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September 15, 2003

Public Information Room
Office of the Comptroller of the Currency
250 E Street, SW
Mailstop 1-5
Washington, DC 20219
Attention: Docket No. 03-10

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Re: Docket No. R-1151

Robert E. Feldman, Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
Attention: No. 2003-20

Re: **Regulatory Publication and Review Under the *Economic Growth and Regulatory Paperwork Reduction Act of 1996***

Dear Sir or Madam:

The Independent Community Bankers of America (ICBA)[1] appreciates the opportunity to comment on the regulatory burden review now underway. The ICBA heartily commends the agencies for carrying out this extremely important task. The volume of regulatory requirements facing the banking industry today presents a daunting task for any institution, but severely saps the resources of community banks. Anecdotal evidence further suggests that the cumulative regulatory burden confronting community bankers is a factor leading to industry consolidation to the detriment of local communities and to small businesses that rely on local community banks for credit and other banking services. Therefore, this effort by the agencies is greatly welcomed by the ICBA.

THE REVIEW PROCESS

While each individual regulation may or may not in and of itself be unduly burdensome, it is the totality of regulatory requirements and their cumulative affect that result in regulatory burden. However, just as the volume of regulations can be daunting, the ICBA is concerned that the review itself will be challenging for bankers. For this reason, the ICBA believes that the review might produce greater and more useful feedback and comment if taken in more manageable groupings, particularly the consumer protection regulations.

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[1] ICBA is the nation's leading voice for the community banks, representing some 5,000 institutions at more than 17,000 locations nationwide. ICBA's members hold more than $511 billion in insured deposits, $624 billion in assets and more than $391 billion in loans for consumers, small businesses and farms. They employ nearly 231,000 citizens in the communities they serve.

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The regulatory outreach meetings held to date in Orlando, St. Louis and Denver have been very productive, and we applaud the agencies for hosting them. As the process moves forward, we encourage the agencies to continue to hold similar meetings in other parts of the country, and to consider similar focus groups with interested parties.

During the first three meetings, it became apparent that the two areas that provide the greatest concern for bankers are the many consumer regulations and Bank Secrecy Act compliance. For the latter, new demands under the USA PATRIOT Act and the increased focus on anti-money laundering and anti-terrorism efforts should be reviewed independently after banks have had time to adjust and assess the new requirements. For example, the ICBA strongly encourages the agencies to carefully assess Office of Foreign Asset Control (OFAC) requirements in this regard, and the guidance needed to help banks comply.

The area of regulations that has the greatest impact on bank day-to-day operations is the many consumer regulations, from the Equal Credit Opportunity Act through the Truth-in-Lending Act and Truth-in-Savings Act. These consumer protection regulations affect applications, account openings and daily operations of virtually every aspect of the bank. Because of the breadth of their impact, in order to better enable bankers to comment, the ICBA strongly urges the agencies to review these regulations in more discrete groups in separate timeframes, rather than all consumer protection regulations in the same group at the same time. For example, it might be logical to group all real estate lending requirements into one section for review at one time and deposit regulations into a separate grouping at another time.

As the process moves forward, the ICBA also strongly encourages the agencies to bear in mind the functional impact of different regulations and, if possible, coordinate regulatory requirements. For example, when a customer comes into a branch to apply for a car loan, there is no single "lending rule." Rather, there is a myriad of regulatory requirements that affect each bank product or service. If the regulations could be coordinated or if the agencies could provide guidance based on products and services outlining what regulations apply to that product or service, it would be both useful for banks and helpful for the agencies' analysis of the regulations. For example, many banks offer money market deposit accounts; a list of all the regulations that apply to such an account would be extremely useful. Similar guidance should be offered for each type of product and service. In other words, if a bank offers a home equity line of credit, the regulators would provide a checklist of all the regulations that a bank compliance officer (and examiner) needs to consider to ensure that the bank offers that home equity line in compliance with federal banking requirements.

THE CURRENT REVIEW

This first set of regulations being reviewed as part of the EGRPRA process are those governing applications and reporting, powers and activities and international operations. Anecdotal feedback from ICBA members suggests that one-time activities, such as applications to acquire a bank or a branch, are not the regulations that create the major burden. While there is certainly room for improvement and streamlining, the ICBA believes that the primary focus of the agencies should be on areas where regulations impact the regular daily activities of the bank, such as opening accounts or making loans. Second, the regulators should carefully consider and review the areas of reporting required from banks to assess whether all the reports are necessary and whether data could be provided in less burdensome formats. And finally, the examination process needs careful and thorough evaluation.

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Applications and Reporting

The ICBA believes that there are a number of steps that could be taken to reduce the burden in the area of applications and reporting. Following are specific comments pertaining to individual regulations identified in the proposal.

Federal Reserve Regulation Y, Appendix C. Appendix C of Regulation Y includes the Small Bank Holding Company Policy Statement on Assessment of Financial and Managerial Factors (Policy Statement). This Policy Statement applies only to bank holding companies with pro forma consolidated assets of less than $150 million that (1) are not engaged in any non-banking activities involving significant leverage and (2) do not have a significant amount of outstanding debt that is held by the general public.

ICBA submitted a petition to the Federal Reserve in 1989 and a comment letter in 1996 urging the Board to revise the Policy Statement to define small bank holding companies as those whose assets totaled $500 million or more, rather than the outdated $150 million. In addition, we recommended the debt-to-equity ratio threshold of 1:1 be increased to 3:1.

In light of the fact that the $150 million exemption level has remained a static figure since 1972, the ICBA is even more adamant that the limit be raised given the average asset growth in the banking industry and inflationary pressures. In order to truly represent the asset size of a small BHC today, the exemption should be raised to $1 billion. The lack of indexing for the $150 million over the past 31 years has hindered the ability of small banks to facilitate the transfer of ownership and remain independent, rather than selling out to a larger regional BHC. Increasing the exemption to $1 billion would improve the ability of small local institutions to sell their stock locally, keeping the financial decisions affecting the community in the local area.

Small banks and small bank purchasers frequently borrow all or a substantial portion of the purchase price in an acquisition. Therefore, the debt-to-equity ratio for small BHCs should be raised to 3:1. It does not require a significant amount of debt to increase the debt-to-equity ratio to 3:1, nor does it cause any significant systemic risk. The difference in a small BHC as opposed to a large BHC is that the large BHCs cannot cut their dividends without adversely affecting their ability to raise equity capital. Dividends are essential if a large BHC is to main an acceptable market price for its stock. The dividends for a small BHC, however, can be reduced, in most instances, without significantly impacting the ability of the small BHC to raise equity capital. Restriction of dividends is easier for institutions that are closely held and where the decision involves a limited number of owners.

Federal Reserve Regulation Y, Subparts A- F, I and J

Applications by Small Bank Holding Companies. Throughout Federal Reserve Regulation Y, there are instances where the application or notice requirements for bank holding companies with consolidated assets of less than $150 million are different from the requirements for bank holding companies with consolidated assets greater than $150 million. For instance, when a bank holding company files a notice to the Federal Reserve for the purchase or redemption of more than ten percent of its stock which it is required to do under Section 225.4 of Regulation Y, bank holding companies with assets more than $150 million must disclose consolidated pro forma risk-based capital and leverage ratio calculations and if the redemption is to be debt funded, a parent-only pro forma balance sheet whereas bank holding companies with

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assets less than $150 million have to submit only a parent-only balance sheet and if the redemption is to be debt funded, one year income statement and cash-flow projections. In an effort to further streamline the application process, ICBA urges the Federal Reserve to increase the $150 million threshold to $1 billion, particularly if the definition of a small bank holding company in Appendix C is changed to $1 billion.

Notice Requirements. Also throughout Regulation Y, including the change in bank control provisions, bank holding companies are required to publish notices in newspapers of general circulation whenever applications or notices are filed with the Federal Reserve. (The Federal Reserve also publishes the notices in the *Federal Register.)* Bankers complain that the newspaper notices are often expensive and that few people read them. Often these notices must be published in weekly newspapers, particularly if the bank's main office is located in a rural community. The inconvenience of publishing in a weekly newspaper can often delay the acceptance of an application by the Federal Reserve. Bankers also report delays with their applications because the Federal Reserve Banks require bankers to submit "tear sheets" from the newspaper indicating that the notice has been published. ICBA urges the Federal Reserve to eliminate the newspaper publication requirement for applications and notices under Regulation Y. In lieu of publishing in a newspaper of general circulation, ICBA suggests that notices be posted online on the Federal Reserve's website or on a separate website set up by all the bank agencies which would be devoted to financial institution notices and applications.

Federal Reserve Regulation H, Subparts A, B and G

Dividends. Section 208.5 of Regulation H prohibit a member bank from declaring or paying a dividend if the total of all dividends declared during the calendar year, including the proposed dividend, exceeds the sum of the bank's net income during the current calendar year and the retained net income of the prior two calendar years, unless the dividend has been approved by the Board. ICBA suggests that he Federal Reserve eliminate this requirement for banks that are well-capitalized and will continue to be well-capitalized following the declaration of the dividend. Banks with excess capital often find it difficult to reduce their capital because of this restriction. Once they declare an extraordinary dividend that exceeds their income for the current year and their income for the prior two years, they must wait several years before they can declare another extraordinary dividend that exceeds their current year's income. Elimination of this requirement will ease the regulatory burden on banks that have excess capital.

Branch Applications. Section 208.6 of Regulation H requires a state member bank wishing to establish a branch to file an application with the Federal Reserve and to publish notice of the filing in a newspaper of general circulation. As noted above, ICBA urges the Federal Reserve to eliminate the newspaper publication requirement for all Federal Reserve applications and notices. Bankers report that few people read the notices and that they are expensive. ICBA also recommends that the Federal Reserve consider eliminating the requirement of filing a branch application for "eligible banks" (e.g., those with high CAMEL ratings and satisfactory CRA ratings and compliance ratings) particularly if the branch that is being acquired is less than a certain percentage of the total consolidated asset value of the bank or less than a certain dollar amount. Banks do not need to file an application with the Federal Reserve every time they acquire a branch. Furthermore, branch applications that are filed with the Federal Reserve are often duplications of applications filed with the state banking authorities. Both the state banking authorities and the Federal Reserve consider the same factors for approving branch applications

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such as capital adequacy, convenience and needs, etc. It is unnecessary and duplicative for member banks to file branch applications with both the state banking authorities and the Federal Reserve.

Call Reports (12 CFR Part 304)

Bankers often complain about the regulatory burden of Call Reports. They feel that the information requested by these reports is far more than the regulatory agencies need and that it is hard to complete the numerous schedules to the reports. ICBA applauds the goal of the banking agencies to automate the Call Report system and to build a central data repository. However, we recommend that the agencies convene an industry-wide task force to review all the information that is required by the Call Report to determine (a) if such information is necessary for the agencies to carry out their supervisory responsibilities, (b) whether any information can be removed from the Call Report, and (c) if there is an easier method for the banks to retrieve and prepare the information and send it to the agencies in a format most compatible with existing bank data processing systems. Such a task force of bankers could assist in streamlining the requirements of the Call Report and provide recommendations for facilitating the retrieval of Call Report data.

Powers and Activities

OCC Lending Limits. Currently, the OCC is conducting a pilot program that allows eligible national banks to take advantage of higher lending limits for small business loans and residential real estate loans. The OCC offered the pilot in connection with its own efforts to eliminate regulatory provisions that are unduly burdensome for community banks and promote their competitiveness. Although the ICBA strongly recommended that the OCC include agricultural loans in the pilot, the OCC declined to do so.

Many community banks are agricultural lenders, and the ICBA again strongly urges the OCC to include agricultural loans in the categories of loans eligible for the higher lending limits. This is an area where increased lending limits would be especially beneficial for community banks, many of which are located in rural markets and are dependent on agricultural lending. Without an increased lending limit for agricultural loans, those banks may not benefit from the OCC's proposal at all. As long as the loans are structured properly, and as long as the bank is well-managed and well-capitalized, there is no reason that agricultural loans could not be included. Essentially, agricultural loans are small business loans.

As with small business loans, the OCC could use the CRA Regulation/Call Report Instructions for guidance in defining these loans. However, as with small business loans, and for similar reasons, the $500,000 size limit for "small farm loans" of the CRA Regulation/Call Report Instructions should not apply for purposes of the increased lending limit.

Many agricultural lenders report that there has been a consolidation in farming operations with commensurate demands for larger lines of credit from a single lender. If a $500,000 cap were applied to the amount that a community bank could lend to one agricultural borrower under the pilot, it would defeat the ostensible purpose of an increased lending limit. Such a cap would only benefit the smallest community institutions. In fact, using the cap found in the CRA Regulation/Call Report Instructions would be much more severe in its application to agricultural loans than for small business loans. For example, a $35 million asset bank with 10 percent capital can already make a loan over $500,000 under current OCC lending limits. Therefore, a

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cap of $500,000 for agricultural loans to one borrower would provide little or no benefit for banks larger than $35 million. While the CRA Regulation/Call Report Instruction might provide guidance for identifying the purposes of a loan to categorize it as a small business or small farm loan, the ICBA strongly urges that the size cap not be included.

Debt Cancellation Contracts. The ICBA does not have any explicit recommendations for changes to the current OCC requirements on debt cancellation requirements. However, as this is one of the first regulations to be evaluated under the EGRPRA review process that includes consumer disclosures, the ICBA believes it is appropriate to take the opportunity to make a general recommendation regarding consumer disclosures.

One of the most frequently heard complaints from bankers is that customers ignore or disregard disclosures as meaningless, inappropriate or unnecessary. However, the bank must still go to the effort and expense to ensure that the disclosures are provided accurately and in accordance with regulations. As part of the overall EGRPRA review process, the ICBA recommends that the agencies develop focus groups of both bankers and consumers to assess the many consumer disclosures. Feedback from these focus groups could provide information that the agencies should have on the utility and validity of disclosures. Moreover, such feedback would provide data for reports to Congress on disclosures. As Comptroller of the Currency John Hawke noted in a presentation to the ICBA Convention in March 2003, disclosures should be meaningful and provide information that allows consumers to make appropriate choices. Without feedback from consumers, it is difficult to comprehend how that goal can be achieved. Therefore, the ICBA strongly recommends the agencies begin a process of soliciting such feedback.

INSTITUTION OF A REGULAR REVIEW PROCESS

While the ICBA strongly supports the overall EGRPRA burden review, and hopes that it can provide much needed relief for the banking industry, the ICBA also believes that the breadth and scope of the review may make it difficult to manage. As a companion to this worthwhile process, the ICBA also recommends that each agency institute its own process of regulatory review. The Federal Reserve has established a system of review of many of the consumer regulations, and the ICBA urges all the agencies to establish a formal review process for each regulation within a set period of time. However, as a part of this process, the agencies should ensure that revisions do not actually make the regulation more burdensome.

Another consideration would be the creation of a review process within 18 to 24 months after new regulations are implemented to assess the effectiveness of the regulation after it has been finalized to ensure that it is meeting its goals with a minimum of regulatory burden. While the ICBA recognizes that these projects will require additional resources, the overall burden on the industry of regulations makes it a recommendation that should be seriously considered.

CONCLUSION

The ICBA commends the agencies for undertaking this task, and we look forward to working with the agencies to identify areas of regulatory burden that can be eliminated or updated without compromising the safety and soundness of the institution or without reducing needed consumer protections.

This must be an ongoing and dynamic process with input from all interested parties. Continued forums and focus groups will help elicit feedback and comment and should supplement written comments. The ICBA also believes that it is critical to recognize that this process is one that must be ongoing and incorporated into every aspect of rule-making and regulation review. The process of regulatory review should not end with this particular project, but should be one that the agencies constantly strive to incorporate into their operations.

Thank you for the opportunity to comment. We look forward to continuing to work with the agencies on this project. If you have questions or need any additional information, please contact either Rob Rowe or Chris Cole, ICBA's regulatory counsels at 202-659-8111.

Sincerely,

Ken Guenther
President & CEO

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