CaliforniaBanker

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A PUBLICATION OF CALIFORNIA BANKERS ASSOCIATION

CALIFORNIA BANKERS ASSOCIATION

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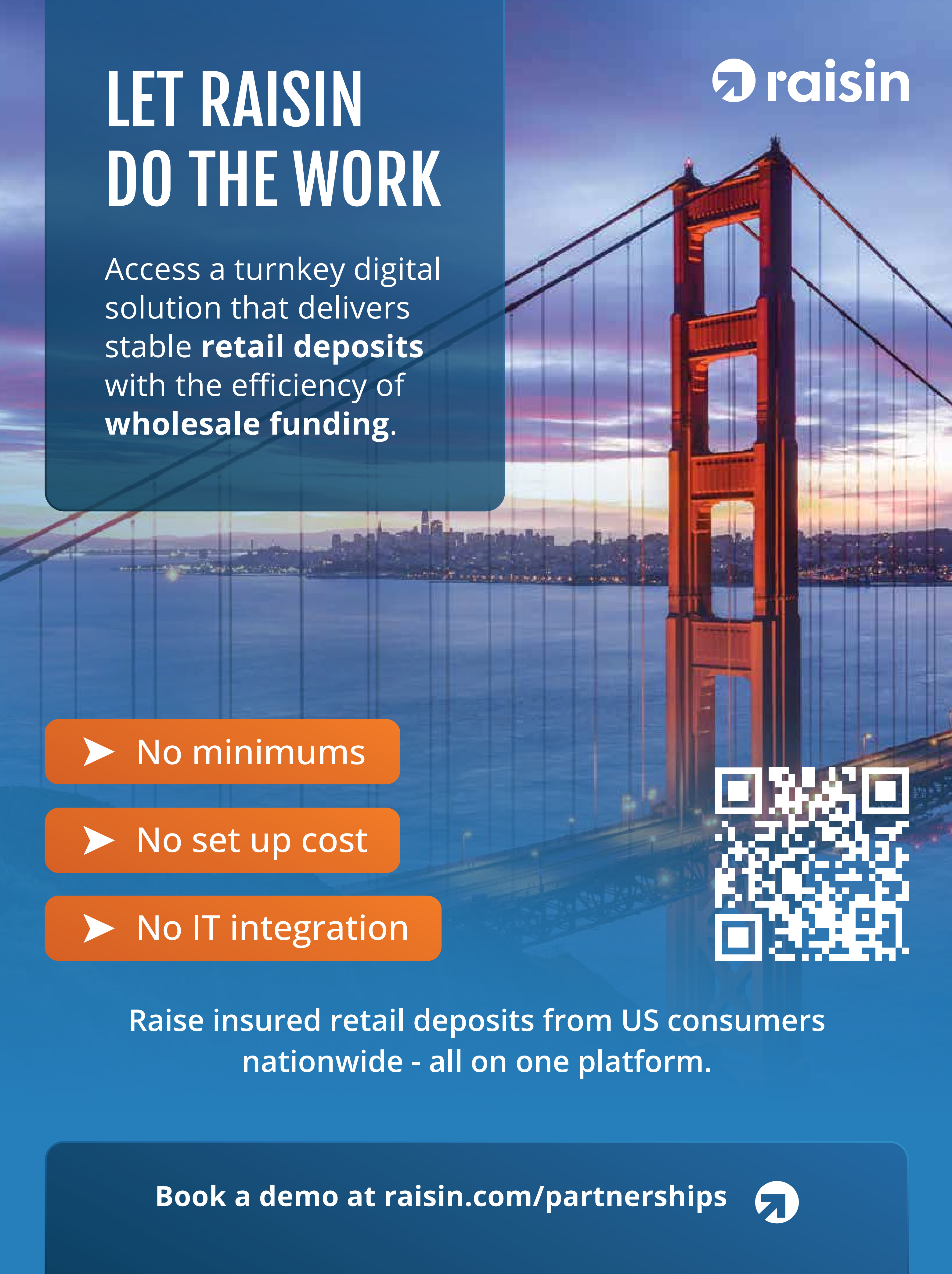
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We believe that proactive engagement with our government officials is essential for ensuring that the needs of our members and the communities they serve are prioritized.

Wildfire Response One Example of Our Industry's Strength and Solidarity

As Los Angeles begins the process of rebuilding in the aftermath of the devastating wildfires in January, we want to recognize the remarkable response from bankers who are proactively stepping up to support their customers and communities through these challenging times. Bankers took immediate action by implementing measures such as enhanced loan flexibility, extended payment deadlines, and dedicated resources to assist those affected. Their swift relief efforts exemplify the strength and solidarity within our industry and illustrate the deep commitment that banks have to their communities. We are also extremely grateful for the support from ABA and state banking associations across the country who provided charitable contributions to disaster relief organizations.

Reflecting on our recent initiatives, we hosted a successful Bank Presidents Seminar in January, featuring the inspiring Brandi Chastain and a distinguished lineup of presenters. It was an honor to have Governor Michelle "Miki" Bowman from the Federal Reserve as a speaker. Governor Bowman's insights into the financial landscape provided valuable perspectives for our members. In addition, attendees gained critical insights into the current economic landscape, regulatory updates, M&A developments, and more, empowering them to navigate the evolving financial environment. We also honored our Distinguished Banker, Rick Smith, at the gala dinner for his unwavering commitment to the communities he serves, his contributions to the association, and his support of the industry. We are pleased to announce that Rick Smith is featured on the cover of this issue of the magazine, where his inspiring story is shared in more detail.

We are excited about our recent virtual program, which included a focus on the BankWork$ initiative — an impactful program providing vital training for individuals in under-served communities to pursue rewarding careers in banking. This effort not only enhances our workforce but also enriches our communities.

In our ongoing efforts to support our members, our Government Relations team has been actively engaging with legislators, especially with new lawmakers that comprise a third of the Legislature. These discussions are crucial as we prepare to address a myriad of pressing legislative issues. We believe that proactive engagement with our government officials is essential for ensuring that the needs of our members and the communities they serve are prioritized.

In late February, we had the opportunity to travel back to Washington, D.C., to visit with recently elected freshman members. We had a day of jam-packed meetings where we discussed a range of legislative and regulatory issues of concern to our industry. Looking forward, our April trip to D.C. presents an invaluable opportunity to engage with members of the California delegation and key regulators. We will passionately advocate for the pressing issues facing our industry, ensuring that our collective voice is heard on matters that impact us all. We encourage our bank members to join us on this trip and share your experiences in banking with legislators.

We are also gearing up for the Annual Conference & Directors Forum at the prestigious La Quinta Resort & Club, commencing May 13. We are thrilled to announce that Joe Theismann will be our opening speaker, setting the stage for an impactful and inspiring gathering. We encourage everyone to join us for this premier event.

Additionally, our collaboration with the California Credit Union League has resulted in a powerful opinion piece that will be circulated digitally across the state and is also featured in this issue of the CaliforniaBanker magazine, amplifying our shared vision and focus on preventing fraud.

As always, we are grateful for your continued support. Your input and engagement is crucial to our mission, and we are excited to connect with you at upcoming events. Together, we can navigate the challenges ahead and strengthen our communities.

Bringing members together. Making our banks better.

Kevin Gould
President & CEO, California Bankers Association

Rick Smith Honored as CBA Distinguished Banker of the Year

Q: The California Bankers Association is proud to announce that Richard (Rick) Smith, the president and CEO of Tri Counties Bank, has been named the CBA's Distinguished Banker of the Year. Smith received this prestigious award during the CBA's Bank Presidents Seminar held on January 9, 2025.

This accolade recognizes an outstanding banker who embodies the spirit of a distinguished California banker — someone dedicated to the industry, who serves as a role model for future leaders, actively engages in their community, and exhibits strong leadership within the association.

"The California Bankers Association was honored to have presented this award to Rick," said Kevin Gould, president and CEO of the California Bankers Association. "Our association has benefitted greatly from Rick's guidance and leadership over the years. In addition to serving as the chair of our board of directors, he has led and dedicated countless hours to numerous committees. Rick has been a passionate advocate for the banking community and is truly deserving of this award."

Joining Tri Counties Bank more than 30 years ago as the vice president of supermarket banking, Smith's innovative strategies have positioned the bank as a leader in this sector, culminating in the opening of 27 branches in prominent grocery outlets such as Albertsons, Walmart and Raley's.

During his extensive career at Tri Counties Bank, Rick has held several key roles, including Senior Vice President of Bank Operations, Chief Information Officer, and Chief Operations Officer. He became President and CEO on November 16, 1999, and was appointed Chairman of the Board on May 27, 2020. Under his leadership, the bank has expanded from less than $500 million in assets when he joined in 1993 to nearly $10 billion by 2025. The bank also acquired six community banks, growing its branches from 13 to 68 and its workforce from 200 to more than 1,200 employees.

Tri Counties Bank has reported positive earnings consistently since 1975 and has issued quarterly stock dividends for more than 35 years. Recently, the bank was recognized as the "Best Place to Work" by the Sacramento Business Journal, and named one of "America's Best Banks" in 2024 by Forbes Magazine.

Smith has actively contributed to the California Bankers Association, serving on the board and various committees and as chairman of the board of directors in 2011. He was honored as one of the Sacramento Business Journal's "Most Admired CEOs" in March 2023 and has recently joined the newly formed Nasdaq's Bank Council (NBC).

Born and raised in Northern California, Smith earned his bachelor's degree from California State University, Sacramento, and continues to call Chico, Calif., here Tri Counties Bank is headquartered, his home. His leadership emphasizes community engagement, reflected in the bank's strong commitment to exceptional CRA performance and support during times of need. Notably, he recently led a $50,000 bank donation to aid in the rebuilding of Chico's Historic Bidwell Mansion after it was devastated by arson.

Smith has been happily married to his wife, Becki, for over 37 years. The couple is blessed with two wonderful daughters, fantastic sons-in-law (Andie and Steven Koehnen and Delaney and Eric Hodge), and 3-plus grandchildren under the age of five: Parker, Taylor and Miles, with a "Baby Girl" expected in May. When he's not spending time with his grandkids, Smith enjoys golfing, relaxing at the cabin, or boating on a lake. »


CALIFORNIA REPUBLIC

Lawmakers Return to Work: New Faces, Bold Agendas, and the Fight to 'Trump-Proof' the State

By Jason Lane, Senior Vice President and Director of Government Relations, California Bankers Association

California's 2025-26 legislative session commenced on January 6 with an influx of 37 freshman legislators — 24 in the Assembly and 13 in the Senate — comprising nearly one-third of the 120-member body. This substantial turnover is among the largest in recent history, reflecting the dynamic nature of California's political landscape. This new group of legislators brings a diverse array of experiences, including former local government officials, community activists, and professionals from various industries. A record high 49 percent of the seats (59 seats) are now filled by female legislators — double the number from seven years ago. The state Senate has achieved gender parity for the first time, with women occupying 21 of the 40 seats.

Although many members of the freshman class campaigned on pledges to tackle California's cost of living, healthcare, education, and family services, the new session began with a focus on partisan debates over social issues. Shortly after the presidential election, Gov. Gavin Newsom called a special session to "Trump-proof" California, aiming to safeguard the state against potential federal policies that could undermine its progressive agenda.

Newsom's plan includes the expansion of the state's authority to set stricter environmental regulations, including emissions standards and renewable energy targets, ensuring that California remains a national leader in combating climate change, and fully funding the California Department of Justice for ensuing legal battles with the Trump administration. Additionally, the governor is prioritizing bolstering reproductive healthcare access and LGBTQ+ protections, doubling down on policies to shield vulnerable populations from regressive federal actions. As legislators look to protect California values, these efforts are being balanced against the need to secure federal funding for Los Angeles wildfire victims.

State Legislative Outlook

"Trump Proofing" California could also lead to enhanced consumer protections for Californians, particularly if policymakers hold the view that Trump is likely to weaken the Consumer Financial Protection Bureau. As we survey the landscape of potential legislative action relative to banking, there are a number of legislative proposals that may surface in the 2025-26 legislative session.

State-Level CRA: Lawmakers may look to revive past efforts to adopt state-level Community Reinvestment Act (CRA) requirements to ensure financial institutions meet the credit needs of underserved communities. These efforts aim to fill gaps left by federal regulations, which do not require CRA compliance for Credit Unions. While CBA supports efforts to extend CRA obligations to credit unions, we remain concerned about legislative proposals that impose new requirements on state-chartered banks, which has the potential to create duplicative reporting requirements.

Elder Financial Abuse: The legislature believes that it still has work to do to strengthen protections against elder financial abuse, especially following the Governor's veto of SB 278 (Dodd) last year. Legislators argue that banks should play a more active role in combating elder financial abuse by implementing stronger safeguards. They emphasize the need for financial institutions to better train staff to detect and prevent fraudulent activities targeting seniors. CBA is sponsoring AB 83 (Pacheco) to provide immunity protection for financial institutions when they elect to hold or deny suspicious transactions. The measure also permits financial institutions to share transaction information with a third party designated by a senior accountholder if fraud is suspected.

Payments Fraud: Lawmakers are increasingly considering measures to hold banks accountable for preventing payment fraud. These measures aim to reduce fraudulent activity

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while ensuring banks take a more proactive role in safeguarding their customers' funds.

Interchange: Following the enactment of Illinois' Interchange Fee Prohibition Act earlier this year, states are beginning to explore interchange fee legislation to address concerns about the financial burden these fees place on small businesses and consumers. Proposed measures aim to cap or regulate fees that merchants pay to banks and credit card companies for processing transactions justified by the specious assertion that reduced costs for businesses translates to lower prices for consumers.

Public Banking: With the completion of the Cal Accounts feasibility study earlier this year, and the ensuing endorsement of the California State Treasurer, introduction of implementing legislation to create the program seems likely. Proponents of AB 857 (Chiu) are attempting to advance legislation to weaken the protections negotiated by CBA in 2019. AB 857 allows local governments to apply for a public bank charter with the Department of Financial Protection and Innovation, provided specified conditions are met. The advocates are seeking to weaken the collateral and capital requirements imposed by the enacted measure, and to remove the sunset date which allows the statute to expire in 2029. Public banking groups are also advocating for elimination of the requirement that public banks obtain FDIC insurance before applying for a state charter.

Privacy and AI: Privacy remains a perennial issue for the state legislature and policymakers will continue to advance proposals to regulate artificial intelligence (AI) to ensure its development and use align with ethical and safety standards. Lawmakers will once again introduce measures requiring transparency in AI algorithms, mandating impact assessments for high-risk applications, and establishing accountability for misuse or harm caused by AI systems.

Homeowners Insurance: CBA will continue to participate in discussions on homeownership availability. Arguably the most pressing issue before the legislature this year, many homeowners are being forced to seek coverage through the state's FAIR Plan, an expensive last-resort insurance option. This situation has sparked concerns about affordability, housing market stability, and the need for regulatory reform to ensure that homeowners can access reliable and affordable insurance coverage in the future. The primary drivers of this crisis are escalating wildfire risks, with the most recent fires in Los Angeles raising concerns about uninsured or underinsured homeowners.

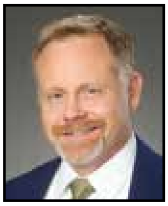
Mortgage Relief: California banks are providing vital mortgage relief for homeowners in areas impacted by the wildfires, but California lawmakers are already pursuing additional mortgage relief measures to help homeowners affected by wildfires and the financial strain caused by property losses and rising insurance costs.

Federal Legislative Outlook

The re-election of President Donald Trump is likely to bring significant changes to banking regulations, with discussions underway about consolidating or even eliminating key regulatory agencies. Generally, it is believed that the regulatory climate will be more favorable to banks, which might include streamlining merger approval processes and lowering compliance burdens. Additionally, the administration is expected to be bullish on cryptocurrency and artificial intelligence, with efforts underway to ease regulatory scrutiny of technology.

Sen. Tim Scott of South Carolina has been selected to chair the U.S. Senate Committee on Banking, Housing, and Urban Affairs, becoming the first African American senator to chair a full Senate committee. The Senator has said his focus will be on financial inclusivity and access to capital.

Representative French Hill (R-AR) has been appointed as the Chair of the House Financial Services Committee. Hill has extensive experience in banking and finance and is a strong advocate for community banking. As Chair, he is poised to play a central role in shaping banking policy and advancing Trump's agenda. Rep. Maxine Waters (D-CA) will retain her ranking minority leader status on the committee and is expected for focus on affordable housing.



Jason Lane is Senior Vice President, Director of Government Relations for the California Bankers Association and manages California state tax policy for the association, which involves analyzing legislation and regulatory activity, and the development of policy positions for the association. Lane is one of three lobbyists at CBA and, in addition to his primary focus on taxation, he also lobbies on behalf of the association on issues related to the state budget, and consumer lending legislation.

2025's Top Challenges and Opportunities for Community Banks

By Allison Maddock, Chief Product Officer, CSI

Continued adoption of open banking, enhanced cybersecurity and evolving regulatory concerns shape what financial institutions must consider when developing their strategies. However, these areas also represent a tremendous opportunity for those who adapt.

CSI's Banking Priorities Survey — which asked a cross section community bankers nationwide about their strategies and priorities for 2025 — explored both, taking the industry's pulse and plans for the year.

2025's Foremost Challenge: Cybersecurity/Data Privacy

Although we've made advances in cybersecurity monitoring technology, cyberattacks continue making headlines and concern institutions of all sizes. The average cost of a data breach rose from $5.9 million in 2023 to $6.08 million in 2024. A successful cyberattack can also expose an institution to reputational and legal consequences. For all these reasons, paired with regulatory scrutiny, 28 percent listed cybersecurity/data privacy as the most pressing issue, surpassing all other concerns.

To stay ahead of cyber threats, institutions need around-the-clock monitoring and response. A managed cybersecurity monitoring platform helps institutions identify anomalies and send alerts for investigation to ensure the threat doesn't spread. Solutions like data loss prevention (DLP) help institutions protect their data and control how it's shared. Implementing cyber hygiene is another effective strategy to improve security and keep employees and consumers safe.

2025's Second Most Significant Challenge: Interest Rates

Interest rates surged in 2022 and 2023, due to the Federal Reserve's efforts to curb inflation, creating a challenging environment for community banks. Bankers' concern for interest rates has lowered since 2023, potentially due to stabilizing rates and anticipated future rate changes from the Fed. Nevertheless, it ranked second highest on their list of concerns.

This economic uncertainty is prompting a prioritization of digital account opening and related technologies, emphasizing gaining new accounts and low-interest deposits. Institutions should also evaluate opportunities within their existing market and portfolio. Diversifying portfolios through resources like lending marketplaces is another avenue institutions are exploring to weather the effect of high interest rates.

Bankers' Top Technology Investments

Financial institutions are doubling down on digital-first technology investments to meet the evolving needs of a convenience-driven, tech-savvy clientele.

2025's Leading Investment: Efficiency Drivers like Automation or AI

At the forefront of technology investments lies efficiency drivers like automation or AI, with 43 percent of bankers acknowledging its importance. Most banks are seeking efficiencies in back-office processes, with some beginning to utilize AI and automation to remove manual steps and add new functionality.

The rise of generative AI tools, which we discuss further below, offers the potential for heightened efficiency in the banking sector. Automation enables banks to streamline processes, improve customer interactions, and strengthen fraud detection.

2025's Second Highest Ranking Investment: Data Analytics and Reporting

Garnering 42 percent of the vote, data analytics and reporting are transforming banking and customer experience. Data analytics and reporting provide banks with insight to understand customer behavior and identify areas to better serve them, including customizing offerings and promoting them via the digital experience.

Using data analytics and reporting to personalize throughout the digital experience is the core of digital engagement. To improve digital engagement, banks should strive to provide unique solutions to best serve customers and increase the adoption of those services. The more personalization banks build into their products and experiences, the more they will drive engagement, adoption and loyalty.

Bankers' Top Opportunities for 2025

Bankers are strategically engaging with consumers and embracing transformative trends that promise to redefine banking operations and customer service in the years to come.

2025's Greatest Opportunity: Harnessing the Power of AI

Thirty Three percent of bankers surveyed named AI 2025's top technology trend. Generative AI applications, for example, promise hyper-personalized, around-the-clock service. If deployed well, this could enable community banks to level the playing field. From virtual assistants to content creation tools, the applications of generative AI are vast, offering banks newfound agility and efficiency in meeting customer needs.

By embracing these deep learning technologies, institutions can position themselves as leaders in innovation and customer-centricity, driving sustained growth and profitability in an ever-evolving landscape. However, time will tell how regulations and successful use cases permeate the industry.

2025's Second-Greatest Opportunity: Real-Time Fraud Detection

As fraud continues to skyrocket, 17 percent of bankers selected real-time fraud detection as the top technology trend poised to affect the industry in 2025. FTC data showed consumers reported fraud losses totaling more than $10 billion in 2023, particularly in areas like check fraud.

Real-time fraud detection presents a valuable opportunity for community banks in 2025.

From synthetic identity fraud to check fraud, AI-powered solutions that analyze copious amounts of data stand to help institutions fight these evolving threats. Institutions should inform customers about these evolving fraud tactics.

Navigating the Road Ahead for Community Banking

From digital banking to AI and open banking, bankers are strategically engaging consumers and capitalizing on emerging trends, demonstrating measured confidence in navigating the ever-changing financial landscape.

This article only scratches the surface of their planned investments. See a more complete picture in the 2025 Banking Priorities Executive Report.

Allison Maddock serves as senior vice president and chief product officer, a role in which she leads CSI's product management team to deliver solutions aligned with CSI's vision and strategy. As a member of the executive leadership team, she uses her product management, strategy, operations and technology expertise to advance CSI's products and services.

Tackling Financial Fraud: Going Beyond Banks

By Kevin Gould, President & CEO, California Bankers Association, and Scott Simpson, President and CEO, California Credit Union League

People are more connected today than ever, a phenomenon accomplished through advances in telecommunication technology, the increased availability of powerful personal devices, and a greater reliance on social media. Unfortunately, the rise of fraud through the inappropriate use of telecommunications and social media poses a significant threat to the well-being of individuals and the financial institutions that serve them. Banks and credit unions will always play a fundamental role in protecting our customers and combating scams, but given the sophistication in the methods of communications and the prevalence of the use of devices in conducting financial transactions, we can no longer do this alone.

To address this challenging problem, we need a holistic solution; one that includes not only financial institutions but social media platforms, telecommunication companies, and government. The California Bankers Association and the California Credit Union League are united on the importance of advancing meaningful change and are sharply focused on preventing increased fraud and scams through a multi-pronged approach.

Fighting fraud holistically through shared responsibility

Bank customers and credit union members navigate an increasingly complex digital landscape. We can no longer rely solely on financial institutions to detect and prevent fraud. A comprehensive approach calls for shared responsibility, as scammers have become more sophisticated, using tactics that attempt to thwart the most vigilant financial institutions.

In fact, on Dec. 11, 2024, Acting Comptroller of the Currency, Michael Hsu, underscored the need for collective action from all stakeholders, including banks, telecommunication companies, social media platforms, and regulatory bodies, to combat fraud. We agree with Acting Comptroller Hsu and are eager to partner with all stakeholders to address this important issue.

Banks can do more

To better protect customers, banks and credit unions can provide opportunities for certain accountholders to identify a trusted contact that the financial institution can reach out to when there is suspected fraud perpetrated against our most vulnerable customers. Allowing banks to place a permissive hold on suspicious transactions can also prevent funds from ever leaving the bank or credit union.

Building a collaborative defense

A collaboration between social media platforms and financial institutions would be a leap in the fight against fraud. Imagine if social media platforms worked closely with banks to identify potentially fraudulent activity? By opening the lines of communications, platforms could alert financial institutions to suspicious activities that are targeting their users leading to swifter action on unusual transactions.

We believe such a partnership could be mutually beneficial, as one component in helping to protect our members and customers, while also enhancing the overall security of social media platforms. Sharing information on known fraudulent accounts and implementing enhanced verification features for in-app purchases could create a barrier against fraud and enable a safer online experience.

Taking a stand against fraudulent communications

Telecommunications companies play a pivotal role in combating fraud, as such activity is often initiated through phone calls and messaging services. To help alleviate scams, telecommunications providers could enhance caller authentication through technologies like the Secure Telephone Identity Revisited (STIR) and Signature-based Handling of Asserted Information Using toKENs (SHAKEN). STIR/SHAKEN helps identify and label spoofed calls and digitally validates the handoff of phone calls passing through the complex web of networks, allowing the phone company of the consumer receiving the call to verify that a call is from the number displayed on Caller ID.

Getting too social on social media

Social media sites can foster financial scams. In some cases, fraudulent accounts can be created with minimal oversight. Under federal law, financial institutions are required to comply with Know Your Customer laws to combat fraud and other illicit activities. Implementing a more robust identity verification process for social media platforms at account creation would be meaningful.

By adopting identity verification protocols such as multi-factor authentication, biometric checks, and linking user profiles to verified phone numbers or government-issued IDs, social media platforms can create a more secure environment. Enhanced account verification would make it difficult for scammers to establish fake profiles, thereby protecting their users and the broader community. While some social media platforms already offer account verification processes, we believe a more comprehensive industry standard would provide greater protections.

Boosting fraud awareness

Social media companies are in a unique position to educate their users through public awareness campaigns. These campaigns can highlight common fraudulent techniques, such as cryptocurrency fraud, phishing schemes, and romance scams.

By issuing warning messages about trending fraud attempts — especially against vulnerable populations, sharing safety tips, and providing guides on reporting suspicious activity — social media platforms can empower users to be more vigilant and proactive in protecting themselves.

Public awareness campaigns led by telecommunication providers can complement these efforts. For example, text alerts warning about recent frauds, information on apps, and educational content shared via media outlets can keep users informed and prepared.

At the federal level, lawmakers are advancing legislation to reduce cybersecurity risks through public awareness campaigns. In 2023, U.S. Representative Jay Obernolte (R-CA) introduced the American Cybersecurity Literacy Act (HR 1360). The bipartisan legislation requires the National Telecommunications and Information Administration to establish a cybersecurity literacy campaign to increase knowledge and awareness of cybersecurity risks. This is a step toward more digital security and fraud prevention.

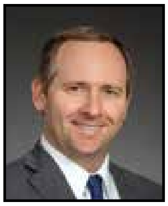
Empowering Adult Protective Services

The Adult Protective Service (APS) office operated at the county level plays a critical role in protecting vulnerable individuals from financial abuse. However, APS needs more resources to combat this problem. Lawmakers should do their part by increasing funding for APS, especially funding contingent on hiring more investigators dedicated to suspected financial abuse cases. With more resources, APS can improve its capacity to prevent and respond to potential crimes targeting vulnerable populations.

Also, requiring APS to inform mandated reporters of known or suspected financial abuse, like credit unions and banks, about the outcomes of their investigations can help assess the effectiveness of preventative measures deployed by credit unions and banks and assist with adapting strategies based on feedback.

Conclusion

We look forward to collaborating with telecommunications companies, social media platforms and the government to strengthen our collective efforts to fight fraud. Working together, we can achieve meaningful change that protects the well-being and security of our customers. As Acting Comptroller Hsu put it, solving this problem is going to require "each and every stakeholder to step up and do their part to combat fraud." »



Kevin Gould is the President and CEO of the California Bankers Association.

Scott Simpson is the President and CEO of the California Credit Union League.

The Onus of 'On Us' Checks

By Theodore "Theo" Kelly, Compliance Alliance

An "on-us" check is one that is drawn on an account held at the same bank at which it is presented. That is, the bank is both the depository bank and the payor bank. In simple terms, the opposite of an on-us check is a transit check. A transit check is presented at another financial institution and subsequently sent to the payor bank through a clearing process for settlement. On-us checks carry different risks than transit checks, creating distinct responsibilities, particularly regarding wrongful dishonor and funds availability.

No federal requirement obliges banks to pay on-us checks "over the counter." If a non-customer physically presents an on-us check to "Bank of Snow," there is no explicit requirement for the bank to pay that item (at least from a federal standpoint). Of course, most banks contractually agree to pay duly presented and properly payable items, so refusing an on-us check may incur legal risk from the drawer. That's not to say the bank is prohibited from dishonoring this type of check for a valid reason, such as insufficient funds in the drawer's account or failure of the payee to provide reasonable identification; but wrongful dishonor may occur in the absence of a valid reason. (See UCC 3-501, 3-502, and UCC 4-402.)

Wrongful dishonor occurs when a bank lacks a valid reason for refusing its obligation to pay an item according to its terms. And a bank may be held liable for damages proximately caused by its refusal. (See UCC 4-402.) Further, some states require banks to pay on us checks without regard to whether the payee is a customer (provided the check is properly payable and the payee provides reasonable identification). That is, if the bank would otherwise cash an on-us check for a customer, some states require banks to do the same for non-customers. Further, a bank's agreement with its customer may not disclaim responsibility for lack of good faith or to limit potential damages. Improper intervention between a customer's promised payment to another party may evidence a lack of good faith, or worse, increased liability for proximate damages if bad faith can be proved. (See UCC 4-103.)

If the above isn't enough to initiate a conversation with bank counsel, my compliance colleagues may want to consider the UDAAP ramifications associated with disparate treatment. Let's say your bank has a policy of cashing an on-us check for non-customers for $5. Simultaneously, the bank requires customers to deposit on-us checks and will only make those funds available according to its Funds Availability Policy. Refusing to pay an on-us check to a customer according to the same terms as a non-customer would likely incur UDAAP risks.

For instance, if a customer's account is overdrawn, but they merely want to cash the on-us check to prevent an offset of those funds, is it "fair" to not provide the same service to customers as the bank does to non-customers? Probably not. A customer could easily endorse the check to a third-party non-customer or deposit it at another financial institution to avoid the bank's offset of funds. I certainly don't want to be the person trying to explain the "countervailing benefits to consumers or competition" that somehow outweigh the injurious effects of this type of policy.

Of course, these analyses are dependent on your bank's specific policies, agreements, and the relevant federal and state authorities — it's uncertain whether the practices described above will result in administrative or civil liability. Determination of whether a violation even exists is left to the factfinder (i.e., auditor/examiner or judge/jury). That said, banks should consider implementing policy changes and other controls to bring any identified risks within the limits of their risk appetite (along with safety & soundness considerations). We always recommend consulting with bank counsel for guidance relating to legal risks.

So, we've discussed cashing on-us checks. Well, what if a customer deposits an on-us check? There is a question of the appropriate "funds availability" timeline for a deposit versus cashing an on-us check. Regulation CC generally requires a bank to make funds available to their customers as soon as the material risks associated with the type and amount of the check subside. The timelines act as a balance of safety and soundness and consumer protection risks. When a customer deposits an on-us check, the risk is relatively low because the bank can almost immediately determine that the check is authentic and that funds are available in the drawer's account. When a customer deposits a transit check, the risk is much greater because the check could be altered, fraudulent, stolen, there may be insufficient funds, the clearinghouse or payor bank may have a system issue that delays settlement, etc. Because the risk is much lower, funds from on-us checks must generally be made available no later than the next business day following the banking day of deposit.

A final word on funds availability — remember that banks are not permitted to invoke the "holds on other funds" rule when cashing on-us checks for customers.

The handling of on-us checks presents unique challenges for banks, particularly regarding wrongful dishonor and funds availability. While federal regulations may not explicitly mandate the payment of on-us checks to non-customers, banks often have contractual obligations to do so. Additionally, state laws and UDAAP considerations may necessitate equitable treatment of customers and non-customers in on-us check cashing policies. Banks should carefully navigate these complexities by establishing clear procedures for on-us check handling and consulting bank counsel and your friendly neighborhood compliance advisors for guidance.

Theodore "Theo" Kelly, JD, MBA, CCEP, Associate General Counsel Alliance, supports the Compliance Hub division of Compliance Alliance. He holds a Bachelor's Degree in Political Science from The Ohio State University, a Master's in Business Administration from Franklin University, and a Juris Doctor from Capital University Law School.

CALIFORNIA BANKERS ASSOCIATION

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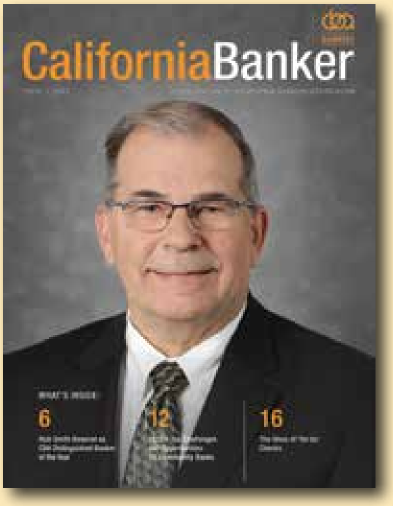

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