

Better prepared than surprised

Writing in his column last month about the pending regulatory reform legislation, ABA Chairman Art Johnson observed, "My son is the compliance officer for our family-owned bank. As I like to tell people, that puts him on the growth side of the business."

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A sense of humor will be essential to keeping your sanity as the industry enters the post-crisis era.

Despite victories during the intense legislative scrum over financial reform—due to almost nonstop efforts by ABA, state associations, and their bank members—the industry will be facing new rules, new rule-writers, and possibly new enforcers. It will take time before all the new regulations are in place, but there are several important regulatory changes that are occurring right now, and need bankers' attention. Three are covered in this issue.

First, the cover story (p. 28) sounds a sharp warning about a new push to use the regulatory tool known as "Unfair and Deceptive Acts and Practices," or UDAP, first used by the Federal Trade Commission. Jo Ann Barefoot, a long-time contributor to the magazine, former regulator, and bank consultant does an excellent job of sketching out the challenge. And it's a big one. More importantly, she also lists a series of steps banks can take to avoid running into the UDAP "iceberg."

Those steps alone, however, may not be enough. "UDAP isn't about compliance," she writes, "it's about risk. More deeply, it's about ethics. It's about culture." Barefoot believes that relatively few banks have truly made the transition from a technical focus on "compliance," to a proactive process that anticipates, weighs, and handles risks.

A second regulatory challenge is covered this month in Tech Topics (p. 22), where bank technology consultant Dan Fisher writes that regulators are beginning to shift some of their focus and manpower from credit and liquidity to technology issues. This also is part of the broad regulatory shift to a focus on risk management. Fisher says bankers he's worked with have already experienced much tougher IT exams, which put much more emphasis than previously on senior management and board oversight.

Finally, in this month's Compliance Clinic (p. 39), contributing editors Lucy Griffin and Nancy Castiglione examine the implications of the Fair Lending settlement between Wells Fargo and the NAACP. Here too, the emphasis of the article is on what you can do, or watch out for, going forward.

And "going forward" is what is important. Banking may be entering a new era of tougher regulation—some of it overkill. The industry will not only survive it, but the adaptable among its ranks will thrive, figuring out how to benefit from some of the changes. These three articles are a part of that figuring-out process. More to come. —