Third-Party Lending (July 29, 2016), https://www.fdic.gov/news/news/financial/2016/fil16050a.pdf. To date, this proposed guidance has not been finalized.

The ambiguity of these terms also creates a lack of a clear nexus to measurable metrics. Other regulatory frameworks, such as prompt corrective action or capital adequacy requirements, specify quantifiable thresholds. In contrast, the "unsafe or unsound" standards do not link to objective metrics. As a result, institutions may face enforcement actions or supervisory criticisms based on subjective judgments that are difficult to anticipate, reproduce, or challenge.

These challenges complicate both compliance and strategic decision-making. Without a clear definition, institutions face difficulty assessing whether new products, technologies, or partnerships could be viewed as unsafe or unsound, which makes demonstrating compliance during examinations nearly impossible. The lack of regulatory predictability undermines the ability of financial institutions to develop long-term compliance strategies.

Providing clearer statutory or regulatory guidance—or at minimum, updated supervisory principles—around the definition of "unsafe or unsound" will enhance transparency, support more consistent enforcement, and reduce uncertainty in the banking system.

The Agencies' Regulatory Approach Will Provide Additional Clarity and Certainty

It is for these reasons that OLA fully supports the regulatory approach proposed by the agencies that would generally limit the agencies' authority to take enforcement action or issue Matters Requiring Attention (MRAs) based on "unsafe or unsound practices" to circumstances posing material harm to the financial condition of the institution or a material risk of loss to the FDIC's Deposit Insurance Fund (DIF).

This approach will ensure that deficiencies will be identified before they become safety-and-soundness violations. Focusing on circumstances that pose material harm to the financial condition of the institution or a material risk of loss to the DIF allows examiners to highlight deficiencies before they pose a direct threat to the institution's financial condition or to the Fund itself. Concentrating on these areas in the safety-and-soundness framework encourages proactive remediation, reducing the likelihood that issues escalate to formal enforcement actions under Section 8. This aligns with long-standing supervisory practice that emphasizes prevention over reaction.

This approach better focuses supervisory judgments on the root causes of risks by addressing underlying governance, risk-management, and internal-control problems that may not produce immediate losses but indicate structural vulnerabilities. These underlying issues can include inadequate credit-risk review processes, deficient liquidity controls, insufficient cybersecurity resilience, or management's failure to adhere to established policies. This approach recognizes that a bank's condition is determined not only by its current financial ratios but by the soundness of the systems and processes that support ongoing operations.

Integrating acts or practices that present actual or likely material financial harm to the institution into the definition of "unsafe or unsoundness practices" as proposed by the agencies will provide institutions with clearer expectations regarding what constitutes a meaningful weakness. It reduces subjectivity by tying potential Section 8 concerns to a documented supervisory record. And it will foster a more predictable and transparent compliance environment in which institutions can understand the escalatory pathway—from observation, to MRA, to potential enforcement, thereby improving adherence and reducing disputes. More critically, focusing the definition of "unsafe or unsounds" practices on acts or practices that present actual or likely material financial harm to the institution strengthens industry stability and limits regulatory burden. When institutions address these types of issues promptly, they often avoid more severe and punitive consequences such as consent orders, civil money penalties, or restrictions on growth. This approach allows regulators to reserve formal enforcement for institutions that fail to correct identified problems, focusing enforcement on bad actors.

A risk-focused, modern supervision approach like this reflects the realities of contemporary banking, in which risks evolve rapidly across operational, technological, and third-party domains. A supervisory structure that provides adaptable tools for examiners will enable them to identify and communicate risks that may not fit neatly into legacy definitions of unsafe or unsound practices. This approach more effectively captures emerging threats -- cybersecurity gaps, weaknesses in data governance, or deficiencies in climate-related risk management—before they create systemic vulnerabilities.

Focusing Unsafe and Unsound Practices on Acts that Prevent Actual Harm will Foster Responsible Bank–Fintech Partnerships

Highlighting acts or practices that present actual or likely material financial harm to the institution as the principal tool for supervisory communication will meaningfully improve the quality and stability of bank-fintech partnerships. This approach enhances early risk identification, increases regulatory clarity, promotes proportional oversight, strengthens governance, and supports responsible innovation. This type of modernized framework enables regulators, banks, and fintech partners to collaborate more effectively in delivering safe, efficient, and technologically advanced financial services to consumers and businesses

Under this framework, fintech partnerships can identify and address operational, cybersecurity, data-governance, and model-risk challenges that were not contemplated in traditional safety-and-soundness standards. Emphasizing acts or practices that present actual or likely material financial harm to the institution as the central supervisory tool allows examiners to identify technology-related weaknesses early, provide specific and actionable remediation guidance, and enable banks and fintech partners to correct issues promptly. This approach preserves supervisory rigor while creating an environment in which innovation can occur safely under strong regulatory oversight. It will enable banks and fintech partners to design governance, risk, and compliance structures that meet defined regulatory thresholds. This greater clarity reduces compliance ambiguity and supports responsible market development.

Emphasizing acts or practices that present actual or likely material financial harm to the institution as a focal point of safety and soundness will support the stability and scalability of Banking-as-a-Service models (BaaS), whose growth in recent years has outpaced supervisory clarity. By utilizing a narrower approach as the primary instrument for identifying and addressing deficiencies, regulators can correct unsafe practices before they escalate by requiring improvements while preserving continuity of service. This will ensure fintech partners operate at a standard consistent with banking expectations and protect depositors, consumers, and the broader financial ecosystem, creating a more stable and sustainable foundation for BaaS programs and preventing abrupt disruptions while strengthening long-term supervisory outcomes.

Furthermore, focusing on acts or practices that present actual or likely material financial harm to the institution promotes proportional risk-based supervision instead of one-size-fits-all enforcement. As banks adopt new technologies, the risks vary significantly depending on scale, complexity, customer exposure, and the maturity of the fintech partner. Emphasizing a clearer safety-and-soundness framework encourages tailored regulatory responses by allowing supervisors to calibrate corrective actions to the specific risk profile of each partnership. This will better support remediation pathways that avoid unnecessary disruption to consumers and preserve enforcement actions for only those situations where deficiencies remain unaddressed or pose material safety-and-soundness threats. This proportional approach promotes innovation while maintaining strong supervisory safeguards.

The proposed changes also will clarify and reinforce the expectations placed on bank boards and senior leadership. This approach will encourage documented corrective action plans, timely remediation progress, and ongoing board oversight. Applying this framework to fintech partnerships ensures these relationships are appropriately integrated into enterprise risk management, rather than operating at the periphery of internal controls. This will strengthen governance, enhance operational reliability, and reduce the likelihood of compliance or consumer-protection failures.

Conclusion

Bank collaboration with technology companies has revolutionized the financial services sector, altering business models, risk mitigation strategies, and systems performance. As this technology continues to evolve, consumers increasingly expect more accessible products and services in real-time, which will change the way both individuals and companies engage in financial activities. That is the ultimate promise of fintech: delivering safer, more transparent, lower cost, and more convenient financial products and services to consumers.

However, the continued growth of the fintech sector depends on a modernized regulatory framework that ensures safety and soundness while providing clarity and certainty. The agencies' proposal to focus the definition of "unsafe or unsound" practices under Section 8 of the FDIA on acts or practices that present actual or likely material financial harm to the institution strikes the proper balance between innovation and oversight by providing clearly defined expectations and standards without overly prescriptive rules that stifle innovation and technology.

By clearly defining unsafe or unsound practices, regulators can ensure that bank-fintech partnerships will continue to contribute positively to the financial system without compromising safety, soundness, or consumer protection. OLA appreciates this opportunity to offer input on these key issues. If you have questions or need additional information, please feel free to contact me at [redacted]

Sincerely,

Michael Day
Policy Director
Online Lenders Alliance