

Regulatory Blizzard

January 23, 2025

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By Andrew Karp
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As the new administration settles in, it has begun to catalyze significant changes in the bank supervisory and regulatory environment. The FDIC is the first mover in this effort. Longtime director and sometime Chairman Martin Gruenberg resigned as a director over the weekend prior to the January 20 inauguration. He was succeeded by then Vice Chair, Travis Hill, who is now Acting Chair. If one were to accept reductive descriptions of their respective policy inclinations, former Chairman Gruenberg would best be described as having favored very strong regulation and as skeptical of innovation in the banking system. Acting Chair Hill, by contrast, appears to favor substantially lighter regulation and to trust the banking system with greater scope for innovation.

Within a day of his appointment, Acting Chairman Hill published a list of ambitious goals for the agency. If implemented, these goals would temper or reverse several of the measures that the Gruenberg-led FDIC considered standout achievements. Implementation of these measures would generally require approval by a majority of the FDIC board, and in some cases might also require agreement of other bank regulators. The President should be able to assure a Republican majority of the five-member board, but the board approval process, any necessary agreement among the banking agencies, and, where applicable, the public notice-and-comment process could well draw out the timing of change and result in final actions that differ from the proposals.

This note summarizes and comments on the Acting Chairman's goals as published on January 21:

- **Acting Chairman Goal:** Conduct a wholesale review of regulations, guidance, and manuals to ensure our rules and approach promote a vibrant, growing economy.
 - **Comment:** This goal does not target a specific prior policy or action, but instead signals a lighter regulatory and supervisory touch. It states the Acting Chairman's overall theme.
- **Acting Chairman Goal:** Adopt a more open-minded approach to innovation and technology adoption, including (1) a more transparent approach to fintech partnerships and to digital assets and tokenization, and (2) engagement to address growing technology costs for community banks.
 - **Comment:** This goal is intended to reverse several actions that market observers considered to have impeded digital innovation in banking markets. Most notably, these included the FDIC's closure of its innovation lab (established by Chairman Jelena McWilliams, former Chairman Gruenberg's immediate predecessor) and a series of letters that the FDIC issued to various banks suggesting the banks "pause" their digital asset activities.
- **Acting Chairman Goal:** Improve the bank merger approval process and replace the 2024 Statement of Policy to ensure that merger transactions that satisfy the Bank Merger Act are approved in a *timely* way.
 - **Comment:** This goal would repeal the FDIC's 2024 Statement of Policy on the Bank Merger Act. The SOP implemented tighter FDIC control over bank merger applications within its jurisdiction by establishing new substantive and procedural standards perceived as substantially more burdensome than the prior process.
- **Acting Chairman Goal:** Withdraw problematic proposals from the past three years, such as proposals on brokered deposits and corporate governance.
 - **Comment:** This is a more specific manifestation of the overall theme, aimed at two rules that, respectively, (i) broadened the class of deposits subject to quantitative and qualitative restrictions and conditions, and (ii) imposed governance standards that the market perceives as both inconsistent with expectations or standards set by the OCC and the Federal Reserve and incompatible with generally accepted concepts of corporate law, including current notions of officers' and directors' fiduciary duties.
- **Acting Chairman Goal:** Improve the supervisory process to focus more on core financial risks and less on process, and reevaluate the supervisory appeals process.
 - **Comment:** Following the large bank failures of Spring 2023, many industry commenters, legislators, and the banking agencies themselves have observed that agencies' focus on, or some would say obsession with, bank

processes and governance has obscured or diverted the agencies' and the banks' attention from the banks' true financial and operational risks. This goal is intended to remedy those errors.

- **Acting Chairman Goal:** Enhance our readiness and preparedness for resolving issues within large financial institutions, incorporating lessons from the far-too-costly failures of 2023, including the need to be much more proactive and nimble, and to improve the bidding process.
 - **Comment:** Another criticism of the FDIC arising from the Spring 2023 bank failures was the market's perception that the FDIC's bidding and sale processes are unduly opaque and clumsy, with the ultimate result that the receiver's recoveries are less than they should be. Industry observers have long suggested process improvements.
- **Acting Chairman Goal:** Pursue adjustments to our capital and liquidity rules to appropriately balance driving economic growth with ensuring safety and soundness and resilience to shocks.
 - **Comment:** This goal points out likely specific elements of the overall theme. It clearly suggests some forthcoming proposals in the contentious capital and liquidity areas.
- **Acting Chairman Goal:** Encourage more *de novo* activity so there is a healthy pipeline of new entrants in the banking sector.
 - **Comment:** The FDIC's pace in approving new bank charters has accelerated of late (admittedly in comparison to the long-prevailing glacial pace). However, the agency has been extremely reluctant to approve the establishment of industrial loan companies. This goal may signal a more welcoming attitude.
- **Acting Chairman Goal:** Work to ensure that law-abiding customers have, and do not lose, access to bank accounts and banking services.
 - **Comment:** This goal recalls the Choke Point project of several years ago, an echo of which many in the industry see in the pause letters noted above and the agency's hostile attitude toward fintech-bank "partnership" arrangements. Like the principal goal appearing and many of the more specific goals, this goal suggests a moderation of the current barriers to change and innovation in the banking markets.
- **Acting Chairman Goal:** Modernize implementation of the Bank Secrecy Act.
 - **Comment:** Industry commenters have asserted that current implementing regulations are ill-adapted to the current state of the financial markets and technology. This goal suggests that Acting Chairman Hill intends to push for reform.
- **Acting Chairman Goal:** Study deposit behavior to develop a more sophisticated understanding of the relative stability of different types of deposits and depositors.
 - **Comment:** This goal is yet another response to the Spring 2023 bank failures, which exposed that banks and supervisors did not fully understand how and the extent to which the development of broadly available instantaneous deposit transfer technologies has exacerbated deposit-run risk.
- **Acting Chairman Goal:** Reevaluate our disclosure practices, and expand transparency in areas that do not impact safety and soundness or financial stability.
 - **Comment:** Over the last several years academic and industry observers have criticized the agencies' practice of keeping confidential examination and related supervisory information as, ultimately, an impediment to better bank supervision, market understanding, and bank management. While statutes designate supervisory information as confidential, this goal suggests that the FDIC may seek to refine the definition of confidential supervisory information through legislation or interpretation. Ideally, the other banking agencies would participate in any such effort, in order to promote consistency in this important area.
- **Acting Chairman Goal:** Ensure the FDIC remains within our statutory mandates, and stops coloring outside the lines.
 - **Comment:** Several recent FDIC proposals have been criticized as undue assertions of authority reserved to other banking agencies. Among these are the corporate governance guidelines, the Bank Merger Act Statement of Policy, and a revision of the FDIC's regulations implementing the Change in Bank Control Act that purports to authorize the FDIC to assert authority over certain investments thought to be reserved to a bank's or holding

company's primary federal regulator. This goal suggests the Acting Chairman wishes to restore the prior division of authorities.

- **Acting Chairman Goal:** Pursue internal efficiencies to ensure we are serving as responsible stewards of the Deposit Insurance Fund.
 - **Comment:** This is a budget goal that might have some, as yet imponderable, effect on the FDIC's operations and capacity.
- **Acting Chairman Goal:** Reestablish a strong workforce culture, where misconduct is not tolerated and those who engage in misconduct are held accountable.
 - **Comment:** The FDIC's efforts to improve its culture are well known. The effects of the efforts on the FDIC's execution of its duties are, of course, hard to predict.

Maryland Emergency Regulations

January 23, 2025



By Mercedes Kelley Tunstall
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On January 10, 2025, the Maryland Office of Financial Regulation issued emergency regulations revised to clarify that “passive trusts” holding residential mortgage loans must obtain a Mortgage Lender License and if the trusts hold installment loans (described below), then they may also need to obtain an Installment Lender License. The emergency regulations were issued on an emergency basis to **codify precedent established in case law** in Summer 2024.

Please see below for a brief discussion of the loans and trusts that are affected by these regulations.

If the trust (whether it is a new trust or existing trust) holds residential mortgage loans (*i.e.*, loans securing “owner-occupied property having a dwelling on it designated principally as a residence with accommodations for not more than 4 families”), then that trust must obtain a Mortgage Lender license in Maryland.

In addition, if the trust (whether it is a new trust or existing trust) holds unsecured consumer loans or business-purpose loans made to individuals (*i.e.*, “installment loans”), then that trust may also need to obtain an Installment Lender license in Maryland. While the emergency regulations do not specifically call out the need for an Installment Lender license, reasonable interpretation of the language leads to the conclusion that passive trusts holding installment loans would also need to be licensed.

Please note that for purposes of this analysis, these conclusions apply regardless of whether the loans in question are open-end or closed-end loans.

For lenders that originate business-purpose loans to individuals, please reach out to us for further information on potential licensing requirements for passive trusts holding such loans.

UK Banking and Insurance Regulation Update

January 23, 2025



By Michael Newell
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By Alix Prentice
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The UK's Prudential Regulation Authority ("PRA") has recently published various statements regarding its current approach to its regulation of banking in the UK, including delaying implementation of Basel 3.1 rules.

Delay to UK Basel 3.1 implementation

On 17 January 2025, the PRA published a press release announcing that it has decided to delay the UK implementation of the Basel 3.1 reforms at least until 1 January 2027, mainly to allow more time for greater clarity to emerge about plans for, and timing of, the U.S. implementation. The PRA also announced:

- Transitional periods for the reforms will be reduced so that full implementation is still required by 1 January 2030.
- The deadline for firms to inform the PRA that they intend to join the interim capital regime ("ICR") (previously 28 February 2025) is being extended.
- A data collection exercise, intended to inform an off-cycle review of firm-specific Pillar 2 capital requirements, is paused until further notice.

Advancing UK competitiveness and growth agenda

On 20 January 2025, the PRA published a reply to a letter from the Prime Minister (dated December 2024) regarding the Government's approach to financial services regulation in the UK.

The PRA sets out the actions it has taken recently to advance competitiveness and growth:

- the now-completed implementation of the new Solvency UK prudential regime for insurers;
- removing the 'bonus cap' for banks;
- undertaking a review of the Senior Managers and Certification Regime; and
- driving improvements in operational efficiency, with a particular focus on the timely handling of authorisation applications.

The PRA then sets out further actions that it intends to take:

- simplifying the prudential regime for small banks;
- increasing the ability of the insurance sector to invest in the UK economy;
- improving the UK framework for Insurance Special Purpose Vehicles ("ISPVs"), including simplifying and accelerating the ISPV authorisation process;
- making further amendments to remuneration requirements to enhance competitiveness; and
- simplifying regulatory data reporting from banks.

Banking supervisory priorities

On 21 January, the PRA published two "Dear CEO" letters, setting out its thematic priorities in relation to the supervision of international banks and UK deposit takers, respectively (noting that these thematic priorities are not exhaustive and are intended to complement both its core assurance work and any firm-specific feedback from periodic summary meetings):

- **Risk management, governance and controls.** The PRA notes that it expects firms to have robust frameworks in place, commensurate with the firm's business model, across its business, risk and internal audit functions. Boards should consider where risk culture may be the root cause of any material weaknesses in their control environment. The PRA states that firms should continue to invest in robust credit risk management and measurement practices, including modelling (for UK firms to align with the principles in the PRA's supervisory statement 23 January), in order to ensure that these remain adaptable to changing conditions. New lending policies, growth areas and existing portfolios should be continually risk assessed in the context of an ever-evolving outlook.
- **Operational resilience and data risk.** The PRA states its expectation that firms should have made significant progress with their operational resilience obligations, given the approaching March 2025 deadline, and that this should be a key point of consideration for boards and executives. The PRA and the Financial Conduct Authority plan to issue a consultation in the second half of 2025 on policy relating to the management of information, ICT and cyber risks. The PRA reminds firms of the need to ensure they are submitting complete, timely and accurate regulatory returns, and notes that, while not all firms are in scope of the Basel Committee on Banking Supervision's principles for effective risk data aggregation and reporting, these principles provide a good base for firms to think about in their management of data risk.
- **Financial resilience.** The PRA plans to continue to focus on firms' financial resilience in 2025 through ongoing assessment of individual firms' capital and liquidity. It notes that it expects to see firms consider and manage risk to a broad range of forward-looking liquidity and capital indicators, to use stress testing to assess their financial resilience and to have realistic and effective contingency plans that are supported by accurate and relevant information.
- **Funding and liquidity.** The PRA notes to UK deposit takers that liquidity events in recent years have highlighted the importance of liquidity resilience and firms' preparedness for unexpected shocks. The PRA observes that the funding and liquidity landscape for UK banks will see significant changes in the next few years both in terms of normalisation of the Bank of England's balance sheet and changing market dynamics, meaning firms need to ensure the effectiveness of balance sheet management and how these changes will impact them.
- **The delay in implementing Basel 3.1.** The PRA notes that firms should ensure they continue to work through the potential implications of Basel 3.1 with their board despite the delay in implementation.

DORA Now in Force in the EU

January 23, 2025



By Michael Newell
Partner | Financial Services



By Alix Prentice
Partner | Financial Regulation

Regulation (EU) 2022/2554 on digital operational resilience for the financial sector (“DORA”), which establishes a uniform set of requirements relating to the security of network and information systems supporting financial system participants’ business processes, is now live as of 17 January 2025, without any transitional provision.

A wide range of rules applicable for managing ICT risks, including risks linked to ICT third-party service providers, is now in force. DORA applies to nearly all financial entities regulated in the EU, with very few exemptions for smaller institutions. For the first time, it also covers major unregulated ICT third-party service providers; a significant shift in European financial regulation.

In particular, DORA requires financial firms to:

- have internal governance and control frameworks that ensure they manage all ICT risks effectively;
- have a robust ICT risk management framework that enables them to address ICT risk;
- report major ICT-related incidents and notify significant cyber threats to their competent authorities;
- carry out digital operational resilience testing (see Digital Operational Resilience Testing);
- manage ICT third-party risk as an integral component of ICT risk within their ICT risk management framework; and
- share information and intelligence about cyber threats and vulnerabilities.

DORA also lays down rules for the establishment and conduct of a new oversight framework for critical ICT third-party service providers (which includes many of the large technology companies) when they provide services to the firm.

Antitrust in the Spotlight: Key Updates From the FTC and DOJ

January 23, 2025



Cadwalader counsel [Bilal Sayyed](#) has recently authored two [Client & Friends Memos](#) discussing notable shifts in antitrust enforcement from the Federal Trade Commission and Department of Justice.

- [FTC & DOJ: Board Observers Are Subject to the Antitrust Laws' Prohibition on Interlocking Directorates](#)

The Department of Justice and the Federal Trade Commission have been active recently in identifying and achieving remediation of interlocks that may violate Section 8 of the Clayton Act and/or Section 5 of the Federal Trade Commission Act. In a recent joint DOJ and FTC “statement of interest,” the agencies argue that the prohibitions of Section 8 and Section 5 apply to *board observers* and not only officers and directors.

- [FTC & DOJ Substantially Revise Guidance on Application of Antitrust Laws to Activities Affecting Workers: Trump Administration Likely to Adopt Some But Not All of the Guidance](#)

Two working days before the inauguration of President Trump, the federal antitrust agencies have withdrawn the *Antitrust Guidance for Human Resource Professionals* (2016) (“Guidance Document”), and issued *Antitrust Guidelines for Business Activities Affecting Workers* (2025) (“Guidelines”).

CFTC Under Trump Will Focus More on Existing Laws: Legal Insight

January 23, 2025



Cadwalader partner [Peter Malyshev](#) authored an article, "CFTC Under Trump Will Focus More on Existing Laws: Legal Insight," published by Bloomberg Law on January 16.

The Commodity Futures Trading Commission ("CFTC") is expected to focus more on fraud and manipulation and less on regulation by enforcement during the incoming Trump administration. In this article, Peter discusses the specific changes and shifting priorities coming to the CFTC under new leadership.

Read the full article [here](#) (subscription required).

How Bank Lawyers Can Make Peace With AI Tools

January 23, 2025



Wednesday, January 29

LIVE WEBINAR

*AI and Bank Operations
and Supervision*

Mercedes Tunstall

Partner

CADWALADER

Please join Cadwalader Financial Services partner, **Mercedes Tunstall** for a live webinar discussing how to approach, evaluate and address the risks of artificial intelligence tools.

AI and Bank Operations

Wednesday, January 29

4:00 PM - 5:00 PM

Register [here](#).