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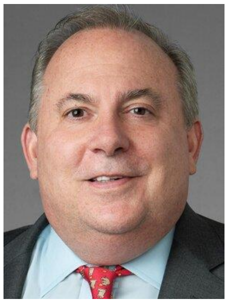
The Story Of 2024's Biggest Bank Regs, And Their Fate In 2025

By **Arthur Long and Pia Naib** (December 19, 2024, 4:21 PM EST)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In 2024, the U.S. federal bank regulators were extremely active, with initiatives ranging from antitrust and capital to proposals regarding controlling shareholders and incentive-based compensation. Climate issues and resolution planning were also areas of focus.

With the election of Donald J. Trump to a second term as president of the U.S., however, the next four years will be a time of deregulation. Below, we discuss the regulators' initiatives and their likely future under the new administration.

Bank Merger Transactions

Consistent with the Biden administration's initiatives to strengthen U.S. antitrust regulation, the Federal Deposit Insurance Corp., the Office of the Comptroller of the Currency and the U.S. Department of Justice announced changes in September 2024 to their practices for bank mergers.

These updated policies and guidelines aimed to enhance clarity and transparency in the bank merger process, while also signaling increased regulatory scrutiny for transactions involving financial institutions.

Notably absent, however, was the Federal Reserve Board, which must approve mergers and acquisitions involving bank holding companies and is therefore the most critical bank regulator for these transactions.

Potential Status in 2025

The first Trump administration took a more transaction-friendly approach to consolidation. During his second term, Trump will be able to name a new comptroller of the currency, and the FDIC board of directors will have a Republican majority.

Bank M&A activity will likely increase as smaller players continue to face challenges from increased regulatory compliance costs and economic factors. The most likely outcome is that the FDIC, OCC and DOJ revert to prior practices; however, the prevailing approach to market definition for bank mergers is entirely outdated and would be a fruitful area for updating.

Basel III Endgame

On July 27, 2023, the Federal Reserve, OCC and FDIC issued a comprehensive proposal known as Basel III to overhaul the methods by which large banking organizations must calculate risk-based capital requirements. The Basel III proposal would have materially increased the current capital requirements for banking organizations with $100 billion or more in total consolidated assets.

As of Jan. 24, 2024, the banking agencies had received over 400 public comment letters on the Basel III Proposal. Reactions to the Basel III proposal were overwhelmingly negative and came from a broad group of constituencies.

In light of the significant comments received, Federal Reserve Chair Jerome Powell and Vice Chair for Supervision Michael Barr stated that they intended to make "broad and material changes" to the Basel III proposal.

On Sept. 10, Barr gave a speech in which he outlined the principal changes that he would recommend to the full board of governors in a reproposed rule.

The Barr speech sketched a package of proposed and specific reforms and recommended that the Basel III proposal's most stringent provisions should only apply to a subset of banks – U.S. global systemically important banks and other large banks that were internationally active or had significant trading operations.

However, given that Barr did not address many important areas that had attracted criticism from a wide range of commenters, whether a reproposal will include "broad and material changes" remains to be seen.

Potential Status in 2025

The change in administration will likely delay an issuance of a reproposal until after Trump's appointees to the FDIC board of directors and OCC have assumed their positions in 2025.

Although a reproposal will reduce the amount by which required bank capital must increase when compared with the original 2023 proposal, we expect continued lobbying by the banking industry to prevent stricter rules for U.S. banks compared to their non-U.S. competitors.

In addition, a reproposal will almost assuredly focus capital increases on the largest, most internationally active U.S. banks, with domestic regional and community banks being largely or totally exempt. The reproposal will be subject to public notice and comment requirements, which means that any Basel III endgame rule will not be finalized before the second half of 2025.

Change in Bank Control Act

The FDIC board of directors approved a notice of proposed rulemaking in July to amend the agency's regulations under the Change in Bank Control Act.

The CIBCA proposal would require advance notice to the FDIC for acquisitions of 10% or more of the voting securities of a holding company with an FDIC-supervised bank subsidiary, and would allow the FDIC to reject such acquisitions if one or more statutory factors are not met.

The CIBCA proposal reflects the FDIC's increasing concern over "indirect control or concentration of ownership," as it was referred to in the proposal, by large asset managers and other institutional investors that sponsor, manage or advise multiple index funds whose underlying securities are stocks of FDIC-supervised institutions or their holding companies.

Although these investments by institutional investors are intended to be passive, the FDIC has observed that such investors have acquired 10% or more of the voting securities at FDIC-supervised institutions or their controlling affiliates and have continued to increase their ownership percentages at more institutions.

The CIBCA proposal cautions that without regulatory changes, these investors could exercise enough influence over publicly traded FDIC-supervised institutions to "increase the risk profile at such institutions" and raise safety and soundness concerns.

Potential Status in 2025

A majority-Republican FDIC board is unlikely to finalize the CIBCA proposal in its current form.

Resolution and Recovery Planning

The FDIC **issued** a final rule in June to update its resolution plan regulations for covered insured depository institutions. The revisions are intended to support "the FDIC's ability to undertake an efficient and effective resolution" under the Federal Deposit Insurance Act in case of large financial institution insolvency, failure or FDIC receivership.

Under the rule, insured depository institutions with $50 billion to less than $100 billion in average total assets are subject to new resolution reporting standards, with enhanced reporting for those with average total assets of $100 billion or more.

The OCC issued a final rule in October to revise its enforceable recovery planning guidelines for insured national banks, insured federal savings associations and insured federal branches of non-U.S. banks with $100 billion or more in average total consolidated assets.

The revisions to the guidelines are intended to expand the applicability of the recovery planning guidelines to covered banks with at least $100 billion in average total consolidated assets; incorporate a testing standard for recovery plans; include nonfinancial risks, such as operational and strategic risks, in recovery planning; and provide time frames by which covered banks must comply with the guidelines.

Potential Status in 2025

We expect resolution and recovery planning to receive continued attention as questions have lingered after the failures of Silicon Valley Bank and Signature Bank regarding whether the banking agencies are adequately equipped to handle future bank failures. In addition, worries remain about the level of commercial real estate risk in bank portfolios.

Community Reinvestment Act

On April 1, the banking agencies' extensive revisions to the regulation implementing the Community

Reinvestment Act, which is intended to promote bank lending in underserved communities, became effective.

Prior to the effective date, in the case of Texas Bankers Association v. Office of the Comptroller of the Currency, several banking trade groups sued the banking agencies in the U.S. District Court for the Northern District of Texas.[1] They alleged that the agencies overstepped their regulatory mandates when overhauling the CRA regulation.

The revisions to the CRA regulation, the plaintiffs asserted, flouted "the plain text of the CRA," and were unnecessarily "byzantine" (spanning 649 pages and 60,000 words in the Federal Register), "burdensome," and "arbitrary and capricious." The district court issued a preliminary injunction against the final CRA rule.

Potential Status in 2025

Pending litigation will continue as the district court decision has been appealed to the U.S. Court of Appeals for the Fifth Circuit amid a judicial climate that is increasingly nondeferential to administrative action.

Climate Risk Management

In May, the Federal Reserve published a summary of the results of a pilot climate scenario analysis that explored how resilient six of the largest U.S. bank holding companies were to climate-related financial risks, by total assets.

The aim of the analysis was to help the Federal Reserve "learn about large banking organizations' climate risk-management practices and challenges and to enhance the ability of large banking organizations and supervisors to identify, estimate, monitor and manage climate-related financial risks."

The analysis, which was first announced in September 2022, was intended to be an exploratory exercise and therefore did not result in any capital or supervisory consequences for the participating financial institutions.

Potential Status in 2025

Given that climate risk is not expected to be a priority for the Trump administration, we foresee minimal developments in this area.

Incentive-Based Compensation

On May 6, the FDIC, the OCC, the Federal Housing Finance Agency and the National Credit Union Administration **issued** a joint notice of proposed rulemaking to curb "excessive risk taking" resulting from incentive-based compensation arrangements. The Federal Reserve and the U.S. Securities and Exchange Commission did not join in the proposed rule.

The proposed rule seeks to curtail incentives for certain financial services sector officers, employees and directors to take "inappropriate risks" as a result of seeking excessive compensation, fees or benefits.

The revival of the proposed rule, which reproposes the regulatory text previously proposed in June 2016 (with a new preamble that acknowledges new developments and supervisory learnings), was driven in part by lawmakers and regulators' reaction to the spring 2023 banking crisis.

Potential Status in 2025

As with the 2016 proposal, the proposed rule is likely to languish for the next four years under Trump's appointees to the agencies.

Further Regulatory Changes Expected in 2025

In addition to the above, more changes can be expected once Trump's appointees are confirmed at the OCC and FDIC board of directors. There are currently no open seats at the Federal Reserve.

The OCC and FDIC will likely support digital asset companies — for example, in the waning days of the first Trump administration, the OCC approved a new charter or charter conversions for trust banks that would act as custodians for, and provide ancillary services to, digital assets. The FDIC may consider new industrial bank charters.

Trump's regulators should also be expected to seek a reduction of supervisory burdens on both community and regional banks. Finally, to the extent banking agency action is challenged in court, continued hard looks by federal district and appellate judges should be expected.

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[1] Compl., Texas Bankers Association, et al. v. Office of the Comptroller of the Currency, et al. (N.D. Tex., Feb. 5, 2024).