

From: Kerry Hoops [kerry.gasb@ffgbank.net]
Sent: Monday, April 19, 2004 11:11 PM
To: Comments OTS
Subject: EGRPRA Review of Consumer Protection Lending Related Rules

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Dear OTS:

As a community banker, I greatly welcome the regulators' openness to consider input on the critical problem of regulatory burden. Community bankers work hard to establish the trust and confidence with our customers that are fundamental to customer service, but consumer protection rules frequently interfere with our ability to serve our customers. The community banking industry is slowly being crushed under the cumulative weight of regulatory burden, something that must be addressed by Congress and the regulatory agencies before it is too late. This is especially true for consumer protection lending rules, which though well intentioned, unnecessarily increase costs for consumers and prevent banks from serving customers. While each individual requirement may not be burdensome itself, the cumulative impact of consumer lending rules, by driving up costs and slowing processing time for loans from legitimate lenders, helps create a fertile ground for predatory lenders. It's time to acknowledge that consumer protection regulations are not only a burden to banks but are also a problem for consumers who are becoming overwhelmed with the number of consumer-protective type disclosure documents that are thrown at them when we close a loan.

Truth in Lending (Federal Reserve Regulation Z)

Right of Rescission. One of the most burdensome requirements is the three-day right of rescission under Regulation Z. Rarely, if ever, does a consumer exercise the right. Also, consumers resent having to wait three additional days to receive loan proceeds after the loan is closed, and they often blame the bank for "withholding" their funds. Even though this is a statutory requirement, inflexibility in the regulation makes it difficult to waive the right of rescission which further aggravates the problem. If not outright repealed, depository institutions should at least be given much greater latitude to allow customers to waive the right. This is another example of a regulation that was put in place due to a few unscrupulous lenders who took advantage of people and rather than penalizing those few, the whole industry suffers through this additional regulation.

Finance Charges. Another problem under Regulation Z is the definition of the finance charge. Assessing what must be included in - or excluded from - the finance charge is not easily determined, especially fees and charges levied by third parties. And yet, the calculation of the finance charge is critical in properly calculating the annual percentage rate (APR). This process desperately needs simplification so that all consumers can understand the APR and bankers can easily calculate it. The fear of under-disclosing and being penalized by regulators often forces banks to

overstate the APR to avoid regulator scrutiny, which ultimately could result in the loss of the loan to a competitor who is not taking such a conservative approach to this regulation.

Credit Card Loans. Resolution of billing-errors within the given and limited timeframes for credit card disputes is not always practical. The rules for resolving billing-errors are heavily weighted in favor of the consumer, making banks increasingly subject to fraud as individuals learn how to use the system, even going so far as to do so to avoid legitimate bills at the expense of the bank. There should be increased penalties for frivolous claims and more responsibility expected of consumers.

Equal Credit Opportunity Act (Federal Reserve Regulation B)

Regulation B creates a number of compliance problems and burdens for banks. Knowing when an application has taken place, for instance, is often difficult because the line between an inquiry and an application is not clearly defined.

Spousal Signature. Another problem is the issue of spousal signatures. The newly implemented revision to Reg B makes it difficult and almost requires all parties - and their spouses to come into the bank to personally complete loan documents. The revised Reg also seeks to verify the intent of the applicants in the lending process. In a rural community like ours, with a large portion of agricultural and small business credit where one spouse handles the majority of the business, it is rather absurd to have both spouses come into the bank each time they want to apply for a loan to verify their intent. We know our customers and they know us and they expect simple, unencumbered access to credit without jumping through numerous hoops. This new Reg also makes little sense as the world moves toward new technologies that allow for the on-line application of loans with electronic signatures similar to the IRS and the electronic transmission of their federal income tax returns.

Adverse Action Notices. Another problem is the adverse action notice. It would be preferable if banks could work with customers and offer them alternative loan products if they do not qualify for the type of loan for which they originally applied. However, that may then trigger requirements to supply adverse action notices. For example, it may be difficult to decide whether an application is truly incomplete or whether it can be considered "withdrawn." A straightforward rule on when an adverse action notice must be sent - that can easily be understood - should be developed.

Other Issues. Regulation B's requirements also complicate other instances of customer relations. For example, to offer special accounts for seniors, a bank is limited by restrictions in the regulation. And, most important, reconciling the regulation's requirements not to maintain information on the gender or race of a borrower and yet obtain copy of driver's licenses and other sufficient information to identify a customer under section 326 of the USA PATRIOT Act seems contradictory and extremely burdensome. And always, the nation's financial institutions are always called on, through additional regulation, to monitor everything from money laundering to terrorist identification.

Home Mortgage Disclosure Act (HMDA) (Federal Reserve Regulation C)

The volume of data that must be collected and reported is clearly burdensome. The changes implemented in 2004 make this statement even truer. Now, even more loans from our commercial and agricultural loan portfolios are considered HMDA reportable under the new definition of refinance. These loans will further skew the HMDA data from its original intent.

Certain data collection requirements are difficult to apply in practice and therefore add to regulatory burden and the potential for error, e.g., assessing loans against HOEPA (the Home Owners Equity Protection Act) and reporting rate spreads; determining the date the interest rate on a loan was set; determining physical property address or census tract information in rural areas, etc. Talk about additional regulatory burden!

Exemptions. The HMDA requirements are the one area subject to the current comment period that does not provide specific protections for individual consumers. HMDA is primarily a data-collection and reporting requirement and therefore lends itself much more to a tiered regulatory requirement. The current exemption for banks with less than \$33 million in assets is far too low and should be increased to at least \$250 million.

Ironically, at a time when regulators are reviewing burden, the burden associated with HMDA data collection was only recently increased substantially. Consumer activists are constantly clamoring for additional data and the recent changes to the requirements acceded to their demands without a clear cost-benefit analysis. All consumers ultimately pay for the data collection and reporting in higher costs, and regulators should recognize that.

Flood Insurance

The current flood insurance regulations create difficulties with customers, who often do not understand why flood insurance is required and that the federal government - not the bank - imposes the requirement. The government needs to do a better job of educating consumers to the reasons and requirements of flood hazard insurance. Flood insurance requirements should be streamlined and simplified to be understandable.

Additional Comments

As a community banker, we are often called upon to wear many hats. However, the regulatory burden in the banking industry continues to grow exponentially. In fact, the amount of banking regulation that I have seen put in place in my short 20 year banking career is staggering. Where does it end? And, unfortunately as a community bank with limited resources, we are forced to comply with the same level of regulation as large financial institutions. Somehow, banking regulations must be tiered to different size banking institutions or reduced based on a history of compliance or limited infractions.

It would be much easier for banks, especially community banks that have limited resources, to comply with regulatory requirements if requirements were based on products and all rules that apply to a specific product were consolidated in one place. Second, regulators require banks to provide customers with understandable disclosures and yet do not hold themselves to the same standard in drafting regulations that can be easily understood

by bankers. In fact, many times even the regulatory examiners themselves don't know how to interpret some of the regulations and how they are written. Finally, examiner training needs to be improved to ensure that regulatory requirements are fairly and uniformly enforced.

Conclusion

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. We need help immediately with this burden before it is too late. Community bankers are in close proximity to their customers, we understand them and their special circumstances and we pride ourselves on providing a more personalized and responsive level of service than the large megabanks. However, community banks cannot continue to compete effectively and serve their customers and communities without some relief from the crushing burden of regulation.

Thank you for the opportunity to comment on this critical issue!

Sincerely,

Kerry L. Hoops