

Remarks by
Julie L. Williams
Acting Comptroller of the Currency
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It is a real pleasure to be here and to congratulate the ICBA on its 75th anniversary – that’s 75 years of service to the banking industry and to America’s communities. For ICBA and its many members and well-wishers, it’s a proud and important time. It’s a time to think back and appreciate the many accomplishments of community bankers, and it’s also a time to appreciate the challenges community bankers face today.

Usually, the rewards of community banking make it all worthwhile. But I also know there are moments when the frustrations and challenges are enough to make you long for a simpler life – and another line of work. And, I suspect you are finding those moments more frequent in recent years than in the past.

I’d like to talk to you today about some of those frustrations and challenges.

I want to talk to about three things I know are on your mind: the burden and cost of various consumer compliance requirements; how the OCC is approaching enforcement of the Bank Secrecy Act, and, finally, what’s happening with the CRA rules. And since we’re in Texas, I know I shouldn’t mess around getting to the point.

What do the topics I named have in common? They share a common theme on which community bankers, bank regulators, and even academic economists should agree: the burden of regulatory compliance requirements represents a serious drain on the resources of community banks and a meaningful factor for the future viability of community banking franchises. We need to recognize this as a real issue with ramifications for the fabric of our financial system; it’s not just rhetoric. And we need to do something about it.

I’m sure each community banker in the audience today could tell me about hours spent coping with ever-changing and ever-increasing compliance requirements – and that those hours take time away from serving your customers. And I’ll bet you could tell me about the significant and increasing resources you devote to compliance systems and compliance specialists, such as lawyers and consultants – and that those are resources you could be devoting to developing your business and improving your service.

From the bank regulator’s perspective, I could recite the long and lengthening list of consumer-oriented legislation and regulations – now numbering in the dozens, known

in regulator-speak as the “Alphabet rules” – and I also could tell you about the millions of dollars the banking agencies spend each year to measure and monitor banks’ compliance with those regulations.

And even economists can point to the succession of studies showing that, while compliance costs represent a serious burden for all banks, those costs take a particularly heavy toll at community banks, which don’t enjoy the economies of scale available to their larger counterparts.

We should all come to the same conclusion: regulatory burden relief, especially for community banks, should be a national priority.

Let’s start with consumer compliance disclosure requirements. In my view, this area is ripe for regulatory burden relief because the reams of disclosures you are obliged to provide aren’t working very well to inform your customers about the things those customers really want to know.

In the past several decades, Congress and regulators, with the best of motives, have approached many new consumer issues in the financial services arena by requiring more and more information to be provided to consumers. The logic behind this disclosure system seems unarguable. Give consumers the information they need to make rational decisions in their self-interest, and you stimulate healthy competition, drive down costs among providers, and create a more responsive free market.

One of the great strengths of this nation and our economy is our belief in free markets. In our financial system, with limited exception, the government does *not* dictate the price and terms of products and services that banks may offer to their customers. But, in order for this free market to work at the consumer level, consumers need to have the means to make *informed* decisions.

But how well is our system actually working? Personally, I think it’s reached the point where consumers are actually getting *too much* information that’s not what they’re really after. The volume of information they’re getting may not be *informing* them, but rather *obscuring* what’s most helpful to their understanding of their financial choices.

Think of your own customers. How many do you think actually read and understand all the disclosure materials that you must provide when you make a loan?

Do those disclosures clearly convey what your customers most want to know?

When is the last time you heard from one of your loan officers that a mortgage loan customer actually read all the material they received at a loan closing?

How many of you, even as industry professionals, understand and can explain to your customers all the mandated disclosures you are required to provide to them?

Can you blame customers who feel that the disclosures they get confuse more than they inform?

Both Congress and the bank regulators need to do a better job understanding what information consumers want to know to help them make particular financial decisions. For that reason, I am a strong advocate of incorporating consumer testing, conducted by experts in the field, whenever bank regulators impose disclosure requirements. The end result should be shorter disclosures; disclosures that customers can understand; and disclosures that tell customers what they really want to know.

But what's in this for banks? Shorter, focused consumer disclosures can meaningfully reduce your regulatory burden. Your costs are reduced if one sheet of paper can take the place of a stack. And if you run a non-complex business, why shouldn't you be subject to non-complex compliance requirements, with non-complex disclosure requirements to go with them? The time you spend on compliance matters and the money you spend on lawyers and consultants navigating through complicated requirements could be redirected to better serving your customers and improving returns to your stockholders.

These are fundamental changes to our current approach to compliance regulation that deserve to be pursued – by Congress and by bank regulators.

My second topic this morning is enforcement of the Bank Secrecy Act and anti-money laundering standards. I meet with and talk with bankers every week, and I know this is a topic that is keeping many bankers awake at night.

And I would be losing sleep too, based on things I hear about what bank examiners are doing in BSA exams and the policy positions being attributed to bank regulators – if those tales were true. At the OCC, these stories concern us, and we try to track them down. If a story accurately reflects a misguided policy, or illustrates an overly aggressive enforcement stance, we not only want to know about it; we certainly want to correct it.

And we also want to set the record straight when we hear about things that just aren't right.

For example, how many of you have heard that it is OCC policy that banks should sever their ties with money service businesses? *Not true*. Or that the OCC's due diligence expectations are set so high in order to effectively force banks to sever their ties with MSBs? *Not so*.

It is absolutely not OCC's intent that national banks should be forced to sever their relationships with money service businesses. MSBs play a vital role in the national economy, providing financial services to individuals who are not otherwise part of the mainstream financial system. Moreover, different types of MSBs clearly present varying degrees of risk. Some have been specifically licensed and are subject to regulation, some

are types of small businesses – grocery stores, for example – that cash checks as a service to their customers, while other types of enterprises conduct activities that present greater risks.

What we absolutely are saying, however, is that banks need to have controls commensurate with and adequate to monitor, manage, and control the different levels of risk presented by different types of MSBs. Put another way, a bank's controls should be geared to the level of risk presented by the types of MSBs it has as its customers. Banks need to calibrate the level of due diligence they apply to money service businesses, and it is entirely appropriate to conduct a lower level of diligence for those MSBs that present lower levels of risk. If we at the OCC need to clarify that message, we will do so; in fact, we, together with FinCEN and the other banking agencies, hope to provide that guidance on this important issue very soon.

So, now how many of you have heard that national bank examiners are empowered to impose a cease-and-desist order on their own authority, or that our recent enforcement guidance takes away examiners' discretion on whether or not to cite violations? *Not true, not true.*

First, no national bank examiner has the power to issue a cease and desist order by himself or herself. Second, the OCC's recent enforcement guidance preserves the ability of national bank examiners to exercise their judgment in determining when to recommend that a violation be cited. Any citation of a bank for a BSA violation must be reviewed and approved at the highest levels of the OCC. Because we realize the gravity of citing a violation of the BSA rules, we have put in place a process for all proposed citations to be considered by our Washington Supervision Review Committee, which reports directly to our Senior Deputy Comptrollers for Bank Supervision.

Since our enforcement guidance was issued in November 2004, approval to issue a cease-and-desist order has been granted only on the infrequent occasion when we found that a bank's BSA violations met a standard of persistence or egregiousness that set it apart. And where we conclude that a violation should not be cited, examiners have a variety of informal remedies that they can pursue, based on the circumstances of the particular bank.

Next...how many of you have heard that BSA analysis for most examiners means counting the number of SARs that an institution has filed over a particular time span? If it's too few, that's a problem; and more recently, if it's too many, that's a problem too. How many of you have heard that the OCC has a "zero tolerance" policy; one slip in failing to file a SAR and you will be hit with a C & D? *Again, not true, not true.*

Here are the facts. At the OCC, we do not determine whether a bank represents a high risk for BSA noncompliance by the number of suspicious activity reports it has filed – or not filed – during a particular period. We made a point in our recent enforcement guidance to note that the act of filing SARs is an inherently subjective judgment, and that

banks should not be cited for a decision not to file – provided the decision was made in good faith and the bank has an adequate SAR reporting process in place.

All of this is not to say that there aren't banks around the country that have BSA deficiencies that need rectifying. But in the vast majority of cases, we do not expect to have to resort to a cease-and-desist order in order to get those deficiencies addressed. Nor do we expect that, with all that you have to contend with, and the constraints on resources you have available for those purposes, an extensive corrective action can be achieved overnight. Most important to us is to see the proper culture of BSA compliance and commitment. It's when we determine that those factors of culture and commitment are missing that we're most likely to step up our scrutiny of a bank's activities – but always subject to the checks and balances laid out in our policies.

We also strongly believe that communication is key to understanding our mutual obligations and expectations under BSA – and to squelching some of the unfortunate rumors that are still circulating. That's why we are conducting BSA outreach meetings and telephone seminars, delivering speeches and interviews, and issuing clarifying guidance to bankers and our own examiners. I have personally met with the ICBA leadership to make sure that we thoroughly understand each other's point of view. We want to continue keeping all these channels open.

We also recognize the need to assure consistent implementation of OCC's policies in this important area throughout the national banking system. We have used a number of communications avenues to get the right word out to our examiners and supervisors in the field, and we will continue that effort to assure that our actions are consistent with OCC's policies and intended approach.

Finally, let me bring you up to date on what's been happening with the Community Reinvestment Act regulations. We are now in the midst of a rulemaking – I am happy to say that it's an inter-agency rulemaking – the proposal has been issued jointly by the OCC, FDIC and the Federal Reserve, so my ability to comment is constrained by requirements of the rulemaking process.

The new interagency proposal would provide a simplified lending test and a flexible new community development test for small banks between \$250 million and \$1 billion in assets – referred to in the proposal as “intermediate small banks.” It would permit these “intermediate small banks” to have their CRA performance evaluated under a two-part test: the current streamlined small-bank lending test and a flexible, new community development test, rather than the current three separate lending, investment and services tests that apply to large banks. The new community development test would give a bank flexibility to meet the community development lending, services and investment needs of its assessment areas, through a mix of CD lending, services and investments that it would determine based on its capacity and resources, and the need for and availability of CD lending, services and investment opportunities in its assessment area.

The proposal also would raise the asset threshold for when a bank is subject to the “large bank” lending, investment, and service tests to \$1 billion, and would eliminate holding company aggregate bank assets as a factor in determining whether a bank is treated as a “large bank” for CRA purposes. It also would eliminate the loan data reporting requirements for the new “intermediate small bank” population for small business, small farm, and community development loans. And the proposal would expand the universe of eligible community development activities by redefining community development to include activities that benefit people and communities in underserved rural areas and designated disaster areas.

With that summary, and respecting the constraints of the rulemaking process, let me emphasize a couple of points. *We heard you* on the issue of unnecessary regulatory burden imposed on community banks that are treated as “large banks” under the present rule. We tried to design a less complex, more flexible means to evaluate CRA performance for intermediate size banks that is a better fit for the capacities of banks in that size range and that better recognizes the *availability* of CD lending, services and investment opportunities in a bank’s community. At the same time, we sought to ensure that those banks’ basic obligations under the CRA were not undercut. It was important to us that the proposal be balanced in that regard. And, we felt that it was very important to achieve interagency consistency – at least among the bank regulatory agencies – in this important area.

Now it’s your turn to tell us what you think. I know I can count on ICBA for its usual thorough and thoughtful insights as part of the comment process.

In closing, let’s take a few steps back. I’ve talked about three areas that illustrate why we must appreciate and address the impact of regulatory compliance requirements on the resources and long-term franchise of community banks. Regulators – and legislators – should never lose sight of this. You have my promise that I won’t.

But I cannot conclude without recognizing the *most* important factor to the success of community banking is this country today – and that’s you.

There are still those who say that community banks cannot survive in a world dominated by megabanks. I couldn’t disagree more. And, I would remind those pessimists, that we’ve heard these dire predictions many times before, and community banks are here today, still serving their customers and communities. This industry has survived and thrived not because – or in spite of – things the government has or has not done, but because of your skill and dedication to serving your customers.

You would serve your communities even if there were no CRA. You would know your customers even if you were not required by rules to do so. And you would treat your customers fairly, even if it were not required by law.

This tradition of service helps to explain why Americans over the years have registered their belief that community banks should occupy a permanent place in the

fabric of our financial system. But we have to recognize that new challenges emerge with each generation, and that today, regulatory burden is a significant factor in the future of community bank franchises across the country. We need to address this so that community banking in the 21st century is not so shackled by regulatory compliance requirements that conducting the business of banking becomes a secondary activity.

Community banking is a vital component of our national economic infrastructure. All of us should have a common goal to ensure that the next generation of the best and the brightest see community banking as a vibrant, prosperous and promising business; a business they want to be part of because it delivers financial services and promotes economic vitality in communities large and small, urban, suburban and rural, throughout the land.

Thank you.