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May 2, 2005

Via Email: ***regs.comments@occ.treas.gov***
Attn: Public Information Room
Office of the Comptroller of the Currency
RE: Docket No. 05-01

Via Email: ***comments@FDIC.gov***
Attn: Robert E. Feldman, Executive Secretary
Federal Deposit Insurance Corporation
RE: EGRPRA Burden Reduction Comment

Via Email: ***regs.comments@federalreserve.gov***
Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
RE: Docket No. OP-1220

Via Email: ***regs.comments@ots.treas.gov***
Regulation Comments - Chief Counsel's Office
Office of Thrift Supervision
RE: 2005-02

Dear Sir or Madam:

The Independent Bankers Association of Texas ("IBAT") welcomes this opportunity to participate in the regulatory burden reduction process by commenting on the most current set of regulations under review. IBAT is a trade association representing approximately 600 independent community banks domiciled in Texas. The majority of our members have assets of $100 million or less. The continuing proliferation of regulatory requirements on these institutions is extremely costly and falls more heavily on the smaller banks. While larger institutions can and do devote an entire department to regulatory compliance, smaller institutions do not have that flexibility. Therefore, compliance with the regulations is an ancillary task for several officers in a bank or is dealt with by an individual who must be an expert on a wide array of areas in order to comply with the rules ranging from lending to operations to security. Thus, we welcome this project and encourage positive steps to implement effective changes.

Money Laundering

Bank Secrecy Act ("BSA") Compliance and Reports of Crimes or Suspected Crimes – Without question, IBAT member banks have identified BSA Compliance as the most burdensome, inconsistent, and difficult to understand of all regulations. Our members attend conferences conducted by experts and learn that there is a measure of flexibility expected at banks with regard to compliance. Then an examiner tells them that there is "zero" tolerance for filing a suspicious

activity report. IBAT has a compliance forum for its members. Over 700 of our participants have viewed recent postings relating to BSA with 370 views alone attributed to OFAC compliance. In our comments, we have noted that recently examined banks believe that there is no such thing as "zero" tolerance. They have been told this explicitly by examiners. In addition, there appears to be no "right-sizing" in the processes. Small banks believe that they are being held to the same standards as larger institutions. In fact, banks that have been examined under proposed, revised BSA procedures have reported that they will be hiring as many as four additional dedicated BSA staff (and this latter report came from a bank that already had dedicated BSA staff and in-house counsel).

The major issue to be drawn from the comments is simply that there is a significant disconnect between policy statements issued out of Washington DC and examination procedures and comments received in the field. We have also received comments that banks that have been examined are terminating their relationships with money services businesses and other high risk entities such as convenience stores even when those are not themselves money transmitters. Banks are also considering elimination of IOLTA accounts and other trust relationships based on recent exams.

IBAT continues to receive numerous questions relating to customer identification program requirements, particularly with regard to fiduciaries and other situations in which the beneficial owner is different from the person opening the account. The recently promulgated FAQs are particularly helpful and greatly appreciated. In general, FAQs published by the regulators have proven a wonderful tool in clarifying complex areas of the laws and regulations. We encourage additional FAQs to be developed as the issues are fleshed out. Perhaps even FAQs could be developed with community banks in mind. Few of our members have to identify a pension trust, but they do encounter living trusts and non-U.S. persons, which are not specifically addressed in the current FAQs.

The most troubling issue in the area of BSA Compliance relates to reports of suspected crimes. Examiners have written up banks for failing to file a SAR where there is any suspicious activity regardless of whether there is a reasonable belief that a crime was actually committed. The result is a rash of protective filings. The statistics certainly bear this out. In reviewing information published by the Financial Crimes Enforcement Network, we noted that in 1996 there were less than 50,000 SARs filed. In 2000, that number had grown to 157,000. However, in 2004 the number was 664,000.

Banks stand ready and willing to participate in the fight against terrorists and money launderers and other criminals. They simply need to know what the laws are and be confident that the rules will not change in mid-stream. The greatest improvement that could be made in regulatory burden in this area would be to eliminate the inconsistency between statements from the policy makers in Washington DC and actions taken in the field. This can be achieved only if examiners are confident that they will be supported in their flexibility.

Safety & Soundness

Appraisal Standards for Federally Related Transactions – The changes made several years ago in the thresholds for appraisals and the exemptions from certified appraisals generally appear to be working. One recommendation we would make would be to take the interpretations issued early after the rules were created and publish those in a cohesive fashion. This would create an extremely helpful tool to banks' concerns about technical application of refinancing and multiple transactions, for example.

Lending Limits – The revisions made to these rules in the near past have significantly improved the lending limit requirements. As might be expected, the most difficult area and source of confusion is aggregation. More particularly, there needs to be greater clarity as to how to apply the rules relating to common source of repayment and rules relating to different kinds of entities, such as limited partnerships. There are excellent interpretative letters that have been issued over the years. Collecting those into a single publication for reference would provide a very helpful tool. Furthermore, if any of those interpretative letters are no longer valid, clarifying that point, and omitting them from such a publication, would also be beneficial. Finally, one of the major issues of concern is methods for curing a lending limit violation. We believe that most lending limit violations are truly inadvertent, resulting from a misapplication of the aggregation rules. It should be permissible for a bank to sell a participation or otherwise eliminate the over line and liability, and without being written up as a violation of law, unless there is indeed a willful violation of the lending limit.

Lending Limit Standards – The changes in the early 90s are fairly clear and very helpful. The area that still raises questions for our members from time to time is the loan-to-value ratio guidance. In particular, rules relating to "raw land" and development loans are not quite as clear as they could be. Also, institutions are reluctant to utilize the exception rules relating to the basket of non-conforming loans. Again, additional clarification would be beneficial.

Annual Independent Audits and Reporting Requirements – The Sarbanes-Oxley Act only applies to publicly held companies with regard to most of its requirements. Applying certain of the independent audit and independent audit committee requirements to institutions that are not publicly traded and are less than $1 billion in assets is extremely burdensome. Many public accountants in Texas have largely limited their practices to either audit or consulting. It is very difficult for a small institution to obtain the benefit of outside professionals with regard to compliance consultation and other services. No CPA firm is willing to provide both audit and consulting services. In some small communities, this means that services are simply not available.

The most difficult portion of the audit requirements for community banks has to do with the outside audit committee. It is difficult to attract and retain outside directors for audit committee and compensate them adequately for the risk that such directors undertake. Again, the threshold should be at least $1 billion in assets before such requirements are applicable to non-publicly held companies.

Thank you for this opportunity to comment. Again, we applaud this strong commitment to reducing regulatory burden and welcome the opportunity to provide input from local institutions.

Sincerely,

Christopher L. Williston
President & CEO