



January 24, 2005

Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington D.C. 20552

Attention: No. 2004-54

Re: EGRPRA Regulatory Review – Application and Reporting Requirements
69 FR 68239 (November 24, 2004)

Dear Madam or Sir:

America's Community Bankers ("ACB")¹ is pleased to comment on the interim final rule² issued by the Office of Thrift Supervision ("OTS") as part of its review of regulations under section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 ("EGRPRA").³ The interim final rule modifies the branch office and agency office application and notice requirements, harmonizes publication and public comment procedures for various applications and notices, and revises meeting procedures.

ACB Position

ACB strongly supports OTS efforts to reduce regulatory burden and eliminate requirements that are unnecessary for the safe and sound supervision of the institutions it regulates. Eliminating unnecessary regulations will free up funds for community banks to invest in their communities and better serve their customers' financial needs. Moreover, reducing regulatory burden will enable insured depository institutions to compete with less regulated or unregulated financial service providers. We support the changes to the application process and the clarifications to the regulations. These changes will provide relief from paperwork and other requirements and make it easier for well-run savings associations to serve their communities.

¹ America's Community Bankers is the member driven national trade association representing community banks that pursue progressive, entrepreneurial and service-oriented strategies to benefit their customers and communities. To learn more about ACB, visit www.AmericasCommunityBankers.com.

² 69 Fed. Reg. 68239 (November 24, 2004).

³ Pub. L. 104-208, Sept. 30, 1996.

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Application and Notice Requirements

ACB strongly supports the elimination of various branch application and notice requirements for certain highly rated federal savings associations. Specifically, the interim final rule:

- Eliminates the application and notice requirements for re-designations of home and branch offices.
- Permits certain highly rated federal savings associations to change the location of a home or branch office or establish a new branch office without filing an application or notice with OTS, as long as no commenter objects during the 30-day comment period following newspaper publication.
- Eliminates the notice requirement for short-distance relocations of home or branch offices.
- Treats federal savings associations incorporated, organized, or doing business in the District of Columbia the same as all other associations regarding the relocation or establishment of the home or branch offices.
- Eliminates restrictions on the establishment of drive-in or pedestrian offices.

We commend the OTS for replacing these routine applications with after-the-fact notice filings. This change will reduce costs and regulatory burden for the agencies and the affected institutions alike. Institutions will not have to expend the resources or the time on the full application process. In addition, a notice requirement will expedite the ability of well-managed insured depository institutions to offer services to additional communities and will enhance competition.

The interim final rule provides that a highly rated savings association need not file an application to relocate or establish a branch if certain conditions are met. One of the conditions is that a comment has not been filed opposing the proposed action or if a comment has been filed, the OTS determines that the comment raises issues that are not relevant to the criteria set out in revised 545.95(b). We believe that the approval standards established are appropriate and that they provide the agency and highly rated savings associations needed flexibility in this process.

Agency Offices

Prior to the interim final rule, agency offices had the authority to service and originate (but not approve) loans and contracts. Loan and contract approvals could be conducted only at the main office and at branch offices of a federal thrift. The interim final rule permits federal savings associations to conduct loan and contract approval at agency offices without OTS approval. ACB strongly supports this change. Often, it is more efficient for an institution to approve loans at an agency office. The interim final rule

enables institutions to achieve more efficient operations without impacting safety and soundness.

Applications Processing

ACB strongly supports the provisions of the interim final rule that address publication and public meeting procedures for various applications and notices.

Publication. The interim final rule aligns newspaper publication dates for soliciting comments regarding mutual to stock conversions and change in bank control rules with the requirements for other application dates. Prior to the interim final rule, the requirements for publication were riddled with inconsistencies. For example, the uniform application procedures require an applicant to publish a newspaper notice no earlier than seven days before the filing of the application and no later than the date of filing of the application.⁴ By contrast, OTS regulations governing conversions from mutual to stock form and change of control applications required newspaper publication no earlier than three calendar days before and no later than three calendar days after the filing of the application.⁵ The interim final rule provides a more consistent rule that is easier to apply and simpler to track.

We believe that addressing additional publication inconsistencies would be helpful for OTS regulated institutions. The OTS holding company application regulation requires publication of the notice of the application “in the business section” of the newspaper.⁶ This requirement differs from the requirement in the OTS regulations promulgated under the authority of the Bank Merger Act.⁷ We suggest that these requirements should be consistent. The statutory provisions governing applications by holding companies do not require publication of notice in the business section of the newspaper.⁸ Compliance with this publication can be costly in major metropolitan areas. Newspapers have separate business sections and advertising space is expensive. We suggest that the requirements for publication should conform to those applicable to bank mergers.

The requirements for the initial date of publication also differ. In fact, the publication requirements for H(e) applications generally are inconsistent with the requirements for Bank Merger Act applications. For example, for H(e)1-S applications involving an interim savings association and for H(e)(3) applications (which involve a merger of a previously non-affiliated existing savings association and an existing subsidiary of the holding company), the publication of notice must follow the regulations under the Bank Merger Act in addition to following the different requirements for publication of notices related to other holding company applications. In order to facilitate this process, we recommend that the OTS make these requirements consistent.

⁴ 12 CFR 516.60.

⁵ 12 CFR 563b.180(a) and 574.6(d).

⁶ 12 CFR 574.6(d)(1)

⁷ 12 CFR 563.22(e)(1)

⁸ Home Owners' Loan Act Section 10(e), 12 U.S.C. 1467a(e). *See also* 12 U.S.C. 1817(j)(2)(D)) (Change in Bank Control Act likewise does not require publication in the business section).

Meetings. The interim final rule also revises the circumstances under which the OTS will hold formal and informal meetings with commenters. Under the interim final rule, the OTS will grant a meeting request only if written submissions are insufficient to address facts or issues raised by an application, or if the OTS otherwise determines that a meeting will benefit its decision-making process. If the OTS decides to conduct a meeting, it will invite the applicant and the commenter, and may invite other interested persons at its discretion. Unlike the previous rule, the OTS has the discretion to suspend applicable timeframes if it decides to conduct a meeting.

We strongly support this change. Under the prior rule, the OTS granted an informal meeting, followed by a formal meeting with the parties interested in the application. This approach was used as a tactic to delay the consideration of applications. We commend the OTS for amending this section to provide that informal and formal meetings are not, in fact, automatically granted but will be granted if appropriate. We also support the process developed as part of the interim final rule that establishes a standard for determining whether to hold a meeting and if a meeting is held, whether to suspend the applicable application processing time frames. This approach will enable the process to move more smoothly without unnecessary disruptions.

ACB also supports the streamlining of the of the regulations relating to applications for specific corporate reorganizations or transactions by using cross references to the general application requirements rather than repeating the regulatory language in each place. This change will result in a clarification that the application process is the same for each transaction. The OTS will not need to amend each regulatory section every time a change is made to the overall application process.

Equal Housing Logo

The interim final rule eliminates the equal housing logo requirement for lending that is unrelated to housing, such as credit card loans, commercial loans, and educational loans. Eliminating the equal housing symbol from extraneous contexts will be helpful to both consumers and savings associations. Mentioning “housing” in the context of a consumer or commercial loan is not helpful to persons shopping for these products. Instead, the logo merely adds to the volume of information that customers increasingly ignore as superfluous background noise. In addition, eliminating the logo requirement in situations where it is not relevant helps savings associations by freeing up precious advertising space.

Miscellaneous Provisions

ACB also supports provisions of the interim final rule that (1) revise the pre-approved list of service corporation activities to continue to permit service corporations to execute transactions in securities in an agency or riskless principal basis, provided the service corporation registers with the Securities and Exchange Commission or state securities regulators as required by applicable law; (2) eliminate the requirement that mutual

associations submit change of control reports; and eliminate regulatory section that requires acquirers of savings associations to maintain capital. .

The OTS is also working to seek legislative repeal of the requirement that savings associations and savings and loan holding companies report changes of CEOs and directors. ACB supports these efforts and is ready to work with the OTS to eliminate this requirement.

Conclusion

ACB reiterates our commitment to reducing unnecessary regulatory burden on community banks and we urge the OTS to explore additional areas to address unnecessary or conflicting requirements.

Thank you for the opportunity to comment on this important matter. Should you have any questions, please contact the undersigned at 202-857-3121 or via e-mail at cbahin@acbankers.org, or Krista Shonk at 202-857-3187 or via e-mail at kshonk@acbankers.org.

Sincerely,



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