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# A Year of Transition: Preparing for Banking's Regulatory and Strategic Shifts

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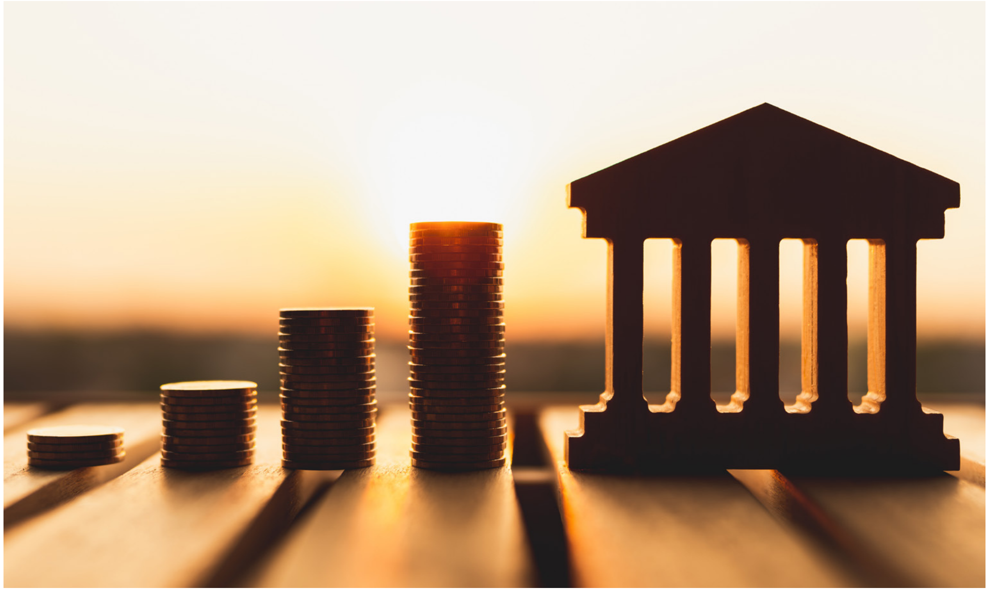

As 2025 began, the banking industry showed signs of optimism for the year ahead. This sentiment is driven, in part, by expected shifts in federal agency priorities, rulemaking, and enforcement actions. Yet it comes on the heels of a turbulent year in the banking sector, disrupted by technological innovation, changing regulations, evolving customer expectations, and economic and geopolitical uncertainty.

Time will tell if today's optimism is warranted, but in the meantime, the outlook is mixed. Lately, the industry has seen positive early indicators as bank regulatory capital has increased while liquidity and funding conditions remained stable. But the positives have been counterbalanced by issues such as increased delinquencies on commercial real estate and consumer loans. Even if we see changes at the helm of certain federal agencies, trends like these and the potential impact of inflationary pressures will likely remain areas of focus for both bank executives and regulators in 2025.

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While the landscape remains uncertain, effective risk management will continue to be critical for the stability and long-term success of any banking institution. Those that have invested in refining and optimizing their risk management programs will be better equipped to navigate change while maintaining operational efficiency and effectively responding to market demands.

This article previews two of the major developments expected to shape the banking environment in 2025, and then describes the risk management discipline needed to surmount whatever lies ahead this year.

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### New Policies for Bank M&A

It is widely believed that bank merger and acquisition activity will increase in 2025 due to a more favorable economic environment and regulatory posture. While the prospect of increased bank transactions could be considered positive news, it is important to consider how recent regulatory changes in this area may impact processing timeframes and substantive considerations of the applications for regulatory approval.

On September 17, 2024, the Federal Deposit Insurance Corporation (FDIC) and the Office of the Comptroller of the Currency (OCC) each adopted final policy statements regarding their review of applications under the Bank Merger Act. The policy statements were intended to clarify how the agencies consider certain statutory factors under the act when evaluating applications for regulatory approval. The OCC policy statement describes general principles, including the factors that make an application more likely to withstand its scrutiny and be approved expeditiously. Applicants submitting proposals that raise supervisory or regulatory concerns will need to resolve those issues prior to obtaining regulatory approval. The time that takes can vary substantially depending on the nature of the concerns. Timing and other details are further clouded by a more recent statement by new FDIC Acting Chairman Travis Hill, who said the FDIC's 2024 Final Statement of Policy on Bank Merger Transactions will be replaced to "ensure that merger transactions that satisfy the Bank Merger Act are approved in a *timely* way."

On the same day as these coordinated statements, the Department of Justice (DOJ) announced that it was withdrawing its 1995 Bank Merger Guidelines and issuing new guidance after a collaborative consultative process with the FDIC, OCC, and Federal Reserve Board. Typically, the DOJ and the federal banking agencies review the competitive impact of bank mergers under banking and antitrust laws. Now, all lead agencies in banking M&A except the Fed have changed their approach.

In its announcement, the DOJ emphasized that its general 2023 Merger Guidelines will stand as its sole authoritative statement across all industries. A 2024 banking addendum to the 2023 guidelines was published to provide a high-level overview of the substantive considerations the DOJ will use in evaluating the competitive impact of bank mergers, without going into much substantive detail. It did note, however, that bank transactions will be subject to a lower threshold—and therefore

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higher scrutiny—under the Herfindahl-Hirschman Index (HHI), which measures market concentration levels and competitiveness in a particular market . This means the threshold for the rebuttable presumption of competitive harm will be lower for bank mergers going forward. Additionally, the impact of mergers on economically underserved individuals will be considered. Notably, this change in DOJ policy marks the first time in almost 30 years that bank mergers and related transactions are subject to new DOJ guidelines.

### Uncertainty at the CFPB

With the change in presidential administrations, a new Consumer Financial Protection Bureau (CFPB) director is expected to take over this year. This change is coming as the agency has continued to expand its areas of focus on both traditional and nontraditional financial institutions. In recent weeks, for example, the CFPB issued a final overdraft lending rule, which applies to overdraft credit provided by very large financial institutions. The final rule standardizes certain information provided to consumers regarding similar overdraft credit products to facilitate comparison shopping.

The recent CFPB rulemaking caused some controversy because it was issued a few weeks after other federal banking agencies announced their intention to refrain from finalizing rulemaking before the presidential transition. Nevertheless, the phenomenon of so-called "midnight rulemaking," which is when a federal agency engages in rulemaking activity at the end of a presidential administration, is not without precedent. Whether and how the new administration reacts to this rulemaking is an open question. In the past, new administrations have employed a variety of strategies to respond to midnight rulemakings ranging from postponing or suspending the effective dates of the rules in question to even formally withdrawing rules not yet published in the Federal Register. Time will tell how the expected changes to CFPB leadership will impact this and other industry regulation.

### Getting Back to (Risk Management) Basics

Effective bank risk management programs are designed to identify, assess, monitor, and manage risks that could negatively impact a bank's ability to meet its strategic objectives and seize on new opportunities. As institutions prepare for uncertainty and new challenges in the coming year, they should consider getting back to risk management basics by focusing on how they can optimize existing risk management programs to strengthen their resilience and foster organizational agility.

Without continuous evaluation and adjustment, risk management programs can become outdated or overly complex, hindering a bank's ability to respond swiftly to changing regulatory requirements and market dynamics. On the other hand, a strategy to optimize risk management programs helps create a structured, forward-looking approach that enables banks to proactively manage risks, comply with regulatory requirements, and maintain profitability under evolving regulatory and market conditions. Inefficient processes drain resources, and optimization can help identify redundancies and focus on cost-effective risk management routines.

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Banks can improve and streamline risk management processes through strategic and integrated technology investments. They can measure the effectiveness of their risk management optimization efforts by using real-time dashboards and reporting tools to provide insights into risks and exposures while tracking metrics related to:

- Strengthening risk culture across all levels of the organization.
- Enhancing compliance with regulatory standards.
- Improving response times.
- Reducing operational losses.
- Efficiently using capital and resources in risk mitigation.

These enhancements can help a bank make better use of key performance indicators (KPIs) and key risk indicators (KRIs), which are important metrics that help inform the board of directors and senior management about material and emerging risks relative to the bank's established strategic goals and risk appetite. It is important to distinguish the measurement of past performance from the measurement of potential risk, including the likelihood that the risk will materialize. If designed well, KRIs also may lead to greater efficiencies and better use of the bank's resources.

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### Conclusion

While the regulatory outlook for 2025 is unclear, it will no doubt be an interesting year. As the regulatory landscape evolves, banks that optimize their risk management programs will remain better equipped to overcome challenges and seize opportunities in 2025 and beyond.

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