

Featured Professionals

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Sea Change in Banking

Legal Update

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By Karen L. Grandstrand

I have been part of the banking industry since 1982, seeing it from the vantage point of regulator, attorney and director. Over that period of time, the industry has experienced the S&L debacle and agricultural crisis of the '80s, the privacy concerns of the '90s, 9/11, and the recent recession and subsequent recovery. Congress reacted to each of these with major legislation—FIRREA, FDICIA, GLBA, the Patriot Act, and Dodd-Frank.

Bankers ask me how I would describe the current environment, and the words that most often come to mind are “sea change.” Unlike the past, this change has not been driven by a major new piece of legislation or the repeal of Dodd-Frank (although as I write, legislation is pending and will likely come next). Rather, it has come from leadership changes at bank regulatory agencies. Change is occurring based on how those in leadership positions in the agencies are choosing to interpret, apply, and enforce the law.

For example, consider what Acting Comptroller Noreika has done in six short months, with no legislative changes. The OCC has revised how evidence of discriminatory or other illegal credit practices will affect an institution's CRA evaluation and rating, reversed its position on deposit advances, approved a new bank charter, weighed in on arbitration, and more. As new leadership is installed at the Fed, CFPB, and FDIC, further change will occur. Indeed, as I write this article, Acting CFPB Director Mulvaney has implemented a hiring and regulation freeze and “hit the pause button” on two pending court cases.

In addition to these changes in the regulatory climate, we are seeing a fundamental restructuring of the industry in the upper Midwest through ongoing consolidation and the establishment of branches and loan production offices by out-of-state institutions. The big questions are whether and when de novos will again appear in this part of the country and whether fintech and other nontraditional financial institutions will be allowed entry. My view is that we will again have new charters but not at the pace we saw 15 years ago.

Finally, in addition to a changing regulatory climate, consolidation, and new market entrants, two other critical issues for bankers are changes required to enhance cybersecurity and changes required to protect reputation. These two items need to be on every bank's short list.

Takeaway

The changing regulatory climate, consolidation, competition from new market entrants, and cybersecurity and reputation risk create both opportunities and pitfalls. The changing environment presents opportunities for banks that are prepared and well-positioned but risks for those that are not.