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November 14, 2005

Public Information Room
Office of the Comptroller of the Currency
250 E Street, SW
Mailstop 1-5
Washington, DC 20219
November 9, 2005

Attention: Docket 05-15

Robert E. Feldman, Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
Attn: EGRPRA Burden Reduction Comment

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street an Constitution Avenue, NW
Washington, DC 20551
Docket No. OP-1232

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
Attn: No. 2005-26

Re: EGRPRA Burden Reduction

Dear Sir or Madam:

The Independent Community Bankers of America (ICBA)[1] appreciates the opportunity to offer comments on the agencies' fifth installment of the EGRPRA[2]

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[1] *The Independent Community Bankers of America represents the largest constituency of community banks of all sizes and charter types in the nation, and is dedicated exclusively to representing the interests of the community banking industry. ICBA aggregates the power of its members to provide a voice for community banking interests in Washington, resources to enhance community bank education and marketability, and profitability options to help community banks compete in an ever-changing marketplace.*

With nearly 5,000 members, representing more than 17,000 locations nationwide and employing over 260,000 Americans, ICBA members hold more than $631 billion in insured deposits, $778 billion in assets and more than $493 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at www.icba.org.

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project. Mandated by Congress, the EGRPRA project is an overall review of agency rules to identify outdated, unnecessary, or unduly burdensome regulatory requirements. Earlier installments have examined applications, powers, international operations, consumer lending requirements, consumer protection, account/deposit relationships, money laundering, safety and soundness, and securities rules. This installment reviews the rules concerning Banking Operations; Directors, Officers and Employees; and Rules of Procedure.

General Comments

ICBA commends the banking agencies for the work that they have done under the EGRPRA project to identify outdated, unnecessary and unduly burdensome regulations**.** Through the public comment process, bankers outreach meetings and the EGRPRA website, the project has generated a large number of recommendations for reducing the regulatory burden on banks. Changes to the Community Reinvestment Act regulations and the amendments by the FDIC to the Annual Audit and Reporting Requirements (Part 363) are examples of burden reduction measures that have been recently adopted by the banking agencies that were due, in whole or in part, to the efforts of the EGRPRA project. **However, there are still many recommendations that have not been implemented by the agencies. ICBA strongly urges the agencies to implement more of these burden reduction recommendations.**

ICBA also commends the agencies for their support of some of the provisions of H.R. 3505, the Financial Services Regulatory Relief Act of 2005, introduced by Reps. Jeb Hensarling and Dennis Moore. ICBA has endorsed the Hensarling/Moore bill and is pleased that it contains several provisions from the ICBA- backed Communities Banks Serving Their Communities First Act (H.R. 2061) introduced by Rep Jim Ryun and co-sponsored by over eighty representatives. The Communities First Act includes over a dozen measures to reduce regulatory burden on banks and their customers. However, the agencies have had difficulty reaching a consensus on many items in the Communities First Act. **ICBA urges the agencies to continue to work to reach consensus on meaningful legislative initiatives to reduce regulatory burden for community banks such as changes to the three-day right of rescission under the Truth-in-Lending Act to provide for a consumer waiver of that right and further exemptions from reporting requirements under the Home Mortgage Disclosure Act.**

Even though the last four years have been very profitable for the banking industry as a whole, there still remains a significant gap between community banks' profitability and the rest of the industry due to the disproportionate impact of regulations on community banks, causing many community banks to consider selling or merging. As former FDIC Vice Chairman John Reich stated in Congressional testimony, "I believe that in looking to the future, regulatory

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[2] The Economic Growth and Regulatory Paperwork Reduction Act of 1996.

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burden will play an increasingly significant role in shaping the industry and the number and viability of community banks….if we do not do something to stem the tide of ever increasing regulation, America's community banks will disappear from many of the communities that need them most." [3]

Furthermore, with the passage of the Sarbanes-Oxley Act and the Patriot Act, regulatory burden has also increased significantly in the past few years. We urge the regulators to consider our recommendations listed below along with the other recommendations that ICBA has made in connection with the EGRPRA project. We realize that some of our recommendations may require statutory changes. However, we believe that the agencies could implement many of our recommendations without legislative change.

Specific Comments

Federal Reserve Regulation O: Limits on Extension of Credit to Insiders

In 1978, Congress enacted the Financial Institutions Regulatory and Interest Rate Control Act and the Federal Reserve issued Regulation O in response to several bank failures and the involvement of Bert Lance, then White House budget director, in a number of insider bank loans involving those failed banks. Regulation O is a good example of a burdensome regulation that needs revision.

For instance, Regulation 0 prohibits a bank from extending credit to an insider that, when aggregated with other loans to the insider, exceeds the higher of $25,000 or 5 percent of the bank's unimpaired capital and surplus unless the loan has been approved in advance by the majority of the board with the insider abstaining from participating directly or indirectly in the vote. **ICBA believes that pre-approval of insider loans is not needed as long as every bank maintains records of all their insider loans and the records are subsequently reviewed by the examiners to determine that (1) the loans were made in accordance with the bank's general policy for making loans of those type, (2) the loans were made on substantially similar terms as those prevailing at the time for non-insiders and (3) the loans do not involve more than normal risk of repayment.**

Eliminating the requirement of pre-approvals of insider loans would allow banks to treat their directors and officers no differently than any other loan customer. Under our recommendation, a loan to an insider would only need board approval if the bank's loan policy required board approval for those types of loans. The current requirement for pre-approval of insider loans discourages insiders from turning to the bank for their borrowing needs and makes it very difficult for the bank to obtain the lending business of an insider. As one banker

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[3] Statement of John M. Reich, Vice Chairman, Federal Deposit Insurance Corporation on Consideration of Regulatory Reform Proposals before the Committee on Banking, Housing and Urban Affairs, United States Senate, June 22, 2004

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put it, insiders are often treated worse than many of the bank's customers. For example, insiders may need to wait weeks for a loan decision pending a bank board meeting. Regulation O also makes it difficult for community banks to find persons who will serve on the board particularly now that directors are often legally required to be independent of the bank and are held to a higher standard of care.

Regulation O also prohibits a bank from extending credit to an executive officer, other than for his or her children's education and for his or her residence unless the extension of credit meets certain collateral requirements or does not exceed the higher of 2.5 percent of the bank's unimpaired capital and surplus or $25,000, but in no event exceeds $100,000. **ICBA believes that the $100,000 overall limit should be updated to reflect the increased costs of housing and education. We recommend that this amount be increased to $250,000 to provide banks more flexibility to deal with the potential borrowing needs of their executive officers and to reflect a reasonable increase for inflation since the limit was set.** The ICBA-backed Communities First Act calls for an increase in the limit to $250,000.

Regulation O also prohibits a bank from paying an overdraft of an executive officer or director unless it was an inadvertent overdraft of $1,000 or less for not more than five business days or unless payment is made under a written preauthorized plan that provides either for a transfer from another account at the bank or is an interest-bearing extension of credit with a specified method of repayment (for any overdraft, the insider must be charged the same fee as any other customer under similar circumstances). ICBA recommends that the $1,000 amount be updated to $3,000 to reflect inflation since the regulation was issued. **Overdrafts of $3,000 or less are small enough to be considered inadvertent.**

ICBA also recommends that the Federal Reserve provide and distribute a flow chart showing the restrictions of Regulation O and the steps that banks need to take to comply with the regulation. Several bankers have indicated that a flow chart would be useful, particularly since there are also state regulations concerning loans to insiders as well as state limits on loans to one borrower that a bank must consider before making loans to insiders. Bankers would be able to combine or overlay a flow chart of state regulations with the flow chart provided by the federal agencies on Regulation O so that they could have one chart that shows what regulations must be complied with before making an insider loan.

Several bankers also questioned the requirement in Regulation O that a loan to an executive officer must be payable on demand noting that in most instances banks have the legal authority to call in their troubled loans anyway. As noted by one banker, this requirement becomes another "gotcha" for bank examiners. A number of bankers also questioned the need to report insider

borrowings on a bank's call report particularly since the bank has a record of the borrowings that is accessible to the examiners.

Federal Reserve Regulation D: Reserve Requirements

Federal Reserve Regulation D imposes uniform reserve requirements on all depository institutions with transaction accounts or non-personal time deposits, defines those deposits, and requires reports to the Federal Reserve. Transaction accounts are defined to include checking accounts, NOW accounts, share draft accounts, savings accounts that allow automatic transfers or third-party payments by automated teller machines, and accounts that permit more than a limited number of telephone or preauthorized payments or transfers each month. The reserve requirement currently is 3% of the first $47.6 million of net transactions balances and 10% of the rest.

Time deposits currently are subject to a zero reserve requirement. Time deposits are defined as those deposits or certificates with original maturities of at least seven days, and savings accounts (including money market deposit accounts, regular share accounts at credit unions and regular accounts at thrifts) that allow the institution to require at least seven days' notice by the depositor before a withdrawal is made. To be treated as a savings account, an account that permits telephone or preauthorized payments or transfers to third parties must limit such transfers to no more than six per month, of which no more than three may be by check or share draft.

Regulation D sets out the rules for computing the amount of reserves that must be held and the methods for holding them. **Some bankers complain that Regulation D's rules for computing reserves sometimes result in volatile shifts in reserves, particularly when transaction accounts spike. They suggest that the reserve requirements be based on an average of transaction accounts over a longer period of time.** This would prevent a balloon effect that occurs when there are large swings in transaction account balances.

Many community banks meet their reserve requirements through vault cash levels. For these banks, it is burdensome to constantly have to complete forms on a quarterly and sometime weekly basis. ICBA recommends abbreviated reporting requirements for banks that consistently meet their reserve requirements through vault cash reserves.

The Federal Reserve Board has issued numerous interpretative letters regarding Regulation D that are important to determining reserve requirements and in particular, whether an account is considered a transaction account or a time deposit account. Some of these interpretative letters were issued forty or fifty years ago. We suggest including a commentary that would incorporate all the interpretative letters that have been issued concerning reserve requirements.

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We would also recommend updating the regulation so that it incorporates more of the definitions and opinions that have been issued as Board interpretations.

Finally, ICBA supports amending the rules under Regulation D and Regulation Q to allow money market deposit accounts (MMDAs) to have one unrestricted inter-account transfer each business day (i.e., 24 per month) rather than the current limit of six per month. This would allow community banks the opportunity to compete with credit unions and other non-bank competitors in providing cash management services to their commercial customers. It also would enable commercial customers to earn a return on their funds and have funds readily available for use in a demand deposit account.

Federal Reserve Regulation L: Management Official Interlocks

Federal Reserve Regulation L prohibits a management official of one bank from serving at the same time as a management official of another bank in the same community**. ICBA believes that community banks with less than $500 million in assets should be exempt from Regulation L.** It is often difficult for smaller community banks, particularly if they are located in rural areas, to find qualified persons to serve as directors. In particular, finding qualified persons to serve on audit committees has become very difficult for community banks. Exempting smaller community banks would allow persons to serve as directors of more than one bank in a single community and would mitigate the problem that these banks are having in finding qualified persons to serve as directors.

Federal Reserve Regulation S: Reimbursement to Financial Institutions for Providing Financial Records

Under the Right to Financial Privacy Act, financial institutions are reimbursed for producing financial records to government authorities. ICBA strongly supports this reimbursement, because researching, assembling and collating records required for government investigations can be costly.

ICBA strongly urges the federal banking agencies to encourage Congress to revise the list of exceptions to this requirement. Currently, the exceptions from reimbursement are much too broad and prevent banks from being properly compensated. Moreover, since there are many instances when government authorities demand records under one of the exceptions, there is no incentive for government agents to focus the request or to be reasonable. ICBA often hears from members where government agencies demand records in a broad “fishing expedition” without regard to the disruption of the bank’s business, the time frame or the expense to produce the records in question. If the governmental authority is required to reimburse a bank for the costs of record production, then government agents will pay more careful attention to whether the costs are justified. Without that incentive, government agents have no incentive to consider whether the costs and burdens are justified.

While some exceptions are appropriate, ICBA believes others should be curtailed or eliminated. Records produced in connection with perfecting a security interest or records produced for financial supervisory agencies are part of the normal course of a bank's business. However, the bank should be properly compensated whenever it produces records for the Internal Revenue Service, Securities and Exchange Commission or other agency investigating the activities of a bank's customer. Any records produced in connection with activities that involve the bank or its management can be covered by an exception from the reimbursement requirement, but any time a government authority is investigating the activities of a customer of the bank, the bank should be fully compensated for producing those records. Failure to compensate the bank is, in reality, an unfair tax on financial institutions.

Finally, the fees for reimbursement should reflect current market conditions and should be regularly updated. As part of any record request from a bank, the requesting agency should simultaneously explain how the bank can be compensated and provide the fee schedule, along with a simple form that can be submitted for reimbursement. This will also help focus government agents' attention on the fact that there are costs associated with producing bank records.

Federal Reserve Regulation CC -- Availability of Funds and Collection of Checks

ICBA strongly urges the Board of Governors of the Federal Reserve System (Board) to adopt an interim rule that would extend the funds availability time frame for U.S. Postal Service money orders, cashier's checks, and official bank checks if a financial institution questions the authenticity of these instruments. These referenced instruments, subject to next business day availability under Section 229.10(c), have become a chronic problem for community banks and other financial institutions. ICBA has noted a substantial increase in the number of FDIC Special Alerts regarding fraudulent cashier's checks and official bank checks (15 to 20 each month). An interim rule extending the funds availability time frame for these instruments would provide financial institutions a desperately-needed mechanism for reducing fraud losses and afford the Board sufficient time to permanently address this chronic issue.

Additionally, as the industry proceeds with the implementation of the Check 21 Act and new, more efficient electronic check alternatives reach critical mass, the Board will need to revisit all of the funds availability provisions of Regulation CC. Hopefully, the results of the Board's upcoming Check 21 Act Survey will provide much needed information to assist the Board with this daunting challenge.

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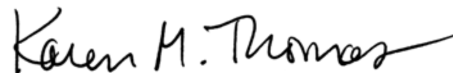
Conclusion

ICBA strongly supports the current efforts of the agencies under the EGRPRA project to reduce regulatory burden. Even though there has been some progress since the EGRPRA project was started, a considerable amount of work remains. ICBA strongly urges the banking agencies to implement more of the burden reduction recommendations that have been made by the industry and to continue to work to reach a consensus on meaningful legislative initiatives to reduce regulatory burden for community banks. ICBA looks forward to working with the agencies and with Congress to complete the EGRPRA project and to ensure that the community banking industry in the United States remains vibrant and able to serve our customers and communities.

Thank you for the opportunity to comment. If you have any questions or need any additional information, please contact me at 202-659-8111 or Karen.Thomas@icba.org.

Sincerely,



Karen M. Thomas
Executive Vice President and