[Why the FDIC Should Withdraw its Corporate Governance & Risk Management Proposal](#)

BLOG POST

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The FDIC should withdraw its proposed corporate governance and risk management guidelines. The proposal ignores and conflicts with state corporate governance laws, micromanages how a bank's board is constituted and functions, and imposes a tangle of ill-designed organizational requirements and procedural checklists.?In short, the proposal is fatally flawed, as CSBS told the FDIC in a **comment letter**.

State regulators promote safety and soundness and support strong corporate governance and risk management practices. However, the FDIC's proposal lacks data or factual support to demonstrate that these additional corporate governance and risk management requirements would actually promote safety and soundness. In the end, the guidelines appear to be a solution, albeit specious, without a defined problem.

The guidelines would conflict with state corporate governance laws. For example, a new federal "stakeholder" standard would require bank directors to consider the interests of an impossibly broad list of stakeholders, including the general public. But state laws already govern a board's obligations and duties, and for over 100 years these state fiduciary standards have made clear that directors owe a fiduciary duty to the corporation and its shareholders. Ultimately, the FDIC's new federal stakeholder standard would undermine the ability of directors to meet their primary duties to the bank and its shareholders.

The FDIC's proposal would also blur the critical and fundamental distinction between a board's policy setting and oversight responsibilities and management's operational responsibilities. Bank directors would be required to carry out a litany of prescriptive tasks that are delegated to management under every other corporate governance framework. Banks and their boards would be overloaded with procedural checklists, and no doubt distracted from focusing on core safety and soundness risks.

The guidelines include a new board composition requirement, mandating that most of a bank's directorate be independent and outside directors. And the FDIC adds new tests for when a bank director would qualify as "independent." These requirements are unnecessary and overly complex. They would needlessly upend the current composition of many banks' board of directors and create complications for banks with holding companies as well as publicly traded banking organizations.

These flawed guidelines would apply to banks with $10 billion or more in assets that are jointly supervised by state regulators and the FDIC, i.e., state nonmember banks. Approximately 60 state-chartered banks would be subject to these onerous requirements but not the nearly 100 other banks of that size that are not subject to FDIC

supervision. The FDIC could also extend the guidelines to any size state nonmember bank it deems to be “highly complex” or posing a “heightened risk.”

The guidelines have the perverse effect of imposing the most onerous corporate governance and risk management requirements on the relatively smallest banks. But the FDIC has provided no rationale for why one group of banks should have a dramatically different set of corporate governance and risk management requirements than others.

State regulators believe the best solution is for the FDIC to withdraw this fatally flawed proposal in its entirety.

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