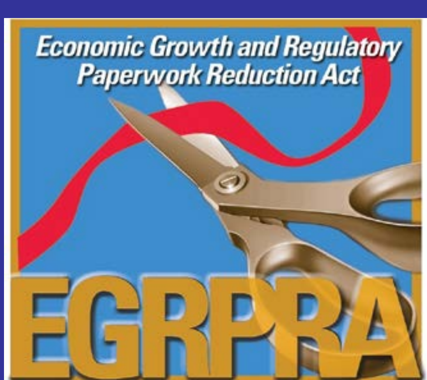
Federal Financial Institutions Examination Council

Board of Governors of the Federal Reserve System
Federal Deposit Insurance Corporation
National Credit Union Administration
Office of the Comptroller of the Currency
Office of Thrift Supervision

Joint Report to Congress

Economic Growth and Regulatory Paperwork Reduction Act

July 31, 2007



FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

ECONOMIC GROWTH AND
REGULATORY PAPERWORK REDUCTION ACT
REPORT TO CONGRESS

Preface……………………..………………………………..……………………..….1

I. Joint Agency Report...5

A. Introduction...5

B. The Agencies' EGRPRA Review Process...8
1. Overview of the EGRPRA Review Process 8
2. Significant Issues Arising from the EGRPRA Review and the Agencies' Responses..10

C. Other Joint Agency Initiatives..54

D. Individual Agency Efforts to Reduce Regulatory Burden 63
1. The Board of Governors of the Federal Reserve System 64
2. Federal Deposit Insurance Corporation 80
3. Office of the Comptroller of the Currency 91
4. Office of Thrift Supervision..97

E. Conclusion...103

Appendixes:
Appendix I-A: The Financial Services Regulatory Relief Act of 2006...........................104
Appendix I-B: Methodology of the Agencies' EGRPRA Review Process 109
Appendix I-C: Summary of Comments, by Federal Register Notice Release and by Subject Matter for the Federal Banking Agencies 113
Appendix I-D: Economic Growth and Regulatory Paperwork Reduction Act................205

II. NCUA Report...208
A. Introduction...208
B. NCUA Methodology...210
C. Significant Issues Raised..211
D. Accomplishments and Burden Reduction Efforts...218
E. Legislative Issues..230
F. Conclusion...232

Appendixes:
Appendix II-A: Subject and Regulation Cite, by Category 233
Appendix II-B: Summary of Comments, by Category 236

PREFACE

By John M. Reich, Director
Office of Thrift Supervision[1]

Prudent regulations are absolutely essential to maintain rigorous safety and soundness standards for the financial services industry, to protect important consumer rights, and to assure a level-playing field in the industry. As a regulator, I clearly understand the need for well-crafted regulation.

However, outdated, unnecessary or unduly burdensome regulations divert precious resources that financial institutions might otherwise devote to making more loans and providing additional services for countless individuals, businesses, nonprofit organizations, and others in their communities. Over the years, Congress passed a variety of laws to deal with problems that have cropped up and the regulators adopted numerous regulations to implement those laws. In fact, over the past 17 years, the federal bank, thrift, and credit union regulators have adopted more than 900 rules. Accumulated regulation has reached a tipping point for many community banks and has become an important causal factor in recent years in accelerating industry consolidation.

In passing the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA), Congress clearly recognized the need to eliminate any unnecessary regulatory burden. That is why Congress directed the Federal Financial Institutions Examination Council and its member agencies to review all existing regulations and eliminate (or recommend statutory changes that are needed to eliminate) any regulatory requirements that are outdated, unnecessary, or unduly burdensome.

As this comprehensive report makes clear, the agencies have worked diligently to satisfy the requirements of EGRPRA. Over a three-year period ending December 31, 2006, the agencies sought public comment on more than 130 regulations, carefully analyzed those comments (as indicated in this report), and proposed changes to their regulations to eliminate burden wherever possible.

In addition to obtaining formal, written comments on all of our regulations, the federal banking agencies hosted a total of 16 outreach sessions around the country involving more than 500 participants in an effort to obtain direct input from bankers, representatives of consumer/community groups, and many other interested parties on the most pressing regulatory burden issues.

Besides reviewing all of our existing regulations in an effort to eliminate unnecessary burdens, the federal banking agencies worked together to minimize burdens resulting from new regulations and current policy statements as they were being adopted. We also reviewed many internal policies in an effort to streamline existing processes and procedures. Finally, we have sought to communicate our regulatory requirements, policies and procedures more clearly to our constituencies to make them easier to understand.

On the legislative front, the federal banking agencies worked together, preparing and reviewing numerous legislative proposals to reduce regulatory burden, testifying before Congress on several occasions about the need for regulatory burden relief, and providing technical assistance to the staff of the Senate Banking Committee and the House Financial Services Committee on their regulatory relief bills. Congress ultimately passed, and the President signed into law, the Financial Services Regulatory Relief Act of 2006. As part of this process, the agencies, representatives of the industry, and consumer and community groups were asked to provide positions on the many legislative proposals that were submitted to Congress. The 2006

---

[1] Director Reich was the leader of the interagency EGRPRA program.

Act included a number of important regulatory relief provisions.

Financial institutions of all sizes suffer under the weight of unnecessary regulatory burden, but smaller community banks unquestionably bear a disproportionate share of the burden due to their more limited resources. While it is difficult to accurately measure the impact regulatory burden has played in industry consolidation, numerous anecdotal comments from bankers across the country as well as from investment bankers who arrange merger and acquisition transactions indicate it has become a significant factor. Accordingly, I am deeply concerned about the future of our local communities and the approximately 8,000 community banks under $1 billion in assets that represent 93 percent of the industry in terms of total number of institutions but whose share of industry assets has declined to approximately 12.5 percent, and whose share of industry profits have declined to approximately 11.2 percent (as of December 31, 2006).

Community banks play a vital role in the economic wellbeing of countless individuals, neighborhoods, businesses and organizations throughout our country, often serving as the economic lifeblood of their communities. Many of the CEOs of these institutions are concerned about their ability to profitably compete in the future, unless there is a slowdown in the growth of new banking regulations.

Ultimately, a significant amount of the costs of regulation are borne by consumers, resulting in higher fees and interest rates. If financial services are going to continue to be affordable, and in fact if we are going to be successful in bringing more of the unbanked into the mainstream, constant vigilance will be required to avoid the increasing costs resulting from the burden of accumulated regulations.

With every new regulation or policy imposed on the industry, I think it is important for Congress and the agencies to consider the regulatory burden aspects and to minimize those burdens to the extent possible. I want to take this opportunity to thank my colleagues at each of the agencies for their active support and participation on this interagency project. The staffs at each of the agencies devoted much time and energy to make sure we met not only the letter of the EGRPRA law, but the spirit as well. We look forward to continuing to work with Congress on these important issues and continuing to use the valuable information about regulatory burden issues that was shared with the agencies by the many participants in the EGRPRA process.

I. Joint Agency Report

A. Introduction

This report describes the actions by the Federal Financial Institutions Examination Council (FFIEC) and each of its member agencies: the Board of Governors of the Federal Reserve System (the Board), Federal Deposit Insurance Corporation (FDIC), National Credit Union Administration (NCUA), Office of the Comptroller of the Currency (OCC), and Office of Thrift Supervision (OTS), hereinafter "the Agencies,"[2] to fulfill the requirements of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA). Section 2222 of EGRPRA requires the Agencies to:

- Conduct a decennial review of their regulations, using notice and comment procedures, in order to identify those that impose unnecessary regulatory burden on insured depository institutions;
- Publish in the *Federal Register* a summary of comments received during the review, together with the Agencies' identification and response to significant issues raised by the commenters;
- Eliminate any unnecessary regulations, if appropriate; and
- Submit a report to Congress that discusses the issues raised by the commenters and makes recommendations for legislative action, as appropriate.

The Agencies have completed the first decennial review of their regulations. This report to Congress includes both the Agencies' comment summary and their discussion and analysis of significant issues identified during the EGRPRA review process. The report also describes legislative initiatives that would further reduce unnecessary regulatory burden on insured

[2] In 2006, the State Liaison Committee, which represents the Conference of State Bank Supervisors, was added to the FFIEC as a voting member.

depository institutions, including, in some cases, references to current initiatives being considered by Congress. Separately, the Agencies have published in the *Federal Register* a summary of comments received, together with the Agencies' identification and response to significant issues raised by the commenters. Finally, since the inception of the EGRPRA review process in 2003, the Agencies have individually and collectively started a number of burden-reducing initiatives. This report describes those accomplishments.

Throughout the EGRPRA process, NCUA participated in the planning and comment solicitation process with the federal banking agencies. Because of the unique circumstances of federally insured credit unions and their members, however, NCUA established its own regulatory categories and publication schedule and published its notices separately. NCUA's notices were consistent and comparable with those published by the federal banking agencies, except on issues unique to credit unions. In keeping with this separate approach, the discussion of NCUA's regulatory burden reduction efforts and analysis of significant issues is set out separately in Part II of this report. The summary of comments received by NCUA is contained in Appendix II-B.

The Agencies' EGRPRA-mandated review coincided with work in the 109th Congress on regulatory relief legislation. Each Agency presented testimony to congressional oversight committees about priorities for regulatory burden relief and described the burden-reducing impact of legislative proposals that were under consideration by Congress. The Agencies' ongoing work on the EGRPRA review laid the foundation for them to achieve consensus on a variety of burden-reducing legislative proposals. A number of these proposals were enacted as part of the Financial Services Regulatory Relief Act of 2006 (FSRRA), which was signed into law on October 13, 2006.[3] Appendix I-A of this report highlights key burden-reducing

---

[3] Pub. L. No. 109-351.

provisions included in that legislation.

B. The Federal Banking Agencies' EGRPRA Review Process

1. Overview of the EGRPRA Review Process

Consistent with the requirements of EGRPRA, the federal banking agencies first categorized their regulations, and then published them for comment at regular intervals, asking commenters to identify for each of the categories regulations that were outdated, unnecessary or unduly burdensome.[4]

The 131 regulations were divided into 12 categories, listed below alphabetically:

- Applications and Reporting
- Banking Operations
- Capital
- Community Reinvestment Act
- Consumer Protection
- Directors, Officers and Employees
- International Operations
- Money Laundering
- Powers and Activities
- Rules of Procedure
- Safety and Soundness
- Securities

[4] As noted above, the NCUA developed its own categories of regulations and published its notices separately from the bank regulatory agencies. Details relating to its regulatory categories and its burden reduction efforts are set out Part II of this report. The summary of comments received by NCUA is attached as Appendix II-B of this report.

Semiannually, the federal banking agencies published different categories of regulations. The first *Federal Register* notice was published on June 16, 2003. It sought comment on the agencies' overall regulatory review plan as well as the following initial three categories of regulations for comment: Applications and Reporting; Powers and Activities; and International Operations.[5] The federal banking agencies requested public comment about the proposed categories of regulation, the placement of the rules within each category and the agencies' overall plan for reviewing all of their regulations.

The federal banking agencies adjusted the proposed publication schedule due to concerns raised that the consumer regulation category encompassed so many different regulations that it would prove too burdensome to respond adequately within the comment period timeframe. As a result, the agencies divided that category into two notices with smaller groups of regulations for review and comment.

There were a total of six *Federal Register* notices, each issued at approximately six-month intervals with comment periods of 90 days. In response to these comment requests, the agencies received more than 850 letters from bankers, consumer and community groups, trade associations and other interested parties.

There were numerous recommendations to reduce regulatory burden or otherwise improve existing regulations. Each recommendation was carefully reviewed and analyzed by the staffs of the appropriate federal banking agency or agencies to determine whether proposals to change specific regulations were appropriate.

To further promote public input, the federal banking agencies also co-sponsored 10 outreach sessions for bankers, as well as 3 outreach sessions for consumer and community groups, in cities around the country. The agencies then sponsored three joint banker and

[5] 68 FR 35589.

consumer/community group focus meetings in an effort to develop greater consensus among the parties on legislative proposals to reduce regulatory burden. (Please refer to Appendix I-B for a more complete discussion of the federal banking agencies' EGRPRA review process as well as a table indicating the timing and categories of regulations that were published for comment as part of the EGRPRA process.)

2. Significant Issues Arising from the EGRPRA Review and the Federal Banking Agencies' Responses

Section 2222 of EGRPRA requires a summary of the significant issues raised by the public comments and the Agencies' responses and comments on the merits of such issues and analysis of whether the Agencies are able to address the issues by regulation or whether legislation is required. Several significant issues received substantial federal banking agency support and were successfully included in the FSRRA during the 109th Congress. Below is a summary of the significant issues and relevant comments received by the federal banking agencies together with the banking agencies' recommendations.

a. Bank Secrecy Act/Currency Transaction Report

Issues:

(1) Should the $10,000 Currency Transaction Report (CTR) threshold be increased to some higher level?

(2) Can the CTR forms be simplified to require less information on each form?

(3) Should the existing CTR exemption process be revised to make it less burdensome on the industry, such as by adopting a "seasoned customer" exemption?

Context: The $10,000 threshold for filing CTRs has not changed since the requirement was first established by the Department of the Treasury some 30 years ago. Financial institutions are required to report currency transactions in excess of $10,000. These reports are filed pursuant to requirements implemented in rules issued by the Department of the Treasury and are filed with the Internal Revenue Service. In addition to the appropriate federal supervisory agency for the financial institution (including the Board, FDIC, OCC, and OTS), the Financial Crimes Enforcement Network (FinCEN), Federal Bureau of Investigation (FBI), and other federal law enforcement agencies use CTR data. The FBI and other law enforcement bodies have stated that CTR requirements serve as an impediment to criminal attempts to legitimize the proceeds of a crime. Moreover, they serve as a key source of information about the physical transfer of currency, at the point of the transaction.

Comments: Many of the written and oral comments received during the EGRPRA process reflected widespread concern that the reports' effectiveness had become degraded over time, because ever-larger numbers of transactions met or surpassed the threshold, resulting in growing numbers of CTR filings. Many commenters and participants in the outreach meetings expressed concern that, with the increased number of CTR filings, the federal banking and law enforcement agencies were not able to make effective use of the information being provided. Commenters noted that the low threshold for CTR filings created more regulatory burden for banks. One commenter noted that certain policies such as requiring banks to continue filing for exempt status for transactions between themselves were unnecessary.

Several commenters raised concerns about the burdens associated generally with the CTR process and the utility of the information that depository institutions must provide. To ease some of this burden, commenters urged the adoption of a broader "seasoned customer" exemption, as well as other reforms in the CTR process. The federal banking agencies received several comments about the difficulties of obtaining a CTR exemption under current procedures. Some bankers contended that it was easier for a bank to file a Suspicious Activity Report (SAR) than to undertake the determination that a customer qualified for an exemption from the CTR filing requirement. One commenter suggested that the Agencies grant exemptions through a one-time filing (and eliminate the yearly filing requirement).

Although the federal banking agencies received extensive comments on the burdens associated with the CTR filing process, there were no concrete suggestions as to what types of information were unnecessary in the context of a CTR filing. One commenter suggested that *lowering* the threshold would reduce duplicative paperwork burden, while another noted that the process of requesting an exemption from CTR reporting was too complicated. Another commenter suggested replacing daily CTR filings with monthly cash transaction reporting.

Current Initiatives: Congress recently enacted legislation that requires the Government Accountability Office (GAO) to conduct a study of the CTR process. Section 1001 of the FSRRA requires the Comptroller General of the United States to conduct a study and submit a report to Congress within 15 months of enactment of the legislation on the volume of CTRs filed. The FSRRA also requires the Comptroller General to evaluate, on the basis of actual filing data, patterns of CTRs filed by depository institutions of various sizes and locations. The study, which will cover a period of three calendar years before the legislation was enacted, will identify whether, and the extent to which, CTR filing rules are burdensome and can or should be modified to reduce burden without harming the usefulness of such filing rules to federal, state, and local anti-terrorism, law enforcement, and regulatory operations.

The study will examine the:

1. Extent to which financial institutions are taking advantage of the exemption system available;
2. Types of depository institutions using the exemption system, and the extent to which the exemption system is used;
3. Difficulties that limit the willingness or ability of depository institutions to reduce

their CTR reporting burden by taking advantage of the exemption system;

4. Extent to which bank examination problems have limited the use of the exemption system;
5. Ways to improve the use of the exemption system, including making the exemption system mandatory so as to reduce the volume of CTRs unnecessarily filed;
6. Usefulness of CTR for law enforcement, in light of advances in information technology;
7. Impact that various changes in the exemption system would have on the usefulness of CTR; and
8. Changes that could be made to the exemption system without affecting the usefulness of CTR.

The study is to contain recommendations, if appropriate, for changes in the exemption system that would reflect a reduction in unnecessary costs to depository institutions, assuming a reasonably full implementation of the exemption system, without reducing the usefulness of the CTR filing system to anti-terrorism, law enforcement, and regulatory operations.

The GAO produced a report in April 2006 that looked at Bank Secrecy Act (BSA) enforcement and made three recommendations to improve coordination among FinCEN and the federal banking agencies:

1. As emerging risks in the money laundering and terrorist financing area are identified, the federal banking agencies and FinCEN should work together to ensure that these are effectively communicated to both examiners and the industry through updates of the interagency examination manual and other guidance, as appropriate;
2. To supplement the analysis of shared data on BSA violations, FinCEN and the federal banking agencies should periodically meet to review the analyses and determine

whether additional guidance to examiners is needed; and

3. In light of the different terminology the federal banking agencies use to classify BSA noncompliance, FinCEN and the federal banking agencies should jointly assess the feasibility of developing a uniform classification system for BSA violations.[6]

The federal banking agencies have undertaken several initiatives that address the GAO's recommendations to improve coordination among the agencies and FinCEN regarding BSA enforcement, including the measures outlined below.

Under the auspices of the FFIEC BSA/Anti-Money Laundering (AML) Working Group, the federal banking agencies, FinCEN, and the Conference of State Bank Supervisors (CSBS) continue to meet monthly to address all facets related to BSA/AML policy, examination consistency, training, and issues associated with BSA compliance. Under the auspices of their General Counsels, the federal banking agencies have developed and published an Interagency Statement on Enforcement of BSA/AML Requirements to help insure consistency among the agencies in BSA enforcement activities.[7] The federal banking agencies and FinCEN also work together to issue appropriate guidance to financial institutions on how to meet BSA/AML compliance requirements. One example of a joint product is the *FFIEC BSA/AML Examination Manual* that was issued to ensure consistency in BSA/AML examinations by providing a uniform set of examination procedures. The manual is a compilation of existing regulatory requirements, supervisory expectations, and sound practices in the BSA/AML area. The manual

---

[6] *See* "Bank Secrecy Act: Opportunities Exist for FinCEN and the Banking Regulators to Further Strengthen the Framework for Consistent BSA Oversight," Report to the Committee on Banking, Housing and Urban Affairs, U.S. Senate, U.S. Government Accountability Office, April 2006, pages 19-20.

[7] *See* Interagency Statement on Enforcement of Bank Secrecy Act/Anti-Money Laundering Requirements, July 19, 2007.

provides substantial guidance to institutions in establishing and administering their BSA/AML programs and is updated to incorporate emerging risks in the money laundering and terrorist financing area, as deemed appropriate by the federal banking agencies in consultation with FinCEN.[8] In addition, the federal banking agencies have individually and jointly held frequent outreach sessions for the industry to discuss such guidance and emerging issues.

Finally, as part of the legislative process leading up to the enactment of the FSRRA, Congress considered, but did not enact, other statutory proposals for CTR relief. The current Congress also is continuing to consider such initiatives and a bill to provide for a seasoned customer exemption from CTR filing (H.R. 323, the Seasoned Customer CTR Exemption Act of 2007) passed the House of Representatives on January 23, 2007. This is similar to a provision passed by the House in 2006.

The federal banking agencies continue to work with FinCEN, as the administrator of the BSA, to effectively oversee anti-money laundering compliance and ensure the safety and soundness of the financial institutions they regulate and to find ways to achieve these goals while eliminating unnecessary regulation. Recently, Secretary of the Treasury Paulson announced a Treasury initiative to administer the BSA in a more efficient and effective manner. The federal banking agencies will continue their close coordination with FinCEN to improve its communications with the industry. Moreover, the agencies will continue to work with Congress to analyze proposed legislative changes and provide recommendations and comments as requested.

[8] The *FFIEC BSA/AML Examination Manual* was issued in 2005 and revised in 2006; further revisions are underway for issuance in August 2007.

Recommendation: The Board, FDIC, OCC, and OTS appreciate the comments received concerning the CTR exemption process. The federal banking agencies believe that any changes must be carefully balanced with the critical needs of law enforcement for necessary information to combat money laundering, terrorist financing, and other financial crimes. Any changes to the exemption process must not jeopardize or detract from law enforcement's mission.[9] The federal banking agencies further believe that, in light of the attention and study given to this issue by Congress and in other forums, it would be premature to adopt changes in this area before the reports and recommendations are complete. Therefore, the agencies are not recommending any changes at this time but may do so once the GAO finalizes its report.

b. Anti-Money Laundering/Suspicious Activity Report

Issue: Should the federal banking agencies, together with FinCEN, revise or adopt policies relating to SARs to help reduce the number of defensive SARs that are being filed?

Context: Financial institutions must report known or suspected criminal activity, at specified dollar thresholds, or transactions over $5,000 that they suspect involve money laundering or attempts to evade the BSA. SARs play an important role in combating money laundering and other financial crimes.

Comments: Many commenters stated that SAR filing requirements were burdensome and costly. Some commenters complained that they filed numerous SARs and rarely, if ever, heard back from law enforcement. They questioned whether they were simply filing these forms into a "black hole." One commenter noted that SAR filings make CTR filings redundant.

[9] The FBI has advised that to dramatically alter currency transaction reporting requirements—without careful, independent study—could be devastating and a significant setback to investigative and intelligence efforts relative to both the global war on terrorism and traditional criminal activities. Statement of Michael Morehart Section Chief, Terrorist Financing Operations, Counterterrorism Division, Federal Bureau of Investigation, before the Senate Committee on Banking, Housing and Urban Affairs, April 4, 2006; *see also*, Statement of Kevin Delli-Colli, Deputy Assistant Director, Financial & Trade Investigations Division, Office of Investigations, U.S. Immigration and Customs Enforcement, Department of Homeland Security, before the Senate Committee on Banking, Housing and Urban Affairs, April 4, 2006.

Commenters complained both in writing and during the EGRPRA bankers' outreach meetings that the filing of SARs and the development of an effective SAR monitoring system add to compliance costs for banks and imposed a significant regulatory burden on them.

Current Initiatives: The federal banking agencies, in cooperation with FinCEN, seek to pursue effective SAR policies that contribute to efforts to track money laundering transactions while minimizing burden on regulated institutions that must file such reports. The federal banking agencies believe it is important to provide clear guidance to financial institutions on all SAR filing issues and will continue to work with FinCEN to do so.[10] In considering what further changes to make to SAR policies, it is important to closely coordinate with law enforcement so as not to undermine efforts to combat money laundering and curtail other illicit financial transactions.

As noted in the GAO's 2006 report on BSA oversight by the federal banking agencies, all of the Agencies have implemented extensive BSA/AML training for examiners, including joint training through the FFIEC.[11] The federal banking agencies have also stepped up their hiring of examiners to meet the need for greater BSA/AML compliance. The extensive training federal banking agencies have implemented has resulted in greater examiner expertise on BSA/AML matters.

In addition, the Department of the Treasury Inspector General directed FinCEN to undertake a SAR data quality review, which FinCEN subsequently shared with the federal banking agencies. The federal banking agencies indicated at the time that they found the analysis of the SAR filings to be useful in enabling financial institutions to address relevant problems or issues. FinCEN has publicly indicated that there is no evidence to suggest that the SAR filings

[10] For example, in 2007, FinCEN issued tips for SAR form preparation and filing that addressed a variety of issues, including what constitutes supporting documentation for a SAR. *See* "SAR Activity Review, Trends, Tips & Issues," Issue 11, May 2007.
[11] *See* footnote 6, pages 50-59.

include significant numbers of “defensively filed” SARs; rather, reviews show useful and properly filed reports.[12]

Recommendation: The federal banking agencies**,** along with FinCEN, seek to pursue effective SAR policies that contribute to efforts to track suspicious transactions while minimizing burden on regulated institutions that are required to file such reports. It is important to provide clear guidance to financial institutions on all SAR filing issues and to continue to work with FinCEN to do so. In considering what further changes to make to SAR policies, the Agencies believe that it is important to coordinate closely with law enforcement so as not to undermine efforts to combat money laundering and curtail other illicit financial transactions.

c. PATRIOT Act

Issues:

(1) Can the federal banking agencies provide greater guidance as to the types of identification that are acceptable under a bank’s Customer Identification Program (CIP)?

(2) Can the recordkeeping requirements under the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001[13] (PATRIOT Act) be revised to reduce burden?

Context: Department of the Treasury and federal banking agency regulations require depository institutions to obtain identification information from customers as a condition to opening/maintaining account relationships.[14] The regulation requires every depository institution to have a written CIP. The CIP must include risk-based procedures to enable the depository institution to form a reasonable belief that it knows the true identity of each customer. With respect to individuals, the regulation requires institutions to obtain, at a minimum, the name, date

[12] *See* the prepared remarks of Robert W. Werner, Director, FinCEN, before the American Bankers Association/American Bar Association Money Laundering Enforcement Conference. October 9, 2006, available on FinCEN’s Web site (http://www.fincen.gov.werner_statement_10092006.html).
[13] Pub. L. No. 107-56, October 26, 2001.
[14] *See generally* 31 CFR 103.121.

of birth, and address of the prospective customer, as well as an identification number, such as a tax identification number (for a U.S. person) or, in the case of a non-U.S. person, a tax ID number, passport number and country of issuance, alien registration number, or the number and country of any other identification number evidencing nationality or residence and containing a photograph of the individual or similar safeguard. For entities such as a corporation, the institution must also obtain a principal place of business, local office, or other physical location from the business applicant. The CIP must also contain procedures for verifying that the customer does not appear on a designated government list of terrorists or terrorist organizations. However, to date, the government has not designated such a list for purposes of CIP compliance.

The CIP regulations further require institutions to verify the identity of customers within a "reasonable time" after an account is opened. Institutions may conduct such verification through documents, non-documentary methods, or some combination of the two. An institution's CIP likewise must address situations where the institution is unable to verify a customer's identity.

Comments: During the EGRPRA process, the federal banking agencies received extensive comments concerning the CIP under the PATRIOT Act. Many commenters noted the burden that the requirements impose on institutions and asserted that these requirements can cause inconvenience, even for long-time customers of a financial institution. Commenters had a number of suggestions for improved guidance, including: (1) amending the definition of "established customer" to clarify that it refers to a customer from whom the bank has already obtained the information required by 31 CFR 103.121(b)(2)(i); (2) providing greater clarity about the types of identification that are acceptable; and (3) amending the definition of "non-U.S. persons" to refer only to foreign citizens who are not U.S. resident aliens.

The purpose of the CIP requirements is to aid in addressing both money laundering and terrorist financing. It can be crucial to have good records about the identity of customers in order to help prosecute cases involving money laundering or terrorist financing. Existing rules already contain detailed guidance about the types of identification that can be used to satisfy the requirements of the PATRIOT Act. In addition, the CIP does not apply to existing customers of the financial institution provided that the financial institution has a reasonable belief that it knows the true identity of the person.

With respect to recordkeeping requirements, the regulations issued pursuant to section 326 of the PATRIOT Act require institutions to keep records of their efforts to verify the identity of customers for five years after the account is closed. Many institutions commented during the EGRPRA process that this recordkeeping requirement was burdensome.

Current Initiatives: The federal banking agencies have worked in close collaboration with FinCEN in an effort to ensure that the requirements imposed by the PATRIOT Act are appropriate and necessary, and the agencies will continue to work with FinCEN to enhance the effectiveness of the Act's requirements while looking for ways to reduce the burden on financial institutions. For example, the federal banking agencies together with securities and futures industry regulators have worked to provide additional guidance on the application of the CIP rule. This guidance, in the form of frequently asked questions, has been updated as necessary to respond to industry questions and can be found on FinCEN's Web site (http://www.fincen.gov/faqsfinalciprule.pdf). The guidance that applies to depository institutions is also incorporated into the *FFIEC BSA/AML Examination Manual*.

Recommendation: While the federal banking agencies jointly issued the regulations at 31 CFR 103.121 with the Department of the Treasury, the agencies cannot unilaterally revise the regulation. While the agencies regularly discuss PATRIOT Act issues with their counterparts in FinCEN and the Department of the Treasury, the authority to amend many of the recordkeeping rules required under the PATRIOT Act is solely within the jurisdiction of the Department of the Treasury. Nonetheless, the comments will be a helpful contribution to the discussion of the issues.

d. Interest on Demand Deposits (Regulation Q) and NOW Account Eligibility

Issues:

(1) Should the prohibition against payment of interest on demand deposits be eliminated?

(2) Should the NOW account eligibility rules be liberalized?

Context: The prohibition against payment of interest on demand deposits is a statutory prohibition and an amendment enacted by Congress would be necessary to repeal the prohibition. Section 19(i) of the Federal Reserve Act provides that no bank that is a member of the Federal Reserve System may, directly or indirectly, by any device whatsoever pay any interest on any demand deposit. Similar statutory provisions apply to non-member banks and to thrift institutions. The Board's Regulation Q implements section 19(i) and specifies what constitutes "interest" for purposes of section 19(i). As a practical matter, the effect of section 19(i) is to prevent corporations and for-profit entities from holding interest-bearing checking accounts. This is because federal law separately permits individuals and non-profit organizations to have interest-bearing checking accounts, known as "negotiable order of withdrawal," or NOW, accounts. (*See* 12 U.S.C. 1832.)

Comments: Several commenters suggested that the prohibition against the payment of interest on demand deposits be eliminated. One commenter stated that, if the statutory prohibition against payment of interest on demand deposits were repealed, the Board should allow a two-year phase-in period, during which depository institutions could offer MMDAs (savings deposits) with the capacity to make up to 24 preauthorized or automatic transfers per month to another transaction account.

Current Initiatives: For the past several years, Congress has considered, but not enacted, legislation that would repeal the prohibition in section 19(i) against the payment of interest on demand deposits. Some of this legislation also would have made certain changes with respect to NOW accounts.

Recommendation: The federal banking agencies support legislation that would repeal the prohibition against payment of interest on demand deposits in section 19(i) and related statutes. Such legislation would allow corporate and for-profit entities, including small businesses, to have the extra earning potential of interest-bearing checking accounts and would eliminate a restriction that currently distorts the pricing of checking accounts and associated bank services. The federal banking agencies, however, do not have a joint position at this time on whether to expand NOW account eligibility and, as such, are making no joint recommendation with respect to this issue. We will continue to work with Congress on these important matters.

e. Home Mortgage Disclosure Act (Regulation C)

Issues:

(1) Should the tests for coverage of financial institutions be changed to exempt more institutions from the reporting requirements of the Home Mortgage Disclosure Act (HMDA)? If so, how?

(2) Should revisions be made to the data that are required to be reported under HMDA, such as revising the reporting requirements for higher-priced loans?

Context: The purpose of HMDA is to provide the public with mortgage lending data to help determine whether financial institutions are serving the housing needs of their communities, assist public officials in distributing public sector investment so as to attract private investment to areas where it is needed, and to assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes. HMDA requires banks, savings associations and credit unions that make “federally related mortgage loans,” as defined by the Board, to report data about their mortgage lending if they have total assets that exceed an asset threshold that is now set by statute (indexed for inflation in 2007 at $36 million) and a home or branch office in a metropolitan statistical area. Board Regulation C, which implements HMDA, clarifies that these institutions are subject to HMDA reporting for a given year if, in the preceding calendar year, they made at least one “federally related mortgage loan,” which is defined to be a home purchase loan or refinancing of a home purchase loan (1) made by an institution that is federally insured or regulated or (2) insured, guaranteed, or supplemented by a federal agency or (3) intended for sale to Fannie Mae or Freddie Mac. Each federal banking agency enforces the requirements of HMDA with respect to the institutions for which such agency is the primary federal supervisor.

Comments: Commenters have suggested revising the coverage tests for HMDA reporting requirements so that fewer institutions are subject to reporting, such as by raising the statutory asset test or exempting institutions that make only a *de minimis* number of mortgage loans in a year. Commenters asserted these changes could be made within the framework of HMDA, which provides the Board authority to make exceptions to the statute’s requirements in certain circumstances. Moreover, the Board could also recommend that Congress consider making changes in the coverage tests that are not now authorized under HMDA.

Current Initiatives: With respect to whether revisions should be made to the data reporting requirements under HMDA, such as revising the reporting requirements for higher-priced loans, the Board completed a multi-year review of Regulation C in 2002. As part of this process, the Board considered numerous comments from the public on additional data to be reported under HMDA relating to the pricing of loans and ways to improve and streamline the data collection and reporting requirements of Regulation C. As a result of the review, the Board made several changes to HMDA reporting requirements, including adding reporting requirements for higher-priced loans. In determining whether to add each new data requirement, the Board carefully weighed what data would be most beneficial in improving HMDA analysis against the operational/compliance costs to industry in collecting the data. The revisions to Regulation C became effective on January 1, 2004.

Recommendation: Any expansion of the coverage tests that results in fewer institutions subject to HMDA reporting requirements would warrant a careful analysis that would include weighing the benefits of reduced reporting for institutions against the loss of HMDA data. The more financial institutions that are exempted from HMDA data reporting requirements, the more difficult it would be for the federal banking agencies, other government officials and interested parties to monitor and analyze aggregate trends in mortgage lending, and compare the mortgage lending of particular institutions to the mortgage lending of all other lenders in a given geographic area or product market. It would also be more difficult for supervisors to identify institutions, loan products, or geographic markets that show disparities in the disposition of loan applicants by race, ethnicity or other characteristics and that require further investigation under the fair lending laws.

It has been two years since institutions began reporting and disclosing data relating to the new reporting items. With so few years of reporting data available, it is too early to assess the effectiveness of the new data items and consider how the reporting requirements could be changed. Any changes would have to take into account both the burden on financial institutions and the benefits of the new data to policymakers and the public. The Board and other federal banking agencies will, however, carefully consider these issues after more experience has been gained with the new reporting requirements. Several statutory changes to HMDA reporting were considered by Congress as part of its consideration of the FSRRA, including proposals to expand the HMDA exemptions. While the federal banking agencies took differing positions on these proposals, all of the agencies recognize that any statutory changes to HMDA reporting must be carefully balanced to ensure that consumer protection and access to HMDA data for appropriate consumer purposes are not diminished.

f. Truth in Lending Act (Regulation Z)

Issues:

(1) Should the consumer disclosures required under the Truth in Lending Act (TILA), as well as those required under the Real Estate Settlement Procedures Act of 1974 (RESPA), be simplified in an effort to make them more understandable?

(2) Should the statutory right of rescission be eliminated for all home-secured lending or for certain transactions (such as refinancings with new creditors where no new money is provided or refinancings involving "sophisticated borrowers")? Alternatively, should consumers be able to more freely waive their three-day right of rescission for home-secured lending?

Consumer Loan Disclosures

Context: Ensuring that consumer disclosures, including those in mortgage transactions covered by TILA and RESPA, are effective and understandable is important in carrying out the purposes of the statutes. The volume of paperwork in such transactions has increased greatly due in part to reasons other than the required disclosures, such as liability-protection concerns of lenders. Nevertheless, it is essential to review the disclosure requirements periodically to consider whether disclosures are achieving their intended purposes. The Board's Regulation Z implements TILA, and each Agency enforces the requirements of TILA with respect to the institutions for which such agency is the primary federal supervisor.[15]

Comments: Regulation Z was one of the most heavily commented-upon regulations during the EGRPRA review process. A general comment from many industry commenters was

[15] *See* Part II of this report for a discussion of comments submitted by credit unions to NCUA on this topic.

that consumers are frustrated and confused by the volume and complexity of documents involved in obtaining a loan (especially a mortgage loan), including the TILA and RESPA disclosures. Some commenters acknowledged that the increased volume and complexity of loan documents also stemmed from lenders' attempts to address liability concerns. Many commenters requested that the required loan disclosures be provided in a manner that would facilitate consumer understanding of the loan terms. (For a more complete summary of the comments received, see the discussion of comments received for TILA/Regulation Z in Appendix I-C of this report.)

Current Initiatives: The Board is conducting a multi-stage review of Regulation Z, which implements TILA. In 2004, the Board issued an advance notice of proposed rulemaking (ANPR) requesting public comment on all aspects of the regulation's provisions affecting open-end (revolving) credit accounts, other than home-secured accounts, including ways to simplify, reduce or improve the disclosures provided under TILA.[16] The next stage of the review is expected to be a review of the disclosures for mortgage loan transactions (both open-end and closed-end) as well as other closed-end credit, such as automobile loans. The multi-stage review will consider revisions to the disclosures required under TILA to ensure that disclosures are provided to consumers on a timely basis and in a form that is readily understandable.

Recommendation: The federal banking agencies have all testified before Congress on the need to simplify and streamline consumer loan disclosures. Among other things, the Board's review will consider ways to address concerns about information overload, which can adversely affect how meaningful disclosures are to consumers. The Board will use extensive consumer testing to determine what information is useful to consumers to address concerns about information overload. After the Board's review and regulatory changes are in place, the agencies will consider what, if any, legislative changes may be necessary.

[16] *See* 69 FR 70925, December 8, 2004.

Revisions to the Right of Rescission

Context: Under TILA, consumers generally have three days after closing to rescind a loan secured by a principal residence. Among other things, the right of rescission does not apply to a loan to purchase or build a principal residence or a consolidation or refinancing with the same lender that already holds the mortgage on the residence and in which no new advances are being made to the consumer. The statute authorizes the Board to permit consumers to waive this right, but only to meet bona fide personal financial emergencies (*see* 15 U.S.C. 1635(d); 12 CFR 226.15(e) and 226.23(e)).

The right of rescission is intended to provide consumers a meaningful opportunity to fully review the documents given to them at a loan closing and determine if they want to put their home at risk under the repayment terms described in the documents. Thus, substantial revision to the statutory three-day right of rescission, either through allowing waivers more freely or exempting some or all home-secured loans from the requirement, would require careful study. Currently, consumers are presented with a substantial amount of documents at closing, and the final cost disclosures provided at closing may differ materially from earlier cost disclosures provided to the consumer. Under these circumstances, consumers may benefit by having the opportunity to review the terms and conditions of the loan after the loan closing. The three-day right of rescission is particularly important, and the ability to freely waive that right may potentially be more problematic, for loan products and borrowers who are more susceptible to predatory lending practices.

The three-day right of rescission plays an important role in protecting consumers, and this may be the case even in refinancings with new creditors where no additional funds are advanced. Refinancings occur for many reasons and may have terms that place the consumer’s home more at risk. For example, to obtain a lower initial monthly payment, a consumer may refinance a 30-

year fixed-rate, home-secured loan with a loan that has an adjustable rate, that provides for interest-only payments or a balloon payment, or that has a longer loan term. Depending on the consumer’s circumstances, these changes may place the consumer’s home more at risk or otherwise be less favorable to the consumer. If their refinancing is with a new creditor, consumers can use the three-day rescission period to review the terms of these loans. Therefore, even in a refinancing with no new funds advanced, the right to rescind a transaction with a new creditor can be important to consumers. Issues concerning the right of rescission will be considered in the course of the Regulation Z review discussed above.

Comments: Many industry commenters contended that the right of rescission was an unnecessary and burdensome requirement, and they suggested either eliminating the right of rescission or allowing consumers to waive the right more freely than under the current rule (which requires a bona fide personal emergency). Representatives of consumer and community groups called the right of rescission one of the most important consumer protections and urged the regulators not to weaken or eliminate that right.

Recommendation: The Board will consider issues concerning the right of rescission in the course of the Regulation Z review discussed above. In addition, in 2006 Congress considered regulatory burden relief proposals and ultimately enacted the FSRRA. At that time, suggestions were made to include amendments to TILA that would expand the circumstances under which a consumer could waive the three-day right of rescission. All of the federal banking agencies opposed or expressed concern about waiving this important consumer protection right without adequate safeguards to ensure that consumers are protected from the abuses that may occur from expanding the waiver authority.

g. Regulation O

Issue: While the FSRRA eliminated certain Regulation O reporting requirements, several commenters also asked whether the insider lending limits should be increased to parallel those permitted under some state laws.

Context: Sections 22(g) and 22(h) of the Federal Reserve Act impose various restrictions on extensions of credit by a member bank to its insiders. By statute, these restrictions also apply to nonmember state banks and savings associations. The Board's Regulation O implements sections 22(g) and 22(h) of the Federal Reserve Act for member banks. Regulation O governs any extension of credit by a member bank to an executive officer, director, or principal shareholder of (1) the member bank, (2) a holding company of which the member bank is a subsidiary, or (3) any other subsidiary of that holding company. Regulation O also applies to any extension of credit by a member bank to a company controlled by such a person and a political or campaign committee that benefits or is controlled by such a person. Each federal banking agency enforces the requirements of Regulation O with respect to the institutions for which such agency is the primary federal supervisor.

Section 22 (g) of the Federal Reserve Act specifically prohibits a member bank from making extensions of credit to an executive officer of the bank (other than certain mortgage loans and educational loans) that exceed "an amount prescribed in a regulation of the member bank's appropriate federal banking agency." Regulation O currently limits the amount of such "other purpose" loans to $100,000.

Comments: A number of industry commenters requested a review of Regulation O reporting and threshold requirements because they view them as overly burdensome and somewhat ambiguous, with outdated dollar amounts that need updating to reflect today's economy.

Recommendation: The federal banking agencies currently have the statutory authority to raise the limit on "other purpose" loans for institutions under their supervision if the federal banking agencies were to determine that such action was consistent with safety and soundness. In this regard, the Board plans to consult with the other agencies on a proposal to increase the Regulation O limit on other purpose loans as part of its upcoming comprehensive review of Regulation O.

h. Corporate Governance/Sarbanes-Oxley Act of 2002

Issues:

(1) Should banks that are not publicly traded and that have less than $1 billion in assets be exempt from the Sarbanes-Oxley Act of 2002[17] (SOX)?

(2) Should banks that comply with part 363 of the FDIC's rules be exempt from section 404 of SOX?[18]

(3) Should the exemption for compliance with the external independent audit and internal control requirements of 12 CFR 363 be raised from $500 million to $1 billion?

Context: SOX was enacted to improve corporate governance and financial management of public companies in order to better protect investors and restore investor confidence in such companies. Section 404 of SOX applies directly to public companies only, including insured depository institutions and their parent holding companies that are public companies, and indirectly to institutions that are subsidiaries of holding companies that are public companies. Section 404 of SOX does not apply to institutions that are not "publicly traded," such as nonpublic companies or subsidiaries of nonpublic companies. Section 404 of SOX requires the management and external auditors of all public companies to assess the effectiveness of internal controls over the company's financial reporting.

Part 363 of the FDIC's regulations establishes annual audit and reporting requirements for all insured depository institutions with $500 million or more in total assets. Part 363 requires

[17] Pub. L. No. 107-204, July 30, 2002.
[18] 15 U.S.C. 7262.

all insured depository institutions with $500 million or more to have an annual audit of their financial statements conducted by an independent public accountant (external auditor). Part 363 also requires that the management and external auditors of institutions with $1 billion or more in total assets attest to internal controls over financial reporting. To be considered "independent," Guideline 14 to part 363, which was adopted by the FDIC in 1993, states that the external auditor "should be in compliance with the [American Institute of Certified Public Accountants'] Code of Professional Conduct and meet the independence requirements and interpretations of the [Securities and Exchange Commission] and its staff." Title II of SOX imposed additional auditor independence requirements on external auditors of public companies, which the Securities and Exchange Commission (SEC) has implemented through rulemaking. Thus, the external auditors of nonpublic institutions that are subject to part 363 are expected to comply with SOX's auditor independence requirements and the SEC's implementing rules.

Comments: Some commenters focused on the increased burden and costs imposed on public companies by SOX, particularly publicly traded community banks. Several commenters recommended requiring such banks to comply only with part 363 and not with SOX section 404. Other commenters were concerned about the burden placed on banks to comply with the auditor independence requirements in SOX under the FDIC's rules for those banks that are not publicly traded and have less than $1 billion in assets. These commenters believed that such requirements make it difficult for banks in small communities to find professionals to help comply with the requirements.

Current Initiatives: On March 5, 2003, the FDIC issued Financial Institution Letter (FIL) 17-2003 to provide guidance to institutions about selected provisions of SOX, including the actions the FDIC encourages institutions to take to ensure sound corporate governance. On May 6, 2003, the Board, OCC, and OTS collectively issued similar guidance entitled "Statement on Application of Recent Corporate Governance Initiatives to Non-Public Banking Organizations." None of the federal banking agencies established any new mandates for nonpublic institutions as a result of SOX.[19] In the 2003 guidance, the federal banking agencies encouraged nonpublic institutions to follow the sound corporate governance practices that the agencies have long endorsed. In addition, the federal banking agencies encouraged all nonpublic institutions to periodically review their policies and procedures relating to corporate governance and auditing matters. These reviews should ensure that policies and procedures are consistent with applicable law, regulations, and supervisory guidance and appropriate to the institution's size, operations, and resources.

Recommendations:

Banks That Are Not Publicly Traded and Have Less Than $1 Billion in Assets. As discussed above, SOX generally does not apply to banks of any size that are not publicly traded or owned by a publicly traded company. Because SOX did not impose any new mandates on nonpublic institutions that have less than $1 billion in assets, the federal banking agencies do not believe any action on this matter is necessary.

Relationship between Part 363 of the FDIC's Rules and Section 404 of SOX. The SEC rules implementing the section 404 requirements took effect at year-end 2004 for "accelerated filers," i.e., generally, public companies whose common equity has an aggregate market value of at least $75 million, but these rules will not take effect until 2007 for public companies that are "non-accelerated filers." Section 404 does not explicitly authorize the SEC to exempt any public companies from its internal control requirements.

Section 36 of the FDI Act, which was enacted more than 10 years before SOX, imposes annual audit and reporting requirements on certain insured depository institutions. These

[19] The auditor independence provisions of part 363, which dated back to 1993 and envisioned auditor compliance with the SEC's independence requirements as they might change from time to time, did not constitute a new mandate for nonpublic institutions with $500 million or more in total assets.

requirements, as implemented by part 363 of the FDIC's regulations, include assessments of the effectiveness of internal control over financial reporting by management and external auditors. Section 36 of the FDI Act authorizes the FDIC to set the size threshold at which institutions become subject to the audit and reporting requirements of section 36, provided the threshold is not less than $150 million in assets. In November 2005, the FDIC, after consulting with the other federal banking agencies, amended part 363 to require internal control assessments by management and external auditors only of insured depository institutions, both public and nonpublic, with $1 billion or more in total assets.

Part 363 applies to insured depository institutions, but section 404 applies to public companies, which, in most cases, is the parent holding company of a depository institution rather than the depository institution itself. If certain conditions are met, part 363 permits an institution to satisfy the requirement for internal control assessments by management and external auditors at the holding company level. However, when satisfied at the holding company level, part 363 provides that the internal control assessments need only cover "the relevant activities and operations of those subsidiary institutions within the scope" of the regulation, such as those subsidiary depository institutions with $1 billion or more in total assets. In contrast, internal control assessments performed under section 404 must cover the entire consolidated organization, including any insured depository institution subsidiaries with less than $1 billion in total assets and subsidiaries that are not depository institutions.

The FDIC and the other federal banking agencies have no authority to exempt institutions that comply with the internal control requirements of part 363 from the internal control requirements of section 404, which the SEC administers. Legislation that amends section 404 would be needed to create such an exemption (unless the SEC were to determine that it had the authority to do so). Moreover, in considering whether or how to craft such an exemption, one would need to recognize and take into account the fact that part 363 internal control assessments by management and external auditors are required to be performed only by insured depository institutions and not on a consolidated basis at the parent holding company level. In connection with consideration of proposals to be included in the FSRRA, one proposal would have exempted financial institutions with assets of less than $1 billion from section 404 if subject to section 36 of the FDI Act. The federal banking agencies had differing views on the advisability of such an amendment and will continue to work with Congress to look for ways to reduce burden while ensuring that adequate internal control requirements are in place.

Furthermore, because insured institutions with less than $1 billion in total assets that are public companies, or subsidiaries of public companies, are not subject to the part 363 internal control requirements, such institutions would not benefit from an exemption from the section 404 internal control requirements that would apply to institutions that comply with the part 363 internal control requirements.

Asset Threshold for the External Independent Audit and Internal Control Requirements of 12 CFR 363. Part 363 of the FDIC's regulations, which implements the annual audit and reporting requirements of section 36 of the FDI Act, requires each insured depository institution with $500 million or more in total assets to have an annual audit of its financial statements by an independent public accountant (external auditor). Section 36 and part 363 also require assessments of the effectiveness of internal control over financial reporting by an institution's management and external auditor. In November 2005, the FDIC's Board of Directors amended part 363 to raise the asset size threshold for these internal control assessments from $500 million to $1 billion.

In developing its proposal to amend the asset size threshold for internal control assessments to $1 billion in 2005, the FDIC, in consultation with the other federal banking agencies, considered whether the threshold should also be increased for the audited financial statement requirement in part 363. The longstanding policy of each of the federal banking agencies has been to encourage all insured depository institutions, regardless of size or charter, to have an annual audit of their financial statements performed by an independent public accountant. When auditing financial statements, the institution's external auditor must obtain an understanding of internal control, including assessing control risk, and must report certain matters regarding internal control to the institution's audit committee. The FDIC and other agencies concluded that raising the asset size threshold for audited financial statements under part 363 would not be consistent with the objective of section 36, such as early identification of needed improvements in financial management. In this regard, the FDIC decided that relieving institutions with between $500 million and $1 billion in total assets from the internal control assessment requirement of part 363 while retaining the financial statement audit requirement for all insured institutions with $500 million or more in assets would continue to accomplish the objective of section 36 in an appropriate manner.

Therefore, the FDIC does not currently plan to raise the asset size threshold for the financial statement audit requirement in part 363 from $500 million to $1 billion.

i. Flood insurance

Issues: Should the flood insurance requirements be reduced to cover fewer loans such as by increasing the small-loan exemption threshold (currently $5,000), or exempting loans on certain properties without residences such as properties with only barns, storage sheds, or dilapidated, non-residence structures?

Context: Under the National Flood Insurance Act, as amended, federally regulated lenders may not make, increase, extend, or renew any loan secured by a building or mobile home located or to be located in a special flood hazard area in which flood insurance is available under the Act unless the building or mobile home and any personal property securing the loan is covered by adequate flood insurance for the term of the loan. These requirements do not apply to property securing any loan with an original principal balance of $5,000 or less and a repayment term of one year or less.

Comments: During the EGRPRA process, a number of commenters suggested that the statutory exception for requiring flood insurance for small loans be raised from its current level of $5,000. Commenters also asserted that flood insurance should not be required for certain types of properties such as properties with barns, storage sheds or dilapidated structures.

Current Initiatives: Congress has been working on legislation to reform the National Flood Insurance Program (NFIP) to address the weaknesses in the program that became more apparent from hurricane disasters that severely impacted the United States in the last few years. HR 4973 passed the House of Representatives during the 109^{th} Congress and was under consideration by the Senate when the 109^{th} Congress adjourned. This bill would have:

- Increased penalties for noncompliance with flood insurance requirements,
- Increased the maximum coverage limits,
- Allowed for greater premium increases,
- Increased the Federal Emergency Management Agency's (FEMA) borrowing authority, and
- Directed FEMA to establish an ongoing program to review, update, and maintain flood maps and elevation standards.

This legislation has been re-introduced in the 110^{th} Congress.

Recommendation: The federal banking agencies believe that Congress should consider the suggested changes to the flood insurance requirements as part of the continuing efforts of Congress to comprehensively reform the NFIP to address several critical issues. The agencies will continue to work with Congress as appropriate to review and provide comments on legislative proposals to amend the NFIP.

j. Expedited Funds Availability (Regulation CC)

Issues:

(1) Should the general availability schedules for local and nonlocal checks be reviewed to determine if they are still appropriate?

(2) Should the maximum hold period for some items that currently receive next-day availability, particularly official bank checks and government checks, be extended to prevent fraud?

(3) Should the parameters of the large deposit, new account, and reasonable cause exceptions be adjusted?

Context: Under the Expedited Funds Availability Act (EFA Act) as implemented by the Board's Regulation CC, a bank generally must make an amount deposited by check available for withdrawal on the first, second, or fifth business day after deposit, depending on the characteristics of the deposit. Under the next-day availability provision, deposits by cashier's checks, teller's checks, and certified checks (collectively, official bank checks) and by U.S. Postal Service (USPS) money orders, Treasury checks, and other types of checks drawn on units of federal or state government (collectively, government checks) typically are entitled to next-day availability if deposited in the payee's account by the payee in person to a bank employee. If a check is not subject to the next-day availability provision, its general availability is determined under the availability schedule for local and nonlocal checks. Local checks typically are entitled to availability no later than the second business day after deposit and nonlocal checks typically are entitled to availability no later than the fifth business day after deposit. The next-day availability schedule and the local/nonlocal schedule (collectively, the generally applicable availability schedule) thus establish the maximum time that banks generally may wait before making a deposit available for withdrawal (the generally applicable hold period).

Banks may choose to give faster availability than the generally applicable availability schedule requires. They may also withhold availability for checks for an additional reasonable period beyond the generally applicable hold period by invoking what commonly is called an exception hold. The six reasons for invoking an exception hold, which are specified in detail in the EFA Act and Regulation CC, are that the account is new, the aggregate amount of a deposit by one or more checks on any one banking day exceeds $5,000, the bank has reasonable cause to doubt that it can collect the check, the account to which the deposit is made has been repeatedly overdrawn, the check in question previously was returned unpaid, or emergency conditions exist. Each federal banking agency enforces the requirements of EFA Act and Regulation CC with respect to the institutions for which such agency is the primary federal supervisor.

Comments: Many commenters addressed issues concerned with the EFA Act and Regulation CC. The most frequent comment related to increases in fraud associated with items for which banks must give next-day or second-day funds availability, particularly official bank checks, postal money orders, and other items drawn on governmental units. Many of these commenters suggested increasing the maximum hold time for these items to provide more time for notice to be given to a bank of the fraud. Other commenters discussed increasing the hold time for other deposits, the need to streamline the disclosures given to customers, and other miscellaneous comments.

Current Initiatives: As check clearing times improve, the EFA Act requires the Board, by regulation, to reduce the maximum hold periods that apply to local checks, nonlocal checks, and checks deposited at nonproprietary ATMs to the period of time that it reasonably takes a depository bank to learn of the nonpayment of most items in each of those categories. The Check

Clearing for the 21st Century Act (Check 21 Act) specifically requires the Board to conduct a study to assess the impact of the Check 21 Act on the use of electronics in the check clearing process, check clearing and funds availability times, check-related losses, and the appropriateness of the existing availability schedules. The results of the Board's study are discussed in the Board's April 2007 report to Congress. The Board found that check collection and return times have not improved enough to warrant the Board changing the existing availability schedules by rule at this time. The Board also provided Congress with information relating to banks' actual funds availability practices, check-related losses, and the amount limits set forth in the EFA Act. The information in the Board's report should assist Congress in determining the appropriateness of any statutory changes to the EFA Act at this time.

With respect to extending the maximum hold period for some items that currently receive next-day availability, the EFA Act specifically requires next-day availability for the items listed in the next-day availability schedule, including official bank checks and government checks, when the specified statutory criteria for next-day availability are met. Although the EFA Act authorizes the Board to shorten the availability times for local and nonlocal checks and checks deposited at nonproprietary ATMs, the EFA Act does not specifically give the Board the authority to lengthen (or shorten) the maximum generally applicable hold periods for items subject to the next-day availability schedule. In addition, by the terms of the EFA Act, the reasonable cause to doubt collectibility exception for placing an exception hold on a check may not be invoked simply because the check is of a particular class.

Recommendation: Although the Board may suspend the application of any provision of the EFA Act for a class of checks to prevent fraud losses, such a suspension is limited to 45 business days and requires both a finding by the Board that suspension of the EFA Act's requirements is necessary to diminish the fraud and a report to Congress concerning the reasons and evidence supporting the Board's action. In light of these considerations and limitations, the ongoing relief sought by commenters would require a statutory change. The federal banking agencies, however, are taking actions to respond to the increase in the number of fraudulent official checks.

Information in the Board's report indicates that, although check-related losses sustained by banks have risen somewhat in the last decade, checks that receive next-day availability are associated with only around 10 percent of those losses and thus are not the source of most bank check-related losses. The other information in the Board's report should assist policy makers in determining whether statutory adjustments to the next-day availability provisions would be appropriate.

With respect to adjusting the parameters of the large deposit, new account, and reasonable cause exceptions, it should be noted that these parameters are specified by the EFA Act, and adjusting them therefore would require a statutory change. Streamlining and simplifying the requirements under the EFA Act was an issue that was raised when Congress considered regulatory burden proposals during its work last year on the FSRRA. The Board's report of its most recent check collection study includes, among other things, an assessment of both the time periods and dollar thresholds that apply to the safeguard exceptions, including but not limited to the large deposit and new account exceptions. The results of that study should assist policy makers in determining the appropriateness of adjusting the current parameters of the exception holds and provide guidance to the federal banking agencies to determine whether to recommend legislative changes to eliminate unnecessary burden that may be imposed by statutory requirements.

k. Powers and Activities

Issues:

(1) Should existing consumer and commercial lending limits for savings associations be increased?

(2) Should bank holding companies that are not financial holding companies be able to conduct a broad scope of insurance agency activities directly or through a nonbanking subsidiary?

(3) Should the federal banking agencies issue a joint rule to clarify interest rate exportation guidelines?

Consumer and Commercial Lending Limits for Savings Associations

Context: The Home Owner's Loan Act (HOLA) currently subjects a federal savings association to a 35 percent of assets limitation for *secured* consumer loans while imposing no statutory limit on the amount of *unsecured* credit card lending. This limit exists even though the proceeds of the loan may be used for the exact same purpose. With respect to commercial loans, HOLA currently caps aggregate commercial loans other than small business loans at 10 percent of a savings association's assets, and permits commercial lending, including small business lending, up to 20 percent of assets.

Comments: During the EGRPRA review process, several commenters urged OTS to increase consumer and commercial lending limits. One asserted that savings associations are developing business strategies that require more flexible consumer loan limits. Another commenter suggested that small business lending limits be increased to 20 percent of assets to help increase small business access to credit and expand the amount of loans made to small and medium-sized businesses.

Current Initiatives: When Congress was working on the FSRRA last year, there were some amendments that OTS strongly supported that would have amended HOLA to ease the consumer and commercial limits for savings associations. OTS will suggest these amendments again when Congress considers new regulatory burden relief initiatives.

Recommendation: OTS is committed to continuing to work with Congress next year on easing consumer and commercial lending limits for savings associations.

Insurance Agency Activities

Context: Sections 4(c)(8) and (k) of the Bank Holding Company Act (BHC Act), as amended by the Gramm-Leach-Bliley Act of 1999 (GLBA), do not permit the Board to expand the list of nonbanking activities that are permissible for bank holding companies that have not qualified to be a "financial holding company" beyond those activities that the Board determined, by regulation or order, were "closely related to banking" as of November 11, 1999. As a result, a bank holding company that does not elect to become a financial holding company is permitted to engage only in those nonbanking activities that the Board had determined were permissible under section 4(c)(8) as of that date.

Prior to the enactment of the GLBA, bank holding companies were permitted under section 4(c)(8)to engage in general insurance brokerage activities only in a "place of 5,000." A similar place of 5,000 limit applies to the general insurance brokerage activities of national banks and their subsidiaries. The GLBA amended the law to allow subsidiaries of bank holding companies that qualify as financial holding companies and financial subsidiaries of national banks that qualify to have financial subsidiaries to engage in general insurance agency activities without the place of 5,000 requirement.

Comments: Several commenters, including industry trade associations, supported allowing a bank holding company to conduct an expanded scope of insurance agency activities directly or through a nonbanking subsidiary.

Current Initiatives: When Congress was considering proposals to be included in the FSRRA, legislation was suggested, but was not enacted, that would have allowed all bank holding companies to provide insurance as agent without the place of 5,000 requirement or would have amended the BHC Act to permit the Board to expand permissible activities for bank holding companies. The Board reiterated its support of these proposals in testimony on regulatory relief in March 2006.[20] In addition, legislation was suggested that would have permitted national banks to engage in a full range of insurance agency activities without the place of 5,000 restriction. The OCC expressed its support for making this change for national banks.

Recommendation: The Board is statutorily prevented from authorizing bank holding companies that are not financial holding companies to engage in a full range of insurance agency activities without the place of 5,000 requirement. Currently, bank holding companies that do not become a financial holding company may engage only in very limited insurance sales activities (primarily involving credit-related insurance) outside such small places. Similar restrictions apply to national banks, and national banks cannot engage in a full range of insurance agency activities without the place of 5,000 restriction except through a financial subsidiary. As noted above, the Board and the OCC support certain changes to the current restrictions on the insurance agency activities of bank holding companies and national banks, respectively. The federal banking agencies will work with Congress on these issues to support appropriate burden relief for the industry from the current restrictions on these agency activities.

"Exportation" of Interest Rates

[20] *See* Testimony of Governor Donald L. Kohn before the Committee on Banking, Housing, and Urban Affairs, dated March 1, 2006.

Context: Federal statutes permit the "exportation" of interest rates and fees for federally insured depository institutions and their operating subsidiaries from any state in which the institution is located, except federal credit unions, which are subject to a federal usury ceiling.[21] While the applicable federal laws are substantially similar, the federal banking agencies have implemented or interpreted these provisions, or are considering doing so, through different avenues.

Comments: One commenter recommended that the federal banking agencies clarify that financial institutions could use their home state interest rates regardless of the contacts (or lack thereof) between the home state and the loan. The commenter indicated that the federal banking agencies should further clarify the factors that need to be considered when the rate of a state other than the home state is used. The commenter said that the federal banking agencies should issue a new joint rule to clarify these issues. According to the commenter, the federal banking agencies also should review their interpretations concerning what constitutes "interest" under the export doctrine, to ensure consistency.

Initiatives: The OCC has issued regulations and interpretations that apply to national banks and their operating subsidiaries.[22] In addition, there are Supreme Court decisions dealing with national banks' exportations of rates and fees.[23] OTS similarly has issued regulations in this area for federal and state thrifts.[24] In March 2005, the FDIC held a hearing on a proposal that includes a request to codify the FDIC's interpretations of the interest rates charged by state banks in interstate lending transactions. In October 2005, the FDIC issued a proposed rule that includes

---

[21] S*ee* 12 CFR 701.21(c)(7)). *See* 12 U.S.C. 85 (national banks); 1463(g) (federal and state thrifts); 1831d (state banks); 1785(g) (federal and state credit unions *but see* discussion above concerning federal credit union usury limits).
[22] S*ee* 12 CFR 7.4001, 7.4006, Interpretive Letter 954, February 2003.
[23] *See,* e.g., *Marquette National Bank of Minneapolis v. First of Omaha Service Corp.*, 439 U.S. 299 (1978); *Smiley v. Citibank (South Dakota), N.A.*, 517 U.S. 735 (1996).
[24] *See* 12 CFR 560.110.

a proposed codification.[25] Federal court decisions have also addressed the ability of state banks to "export" interest rates under 12 U.S.C. 1831d.[26]

Recommendation: In light of the actions taken or already under consideration by the federal banking agencies in this area, they do not believe joint rulemaking on this subject is needed.

l. Capital

Issue: Should the federal banking agencies permit an opt-out for highly capitalized community banks from the proposed revisions to Basel I to allow them to continue to use existing capital rules?

Context: On September 25, 2006, the Board, FDIC, OTS, and OCC issued a notice of proposed rulemaking (NPR) for the advanced approaches of the Basel II capital framework. The Basel II capital framework is designed to ensure that capital regulations appropriately address existing and emerging risks; the agencies recognize that the current Basel I framework no longer does so with respect to the largest, most sophisticated banks. Although the advanced approaches of the Basel II capital framework are quite complex, only a relatively small number of the largest and most internationally active banks, savings associations, and bank holding companies (banking organizations) will be required to apply the framework.

The federal banking agencies also issued a proposed revision to Basel I in December 2006, which is commonly known as Basel IA. The primary goal of this initiative was to increase the risk sensitivity of the existing capital rules without unduly increasing regulatory burden. The Basel IA proposal provided that, except for those banking organizations that may be required to apply the Basel II capital framework, banking organizations would have the option of adopting the proposed Basel IA revisions or continuing to determine capital under the existing risk-based

[25] *See* 70 FR 60019.
[26] *See Greenwood Trust Co. v. Commonwealth of Mass.*, 971 F. 2d 818 (1st Cir. 1992).

capital rule. The regulators reserved the authority under the proposed rules to mandate a particular framework for a particular institution, depending on the risk profile and activities of a particular institution.

Comments: During the EGRPRA process, the federal banking agencies received relatively few comments concerning capital issues, as the *Federal Register* notice advised that comments concerning capital would be gathered and considered in connection with the capital rulemaking process. Nevertheless, among those who did comment, there was some concern that banking regulators' efforts to revise capital rules could prove to be overly burdensome for smaller banks and difficult to implement. Some of those commenters proposed that highly capitalized community banks be allowed to opt out from the proposed revisions to Basel I and continue to use the existing Basel I risk-based capital framework. Commenters to the Basel IA and Basel II proposals urged the agencies to adopt the Basel II so-called "standardized" approach. The standardized approach is, in part, a set of modifications to the Basel I framework that modestly enhances overall risk sensitivity. On July 20, 2007, the agencies issued a press release stating their intention to issue a proposed rule that would provide those banking organizations not required to adopt the Basel II framework an option to adopt a Basel II-based standardized approach. The press release noted that this new proposal would replace the Basel IA option.

Recommendation: The agencies have stated their intention to make the standardized proposal optional. Banking organizations in most cases would have the option of selecting the regulatory capital framework—the existing Basel I rules or the standardized approach or the Basel II advanced approaches. Thus, the federal banking agencies believe that potential revisions to the Basel I capital rules do not create undue regulatory burden for most banking organizations, including highly capitalized community banks.

m. Community Reinvestment Act “Sunshine Rules”

Issue: Should the Community Reinvestment Act (CRA) Sunshine rules be repealed?

Context: Section 711 of the GLBA added a new section 48 to the Federal Deposit Insurance Act (12 U.S.C. 1831y), entitled “CRA Sunshine Requirements,” which has been implemented by regulations adopted by each federal banking agency.[27] This section requires nongovernmental entities or persons, depository institutions, and affiliates of depository institutions that are parties to certain agreements that are in fulfillment of the CRA to make the agreements available to the public and the appropriate agency and to file annual reports concerning the agreements with the appropriate agency. The types of agreements that could be covered by the statute include:

- Written agreements providing for cash payments, grants, or other consideration (except loans) with an aggregate value in excess of $10,000 in a calendar year; or
- Loans to one or more individuals or entities (whether or not parties to the agreement) that have an aggregate principal amount of more than $50,000 in any calendar year.

Comments: During the EGRPRA review process, both bankers and community advocates supported repeal of these requirements. Bankers generally commented that the burden of compliance outweighs any benefit of the reporting requirements. Community advocates expressed concern about the government’s monitoring the amount of funding they receive as a result of bank efforts to fulfill CRA obligations.

Recommendation: All of the federal banking agencies supported repeal of these statutory requirements last year when Congress was considering regulatory burden relief proposals to include in the FSRRA. This change would reduce regulatory burden on depository institutions, nongovernmental entities (such as consumer groups) and other parties to covered

[27] 12 CFR 35; 12 CFR 207 (Regulation G); 12 CFR 346; 12 CFR 533.

agreements as well as the agencies.

n. Equal Credit Opportunity Act (Regulation B)

Issues:

(1) Should the federal banking agencies provide additional guidance on fair lending issues, such as when two individuals demonstrate sufficient evidence that they are applying jointly for credit so the creditor may require the signature of both individuals?

(2) Should the requirements for "adverse action" notices under the Equal Credit Opportunity Act (ECOA) be changed to make it easier to determine the circumstances in which an adverse action notice is required?

(3) Should the Board's Regulation B be amended to eliminate requirements that institutions collect data on applicants' race, ethnicity, and gender, leaving HMDA as the only requirement for collection of similar data? Alternatively, should Regulation B be amended so that, if a consumer opts not to provide information on race, ethnicity, and gender, the lender is not required to collect the information on the basis of visual observation or surname?

Context: The primary federal fair lending statute, ECOA, is implemented through the Board's Regulation B. The Board's Official Staff Commentary to Regulation B provides additional guidance. Each federal banking agency enforces the requirements of ECOA with respect to the creditors for which such agency is the primary federal supervisor. The Board completed a comprehensive review of Regulation B and the Commentary in 2003. The federal banking agencies also have worked together to provide guidance on fair lending issues, particularly examiner guidance on conducting compliance and fair lending examinations at the institutions the agencies supervise. The federal banking agencies address matters involving more fact specific fair lending issues on a case-by-case basis.

Guidance on Fair Lending Issues. Regulation B provides that a creditor may not require a signature of a loan applicant's spouse or other individual if that applicant qualifies independently for the credit. This restriction, however, does not apply to applications that are filed jointly by two or more individuals. The regulation states that a creditor may not deem the submission of a joint financial statement as evidence of intent to apply jointly. Thus, the issue arises as to what constitutes evidence of intent to apply for joint credit. The Board addressed the issue involving the ambiguity of when there is evidence of intent to apply for credit as joint applicants in its 2003 review of Regulation B. The Board adopted an amendment to the Commentary to provide additional guidance on how a consumer can establish intent to apply jointly for credit. Since that time, Board staff has responded on a case-by-case basis to requests for clarification of ways consumers can establish intent to apply jointly for credit, which appears to have adequately clarified the matter.

"Adverse Action" Notice Requirements. Financial institutions must provide an adverse action notice to an applicant if a credit application is denied. The determination of when a credit application exists—as opposed to a general credit inquiry or evaluation—and under what circumstances it is considered to have been denied, has been the subject of questions. In the comprehensive review of Regulation B, discussed in the response to the preceding issue, the Board amended the Official Staff Commentary to Regulation B to provide additional guidance on the circumstances under which a general credit inquiry or a prequalification request can be considered an application for purposes of Regulation B. The additional guidance included new examples of when communications with consumers are considered applications. In the review of Regulation B, the Board also considered adopting a bright-line test for deciding whether an application exists. After carefully considering the benefits and drawbacks of a bright-line test, the Board decided at the time not to adopt such a test. While a bright-line test might provide clarity in some situations, it also would risk including as applications some situations that should not be included (for example, credit counseling in which a consumer’s credit report is obtained). A bright-line test might also exclude some situations that should be covered because lenders might inform consumers that they do not qualify for credit even when consumers have not submitted a formal application.

Information on Applicants’ Race, Ethnicity, and Gender for Regulation B and HMDA. Regulation B requires some collection of data that is not required under HMDA, including data on age and marital status. Thus, if all Regulation B monitoring requirements were eliminated, the age and marital status data would no longer be available to monitor lenders' compliance with fair lending law provisions that prohibit discrimination based on age or marital status. In addition, some lenders that are covered by Regulation B are not covered by HMDA; therefore, if the suggested change were adopted, no applicant data would be available for such lenders for the purpose of monitoring fair lending compliance.

In addition, if lenders were not required to note applicant information in cases where the applicant does not provide such information, the data available for monitoring fair lending compliance might be significantly incomplete, causing problems for fair lending enforcement.

Recommendation: For the reasons summarized above, generally the federal banking agencies have not supported changing ECOA in the manner discussed above.

o. Electronic Fund Transfer Act (Regulation E)

Issues:

(1) Should the Regulation E limits on consumer liability for unauthorized electronic fund transfers be increased?

(2) Can the requirement for periodic statements be eliminated in some cases (e.g., where the consumer has online access to account information), or can the required frequency of periodic statements be reduced in some cases (such as where there is no electronic fund transfer

activity)?

Context: The Electronic Fund Transfer Act (EFTA) is implemented through the Board's Regulation E. Each Agency enforces the requirements of the EFTA with respect to the institutions for which such agency is the primary federal supervisor.

Increasing Regulation E Limits on Consumer Liability for Unauthorized Electronic Fund Transfers. The limits on consumer liability specified in the Board's Regulation E are required by and set forth in the EFTA. When the EFTA was enacted, Congress made a determination that placing strict limits on consumer liability for unauthorized transfers would serve as an incentive for financial institutions to develop more secure electronic fund transfer systems, as well as protect consumers from serious losses. Nevertheless, the EFTA gives consumers an incentive to guard their debit cards and personal identification numbers (PINs), because the consumer may be liable for a share of an unauthorized transaction.

Comments: Some commenters suggested tightening the rules on consumer liability to include a negligence standard under which a consumer who violated the standard may have greater liability for the loss or theft. Another commenter recommended generally increasing the consumer's liability from $50 to $250. Consumer group commenters suggested that institutions should not be permitted to place the burden of proof on a consumer regarding a claim of an unauthorized transfer and should be required to reimburse the consumer unless the institution can prove that the transfer was authorized.

Recommendation: Given Congress's goal of providing adequate incentives to both consumers and financial institutions to reduce risks, before increasing the limits on consumer liability serious consideration should be given to whether a higher limit would be appropriate or achieve the goal of relieving unnecessary burden. When the FSRRA was being considered in 2006, some proposed increasing the consumer liability under Regulation E from $50 to $500 for unauthorized transfers resulting from writing a PIN on a card or keeping the PIN in the same location as the card. The federal banking agencies generally did not support this amendment.

Periodic Statement Requirements. The Board has issued a number of proposals and interim rules under Regulation E over the past several years for the purpose of facilitating, and providing standards for, the use of electronic disclosures (including electronic periodic statements). In 2000, the Electronic Signatures in Global and National Commerce Act (E-Sign Act) was enacted to authorize the use of electronic records (including electronic consumer disclosures) with consumers' consent. Both the E-Sign Act and the Board's rules already provide for online periodic statements; therefore, paper statements are no longer required. Thus, it may not be necessary to completely eliminate the periodic statement requirement to reduce regulatory burden and the use of paper. In addition, in August 2006, the Board issued a final rule clarifying the application of Regulation E to payroll card accounts. The final rule grants flexibility to financial institutions in providing account information to payroll card users. Under the rule, institutions are not required to provide periodic paper statements for payroll card accounts if the institution makes account information available by telephone and electronically, and upon the consumer's request, in writing.

On the frequency of periodic statements, Regulation E permits quarterly statements (in place of monthly) where there is no electronic fund transfer activity (or no electronic fund transfer activity except for direct deposits). However, some consumers may need periodic statements even where there is no electronic fund transfer activity. For example, the consumer may have expected an electronic deposit to an account and may not know until receiving the statement that it failed to occur.

Comments: Commenters suggested that, in the case of consumers who have online or telephone access to monitor their accounts and transactions daily, the requirement for a monthly or quarterly periodic account statement is unnecessary. A commenter contended that the requirement to provide periodic statements quarterly for accounts with electronic access but no activity is unduly burdensome and suggested that the agencies amend the rule to allow for semiannual or annual statements in such cases.

Recommendation: The federal banking agencies believe that additional study would be necessary before making any recommendations for legislative changes or pursuing additional regulatory changes with respect to the frequency of periodic statements.

p. Truth in Savings Act (Regulation DD)

Issue: Should Truth in Savings Act (TISA) disclosures be revised to streamline, simplify, and improve the effectiveness of the disclosures, and to make them more understandable for consumers?

Context: The Board's Regulation DD implements TISA. However, each federal banking agency enforces the requirements of TISA with respect to the institutions for which such agency is the primary federal supervisor. The current Board policy provides that the Board must conduct a periodic review of its regulations, including Regulation DD, to update and, where appropriate, streamline them.

Comments: Many industry commenters asserted that their customers pay little attention to the TISA disclosures and, thus, the disclosure requirements impose unnecessary and burdensome costs on the industry. A consumer group suggested that the TISA disclosures should be required to be made available on financial institutions' Web sites.

Recommendation: The Board will consider suggestions for improving TISA disclosures during the next periodic review of Regulation DD. As a result, the federal banking agencies will wait until such review is completed before making any recommendations on this issue.

C. Other Joint Agency Initiatives

For many years, the Agencies have had programs in place to periodically review their regulations in an effort to eliminate any outdated or unnecessary regulations and to otherwise amend their regulations to better meet the Agencies' objectives, while minimizing regulatory burden. From previous reviews and as part of the EGRPRA review, certain issues were deemed "significant" in terms of being viewed by the industry as being particularly burdensome.

Pursuant to the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI), the federal banking agencies conducted a systematic review of their regulations and written policies to improve efficiency, reduce unnecessary costs and eliminate inconsistencies and outmoded and duplicative requirements. CDRI also directed the federal banking agencies to work jointly to make uniform all regulations and guidelines implementing common statutory or supervisory policies. As a result of the CDRI review that was completed in 1996, the federal banking agencies either jointly or individually rescinded or revised many rules and regulations. The federal banking agencies also have continued to incorporate the principles of CDRI into their regulatory policy development and periodically report these accomplishments to Congress.

Subsequently, the EGRPRA statute modified numerous regulatory requirements and procedures affecting the Agencies, financial institutions and consumers. The law:

- Streamlined application and notice requirements in a number of areas, such as nonbanking acquisitions by well-managed and well-capitalized bank holding companies;
- Allowed a 60-day period (with a 30-day extension) for FDIC consideration of completed applications from a state bank or its subsidiary to engage in an activity that is not permissible for a national bank;

- Directed each federal banking agency to coordinate examinations and consult with each other to resolve inconsistencies in recommendations to be given to an institution, and to consider appointing an examiner-in-charge to ensure the consultation takes place;
- Provided in cases of coordinated examinations of institutions with state-chartered subsidiaries, that the lead agency could be the state chartering agency;
- Required reports from all banking regulators on actions taken to eliminate duplicative or inconsistent accounting or reporting requirements in statements or reports from regulated institutions.

Certain significant burden reduction initiatives were already underway outside of the EGRPRA review process and are detailed below.

1. Community Reinvestment Act Interagency Rulemaking

When revised CRA rules were published in 1995, the federal banking agencies committed to undertake a comprehensive review of the regulations to ascertain whether the performance-based evaluation standards established by the revised rules had, among other things, minimized compliance burden. In July 2001, the federal banking agencies published a joint ANPR seeking comment to determine whether, and to what extent, the regulations should be amended to eliminate unnecessary burden as well as other issues.[28] In February 2004, after a review of the comments received on the ANPR, the federal banking agencies issued a joint NPR proposing changes to the regulations to reduce undue regulatory burden by changing the definitions of a "small bank" and a "small savings association" (which may qualify for a streamlined CRA evaluation) and to address abusive lending practices.[29]

[28] 66 FR 37602, July 19, 2001.
[29] 69 FR 5729, February 6, 2004.

On August 18, 2004, OTS published a final rule raising the small savings association asset threshold from $250 million to $1 billion (without consideration of holding company affiliation).[30] Also in August 2004, the FDIC published a proposed rule to raise the CRA small bank threshold to $1 billion without consideration of holding company affiliation and add a community development test for institutions between $250 million and $1 billion in assets.[31] In March 2005, the FDIC, the OCC, and the Board published a joint NPR (the March 2005 proposal) to (1) raise the small bank asset threshold to $1 billion, (2) eliminate data collection and reporting of small business, small farm, and community development loans, (3) rationalize the performance tests to allow for more flexibility in meeting CRA goals, and (4) add a community development test for institutions between $250 million and $1 billion in assets.[32] The proposal also provided an annual inflation adjustment for these thresholds. In response to the NPR, a combined total of 10,000 comments were received on the March 2005 proposal.

After considering comments, the Board, FDIC, and OCC adopted a joint final rule on August 2, 2005.[33] The changes took effect September 1, 2005. The final rule sought to balance the need to provide meaningful regulatory relief to small banks and the need to preserve and encourage meaningful community development activities by those banks. The final rule raised the small bank threshold to $1 billion without consideration of holding company affiliation. These banks are no longer required to collect and report CRA loan data, responding to community bank concerns about unnecessary burden. The new rule also added an intermediate small bank examination process for banks with $250 million to $1 billion in assets. Under the new rule, these dollar thresholds are adjusted annually for inflation. The staff of the three agencies issued questions and answers for comment in November 2005 to address revisions to

[30] 69 FR 51155, August 18, 2004.
[31] 69 FR 51611, August 20, 2004.
[32] 70 FR 12148, March 11, 2005.
[33] 70 FR 44256, August 2, 2005.

the regulations.[34] After review of the comments, in March 2006, the staff of the Board, FDIC, and OCC issued final questions and answers.[35]

OTS issued a final rule effective April 1, 2005, providing additional flexibility to each savings association evaluated under the large retail institution test to determine the combination of lending, service and investment it will use to meet the credit needs of its local community(ies), consistent with safe and sound operations.[36] The final rule allows savings associations to select any combination of weights assigned to lending, service and investment, as long as the weights total 100 percent and lending receives no less than a 50 percent weight.

In an April 12, 2006, final rule, OTS revised the definition of “community development,” making its definition consistent with that of the other agencies.[37] On that same date, OTS also issued a notice soliciting comments on proposed questions and answers guidance related to the final rule.[38] OTS finalized the proposed questions and answers on September 5, 2006.[39]

On November 24, 2006, OTS issued an NPR to revise its rule implementing CRA for interagency uniformity. The NPR was issued to solicit comment on whether OTS should revise its CRA rule to align with the CRA rules of other federal banking agencies. The proposal would eliminate alternative weights, add an intermediate small savings association examination for savings associates with assets between $250 million and $1 billion, adjust the asset thresholds annually for inflation, and incorporate a provision on discriminatory or other illegal practices. The comment period closed on January 23, 2007. OTS adopted a final rule on March 22, 2007, with an effective date for the rule of July 1, 2007.

[34] 70 FR 68450, November 19, 2005.
[35] 71 FR 12424, March 10, 2006.
[36] 70 FR 10023, March 2, 2005.
[37] 71 FR 18614, April 12, 2006.
[38] 71 FR 18807, April 12, 2006.
[39] 71 FR 52375, September 5, 2006.

2. Call Report Modernization

The FFIEC Central Data Repository (CDR) was successfully implemented on October 1, 2005. The CDR is designed to consolidate the collection, validation and publication of quarterly bank financial reports. All national, state member, and state non-member banks, including FDIC-insured state savings banks, were enrolled in the CDR and started using the CDR to file their financial reports via the Internet beginning with the third quarter of 2005. The CDR employs new technology that uses the eXtensible Business Reporting Language (XBRL) data standard to streamline the collection, validation, and publication of Call Report data. Over 7,900 financial institutions used the CDR to file their financial reports for the fourth quarter of 2006 via the Internet. The initial quality of the data was much higher than in previous quarters, which speeded the availability of the data to regulatory financial analysts and ultimately the public, thereby fulfilling one of the overarching goals of the CDR project. Higher data integrity, accuracy, and consistency will help to increase the efficiency with which the data can be collected, analyzed, and released to the public.

3. BSA/AML Compliance Outreach to the Banking Industry

The Agencies have conducted significant outreach to the banking industry in the area of BSA/AML compliance, with the goal of enhancing the clarity and consistency of regulatory requirements and supervisory expectations. In addition to engaging in dialogue with supervised banking organizations through the examination process, the Agencies have conducted outreach through various channels, such as conferences and training events sponsored by the Agencies or by trade associations. For example, in September 2006, the Agencies (in coordination with FinCEN and OFAC) hosted a series of conference calls to discuss the changes to the *FFIEC BSA/AML Examination Manual* and to provide financial institutions with the opportunity to raise questions. Approximately 10,500 financial institution personnel participated in these calls.

4. Regulatory Relief for Banks and Customers in the Hurricane Disaster Areas

The FFIEC established a special FFIEC Interagency Katrina Working Group to facilitate the coordination, communication, and response to financial institution supervisory issues arising in the aftermath of Hurricanes Katrina and Rita. State supervisors on the FFIEC State Liaison Committee also were invited to participate. Interagency efforts to help New Orleans and the Gulf region recover from the hurricane devastation included guidance on the establishment of temporary branches and branch- and employee-sharing arrangements. Efforts also included guidance on published responses to interagency frequently asked questions on additional topics including the CRA, BSA, and various operational issues, including regulatory reporting requirements. Agencies created Web sites with Hurricane Katrina and Rita disaster-related links, including FFIEC issuances for financial institutions, their customers, and employees who were impacted by the disasters. Other links provided were to disaster recovery and assistance agencies and trade associations with information for victims. In addition, telephone "hotlines" were set up and information provided regarding financial institution locations, contact information, and general disaster assistance information.

By relaxing certain documentation, notification and reporting requirements, the Agencies helped the affected institutions to continue operating during the days, weeks, and months following the disaster. For example, the Agencies immediately issued joint guidance asking insured depository institutions to consider all reasonable and prudent steps to assist customers' cash and financial needs in areas affected by the hurricane. Among the actions the Agencies encouraged institutions to consider were:

- Waiving ATM fees for customers and non-customers;
- Increasing ATM daily cash withdrawal limits;
- Easing restrictions on cashing out-of-state and non-customer checks;

- Waiving overdraft fees as a result of paycheck interruption;
- Waiving early withdrawal penalties on time deposits;
- Waiving availability restrictions on insurance checks;
- Allowing customers to defer or skip some loan payments;
- Waiving late fees for credit cards and other loans due to interruption of mail and/or billing statements, or the customer's inability to access funds;
- Easing credit card limits and credit terms on new loans;
- Delaying delinquency notices to credit bureaus; and
- Encouraging institutions to use non-documentary customer verification methods for customers that are not able to provide standard identification documents.

Finally, the federal banking agencies issued examiner guidance and a subsequent reminder making it clear that an institution retains flexibility in its workout or restructuring arrangements with customers in the disaster areas.

5. Reducing Examination Frequency

On April 10, 2007, the federal banking agencies jointly issued and requested comment on their respective interim rules to implement section 605 of the FSRRA (*see* Appendix I-A) enacted on October 13, 2006, and a subsequent conforming amendment enacted on January 11, 2007. (*See* 72 FR 17798, April 10, 2007.) The changes to the law made by this legislation give the agencies the discretion to conduct on-site examinations, on 18-month cycles rather than annual cycles, of highly rated insured depository institutions that have less than $500 million in total assets. Prior law allowed 18-month examination cycles only for such qualifying insured depository institutions with less than $250 million in total assets. In addition to reducing the burden on small, well-capitalized, and well-managed insured depository institutions, the changes to the law allow the federal banking agencies to better focus their supervisory resources on those institutions that may present issues of supervisory concern. The agencies' interim rules became effective on April 10, 2007, and the comment period closed on May 10, 2007.

6. Examination Programs

The Agencies have worked together to implement programs that improved regulatory risk-assessment capabilities and streamlined examinations and other supervisory functions. For example, as early as 1998, the FDIC, the Board, and CSBS worked together to develop and implement examination software applications that integrated information from various automated systems to assist in the preparation of an automated examination report. This cooperation promoted consistency among the Agencies and reduced regulatory burden on state-chartered banks. The same Agencies also formed a steering committee to better coordinate risk-focused examination procedures. The Agencies continue to work together to improve upon these examination tools. Since 1994, the Agencies have used a common core report of examination to promote interagency consistency and reduce regulatory burden.

7. Privacy Notices

Section 728 of the FSRRA requires that the Board, OCC, FDIC, OTS, NCUA, FTC, SEC, and Commodity Futures Trading Commission (CFTC) publish a proposed model privacy notice that is clear and comprehensive for public comment within 180 days of enactment. Section 728 of the FSRRA provides that the model notice will provide a safe harbor for the financial institutions that use it. Further, financial institutions may, at their option, use the model notice to satisfy the privacy notice requirements of the GLBA. The Board, OCC, FDIC, OTS, NCUA, FTC, SEC, and CFTC have developed a proposed model notice, which was published for public comment in March 2007 (earlier than required by the 180-day deadline) (72 FR 14940).

Efforts to simplify privacy notices have been underway for some time. In 2003, the Board, OCC, FDIC, OTS, NCUA, FTC, SEC, and CFTC published an ANPR in which they sought comment on simplifying privacy notices. After reviewing the comments received from the ANPR, the Board, OCC, FDIC, NCUA, FTC, and SEC engaged experts in plain language disclosures and consumer testing to assist them in developing a simple and comprehensible notice. That notice is now the one being proposed by the Board, OCC, FDIC, OTS, NCUA, FTC, SEC, and CFTC to fulfill the requirements of section 728 of the FSRRA.

In addition, during the consideration of amendments to be included in the FSRRA, Congress considered a proposal that would, subject to certain conditions, allow a financial institution to avoid having to provide an annual privacy notice to consumers, if the financial institution (1) did not disclose nonpublic personal information in a manner that would be subject to a consumer's right to opt out under applicable laws and (2) had not changed its privacy policies and procedures from the policies and procedures stated in the last notice that was provided to consumers. The annual notice, when required, must provide information about the institution's policies and procedures with respect to disclosing nonpublic personal information about consumers consistent with the customer's right to opt out of such disclosures under applicable statutes and regulations. The federal banking agencies generally supported this amendment. While this amendment was not included in the FSRRA as enacted, it was included in the House-passed version of this bill[40] and may be again considered by Congress in the future.

[40] H.R. 3505, 109th Congress, section 617 (2006).

D. Individual Agency Efforts to Reduce Regulatory Burden

During the EGRPRA process, the federal banking agencies individually undertook efforts to reduce regulatory burden on institutions that they supervise and regulate. These initiatives took many forms, ranging from regulatory changes, streamlining of supervisory processes, and revisions of agency handbooks. Together, these efforts contributed significantly to the central goal of EGRPRA: elimination of unnecessary regulatory burden on financial institutions.

1. The Board of Governors of the Federal Reserve System

During the EGRPRA review period, the Board has undertaken a number of initiatives to reduce unnecessary regulatory burden on the financial organizations it regulates and supervises. Such initiatives included revisions of various aspects of the Board's supervisory, regulatory, monetary policy, payments, and consumer protection rules, procedures, and guidance. In connection with its regulations and supervisory processes, the Board will continue to identify appropriate regulatory and supervisory revisions to reduce unnecessary burden while ensuring the safety and soundness of institutions, protecting the integrity of the financial payment systems, and safeguarding consumer protections.

a. Supervisory Initiatives. In 2006, the Board approved a final rule that expands the definition of a small bank holding company (small BHC) under the Board's Small Bank Holding Company Policy Statement (Policy Statement) and the Board's risk-based and leverage capital guidelines for BHCs (Capital Guidelines). The Board revised its Policy Statement to raise the small BHC asset size threshold from $150 million to $500 million and to amend the qualitative criteria for determining eligibility as a small BHC for the purposes of the Policy Statement and the Capital Guidelines. Additionally, the Board revised its regulatory financial reporting requirements so that qualifying small BHCs will only be required to file parent-only financial data on a semiannual basis (FR Y-9SP). These changes significantly increased the number of bank holding companies that are exempt from the Board's consolidated capital rules and that may benefit from more streamlined reporting requirements. The amendments to the threshold and the qualitative criteria reflect changes in the industry since the initial issuance of the policy statement in 1980.

In addition, the Board revised its guidance to examiners on the format of examination reports for community banking organizations in order to better focus examination findings on matters of risk and importance to the bank's overall financial condition. The Board designed the revisions to improve communications with bank management and boards of directors and to minimize burden on banking organizations. The revisions require the incorporation of findings of specialty examinations into the safety and soundness conclusions to provide a more comprehensive assessment.

To further enhance its risk-focused supervision program, the Board implemented revised procedures for the supervision of bank holding companies with total consolidated assets of $5 billion or less. The revisions to the bank holding company supervision procedures promote more effective use of targeted on-site reviews to fulfill the requirements, when necessary, for the full scope inspections of holding companies with total consolidated assets between $1 billion and $5 billion. Additionally, the revisions to the supervisory procedures promote a flexible approach to supervising bank holding companies and are designed to enhance the overall effectiveness and efficiency of the System's supervisory efforts for these institutions.

The Board also worked to revise the principles and goals initially adopted by the Nationwide State Federal Supervisory Agreement (Agreement) governing how state and federal banking agencies coordinate the supervision of interstate banks. This revised Agreement reinforces the longstanding commitment of federal and state agencies to provide efficient, effective, and seamless oversight of state banks of all sizes, including those institutions that operate in more than one state. Additional objectives of the Agreement are to ensure that supervision is flexible and risk-focused and minimizes regulatory burden and cost for covered institutions. Recommended supervisory practices also address aspects of the ongoing and rapid transition of the banking industry that have presented challenges (such as continued consolidation and engagement in more complex or specialized activities in order to remain competitive).

In an effort to better align the supervisory rating system for bank holding companies, including financial holding companies, with the Board's current supervisory practices, the Board implemented a revised BHC rating system that:

- Emphasizes risk management,
- Introduces a more comprehensive and adaptable framework for analyzing and rating financial factors, and
- Provides a framework for assessing and rating the potential impact of the parent holding company and its non-depository subsidiaries on the subsidiary depository institution(s).

Given that the revised rating system is consistent with current supervisory practices, the revisions are generally not expected to have an effect on the conduct of inspections, nor add to the supervisory burden of supervised institutions. Rather, the revised rating system will better communicate the supervisory findings of examination staff to both supervised institutions and the Board's staff.

b. Transactions with Affiliates. In 2002, the Board adopted in final form Regulation W[41] to implement, in a comprehensive fashion, the restrictions imposed by sections 23A and 23B of the Federal Reserve Act.[42] These sections, which impose limits and conditions on lending and certain other transactions between a bank and its affiliates, are a key component of the supervisory framework for all banks. The Board's purpose in adopting a regulation that, for the first time, comprehensively implemented these restrictions was, among other things, to simplify the interpretation and application of sections 23A and 23B by banking organizations, allow banking organizations to publicly comment on Board and staff interpretations of sections 23A and 23B, and minimize burden on banking organizations.

[41] 12 CFR 223.
[42] 12 U.S.C. 371c, 371c-1.

c. Regulation Y: Bank Holding Companies and Financial Holding Companies. The Board has made significant revisions to Regulation Y since the passage of EGRPRA that have substantially reduced regulatory burden on bank holding companies and significantly reduced processing times for applications/notices filed under Regulation Y. For example, in 1997, the Board adopted comprehensive amendments to its Regulation Y that significantly reduced regulatory burden by streamlining the application/notice process and operating restrictions on bank holding companies. The revisions included a streamlined and expedited review process for bank acquisition proposals by well-run bank holding companies and implemented changes enacted by EGRPRA that eliminated certain notice and approval requirements and reduced other requirements for nonbanking proposals by such companies. In addition, the Board expanded the list of permissible nonbanking activities and removed a number of restrictions on such activities. The revisions also amended the tying restrictions and included many other changes to Regulation Y to eliminate unnecessary regulatory burden.

In 2001, the Board also revised Regulation Y to implement changes enacted by the GLBA, which further significantly reduced regulatory burden on the nonbanking activity proposals of bank holding companies who elect financial holding company status. These revisions:

- Provided an expeditious approach to the election process to become a financial holding company,
- Identified the expanded types of nonbanking activities that are permissible for financial holding companies, and
- Provided a post-notice procedure for engaging in such activities.

During that year, the Board also adopted revisions to Regulation Y implementing the new authority for financial holding companies to engage in merchant banking activities and permitting financial holding companies to act as a “finder” in bringing together buyers and sellers for transactions that the parties themselves negotiate and consummate.

In 2003, the Board again amended Regulation Y to expand the types of commodity derivative activities permissible for all bank holding companies. In particular, these amendments permitted bank holding companies to (1) take and make delivery of title to the commodities underlying commodity derivative contracts on an instantaneous, pass-through basis and (2) enter into certain commodity derivative contracts that do not require cash settlement or specifically provide for assignment, termination or offset prior to delivery. Also in 2003, the Board adopted a final rule that expanded the ability of all bank holding companies to process, store and transmit non-financial data in connection with their financial data processing, storage and transmission activities.

Since 2003, the Board also has issued orders permitting various financial holding companies to engage in physical commodity trading activities on a limited basis as an activity that is complementary to the company's financial commodity derivative activities.

Since the Board’s revisions to Regulation Y in 1997 to streamline processing of nonbanking notices and since 2001 to implement the GLBA, there has been a dramatic decline in the number of nonbanking proposals that require Federal Reserve System approval. Therefore, there has been a substantial reduction of regulatory burden on bank holding companies engaged in nonbanking activities.

The Board is in the process of identifying additional revisions to Regulation Y that would clarify regulatory requirements and reduce regulatory burden for bank holding companies and financial holding companies where appropriate. In 2007, the Board expects to issue an NPR to solicit comments on those proposed revisions.

d. International Banking Initiatives. Since 1997, the Board has made a number of enhancements to Regulation K[43] governing foreign operations of U.S. banking organizations and the U.S. operations of foreign banking organizations (FBOs) to reduce regulatory burden, streamline the authorization process, and improve agency transparency.

(1) Comprehensive Amendments to Regulation K. In October 2001, following a rulemaking initiated in 1997, the Board approved comprehensive revisions to Regulation K, expanding the range of activities that U.S. banking organizations may conduct overseas and reducing associated processing times and filing requirements. For example, with respect to establishing foreign branches, an application requirement was replaced with a prior notice obligation, and the prior notice period was reduced from 45 days to 30 days or, in some instances, 12 days. General consent limits for investments in foreign subsidiaries or joint ventures were changed from an absolute dollar figure to a percentage of the investor's capital, with higher percentages authorized for well-capitalized and well-managed investors. The prior notice period applicable to foreign investments also was reduced from 45 days to 30 days. The scope of permissible nonbanking activities abroad was expanded, including in the areas of securities underwriting, dealing, and trading. In addition, the Board implemented statutory provisions authorizing member banks, with Board approval, to invest up to 20 percent of their capital and surplus in Edge and agreement corporations and the factors to be considered when making determinations on those requests.

The revisions to Regulation K also streamlined the application procedures applicable to FBOs seeking to expand operations in the United States. With respect to the establishment of some U.S. offices by FBOs, the Board replaced an application requirement with a 45-day prior notice obligation; other office proposals became subject to general consent procedures. The Board also liberalized the provisions governing the qualification of FBOs for exemptions from

[43] 12 CFR 211.

the nonbanking provisions of the Bank Holding Company Act and implemented provisions of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 addressing changes in home state of FBOs.[44]

(2) International Lending Supervision. In January 2003, the Board amended Regulation K to eliminate the requirements as to the particular accounting method to be followed in accounting for fees on international loans and require instead that institutions follow GAAP in accounting for such fees.

e. Communication with Industry. The Federal Reserve strives to be as transparent as possible in communicating regulatory requirements and supervisory expectations to the institutions it supervises. In addition to making regulatory changes and policy-related or supervisory issuances available on the Board's public Web site, there is active and ongoing communication regarding regulatory requirements and supervisory expectations between supervisory staff at all Federal Reserve banks and the institutions in their Districts. Board members and senior management also participate regularly in meetings with bankers to provide insight regarding Federal Reserve regulatory and supervisory initiatives.

The Federal Reserve also hosts and participates in various outreach efforts. Its wide-ranging efforts include sessions directed to supervision staff, formal seminars and dialogues with industry representatives, and informal meetings on focused issues designed to foster two-way dialogue with the industry to help ensure that open channels of communication remain efficient and effective.

f. Payments, Reserves, and Discount Window Initiatives

(1) Discount Window Lending (Regulation A)

[44] In 2002, the Board issued (and has since revised) application forms (collectively known as the FR K-2) to be used by FBOs when seeking regulatory authorizations under Regulation K. These replaced and significantly enhanced an informal set of staff questions to which FBOs routinely responded when seeking such authorizations. The Board also modified (and has since revised) the FR K-1, consisting of forms to be used by U.S. banking organizations seeking authorization to conduct or expand foreign operations, to reflect the enhancements to Regulation K.

(a) Y2K Special Liquidity Facility. To address the possibility that depository institutions and their customers would experience unexpected credit and liquidity needs over the century date change period, the Board revised its Regulation A to implement a special limited-time discount window lending program. Under this Y2K special liquidity facility, Federal Reserve Banks offered credit at a rate 150 basis points above the Federal Open Market Committee's targeted federal funds rate to eligible institutions to accommodate liquidity needs during the century date change period. The facility was available from October 1, 1999, to April 7, 2000, and was intended to reduce potential market strains during that period and any attendant difficulties for depository institutions.

(b) Redesign of Discount Window Lending Program. Effective January 9, 2003, the Board also revised Regulation A to improve the operation of the discount window. Among other changes, the revisions replaced the existing adjustment credit program, which provided short-term credit at a below-market rate but only if the borrower had exhausted other funding sources and used the funds within prescribed limitations. The new primary credit program makes short-term credit available to generally sound institutions at an above-market rate, but with little or no administrative burden or use restrictions on the borrower. In addition to providing improved transparency and reduced administrative burden to the discount window process, the revisions also reorganized and streamlined the regulatory language to make it easier to understand.

(2) Check Collection (Regulation CC)

(a) Y2K Extension of Time for Merger-Related Reprogramming. The Board's Regulation CC allows merging depository institutions one year to combine their automation systems for check collection and funds availability purposes under Regulation CC. In the late 1990s, the Board recognized that depository institutions were dedicating significant automation resources to addressing Y2K computer problems and may have been challenged to make and test other programming changes, including those that needed to comply with Regulation CC’s merger transition provisions, without jeopardizing their Y2K programming efforts. Therefore, the Board amended Regulation CC to allow depository institutions that consummated a merger on or after July 1, 1998, and before March 1, 2000, greater time to implement software changes related to the merger.

(b) Implementation of the Check 21 Act. Effective October 28, 2004, the Board adopted amendments to Regulation CC to implement the Check 21 Act, a law that was based on a Board proposal to Congress and that the Board strongly supported. Electronic collection of checks often is faster and more efficient than collecting checks in paper form. However, prior to the Check 21 Act, banks’ use of electronic check collection was impeded by the fact that paying banks, by law, could require presentment of original checks. The Check 21 Act and the Board’s implementing amendments authorized a new negotiable instrument, known as a substitute check, which is a special copy of the original check that, when properly prepared, is the legal equivalent of the original check. The Check 21 Act facilitated the ability of banks to send check-related information electronically for most of the check collection process because a bank that has the electronic check file now is able to provide a legally equivalent substitute check when and where an original check is needed. When it implemented the Check 21 Act, the Board made other clarifying changes to Regulation CC to make it easier for depository institutions to understand and comply with the regulation.

(c) Remotely Created Checks. “Remotely created checks” typically are created when the holder of a checking account authorizes a payee, such as a telemarketer, to draw a check on that account but does not actually sign the check. In place of the signature of the account-holder, the remotely created check generally bears a statement that the customer authorized the check or bears the customer’s printed or typed name. State laws vary with respect to whether or not the bank that holds the account from which a check is paid (the paying bank) has a warranty claim back against the bank of first deposit (the depositary bank) if the paying bank's customer reports that a remotely created check is unauthorized. Effective July 1, 2006, the Board amended Regulation CC to provide such a warranty claim for the paying bank. This amendment reduces the likelihood that paying banks ultimately will bear financial losses due to fraudulent remotely created checks and places responsibility for those checks on the bank whose customer deposited the check and who, therefore, is in the best position to detect and present the fraud.

(3) Location of Federal Reserve Accounts (Regulations D and I). Statutory changes in the mid-1990s, such as the Riegle-Neal Interstate Banking and Branching Efficiency Act, eliminated many barriers to interstate banking. Consequently, the number of depository institutions that operated branches in more than one Federal Reserve District increased. On January 2, 1998, the Federal Reserve Banks implemented a new account structure to provide a single Federal Reserve account for each domestic depository institution.

Specifically, to provide increased flexibility to depository institutions in managing their operations in diverse geographic locations, the Board revised Regulations D and I to allow depository institutions with offices in multiple Federal Reserve districts to be able to request a determination from the Board that the institution is deemed to be located in a district other than the district of its charter location for purposes of reserve account location (Regulation D) and Federal Reserve membership (Regulation I). The amendments set out criteria that the Board would use in making such a determination, including the business needs of the bank; the location of the bank's head office; the location of the bulk of the bank's business; and the location that would allow the bank, the Board, and the Reserve Banks to perform their functions most efficiently and effectively.

g. Consumer Regulatory Initiatives

(1) Electronic Fund Transfers (Regulation E)

(a) Error Resolution. Regulation E requires financial institutions to investigate and resolve consumer claims of error within prescribed time periods. In general, an institution must either resolve the claim within 10 business days or provisionally recredit the consumer's account within that time and finally resolve the claim within 45 calendar days. In 1998, the Board amended Regulation E to extend these deadlines from 10 business days to 20 business days and from 45 calendar days to 90 calendar days in the case of new accounts, recognizing the higher fraud risk for new accounts and consequently institutions' need for more time to investigate error claims.

(b) Electronic Check Conversion. In 2001, the Board issued amendments to the Official Staff Commentary to Regulation E relating to electronic check conversion. In electronic check conversion transactions, a payee uses a consumer's check to initiate a one-time automated clearing house (ACH) debit to the consumer's account, by capturing the routing, account, and check numbers from the magnetic ink character recognition (MICR) line on the check. The payee may be a merchant at point-of-sale (POS) or a bill payee receiving the check via a lockbox. The amendments provide that electronic check conversion transactions are covered by Regulation E and afford guidance on how particular regulatory requirements apply to such transactions. By providing clarification and guidance, the Board sought to facilitate greater use of electronic check conversion, which can provide benefits to consumers, creditors and other payees, and depository institutions.

In 2006, the Board issued further amendments dealing with electronic check conversion, both to the Commentary and to Regulation E itself, to provide further clarification and guidance. One of these amendments permits payees to obtain a consumer's authorization to use information from the check to initiate an electronic fund transfer or to process the transaction as a check, easing compliance for payees.

(c) Stop-Payment Procedures. In the 2006 amendments, the Board also revised the Commentary to facilitate compliance with the Regulation E's requirements regarding stopping payment of recurring debits to a consumer's account. The revision permits an institution to use a third party (such as a debit card network) to stop payment, if the institution does not itself have the capability to block the debit from being posted to the account.

(d) Notice of Variable-Amount Transfers. Regulation E provides that if a recurring debit from a consumer's account will vary in amount from the previous transfer, or from the preauthorized amount, the designated payee or the consumer's financial institution must give the consumer the option to receive written notice of the amount and scheduled date of the debit 10 days in advance. In the 2006 amendments, the Board revised the Commentary to exempt recurring transfers to an account of the consumer at another institution from this requirement, provided the amount of the transfer falls within a specified range that reasonably could be anticipated by the consumer. This revision should help eliminate unnecessary notices and provide cost savings in the case of transfers of interest on a certificate of deposit held at one institution to the consumer's account at another institution.

(e) Fee Disclosures at Automated Teller Machines. If a consumer uses an automated teller machine (ATM) operated by an institution other than the one holding the consumer's account, Regulation E requires the ATM operator to disclose any transaction fee imposed by the operator. In the 2006 amendments, the Board revised the regulation and the Commentary to clarify that the fee notice may state either that a fee "will" be imposed, or that a fee "may" be imposed (unless the fee will be imposed in all cases). This clarification addresses issues raised by a number of institutions that had been charged with noncompliance by claimants asserting that the regulation required use of the term "will," even on ATMs where a fee is not imposed in all cases.

(f) Payroll Cards. In 2006, the Board adopted an amendment to Regulation E relating to payroll card accounts. The amendment provides that payroll card accounts (established to provide salary, wages, or other employee compensation on a recurring basis) are covered by Regulation E, and also provides that periodic statements need not be sent to payroll card holders if account information is available through certain other means (including electronically). By clarifying coverage of payroll card accounts and also granting relief from the periodic statement requirement, the amendment may facilitate the use of such accounts and thereby reduce costs for employers, as well as providing unbanked employees a convenient way to receive their pay.

(g) Receipts. In 2007, the Board adopted an amendment to Regulation E to create an exception for transactions of $15 or less from Regulation E's requirement that receipts be made available to consumers for transactions initiated at an electronic terminal. The amendment was intended to allow debit card transactions by a consumer in retail environments where making receipts available may not be practical or cost effective.

(2) Truth in Lending (Regulation Z). As noted above, the Board is undertaking a comprehensive review of Regulation Z. As part of that review, the Board intends to consider ways to reduce unnecessary regulatory burden consistent with the purposes and requirements of TILA. In 2007, the Board issued a proposed amendment to Regulation Z to improve the effectiveness of the disclosures that consumers receive in connection with credit card accounts and other revolving credit plans by ensuring that information is provided in a timely manner and in an understandable form. The Board sought comment on the elimination of the requirement to disclose the "effective" or "historical" annual percentage rate, among other proposals that could reduce regulatory burden on institutions. (The effective annual percentage rate reflects the cost of interest and certain other finance charges imposed during the statement period.)

(a) Credit Card Fees. Regulation Z requires credit card issuers to disclose “finance charges” (fees that are imposed as an incident to or a condition of the extension of credit), as well as “other charges” (fees that are not finance charges but that are significant charges that may be imposed as part of the credit card plan). In 2003, the Board revised the Official Staff Commentary to Regulation Z to address the status of two types of fees charged on credit card accounts as to which the credit card industry had sought guidance—a fee imposed when a consumer requests that a payment be expedited, and a fee imposed when a consumer requests expedited delivery of a credit card. The Commentary revisions provided that both types of fees constitute neither finance charges nor other charges (and therefore are not subject to the disclosure requirements of Regulation Z). The revisions reduce regulatory burden by relieving card issuers of disclosure requirements (for example, in disclosures provided at account opening and on periodic statements) that might otherwise have applied.

(b) Issuance of Credit Cards. Regulation Z provides that, in general, credit cards may be issued only in response to a request or application, except that a card issued as a renewal or substitute for an existing card may be issued automatically. Further, generally only one renewal or substitute card may be issued to replace one existing card (the “one-for-one” rule). The 2003 Commentary revisions provided an exception to the one-for-one rule, whereby a card issuer may replace an existing credit card with more than one renewal or substitute card, if (1) the replacement cards access only the same account of the existing card, (2) all cards issued on the account are governed by the same terms and conditions, and (3) the consumer’s total potential liability for unauthorized credit card use with respect to the account does not increase. These changes accommodated developments in the credit card industry in which some card issuers are able to issue a supplemental card, sometimes in different sizes and formats from the existing card, along with the regular card replacing the existing card, which may enhance consumer convenience. The changes could reduce costs by not requiring card issuers to first obtain a request from a consumer before issuing the supplemental card, while also including terms to protect customers.

(3) Consumer Compliance Examination. The Board has adopted a consumer compliance risk-focused supervision program designed to ensure that all its supervised organizations comply with consumer protection laws and regulations. The program is founded on the expectation that each state member bank and bank holding company will appropriately manage its own consumer compliance risk as an integral part of the organization's corporate-wide risk management function. The adequacy of an organization's consumer compliance risk management program is evaluated in the context of the inherent risk to the organization and its customers. Accordingly, smaller and less complex organizations with a lower risk profile, deemed to have an adequate compliance risk management program, require less supervisory scrutiny.

The risk-focused supervisory program directs resources to organizations, and to activities within those organizations, commensurate with the level of risk to both the organization and the consumer. It provides for the efficient and effective deployment of resources including examiner time, by allowing Reserve Banks to tailor supervisory activities to the size, structure, complexity, and risk of the organization. This supervisory approach reduces regulatory burden on institutions and results in more efficient use of examiner time and resources.

(4) Proposed Amendments to Consumer Financial Services and Fair Lending Regulations (Regulations B, E, M, Z, and DD). In 2007, the Board issued proposed amendments to five consumer financial services and fair lending regulations (Regulation B, E, M, Z, and DD) to clarify the requirements for providing consumer disclosures in electronic form. The proposed amendment would withdraw provisions that could impose undue regulatory burden on electronic banking and commerce.

2. Federal Deposit Insurance Corporation

On an ongoing basis, the FDIC is aware of regulatory burden and addresses such issues where appropriate. When areas of the country experience natural disasters and other misfortunes, the FDIC issues financial institution letters to provide regulatory relief to those institutions affected by such events and to thereby facilitate recovery in the communities. For example, a FIL may be issued asking financial institutions in those areas to extend repayment terms, restructure existing loans where appropriate, and provide that the FDIC would consider regulatory relief from certain filing and publishing requirements for financial institutions in the affected areas.

a. FDIC's Deposit Insurance Rules. Bankers and consumers have suggested that the FDIC should simplify the insurance rules to make them easier for bankers to understand and for depositors to qualify for increased coverage by placing funds in different rights and capacities. In recent years, the FDIC has adopted several regulatory changes in a concerted effort to simplify the rules for deposit insurance coverage.

The Federal Deposit Insurance Reform Act of 2005 (Reform Act), which the President signed into law on February 8, 2006, provides for numerous enhancements of the federal deposit insurance system, including an increase in the maximum amount of deposit insurance coverage for certain retirement accounts from $100,000 to $250,000. In addition, the new law establishes a method for considering an increase in the insurance limits on all deposit accounts (including retirement accounts) every five years starting in 2011 and based, in part, on inflation.

Although the Reform Act increased the maximum insurance limit for certain retirement accounts to $250,000, Congress decided against increasing the insurance limit for all other deposit accounts. Thus, the basic insurance limit for all deposit accounts remains at $100,000. However, as noted above, the insurance limit for all deposit accounts may be increased every five years based on inflation beginning in 2011.

(1) Specific Deposit Insurance Rule Changes

(a) Deposit Insurance Regulations; Inflation Index; Certain Retirement Accounts and Employee Benefit Plan Accounts. The FDIC amended its deposit insurance regulations to implement applicable revisions to the Federal Deposit Insurance Act (FDI Act) made by the Reform Act and the Federal Deposit Insurance Reform Conforming Amendments Act of 2005. The interim rule, which became effective on April 1, 2006, provides for the following:

- Consideration of inflation adjustments to increase the current standard maximum deposit insurance amount of $100,000 on a five-year cycle beginning in 2010;
- Increase in the deposit insurance limit for certain retirement accounts from $100,000 to $250,000, also subject to inflation adjustments; and
- Per-participant insurance coverage to employee benefit plan accounts, even if the depository institution at which the deposits are placed is not authorized to accept employee benefit plan deposits.

The changes to the deposit insurance rules implemented by this rulemaking will benefit depositors by increasing coverage for retirement accounts and removing a limitation on the availability of pass-through insurance coverage for employee benefit plan accounts. Section 330.14 is amended to reflect that pass-through coverage for employee benefit plan accounts no longer hinges on the capital level of the depository institution where such deposits are placed. Under the former law, pass-through coverage for employee benefit plan deposits was not available if the deposits were placed with an institution not permitted to accept brokered deposits. Under section 29 of the FDI Act (12 U.S.C. 1831f), only institutions that meet prescribed capital requirements may accept brokered deposits. The Reform Act takes a different approach. It prohibits insured institutions that are not "well capitalized" or "adequately capitalized" from accepting employee benefit plan deposits. But, under the Reform Act, employee benefit plan deposits accepted by any insured depository institution, even those prohibited from accepting such deposits, are nonetheless eligible for pass-through deposit insurance coverage. This change in the deposit insurance rules will apply to all employee benefit plan deposits, including employee benefit plan deposits placed before the effective date of the interim rule, irrespective of whether such deposits would have been eligible for pass-through coverage under the former statute and rules. The other requirements in section 330.14 of the FDIC's rules on the eligibility of employee benefit plan deposits for pass-through insurance coverage continue to apply.

(b) Deposit Insurance Coverage Regulations: Living Trust Accounts. Effective April 1, 2004, the FDIC amended its regulations to clarify and simplify the deposit insurance coverage rules for living trust accounts. The amended rules provide coverage up to $100,000 per qualifying beneficiary who, as of the date of an insured depository institution failure, would become the owner of the living trust assets upon the account owner's death. The FDIC undertook this rulemaking because of the confusion among bankers and the public about the insurance coverage of these accounts. Prior to the amended rulemaking, the amount of insurance coverage for a living trust account could only be determined after the trust document has been reviewed to determine whether there are any defeating contingencies. Consequently, in response to questions about coverage of living trust accounts, the FDIC could only advise depositors that the owners of living trust accounts seek advice from the attorney who prepared the trust document. This process was burdensome to both consumers, bankers, and other financial service providers. Also, when a depository institution fails the FDIC must review each living trust to determine whether the beneficiaries' interests are subject to defeating contingencies. This often is a time-consuming process, sometimes resulting in a significant delay in making deposit insurance payments to living trust account owners.

(c) Deposit Insurance Certified Statements. The FDIC modernized and simplified its deposit insurance assessment regulations governing certified statements, to provide regulatory burden relief to insured depository institutions. Under the final rule, insured institutions will obtain their certified statements on the Internet via the FDIC's transaction-based e-business Web site, FDICconnect. The FDIC provides e-mail notification each quarter to let depository institutions know when their quarterly certified statement invoices are available on FDICconnect. An institution that lacks Internet access may request from the FDIC a one-year renewable exemption from the use of FDICconnect, during which it will continue to receive quarterly certified statement invoices by mail. Correct certified statements will no longer be signed by insured institutions or returned to the FDIC, and the semiannual certified statement process will be synchronized with the quarterly invoice process. If an insured institution agrees with its quarterly certified statement invoice, it will simply pay the assessed amount and retain the invoice in its own files. If it disagrees with the quarterly certified statement invoice, it will either amend its report of condition or similar report (to correct data errors) or amend its quarterly certified statement invoice (to correct calculation errors). The FDIC will automatically treat either as the insured institution's request for revision of its assessment computation, eliminating the requirement of a separate filing. With these amendments, the time and effort required to comply with the certified statement process will be reduced.

(d) Certification of Assumption of Deposits and Notification of Changes of Insured Status. The FDIC adopted a final rule that became effective on March 23, 2006, clarifying and simplifying the procedures to be used when all of the deposit liabilities of an insured depository institution have been assumed by another insured depository institution or institutions. The final rule clarifies the deposit insurance certification filing responsibilities for assumed and assuming institutions and eliminates the need for orders terminating deposit insurance in certain instances.

Finally, the rule would provide more specificity concerning how notice is given to depositors when an insured depository institution voluntarily terminates its insured status without the assumption of all of its deposits by an insured institution. The revisions make the insurance termination process easier for insured depository institutions and more efficient for the FDIC.

(e) Funds Merger. The FDIC merged the Bank Insurance Fund (BIF) and the Savings Association Insurance Fund (SAIF) to form the Deposit Insurance Fund, effective March 31, 2006. This action was pursuant to the provisions in the Reform Act. The FDIC amended its regulations to reflect the funds merger.

(f) One-Time Assessment Credit. The FDIC amended its regulations to implement a one-time assessment credit pursuant to the provisions in the Reform Act. The final rule was published on October 18, 2006. The rule implements the one-time assessment credit; establishes the aggregate one-time assessment credit at approximately $4.7 billion to be divided among eligible depository institutions; and defines eligible insured depository institution as an insured depository institution that was in existence on December 31, 1996, and paid a deposit insurance assessment prior to that date or is a *successor* to such an institution. The rule allows institutions to use their assessment credits to offset deposit insurance assessments to the maximum extent allowed by law.

(g) Educational and Outreach Efforts for Deposit Insurance Rules. In addition to simplifying and clarifying the deposit insurance rules, the FDIC engages in a wide range of educational and outreach initiatives intended to inform bankers and depositors on the rules for deposit insurance coverage. Examples of these efforts include:

- FDIC Web site (http://www.fdic.gov), which offers extensive information for bankers and consumers on FDIC deposit insurance coverage, including publications and newsletters, videos on deposit insurance coverage, and an interactive electronic calculator that bankers and consumers can use to determine the maximum insurance coverage for their deposit accounts at an insured institution

- FDIC Call Center, which is staffed by deposit insurance specialists who answer banker and consumer questions about deposit insurance coverage and other banking issues
- Customer Assistance Online Form, where bankers and consumers can obtain written responses to questions about FDIC deposit insurance coverage
- Deposit Insurance Seminars for bankers, which include telephone seminars and traditional training seminars on the deposit insurance rules

(h) Advertisement of Membership/Logo. The final rule on the FDIC's advertising logo was published on November 13, 2006, and becomes effective November 13, 2007. The rule replaces the separate signs used by BIF and SAIF members with a new sign, or insurance logo, to be used by all insured depository institutions. The new rule consolidates the exceptions to the official advertising statement requirements from 20 to 10 by requiring the statement only in advertisements that either promote deposit products and services or promote non-specific banking products and services.

(2) Applications, Reporting, and Corporate Powers; Filing Procedures, Corporate Powers, International Banking, Management Official Interlocks, Golden Parachute, and Indemnification Payments. The FDIC adopted a final rule amending its procedures relating to filings, mutual to stock conversions, international banking, management official interlocks and golden parachute payments. The changes are mostly technical in nature or clarify previous FDIC positions; nevertheless, the revisions make the applications process more transparent to the public. The FDIC's regulations at 12 CFR 303 generally describe the procedures to be followed by both the FDIC and applicants with respect to applications and notices required to be filed by statute or regulation. On December 27, 2002, the FDIC issued in final form a revised part 303 to reflect a recent internal reorganization at the FDIC and to remove internal delegations of authority from the regulation. The regulation was revised to clarify terms and to establish 30 days as a reasonable time in which to review any response submitted by an institution or institution-affiliated party. The FDIC also added a provision setting forth its authority to waive any non-statutorily required provision for good cause and to the extent permitted by statute. The revised rule clarifies when a change in control notice is required and may be consummated. Finally, the FDIC adopted a technical correction to section 303.244, creating a cross-reference to section 359.4(a)(4) of this chapter regarding golden parachutes and severance plan payments to make clear the responsibilities of an applicant seeking approval of filings.

(3) Annual Independent Audits and Reporting Requirements. The Corporation amended 12 CFR 363 of its regulations by raising the asset size threshold from $500 million to $1 billion from requirements relating to internal control assessments and reports by management and external auditors. The amendment also relieves covered institutions with total assets of less than $1 billion from having outside directors on the audit committee from being independent of management. The amendment does not relieve public covered institutions from their obligation to comply with applicable provisions of the SOX Act and the SEC's implementing rules. The revisions became effective on December 31, 2005.

(4) International Banking. The FDIC conducted a comprehensive review of its International Banking Rules. The revised rules, which became effective July 1, 2005, amend 12 CFR 303, 325, and 327 relating to international banking; and revise part 347, subparts A and B. The rules were reorganized and clarified to reduce regulatory burden. The revised rule expanded the availability of general consent for foreign branching and investments by insured state nonmember banks abroad and addressed intrastate and interstate relocations for "grandfathered branches.” In addition, the “fixed” percentage asset pledge requirement for existing insured U.S. branches of foreign banks (“grandfathered branches”) was replaced by a risk-focused asset pledge requirement.

(5) Extension of Corporate Powers. Effective October 18, 2005, the FDIC amended its interpretive rule, 12 CFR 333.101(b), which states that insured state nonmember banks not exercising trust powers may offer self-directed traditional Individual Retirement Accounts (IRA) and Keogh Plan accounts without the prior written consent. Since 1985, Congress has introduced new accounts with tax-incentive features comparable to these plans. Accordingly, the interpretive ruling was expanded to expressly include Coverdell Education Savings Accounts, Roth IRAs, Health Savings Accounts, and other similar accounts.

(6) Other Accomplishments and Initiatives. FDICconnect is a secure Internet site developed by the FDIC to facilitate business and exchange information between the FDIC and FDIC-insured institutions. FDICconnect provides a secure e-business transaction channel that supports implementation of the Government Paperwork Elimination Act, which requires agencies to provide online consumer and business alternatives for paper-based processes. The national rollout of FDICconnect began on December 8, 2003. FDICconnect supports examination file exchange, electronic distribution of “Special Alerts,” electronic submission of deposit insurance invoices, and electronic filing of certain applications and notices. FDICconnect reduces regulatory burden by providing a more efficient means for insured institutions to interact with the FDIC and various states. Twenty business transactions are available through FDICconnect, and as of March 2006, there were 8,263 FDIC-insured institutions registered with FDICconnect.

Beginning July 2007, enhancements to the system enable financial institutions to securely exchange electronic pre-examination and examination files with the FDIC and/or their state banking regulator. The use of the system should relieve examination burden on institutions by allowing FDIC staff to complete a significant portion of the examination process off-site.

(7) Risk-Focused Examinations. The FDIC has improved examination efficiency and reduced burden on the banks it supervises by raising the threshold for well-rated, well-capitalized banks qualifying for streamlined Maximum Efficiency, Risk-Focused, Institution Targeted (MERIT) examinations from $250 million to $1 billion, implementing more risk-focused compliance and trust examinations, and streamlining information technology (IT) examinations for institutions that pose the least technology risk. The MERIT program, originally implemented in April 2002, was applicable to banks with assets under $250 million. During a MERIT examination, the examiners use procedures that focus on determining the adequacy of the institution's internal controls system and the effectiveness of its risk management program and processes. The program provides an opportunity for the FDIC to redirect examination resources to institutions that pose higher risk.

(a) Relationship Manager Program. On October 1, 2005, the Corporation implemented the Relationship Manager Program for all FDIC-supervised institutions. The program, which was piloted in 390 institutions during 2004, is designed to strengthen communication between bankers and the FDIC, as well as improve the coordination, continuity, and effectiveness of regulatory supervision. Each FDIC-supervised institution was assigned a relationship manager, who serves as a local point of contact over an extended period, and will often participate in or lead examinations for his or her assigned institution. The program will allow for flexibility in conducting examination activities at various times during the 12- or 18-month examination cycle based on risk or staffing considerations.

(b) IT Examinations. The FDIC has updated its risk-focused IT examination procedures for FDIC-supervised financial institutions under its new Information Technology Risk

Management Program (IT-RMP). IT-RMP procedures were issued to examiners on August 15, 2005. The new procedures focus on the financial institution's information security program and risk-management practices for securing information assets. The program integrates with the Relationship Manager Program by embedding the IT examination within the Risk Management Report of Examination for all FDIC-supervised financial institutions, regardless of size, technical complexity, or prior examination rating.

(c) Compliance Examinations. Compliance examination procedures were first revised in July, 2003, and have been updated periodically since then to make the compliance examination process more efficient and allow examiners to focus their examination efforts on compliance areas with the highest risk to both consumers and financial institutions.

(8) Community Reinvestment Act. During EGRPRA Outreach meetings, bankers suggested that the FDIC expand what qualifies for CRA credit under the service test, such as community service activities and provide additional guidance to banks about ways to meet both the service and investment tests. In response, the FDIC made it easier for banks to assist low and moderate income individuals, and obtain CRA credit for doing so, by developing MoneySmart, a financial literacy curriculum. The FDIC provides the MoneySmart program, which is available in six languages and a version for the visually impaired, free to all insured institutions. The FDIC also published its Community Development Investment Guide, which is designed to assist banks considering community development investments to navigate the complex laws and regulations that may apply.

(9) Redesign of Financial Institution Letters. The industry suggested that regulators should try to make their publications, such as FILs, more concise and descriptive, so that readers can immediately determine if the guidance or recommendations applies to their bank. In response, the FDIC redesigned the format for its FILs. The new format is designed to promote the quick identification of key issues and to expedite the delivery of the information to the appropriate party. Additionally, the FDIC is moving toward an all-electronic distribution of FILs to eliminate unwanted paper and to better facilitate the distribution of FILs within each bank.

(10) Bank Secrecy Act/Anti-Money Laundering Outreach. In an effort to enhance bank personnel's understanding of the regulatory requirements associated with the BSA, the FDIC conducts or participates in numerous BSA outreach events during the year. During these events the FDIC discusses outstanding BSA/AML guidance and current regulations as well as BSA examination requirements outlined in the *FFIEC BSA/AML Examination Manual*. In September 2006, the FDIC hosted, along with the other federal banking agencies, FinCEN and the Office of Foreign Assets Control, a series of conference calls to discuss the changes to the *FFIEC BSA/AML Examination Manual*. Approximately 10,500 bank personnel participated in this three-day event.

3. The Office of the Comptroller of the Currency

The OCC regularly reviews its regulations to identify opportunities to streamline regulations or regulatory processes, while ensuring that the goals of protecting safety and soundness, maintaining the integrity of bank operations, and safeguarding the interests of consumers are met. In the mid-1990s, pursuant to its comprehensive "Regulation Review" project, the OCC looked carefully at every regulation in its rulebook with that goal in mind. As a result of that project, the OCC made significant, substantive revisions to virtually every one of its regulations.

More recently in connection with the OCC's review of its regulations required by EGRPRA, the OCC identified further revisions that could be made to its rules. Based on this review, the OCC has developed a proposal that would update and streamline a number of the OCC's rules to reduce regulatory burden, as well as to make technical, clarifying, and conforming changes to certain rules. Summarized below is the OCC's recent regulatory burden relief proposal, as well as other actions that the OCC has taken in recent years to ease unnecessary regulatory burden on national banks.

a. Recent Significant Regulatory Burden Relief Initiative. On July 3, 2007, the OCC published an NPR[45] soliciting public comment on proposed amendments to the OCC's regulations developed in connection with its EGRPRA review. The comment period expires on September 4, 2007. Some of these proposed changes would relieve burden by eliminating or streamlining existing requirements or procedures. Others would enhance national banks' flexibility in conducting authorized activities, either by revising provisions currently contained in regulations or by codifying, and, thus, making generally applicable, determinations made on a case-by-case basis. A third category of proposed changes would eliminate uncertainty by

[45] *See* 72 FR 36550, July 3, 2007.

harmonizing a particular rule with other OCC regulations or with the rules of another agency. A fourth category would cover technical revisions that update the OCC's rules to reflect changes in the law, including the recently enacted FSRRA, or in other regulations.

b. Enhancing National Banks' Flexibility Consistent with Safety and Soundness

(1) Lending Limits Pilot Program. On June 7, 2007, the OCC published an interim final rule with request for comment to amend the OCC's regulation at 12 CFR 32.7.[46] This regulation governs the pilot program providing eligible national banks[47] with the authority to apply special lending limits with respect to loans to one borrower in the case of 1-4 family residential real estate loans, small business loans, and small farm loans or extensions of credit. This special lending authority is subject to certain conditions that ensure that lending under higher limits is consistent with safety and soundness. The comment period closed on July 9, 2007.

The interim final rule makes two changes to the current program. First, the program as initially adopted in September 2001 provided for an expiration date. The expiration date has been extended over the years to September 11, 2007. The interim final rule deletes the expiration date thereby making the program permanent. Second, the interim final rule eliminates one of the restrictions that applied to such lending. Other restrictions and caps based on the bank's capital and surplus, however, continue to apply. Eligible national banks will continue to be subject to caps on the special lending authority that apply both to an individual borrower and to the aggregate amount that a bank may lend under the program. The OCC's supervisory experience with the program has been positive from a safety and soundness perspective. Moreover, national banks participating in the program indicate that the special lending limits allows them to better serve their customers and communities.

[46] *See* 72 FR 31441, June 7, 2007.
[47] An eligible national bank is one that is well capitalized under the OCC's rules and has a composite rating of "1" or "2" under the Uniform Financial Institutions Rating System with at least a rating of "2" for asset quality and for management. *See* 12 CFR 32.2(i).

(2) Electronic Banking Rule. Regulatory burden results when regulations do not keep up with the changing ways in which banks do business. The OCC also has updated its rules and processes to reflect the effects of technological advances on the business of banking. In 2002, the OCC published a final rule entitled "Electronic Activities."[48] This rule clarified and expanded the types of electronic activities that national banks are permitted to conduct and placed all of its related rules together in one section of the *Code of Federal Regulations* (CFR) for ease of reference.

The regulation incorporated specific precedent addressing the ability of national banks to act as "finders" via electronic means, such as the Internet. It also codified the standards that the OCC applies to determine whether electronic banking activities are part of, or incidental to, the business of banking and thus permissible under federal law. The final rule also clarified that a proposed activity comprising separate permissible interrelated activities also would be permissible.

The rule permitted national banks to acquire or develop excess capacity in good faith for banking purposes, and allowed banks to sell such capacity so long as it was legitimately acquired or developed for its banking business. It codified national bank authority to act as a digital certification authority and extended that authority to certify attributes going beyond identity, for which verification is part of, or incidental to, the business of banking. And it codified previous OCC interpretations confirming that a national bank may collect, process, transcribe, analyze, and store banking, financial and economic data for itself and its customers as part of the business of banking. Finally, the regulation clarified where an electronic bank is deemed to be "located" for purposes of national banking law.

c. Streamlining the OCC's Regulatory Processes

---

[48] *See* 67 FR 34992, May 17, 2002.

(1) Electronic Filings: e-Corp. The OCC has made effective use of technology to reduce the burden on national banks from the administrative processes necessary to obtain OCC approvals or file required notices. The OCC designed a new Web-based filing system, e-Corp, to facilitate such filings. The system, launched in 2003, enables national banks to complete, sign, and submit applications electronically to the OCC. Originally limited to four classes of filings, the OCC recently adopted a final rule that allows national banks, at their option, to make any class of licensing filings electronically.[49] E-Corp has reduced costs and regulatory burden for national banks by simplifying the filing of applications and notices and by providing easy, online access to much of the information that national banks need to complete such documents.

(2) Streamlined Assessments Computation. In 2006, the OCC issued a final rule streamlining the process national banks use to compute their semiannual assessments.[50] The rule took effect on August 24, 2006. The revised regulation provides that the OCC, rather than the bank, calculates the assessment amount. The new procedures eliminated a cumbersome process for reviewing and correcting miscalculations.

(3) Streamlined Procedures for Community Development Investments. In 2003, the OCC amended its community development investment regulation at 12 CFR 24. (*See* 68 FR 48771, August 15, 2003.) The final rule provided for a streamlined, after-the-fact notice process for eligible banks making investments permissible under the authority of 12 U.S.C. 24(Eleventh). The OCC undertook this step to make the filing process less burdensome on national banks, while ensuring that the OCC continued to receive information it needs for supervisory purposes.

(4) Streamlined Procedures for Federal Branches and Agencies. On December 19, 2003, the OCC published a final rule revising its international banking regulations. (*See* 68 FR 70691, December 19, 2003.) Consistent with the procedures available for domestic national

---

[49] *See* 69 FR 1, January 2, 2004.
[50] *See* 71 FR 42017, July 25, 2006.

banks, the final rule permitted federal branches and agencies of foreign banks in the United States to make additional regulatory filings through an after-the-fact notice, rather than a more detailed application, and streamlined review times for filings and applications. In addition, the final rule provided that foreign banks would operate under a single license, as is the case for domestic national banks, rather than having to obtain separate licenses for each federal branch or agency that a foreign bank operates in the United States; this latter change greatly simplifies the regulatory filing process for such offices of foreign banks.

d. Explaining Regulatory Requirements. The OCC's primary vehicle for explaining regulatory requirements to national banks is through our ongoing supervisory activities. All supervisory offices have frequent contact with the management and boards of the banks in their portfolios, allowing the OCC to inform banks of regulatory changes and requirements on an individual basis.

Timely and detailed OCC issuances explaining regulatory changes are distributed to all national banks, and are available for reference on our public website. Additionally, on a quarterly basis, the OCC provides all national banks with a comprehensive list and brief summary of issuances from the prior quarter. Bankers find this quarterly summary a valuable tool for ensuring that they are aware of new and changing regulatory requirements.

The OCC also sponsors extensive outreach forums for providing guidance to bankers on regulations, examination practices, and initiatives. These events range from small group meetings to larger regional sessions; the Comptroller himself is the primary speaker at many such sessions. The OCC supplements its outreach efforts by offering a variety of banker education seminars on topics including our risk assessment process, credit risk management, compliance risk management, and issues of particular interest to new national bank directors.

e. Risk-Based Supervision. The OCC employs a risk-based approach to supervision that distinguishes between large/mid-size banks and community banks to reflect the generally less complex activities of smaller institutions. Regardless of size and complexity, the primary focus is an evaluation of the bank's risk management system to determine its ability to identify, measure, monitor, and control risks. This evaluation is accomplished through an assessment of the bank's policies, processes, personnel, and control systems that tailors examination activities to the key characteristics of each bank, including products and services offered, volume of activities, markets in which it competes, and the board's and management's tolerance for risk.

4. The Office of Thrift Supervision

a. Application and Reporting Requirements. Based on comments received through the EGRPRA interagency review process, OTS issued an interim final rule in August 2005 to reduce the regulatory burden on savings associations by updating and revising various application and reporting requirements. These revisions included exempting certain highly rated savings associations from branch and home office application requirements and eliminating some application and notice requirements for branch relocations and agency offices. OTS also conformed the various application publication requirements and public comment periods to the extent permissible under statutory requirements. This final rule revised the agency's procedures for formal and informal meetings as well as eliminated a number of OTS rules that no longer served a useful regulatory purpose.

Specifically, the final rule:

- Modified the branch office and agency office application and notice requirements,
- Harmonized publication and public comment procedures for various applications and notices, and
- Revised the meeting procedures.

OTS also amended 12 CFR 528.4 to require displays of the equal housing logotype and legend only in advertisements for housing related loans. The equal housing lender logotype did not provide relevant information to individuals shopping for loans unrelated to housing. As a result, the former rule imposed an unnecessary burden on savings institutions who must provide the information, and on consumers who must process this information in addition to the volume of other data that they receive in connection with consumer and commercial loan applications. OTS also noted this rule change promotes consistency with related rules issued by the other banking agencies, which require the display of the equal housing lender logotype and legend only with respect to advertisements for housing-related loans.

In addition to the burden-reducing changes discussed above, the final rule eliminated the following regulations:

- **12 CFR 545.74.** This rule imposed various requirements on securities brokerage activities of service corporations. The requirements were obsolete, conflicted with the current law and guidance, and were confusing to the industry.
- **12 CFR 563.181.** This rule required mutual savings associations to report changes in control. It implemented section 407 of the National Housing Act, which was repealed in 1989.
- **12 CFR 563.183.** This rule required savings associations and savings and loan holding companies to report changes of chief executive officers and directors that occur with stated time periods before or after a change of control. This rule implemented 12 U.S.C. 1817(j)(12), which requires notices under more limited circumstances. OTS will rely on the more limited statutory requirements.
- **12 CFR 567.13.** This rule addressed capital maintenance agreements and was obsolete in light of other statutory and regulatory protections.

b. Transactions with Affiliates. In December 2002 and October 2003, OTS issued final rules revising its existing rules implementing section 11 of the HOLA which applies sections 23A and 23B of the Reserve Act to savings associations. These final rules revised OTS's existing rules to incorporate applicable provisions of the Board's Regulation W to savings associations. Among other things, OTS's transactions with affiliates (TWA) rules conform the definition of "affiliate" to more closely correspond to the Regulation W definition thus making application more uniform among the federal regulators. This change generally reduced the scope of entities that would be deemed thrift affiliates. Historically, OTS also had incorporated certain presumptions of control from part 574 into the definition. By amending its TWA rules, OTS eased regulatory burden by issuing a set of rules that tend to be less restrictive than the agency's historical standards.

c. Examination Efficiencies and Electronic Initiatives. Recognizing that on-site examinations represent the single biggest area of regulatory burden on the industry, OTS continues to undertake initiatives to reduce the burden of the supervisory and examination process.

(1) Comprehensive Exams. OTS has reduced regulatory burden through the comprehensive examination process. This comprehensive approach has improved the examination process by combining the safety and soundness and compliance functions. Instead of having two separate examination teams, now OTS has one exam team on site at one time during the year to perform safety and soundness and compliance review. The comprehensive exam process produces one exam report and a more comprehensive assessment of an institution's risk profile.

(2) Risk-Focused Exams. OTS also has a risk-focused examination approach that contemplates that the management review should generally be the focus of the examination on noncomplex thrifts that have a modest risk profile and sustained performance within industry norms. OTS examiners have the flexibility to tailor the depth of review depending on the level of risk and complexity of each of the CAMELS and compliance components.

(3) Electronic Communication. OTS is continuing to improve its electronic communication channels to make electronic transmission of examination data even more effective. These improvements include installation of virtual private network software on the examiners' notebook computers to enable them to securely access OTS systems and data over high-speed, broadband connections from a savings association or other locations.

(4) Electronic Preliminary Examination Response Kit. OTS also converted the Preliminary Examination Response Kit documents to electronic forms that may be completed by the association and returned electronically for examiners to use in performing examinations. The files may be provided to OTS through a Secure Messaging Center or on a compact disc. To facilitate the timely transmission of sensitive data and information, OTS designed the Secure Messaging Center to meet industry standards for secure electronic data exchange.

(5) Off-Site Exam Work. Through expanded use of electronic information, OTS envisions even greater opportunities to use high-speed access from savings associations or remote locations to reduce the burden on staff and facilities and ultimately reduce the amount of on-site time during examinations.

d. Directors' Responsibility Guide and the Directors' Guide to Management Reports. In 2006, OTS issued updated versions of the Directors' Responsibility Guide and the Directors' Guide to Management Reports to highlight OTS's supervisory expectations for a strong, consistent approach towards sound corporate governance practices, as well as the importance of strong, independent boards of directors.

The updated Directors' Guide adds a new section on statutory and regulatory responsibility and clarifies the issue of blurred lines of responsibility between the board and management. This is an area where the industry had raised questions and OTS determined that additional clarity would reduce uncertainty and regulatory burden. There is also a chart on the applicability of selected SOX requirements. The streamlined, restructured Guide to Management Reports consolidates some existing reports and adds additional red flags to monitor internal controls and financial performance.

e. Thrift Financial Report. OTS is a member of the interagency FFIEC Reports Task Force that works to help ensure reporting uniformity among the agencies. Nevertheless, differences between the Thrift Financial Report (TFR) and the Call Report remain. These differences relate to the housing and mortgage focus of the thrift industry and the fact that OTS uses TFR data as input for its interest rate risk model used to measure and monitor interest rate risk. OTS continues to study the feasibility of adopting the Call Report, perhaps with certain additional reports that would allow OTS to monitor interest rate risk and mortgage loan changes and trends.

f. Ongoing Efforts to Communicate. Ongoing outreach efforts outside of the exam process are also essential to improving communications. OTS regularly sponsors "town meetings" at which our regional directors discuss pressing issues and solicit input from thrift managers.

(1) Agency Web Site. In an effort to further relieve compliance burdens, OTS makes information available to all through the agency Web site. Savings associations can find comprehensive contact information for all program areas in addition to the following:

- Relevant statutes and CFRs
- Guidance
- Proposed and final rules
- Public comments
- Handbooks
- TFR/Call Report data and instructions
- Expanded List of Permissible Activities
- Industry trends and analysis

g. Savings and Loan Holding Companies. OTS has a well-established program for discharging its statutory responsibilities with respect to savings and loan holding companies. The holding companies that OTS regulates range from non-complex shell companies to very large, internationally active conglomerates. OTS's seamless supervision at all levels of an organization—at the bank level as well as at savings and loan holding companies—ensures a comprehensive supervisory regime with minimal regulatory overlap. Any company that owns or controls a savings association (other than a bank holding company) is subject to OTS supervision up to and including the top-tier parent company. OTS has top-tier holding company supervisory responsibility over groups that contain both financial and industrial lines of business. Household names like General Electric, AIG, American Express, and GMAC are all thrift holding companies and subject to consolidated supervision by OTS. Many of these groups are also subject to the European Union Financial Conglomerates Directive. OTS has worked hard over the past several years to improve and enhance its coordination and communication with the global supervisory community—and this remains a priority for the organization.

E. Conclusion

EGRPRA served as an impetus for all of the Agencies to review their regulations in-depth and to work collaboratively on a number of regulatory burden reduction matters, to develop a consensus on desirable legislative reforms, and to work together with Congress to pass legislation that will help reduce the level of burden on financial institutions.

The Agencies benefited from the synergy created by Congress's consideration of regulatory burden relief legislation for the banking industry. Therefore, the EGRPRA process allowed the federal banking agencies to identify other specific proposals for which there was broad support among the Agencies and to refine those proposals that were already being considered by the Agencies (such as development of model privacy notices). This process also provided the opportunity to review proposals with the industry, consumer groups, and other interested parties.

While the FSRRA was an important step in addressing regulatory burden, the Agencies believe it is important for Congress to continue to look for ways to reduce any unnecessary regulatory burdens on banking organizations. As noted in this report, each agency developed or supported a number of legislative burden reducing proposals that ultimately were not included in the FSRRA. Congress may find these proposals a useful starting point in considering additional regulatory relief measures in the future.

Appendix I-A: The Financial Services Regulatory Relief Act of 2006

The Senate Banking, Housing, and Urban Affairs Committee (Senate Banking Committee) and the House Financial Services Committee have worked for several years to craft appropriate regulatory burden reduction legislation. Agency principals and other senior level officials of the Agencies testified before these committees on seven different occasions over the last four years. At those hearings, agency representatives testified regarding a wide variety of regulatory burden reduction legislative proposals, many of which were incorporated into the FSRRA. In addition, upon request, agency representatives offered technical assistance to congressional staff in connection with the development of that Act, which was enacted on October 13, 2006.

Among the items included in the FSRRA that will reduce the regulatory burden on financial institutions are the following:[51]

1. Provides for joint rules to be issued to implement the bank "broker" exceptions adopted as part of the GLBA.

Section 101 of the FSRRA requires that the SEC and the Board, in consultation with the OCC, FDIC and OTS, adopt a single set of rules to implement the "broker" exceptions for banks in section 3(a)(4)(B) of the Securities Exchange Act of 1934. In December 2006, the Board and the SEC jointly requested comment on a proposed single set of rules to implement these exceptions. *See* 71 FR 77522, December 26, 2006.

2. Reduces reporting requirements currently imposed on banks and their executive officers and principal shareholders related to lending by banks to insiders.

Section 601 of the FSRRA amended section 22(g) of the Federal Reserve Act[52] and

[51] For those provisions affecting mainly credit unions, please refer to the NCUA report in Part II.
[52] 12 U.S.C. 375a.

section 106(b)(2) of the Bank Holding Company Act Amendments of 1970[53] to eliminate several reporting requirements currently imposed on federally insured banks and savings associations, their executive officers, and principal shareholders.

The Agencies determined that these particular reports did not contribute significantly to the monitoring of insider lending or the prevention of insider abuse. Identifying and reviewing insider lending will continue to be conducted as part of the normal examination and supervision process, and the amendments will not alter the restrictions on insider loans or limit the authority of the Agencies to take enforcement action against a bank or its insiders for violations of those restrictions.

3. Streamlines Consolidated Reports of Condition by requiring that the federal banking agencies periodically review the information and schedules required to be filed by insured depository institutions.

Section 604 of the FSRRA amended section 7(a) of the FDI Act [54] to require that, within one year after enactment of the FSRRA and at least once every five years thereafter, each federal banking agency, in consultation with the other agencies, shall routinely review both the burdens and benefits associated with Call Report information requirements so as to reduce any unnecessary burden.

4. Streamlines merger application requirements and exempts certain merger transactions from competitive factors review and post-approval waiting periods.

Section 606 of the FSRRA amended section 18(c) of the FDI Act[55] (the Bank Merger Act) to eliminate the requirement that each federal banking agency request a competitive factors report from the other three federal banking agencies as well as from the Attorney General in connection with the bank mergers. Instead, the amendment allows the agency reviewing the

[53] 12 U.S.C. 1972(2).
[54] 12 U.S.C. 1817(a).
[55] 12 U.S.C. 1828(c).

Bank Merger Act application to request a report only from the Attorney General and to provide a copy of this request to the FDIC as insurer.

This section also modifies the Bank Merger Act to exempt certain merger transactions between an insured depository institution and one or more of its affiliates from both the competitive factor review process and the post-approval waiting period. This type of merger generally is considered to have no material effect on competition.

5. Provides an inflation adjustment for the small depository institution exception under the Depository Institution Management Interlocks Act.

Section 610 of the FSRRA amended section 203(1) of the Depository Institution Management Interlocks Act which prohibits depository organizations from having interlocking management officials, if the organizations are located or have an affiliate located in the same Metropolitan Statistical Area, Primary Metropolitan Statistical Area, or Consolidated Metropolitan Statistical Area. Prior to the FSRRA, this prohibition did not apply to depository organizations with total assets of less than $20 million. The Agencies proposed that this total asset threshold for the MSA exception be raised to $100 million. The FSRRA raised the threshold to $50 million.

6. Authorizes the Board to pay interest on reserves.

Section 201 of the FSRRA gives the Board express authority, effective October 1, 2011, to pay interest on all types of balances (including required reserves, supplemental reserves and contractual clearing balances) held by or for depository institutions at the Federal Reserve Banks.

7. Increases flexibility for the Board to establish reserve requirements.

Effective October 1, 2011, section 202 of the FSRRA gives the Board the discretion to set reserve requirements for transaction accounts below the ranges established in the Monetary Control Act of 1980.

8. Enhances examination flexibility.

Section 605 of the FSRRA and related legislation amended section 10(d) of the FDI Act[56] to permit insured depository institutions that have up to $500 million in total assets, and that meet certain other criteria, to qualify for an 18-month (rather than 12-month) on-site examination cycle.[57] These legislative changes will potentially permit more well-capitalized and well-run small institutions to qualify for less-frequent examinations.

9. Provides for the simplification of dividend calculations for national banks.

Section 302 amended section 5199 of the Revised Statutes of the United States[58] to simplify dividend calculations for national banks and provide more flexibility to a national bank to pay dividends as deemed appropriate by its board of directors. Previously, the payment of dividends was subject to a complex formula.

10. Repeals the loans-to-one borrower limitations for savings associations in section 5(u)(2)(A) of the Home Owners' Loan Act.[59]

Section 404 eliminated the loans-to-one borrower provision that restricts loans by savings associations to develop domestic residential housing units to a $500,000 per unit for each single-family dwelling unit, while retaining the overall limitation for a residential development of the lesser of $30 million or 30 percent of the unimpaired capital and unimpaired surplus.

11. Allows savings associations to invest in bank service companies under the Bank Service Company Act[60] and expands the locations at which a bank service company may provide services that are permissible for each of its investing members.

---

[56] 12 U.S.C. 1820(d).
[57] In addition to the size criteria, an institution is eligible for the extended examination cycle if it is well capitalized, has not undergone a recent change in control, is not subject to a formal enforcement proceeding, and has been assigned a management and a composite rating of "1" or "2" under the Uniform Financial Institutions Rating System at its most recent examination.
[58] 12 U.S.C. 60.
[59] 12 U.S.C. 1464(u)(2)(A).
[60] 12 U.S.C. 1842 and 1863.

12. Amends federal law to facilitate and coordinate the supervision of state banks operating across state lines by the bank's home and host state bank supervisors.

For example, section 711 of the FSRRA amends section 10(h) of the FDI Act[61] to provide for a host state bank supervisor to exercise its supervisory and examination authority in accordance with any cooperative agreement between the host state and home state bank supervisors.

13. Authorizes member banks to use pass-through reserve accounts.

Section 603 of the FSRRA permitted member banks to count as reserves deposits in other banks that are passed through by those banks to the Board as required reserve balances, rather than requiring a member bank to maintain its reserves either in an account at a Federal Reserve Bank or as vault cash.

14. Amends the Securities Exchange Act of 1934 and the Investment Advisors Act of 1940 to remove the duplicative oversight burden and to provide savings associations with the same exemptions from registration and reporting requirements currently provided to banks.

[61] 12 U.S.C. 1820(h).

Appendix I-B: Methodology of the Agencies' EGRPRA Review Process

This interagency review formally began in 2003, under the leadership of then-FDIC Vice Chairman (now OTS Director) John Reich, whom FFIEC asked to chair this effort. The three-year process included a review of almost all of the Agencies' 131 regulations in an effort to reduce regulatory burden, where appropriate, or to recommend statutory changes to reduce burden when the Agencies lack authority to do so unilaterally.

Under Mr. Reich's leadership, the Agencies established an interagency EGRPRA Task Force consisting of senior-level representatives from each of the Agencies. In accordance with statutory requirements, the federal banking agencies have categorized and divided their regulations into 12 categories by type.[62]

The statute requires that the Agencies publish one or more categories of the regulations for public comment on a periodic basis. The requests for comment should ask commenters to identify regulations that are outdated, unnecessary or unduly burdensome.

The EGRPRA Task Force recommended, and the Agencies agreed, to put one or more categories out for public comment every six months, with 90-day comment periods, for the remainder of the review period that ended in September 2006. The Agencies decided that spreading out comments over three years would provide sufficient time for the industry, consumer groups, the public and other interested parties to provide more meaningful comments on our regulations, and for the Agencies to carefully consider all recommendations.

The table below indicates which categories of regulations were published in each of the six *Federal Register* notices, as well as the dates they were issued:

[62] As discussed in Part II, NCUA prepared comparable categories of its rules affecting credit unions.

Federal Register **Notice**	**Sought Comment on:**	**Issue Date**
First	The Agencies' overall regulatory review plan, as well as the following initial three categories of regulations for comment: Applications and Reporting; Powers and Activities; and International Operations. (*See* 68 FR 35589.)	06/16/2003
Second	The lending-related consumer protection regulations, which included Truth-in-Lending (Regulation Z), Equal Credit Opportunity Act (ECOA), Home Mortgage Disclosure Act (HMDA), Fair Housing, Consumer Leasing, Flood Insurance and Unfair and Deceptive Acts and Practices. (*See* 69 FR 2852.)	01/20/2004
Third	The consumer protection regulations that relate primarily to deposit accounts/relationships. (*See* 69 FR 43347.)	07/20/2004
Fourth	The regulations related to anti-money laundering, safety and soundness, and securities. (*See* 70 FR 5571.)	02/03/2005
Fifth	The regulations related to banking operations; directors, officers and employees; and rules of procedure. (*See* 70 FR 46779.)	08/11/2005
Sixth	The Agencies' Prompt Corrective Action regulations as well as the rules relating to the disclosure and reporting of CRA-related agreements. (*See* 71 FR 287.) Since the Agencies had recently sought public comment of the burdens associated with their general capital and CRA rules, the Agencies did not seek further burden reduction comments on those rules.	01/04/2006

The Agencies readily recognized that consumer and public insight into regulatory burden issues would be critical to the success of their effort. Consequently, the regulatory agencies tried to make it as convenient as possible for all interested parties to receive information about the EGRPRA project and to comment on what they thought were the most critical regulatory burden issues.

EGRPRA Web Site

The Agencies established an EGRPRA Web site (http://www.egrpra.gov). The Web site provides an overview of the EGRPRA review process, a description of the Agencies' action plan, information about our banker and consumer outreach sessions, and a summary of the top regulatory burden issues cited by bankers and consumer groups. The Web site also includes direct links to the actual text of each regulation and a button for relaying comments. Comments submitted through the Web site were automatically transmitted to each of the Agencies. Comments were then posted on the EGRPRA Web site for everyone to see. The Web site proved to be a popular source for information about the EGRPRA project, with thousands of “hits” being reported every month.

While written comments were important to the Agencies’ efforts to reduce regulatory burden, the Agencies believed that it was also important to have face-to-face meetings with bankers and consumer/community group representatives so that they would have an opportunity to directly communicate their views to the regulators on the issues that most concern them.

Outreach Meetings

The federal banking agencies decided to sponsor a total of 10 banker outreach meetings in different cities around the country to heighten industry awareness of the EGRPRA project. The meetings provided an opportunity for the Agencies to listen to bankers’ regulatory burden concerns, explore comments and suggestions, and identify possible solutions.

More than 500 bankers (mostly CEOs) and representatives from the American Bankers Association, America’s Community Bankers, Independent Community Bankers of America, the Conference of State Bank Supervisors (CSBS), as well as representatives from numerous state trade associations participated in the meetings. In addition, more than 70 representatives from the Agencies, CSBS, and the state regulatory agencies participated. The Agencies believe that the banker outreach meetings were useful and productive. Summaries of the issues raised during those meetings were posted on the EGRPRA Web site.

The Agencies also co-sponsored three outreach meetings specifically for consumer and community groups. Representatives from a number of consumer and community groups participated in the meetings along with representatives from the Agencies and CSBS. Those meetings produced many suggestions and provided a useful perspective on the effectiveness of many existing regulations.

Finally, the Agencies sponsored three joint banker and consumer/community group focus group meetings in an effort to develop greater consensus among the parties on legislative proposals to reduce regulatory burden.

The Agencies found these outreach and focus group meetings to be extremely helpful in identifying the most burdensome regulations for the industry, discussing possible solutions and understanding the concerns of consumer and community groups about changing certain provisions of the current law and regulations.

Appendix I-C: Summary of Comments, by Federal Register Notice Release and by Subject Matter for the Federal Banking Agencies

I. Federal Register Notice Release No. 1: Applications and Reporting, Powers and Activities, and International Operations (Note: The notice also requested comment on the overall EGRPRA process.)

A. General Comments

1. Regulatory Burden. The federal banking agencies received general comments on regulatory burden through the *Federal Register* notice process as well as during the various Bankers Outreach meetings.

One commenter was appreciative of recent efforts to reduce the regulatory requirements on small institutions and encouraged regulators to continue reviewing regulations and making exceptions for smaller institutions. Another industry group commenter was concerned that small institutions are still disproportionately burdened because they cannot afford to hire more employees to comply with the volume of regulation. The same commenter complained that credit unions do not have to pay the taxes that small institutions pay.

Most bankers asserted that, while the compliance burden is particularly taxing on small institutions, reducing regulatory burden would assist banks of all sizes in refocusing on their core mission: meeting the financial needs of the public while providing value to stakeholders at all levels.

Many other commenters were concerned with the increased burden associated with the consumer regulations, SARS/CTR filings, BSA compliance, and PATRIOT Act, some of which is not exclusively related to banking.

2. Examination Burden. During the outreach meetings, bankers asked the federal banking agencies to better coordinate examinations, particularly at banks that are regulated by multiple agencies, such as the State, Board, and FDIC. They explained that the burden is especially difficult for management and directors of affiliated institutions because examiners seem to be in one or more of the institutions all of the time conducting different types of exams. They complained that preparing pre-exam packages and responding to examiner questions is time consuming for management. On the other hand, they applauded the exams where the state and federal regulators worked together. Bankers also suggested that regulators use the findings of the safety and soundness examination to determine the need for, and scope of, specialty area examinations.

One commenter suggested that the federal banking agencies adopt a risk-based or two-tiered approach based on an institution's size and complexity of operations. While another industry commenter complained about the amount of examination time spent when the institution and the examiners struggle to interpret complex compliance rules.

3. Continuous Regulation Review. A few commenters encouraged the federal banking agencies to use sunset provisions to regularly review the need for regulations. One commenter cited the newly proposed identity theft regulations as an example of a regulation that needs to be reevaluated on a regular basis.

Another commenter requested that the FDIC lead an effort to bring together regulators, bankers, legislators, and consumers to review all consumer regulations to streamline the disclosure process, so that consumers receive disclosures that are meaningful and concise. More specifically, the commenter recommended:

- Implementing burden reduction recommendations that are rule changes and do not require legislative action to implement needed changes faster.

- Improving guidance from the Agencies so that it is clear and consistent.

B. Powers and Activities

1. Activities of Insured State Banks. Part 362 of the FDIC rules and regulations implement section 24 of the FDI Act that restrict and prohibit insured state banks and their subsidiaries from engaging in activities and investments that are not permissible for national banks and their subsidiaries. Some of the commenters questioned the need for FDIC review of subsidiary activities that are not permissible for a national bank, terming the requirement unclear.

2. Bank Holding Companies and Financial Holding Companies. Two industry trade association commenters urged the Board to revise its Small Bank Holding Company Policy Statement in Regulation Y to increase the asset-size cap from $150 million to $500 million or $1 billion for purposes of defining a "small bank holding company." One commenter also encouraged the Board to revise the Statement to increase the debt-to-equity ratio from 1:1 to 3:1 as the threshold for dividend payment restrictions, because purchasers of small banks frequently need to borrow all or a substantial portion of the purchase price.

A commenter also urged the Board to revise Regulation Y to remove restrictions on the activities of a subsidiary of a subsidiary bank of a bank holding company (BHC). The commenter noted that these restrictions have created competitive inequities, in some cases, by preventing subsidiaries of state member banks with a BHC from engaging in activities in which subsidiaries of state nonmember banks may engage under relevant state law, including activities approved by the FDIC for state nonmember banks and their subsidiaries.

Several commenters, including industry trade associations, stated that a BHC that is not a financial holding company (FHC) should be authorized to conduct an expanded scope of insurance agency activities directly or through a nonbanking subsidiary, rather than indirectly through a subsidiary bank that is authorized under state law to engage in such activities. Two commenters contended that BHCs that are well managed and well capitalized and that have satisfactory CRA performance records should be allowed to engage in the broader range of activities permitted for FHCs, including securities and insurance underwriting, even if the BHCs have chosen not to become FHCs. They also stated that such BHCs should be permitted to file post-notices for proposals to engage in permissible nonbanking activities to the same extent that FHCs can file post-notices.

In addition, one commenter urged the Board to amend the FHC rules in Regulation Y that relate to organizing, sponsoring and managing mutual funds (12 CFR 225.86(b)(3)) to remove the requirement that a FHC reduce its ownership in a fund to less than 25 percent of the fund's equity within one year of sponsoring the fund. The commenter asserted that such restriction was unduly burdensome, because it was not mandated by the GLBA and appeared to result unnecessarily in more limited authority for an FHC's domestic mutual fund activities than what currently is authorized under the Board's Regulation K for mutual fund activities conducted abroad.

An industry trade association commenter also stated that the statutory cross-marketing prohibitions on subsidiary depository institutions of an FHC should be revised to apply only with respect to cross marketing of products and services of a company in which the FHC holds a controlling interest of more than 25 percent.

3. State Member Banks. To help ease burden on state member banks with excess capital, a commenter requested that the Board eliminate the restriction in Regulation H on dividend payments (12 CFR 208.5) for well-capitalized banks that will remain well capitalized following payment of the dividends. Another commenter asserted that the branching and investment authority for state member banks should not be limited to what is permissible for a national bank.

4. Community Development Corporations, Community Development Projects, and Other Public Welfare Investments. One commenter suggested that the OCC should reduce the burden of the self-certification requirement for public welfare investments, either by waiving the requirement for well-managed national banks with an Outstanding CRA performance rating, by creating a *de minimis* level below which no certification is required, or by establishing a like-kind investment exception similar to that found in 12 CFR 5.

Also, the commenter stated that federal savings associations should be able to invest in community development entities to the same extent as national banks. Under current law, savings associations may only make such investments through a service corporation. Because many savings associations do not have service corporations, this limits their ability to serve low- and moderate-income communities.

Another commenter stated that the Board should update its regulatory interpretation on community welfare investments (12 CFR 225.127) to reference the quantitative limits on those investments that would not require prior Federal Reserve System (FRS) approval in terms of a percentage of the BHC's consolidated Tier 1 and Tier 2 capital plus the balance of the allowance for loan and lease losses excluded from Tier 2 capital. Currently, the interpretation provides that a BHC, directly or indirectly, may make community welfare investments up to 5 percent of the BHC's consolidated "capital stock and surplus" without FRS approval.

5. Financial Subsidiaries. Several commenters proposed removing certain limits on financial subsidiaries of banks, such as:

- The requirement that each of the 100 largest banks must maintain a top-three debt rating in order to hold a financial subsidiary.
- The prohibition on insurance underwriting and real estate development activities in a financial subsidiary.

- The requirements that financial subsidiaries not be treated as ordinary subsidiaries for capital, 23A/23B, and anti-tying purposes.

6. OCC Lending Limits. One commenter urged the OCC to include agricultural loans in the categories of loans eligible for higher lending limits under an OCC pilot program allowing eligible national banks to take advantage of higher lending limits for small business loans and residential real estate loans. The commenter further urged that the $500,000 cap contained in the CRA regulation and Call Report instructions not apply in such cases.

7. Debt Cancellation Contracts and Debt Suspension Agreements. One commenter proposed that the OCC make permanent the temporary suspension of rules regarding banks offering a periodic payment option and associated disclosures to Debt Collection Contracts (DCCs) and Debt Suspension Agreements (DSAs) sold by unaffiliated, nonexclusive third parties in connection with closed-end consumer loans. The same commenter stated that the OCC should extend the exception to all consumer loans, other than real estate loans, regardless of how such loans are sold.

One commenter stated that the OCC should retain its regulations concerning DCCs and DSAs.

8. Investment. One commenter proposed that the OCC revise 12 CFR 1.3(h) to permit a national bank to purchase (without OCC approval) for its own account shares of an investment company or other entity, provided that (1) the portfolio of assets of the investment company or other entity consists exclusively of assets that a national bank may purchase and sell for its own account and (2) the bank’s holdings of such shares do not exceed the limits set forth in section 1.4(e) of the regulations. The commenter likewise proposed expanding the definition of investment company in 12 CFR 1.1(c) to include entities that are exempt under section 3(c)(1) of the Investment Company Act.

One commenter proposed amending the Investment Adviser's Act to exclude savings associations from the definition of investment adviser.

9. Dividend Payment. A commenter proposed that, for national banks with a single shareholder, dividends payable in property other than cash should not require the prior approval of the OCC under 12 CFR 5.66, if the property is dividended at fair market value, the dividend does not exceed the limits set out in 12 U.S.C. 60, and the dividend comprises an "insubstantial amount" (less than 1 percent) of the bank's capital and surplus.

10. Branching. One commenter proposed that 12 U.S.C. 36(g)(1) and 1828(d)(4)(A) should be revised to allow national banks to engage in *de novo* interstate branching to the same extent as savings associations. They also recommended elimination of the states' authority to prohibit an out-of-state bank or BHC from acquiring an in-state bank that has not existed for at least five years. Another commenter proposed that the FDIC thoroughly examine the procedures for a bank to close a branch and notify its customers, and determine whether there are ways to make the process less onerous.

11. Real Estate Lending. One commenter suggested an amendment to 12 U.S.C. 1464(c)(2)(B)(i) to increase the statutory limit for loans secured by nonresidential real property and/or that OTS establish practical guidelines for non-residential real property lending at levels exceeding 400 percent of capital.

Another commenter suggested elimination of the $500,000 per unit purchase price limit contained in section 1464(u)(2) of the HOLA. Another commenter suggested that the other real estate owned standards be amended to provide greater flexibility to banks, including allowing them to lease a property when they cannot dispose of it rapidly.

12. Fiduciary Powers. One commenter stated that the SEC's final rule to implement the safe harbors for traditional trust activities and other services performed by financial institutions should apply to savings banks and savings associations and should not impose unnecessary burdens on community banks engaged in fiduciary activities.

13. Scope of Investment Advisers Act. One commenter stated that the Investment Advisers Act of 1940 and its regulations burden savings associations unfairly, because savings associations and savings banks are not exempt from the definition of investment adviser. The commenter proposed amending the Investment Advisers Act to exclude savings associations from the definition of investment adviser.

14. Application of Interest Rate Exportation Doctrine to Banks with Multi-State Branches. Two commenters expressed concerns about agency guidance on interest rate exportation. The commenter noted that the guidance varied between OTS, OCC, and FDIC, and that its application could vary by transaction. The commenter recommended that the Agencies clarify that banks could use their home state interest rates regardless of the contacts (or lack thereof) between the home state and the loan. The Agencies should further clarify the factors that the institution needs to consider when they use the rate of a state other than the home state. The commenter said that the Agencies should issue a new joint rule to clarify these issues. The federal banking agencies also should review their interpretations concerning what constitutes "interest" under the export doctrine, to ensure consistency.

15. Consumer Lending Limits for Savings Associations. One commenter, without recommending a particular change, noted that savings associations are developing business strategies that require more flexible consumer loan limits. The commenter urged OTS to review HOLA to see whether the agency could provide additional flexibility without amending the statute.

16. Savings Association Business Lending Authority. One commenter suggested that federal savings associations be permitted to fully engage in small business lending and that the lending limit on other business loans be increased to 20 percent of assets. Expanding the business lending authority of federal savings associations would help to increase small business access to credit and expand the amount of loans made to small and medium-sized businesses.

17. Bank Service Company Act. One commenter proposed amending both the Bank Service Company Act and HOLA to provide parallel investment authority for banks and saving associations to participate in both bank service companies and savings association service corporations.

18. Eliminate Loan-to-One Borrower Residential Housing Exception. A commenter asserted that the $30 million/30 percent of all capital limits on residential lending for federal savings associations is sufficient to prevent concentrated lending to one housing developer and the per-unit cap ($500,000) is excessive. The commenter stated that OTS should either eliminate the per-unit cap or index it to inflation.

C. Applications and Reporting

Commenters recommended changes to ease regulatory burden relief in the applications and reporting area.

1. Applications (generally). Some commenters suggested general changes in the applications area, including both legislative and regulatory changes. These changes included:

- Providing expedited application/notification requirements for well-capitalized and well-managed banks with satisfactory CRA performance record ratings.
- Expediting application review and processing time, including by delegating certain applications to regional offices.
- Allowing electronic applications filing.
- Publishing a list of approved or denied activities.
- Handling routine applications, such as branch applications, as after-the-fact notice

filings.

- Exempting well-capitalized savings associations from dividend notice requirements.
- Eliminating the requirement that a BHC receive prior FRS approval to acquire additional shares of a subsidiary BHC (such as when a BHC's ESOP that is a registered BHC wants to purchase additional shares of the BHC).
- Converting applications (such as new branch applications) to after-the fact notices.

Some of the other changes that industry commenters suggested to improve the applications process included:

- Making publication requirements for different applications consistent.
- Terminating current requirements for applicants/notificants to publish announcements of their regulatory filings in newspapers, because few people read the newspaper notices, such publications are expensive, and publication delays can lengthen processing times.
- Changing the Board's *ex parte* contact policy regarding protested applications to be consistent with the other Agencies' policies on protested applications.
- Allowing institutions to incorporate by reference previously filed documentation, with updates or certification of continued accuracy.
- Recognizing the distinction between internal restructuring and acquisition of a non-affiliated entity, with lesser information requirements for the former.
- Reconsidering the positions of the OCC and the Board that commonly advised mutual funds or other investment funds are considered "acting in concert," and thereby subject to Change in Control (CIC) notice requirements, whenever a fund family collectively acquires 10 percent or more of a bank or bank holding company. In addition, a fund's ownership of shares should not be attributed to the investment

advisor (or its parent organization) for purposes of the CIC regulations.

2. Bank Merger Act Applications. Many industry commenters suggested that the Agencies make their merger reviews more consistent with reviews by the Department of Justice or ask Congress to provide the Agencies with sole authority to conduct competitive analysis of bank mergers. In addition, credit union deposits should be included in the anti-competitive analysis of mergers because credit unions are active competitors with banks. Case-by-case analysis of such deposits imposes burdens on the applicant. Credit unions are full competitors with banks.

In addition, another industry commenter recommended the following suggestions to ease the burden associated with the Bank Merger Act (BMA):

- Applying BMA streamlined filing procedures and timeframes to mergers between qualified banks and their affiliates.
- Clarifying that transfers of "substantially all" assets would not be subject to the BMA if the transfer does not materially impact the institution.
- Establishing a BMA *de minimus* exception for affiliate transfers of deposit liabilities.

3. OCC Business Combination Rule. One commenter noted that the OCC's business combinations rule (12 CFR 5.34) permits nonbank subsidiaries to merge into national banks, but the FDIC's regulations require the filing of an application with the FDIC and require the publication of notice and an opportunity for public comment on such transactions. The commenter said that the FDIC should eliminate the notice and opportunity for comment requirements as unnecessary when the merging entity is a wholly owned bank operating subsidiary. Alternatively, the FDIC should be able to waive these requirements on a case-by-case basis.

4. Savings and Loan Holding Company Applications. One commenter suggested that

OTS revise the publication requirements for Form H(e) applications to conform to those included in the BMA. The same commenter suggested that OTS revise the requirements of Items 110.20(d) and 220.30 of the Form H(e) application to request a list limited to those affiliated persons (as defined in 12 CFR 561.5) who are officers participating in major policy making functions of the applicant (especially where the applicant's stock is publicly held and no shareholder owns or controls more than 10 percent of the outstanding shares of stock). Similarly, another commenter urged OTS to streamline its Form H(e) application process if the thrift is highly rated and well managed. This commenter urged OTS to streamline the requirements of Item 110.40 where the application is for an internal reorganization. Likewise, OTS should limit or eliminate the requirements of Item 210.20 when the applicant is well known; the information is readily available to OTS in other reported materials, and in situations involving an internal reorganization. The commenter also proposed that OTS eliminate Item 210.50 when the applicant is well known to OTS.

This commenter also proposed that OTS revise Item 410.10(c) to request information only on those management officials the board has designated as participants in major policy making functions. Similarly, OTS should eliminate the requirements of Item 410.20 for those transactions involving holding companies whose directors are elected by shareholders, if the shares of the company's stock are publicly held and widely traded.

For corporate reorganizations, OTS should streamline the requirements of Item 510.10. One specific suggestion was to eliminate the requirements of Item 510(a)(1) in transactions involving an applicant familiar to OTS, in corporate reorganizations, and for savings associations operating in relatively small geographic areas. Similarly, OTS should streamline the requirements of Item 620.10 for corporate reorganizations. Finally, this commenter recommended that OTS limit Items 720.10 and 720.30 to a request for those locations affected by the transaction, where the transaction involves a large savings association and/or an applicant that is well known to OTS.

Commenters encouraged OTS to consider several other changes to their rules including:

- Eliminating the requirement for formal meetings/hearings on applications when a commenter asks for one.
- Placing additional controls on the 30-day notice period for well-managed, well-capitalized thrifts to avoid the notice becoming a de facto application process without any set deadline and clarifying the conditions upon which such notice will become an application.
- Amending its mutual holding company regulations and guidance and its mutual-to-stock conversion regulations.
- Allowing an application/notice waiver process for transactions reviewed by another regulator.
- Changing the Change-in-Control regulations to be consistent with the other Agencies.

5. Reports (generally). Other comments more specifically applied to the reporting area. The general comments about reporting requirements included the following suggestions:

- Apply the materiality threshold for reporting purposes consistently across different regulatory reports.
- Clarify why certain data is collected.
- Revise the Summary of Deposits report instructions and definitions to reflect the types of branches that have come into use since emergence of interstate banking.

6. Report Inconsistencies. Several industry commenters would like to see more consistency between Call Report schedules and FRY-9C schedules. They offered the following additional steps to reduce regulatory burden:

- Permit banks to submit one form and require Agencies to share the data since the two reports are practically identical and are compared to each other for discrepancies.
- Reconcile inconsistencies between the two reports to eliminate the burden of formatting and calculating the same financial data for different reports. For example, there are inconsistencies in the Income Statement, Interest Sensitivity data on various schedules, Past Due & Nonaccruals, and various memoranda items. There are also inconsistencies between the data definitions of the Call Report and FR-2416.
- Classify all overdrafts with the appropriate loan category on Schedule C or classify them as "all other loans." Currently both reports require classification of overdrafts as "planned" or "unplanned." This is not a distinction that member banks make in their internal and external reporting. In addition, regulatory reports require that unplanned overdrafts be reported as other loans, except when made to a depository institution, a foreign government or an official institution in which case they are classified on the respective line.

7. Call Reports. Commenter suggestions related specifically to Call Reports included:

- Removing items that are unnecessary for supervision.
- Modifying reported items to conform to banks' internal reporting systems.
- Reducing penalties for noncompliance, which currently are excessive.
- Eliminating the requirement that three bank directors sign because Call Reports are electronically submitted.
- Reducing the level of detail in loans, securities, and deposits schedules.
- Reconsidering the requirement for disclosure of tax-exempt income in Income Statement memoranda items and re-pricing for complex bank organizations because of their limited usefulness.

- Reconsidering the relevance of requiring disclosure details on Schedule RC-O, as current level of FDIC assessments is zero.
- Providing real time access to the electronic Call Report filing system.
- Including on the Call Report all items necessary for supervision of peer group analysis.
- Not diminishing data reporting requirements for Call Reports.

8. FRY Reports. Commenter suggestions related specifically to the Board's FRY Reports included:

- FRY-8: Requiring a signature by one officer of the BHC, rather than signatures by an officer of each subsidiary bank.
- FRY-9C and-9LP: Eliminating or decreasing the frequency of filing, or decreasing the level of detail that is required (as in FRY-11).

D. International Operations

The majority of comments on the category of international operations regulations concerned the Board's Regulation K, as described below. A commenter also stated that OTS should relax its rules that prohibit thrifts from owning less than 100 percent of a foreign operating subsidiary.

Commenters questioned the limitations set forth in section 211.8(b) of Regulation K (12 CFR 211.8(b)) on direct investments by member banks. That section, which implements section 25 of the Federal Reserve Act (12 U.S.C. 601), authorizes only investments in (1) foreign banks, (2) domestic or foreign holding companies for foreign banks, and (3) foreign organizations formed for the some purpose of performing nominee, fiduciary, or other banking services incidental to the activities of a foreign branch or foreign bank affiliate of the member bank. In contrast, section 211.8(c) of Regulation K (12 CFR 211.8(c)), which implements section 25A of the Federal Reserve Act (12 U.S.C. 611 *et seq*.) and section 4(c)(13) of the Bank Holding Company Act (12 U.S.C. 1843(c)(13)), authorizes a greater range of [foreign] investments for bank holding companies and Edge and agreements corporations. The commenters asserted that no valid purpose is served by limiting member bank's foreign investments and suggested that member banks be permitted to make the full range of investments permitted to bank holding companies and Edge and agreement corporations.

Commenters also suggested that the regulators should permit member banks that are well capitalized and well managed and that have satisfactory CRA performance ratings and existing overseas operations to establish foreign branches using the same approval process that is available for domestic branches and nonbanking operations using the same process available for domestic nonbanking activities. Finally, one commenter requested that Edge corporations be permitted to accept domestic deposits from domestic customers, provided the majority of the depositor's deposits were Edge-permissible.

II. Federal Register Notice Releases No. 2 and 3: Consumer Protection Lending-Related Rules and Other Consumer Protection Rules: Account/Deposit Relationships and Miscellaneous Consumer Rules

A. Flood Insurance

1. General. An overwhelming number of commenters stated that customers often do not understand why flood insurance is required and that the federal government—not the bank—imposes the requirement. Commenters said that the government should do a better job of educating consumers about the reasons and requirements of flood hazard insurance. Moreover, the Agencies should streamline and simplify flood insurance requirements to make them more understandable.

One commenter, representing a state bankers' association, stated that many of its members questioned why the banking industry had to police the borrowers' choices. Another commenter asked why the burden of the flood insurance regulation is on financial institutions rather than on the insurance industry.

One commenter asked whether the $5,000 value threshold for triggering flood insurance coverage could be increased. Another commenter urged more guidance on a specific period in which the notice should be given.

One commenter suggested that responsibility should be shifted away from financial institutions for the constant monitoring of whether borrowers continue to maintain flood insurance on the property. Although the commenter agreed that the loan should not be made without flood insurance, requiring the financial institution to constantly review whether flood insurance is up to date is a burdensome task. The bank must constantly review files and in many cases force-place insurance on the borrower. The institution should be able to rely on the NFIP (the insurer) to inform the financial institution that the borrower has dropped coverage rather than the institution having to monitor the files internally.

Another commenter expressed concern about 12 CFR 22.9, Notice of special flood hazards and availability of federal disaster relief assistance. The commenter noted that when a bank makes, increases, extends, or renews a loan secured by a building or a mobile home located or to be located in a special flood hazard area, the bank must mail or deliver a written notice to the borrower and servicer in all cases. The commenter said that, if this same loan is renewed before the expiration of the initial flood zone determination, there should be no need to provide another notice to the consumer.

One commenter recommended that the Agencies provide more guidance on flood insurance. In particular, the commenter said that consumers should have easier access to flood zone information and the ability to determine if the information is current. The Agencies should streamline flood insurance requirements so the lender can easily identify the appropriate amount of coverage.

2. Simplification of Process. One commenter suggested a simplified disclosure concerning flood insurance that would read as follows: "Is the property you want to purchase in a flood plain? YES or NO – If NO, go to next question; if YES see below. The estimate given by a local agent for flood insurance coverage on the property is $_____ per year. You are required to provide proof of flood insurance coverage through an agent of your choosing by loan closing. If you want to know the identity of the agent that gave this estimate, please ask your lender."

Another commenter asked for additional clarification or interpretation of the flood insurance regulations through a "Q and A" format. The commenter noted that, in the past year their external auditors informed them that they needed to compare the flood zone listed on the insurance policy to the zone listed on the determination to ensure they are the same. The external auditors directed the institution to request that the flood zone on the insurance policy be changed if it were not the same as the zone listed on the determination. The commenter contended that this requirement is not part of the regulation, but a new unwritten interpretation. That constitutes a burden on the financial institution. Because the institution cannot force an agent to make the change, the only thing the institution can do is document the file accordingly.

3. Opt-Outs. One commenter stated that flood insurance requirements should consider the value of the land even if the land is located in a flood zone. If the value of the land exceeds the amount of the loan, the borrower should be able to opt out of purchasing flood insurance. Also, currently if the loan is on vacant land in a flood zone, the institution must advise the customer. This commenter stated that this requirement should be eliminated since vacant land cannot be insured. Because of the regulators' strong stance on this requirement, institutions are at a competitive disadvantage with non-regulated mortgage companies. The commenter asserted that the financial institution's customers would also benefit from this requested change.

4. Loan Closings. A few commenters noted that when borrowers use a property located in a special flood hazard area as security on a loan, lenders must provide notice to the borrowers within a "reasonable period of time" prior to closing. This notice advises borrowers that the property is in a flood plain and requires flood insurance under the NFIP prior to closing the loan. The commenter further noted that, while a reasonable period of time is not expressly defined, the NFIP guidelines and agency examiners specify 10 days as a "reasonable period." The timeframe protects the customer from losing their loan commitment while they shop for adequate, affordable insurance coverage. The reasonable period of time was not, however, intended to delay closing if the borrowers have purchased adequate coverage. Currently, there are examiners in the field instructing banks to wait a minimum of 5 to 10 days from the time they provide notice to the borrower until closing, even if the borrower has insurance coverage in place before the time period has expired. Clarification is needed in this area for both creditors and examiners.

One commenter suggested that the Agencies expand the Flood Determination form to include questions about collateral for the loan, such as, building only, contents only, or both, and if available at the time of the determination, questions about the loan amounts related to these items or the collateral value assigned to each. The service provider should then estimate the amount of insurance coverage required, based upon the current requirements, and place an estimate on the Flood Determination form.

5. Flood Insurance in Unincorporated Areas. One commenter noted the difficulty in complying with flood insurance requirements in unincorporated areas, since flood insurance is available only in incorporated areas. Flood hazard determinations are required though on all parcels of land which have a "structure" as defined in the regulation. That includes a grain bin or even an old barn that is beginning to fall over. Because flood insurance is unavailable for these unincorporated areas, it seems very wasteful of time, money and effort to require the flood hazard determination. Even if flood insurance were available however, it would seem wasteful to require a flood insurance determination on a dilapidated building which adds no economic value to the property. The commenter requested a review of the regulations and consideration of the issue of flood determinations on all structures, particularly in areas where flood insurance is unavailable. Another commenter noted that its bank is in a hill area where flood areas are clearly defined. The commenter noted that it has the responsibility to obtain flood insurance where needed, but that a detailed disclosure is still required even though the property is on top of a hill.

6. Special Flood Hazard Areas. Several commenters noted that notices are required for Special Flood Hazard Areas (SFHA). Lenders must provide this notice on loan originations as well as refinances. During a refinance, it is unduly burdensome for a lender to be required to give the notice within a reasonable time (ten days prior to closing) when the borrower is already aware that the property is located in a SFHA because they have an active flood policy in effect.

One commenter said that most appraisals disclose the flood status, and stated that a separate form is unnecessary given that the appraisal makes note of the information. Requiring a standard form is redundant and adds additional costs, either directly by the bank or indirectly through the appraisal.

7. Applicability to Certain Types of Property/Structures. In urging the regulators to simplify the flood insurance regulations, one commenter noted that the regulators said that the definition of “permanently affixed” meant that utilities were hooked to the mobile home. However, the commenter had interpreted “permanently affixed” as wired down or set on a foundation. As a result of the misunderstanding, the bank almost received a fine.

Another commenter urged modification of flood insurance to allow for exemptions for farm buildings like storage sheds, hay barns, and other nonresidential buildings.

Two commenters suggested that investors purchasing commercial property can determine themselves whether they need flood insurance.

Several commenters stated that they would also like to see the Agencies reconsider the requirement for insurance on a structure in a flood zone when the value of the land alone used as collateral supports the extension of credit. It should be the consumer's choice in that situation to purchase the insurance, just as it is when the consumer owns the collateral outright. Another commenter questioned why a borrower has to purchase flood insurance for a structure that is not considered as collateral for loan repayment. It is an additional burden to the financial institution to require the borrower to get the insurance, wait the 10 days after notifying the borrower of the requirement, and then close the transaction.

Another commenter further asked that the flood insurance regulation provide guidance on how to address buildings that the borrower intends to tear down. The commenter noted that it had had situations in which the borrower purchased property that was in a flood zone, and, within one week of the loan, the property was torn down. It is burdensome for the borrower to go through the time and expense of obtaining flood insurance for temporary situations such as this; however the regulation provides no exceptions. The commenter acknowledged that, under the NFIP guidelines, insurance would not be required if the building had no value and this is reflected in the appraisal. In the borrower's example, however, the building had value. The commenter recommended an exception for buildings that will be torn down within an allotted timeframe from the closing date of the loan.

The commenter also requested that the regulation clarify what is acceptable coverage for condominiums when a Residential Condominium Building Association Policy (RCBAP) is in place. The FEMA handbook "Mandatory Purchase of Flood Insurance Guidelines" outlines that a unit owner can acquire supplemental building coverage that will apply only to that part of a loss that exceeds 80 percent of replacement cost of the RCBAP. The commenter asked the Agencies to clarify that the financial institution need only to confirm that the RCBAP is for at least 80 percent replacement cost rather than 100 percent replacement cost.

8. Flood Insurance Maps. One commenter expressed concern that FEMA flood maps are often years out of date, and that the maps are not regularly adjusted. Moreover, in cases where the institution attempts to update the map, there are often long paperwork delays.

Another commenter noted that it is often difficult for bankers to assess whether a particular property is located in a flood hazard zone because flood maps are not easily accessible and are not always current. Even once a property has been identified as subject to flood insurance requirements, the regulations make it difficult to determine the proper amount, and customers do not understand the relationship between property value, loan amount and flood insurance level. Once flood insurance is in place, it can be difficult and costly to ensure that the coverage is kept current and at proper levels. As a result, many institutions rely on third-party vendors to assist in this process, but that adds costs to the loan. A commenter noted that the process for flood map amendment or revision is tedious for the consumer.

9. Force Placement. A few commenters noted that the financial institution is unable to force place a small amount of additional insurance on existing policy holders even if there is insufficient coverage on the property. Instead, the institution must work with the agent in trying to get the additional coverage placed, which the commenter contended cannot always be accomplished in a timely manner. The commenter suggested that the regulators amend the Mortgage Portfolio Protection Program rules to allow institutions to force place the additional coverage.

10. Appraisals. One commenter noted that its regulator says that if a current appraisal is not available, the bank must rely on the most recent hazard insurance policy to determine the value of the dwelling for purposes of calculating the required amount of flood insurance. This is not in the regulation. The commenter urged that the regulation provide guidance as to how old an appraisal can be before it is outdated. The regulation requires that the lender track flood insurance to ensure that proper coverage remains in place, therefore, causing the commenter to review the flood insurance at least once a year at its renewal, and sometimes more often if the loan is modified or renewed. The commenter found that it is constantly recalculating the required amount of flood insurance because the hazard insurance increases every year due to automatic inflationary increases. The commenter complained that the institution continuously must require many of its customers to increase their flood insurance every year. This is an unanticipated expense to a borrower and can cause difficulty in the relationship, not to mention the administrative cost to the institution. The commenter proposed that the flood insurance should not have to be increased above the original required amount, unless the loan amount increases.

The commenter further noted that its regulator allows its institution to combine the building and contents coverage when determining the proper amount of flood insurance for a commercial property loan that is secured by both. However, if the loan is secured by the building only, the institution can refer to the building coverage only. The commenter said that such a policy is inconsistent, especially since the regulation provides guidance on how to determine building coverage; the building should be determined independently of the contents on a loan that contains both as collateral.

The commenter also stated that the initial notification prior to the loan closing is all that is reasonably needed and that regulators should eliminate the notification at the time of renewal, extension, or increase in the loan amount. The borrower is informed prior to closing that the property securing the loan is in a flood zone and flood insurance must be obtained. Because the institution must track this flood insurance, the borrower will be informed via a separate notice should their insurance expire, that they have 45 days to obtain coverage or insurance will be force placed. As a commercial lender, the commenter cross-collateralizes loans to a business and renews the loans on an annual basis. Since these actions do not necessarily have the same maturity date, the borrower is continuously being sent notices that the property is in a flood zone. According to the commenter, borrowers think this is somewhat of a nuisance, and it is an administrative burden for financial institutions.

11. Miscellaneous. One commenter noted that, when a loan is new and secured by property in a flood zone, or property in a flood zone is added to an existing loan, there is no 30-day waiting period for flood insurance. However, the commenter found that this is not the case when the flood insurance is up for renewal and the premium is paid 30 days late. In cases such as this, the customer does have a 30-day grace period regardless of whether they have a loan. The commenter urged regulators to eliminate the 30-day grace period on delinquent policy renewals.

B. Truth in Lending Act/Regulation Z

Regulation Z was one of the regulations that received the most comments during the EGRPRA process. A general comment from many financial institution industry commenters was that consumers are frustrated and confused by the volume and complexity of documents involved in obtaining a loan (especially a mortgage loan), including the TILA disclosures as well as the RESPA disclosures. Industry commenters requested that the disclosures be written in a manner to facilitate consumer understanding. Many comments from both industry and consumer group commenters were also received on specific issues concerning Regulation Z.

1. Rescission. Industry commenters called the right of rescission one of the most burdensome requirements, and many suggested either eliminating the right to rescind or allowing consumers to waive the right more freely than under the current rule (which requires a bona fide personal financial emergency). Other industry suggestions included:

- Exempting regularly examined institutions from the rescission requirements (or allowing free consumer waivers for such institutions).
- Exempting transactions where the initial request for a loan comes from the consumer (rather than from a solicitation by the lender).
- Exempting refinancings (at least where no new money is extended).
- Exempting bridge loans.
- Exempting loans to "sophisticated borrowers" (for example, those with income over $200,000 or assets over $1,000,000), or freely allowing waiver in such cases.
- Dropping the requirement to delay disbursement of loan proceeds.
- Shortening the rescission deadline (such as, 11:00 a.m. on the next business day).

Industry commenters provided the following to support their suggestions:

- Consumers rarely exercise their right to rescind.
- Many consumers dislike having to wait three business days to receive the loan proceeds.
- Because consumers can review the early TILA disclosures given within three days after the loan application, consumers have ample opportunity to understand the transaction and therefore do not need the right to rescind later.

A few commenters said that a bank (even without the requirement) would work with a consumer who had a change of heart within several days after the mortgage closing. Arguments in support of dropping the delay-of-disbursement rule included that the rule is not statutory; that lenders, closing agents, consumers and others all incur extra effort and expense by not being able to finalize the transaction on the day of closing (including, for consumers, extra interest); and that if rescission should occur after disbursement has been made, the transaction can be unwound without great difficulty.

Consumer groups argued that the right of rescission is critical for consumers and must be maintained. They noted that the fact consumers rarely rescind suggests that the rule is not burdensome for lenders. Whether or not consumers rescind, they assert that the option to rescind provides incentive for lenders to comply with TILA. They also noted that consumers need time after closing to review the loan documents, including required regulatory disclosures, because loan terms often change at closing.

Consumer representatives believed that rules allowing consumers to waive the right of rescission should remain narrow and that the rule allowing waivers for bona fide personal financial emergencies works well. These commenters are concerned that such consumers may be unduly pressured to waive their right to rescind, or that they may too freely request a waiver because they are in need of the loan proceeds (especially in the case of low-income consumers). Consumer groups opposed the industry suggestion to exempt some refinancings because much abusive lending involves refinancings. However, one consumer group comment asserted that burden could be reduced by dropping the delay-of-disbursement rule.

2. Mortgage Loan Rules (generally). Industry commenters suggested that the RESPA disclosures, required under regulations issued by the Department of Housing and Urban Development, and the TILA disclosures should be consolidated into a single disclosure scheme, and generally, that one set of disclosures should apply to mortgage loan transactions, as opposed to multiple rules from various regulators. Commenters pointed to the large regulatory burden imposed because of the voluminous documents required at mortgage loan closings.

Consumer group commenters agreed with lenders that TILA and RESPA disclosures should be integrated. These commenters also suggested that lenders should provide consumers with accurate disclosures at the time of application, instead of estimates. In addition, consumer group commenters also stated that the method for calculating the finance charge for mortgage loans should include all costs.

3. Home Ownership Equity Protection Act Rules. With regard to the special rules under the Home Ownership and Equity Protection Act of 1994 (HOEPA), industry commenters asserted that the disclosures required under HOEPA are redundant and unnecessary, and that determining HOEPA coverage is difficult. They suggested using only the rate spread test, and not the fee test. Other suggestions included:

- Using the same rate spread test as for the Home Mortgage Disclosure Act (HMDA) disclosures.
- Making the HOEPA period for providing disclosures (three business days prior to consummation of the mortgage transaction) coincide with the TILA rescission period.
- Excluding credit life insurance premiums from the fee test for HOEPA coverage.

In support of the last suggestion, commenters stated that some consumers may want credit life insurance, yet lenders will not provide it so as to avoid HOEPA coverage. A commenter stated that the requirement for making HOEPA disclosures three business days before closing poses problems for both the bank and the consumer, because if the consumer decides at the last minute to change a term (such as, purchase credit life insurance and finance the premium), new disclosures and an additional three-day waiting period are required.

Consumer group commenters urged that because abusive lending continues to increase, regulators should keep the HOEPA rules in place.

4. Home Equity Line of Credit Rules. With regard to the special Regulation Z rules for home equity lines of credit (HELOCs), industry commenters suggested eliminating the requirement to provide the Board-prescribed home equity brochure, arguing that the brochure is unnecessary now that HELOCs are common and consumers are familiar with them. Another industry suggestion was that lenders be allowed a choice as to when to provide HELOC disclosures: either at the time of receipt of the application or within three days of that date, for consistency with RESPA's good faith estimate and TILA's early disclosure requirements. The consumer representatives suggested that disclosures for HELOCs should be the same as disclosures for closed-end mortgage loans.

5. Adjustable-Rate Mortgage Disclosures. Consumer groups, commenting on the special application-stage disclosures for adjustable-rate mortgage (ARM) loans, stated that the disclosures should be loan-specific, as the technology now exists to provide such information. These commenters also advocated greater penalties for lenders that do not comply.

6. Finance Charge and Annual Percentage Rate Issues. Industry commenters asserted that it is difficult to determine which costs must be included or excluded in calculating the finance charge and annual percentage rate (APR), especially with regard to third-party fees, and that these calculations should be simplified. Commenters stated that consumers do not understand, are confused by, and are not interested in the APR, and that disclosure of the interest rate, loan term, monthly payment, and closing costs should be sufficient. One commenter suggested that the tolerances for finance charge should be increased to reflect inflation, and perhaps stated as a percentage of the loan balance. Another commenter suggested that APRs should reflect (1) the fact that mortgage loans are paid off after 7 to10 years on average (rather than 30), and (2) the probability that, for a variable-rate loan, the initial low rate will rise over time.

7. Credit Card and Other Open-End Credit Issues. Industry commenters also addressed the rules for credit cards. Some institutions asserted that consumers can use rules for resolving billing errors to "game the system," subjecting banks to fraud. These commenters argued that penalties should be imposed on consumers who make frivolous or fraudulent claims.

Other industry commenters suggested that provisions of Regulation Z governing credit card disputes should be made consistent with the rules for debit cards under Regulation E and the Electronic Fund Transfer Act. They also noted that they need more time to investigate billing errors. Commenters also suggested that card issuers be allowed to issue additional credit cards for an existing account even when the consumer's existing credit card is not replaced or renewed.

Consumer representatives suggested that open-end credit account disclosures be revised to illustrate the effect of making only the minimum payments. They suggested that the disclosure tables provided with credit card solicitations and applications (the "Schumer box") also be provided with account-opening disclosures. They also suggested that consumers be permitted to provide oral notice of a billing error (rather than written notice, as under the current rule).

8. Advertising Rules. Industry commenters stated that the TILA rules regarding credit advertising are not clear, and that it is difficult to determine what may or must be included in an advertisement. Commenters also suggested providing exceptions for radio and television advertisements, similar to those under Regulation DD and the Truth in Savings Act.

9. Miscellaneous. Other industry comments included:

- Harmonizing the requirements for closed-end credit disclosures with those for open-end credit.
- Simplifying Regulation Z terminology.
- Providing greater flexibility in Regulation Z restitution requirements.

In addition, a few commenters opposed the Board's proposal for a single standard for "clear and conspicuous" for Regulations B, E, M, Z, and DD, arguing that the changes would cause problems and expenses and that the existing standards in each regulation are sufficient.

Other consumer group comments included:

- Keeping TILA/Regulation Z requirements intact.

- Adjusting the statutory damage caps for inflation (which would adjust the $1,000 cap to $5,350).
- Adjusting the jurisdictional cap ($25,000) for inflation (because many moderately priced automobile loans are now exempt).
- Maintaining the tolerance levels for error without any adjustments because technology permits lenders to make increasingly accurate calculations.
- Covering "bounce protection programs" under Regulation Z, or prohibit such programs altogether.

C. Home Mortgage Disclosure Act Regulation C

Regulation C was another subject of very heavy comment from financial institutions. Numerous commenters stated that collecting HMDA-mandated information was their most burdensome regulatory requirement. Commenters also added that compliance costs millions of dollars for paperwork with no meaningful results. Some commenters called for the outright repeal of HMDA or to have its requirements seriously modified. In addition, many commenters questioned the utility of the information collected.

Other general comments received from industry commenters included:

- Recent amendments to Regulation C have resulted in a large increase in burden and cost, without a cost-benefit analysis of the additional data requested by consumer activists.
- The original burden-reduction purpose of the HMDA review was lost, and Agencies should issue guidance to the media and public on the proper interpretation of HMDA data.
- Lending institutions were concerned that the HMDA data may be unfairly interpreted; for example, denials to minority applicants may appear high if a lender has an

> aggressive outreach program that generates many applications, or is in a rural area with few minorities.

Consumer group commenters argued that the recent Regulation C amendments significantly enhanced HMDA data collection and will provide critical information and, thus, should be given time to take effect. These commenters contended that insufficient time has passed to permit fair consideration of the benefits and burdens of the changes.

Many comments from both industry and consumer group commenters were also received on the following specific issues concerning Regulation C.

1. Institutions Subject to Regulation. A major issue for industry commenters was coverage of depository institutions under HMDA. Many suggested that the asset threshold for the exemption should be increased from its current level (at the time of the solicitation of comment) of $33 million, with some suggesting a coverage threshold of at least $250 million and others suggesting $500 million or $1 billion. One commenter stated that some bank holding companies maintain a number of bank charters in order to stay under the reporting threshold. Others suggested changing to a coverage test based on mortgage loan activity, such as exempting depository institutions with fewer than 100 loan originations annually. Another suggestion was to apply a tiered approach, where only larger institutions would be required to collect data on the rate spread, HOEPA status, and manufactured housing status. Some industry commenters stated that it was unfair to cover depository institutions in rural areas and that the percentage of the institution's loans in the metropolitan statistical area should determine coverage or a population threshold should be used.

Consumer groups opposed increasing the threshold for HMDA exemptions, and supported increased coverage, including covering lenders with assets under $33 million and lenders in rural areas. They asserted that many "problem lenders" are small lenders, and broader coverage would provide a better picture of the entire mortgage market. They also suggested lowering the thresholds to cover more non-depository lenders (specifically, by removing the 10 percent threshold, and lowering the $25 million threshold to $10 million) to address depository institutions' complaints about a level playing field. Consumer groups also advocated including all HMDA-reportable loans in calculating coverage under these thresholds.

2. Types of Loans Reported. Industry commenters asserted that the new definition of refinancing in Regulation C is overly broad, and would require reporting of small business and farm loan refinancings. Commenters believed that such loans should not be covered and would distort HMDA data. Also, commenters pointed to compliance difficulties because such loans are generally not handled in consumer lending departments (where most HMDA-reportable loans are handled). In addition, commenters argued that reporting of such loans would impose more burden on the Agencies, which will have to sort the data to make them usable. Commenters also asked for clarification on whether small business loans that will now be reportable under HMDA should still be reported under the Community Reinvestment Act (CRA). Some commenters suggested that business-purpose loans generally (including loans on multifamily and/or rental property), as well as withdrawn loan applications, should not be reportable. On the other hand, other industry commenters suggested that all residential or home-equity lending should be reported, arguing that determining the underlying loan purpose is difficult and that this change would reduce reporting errors.

3. Data Reported. Industry commenters argued that the volume of data required is excessive and burdensome, and that the value of the data has been overestimated and should be reconsidered. A few commenters suggested that unnecessary data fields be removed and that the focus be on fields that are truly meaningful or that regulators use market share to determine whether a lender is fulfilling its obligations. Industry commenters also stated that certain information is difficult to determine, such as the definition of refinancing, rate spread (the difference between APR and a Treasury-bond-based index), HOEPA status (whether or not a loan is subject to HOEPA), and property location (especially in rural areas). Commenters asked for a consistent rule for determining loan amount for both HELOCs and closed-end home improvement loans. A few commenters argued that the definition of “home improvement loan” is too broad.

Many commenters stated that the rules for determining HOEPA status and rate spread are too complex. Suggestions included revising the HMDA trigger for reporting the rate spread to be consistent with the rate trigger used to determine coverage under HOEPA. Commenters also stated that reporting the APR instead of the rate spread would be simpler, more accurate, and more meaningful. Several commenters also suggested that MSAs needed to be readjusted or redefined for HMDA purposes.

In addition, some commenters suggested that the Board reconsider its recent changes to the categories for race and ethnicity data. Commenters stated that determining when to use multiple categories is difficult when reporting race and ethnicity data by visual observation (and noted that asking the questions may be offensive to applicants). They asserted that the government is perpetuating racial categorizations and suggested that, in telephone applications, lenders should be allowed to send the applicants a form requesting race and ethnicity, rather than asking for the information during the telephone conversation. Also, a commenter suggested that no penalty should apply if the lender inadvertently collects the monitoring data in a situation where such data are not required.

Consumer groups believed that institutions should report more data under HMDA, and that the new items should include pricing information on all loans, critical loan terms (such as the existence of prepayment penalties), and key underwriting variables (such as, credit scores, loan-to-value, debt-to-income ratios). They believed institutions should report property location, even for rural areas and metropolitan areas where the institution does not have offices. They also asserted that institutions should report monitoring information for purchased loans.

D. Equal Credit Opportunity Act/Regulation B and Fair Housing Act

Regulation B also received hundreds of comments from industry commenters. General comments from industry commenters included:

- The Agencies should provide more guidance on fair lending because settlements in fair lending cases are too vague to provide guidance.
- The Agencies should work with lenders to provide them with more flexibility and choice in complying with Regulation B.
- The regulation should not apply to business credit.

Consumer representatives said that Regulation B should not be streamlined or weakened.

1. Evidence of Intent to Apply Jointly. Many industry comments on Regulation B focused on provisions, adopted by the Board in a recent regulatory review, regarding joint applications. Financial institutions contended that the new rules regarding how creditors must evidence the intent of the parties to apply jointly are problematic, particularly for business and agricultural loans, and for telephone and Internet applications. A commenter stated that the new rules almost require all parties and their spouses to come in to the bank's office to complete applications. The commenters also noted issues with respect to the proper use of Fannie Mae and Freddie Mac forms (including some conflicting guidance from different agencies on whether use of these forms would be sufficient to show intent to apply jointly). Some commenters argued that both borrowers' signatures on the note should be sufficient evidence of the party's intent to apply jointly, or that completion of the application form as a joint application should be sufficient evidence of such intent. In addition, some suggested that in business and farm lending where there is an ongoing relationship between the borrower and the lender, providing evidence of intent to apply jointly at the outset of the relationship should suffice.

2. Data on Race and Ethnicity. In regard to Regulation B, some commenters suggested eliminating the collection of monitoring information on the race, ethnicity, and gender of applicants for loans to purchase or refinance a principal dwelling. Commenters stated that, if consumers do not wish to provide the information, the lender should not have to guess race and ethnicity. Commenters also argued that sufficient information is collected under HMDA and therefore should not be separately required under Regulation B. One commenter contended that the Regulation B data collection requirement poses problems for banks not subject to HMDA, because they may use HMDA loan application forms yet the data collection rules under Regulation B differ from those under HMDA. Other commenters suggested that this information should be collected on all loans (or on all real-estate secured loans) or on none.

Consumer representatives also addressed the collection of monitoring information. They urged that lenders be required, or allowed voluntarily, to collect and report information on the demographics of small business borrowers, asserting that lending to businesses in low- to moderate-income areas has stagnated.

3. Interaction with the PATRIOT Act. Commenters also addressed the interaction between Regulation B and the PATRIOT Act, such as, the Regulation B prohibition on obtaining information on gender and race or national origin and the PATRIOT Act requirement to maintain sufficient information to identify a customer. Commenters asked for more guidance on whether or not a copy of the borrower’s photo identification may be kept in a loan file, and suggested that the prohibition against retaining copies of drivers’ licenses in loan documentation should be dropped.

4. Adverse Action Notices. Many commenters criticized the adverse action notice requirements of Regulation B, and stated that consumers do not like receiving adverse action notices. Commenters argued that lenders need more flexibility in dealing with loan applicants (such as, a bank may wish to offer a customer an alternative to the loan originally applied for, but this may trigger an adverse action notice requirement). A few commenters suggested that the Agencies redefine the Regulation B definition of "application." A complaint in this area was that it is difficult to know when an application has been made for purposes of Regulation B, because the distinction between an inquiry and an application is not clearly defined. Commenters recommended that an easily understood rule should be developed on when an adverse action notice is required (such as, it may be difficult to determine whether an application is incomplete, or has been withdrawn). Another comment was that the number of reasons to include on the adverse action notice is a problem. One commenter stated that the Agencies should better coordinate the adverse action notice requirements of Regulation B with those of the Fair Credit Reporting Act.

5. Miscellaneous. Other suggested changes concerning ECOA or Regulation B included***:***

- Repealing the ECOA and Fair Housing Act logo and poster display requirements.
- Allowing consideration for ownership of a cell phone when determining creditworthiness.
- Amending the regulation to clarify whether the institution must provide the consumer with information from an automatic underwriting when used instead of an appraisal report.
- Abolishing the requirement to provide a loan applicant with a notice of the right to receive an appraisal as unnecessary.
- Relaxing the rules for special purpose credit programs.
- Easing Regulation B restrictions to allow the offering of special accounts for seniors.

- Replacing ECOA, Fair Housing Act, and other fair lending legislation with a single antidiscrimination act.

E. Consumer Leasing Act/Regulation M

A few industry commenters addressed Regulation M issues. Comments included suggestions that the Agencies update jurisdictional limits and statutory damages, and amend Regulation M to eliminate new disclosures for month-to-month renewals of leases, and instead require disclosures only when a lease is extended at least 12 months beyond its original term. This would avoid covering, for example, a lease extension while the consumer and lessor work out terms for a buyout of the vehicle.

Consumer group commenters did not comment on Regulation M issues.

F. Unfair or Deceptive Acts or Practices (UDAP)/Credit Practices Rule/Regulation AA and OTS UDAP Regulation[63]

Industry commenters offered a few suggestions regarding Regulation AA, including:

- Non-purchase-money, non-possessory security interests in household goods should be allowed in some cases.
- First-lien mortgages should be exempt from the cosigner notice requirements (because such loans involve low risk, and the cosigners in these transactions are usually aware of the terms and thus do not need notice).

Regarding UDAP issues more generally, industry commenters stated that, if supervisory agencies pursue enforcement actions in this area, the Agencies should release information about the actions to provide guidance to the industry.

Consumer groups commented generally that current UDAP protections should not be weakened. They also argued that current agency UDAP guidance overemphasizes disclosures

[63] No comments were received on the OTS UDAP regulation.

rather than substantive protections against abuse. Consumer group commenters suggested that the Agencies address the following practices in the UDAP rules:

- Equity stripping (such as, exorbitant fees, loan flipping, packing and financing of ancillary products).
- Practices that make borrowers vulnerable to foreclosure (such as subprime prepayment penalties, balloon payments and negative amortization in subprime loans, and mandatory arbitration clauses).
- Practices that exploit vulnerable populations (such as, steering borrowers toward subprime products targeting particular ethnic groups, the elderly, and/or low-to-moderate income persons and neighborhoods).

Commenters also suggested that the Agencies address payday lending and bounce protection under UDAP rules.

Consumer comments on Regulation AA specifically included the suggestion that the Board adopt the Federal Trade Commission's "Holder Rule" to make it applicable to banks. (The Holder Rule requires that a consumer credit sale contract contain language prominently stating that any holder of the contract is subject to any claims and defenses that the consumer could assert against the seller of the goods or services that are the subject of the contract.)

G. Interagency Privacy Rule and Information Security Guidelines

The majority of these comment letters addressed the interagency rules, which are substantively identical, regarding the privacy of customer information (12 CFR 40, 216, 332, and 573) (Privacy Rule). Many of the letters were substantively similar form letters and some letters were submitted by multiple individuals associated with a single depository institution. A few of the letters also addressed the interagency guidelines regarding safeguarding of customer information (12 CFR 30, Appendix B; 208, Appendix D-2; 364, Appendix B; 570, Appendix B;

and 225, Appendix F) (501(b) Guidelines), which also are substantively identical. The Privacy Rule and 501(b) Guidelines implement Title V of the GLBA.

The most frequent comment, by far, on the Privacy Rule was that the annual notice requirement was unnecessary because it was confusing for consumers and/or unduly burdensome for depository institutions. Many commenters suggested alternative follow-up notice requirements that were more limited in scope than the present rule. The most frequently suggested alternative was that no follow-up notice should be required unless and until a depository institution's policy changes. Another suggestion was that the Agencies require annual notices only for those depository institutions that share in a manner that triggers the consumer's right to opt out.

Many commenters expressed general concern that the privacy notices are too detailed and legalistic, which impedes consumers' ability to understand such notices. Some of these commenters suggested specific alternative approaches. Some commenters also suggested that the banking agencies should develop a model form that depository institutions could use as a compliance safe harbor, although commenters differed on whether use of such a form should be required or voluntary.

Some commenters opined that there should be a uniform national standard for privacy notices because the federal rule, when combined with additional state requirements that vary from state to state, created compliance difficulties for depository institutions.

Commenters opined generally that the 501(b) Guidelines were unnecessary and/or overly burdensome. Some of these commenters thought that the flexibility of the Guidelines made it difficult for depository institutions to determine what would constitute compliance and suggested that the Agencies provide clarification in this regard. In addition, some commenters expressed concern that different examiners held depository institutions to different compliance standards and suggested that the Agencies promote more consistent compliance examinations.

H. Section 109 of the Interstate Banking and Branching Efficiency Act of 1994, Prohibition against Deposit Production Offices

Only two comments were received on the regulations that prohibit a bank from establishing or acquiring branches outside of its home state primarily for the purpose of deposit production pursuant to section 109. One industry trade association cited the statute's requirement that the Agencies not impose any additional paperwork collection or regulatory burden when enforcing the provision and stated that the Agencies have complied with the statute's intent. Another industry trade association supported the regulatory requirements and did not recommend any regulatory changes but recommended a statutory change that would increase the threshold for measuring compliance. Instead of a covered bank currently needing to have a loan-to-deposit ratio in states into which it branches that equals one-half (50 percent) of the state bank's overall loan-to-deposit ratio, the industry trade association wants a covered bank to have a ratio that equals 80 percent of the state ratio.

I. Electronic Fund Transfer Act/Regulation E

1. Products Subject to Regulation. An industry commenter suggested that, among stored value products, Regulation E should apply only to products that have the characteristics of traditional deposit accounts, and not to those that do not represent account ownership at a depository institution but that instead are designed to be treated like cash. In contrast, consumer groups suggested applying Regulation E to payroll cards (arguing that payroll cards may be forced on employees, yet lack protections), and to other stored value cards. Consumer group commenters also stated that consumers are confused by differences in protection among debit cards, payroll cards, and other stored-value cards. One commenter stated that the Electronic Funds Transfer Act (EFTA) should be revised to ensure that all consumer payment mechanisms have the maximum level of consumer protections.

2. Error Resolution Rules. A number of industry commenters addressed the error resolution rules of Regulation E. Commenters suggested that the Agencies make Regulation E rules consistent with rules of the National Automated Clearing House Association (NACHA). For example, under the NACHA rules the consumer has 60 days from the date of posting the transaction, while under Regulation E the consumer has 60 days after they have been provided with a periodic statement. Other suggestions were that the time for a consumer to give notice of error be reduced from 60 days to 30 days, and that the time for the bank to resolve the error (or provisionally recredit the consumer's account) be increased from 10 business days to 20 business days. Commenters also suggested that the difference between the time for institutions to resolve errors under Regulation E, and the time for merchants to respond to the institution, be reduced (to lessen the possibility of the merchant responding after the institution has made a provision credit final). In addition, commenters asserted that the bank should not be required to act unless the consumer puts the error claim in writing.

A bank stated that its cost per dispute is approximately $32, and that the mandated time periods for error resolution, notice requirements, and research requirements are very burdensome. Another commenter called the error resolution provisions the most misunderstood in the regulation, and asked for additional clarification or examples. Another comment was that the error resolution procedures are confusing, since they vary depending upon whether the transaction in question occurred in a new account. Further, according to the comment, the Regulation E definition of "new account" does not match the definition of the term in Regulation CC; the definitions should be made consistent.

Another commenter asserted that the bank is prohibited from collecting any dispute fee from the consumer, even if it is found after investigation that no error occurred.

3. Consumer Liability for Unauthorized Transactions. Industry commenters criticized the Regulation E limits on consumer liability for unauthorized electronic fund transfers and urged the Agencies to increase the limits and shorten the timeframes for consumers to report loss or theft. It was argued that the existing limits were appropriate when electronic transfers were a new technology, but unfair today when consumers are familiar with the need to protect their PIN, and where 24/7 access to account information is available to allow consumers to detect suspicious activity.

Thus, commenters suggested that the rules on consumer liability should incorporate a negligence standard, such that if the consumer's negligence leads to unauthorized transactions, the consumer's liability increases. Commenters urged that in cases in which the consumer writes the PIN on the debit card (or keeps the PIN and card in the same location), or if the financial institution can otherwise substantiate consumer negligence, the consumer's liability should be increased to $500. Another commenter recommended that the consumer's basic level of liability, currently $50, be increased to $250, and that the consumer be required to report the loss within five business days from the bank's receipt of the first unauthorized transaction. A commenter suggested adopting a comparative negligence standard consistent with check law under the Uniform Commercial Code. Another suggestion was that the limits on consumer liability for unauthorized electronic fund transfers be adjusted annually for inflation. Regarding signature-based debit card transactions, it was suggested that merchants that accept such transactions without verifying the consumer's signature (or even in all cases, whether or not the merchant verifies the signature) should be held accountable.

A commenter suggested that the same rules should apply to credit card, ATM, and debit card transactions, because it is confusing to consumers as well as bank employees when different sets of rules apply depending upon the type of transaction.

Consumer group commenters suggested that institutions should not be permitted to place the burden of proof on a consumer regarding a claim of an unauthorized transfer; rather, the institution should reimburse the consumer unless the institution can prove that the transfer was authorized.

4. Automated Teller Machine Fee Disclosures. An industry commenter stated that the requirement to provide notice of an automated teller machine (ATM) fee both by posting the notice at the ATM, and by providing the notice on the ATM screen (or on a paper notice issued by the ATM), involved useless duplication.

5. Change in Terms Notices. Many commenters suggested that the requirement to give notice of a change in account terms or conditions should be changed from 21 days in advance of the change to 30 days in advance, to make the notification timeframe consistent with Regulation DD and simplify compliance. An alternative suggested by one commenter was to conform the Regulation DD time period to that under Regulation E.

6. Account-Opening Disclosures. A commenter stated that providing disclosures simply because the account could have an electronic transfer is expensive when many accounts do not have such activity.

7. Periodic Statements. Commenters suggested that, in the case of consumers who have online or telephone access to monitor their accounts and transactions daily, the requirement for a monthly or quarterly periodic account statement is unnecessary. A commenter contended that the requirement to provide periodic statements quarterly for accounts with electronic access but no activity is unduly burdensome, and suggested that the Agencies amend the rule to allow for semiannual or annual statements in such cases.

8. Disclosures (generally). A commenter stated that required EFT disclosures are too lengthy and are likely not read by consumers.

9. Issuance of Debit Cards. A commenter generally supported the Board's current proposed amendment to the Regulation E staff commentary that would clarify that institutions may issue multiple debit cards as a renewal or substitute for an existing single card if the card issuer complies with certain validation requirements set forth in the regulation.

10. Telephone Authorization for Recurring Debits. A commenter generally supported the Board's proposed amendment to the Regulation E staff commentary that would withdraw a comment that states that a tape-recorded telephone conversation does not constitute written authorization for purposes of the requirement that preauthorized recurring electronic debits to a consumer's account be authorized by the consumer only in writing. However, the commenter recommended that the Board specifically confirm that such a tape-recorded authorization would satisfy the requirements of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (and thereby comply with Regulation E), as opposed to merely withdrawing the comment and not addressing the interpretation of the E-Sign Act.

11. Notice of Variable-Amount Recurring Debits. A commenter generally supported the Board's proposed amendment to the Regulation E staff commentary that would provide that a financial institution need not give a consumer the option of receiving an advance notice of the amount and scheduled date of a variable-amount preauthorized recurring electronic transfer from the consumer's account to another account held by the consumer, even if the other account is held at another financial institution.

J. Truth in Savings Act /Regulation DD

A general industry comment was that compliance with Regulation DD can be time-consuming and costly, and therefore many banks have eliminated various accounts and combined statements, doing a disservice to consumers. It was also stated that when Regulation DD was promulgated, few consumers had complained about inability to comparison shop using simple interest rate information.

1. "Level Playing Field." A few commenters suggested that credit unions should be required to provide disclosures similar to those of Regulation DD in order to enable consumers to make an informed decision.

2. Disclosures (generally). A commenter stated that required Truth in Savings Act (TISA) disclosures are too lengthy and are likely not read by consumers. Another commenter suggested that the disclosures be simplified, shortened, and written in a "plain English" format. Another commenter recommended that examiners cite only substantive violations; the commenter stated that using the term "Personal Money Market" in the initial disclosure and the term "Money Market" in the periodic statement was cited as a violation but should not have been. Many commenters asserted that their customers pay little attention to the TISA disclosures. These commenters argued that there is a cost for developing the programs and procedures to produce the disclosures, but if consumers are not paying attention to the disclosures, then the regulatory requirement is needless. The commenters recommended that the banking Agencies conduct a study involving all interested parties, including banks, consumers, and software providers, to determine whether the TISA disclosures are truly serving their purpose and to streamline, simplify, and improve the effectiveness of the disclosures.

A commenter suggested that the disclosure requirements be the same for both paper and electronic forms, to simplify the regulatory framework and ease compliance burdens.

A consumer group commented that the regulation should require TISA disclosures to be made available on financial institutions' Web sites.

3. Change in Terms Notices. Commenters suggested that the requirement to provide a notice of change in terms 30 days in advance of the effective date of the change be revised to provide for a shorter period of advance notice. It was noted that, when interest rates change, a shorter period better reflects the changing market.

4. Renewals of Certificates of Deposit. A few commenters addressed the requirement to provide disclosures before renewals of certificates of deposit (CDs). One commenter noted that TISA disclosures are provided at the time of initial purchase of the CD and argued that, if the CD will be renewed on the same terms, no further disclosure should be required. The comments also noted that if the terms will change at renewal, disclosure of the changes would already have been provided under the change-in-terms notice requirements. Another commenter suggested simplifying the notices by eliminating the different requirements for varying maturities of automatically renewable CDs, as well as between automatically renewable CDs and not automatically renewable CDs (calling for one standard notice that would include the date the existing account matures and a statement that the consumer should contact the institution to obtain further information).

5. Advertising Requirements. A commenter requested clarification that electronic billboards are included in the exempt category of “outdoor media” and that voice response units are included in the exempt category of “telephone response machines.” The commenter stated that, during examinations, the media in question are not consistently treated as exempt from the advertising requirements. Another commenter suggested that the Agencies simplify the advertising rules, especially for banks that are subject to the Federal Trade Commission Act that prohibits unfair and deceptive practices in advertising.

6. “Bounce Protection” Amendments. A few commenters addressed the proposed amendments to Regulation DD regarding bounce protection programs. These commenters expressed opposition to the proposals, in particular those relating to disclosing aggregated overdraft fees on periodic statements and to advertising specific fees and terms of overdraft services. One of these commenters stated that the aggregated fees proposal would be costly to implement and an unnecessary disclosure for consumers; and that the advertising proposal would be difficult to comply with because there are numerous and ever-changing reasons why an institution may refuse to pay an overdraft (which would have to be disclosed by institutions promoting overdraft services). Another of these commenters recommended that, if the Board adopts the proposals, the Board should allow the industry adequate time to make system and personnel changes necessary to comply. Another commenter stated that the costs and burdens of implementing the new rules, if adopted, would lead many community banks to discontinue offering this product, doing a disservice to consumers.

7. Record Retention Requirements. A commenter suggested that institutions that are examined more frequently than once every two years be required to retain records of compliance for one examination cycle (rather than for two years, as currently required).

K. Consumer Protection in Sales of Insurance

A number of industry commenters addressed the interagency regulations on consumer protection in insurance sales, implementing section 47 of the Federal Deposit Insurance Act enacted as part of the GLBA. Commenters raised issues related to the disclosure requirements of the regulations.

Consumer group commenters did not comment on the regulations on consumer protection in insurance sales.

1. Types of Insurance and Annuities Covered by Disclosure Requirements. One of the suggestions most frequently expressed by commenters was that the Agencies should exclude from disclosure insurance products that do not involve investment features or investment risk from the disclosure that there is investment risk associated with the product, including possible loss of value. For example, commenters argued that fixed-rate annuities guarantee the return to the policyholder, and that the Agencies should exclude such annuities from the investment risk disclosure.

Commenters also focused on the disclosure that an insurance product is not a deposit and is not insured by the FDIC or any other government agency. They contended that the disclosure requirement should apply only to insurance products that are similar to a deposit product because of the fact that consumers might confuse such insurance products with an FDIC-insured deposit. They argued that the disclosure requirement should not apply to types of insurance such as credit life, property and casualty, crop, flood, and term life insurance, where, because such insurance products are not similar to a deposit product, there is no likelihood of confusion. Commenters suggested that making the disclosure for insurance products such as credit life insurance in fact confuses consumers (rather than alleviates confusion), and therefore requires institution personnel to spend time explaining the disclosure to consumers.

2. Duplicative Disclosure Requirements. Commenters noted that credit life insurance is subject to a disclosure requirement under section 47 of the FDIA—the fact that the institution may not condition an extension of credit upon the purchase of an insurance product or annuity from the institution—and also to a similar disclosure provision under the Truth in Lending Act. The former disclosure is made at application and the latter at loan closing. Commenters suggested that a single disclosure at loan closing should be sufficient. Commenters also stated that some state laws require similar disclosures. One commenter asserted that, therefore, a consumer in such a state must sign four times to purchase credit insurance (twice for federal disclosures, once for the state disclosure, and once on the insurance company's form). Commenters argued that consumers are confused by the multiplicity of disclosures that have no real meaning for the average consumer.

3. Procedures for Providing Disclosures. Commenters addressed the fact that the regulations require the disclosures both orally and in writing, and suggested that a single method should suffice (for example, written disclosures should be sufficient, except for telephone sales, in which case oral disclosures should be sufficient). Commenters also noted the requirement to obtain the consumer's written acknowledgment that they received disclosures arguing it is burdensome and unnecessary. One commenter also suggested that an oral acknowledgment should suffice in the case of a telephone sale (the regulations, in that circumstance, require that the institution both obtain an oral acknowledgment on the telephone, and make reasonable efforts to obtain a written acknowledgment).

L. Advertisement of Membership (Deposit Insurance)—12 CFR 328

Several comments were received. Two commenters had no recommendations for changes. One of these commenters, an industry trade association, noted it had received few questions or complaints about part 328 since it was revised in 1989. The second commenter, also an industry trade association, said banks generally do not find the regulation burdensome as long as it is reasonably interpreted and not strictly construed – such as, allowing banks to take deposits at a customer service desk or a branch manager's desk without having to display the official bank sign.

Some commenters recommended changing part 328. One commenter favored simplifying the exceptions to the official advertising statement requirement to say that it applies only when advertising deposits. Another commenter recommended eliminating the exception to official advertising statement requirement for radio and television ads that do not exceed 30 seconds. Several commenters from an industry trade association questioned the need for the official sign, and one commenter of that industry trade association thought requiring the official advertising statement on bank merchandise was excessive. One commenter thought that not every teller window required an official sign, saying that posting the official sign on the front door or in the lobby should be sufficient. Finally, one commenter asked for clarification when the official advertising statement is required, saying that the FDIC should not require the official advertising statement on promotional items.

M. Deposit Insurance Coverage—12 CFR 330

One commenter suggested simplifying the rules for the various types of accounts, particularly when combining accounts to maximize coverage limits. Commenters noted the difficulty in explaining the rules to customers. A number of commenters mentioned that the EDIE educational program was very helpful and some commenters asked that it be sent to every financial institution and branch location to assist employees in responding to customer questions. Most commenters also suggested raising, or not lowering, the deposit insurance limits. Some commenters who favored raising the limit suggested the limits be indexed for inflation. In addition, commenters suggested the following:

- Merge the BIF and SAIF.
- Assess growth related premiums on rapidly growing institutions, but not small *de novo* institutions.
- Give FDIC the flexibility to manage the insurance fund and spread recapitalization over a reasonable period.

Commenters also suggested that a rebate system be established, that the need to “structure” deposits be eliminated, and that assessment forms are unnecessary.

N. Deposit Insurance Regulations

Many other commenters supported legislation that would merge the BIF and SAIF fund and allow every institution that benefit from deposit insurance to pay something when they enter the system. The commenters suggested that the Agencies factor into the risk-based assessment other factors such as, number of interstate locations, types of products offered, and exam ratings. Another commenter suggested that new entities that open with FDIC coverage, such as American

Express, but have not paid into the fund, should pay a substantial fee.

One commenter felt the purpose of the fees, to prevent dilution of the SAIF and to ensure payment of FICO bonds, no longer exists so the fees are moot.

One commenter stated that deposit insurance coverage rules need simplifying and streamlining. The same commenter additionally recommended that FDIC distribute information to every branch office of every bank and otherwise disseminate tools more broadly so that consumers understand how to expand coverage.

O. Notification of Changes of Insured Status—12 CFR 307

The one commenter, a trade association, stated that no bank or savings association has ever raised a regulatory burden concern about the requirements and therefore, the commenter had no recommendations for change.

P. OTS Advertising Regulation and Tying Restriction Exception

There were no comments on either OTS regulation. (12 CFR 563.27 and 12 CFR 563.33)

III. Federal Register Release No. 4—Anti-Money Laundering, Safety and Soundness and Securities Regulations

A. Anti-Money Laundering

1. Bank Secrecy Act and Money Laundering. The Agencies received over 125 comments discussing various issues pertaining to compliance with the BSA and other AML legal requirements. In addition to the written comments received, issues associated with BSA compliance ranked among the most burdensome requirements identified by bankers during the nationwide outreach meetings that the federal banking agencies conducted during the EGRPRA process. Whether in written comments submitted in response to the *Federal Register* notice, or in oral comments delivered at the outreach meetings, bankers expressed deep concern over the costs in time, money, and staffing associated with complying with the BSA and, particularly, whether such efforts are useful and cost effective.

a. Currency Transaction Report Thresholds. In comments submitted to the *Federal Register*, as well as in the various Bankers Outreach Meetings, commenters were unanimous in supporting changes to the currency transaction report (CTR) requirements. With the exception of one commenter, all were unanimous that the current threshold of $10,000 for filing CTRs needs to be increased. The suggested numbers for a new threshold ranged from $15,000 to $50,000, with most commenters urging a new threshold of $20,000 or $25,000. The reasons given for the need to increase the threshold varied among the commenters. A number of commenters noted that the $10,000 threshold had been established over three decades ago and that there was a need to adjust the threshold for inflation. A majority of the commenters discussed how burdensome the CTR requirements were, both because of the low reporting threshold and because of the belief that law enforcement did little, if anything, with the CTRs that banks file. One commenter noted that the low threshold “clutters the system” with CTRs that do not have enough value to justify the cost of filing, data entry, storage and retrieval. Raising the threshold, some commenters believed, would be more efficient for both law enforcement and the banks. A couple of commenters suggested reviewing/adjusting thresholds annually to allow for inflation, and to enable government to make changes based on resources and law enforcement needs.

One commenter suggested that lowering the CTR threshold to $5,000 would reduce duplicative paperwork burden. This commenter contended that lowering the threshold would avoid double filing of paperwork, because banks must file CTRs on aggregated transactions that meet the threshold of $10,000 and SARs on the individual deposits making up the total. The commenter asserted that most SARs are required to be filed because a customer has structured deposits that trigger the $10,000 threshold and, if the threshold is lowered to $5,000, the commenter suggested that only a CTR would be required for these same transactions. Another commenter took a different view and noted that excessive SARs for "structured" transactions are being required because the current $10,000 threshold is too low. This commenter suggested raising the CTR threshold to $25,000.

One commenter noted that exemptions from CTR reporting are too complicated and it is easier for a bank to file a CTR than undertake the determination that a customer qualifies for an exemption. The commenter recommended that the federal banking agencies tell FinCEN that CTR exemption rules need to be amended to allow exemption designations for all non-listed businesses other than businesses designated by FinCEN as increased risk, without regard to transaction history, and exemptions should be done through a one-time filing.

Another commenter proposed eliminating the one-year CTR exemption waiting period. This commenter stated that since the PATRIOT Act already requires upfront information to enable institutions to identify customers, it is duplicative and burdensome to not allow CTR exemptions until a year has passed. On a related note, another commenter said that it would be better for there to be no CTR reporting until a customer was deemed suspicious by the depository institution, or until the government told the institution to begin such reporting. Yet, another commenter suggested eliminating the annual recertification requirement for exempt customers. Another commenter stated that it had not made use of a so-called Phase II exemption due to the time and personnel needed to monitor and document activity over a 12-month period to ensure that customers qualify for the exemption. This commenter said that the only requirement should be to eliminate the exemption when a customer's attributes no longer qualify for the exemption. Three commenters said that the biennial filing of exempt accounts is unnecessary because banks review the exemptions annually. Another commenter proposed that the period for establishing a relationship for purposes of an exemption be reduced from 12 months to 3 to 6 months.

One commenter suggested replacing daily CTRs with monthly cash transaction reporting.

The commenter suggested that a report for any customer with cash transactions of over $50,000 would help government focus on the riskiest customers. Another suggested statutory changes to eliminate the CTR form. The commenter suggested that the form is difficult to fill out and that it would be easier for banks to give monthly reports of all deposit accounts that had aggregate cash in/cash out of $10,000 for the month containing account name, account number, taxpayer ID number, account address, and total cash in and cash out. This approach, said the commenter, would eliminate “thousands of hours” spent preparing individual CTRs for everyday deposits/withdrawals. It would also eliminate the need to file SARs for amounts just under $10,000.

One commenter noted that the exemption system for CTRs does not work well for community banks, because it is not cost effective for small institutions that do not file a lot of CTRs and fear regulatory action if the exemption is used incorrectly. The commenter recommended that the agencies work with FinCEN to allow institutions to more quickly exempt business customers. Another commenter urged easing exemption requirements for existing customers as a way of reducing burden on banks.

b. Suspicious Activity Reports. SARs were the subject of much of the same criticism that CTRs received—commenters suggested they are burdensome, are not followed up on, and are not cost effective. Many commenters stressed the need for clearer, more consistent SAR guidance. One commenter urged the banking agencies to create a consistent policy on SARs together with FinCEN and DOJ. Another commenter suggested that further guidance is needed. The commenter asked how far back does one need to research the account once suspicious activity is found; the commenter suggested 1 to 3 months. Another commenter said “we need an FBI agent on staff to interpret SAR rules.” Several commenters noted how time consuming it could be for a financial institution to file a SAR. One commenter noted that the FBI investigated only one SAR filed by the bank and then did not pursue it, adding “it seems there needs to be a loss to the bank of 100K before the FBI will investigate.”

Another commenter noted (see above) that the current $10,000 threshold for CTRs leads to SARs being filed for structured transactions just under that amount; these SARs constitute, according to the commenter, almost 50 percent of all the SARs filed and drive up the costs of the system that stores/processes all the data.

Many commenters noted that the increased volume of SARs is degrading their effectiveness. Commenters suggested that agencies should work with FinCEN to provide detailed guidance on when SARs should be filed and what documentation banks need to maintain. One commenter noted that banks currently need to “over comply” with SARs requirements and that there is no consistency from agency to agency. Several commenters contended that little or nothing is done with SARs once they are submitted.

Several commenters suggested raising the threshold for filing SARs, with one commenter stating that the threshold amount should be raised to $100,000. Another commenter suggested that the threshold be tied to inflation. In the case of SARs, the threshold should be $10,000 when a suspect is known and $50,000 when no suspect has been identified. Another commenter suggested that the threshold for “money laundering SARs” be raised from $5,000 to a higher amount.

Many commenters said that unclear requirements from the agencies regarding SARs have led them to file so-called “defensive SARs.” One commenter noted that banks do this to protect themselves against examiner criticism. Moreover, a commenter noted SAR filings make CTR filings redundant.

One commenter noted that it does not make sense that a person identified as a money launderer can move from bank to bank. The commenter recommended developing a “watch list” of such individuals.

One commenter said that clearer guidance is needed on when filing is necessary. Specifically, the commenter suggested eliminating the requirement that a bank must file a SAR every 90 days after the first SAR is filed. Another commenter noted that the beginning of the 30-day period for SAR reporting is unclear and that banks should be given ample time to examine the activity or maintain a process for the investigation of facts; the 30-day period should begin with a bank determination that suspicious activity has occurred and that a SAR is needed.

c. Customer Identification Program. Many commenters noted the burden that the customer identification program (CIP) currently imposes on banks, and the inconvenience that it creates for long-time customers. One commenter noted that “in our town, we gawk when strangers come in.” This commenter suggested a BSA exemption for banks under $100 million in assets in communities with a population of less than 25,000.

Another commenter suggested that the current definition of “established customer” be amended to make clear that it is a customer from whom the bank has already obtained the information required by 31 CFR 103.121(b)(2)(i). In addition, this commenter suggested amending existing 31 CFR 103.29 to replace references to “deposit account holder” and “person who has a deposit account” with “established customer.” The result would be definitions of “customer” as defined in CIP regulations and “established customer” (one whose basic information has been obtained).

One commenter noted that the frequently asked questions (FAQs) developed for CIPs were helpful. Additional questions and answers should be developed as the need arises. This commenter also indicated that FAQs directed at community banks would be helpful as well. Another commenter stated that current regulations fail to distinguish between relationships with individual versus institutional customers. The commenter suggested creating distinctions between such customers.

Three commenters suggested adding more clarification about what types of identification are acceptable. Another commenter made the same point but added that the confusion relates in particular to customers like the Amish and the extent of identification needed. The commenter noted that community banks have had to close accounts and not open new ones because of identification issues. The commenter indicated this has impacted elderly and foreign customers in particular and has given rise to an underground network of financial services.

One commenter said that the definition of “non-U.S. persons” under the CIP should be limited to foreign citizens who are not U.S. resident aliens. The current definition, according to the commenter, is too broad and makes providing services to immigrant markets very problematic. The commenter added that the burden of verifying customer information is greater than any benefit.

One commenter noted that some BSA requirements are duplicative. Specifically, the commenter pointed out that BSA requirements for recordkeeping with respect to signature authority duplicates PATRIOT Act CIP requirements. The commenter noted that 31 CFR 103.34 (b)(1) requires that the bank retain each signature card for deposit or share accounts and notations of specific identifying information while section 103.121(b)(2)(ii) requires similar identity verification and documentation. It would make sense to eliminate section 103.34(b)(1) in light of the overlap. The commenter pointed out other redundancies, this one between 31 CFR 103.34(b)(11) (requiring a record of each name, address and taxpayer identification number for purchasers of certificates of deposit (CDs)) and 31 CFR 103.121(b)(2)(i) (requiring the name, date of birth, address, and identification number of each customer). Although section 103.34(b)(11) also requires additional records related to the CD issued, according to the commenter, the identifying information of the customer is redundant and should be deleted.

One commenter recommended requiring business type/occupation documentation at the time of account opening. According to the commenter, this information already is included in CTRs but not for CIPs. The commenter suggested that having this information available up front would enable the government to narrow searches and focus efforts on particular types of businesses or occupations.

One commenter suggested that the Department of the Treasury should review the requirement to obtain and perform verification of a business' Employer Identification Number (EIN) as part of the CIP. The commenter proposed that the Department of the Treasury enable financial institutions to obtain and verify a government-issued identification instead of the EIN. The commenter further proposed that the Department of the Treasury review the requirement to obtain a physical street address for all applicants under the CIP. The commenter noted many customers use postboxes to protect their privacy but the post office nevertheless registers it as a physical address. Finally, this commenter suggested eliminating the record retention requirement imposed by the CIP. The commenter argued that the need to maintain name, physical address, date of birth and taxpayer identification number on the account for five years after the account is closed creates a significant burden for financial institutions. The commenter proposed that the Department of the Treasury consolidate the record retention requirements in the CIP and require that financial institutions maintain the information for five years from the date that the account is opened. Another commenter suggested that records be maintained no more than two years after an account is closed.

Another commenter said that it understood the importance of the CIP but suggested that the renewal requirement for the reliance safe harbor be eliminated. The safe harbor should authorize reliance on an affiliated financial institution without regard to documenting a formal reliance certificate. Yet another commenter questioned whether the current exception for existing customers provides much relief and asked what constitutes “reasonable belief” that the financial institution knows the identity of the customer.

One commenter suggested clarification on the discrepancies that exist between the requirement to maintain sufficient information to identify a customer under section 326 of the PATRIOT Act and Regulation B’s prohibition on maintaining information on the gender/race of a borrower.

2. Increased Regulatory Burden. There was broad consensus among the commenters that the agencies’ regulatory policy with regard to BSA and the PATRIOT Act needs to be clarified. Many commenters expressed their concern about the perceived “raising of the bar” concerning BSA programs and policies. Many of these commenters noted that the perception of raising the bar causes banks to file reports in cases where it should not be necessary. Two commenters pointed out what they called the “disconnect” between what agency officials are saying about BSA policy in Washington versus what examiners are saying. A commenter asserted that examiners should be looking to help, not punish, bankers seeking to comply with BSA. One commenter suggested that there be regional committees made up of bankers and regulators to formulate effective means to monitor BSA. Another commenter noted that the level of documentation required under AML regulations is too burdensome. This commenter noted that the level of documentation required for small accounts that occasionally cash checks is time consuming. Another commenter proposed, in light of complicated BSA compliance, that there be an agency person located in the bank full time, rather than getting after-the-fact interpretations. Another commenter noted the growing responsibility being placed on banks without sufficient support from the agencies. On a related matter, a number of commenters noted that agency interpretations of BSA requirements are “unpredictable,” with four commenters noting that the agencies seem to issue different interpretations, making compliance difficult.

One commenter noted that regulations are created with little direction on how to comply, and with too little time between the final rule and implementation. In the view of this commenter, three to six months is not sufficient, seeing that customers need to be notified, disclosures need to be rewritten, and forms changed. Moreover, state laws (especially BSA and privacy) conflict with federal laws too frequently. This commenter suggested keeping state and federal regulations consistent, reduce record keeping requirements to match exam periods, raise the threshold for reporting, increase the time between a final rule and implementation, provide definitive answers, provide better guidance, and provide a tax credit equal to the cost of regulatory burden.

One commenter noted that, since 1999, the banking industry has had to manage the implementation of new rules or changes to old rules roughly every 1.5 weeks, with BSA rules constituting a significant part of the burden. One commenter called for specific guidance from regulators regarding the identification of high-risk customers. The same commenter suggested that the agencies issue clear guidance with respect to what is needed in the narrative section of SARs. Some commenters suggested that the agencies try to issue uniform guidance—one specifically called for all BSA regulations being joint regulations. One commenter pointed to the 2005 interagency guidelines issued for Money Service Business accounts as the type of joint guidance for which agencies should be striving.

a. Money Services Businesses. Regulatory requirements on this issue drew a lot of criticism, with many commenters calling for a reduction in the due diligence requirements with respect to Money Services Businesses (MSBs). One commenter noted that banks have become the “unofficial regulator” of MSBs. The commenter noted that many banks have been forced to close such accounts and that examiners are giving the message that they do not like to see banks working with such businesses. The commenter said that the reporting burden should be on the

MSBs, rather than on the banks. One commenter noted that it is not a bank's responsibility to determine if an MSB has registered with FinCEN. One commenter proposed that the threshold for the check casher category be expanded to reduce burden on independent grocery stores, especially those with limited check cashing services as an adjunct to their business; such stores, the commenter said, should not need a full compliance program but rather should just have to comply with CTR and SAR reporting. Another commenter made a similar observation—that large commercial check cashers and payday lenders may pose a risk that smaller "mom and pop" shops do not. Another commenter said that the type of account monitoring that is necessary and expectations of examiners need to be clearly defined. Commenters noted the need for regulations setting forth in a clear manner what is considered high- versus low-risk MSB activity. One commenter noted that the cost of monitoring money service businesses is "prohibitive." Moreover, noted this commenter, discontinuing business with such businesses ultimately hurts the wider community. One commenter said that examiners need to have a better understanding of existing guidance on MSBs. One commenter contended that bank responsibility for monitoring such businesses is creating a new class of unbanked businesses, with banks having to close such accounts because the regulatory risks and costs are too high. If banks are to accept such accounts again, the agencies need to reduce regulatory requirements. Another commenter suggested that the emphasis should be on wire transfer departments, and not on small businesses; the commenter added that if MSB work is so important, the government should do it directly, rather than through the banks.

One commenter suggested that a clearer definition of "check casher" is needed. Currently, a person becomes a check casher for cashing checks in excess of $1,000 per day. The commenter noted that, on occasion, a business inadvertently exceeds the limit, and questioned whether such a business would be deemed a MSB forever. The commenter suggested that businesses be able to file a statement saying that exceeding the limit was inadvertent and would not happen again. Likewise, the definition of check casher needs to be revised so that an employer who cashes employees' paychecks is not considered a check casher under the regulations.

One commenter noted that MSBs play an important role in providing services to persons who may not have traditional banking relationships. The commenter said that banks need regulators' help to recognize unidentified MSBs. Another commenter asserted that recent guidelines do not provide sufficient relief of costs, burden, and exposure stemming from continued business with MSBs and that the institution is closing out many such accounts.

One commenter asked whether private ATM owners are considered MSBs under existing regulations and urged that the matter be clarified. Another commenter said that businesses should be notified by the state when they apply/renew business licenses that they may qualify as an MSB if they meet certain criteria.

b. Correspondent Accounts/Shell Banks. Commenters' comments included:

- The safe harbor requires certification to open an account and recertification every three years. The recertification process is costly and burdensome and banks are duplicating this effort.
- FinCEN should maintain a central depository where foreign banks could submit their certification and U.S. banks could access it directly through FinCEN.
- The recertification requirement for shell banks should be eliminated or, alternatively, the period for recertifications should be extended to five years. Additionally, the shell bank certification process is burdensome and time consuming and getting recertifications from existing customers is very burdensome. The definition of correspondent account should be clarified, because the current definition is extremely

broad and covers virtually every relationship that is, or could be expected to be, ongoing.

- Banks and broker-dealers spend millions to comply with requirements that they obtain ownership and other information from each foreign bank with which they do business and to confirm that the foreign bank has a physical presence in a jurisdiction. There is no evidence that this helps detect terrorist financing or money laundering. Agencies should review the need to continue these practices and adjust the regulations accordingly.
- The costs/burden/regulatory risk associated with foreign correspondent banking had led it to terminate four out of five relationships that it had with foreign correspondent banks. Increased due diligence requirements have turned the bank into a de facto regulator of foreign institutions. The loss of trade financing, payment transfers, etc. could have a negative impact on the economy.
- Correspondent banking relationships are being reduced or eliminated because of BSA demands, yet these relationships are at the height of many banking relationships and the banks in question know their Latin American correspondent institutions well.

c. Sales of Monetary Instruments. Commenters proposed that record retention requirements for selling monetary instruments between $3000 and $10,000 in currency be revised so that only banks that engage in such transactions with persons who are not "established customers" would have to comply with the record keeping requirements.

d. Office of Foreign Assets Control Compliance. Commenters proposed that there be a bank safe harbor for Office of Foreign Assets Control (OFAC) compliance. They also requested clarification of institutions' obligations regarding automated clearing house transactions and about how often they should check their customer base against the OFAC list.

e. Politically Exposed Persons. Commenters indicated that the Department of the Treasury should provide a more detailed definition of the term "Politically Exposed Person," or PEP. They noted that the PATRIOT Act requires enhanced scrutiny of private banking accounts of current and former senior foreign political figures, thereby requiring financial institutions to identify such individuals but also their family, businesses, close associates, and others. The commenters stated that it was not possible for banks to undertake such detailed investigations, that the Department of the Treasury should provide a definition of "senior foreign political figures," and what constitutes a relationship in terms of these requirements. Another commenter said that examiners had indicated that enhanced scrutiny is applied to any account/transaction involving PEP, regardless of risk, and recommends clarifying whether the same level of monitoring is expected for PEPs associated with low-risk lines of businesses and products. Finally, commenters indicated that there are no definitive sources for banks to consult regarding accounts of senior foreign political figures/their families/close associates. Moreover, once someone is deemed a PEP, the regulations do not provide a way to change the designation.

B. Safety and Soundness

1. Corporate Practices. Some commenters recommended that all the Agencies review their operations in the following areas:

- Conduct a study of exam reports to evaluate whether examiners are appropriately distinguishing management from board obligations in their exam findings, conclusions, and recommendations.
- Review existing regulations that examiners rely on to support their prescriptions that directors undertake more managerial-type responsibilities.
- Incorporate additional detailed guidance in examiner training on distinct and different roles of bank management and the board.

2. Appraisal Standards for Federally Related Transactions. Most comments focused on the threshold to obtain an appraisal stating that the $250,000 threshold, which has been the same since implementation of the regulation in the early 1990s, is out of date and burdensome. One commenter remarked that in 1992, the government-sponsored entity conforming loan limit was $202,300, and now it stands at $333,701 (at the time of the comment), yet the *de minimus* amount for the appraisal rule is still $250,000. Some suggested that the threshold be raised from $250,000 to $500,000. Others suggested raising the threshold to a higher level to account for inflation and increased cost of housing, land, and real estate in general.

Other comments questioned the necessity to require an appraisal by a licensed or certified real estate appraiser. One commenter indicated that bank staff can do an adequate job of assessing property valuation. Another commenter indicated that a banker should be able to use the County Assessor's value on loans up to $500,000 without requiring a formal appraisal. Another commenter suggested that assessed values should be permitted as acceptable valuation for some loans since assessed values typically are more conservative than full-market-value appraisals. One banker indicated that it cost $30 to do an appraisal via the Internet (using databases) and $250 to hire an appraiser to visit the property. Yet, in his experience, the Internet information was just as reliable. Another questioned the need for appraisals when the transactions are between a bank and a governmental sponsored entity. Some felt that appraisal standards are too stringent for residential transactions that are sold into the secondary market, particularly given the market discipline imposed by such transactions.

3. Frequency of Safety and Soundness Examinations. Some commenters stated that on-site examinations are a tremendous time commitment and result in significant disruption to the bank and suggested the Agencies should use a risk-based approach when determining examination frequency that results in less frequent on-site examinations for well-managed, well-capitalized institutions. Commenters believed that regulators could satisfy the annual examination requirement with a less burdensome, off-site examination process that uses information already supplied through existing reporting requirements. Other commenters suggested lengthening the examination cycle to 18 to 24 months for banks that have historically exhibited sound banking practices. Commenters recommended that the various regulatory bodies review interim data, conduct informal management reviews, and use discretion to expedite a review cycle when there is more than average risk.

4. Lending Limits. One commenter remarked that the lending limit for national banks is 15 percent of capital and surplus, while, Kansas's state-chartered banks have enjoyed a general lending limit of 25 percent of capital and surplus for almost eight years. Many of their national bank competitors would like to see the federal law changed for national banks as well. Another commenter recommended that lending limits be revised upward to state law permissible lending limits.

Several commenters remarked that Regulation O limits on inadvertent overdrafts should be increased from the current level of $1,000.

5. Real Estate Lending Standards. There was no recommendation for changing the real estate lending standards regulation; however, there were a few comments that suggested modifying the interagency guidelines that are attached to the regulation. The commenters remarked that the method of risk calculation does not appropriately measure risk of potential loss. Commenters also stated that the supervisory loan-to-value guidelines hamper the ability of small community banks to compete in the market place.

6. Security Devices and Procedures. No comments received.

7. Standards for Safety and Soundness. Commenters stated that the Agencies' rules on safeguarding customer information was unnecessary in light of community bank practices and the rules add cost and burden to their operations. Most commenters believed the information technology requirements are excessive compared to the level of technology available. Some commenters recommended that the Agencies provide risk assessment models to assist in identifying and quantifying possible threats. Some commenters stated that overseeing service providers is burdensome and that the Agencies should provide a model form or checklist. Others asserted that the Agencies should clarify expectations about information security requirements regarding non-affiliated third parties and provide examples on the types of third parties covered and not covered by the Guidelines. Most commenters wanted to receive additional guidance on best practices for compliance with the guidelines. Some commenters remarked that examination practices are too burdensome and need to be adjusted to the size and sophistication of each institution. Others expressed their uncertainty about examination results after incurring significant expenses. One commenter stated that the cost for the security review alone totaled $2,000.

8. Transactions with Affiliates. The sole commenter stated that the requirement to prove affiliate arrangements are on terms and under circumstances “that are substantially the same as those prevailing at the time for comparable transactions with or involving other nonaffiliated companies” is extremely burdensome. The commenter remarked that it is difficult to find cases in which identical services are offered by third parties and stated that while the rule attempts to provide relief in such cases, in practice, it offers little relief. The commenter asserted that 12 U.S.C.371c-1 (a)(1)(b) permits the institution, in the alternative, to prove that it, in good faith, would pay a non-affiliated third party an equivalent fee for similar services. However, in order to respond to an inquiry concerning an institution’s reliance on a 12 U.S.C. 371c-1 (a)(1)(b), a substantial amount of supporting documentation on the fees and services would be necessary to prove that the fees are not excessive. The commenter believes that there should be an exception to the comparable transaction requirement, or alternatively, a reduced burden of proof required if both the parent and the financial institution subsidiary are rated as financially sound, and the bank is CAMELS "1" or "2" rated. If there is minimal risk to the FDIC insurance fund (as would be the case for a sound company), the terms of the affiliate transactions should be irrelevant. Alternatively, the commenter suggested that regulators should relieve institutions of the comparable transaction requirement if the total fees paid to the affiliate do not exceed the amount that could be paid to the affiliate in dividends.

9. Safety and Soundness—Board

a. Extensions of Credit by Federal Reserve Banks. No comments received.

b. Limitations on Interbank Liabilities. No comments received.

10. Safety and Soundness—FDIC

a. Annual Independent Audits and Reporting Requirements. Several commenters noted that the exemption from the external independent audit and internal control requirements in 12 CFR 363 for depository institutions with less than $500 million in assets was adequate. Because of consolidation, together with the application of the public company auditing standard to banks, the exemption needs to be increased to $1 billion to reduce burden on smaller institutions.

One commenter recommended eliminating the current requirement in part 363 for annual reports by management and external auditors on the effectiveness of internal control over financial reporting for those insured depository institutions with $500 million to $1 billion in assets that are not public companies.

b. Unsafe and Unsound Banking Practices (standby letters of credit, brokered deposits). No comments received.

11. Safety & Soundness—OCC

a. Other Real Estate Owned. No comments received.

12. Safety and Soundness—OTS

a. Audits of Savings Associations and Savings Association Holding Companies. Refer to above comment under FDIC heading.

b. Financial Management Policies. No comments received.

c. Lending and Investments—Additional Safety and Soundness Limitations. A commenter wrote that OTS should eliminate the credit enhancement requirement on mortgage and home equity loans that exceed a 90 percent loan-to-value (LTV) ratio as it creates a competitive disadvantage. The commenter pointed out that the cost of credit enhancement drives qualified customers to nonbanking lenders that do not have such requirements and can offer lower-cost products. The commenter remarked that OTS should eliminate the recordkeeping and reporting requirements for loans that exceed certain LTV limits because they are burdensome and increase overhead costs, which affects loan pricing. The commenter explained that the tracking and reporting requirement is difficult because the association captures the information at the account or customer level, and the regulation requires comparison of loans across systems, and aggregation of loans based on collateral. The commenter further remarked that OTS could adequately address any safety and soundness concerns created by high LTV loans through underwriting policies that ensure that borrowers have the capacity to service such loans.

C. Securities

The federal banking agencies received several comments concerning how the Agencies can reduce regulatory burden with respect to securities regulations. Many of the comments received addressed perceived regulatory difficulties associated with complying with the requirements of the SOX.

1. Regulatory Compliance. One commenter said that penalties governing violations of the securities laws need to be significantly relaxed, adding that offenders should have to contribute to the community from which they took rather than be jailed.

2. Reporting Requirements under the Securities Exchange Act of 1934 (34 Act). The letters contained several comments concerning the increased burden that commenters felt SOX had imposed on public companies, but especially for community banks. Commenters urged the federal banking agencies to work with the SEC to minimize the reporting burden for community banks. These commenters stated that making institutions that are not publicly traded and are less than $1 billion in assets comply with independent audit and independent audit committee requirements is very burdensome and that finding outside professionals to help comply with these requirements, especially in small communities, can be impossible. This commenter noted that it is difficult to attract and retain outside directors for audit committees in view of the risks involved. The threshold should be raised to $1 billion for compliance with such requirements.

Some commenters expressed concern about the cost of section 404 compliance (internal control reports). They said that the effort and expense of additional certifications, documentation, and testing requirements are not commensurate with the operational risks. One commenter noted in particular that community banks lack the internal resources to meet the Public Company Accounting Oversight Board's attestation standard. Banks face much higher consulting costs, and increases in their auditing fees, as well as legal compliance costs.

Other commenters noted that the time spent on section 404 compliance detracts from other matters, such as daily operations, long-term performance, and strategic planning. One commenter said that section 404 compliance requirements had forced banks to abandon regular risk audits in favor of concentrating on section 404 compliance.

Several commenters suggested following the requirements of the FDIC's part 363 instead of having to comply with section 404. The requirement of a separate audit of internal controls has created unnecessary burden; instead, a thorough review of how management reaches its conclusions about internal controls would be as effective, but less burdensome, than the required audit. The independent audit, commenters argued, duplicates work done through a company's internal audit function and senior management. Some commenters suggested that the FDIC and the other agencies work with the SEC to explore how to streamline the audit and attestation process.

One commenter urged scaling back the standards to a reasonable level of inquiry that allows an auditor to opine on the conclusions reached by management. In the opinion of the commenter, there are other protections in place to safeguard the investing public and that make the section 404 burdens "inappropriate." If the SEC does not extend a full exemption to depository institutions, they should revise section 404 to provide for a partial exemption for those institutions exempt from the part 363 requirements—either by changing the regulations or through a change in the law.

a. Acceleration of Filing Deadlines. One commenter noted that, since the passage of SOX, the SEC has accelerated the filing deadlines for periodic reports on Forms 10-Q and 10-K, current reports on Form 8-K, and insider beneficial ownership reports under section 16 of the 34 Act. The commenter noted that smaller public community banks do not have employees dedicated solely to filing these reports. The two-business-day deadline for section 16 reports is especially difficult, because the reports have to be gathered from principal shareholders, directors, and executive officers. The four-business-day filing requirement for Form 8-K creates difficulties. To ease the burden on small banks, the SEC should change the deadline for insured depository institutions to 10 calendar days for filing current reports on Form 8-K and section 16 beneficial ownership reports.

The SEC likewise should freeze current deadlines for periodic reports rather than implement the final step in the acceleration schedule that would require annual reports to be filed within 60 days and interim reports within 35 days.

b. Thrift Securities Issues. One commenter said that OTS should move the requirement in 12 CFR 563.5 that savings association certificates must include a statement about the lack of FDIC insurance to a place where it is adjacent to relevant material and can be more easily found. The commenter specifically suggested moving the section-to-section 552.6-3, which discusses the certificates for savings associations generally. In addition, OTS should delete the notice requirements in sections 563g.4(c) and 563g.12, because it should not be necessary to report the results of an offering 30 days after the first sale, every six months during the offering, and then again 30 days after the last sale.

One commenter suggested that the Board, the FDIC, and the OCC conform their rules to those issued by OTS and permit quarterly, rather than monthly, statements be sent for transactions in cash management sweep accounts. The commenter noted that most investment companies provide statements on a quarterly basis to customers.

c. Confirmation of Securities Transactions. One commenter suggested extending the confirmation period so that it could be given to customers as late as one to two days after completion of the transaction. The Agencies should raise the general exemption from 200 to at least 500 securities transactions for customers over a three-year period, exclusive of government securities transactions.

d. Recordkeeping/Confirmation of Securities Transactions. One commenter suggested revising 12 CFR 12.7(a)(4) because quarterly reports for personal securities transactions does not meet the intended purposes. The commenter contended that the regulation relies on employee disclosure of accounts and requires a great deal of effort for a process that tracks only those transactions that the employee chooses to reveal. The administration of the quarterly process involves tracking statements, updating quarterly forms, identifying new employees quarterly to add to the list, identifying terminated employees for removal from the list, and then tracking the return of the forms. This is a great deal of effort to expend on a process that tracks only those transactions that the employee chooses to reveal. The burden far outweighs the benefit according to this commenter.

IV. Federal Register Notice No. 5—Banking Operations, Directors, Officers and Employees and Rules of Procedure

A. Banking Operations

1. Funds Availability/ Regulation CC. Many commenters addressed the provisions of Regulation CC (12 CFR 229) that relate to funds availability.

a. General Comments. Several commenters provided general views on Regulation CC as a whole. One commenter indicated that the commentary to Regulation CC provides extremely helpful examples on how to implement the regulation and suggested that the Board do a comparable commentary for its Regulation D. However, other commenters expressed concern that Regulation CC is too complex and difficult, mainly because of the number of criteria that a bank must consider to determine the maximum hold period for a particular deposit. Another commenter expressed concern that the complexity of the regulations increased banks' legal and compliance risks. Still others indicated that the time periods provided in the availability schedule generally are too long in light of what they perceived as faster clearing times permitted by electronic collection of checks.

Other commenters mentioned that aside from the need to lengthen hold periods for official bank checks and government checks (an issue discussed below) that the generally applicable hold periods should remain unchanged. Some of these commenters argued that only a small percentage of checks are being cleared more expeditiously as a result of the Check 21 Act, and that there has not yet been the industry-wide improvement in collection and return times that would be necessary to warrant shortening hold periods. Some of these commenters argued that shortening hold periods at this time would increase the fraud-related risks of banks that do not clear checks electronically.

b. Comments Relating to Fraud Associated with Next-Day Availability Items. The most frequent comment related to increases in fraud associated with items for which banks must give next-day funds availability, particularly official bank checks, postal money orders, and other items drawn on units of government. Most commenters that identified this issue suggested increasing the generally applicable maximum hold time for these items to increase the likelihood that the depositary bank would learn of the fraud before it was required to make the funds deposited by the fraudulent item available for withdrawal. Some commenters questioned who benefits from expedited availability for official bank checks and government checks and suggested that permissible hold periods for those items could be lengthened without unduly burdening anyone.

In addition, some commenters suggested that, at a minimum, the Board should adopt an interim rule extending availability for fraud-prone items while it figured out how to address the problem permanently. Other commenters suggested that banks were placing extended holds on official bank checks and government checks with the regulators' knowledge and tacit approval, even though doing so violated the EFA Act and Regulation CC. Commenters also expressed concern that the industry, rather than the bank regulators, was taking the lead to address the problems associated with fraud involving next-day availability items.

According to one commenter, Treasury checks and USPS money orders presented the biggest fraud risks associated with next-day availability items because the Department of the Treasury and the USPS, respectively, by statute have longer periods of time than do banks to decide whether or not to a return an item unpaid. The commenter suggested that new accounts were particularly vulnerable to fraudulent Treasury checks and USPS money orders because banks cannot delay the availability of the first $5,000 deposited into a new account by such items and because the bank has less familiarity with the depositor. In addition, this commenter suggested that the Department of the Treasury and USPS should lose their right of return if they did not pay or return an item within seven days. This commenter also asked that the Board revise Regulation CC to provide that an account is new for six months, as opposed to 30 days in the existing rule.

Another commenter indicated that, although many depositary banks that receive next-day availability items attempt to verify the validity of those items, purported issuing institutions are increasingly reluctant to confirm whether they issued a particular check. This commenter suggested that the banking agencies should issue guidance that identifies ways in which banks can reduce the risk of loss associated with fraud related to such checks. The commenter suggested that any such guidance should request that all depository institutions cooperate in addressing this common problem.

Most commenters that addressed the issue of official bank check and government check fraud advocated a regulatory change in response to what they perceived to be a widespread problem. However, other commenters noted that they applied the same availability policy for all but a few checks (presumably by giving faster availability than the law requires for many items) yet had not experienced heightened fraud-related problems because of that practice.

c. Comments on the Scope and Application of Exception Holds. Several commenters advocated changes in the scope of the exception holds that banks may apply to large check deposits, to deposits made in new accounts by official bank checks and government checks, and to checks that the depositary banks has reasonable cause to doubt it cannot collect from the paying bank. Commenters opined that these changes would simplify application of these exception holds and better protect banks.

Under the large deposit exception, up to the first $5,000 of an aggregate deposit by check(s) on a single banking day is subject to the general availability schedule but the bank may place an additional reasonable hold on the amount exceeding $5,000. Similarly, under the new account exception, the bank must make up to $5,000 deposited to a new account on any one banking day by official bank check(s) or government check(s) available according to the generally applicable availability schedule but may delay the availability of the amount exceeding $5,000 until the ninth business day after deposit.

Two commenters suggested that the large deposit exception and the large-deposit provision of the new account exception should allow banks to withhold the entire amount of the relevant large-dollar check deposit. Because the depository bank usually will not learn whether a check is fraudulent for several days after the deposit, these commenters thought that the requirements to make the first $5,000 available left banks vulnerable to fraud, particularly with respect to new depositors.

Another commenter suggested that applying the same hold period for the entire deposit amount also would reduce customer confusion. In some cases, a commenter noted, the EFA Act and Regulation CC allow a bank to place a longer hold on a large deposit in an established account than it can place on a large deposit by official bank check or government check in a new account. The commenter questioned the logic of this result.

Under Regulation CC, a bank can delay availability of the entire amount of a check that it reasonably believes is uncollectible. However, a bank cannot place an exception hold on a check for reasonable cause to doubt collectibility based merely on the fact that a check is of a particular class. In that regard, some commenters suggested that banks should be able to delay availability based on the class to which a check belongs. These commenters indicated that banks were experiencing increasing losses due to credit card checks as a class because a paying bank typically returns a credit card check if charging the consumer's credit card for the amount of the check would exceed the consumer's credit limit. They suggested that banks should be able to delay availability on the basis that a check is a credit card check or, alternatively, that credit card checks should be excluded from the check definition and exempted from Regulation CC's funds availability provisions on that basis.

d. Comments Relating to Notice Requirements and Model Notices. Several comments addressed the notices that Regulation CC requires. One commenter suggested that banks should not be required to provide notice to depositors of changes that improve availability times. Another commenter suggested that the model notice for exception holds is confusing because it lists all the reasons and contains check boxes for each reason. This commenter encouraged the Board to revise the exception hold notice to make it more meaningful to consumers.

e. Comments Relating to Reallocating Liability for Remotely Created Checks. Generally, if a paying bank wants to return a check due to an unauthorized drawer's signature, it must do so by midnight of the next day after it receives presentment of the check. If it misses this deadline, the paying bank generally becomes accountable for the check. One commenter noted that the Board had proposed a rule that would amend Regulation CC to reallocate liability to the depositary bank when a paying bank's customer disputes a check that was remotely created by someone else. This commenter urged the Board to adopt a final rule reallocating liability as soon as possible and thought that such a rule should apply to checks drawn on all types of accounts, preempt inconsistent state laws, include specific loss recovery procedures for handling consumer claims concerning remotely created checks, and provide an effective date six months from publication. This commenter stated that remotely created checks were operationally more analogous to ACH transactions than to other checks. On that basis, the commenter thought that banks should have a 60-day right of return before becoming accountable for remotely created checks and also should have the ability, when recrediting a consumer for an unauthorized remotely created check, to delay availability of the recredit if the account is new or the bank suspects fraud (similar to the exception safeguards applicable to recredit claims for electronic funds transfers).

f. Miscellaneous Comments. Miscellaneous comments included discussion of the treatment of prepaid consumer products. A commenter indicated that prepaid consumer card products should not be considered “deposits” for purposes of Regulation D and therefore should not be included as “accounts” that are subject to the availability provisions of Regulation CC. Prepaid card products, the commenter noted, typically are activated and available for use promptly after the consumer receives them and that usually there is little or no delay when value is added to an existing, activated card. The commenter further expressed the concern that application of the availability provisions of Regulation CC to prepaid card products would be complex and costly for banks and likely would confuse consumers—consumers who would not experience delays in access to their funds but nonetheless would receive funds availability disclosures.

2. Reserve Requirements/Regulation D. Many comment letters suggested changes to Regulation D (Reserve Requirements of Depository Institutions, 12 CFR 204). The most frequent suggestions were to remove the limitations on the number of convenient withdrawals and transfers per month that may be made from a savings deposit, and to allow for-profit entities to hold interest-bearing NOW account checking accounts. Other suggestions included creating a regulatory commentary, changing reporting practices, and clarifying existing regulatory text.

a. Remove Limitations on Savings Deposit Withdrawals and Transfers. Several commenters suggested that the Board eliminate the regulatory restrictions on the number of certain kinds of transfers and withdrawals that may be made each month from a savings deposit. Some commenters suggested that the Board do away with all limitations; others suggested that the Board eliminate the restrictions on preauthorized or automatic transfers that may be made from savings deposits that are linked to transaction accounts in a “sweep account” arrangement, or at least increase the number of such transfers to a higher number, such as 24 per month (i.e., one every business day).

b. Expand Negotiable Order of Withdrawal (NOW) Account Eligibility. Three commenters suggested removing restrictions on eligibility to maintain NOW accounts so that corporate and for-profit entities may maintain them. NOW accounts are interest-bearing checking accounts. NOW accounts function like demand deposits. “Demand deposits,” however, are subject to the Regulation Q prohibition against payment of interest (see Regulation Q, *infra*), while NOW accounts are not. NOW accounts are specifically authorized by 12 U.S.C. 1832. Section 1832 limits the types of depositors that are eligible to hold NOW accounts to individuals, non-profit entities, and governmental units.

c. Incorporate Board or Staff Interpretations and Opinions into Regulation or Commentary. Several commenters stated that numerous staff opinions and interpretations relating to Regulation D issues, some dating back many years, are not available on the Board’s Web site or in the Board’s regulatory publications. These commenters suggested that these opinions and interpretations be collected and incorporated into an official or staff commentary to Regulation D.

d. Miscellaneous Suggestions. Several other commenters made miscellaneous suggestions for amendments to Regulation D. One commenter suggested including U.S. banks’ foreign branch deposits in the Regulation D definition of deposit so that such deposits would receive deposit priority over other general obligations of such banks in the event of bank liquidation. Another commenter suggested that the Board should not impose reserve requirements on the liabilities of subsidiaries of parent depository institutions when the parent holds only a recently acquired and relatively insignificant interest in the subsidiary.

One commenter stated that Regulation D and Regulation Q appeared unnecessarily duplicative of similar FDIC regulations (for example, 12 CFR 329, Interest on Deposits) and suggested that the Agencies promulgate joint regulations on these subjects.

In addition, a commenter suggested clarifying the regulatory text of the Regulation D definition of savings deposit, citing the definition's difficulty to read and interpret. This commenter also suggested extending the period of time over which a depository institution's average transaction accounts should be computed so as to reduce "spikes" in reserves when transaction accounts rise suddenly and also suggested that there should be reduced regulatory reporting for depository institutions that regularly meet reserve requirements by holding vault cash.

Finally, one commenter suggested that the Board amend the Regulation D definition of deposit to exclude all prepaid card products.

3. Prohibition against Payment of Interest on Demand Deposits/ Regulation Q. Several commenters addressed the Board's Regulation Q (Prohibition against Payment of Interest on Demand Deposits, 12 CFR 217). Of these, the majority suggested that the Board authorize the payment of interest on demand deposits or eliminate the prohibition outright. The other comments suggested expanding the eligibility to hold NOW accounts in order to allow corporations and other for-profit entities to hold interest-bearing checking accounts. One commenter expressed support for Regulation Q in its current state and recommended that it not be repealed.

a. Eliminate Prohibition against Payment of Interest on Demand Deposits. Several commenters suggested that the Board eliminate the prohibition in Regulation Q against the payment of interest on demand deposits. One commenter stated that, if the statutory prohibition against payment of interest on demand deposits were repealed, the Board should allow a two-year phase-in period during which depository institutions could offer MMDAs (savings deposits) with the capacity to make up to 24 preauthorized or automatic transfers per month to a linked transaction account.

4. Reimbursement for Providing Financial Records/Regulation S. Two comment letters addressed the provisions of Regulation S (12 CFR 219), which relate to a financial institution's right to reimbursement for certain record requests by government authorities.

One commenter stated that the rule contained too many exceptions to the general reimbursement requirement and suggested that the rule require the government to always reimburse the institution unless the institution itself is a target of the investigation to which the request relates. Another commenter stated that the Board should review and update the fee schedule for reimbursements more regularly.

5. Collection of Checks and Other Items by Board and Funds Transfers through Fedwire (Regulation J). No comments received.

6. Assessments. The one commenter, a state association, polled its members and submitted the following summary of the comments it received: Many members believe the current risk-based system recognizes the efforts of sound management and encourages banks to maintain a high rating. Some members expressed strong sentiment that the two insurance funds be merged, and that every institution that benefits from the deposit insurance should have to pay something when they enter the system. One member suggested that other risk factors such as the number of interstate locations, types of products offered, and exam ratings should be factored into the risk-based fee assessment.

7. Assessments of Fees upon Entrance to or Exit from the Bank Insurance Fund or Savings Association Insurance Fund. Two comments were received. One commenter supports legislation that would merge the BIF and SAIF funds. The other commenter believes new entities that open with FDIC coverage, but have not paid into the fund, should pay a substantial entry fee.

8. Determination of Economically Depressed Regions. No comments received.

B. Directors, Officers, and Employees

1. Regulation O. Generally, most commenters requested a review of Regulation O reporting requirements and quantitative thresholds, because they view them as overly burdensome and somewhat ambiguous, with outdated dollar amounts that need updating to reflect today's economy. One industry recommendation for relieving some of the burden without creating more risk to the industry was to ease lending limits and reporting requirements for banks with composite ratings of "1" or "2" and management ratings of not lower that "2." Another recommendation by community banks was to add a Regulation O summary chart to capture the limitations on loans to various types of insiders in an easy to grasp, comprehensive way, with cross references to Regulation W. Another idea was to review Regulation O interpretive letters issued over the years and convert them into a commentary comparable to the Regulation CC commentary.

2. Management Interlocks. Several commenters asserted that the exemptions in the Board's Regulation L that would allow otherwise prohibited persons to serve in a management position should be drafted in a clearer manner. Most of these commenters also noted that the management interlocks restriction is especially challenging for small community banks, particularly in rural areas.

One commenter said that OTS is the only federal banking agency that takes the position that the Depository Institutions Management Interlocks Act applies to trust-only institutions. The commenter urged OTS to reevaluate its position.

3. Board Composition Requirements. Several commenters requested that OTS amend its regulation to permit a majority of directors of a savings association to be officers or employees of the association as long as the holding company owns at least 60 percent of any class of voting shares of the association.

C. Rules of Procedure

1. Uniform Rules of Practice and Procedure. One comment was received from a trade association that noted that since the Rules of Practice and Procedure were updated within the past five years, its members suggested no significant burden reductions.

The Agencies did not receive any other comments on the individual agency rules of procedures.

V. Federal Register Notice No. 6—Prompt Corrective Action, Capital and Community Reinvestment Act–Related Agreements

A. Capital

The Agencies requested EGRPRA-related comments on capital regulations as part of a broader joint ANPR seeking comment on proposed risk-based capital guidelines that was published in the *Federal Register* on October 20, 2005. (*See* 70 FR 61068, October 20, 2005.) Few of the comments received addressed burden reduction per se, although a number of the comments did address ways in which capital regulations, and proposed revisions thereto, could contribute to, or ease, financial institutions' regulatory burden. Several comments fit into this category.

1. Opt-Out for Highly Capitalized Banks. Several commenters supported the Agencies adopting an opt-out provision as part of a revised Basel I that would give highly capitalized community banks the option to continue using the existing risk-based capital rules and avoid the regulatory burden of more complex risk-based rules. One commenter noted that for such banks, computing risk-based capital minimums and ratios using the Basel IA formula could present significant regulatory burden without any corresponding benefit. The same commenter suggested that the opt-out be limited to banks with less than $5 billion in assets that have a capital-to-asset ratio of 7 percent or higher.

2. Number of Risk-Weight Categories. Several commenters said that the revisions to the risk categories should not add additional categories that would create undue regulatory burden for banks.

3. Same Rules for All Institutions. Two commenters noted, with some concern, that the banking agencies tend to develop one size fits all rules, regardless of the number of staff available, or lack thereof, to comply with the rules, as well as the cost to comply, as a percentage of assets. The commenter requested that regulations relate to the true risk that an institution’s size and location pose to the banking industry. One of these commenters urged that the federal banking agencies not set a single standard for banks, noting that it could result in significant regulatory burden for some of the less complex banks in the country.

4. General Burden. Several commenters expressed concern that Basel IA could lead to increased regulatory burden for banks not adopting the more advanced Basel II approach. One commenter expressed concern that international banks could face increased burden since the proposed Basel IA rule changes could impose additional and duplicative burdens on their U.S. bank subsidiaries. The commenter noted that many U.S. subsidiaries of international banks do not collect data that Basel IA would require. This commenter urged simplification and flexibility in the standards for Basel IA to reduce or eliminate the need to change existing data systems to meet requirements. A second commenter expressed concern that the proposed capital rules likewise could require banks to develop new data gathering systems that they do not currently have, increasing burden on them.

Another commenter urged the Agencies to give all non-Basel II institutions the option of using either the existing Basel I framework or the proposed Basel IA standard. This commenter urged regulators not to require institutions to calculate a capital charge under Basel IA.

5. Calculation for Disallowed Deferred Tax Assets in Calculating Risk-Based Capital Ratio. One commenter recommended that the Agencies review Call Report instructions and the calculation for disallowed deferred tax assets in calculating risk-based capital ratios. The commenter urged that, for small banks (under $150 million in assets), regulators should eliminate the calculation and simplify the instructions. Outsourcing the calculations, according to the commenter, is not cost-effective for community banks. Since many such banks already hold 12 percent or more risk-based capital, the results of the calculation are insignificant to the overall capital calculations of these banks. The commenter stated that there must be an easier, more cost-effective way of calculating these numbers.

B. Community Reinvestment

The banking agencies' regulations implementing the Community Reinvestment Act (CRA) were not included in the sixth EGRPRA request for comment along with the agencies' other regulations falling within the broader EGRPRA category of Community Reinvestment (i.e., the CRA Sunshine regulations, discussed under B.3 below).[64] During the past two years, the agencies solicited comment, separately from the EGRPRA process, on burden reduction measures for their CRA regulations and received voluminous comments in response.[65] The

[64] *See* 71 FR 287, January 4, 2007.
[65] *See* 66 FR 37602, July 19, 2001 (Joint Advance Notice of Proposed Rulemaking); 69 FR 5729, February 6, 2004 (Joint Notice of Proposed Rulemaking); 69 FR 51611, August 20, 2004 (FDIC Notice of Proposed Rulemaking); 69 FR 56175, September 20, 2004 (FDIC extension of comment period for proposed rule); 69 FR 68257, November 24, 2004 (OTS Notice of Proposed Rulemaking); and 70 FR 12148, March 11, 2005 (OCC, the Board, and FDIC Notice of Proposed Rulemaking).

banking agencies have adopted final rules revising the CRA regulations, mindful of the comments related to burden reduction.[66] The banking agencies felt it appropriate to include a summary of the comments to the CRA rules in this report on regulatory burden, however, because the regulatory burden imposed by community reinvestment rules was one of the foremost topics raised by commenters to the CRA rules, at the EGRPRA outreach meetings as well as in written comments submitted in response to the EGRPRA requests for comment. The following summarizes those comments, divided into those comments received by the Board, FDIC, and OCC in response to their joint notice requesting comment, and those received in response to the separate OTS request for comment.

1. CRA Proposed Interagency Rulemaking. Together the federal banking agencies received over 10,000 public comments from consumer and community organizations, banks and industry trade associations, academics, federal and state government representatives, and individuals on the Agencies' proposal to reduce undue regulatory burden by extending eligibility for streamlined lending evaluations and the exemption from data reporting to banks under $1 billion without regard to holding company affiliation.

a. Increase in Size Threshold for Small Banks from $250 million to $1 billion. Most banks were supportive of changing the threshold for small institutions. Community organizations opposed the proposal stating that an increase would cause banks to reduce their investments and services in low- and moderate-income areas and result in a reduction in the public data available. Some community organizations criticized the proposal to adjust the asset threshold annually for small and intermediate small banks based on changes to the Consumer Price Index (CPI), while most banks supported tying the small and intermediate small bank thresholds to changes in the CPI.

[66] *See* 69 FR 51155, August 18, 2004 (OTS Final Rule); 70 FR 10023, March 2, 2005 (OTS Final Rule); and 70 FR 44256, August 2, 2005 (OCC, the Board, and FDIC Final Rule).

b. Community Development Test for Intermediate Small Banks. Many banks opposed the creation of separate new standards and suggested institutions with less than $500 million in assets be evaluated under the streamlined small bank lending test. Most community organizations supported the requirement for a bank to engage in all three activities to earn a satisfactory rating on the Community Development Test (CDT) and asserted that the primary consideration should be the institution's responsiveness to community needs. Many banks and industry trade associations commented favorably on the flexibility that the CDT offered and some large banks requested that the CDT be made available to banks with assets of $1 billion or more. A number of banks and trade associations supported raising the threshold without creating a tier of intermediate small banks (ISBs) that would be subject to the CDT. A few banks stated that the regulatory burden reduction would not be realized if banks continue to collect information under the proposed CDT. A number of community organizations supported the evaluation of ISBs under a CDT and a streamlined lending test.

c. Community Development Definition. Banks and community organizations generally supported expanding the definition to make bank activities eligible for community development consideration in a larger number of rural areas. Comments were received on defining "rural" using existing government definitions (Office of Management and Budget and Census Bureau) and community organizations offered a variety of suggestions. Banks favored revising the definition to include activities in a designated disaster area; some community organizations opposed the revision. Banks expressed concerns about many banks having few or no eligible tracts in their assessment areas, increasing pressure to make community development investments outside of their assessment areas. Banks asked that any rule distinguishing "underserved" rural areas be simple. Some expressed concern that using the CDFI Fund's criteria for distressed areas would be complicated and cause uncertainty, but some indicated the criteria were appropriate. Many banks suggested that an area be eligible regardless of its income if targeted by a government agency for redevelopment. Community banks expressed a strong preference that a bank's support for meeting community needs such as education be considered as "community development" in rural communities of all kinds, not just "underserved" or "low- or moderate-income" communities. Community organizations disagreed that all rural areas should be eligible, but agreed that more rural areas should be eligible than are now. Many requested that the Agencies consider both expanding the standard for classifying rural tracts as low- or moderate-income and adopting criteria such as the distress criteria of the CDFI Fund to identify additional eligible tracts. At the same time, community organizations generally sought to keep the proportion of eligible rural tracts in rough parity with the proportion of eligible urban tracts.

d. Effect of Certain Credit Practices on CRA Evaluations. Most community organizations strongly supported the proposal and recommended that the provision be expanded to include evidence of discriminatory or other illegal credit practices by any affiliate of a bank. Some banks and industry trade associations opposed the standard as unnecessary because other legal remedies are available to address discriminatory or other illegal credit practices and opposed extending the "illegal credit practices" standard to loans by an affiliate that are considered in a bank's lending performance. A few large banks were concerned that their CRA performance would be adversely affected by technical violations of law.

2. CRA Proposed Rulemaking—OTS. OTS received an overwhelming number of comments on the CRA NPR issued in 2004. Most comments were from financial institutions and their trade associations (Financial Institution Comments) or from consumer and community members and organizations (for example, civil rights organizations, Community Development Corporations, Community Development Financial Institutions, community developers, housing authorities, and individuals) (Consumer Comments). Other commenters included members of Congress, other federal government agencies, and state and local government agencies and organizations.

The Financial Institution Comments strongly supported raising the asset threshold and eliminating the holding company test. Most of these commenters expressly supported raising the asset threshold beyond the level in the proposed rule. Most suggested thresholds ranging from $1 billion to $2 billion. Many commenters argued that raising the asset threshold would reduce regulatory burden and allow community banks to focus their resources on economic development and meeting credit demands of the community, rather than compliance burdens. They also asserted that raising the asset threshold was necessary to reflect consolidation in the bank and thrift industries. Other commenters noted that raising the asset threshold to $1 billion would have only a small effect on the amount of total industry assets under the large institution test but would provide substantial additional relief by reducing the compliance burden on more than 500 additional institutions.

The consumer comments strongly opposed raising the asset threshold and urged the banking agencies to withdraw the proposed rule. Most of the comments focused on the proposed raising of the asset threshold to $500 million but did not specifically mention the proposed elimination of the holding company test. Many consumer comments argued that raising the asset threshold would eliminate the investment and service parts of the CRA examination for many institutions, would reduce the rigor of CRA examinations, and would lead to less access to banking services and capital for underserved communities. In particular, these commenters argued that Low Income Housing Tax Credits and Individual Development Accounts would suffer, diminishing the effectiveness of the Administration's housing and community development programs. The commenters observed that this would be contrary to the statutory obligation on financial institutions to affirmatively serve credit and deposit needs on a continuing basis. Commenters also noted that the change would disproportionately affect rural communities and small cities where smaller institutions have a significant market share. Other consumer comments emphasized the need for rural banks and other depository institutions to serve the investment and deposit needs of all the communities in which they are chartered and from which they take deposits.

Comments from members of Congress were mixed. One commenter supported raising the asset threshold to $1 billion. It stated that such a move would not have a significant impact on the total amount of assets nor the total number of institutions covered by the large institution examination, but would provide relief to many additional institutions. Other commenters opposed raising the asset threshold. OTS received other letters from members of the U.S. Senate that generally echoed the consumer comments discussed above.

3. Disclosure and Reporting of Community Reinvestment Act–Related Agreements (CRA Sunshine Act)—12 CFR 35; 12 CFR 207 (Regulation G); 12 CFR 346; 12 CFR 533. The Agencies received several written comments on the CRA Sunshine Act requirements and comments were made at several of the Agencies' outreach meetings. One commenter representing an industry trade association believes that the implementing regulations do hold the regulatory burden on community organizations and financial institutions to a minimum, consistent with the requirements of the statute. Another commenter representing a financial institution stated that the regulation has not affected its level of CRA activity; however, the additional disclosure and reporting has increased the time, effort and cost to comply. In addition, the commenter remarked that the benefits of disclosing the information have yet to be publicly communicated and believes the regulation should be repealed. Yet another commenter representing financial institutions stated that Congress should repeal the Act because it does not further the purposes of the CRA and imposes significant paperwork, regulatory and cost burdens on banks that far outweigh any benefits. This commenter believes the law does not further the interests of communities; instead, it wastes resources that could be better deployed to serving the affordable credit and financial services needs of communities. Short of repeal of the law, the commenter urges the Agencies to completely overhaul the implementing regulations.

Other comments from bankers, consumer groups, and outreach meeting participants were also supportive of repealing the provisions of the Act. In the interim, commenters suggested that the Agencies take steps to reduce unnecessary burden. Commenters also suggested the Agencies clarify that only those agreements that would have a material impact on a bank's CRA rating should be disclosed, so long as community groups' First Amendment or other constitutionally protected rights were preserved.

Commenters also stated that the theory the provisions were based on were flawed and disclosures filed have not exposed any pattern of improper payments by banks to community groups and that allegations that community groups have succeeded in using CRA mainly as a vehicle for funding their organizations are baseless. Instead, commenters contended that the CRA Sunshine Act has imposed an additional and unnecessary burden on both banks and nonprofits and that confusion as to the circumstances and contacts that trigger disclosure remain. Commenters argue that repeal would facilitate the flow of capital to affordable housing, small business, and community development financing for low- and moderate-income people and communities. In addition, a commenter recommends:

- Exempting all CRA contacts that arise in the context and purpose of ordinary CRA business dealings, absent any coercive aspect.
- Allowing disclosure should only be triggered by comments or testimony made in conjunction with CRA-related agreements during a CRA examination or a deposit

facility application process.

- Revising the material impact standard and make it, not CRA contact, the trigger for requiring disclosure under the proposed rule.
- Providing a reporting exemption for non-negotiating parties of a CRA agreement.

Appendix I-D: Economic Growth and Regulatory Paperwork Reduction Act

12 U.S.C.A. 3311

United States Code Annotated

Title 12. Banks and Banking

Chapter 34. Federal Financial Institutions Examination Council

Section 3311. Required review of regulations

(a) In general

Not less frequently than once every 10 years, the Council and each appropriate federal banking agency represented on the Council shall conduct a review of all regulations prescribed by the Council or by any such appropriate federal banking agency, respectively, in order to identify outdated or otherwise unnecessary regulatory requirements imposed on insured depository institutions.

(b) Process

In conducting the review under subsection (a) of this section, the Council or the appropriate federal banking agency shall—

(1) categorize the regulations described in subsection (a) of this section by type (such as consumer regulations, safety and soundness regulations, or such other designations as determined by the Council, or the appropriate federal banking agency); and

(2) at regular intervals, provide notice and solicit public comment on a particular category or categories of regulations, requesting commentators to identify areas of the regulations that are outdated, unnecessary, or unduly burdensome.

(c) Complete review

The Council or the appropriate federal banking agency shall ensure that the notice and comment period described in subsection (b)(2) of this section is conducted with respect to all regulations described in subsection (a) of this section not less frequently than once every 10 years.

(d) Regulatory response

The Council or the appropriate federal banking agency shall—
(1) publish in the *Federal Register* a summary of the comments received under this section, identifying significant issues raised and providing comment on such issues; and
(2) eliminate unnecessary regulations to the extent that such action is appropriate.

(e) Report to Congress

Not later than 30 days after carrying out subsection (d)(1) of this section, the Council shall submit to the Congress a report, which shall include—
(1) a summary of any significant issues raised by public comments received by the Council and the appropriate federal banking agencies under this section and the relative merits of such issues; and

(2) an analysis of whether the appropriate federal banking agency involved is able to address the regulatory burdens associated with such issues by regulation, or whether such burdens must be addressed by legislative action.

CREDIT(S)

(Pub. L. No. 104-208, Div. A, Title II, Section 2222, September 30, 1996, 110 Stat. 3009- 414.)

II. NCUA Report

A. Introduction

The National Credit Union Administration (NCUA), an independent regulatory agency within the executive branch, oversees the nation's system of federal credit unions (FCU) and provides federal share insurance for all federally insured credit unions. Throughout the Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA) process, NCUA participated in the planning and comment solicitation process with the other Federal Financial Institutions Examination Council (FFIEC) agencies. Because of the unique circumstances of federally insured credit unions and their members, however, NCUA issued its notices separately from the other FFIEC agencies. NCUA's notices were consistent and comparable with those published by the other FFIEC agencies, except on issues unique to credit unions. As required by EGRPRA, the NCUA invited public review and comment on any aspect of its regulations that are outdated, unnecessary, or unduly burdensome.

Accordingly, this NCUA report, provided separately from that of the other FFIEC agencies, summarizes the comments NCUA received. The NCUA report also identifies and discusses the significant issues raised by commenters.

The regulatory review required by EGRPRA has provided a significant opportunity for the public and NCUA to step back and review groups of related regulations and identify possibilities for streamlining. The EGRPRA review's overall focus on the "forest" of regulations offers a new perspective in identifying opportunities to reduce regulatory burden. Of course, reducing regulatory burden must be consistent with ensuring the continued safety and soundness of federally insured credit unions and appropriate consumer protections.

EGRPRA also recognizes that burden reduction must be consistent with NCUA's statutory mandates, many of which currently require implementing regulations. In response to the review process, commenters highlighted certain areas in which legislative changes might be appropriate. In this respect, the NCUA has carefully considered the relationship among burden reduction, regulatory requirements and statutory mandates.[67] Section V of this NCUA report describes the statutory changes affecting credit unions in the Financial Services Regulatory Relief Act of 2006 (FSRRA), enacted by Congress in October 2006.

Finally, NCUA has, independent of EGRPRA, developed and implemented its own regulatory review process. Since 1987, a formally adopted NCUA policy requires review of NCUA regulations at least once every three years with a view toward eliminating, simplifying, or otherwise easing the regulatory burden.[68] The review includes an internal review and solicitation of public comments concerning many of the same aspects that EGRPRA also involves. Considered together, these two processes enable NCUA to conduct an ongoing, comprehensive review of its rules and regulations with a view toward improving regulatory structure, systems, and efficiency.

---

[67] Credit unions are also subject to regulations issued by other nonbanking agencies, such as rules issued by the Department of Housing and Urban Development (under Real Estate Settlement Procedures Act of 1974) and by the Department of the Treasury (under the BSA including rules required by the PATRIOT Act). The rules of these other agencies are beyond the scope of NCUA's EGRPRA review and NCUA's jurisdiction. NCUA intends, however, to alert the relevant agencies about comments it has received raising significant issues regarding these related rules.

[68] Interpretive Ruling and Policy Statement (IRPS) 87-2, 52 FR 35231, September 8, 1987, as amended by IRPS 03-2, 68 FR 32127, May 29, 2003.

B. NCUA Methodology

As required by EGRPRA, NCUA first categorized its regulations by type, such as "consumer regulations" or "safety and soundness" regulations. NCUA categorized its regulations into 10 broad categories. A listing of the regulations by category is attached as Appendix II-A of this report. Next, the FFIEC agencies provided notice and solicited comment from the public on one or more of these regulatory categories. Notices were published in the *Federal Register* for a 90-day comment period. A summary of the comments received by NCUA, including the *Federal Register* citation, is attached as Appendix II-B of this report; a summary of the comments received by the other FFIEC agencies is in Appendix I-C.

1. Outreach. Through numerous programs and policies, NCUA conducts outreach to credit unions and the public and provides opportunities for individuals, groups and institutions affected by or interested in credit unions to communicate with the agency. These include programs such as Access Across America, in which NCUA principals travel the country and solicit input, ideas, and policy suggestions from credit unions and their members on a wide range of topics. The agency also has a national ombudsman who investigates complaints relating to regulatory issues and recommends solutions on matters that cannot be resolved at the operational (regional) level. The agency has an active Web site, with comprehensive contact information for all program offices. The Web site also discloses travel schedules for NCUA's board members, who travel extensively throughout the country to speak and listen to concerns of credit unions and their members. In view of these programs, NCUA did not participate in the banker or consumer outreach meetings the FDIC held at various locations during 2004 and 2005.

C. Significant Issues Raised

NCUA received a total of 41 comments in response to its 6 notices. Some of the comments addressed rules administered by the Federal Reserve Board affecting all depository institutions, including credit unions, and those comments were forwarded to the Federal Reserve Board for consideration. With respect to matters exclusively relating to credit unions, the most significant issues raised and the agency's response follows, including NCUA's evaluation of the merits of suggested rule changes as well as a description of any action the agency has taken.

1. Anti-Money Laundering. The area of Bank Secrecy Act compliance has grown in significance in recent years, along with concerns about personal and financial privacy among consumers. Several commenters sought guidance and clarification from NCUA about filing Suspicious Activity Reports (SARs). In addition to a request for additional guidance, several commenters recommended raising the threshold for filing Currency Transaction Reports from the current $10,000 trigger, as well as raising the monetary instruments trigger and the money laundering trigger. One commenter sought an outright exemption from the filing requirements for small credit unions. Two commenters recommended merging the Office of Foreign Assets Control with the Financial Crimes Enforcement Network.

NCUA is not the primary agency with responsibility for these rules. Nevertheless, NCUA is concerned about the need for clearer guidance for credit unions in fulfilling their obligations in this area. Effective November 27, 2006, NCUA issued a final rule modifying section 748.1(c) of its rules to clarify the reportable activity this section covers, identifying important filing procedures and highlighting record retention requirements. The final rule addresses other key aspects of the SAR process, including the confidentiality of the reports and safe harbor information. The rule requires a credit union to inform its board of directors promptly of its SAR reporting activity.

While the changes expand the amount of information in the rule, they do not increase regulatory burden. The changes are intended to provide fundamental information about the SAR process in a single location to facilitate the ability of credit unions to access reporting and filing requirements quickly. The board notification provision formalizes a common practice and, together with the other proposed changes, provides consistency with the SAR regulations established by the other FFIEC regulators. The changes are not intended to and do not eliminate the need for credit unions to review the instructions accompanying the SAR form and the requirements of 31 CFR 103.18, which may be necessary to ensure a report is accurately and fully completed.

2. Risk-Based Capital. Several comments called for a risk-based approach to capital requirements for federal credit unions (FCUs). One noted that credit unions are unique among financial institutions in their regulatory capital structure, which makes only limited distinctions in the types or quality of assets in determining their capital position. These commenters assert an approach to capital that takes into account the various types of assets FCUs hold would provide greater flexibility and better protection against risks to safety and soundness.

NCUA agrees with these comments but notes that a change to the FCU Act is required to implement them. In 2005, NCUA prepared and submitted to Congress a proposal for a risk-based capital program coupled with a prompt corrective action (PCA) enforcement plan. Since that time, NCUA has met with members of Congress and with representatives of the Department of the Treasury to discuss the proposal and to respond to questions or concerns. As of year-end 2006, Congress had not enacted legislation implementing the risk-based capital program.

In 1998, Congress amended the FCU Act to apply PCA requirements to federally insured credit unions based on net worth levels. A credit union is considered:

- “well capitalized” if it has a net worth ratio of not less than 7 percent,

- “adequately capitalized” if it has a net worth ratio of not less than 6 percent,
- “undercapitalized” if it has net worth below 6 percent,
- “significantly undercapitalized” if it has a net worth ratio of less than 4 percent, and
- “critically undercapitalized” if it has a net worth ratio less than 2 percent.

A credit union whose capital ratio falls below 6 percent is required to produce a net worth restoration plan and may also be subject to other regulatory requirements. A credit union that becomes undercapitalized is subject to specific restrictions on asset growth and the ability to make member business loans. In cases involving a credit union that is critically undercapitalized, the NCUA Board has 90 days to take action as the Board determines, such as conserving, liquidating the credit union or other appropriate action.

NCUA and federally insured credit unions have had more than seven years of experience operating under the 1998 PCA rules. This experience, as supported by the Call Report data, indicates the PCA categories set by statute are too high. NCUA believes they operate to penalize low risk institutions, which results in an inefficient use of capital. The categories also overshadow any risk-based system and limit the benefits of behavior modification that would otherwise flow from a robust risk based PCA requirement. The rules also contribute to unwarranted bias against credit union charters by establishing a “one-size-fits-all” effect for federally insured credit unions and create inequities in treatment for the required deposit in the National Credit Union Share Insurance Fund (NCUSIF) and membership capital in corporate credit unions.

NCUA believes the statutory mandate to take prompt corrective action to resolve problems at the least long-term cost to the NCUSIF is sound public policy. Further, this policy is consistent with NCUA’s fiduciary responsibility to the NCUSIF. However, PCA for credit unions does not adequately distinguish between low-risk and higher risk activities.

The current PCA system's high leverage requirement (ratio of net worth to total assets) coupled with the natural tendency for credit unions to manage to capital levels well above the PCA requirements essentially creates a one-size-fits-all system. This penalizes institutions with conservative risk profiles. While providing adequate protection for the NCUSIF, a well-designed, risk-based system with a lower leverage requirement would more closely relate required capital levels with the risk profile of the institution and allow for better use of capital.

The current high leverage ratio imposes an excessive capital requirement on low-risk credit unions. With a lower leverage requirement working in tandem with a well-designed, risk-based requirement, credit unions would have a greater ability to serve members and manage their compliance with PCA. By managing the composition of the balance sheet, credit unions could shift as needed to lower risk assets resulting in the need to hold less capital. A PCA system comparable to that in the banking system would provide sufficient protection for NCUSIF. Such a system for credit unions would also remove charter bias and level the playing field by eliminating differing capital standards unrelated to risk. While credit unions cannot raise capital as quickly in some cases as other financial institutions, the majority of credit unions have a relatively conservative risk profile (driven by the restrictions of powers relative to other institutions and their cooperative, member-owned structure) and a comparatively low loss history. Thus, credit unions should not be required to hold excessive levels of capital.

3. Field of Membership and Chartering. This subject generated the greatest number of comments. The following reflects the most significant issues. Commenters suggested:

- Eliminating the requirement that a proposed group to be added to an existing credit union's membership must be located in "reasonable geographic proximity" to a credit union's service facility or alternatively permitting a shared ATM or other shared facility to meet this requirement. In addition, with respect to adding groups to an existing charter, commenters suggest eliminating the requirement that a group (as opposed to the credit union) must provide documentation about its ability and willingness to establish and support a credit union of its own.

- Removing the preference that groups with membership in excess of 3,000 consider forming their own credit union rather than joining an existing credit union, and clarifying that the preference is not applicable in the case of voluntary mergers of credit unions.
- Allowing an FCU that converts to a community charter to retain select employee groups located outside the community.
- Allowing an FCU to provide check cashing and wire transfer services to nonmembers.

The last of these items was addressed, with NCUA support, in the FSRRA, and FCUs may now provide check cashing and wire transfer services to nonmembers within their field of membership. Full implementation of the remaining suggestions would require legislative action to change the FCU Act. With respect to the first proposal, NCUA believes the current geographic proximity requirement is appropriate. As noted in NCUA's Chartering and Field of Membership Manual (Manual), groups served by a credit union must have access to a service facility. As further clarified in the Manual, the lack of availability of other credit union service is a factor to be considered in this respect. The Manual also describes a variety of service facility types, such as owned branches (including mobile branches) and proprietary ATMs that meet this requirement. A shared ATM does not qualify as a service facility within this meaning. The Manual describes circumstances in which a shared branch or other shared facility will qualify. Overall, as reflected by the Manual, NCUA continues to believe accessibility to credit union services must remain as the primary consideration in determining whether a proposed group should be included within a credit union's field of membership.

Similarly, NCUA does not support a change to the statutory bias in favor of groups numbering more than 3,000 actual and potential members chartering their own credit union. NCUA believes every group would benefit from having its own credit union if it has the resources necessary to make the venture viable. The Manual provides sufficient flexibility for credit unions to accept groups over 3,000 where stand-alone viability, properly documented, is unlikely, and NCUA is not aware of undue burden arising from this requirement. In mergers, NCUA interprets the FCU Act to require a similar analysis where a group numbering greater than 3,000 is served by a credit union proposing to merge with another credit union, except in cases where the continuing credit union is also providing services to the same group. NCUA supports a change to the FCU Act to eliminate this requirement in the case of mergers.

NCUA supports the other chartering suggestions. The agency perceives little or no benefit from requiring a credit union that converts from a multiple common bond or occupational charter to a community charter to exclude employee groups currently served by the credit union from continued service under the community charter. Credit unions should not be required to face the difficult choice of converting to a community basis or maintaining fidelity with a group that formed the original basis for the charter but which may no longer represent an economically viable basis for continued operations. NCUA notes, in this respect, that many credit unions faced with this dilemma have elected to surrender their federal charter in favor of a state charter.

4. Member Business Lending. In the area of member business lending, commenters suggested it would reduce regulatory burden if NCUA could:

- Raise the level below which a member business loan does not count against the aggregate ceiling for member business loans by a single credit union from $50,000 to $100,000.

- Raise or eliminate the aggregate member business loan ceiling, which currently stands at the lesser of 1.75 times a credit union's net worth or 12.25 percent of its total assets.

Commenters assert that credit unions making member business loans do not adversely affect the profitability of other financial institutions. Moreover, they assert, credit unions frequently provide business loans in amounts and circumstances that many commercial banks will not. These credit union loans fulfill credit needs of small businesses and sole proprietorships, many of which operate on a scale too small to attract the interest of commercial banks; in many cases, they are not able to afford the rates and charges imposed by more traditional commercial lenders.

Changing these restrictions requires changing the FCU Act. NCUA concurs in the points made by the commenters and supports both a change in the aggregate limits and an increase in the threshold below which a member business loan need not be counted against the aggregate limits. The agency believes FCUs have shown an excellent capacity for making prudent lending decisions in this area and also that its rules provide an adequate regulatory framework.

Another comment made in this area was that NCUA should take steps to align its member business rules with SBA's lending requirements to facilitate FCU participation in various SBA guaranteed lending programs. NCUA amended its member business lending rule in October 2004 specifically to accomplish this objective. Results have been excellent, with many credit unions now availing themselves of the SBA guarantee, to the significant benefit of both credit unions and small business members. Effective January 20, 2006, NCUA again amended its member business lending rule, this time to broaden the definition of construction and development loans.

D. Accomplishments and Burden Reduction Efforts

1. NCUA's Regulatory Flexibility Program. Independent of the EGRPRA burden reduction initiative, NCUA established a Regulatory Flexibility Program (RegFlex) in 2002 to exempt qualifying credit unions in whole or in part from a series of regulatory restrictions. Qualifying credit unions are also granted certain additional powers. (*See* 12 CFR 742.) A credit union may qualify for RegFlex automatically or by application to the appropriate Regional Director. To qualify automatically for RegFlex, a credit union must have a composite CAMEL rating of "1" or "2" for two consecutive examination cycles and, as originally conceived, was required to achieve a net worth ratio of 9 percent (200 basis points above the net worth ratio to be classified "well capitalized") for a single Call Reporting period. If a credit union is subject to a risk-based net worth (RBNW) requirement, however, the credit union's net worth must surpass that requirement by 200 basis points.

A credit union unable to qualify automatically for RegFlex may apply to the appropriate Regional Director for a RegFlex designation if it has a CAMEL "3" rating or better or meets the net worth criterion. A Regional Director has the discretion to grant RegFlex relief in whole or in part to an eligible credit union. A credit union's RegFlex authority can be lost or revoked. A credit union that qualified for RegFlex automatically is disqualified once it fails, as the result of an examination (but not a supervision contact), to meet either the CAMEL or net worth criteria in the rule. (*See* 12 CFR 742.6.) RegFlex authority can be revoked by action of the Regional Director for "substantive and documented safety and soundness reasons" (*see* 12 CFR 742.2(b)). The decision to revoke is appealable to NCUA's Supervisory Review Committee, and, thereafter, to the NCUA Board. (*See* 12 CFR 742.7.) RegFlex authority ceases when that authority is lost or revoked, even if an appeal of a revocation is pending. (*Id.*) Past actions taken under that authority are "grandfathered," i.e., they will not be disturbed or undone.

From its inception, the RegFlex program has given qualifying credit unions relief from the following regulatory restrictions:

- **Fixed Assets.** The maximum limit on fixed assets (5 percent of shares and retained earnings) (*see* 12 CFR 701.36(c)(1));
- **Nonmember Deposits.** The maximum limit on nonmember deposits (20 percent of total shares or $1.5 million, whichever is greater) (s*ee* 12 CFR 701.32(b));
- **Charitable Contributions.** Conditions on making charitable contributions (relating to the charity's location, activities and purpose, and whether the contribution is in the credit union's best interest and is reasonable relative to its size and condition) (*see* 12 CFR 701.25);
- **Discretionary Control of Investments.** The maximum limit on investments over which discretionary control can be delegated (100 percent of credit union's net worth) (s*ee* 12 CFR 703.5(b)(1)(ii) and (2));
- **Zero-Coupon Securities.** The maximum limit on the maturity length of zero-coupon securities (10 years) (s*ee* 12 CFR 703.16(b));
- **"Stress Testing" of Investments.** The mandate to "stress test" securities holdings to assess the impact of a 300-basis-point shift in interest rates (s*ee* 12 CFR 703.12(c));
- **Purchase of Eligible Obligations.** Restrictions on the purchase of eligible obligations (s*ee* 12 CFR 701.23(b)), thus expanding the range of loans RegFlex credit unions can purchase and hold as long as they are loans those credit unions would be authorized to make (auto, credit card, member business, student, and mortgage loans, as well as loans of a liquidating credit union up to 5 percent of the purchasing credit union's unimpaired capital and surplus).

Along with amendments to parts 703 (investments) and 723 (member business loans) in

2003, RegFlex credit unions received further relief from the following restrictions:

- **Member Business Loans.** The requirement that principals personally guarantee and assume liability for member business loans (*see* 12 CFR 723);
- **Borrowing Repurchase Transactions.** The maturity limit on investments purchased with the proceeds of a borrowing repurchase transaction; (*Id.*); and
- **Commercial Mortgage-Related Securities.** The restriction on purchasing commercial mortgage-related securities of issuers other than the government sponsored enterprises (*Id*.)

In 2005, the NCUA Board reassessed the RegFlex program to ensure its continued availability to credit unions least likely to encounter safety and soundness problems, thus minimizing the risk of loss to the NCUSIF. The agency's experience indicated these credit unions consistently maintain a high net worth ratio and a high CAMEL rating. Accordingly, the NCUA Board issued a proposed rule reducing from 9 percent to 7 percent the minimum net worth ratio to qualify for RegFlex, but extending from one to six quarters the period the minimum net worth must be maintained to qualify. That rule was finalized in February 2006.

2. Improvements to NCUA Call Report (Form 5300). Like the other federal financial institution regulators, NCUA requires all federally insured credit unions to file periodic reports with the agency. (*See* 12 CFR 741.6.) Effective with the reports due for the second quarter of 2006, NCUA made significant revisions to the form 5300. The revised Form NCUA 5300 consolidates information, reduces ancillary schedules, and is easier to read and use. Based on the revisions, the short form is no longer needed, and the new design provides many benefits for credit unions. The Call Report will be consistent in form each cycle, which should assist smaller credit unions in completing the form. The form is now shorter—16 pages, compared to 19 pages in the previous version. In addition, the revised form is designed so small credit unions generally will not have to complete supporting schedules. Only the first 10 pages require input by all credit unions. For comparison, the previous short form was only 8 pages, but the new, easier format will reduce the burden.

The new design also provides efficiencies and benefits to NCUA. By eliminating the short form, the NCUA only has to maintain one 5300 form, one set of edits and warnings, and one set of Financial Performance Report specifications. This will improve efficiency and reduce the likelihood of introducing errors in the reporting system. In addition, the cost of printing and mailing will be reduced with the distribution of a single form. Both internal and external quarterly financial trend analysis will be improved, since all credit unions will report comprehensive quantitative data. Further, the shift to one Call Report will simplify maintenance of the Financial Performance Report and provide additional data needed for small credit unions to use the expanded Financial Performance Report fully. Additionally, trend reports from NCUA's Automated Integrated Regulatory Examination System (AIRES) will be more consistent and detailed for smaller credit unions. For example, quarterly detail that is currently not provided for real estate loans and investments will be available. In summary, the consolidation of the Call Report and elimination of the Form NCUA 5300SF will improve the agency's efficiency, increase the accuracy of the information collected, and simplify the reporting process for credit unions, large and small.

3. Other Regulatory Burden Reduction Efforts. Effective July 3, 2003, NCUA amended its investment rule for FCUs. (*See* 12 CFR 703.) The amendments clarified and reformatted the rule to make it easier to read and locate information. The amendments expanded FCU investment authority to include purchasing equity-linked options for certain purposes and exempted RegFlex eligible FCUs from several investment restrictions. As noted previously, NCUA made changes in its RegFlex program to conform to the revisions to the investment rule.

Effective October 31, 2003, NCUA amended its member business loan (MBL) regulations to provide greater flexibility to credit unions to meet the business loan needs of their members within statutory limits and appropriate safety and soundness parameters. (*See* 12 CFR 723.) Major changes included: (1) reducing construction and development loan equity requirements; (2) allowing RegFlex credit unions to determine whether to require personal guarantees by principals; (3) allowing well-capitalized credit unions to make unsecured MBLs within certain limits; (4) providing that purchases of nonmember loans and nonmember participation interests do not count against a credit union's aggregate MBL limit, subject to an application and approval process; (5) allowing 100 percent financing on certain business purpose loans secured by vehicles; (6) providing that loans to credit unions and credit union service organizations (CUSOs) are not MBLs for purposes of the rule; and (7) simplifying MBL documentation requirements. Other provisions in the MBL regulation were simplified and unnecessary provisions were removed. At the same time, NCUA amended its PCA rule regarding the risk weighting of MBLs and its CUSO rule to permit CUSOs to originate business loans.

Effective January 29, 2004, NCUA updated and clarified the definitions of certain terms used in the loan participation rule. (*See* 12 CFR 701.22.) Specifically, the definition of "credit union organization" was amended to conform to the terms of the CUSO rule. Also, the definition of "financial organization" was broadened to provide FCUs greater flexibility in choosing appropriate loan participation partners.

Also effective January 29, 2004, NCUA amended its share insurance rules to simplify and clarify them and provide parity with the deposit insurance rules of the Federal Deposit Insurance Corporation (FDIC). (*See* 12 CFR 745.) These amendments provided continuation of coverage following the death of a member and for separate coverage after the merger of insured credit unions for limited periods of time. The amendment also clarified that the interests of nonqualifying beneficiaries of a revocable trust account are treated as the individually owned funds of the owner even where the owner has not actually opened an individual account. Finally, the amendment clarified that there is share insurance coverage for Coverdell Education Savings Accounts, formerly known as Education IRAs.

Effective March 26, 2004, NCUA revised its rules concerning maximum borrowing authority to permit federally insured, state-chartered credit unions (FISCUs) to apply for a waiver from the maximum borrowing limitation of 50 percent of paid-in and unimpaired capital and surplus (shares and undivided earnings, plus net income or minus net loss). (*See* 12 CFR 701 and 741.) This amendment provided FISCUs with more flexibility by allowing them to apply for a waiver up to the amount permitted under state law. In the same rulemaking, NCUA added a provision to its regulations to allow an FCU to act as surety or guarantor on behalf of its members. The final rule established certain requirements to ensure FCUs and FISCUs, if permitted under state law, acting as a surety or guarantor, are not exposed to undue risk.

Effective April 1, 2004, NCUA revised its living trust account rules to provide insurance coverage of up to $100,000 per qualifying beneficiary who, as of the date of a credit union's failure, would become entitled to the living trust assets upon the owner's death. (*See* 12 CFR 745.) The intent of this amendment was to provide for share insurance coverage for qualifying beneficial interests irrespective of defeating contingencies, an issue that had proven to be quite complex and confusing to many credit unions and their members. The amended rule also specifically allowed for separate insurance for both a life estate and a remainder interest for qualifying beneficiaries. This configuration is typically used by a husband and wife, with the survivor receiving a life estate and the remainder interest going to specified qualified beneficiaries upon the death of the survivor. NCUA determined to amend its rule to make it consistent with the FDIC's position and determined not to require a credit union to maintain records disclosing the names of living trust beneficiaries and their respective trust interests. The FDIC solicited comment specifically on this matter and concluded that to do so would be unnecessary and burdensome. The NCUA Board concurred with that judgment, recognizing that a grantor may elect to change the beneficiaries or their interests at any time before death and requiring a credit union to maintain a current record of this information is impractical and unnecessarily burdensome.

The general principles governing share insurance coverage in NCUA's regulations, however, still require that the records of the credit union disclose the basis for any claim of separate insurance (*see* 12 CFR 745.2(c)). This obligation may be met if the title of the account or other credit union records refer to a living trust. The final rule makes reference to this requirement, but specifically disclaims any requirement that the credit union's records must identify beneficiaries or disclose the amount or nature of their interest in the account. NCUA's objectives in this rule change were to simplify the rule and also to conform all types of revocable trust arrangements to similar rules on calculating insurance coverage.

Effective July 29, 2004, the NCUA amended its regulations governing an FCU's authority to act as trustee or custodian to authorize FCUs to serve as trustee or custodian for Health Savings Accounts (HSAs). (*See* 12 CFR 721 and 724.) The NCUA issued the rule as an interim final rule so FCUs and their members could take advantage of the authority granted in the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (Medicare Act). The Medicare Act authorizes the establishment of HSAs by individuals who obtain a qualifying high deductible health plan and specifies that an HSA may be established and maintained at an FCU. The final rule also amended NCUA's incidental powers regulation to include trustee or custodial services for HSAs as a pre-approved activity.

Effective August 30, 2004, NCUA amended its Community Development Revolving Loan Program (CDRLP) regulation to permit student credit unions to participate in the program. (*See* 12 CFR 705.) Before this rule change, NCUA took the position that, although student credit unions are designated as low-income credit unions for purposes of receiving nonmember deposits, they did not qualify to participate in the CDRLP because they were not specifically involved in the stimulation of economic development activities and community revitalization. NCUA changed its view, recognizing the importance of student credit unions and their impact on the economic development and revitalization of the communities they serve. Student credit unions not only provide their members with valuable financial services generally not available but also a unique opportunity for financial education. NCUA acknowledged that well run student credit unions would benefit greatly from participation in the CDRLP and changed its rule. As a result, these credit unions are now better able to serve their communities.

Effective August 2, 2004, NCUA issued final revisions to its regulations regarding investment in collateralized mortgage obligations (CMOs) to authorize all FCUs and corporate credit unions to invest in exchangeable CMOs representing interests in one or more stripped mortgage backed securities (SMBS), subject to certain safety and soundness limitations. (*See* 12 CFR 703.) Before that date, NCUA regulations prohibited FCUs and certain corporate credit unions from investing in SMBS and exchangeable CMOs that represent interests in one or more SMBS. NCUA determined its concern about the safety and soundness aspects of direct SMBS investment could be reconciled for some exchangeable CMOs representing interests in one or more SMBS, which can be safe investments for credit unions. The rule also authorized FCUs and corporate credit unions to accept exchangeable CMOs as assets in a repurchase transaction or as collateral on a securities lending transaction regardless of whether the CMO contains SMBS.

Effective October 29, 2004, the NCUA Board issued final revisions to its fixed-asset rule.

(*See* 12 CFR 701.36.) The fixed-asset rule governs FCU ownership of fixed assets and, among other things, limits investment in fixed assets to 5 percent of a FCU's shares and retained earnings. The amendment clarified and reorganized the requirements of the rule to make it easier to understand. The final rule also eliminates the requirement that an FCU, when calculating its investment in fixed assets, include its investments in any entity that holds fixed assets used by the FCU and established a timeframe for submission of requests for waiver of the requirement for partial occupation of premises acquired for future expansion.

Effective November 26, 2004, NCUA amended the collateral and security requirements of its MBL rule to enable credit unions to participate more fully in Small Business Administration (SBA) guaranteed loan programs. (*See* 12 CFR 723.) As noted above, in 2003, NCUA had amended its MBL rule and other rules related to business lending to enhance credit unions' ability to meet members' business loans needs. In addition to comments on those amendments, NCUA received other suggestions on how it could improve the MBL rule. Among the most significant, commenters suggested NCUA amend the MBL rule "so that it could be better aligned with lending programs offered by the Small Business Administration," such as the SBA's Basic 7(a) Loan Program.

While NCUA recognized the merits of this suggestion, NCUA could not include it in the final rulemaking because it addressed issues outside the scope of the rulemaking. The Administrative Procedure Act generally prohibits federal government agencies from adopting rules without affording the opportunity for public comment. (*See* 5 U.S.C. 553.) NCUA noted in the final rule, however, that it would review this suggestion to determine if it would be appropriate to act on it in a subsequent rulemaking. As a result of that review, NCUA issued a proposed amendment to its MBL rule in June 2004 to permit credit unions to make SBA guaranteed loans under SBA's less restrictive lending requirements instead of under the more restrictive MBL rule's lending requirements. NCUA reviewed the SBA's loan programs in which credit unions can participate and determined they provide reasonable criteria for credit union participation and compliance within the bounds of safety and soundness. Additionally, these SBA programs directed as small businesses are ideally suited to the mission of many credit unions.

NCUA noted in the proposal that it recognizes NCUA's collateral and security requirements for MBLs, including construction and development loans, are generally more restrictive than those of the SBA's guaranteed loan programs and could hamper a credit union's ability to participate fully in SBA loan programs. As a result, the MBL rule's collateral and security requirements could prevent a credit union from making a particular loan that it could otherwise make under SBA's requirements. NCUA adopted the final rule to provide relief from these more restrictive requirements and to enable credit unions to better serve their members' business loans needs.

Effective October 21, 2005, NCUA amended its rule concerning CUSOs to provide that a wholly owned CUSO need not obtain its own annual financial statement audit from a certified public accountant if it is included in the annual consolidated audit of the FCU that is its parent. (*See* 12 CFR 712.) The amendment reduced regulatory burden and conformed the regulation with agency practice, which, since 1997, had been to view credit unions with wholly owned CUSOs in compliance with the rule if the parent FCU has obtained an annual financial statement audit on a consolidated basis.

Effective January 20, 2006, NCUA revised its MBL rule to clarify the minimum capital requirements a federally insured corporate credit union (corporate) must meet to make unsecured MBLs to members that are not credit unions or corporate credit union service organizations. (*See* 12 CFR 723.) NCUA also revised the definition of a construction or development loan (C&D

loan) to include certain loans to borrowers who already own or have rights to property and the definition of net worth to be more consistent with its definition in the FCU Act and NCUA's PCA regulation. Finally, the rule clarified that a state may rescind a state MBL rule without NCUA's approval.

Effective January 22, 2007, NCUA revised its rule governing the conversion of insured credit unions to mutual savings banks or mutual savings associations. The final rule improves the information available to members and the board of directors as they consider a possible conversion. The final rule includes revised disclosures, revised voting procedures, procedures to facilitate communications among members, and procedures for members to provide their comments to directors before the credit union board votes on a conversion plan.

The conversion issue has been among the most significant and important issues confronting the credit union industry. As noted in the preamble to the proposed rule, published for a 60-day comment period in June 2006, the conversion from a credit union charter to a bank charter is a fundamental shift. The decision to convert belongs to the members. To make this decision, members must be fully informed as to the reasons for the conversion and have time to consider the advantages and disadvantages of conversion. They should also have an opportunity to communicate their views to the credit union's directors and to communicate with other members about the proposed conversion.

The NCUA solicited public comment on ways to improve the conversion process in each of these areas. The final rule, adopted after consideration of all public comments, requires a converting credit union to give advance public notice that the board intends to vote on a conversion proposal and establishes procedures for members to share their views with directors before they adopt the proposal; thereafter, the rule outlines a procedure for any member to share his views about the proposal among the membership. The rule also clarifies that credit union directors may vote in favor of a conversion proposal only if they have determined the conversion is in the best interests of the members and requires the board of directors to submit a certification to the NCUA of its support for the conversion proposal and plan. The rule also simplifies the required disclosures and includes new requirements for delivery of both the disclosures and the ballots to the membership. Finally, the rule sets out procedures to govern NCUA's review and approval of a conversion request and procedures for appeal of the decision to the NCUA Board.

E. Legislative Issues

1. Financial Services Regulatory Relief Act of 2006. Congress enacted the FSRRA in October. The EGRPRA process served as an impetus to the FFIEC agencies to work together in considering legislative recommendations in connection with burden reduction objectives. The new law makes several changes to the FCU Act, including several new powers for FCUs and clarification of NCUA's enforcement authority. The provisions affecting FCU powers are summarized below.

a. Check Cashing and Money Transfer Services. The new law changes section 107(5) of the FCU Act, 12 U.S.C. 1757(5), to allow FCUs to provide check cashing and money transfer services to all persons described in the field of membership and, therefore, eligible to become members of the credit union, whether or not they have actually joined the credit union. This expansion will introduce low cost financial services to persons of low income and will provide a viable alternative for them to the frequently expensive, sometimes predatory practices to which they are often relegated. It will also allow these persons to begin to gain confidence in more traditional financial organizations, which many of them, especially recent immigrants, often lack. NCUA believes this measure is in furtherance of the credit union mission of serving persons of modest means in their field of membership.

b. Increase in Loan Maturity Limits. The new law makes a change to the FCU Act to permit the NCUA Board to establish FCU general loan maturity limits up to 15 years or longer, liberalizing the previous statutory limit of 12 years (*see* 12 U.S.C. 1757(5)). The increase, implemented through a rulemaking finalized in October, provides FCUs with the flexibility to make loans for a much wider variety of purposes, in accordance with commonly accepted market practices. This liberalization also permits FCUs to offer products and services commonly available from other financial institutions.

c. Preservation of Credit Union Net Worth in Mergers. The new law amends the FCU Act to preserve the net worth of credit unions after a merger (*see* 12 U.S.C. 1790d(o)(2)(A)). Under the new law, a continuing credit union in a merger can include pre-merger retained earnings of the merging credit union in calculating regulatory net worth. The change, which will also require a change to NCUA's PCA rules, was necessary because a proposed final rule by the Financial Accounting Standards Board (FASB) would count only the retained earnings of the continuing credit union toward net worth following a merger. The FASB proposal has the effect of artificially lowering the post-merger capital ratio for the resulting credit union. Without this change, voluntary mergers between credit unions would have been discouraged.

While the FSRRA was an important step in addressing regulatory burden, NCUA believes it is important for Congress to continue to look for ways to reduce any unnecessary regulatory burdens on credit unions. NCUA developed or supported a number of legislative burden reducing proposals that ultimately were not included in the FSRRA. Congress may find these proposals a useful starting point in considering additional regulatory relief measures in the future.

F. Conclusion

The NCUA fully supports the rationale of the EGRPRA legislation. That rationale conforms with the NCUA's own independent commitment to review its regulations periodically to assure they are effective, necessary, and not unduly burdensome.

Appendix II-A: Subject and Regulation Cite, by Category

Category	Subject	Regulation Cite
1. Applications and Reporting	Change in official or senior executive officer in credit unions that are newly chartered or in troubled condition	12 CFR 701.14
	Field of membership/chartering	12 CFR 701.1; IRPS 03
	Fees paid by federal credit unions	12 CFR 701.6
	Conversion of insured credit unions to mutual savings banks	12 CFR 708a
	Mergers of federally insured credit unions; voluntary termination or conversion of insured status	12 CFR 708b
	Applications for insurance	12 CFR 741.0; 741.3; 741.4; 741.6
	Conversion to a state-chartered credit union	12 CFR 741.7
	Purchase of assets and assumption of liabilities	12 CFR 741.8
2. Powers and Activities		
a. Lending, Leasing and Borrowing	Loans to members and lines of credit to members	12 CFR 701.21
	Participation loans	12 CFR 701.22
	Borrowed funds from natural persons	12 CFR 701.38
	Statutory lien	12 CFR 701.39
	Leasing	12 CFR 714
	Member business loans	12 CFR 723
	Maximum borrowing	12 CFR 741.2
b. Investment and Deposits	Investment and deposit activities	12 CFR 703
	Fixed assets	12 CFR 701.36
	Credit union service organizations (CUSOs)	12 CFR 712
	Payment on shares by public units and nonmembers	12 CFR 701.32
	Designation of low-income status; receipt of secondary capital accounts by low-income designated credit unions	12 CFR 701.34
	Share, share draft, and share certificate accounts	12 CFR 701.35
	Treasury tax and loan depositories; depositories and financial agents of the government	12 CFR 701.37
	Refund of interest	12 CFR 701.24
c. Miscellaneous Activities	Incidental powers	12 CFR 721
	Charitable contributions and donations	12 CFR 701.25

	Credit union service contracts	12 CFR 701.26
	Purchase, sale, and pledge of eligible obligations	12 CFR 701.23
3. Agency Programs	Community Development Revolving Loan Program	12 CFR 705
	Central liquidity facility	12 CFR 725
	Designation of low-income status; receipt of secondary capital accounts by low-income designated credit unions	12 CFR 701.34
	Regulatory Flexibility Program	12 CFR 742
4. Capital	Prompt corrective action	12 CFR 702
	Adequacy of reserves	12 CFR 741.3(a)
5. Consumer Protection	Nondiscrimination requirement (Fair Housing)	12 CFR 701.31
	Truth in Savings (TIS)	12 CFR 707
	Loans in areas having special flood hazards	12 CFR 760
	Privacy of consumer financial information	12 CFR 716
	Share insurance	12 CFR 745
	Advertising	12 CFR 740
	Disclosure of share insurance	12 CFR 741.10
	Notice of termination of excess insurance coverage	12 CFR 741.5
	Uninsured membership share	12 CFR 741.9
6. Corporate Credit Unions	Corporate credit unions	12 CFR 704
7. Directors, Officers, and Employees	Loans and lines of credit to officials	12 CFR 701.21(d)
	Reimbursement, insurance, and indemnification of officials and employees	12 CFR 701.33
	Retirement benefits for employees	12 CFR 701.19
	Management officials interlock	12 CFR 711
	Fidelity bond and insurance coverage	12 CFR 713
8. Money Laundering	Report of crimes or suspected crimes	12 CFR 748.1(c)
	Bank Secrecy Act	12 CFR 748.2
9. Rules of Procedure	Liquidation (involuntary and voluntary)	12 CFR 709 and 710
	Uniform rules of practice and procedure	12 CFR 747, subpart A
	Local rules of practice and procedure	12 CFR 747, subpart B
10. Safety and Soundness	Lending	12 CFR 701.21
	Investments	12 CFR 703
	Supervisory committee audit	12 CFR 715
	Security programs	12 CFR 748
	Guidelines for safeguarding member information	12 CFR 748, Appendix A
	Records preservation program and record retention appendix	12 CFR 749
	Appraisals	12 CFR 722

	Examination	12 CFR 741.1
	Regulations codified elsewhere in NCUA's regulations as applying to federal credit unions that also apply to federally insured state-chartered credit unions	12 CFR 741, subpart B

Appendix II-B: Summary of Comments, by Category

I. Applications and Reporting (68 FR 35589, June 16, 2003)

A. Field of Membership and Chartering Section 701.1; IRPS 03-1

Seven commenters commented on field of membership (FOM) and chartering. The commenters were generally pleased with the direction NCUA has taken with chartering; however, six commenters encouraged NCUA to do even more in this area. One commenter cautioned NCUA to chart a prudent course in this area and carefully consider the effects of granting larger FOMs to FCUs with low penetration in their existing FOMs.

The statutory changes suggested by some of the commenters were:

- Remove the "reasonable proximity" requirement in section 1759(f)(1)(B) of the FCU Act. Requiring a physical presence does not make sense in this century of Internet and remote banking.
- Remove the preference in the Credit Union Membership Access Act (CUMAA) for forming new groups over adding a group to an existing credit union. A few commenters suggested eliminating the presumption in CUMAA that a group over 3,000 may be able to form its own credit union, requiring a special analysis and consideration.
- Clarify that the limitation of 3,000 does not apply to voluntary mergers of healthy FCUs.
- Eliminate the undefined local community test.
- Allow FCUs to continue to serve SEGs after the FCU converts to a community charter. Numerous FCUs have converted to state charter because of this limitation.
- Leave it to each FCU as to how to define "family" and "household."

- State that commercial banks and thrifts have no standing to challenge NCUA FOM policies that implement the FCU Act.
- Allow FCUs to provide check cashing and money transfer services to nonmembers.

The regulatory changes suggested to IRPS 03-1 were:

- The IRPS permits an FCU to add a select group if it is in “reasonable proximity” to a wholly owned ATM or a service facility in which it has some ownership interest. Several commenters suggested deleting the “wholly owned” requirement for ATMs and the ownership requirement for a service facility. The commenters noted that the wholly owned requirement penalizes smaller credit unions and hurts credit unions that have joined an ATM network in the spirit of cooperation.
- Eliminate the geographic limitation on occupational common bond based on employment in a trade, industry, or profession (TIP). It is not required in the FCU Act, and any safety and soundness concerns can be addressed in the business plan.
- TIP should not be limited to single common bond credit unions.
- Eliminate the requirement that a credit union expanding to add a group must include with its application certain documentation from the group. The credit union should be allowed to provide all the necessary information. Most groups do not have the time or the expertise to provide the information NCUA requires. NCUA should allow an FCU to provide and attest to the information that is currently required in the group’s documentation.
- Remove the restrictions on voluntary mergers. The legislative history and recent court decisions support the interpretation that the limitations on the expansion of multiple common bond credit unions do not apply to voluntary mergers.

B. Fees Paid by Federal Credit Unions Section 701.6

Five commenters commented on this provision of the regulations. One commenter supported NCUA's efforts to decrease costs and urged NCUA to continue this effort. Four commenters noted that the overhead transfer rate (OTR) is directly related to the operating fee and urge more transparency in the process. Some of the suggestions in conjunction with greater transparency were that NCUA: make certain it is basing its calculations on accurate information; place the procedures for calculating the OTR in the regulations; and release the OTR analysis to the credit union community 60 days prior to setting a new OTR. One commenter commended NCUA on its efforts to accurately calculate the OTR.

C. Applications for Insurance Sections 741.0; 741.3; 741.4; 741.6

One commenter commented on these provisions. The commenter suggested NCUA digitize the insurance application (a digital package of electronic forms). The commenter made the following suggestions for the Form 5300 Call Report: (1) make filing as easy as possible (electronic filing with edit checks); (2) minimize the changes to the Call Report, because this is unduly burdensome to small credit unions; and (3) improve the instructions.

D. Change in Officials Section 701.14

Two commenters commented on this provision. One commenter stated the regulation is overly burdensome and invasive and suggested NCUA review and simplify it. The other commenter suggested shortening the timeframe for the region to determine if the application is complete from 10 to 5 days and shortening the region's 30-day timeframe to approve or disapprove an application. The commenter believes newly chartered and troubled credit unions should be a high priority, and that any delay in the process could derail the success of the credit union.

E. Conversion of Insured Credit Union to Mutual Savings Bank Part 708a

Four commenters commented on this provision. The commenters supported NCUA's proposed changes to this provision. The proposal is intended to ensure more accurate disclosure by requiring credit unions to provide the members with specific information so that they have sufficient knowledge to make an informed decision. The commenters also suggested amending the statute so that NCUA can require a higher percentage for approval than a majority of those voting (*see* 12 U.S.C. 1785(b)(2)(B)). The commenters do not believe it is right that a small number of members could decide the fate of the credit union. The suggestions were to require that a majority of all members vote in favor of the conversion or that a minimum of 20 percent of the members vote and that a majority of those members vote in favor of the conversion. (This is the requirement for conversion to private insurance.)

F. Mergers of Federally Insured Credit Unions; Voluntary Termination or Conversion of Insured Status Part 708b

Three commenters commented on this process. One commenter suggested amending the voting requirements in section 708b.203(c), which covers the conversion from federal to private insurance, from a majority of the members that vote, provided 20 percent vote, to requiring a majority of all members, as is required for termination of insurance in section 708b.201(c). This would require an amendment to section 1785(d)(2) of the FCU Act.

One commenter suggested allowing credit unions converting from state to federal charter to retain investments authorized under state law but not authorized under federal law for a reasonable period of time instead of requiring immediate divestiture.

One commenter asked NCUA not to follow expected guidance from FASB on the issue of merging credit unions. The guidance is expected to require the acquiring credit union in a merger of two or more credit unions to treat the merger as a purchase rather than a pooling of interests.

G. Conversion to State Chartered Credit Union Section 741.7

One commenter commented on this provision. The commenter suggested that when an FCU converts to state charter it should not be required to submit a new request for insurance and go through the insurance review process.

II. Powers and Activities

A. Lending, Leasing, and Borrowing

1. Loans to Members and Lines of Credit to Members Section 701.21. Five commenters commented on this provision. Three commenters suggested amending the FCU Act to give NCUA more latitude in adjusting the interest rate. One commenter suggested simplifying section 701.21(c)(7), the regulatory provision governing interest rates, by reducing it to one paragraph and stating the current rate, effective as of a date certain and explaining that the rate is periodically revised by NCUA.

Two commenters suggested revising the FCU Act by either eliminating the statutory 12-year loan limitation or increasing it to 15 years (*see* 12 U.S.C. 1757(5)).

One commenter suggested increasing the 20-year limitation on mobile home loans and home equity loans (*see* 12 CFR 701.21(f)).

Two commenters suggested amending the FCU Act to eliminate the requirement for board approval for loans to officials over $20,000 and instead allow the board to set the limit or, at a minimum, raise the amount (*see* 12 U.S.C. 1757(5)(A)(5)).

One commenter suggested that NCUA review its regulatory preemption provisions to ensure that they are consistent with the current case law.

One commenter suggested moving the overdraft policy rules form the lending section of the regulations to the share section. The commenter is concerned that by including them in the lending provision this may lend support to the position that overdraft policies fall within Regulation Z.

One commenter suggested clarifying in the regulations that the board may delegate the setting of loan rates and terms to credit union management.

One commenter suggested eliminating the provision in section 701.21(g) that states that “no loan shall be secured by a residence located outside the United States, it territories and possessions, or the Commonwealth of Puerto Rico.” Credit unions serve facilities that have locations throughout the world. Because of this provision an FCU cannot assist a member trying to buy a home in a foreign country.

2. Loan Participation Section 701.22. On commenter commented on this section. The commenter suggested revising section 701.22(d)(4) by removing the requirement that an FCU that is not the originating lender get the approval of the board of directors or investment committee prior to disbursement. The commenter believes that the rule should allow the board to delegate this authority to senior management with the board setting the parameters. The commenter also suggests removing the requirement in section 701.22(c)(2) that the originating lender retain 10 percent of the face amount of the loan. The commenter notes that other types of financial institutions do not have this limitation. This is a statutory requirement and would require an amendment to the FCU Act (*see* 12 U.S.C. 1757(5)(E)).

3. Share, Share Draft, and Share Certificate Accounts Section 701.35. Two commenters commented on this provision. One commenter suggested NCUA pursue a statutory change to permit credit unions to accept deposits as well as shares. One commenter suggested a legislative change to delete from the FCU Act the requirement that “[i]f the par value of a share exceeds $5, dividends shall be paid on all funds in the regular share account once a full share has been purchased.” (*See* 12 U.S.C. 1763.)

4. Member Business Loans Part 723. Five commenters commented on this provision and all five suggested raising the statutory exemption from $50,000 to $100,000 with one recommending deleting it in its entirety (*see* 12 U.S.C. 1757a(c)(B)(iii)). The commenters believe this amendment is necessary for credit unions to provide better service to their members. Two commenters suggested eliminating or revising the statutory restriction limiting a credit union's business lending to the lesser of either 1.75 times net worth or 12.25 percent of total assets (*see* 12 U.S.C. 1757a(a)). The commenters note that credit unions' business lending has no effect on the profitability of other insured institutions and is filling a niche for business loans of modest amounts. They suggest that, at a minimum, the amount should be raised to the amount permitted for thrifts.

Two commenters supported targeted statutory relief, such as for agricultural and faith-based loans.

One commenter suggested additional relief in section 701.21 for residential mortgage lending when the borrowing is basically for personal investment rather than for true business enterprise purposes. This commenter also suggested: better aligning the MBL regulatory requirements with SBA's loan requirements; and providing additional flexibility with respect to the regulatory loan-to-value limitation for MBLs.

5. Maximum Borrowing Section 741.2. Two commenters commented on this provision. One commenter noted that NCUA has a proposed rule out for comment removing the borrowing limitation of 50 percent of paid-in and unimpaired capital and surplus for federally insured state chartered credit unions. The commenter noted the limitation is statutory for FCUs and that the commenter would restrict its comments on this issue to the proposed rule. The other commenter suggested allowing all RegFlex credit unions to exceed the limitation or remove it for all credit unions. This suggestion would require an amendment to section 1757(9) of the FCU Act.

6. Leasing Part 714. One commenter commented on this section. The commenter suggested that NCUA amend the rule by eliminating the 25 percent residual value requirement in section 714.4(c). The commenter believes credit unions should have the ability to make an informed business decision as to what the residual value should be for each lease.

B. Investment and Deposits

1. Designation of Low-Income Status; Receipt of Secondary Capital Accounts by Low-Income Designated Credit Unions Section 701.34. Four commenters commented on this provision. Two commenters suggested eliminating the 20 percent of total shares limit on nonmember deposits in low-income credit unions. These commenters noted that the limit restricts philanthropic and corporate investment and that prompt corrective action (PCA) already addresses the safety and soundness concerns this limitation is addressing. One commenter suggested eliminating the requirement in section 701.34(b)(3) that a secondary capital account have a minimum maturity of five years. The commenter believes this is overly restrictive.

One commenter stated its support for secondary capital and encouraged NCUA to allow the use of secondary capital in all credit unions.

2. Fixed Assets Section 701.36. Three commenters commented on this provision. Two commenters suggested reviewing section 701.36(d), which requires an FCU that purchases property for expansion to have a plan to utilize the property for its own operation. The commenters believe this requirement unnecessarily limits an FCU's future expansion options. The commenters suggested three years is not a reasonable time to require full utilization and suggested deleting it and conditioning the purchase of the property on an ongoing relationship with the sponsor or other entity willing to provide long-term leases.

One commenter objected to the 5 percent of shares and retained earnings limitation on the purchase of fixed assets in section 701.36(c). The commenter believes this is too limiting and that the definition of fixed assets should be modified to only include land and buildings. In addition, the commenter suggested that for FCUs applying for a waiver from the 5 percent limitation that NCUA not require copies of blueprints. This is not a regulatory requirement but may be required by some regions. The commenter believes the waiver process should be simplified.

3. Investment and Deposit Activity Part 703. Three commenters commented on this provision. The commenters identified the following restricted activities as areas for relief: asset-backed securities, short-term corporate commercial paper, corporate notes and bonds, non-agency mortgage-backed securities, shares and stocks of other financial institutions, derivative authority in order to hedge interest rate risk, utilization of financial futures or interest rate risk, securities related to small businesses, residual interest in CMOs/REMICs, mortgage servicing rights, and real estate investment trusts. One commenter suggested allowing FCUs that have the expertise to engage in these activities to do so instead of limiting expanded investment options to RegFlex credit unions.

One commenter suggested exempting all FCUs and not just RegFlex FCUs from the 100 percent limitation in section 703.5(b)(ii). This provision permits an FCU to delegate discretionary control over the purchase and sale of its investments to a person other than a credit union employee up to 100 percent of its net worth. This commenter also suggested lifting the prohibition on the purchase of an investment with the proceeds from a borrowing transaction if the purchased investment matures after the maturity of the borrowing repurchase transaction. This provision does not apply to RegFlex credit unions.

One commenter supported legislation that would increase the investment options for FCUs so that they have the same authority that is approved for other federally regulated financial institutions. This commenter also supported exempting FCUs from registering with the Securities and Exchange Commission as broker/dealers when engaging in certain activities. Banks are already exempt from this requirement.

4. Credit Union Service Organization Part 712. Three commenters commented on this provision. Two of the commenters supported a statutory to change to remove the 1 percent limitation on investments and loans to credit union service organizations (CUSOs) or, at a minimum, increase it to 3 percent or 5 percent.

Two commenters suggested that, although the list of permissible activities in the current regulation is broader than prior versions of the rule, NCUA should go even further. The commenters suggested the rule include guidance as to which activities are related to the routine activities of an FCU and allow FCUs to determine if the activity is permissible. The specific examples currently in the rule should be included as an appendix to the rule and for guidance purposes only.

C. Miscellaneous Activities

1. Incidental Powers Part 721. Two commenters commented on this provision. One commenter supported legislation to permit FCUs to operate full trust departments. The other commenter suggested expanding section 721.3(d) to permit FCUs to lease excess space regardless of whether it intends to eventually occupy space. This restriction prevents FCUs from being competitive with banks.

2. Charitable Contributions Section 701.25. Three commenters commented on this provision. One commenter suggested eliminating the rule in its entirety because this activity does not pose a safety and soundness concern. Two commenters suggested eliminating the requirement in section 701.25(b) that a not-for-profit recipient that is not a 501(c)(3) be located in or conduct activities in the community in which the credit union has a place of business. The commenters suggested allowing the FCU to select the recipient based on location of members.

3. Purchase, Sale and Pledge of Eligible Obligations Section 701.23. One commenter commented on this provision and suggested a statutory change to remove the limitation of 5 percent of unimpaired surplus and capital limitation on the purchase of eligible obligations (*see* 12 U.S.C. 1757(13)).

4. FCU Bylaws. Two commenters suggested that NCUA include the FCU Bylaws in its EGRPRA review. One of those commenters also noted that, by including some of the standard bylaw amendments in the revised 1998 FCU Bylaws (FCU Bylaws) and requiring NCUA approval to adopt those not included in the FCU Bylaws, NCUA had reduced regulatory flexibility. It should be noted that as part of its 2004 regulatory review NCUA is seeking comment on the FCU Bylaws.

III. Agency Programs Parts 705, 725, and 742; Section 701.34 (70 FR 75986, December 22, 2005)

One commenter suggested reducing NCUA's requirement that a credit union have 7 percent capital for six consecutive quarters to be eligible for participation in the agency's RegFlex program. This commenter urged the agency to continue to look for ways, consistent with safety and soundness considerations, to reduce the regulatory burden for community development and low income credit unions. One commenter recommended NCUA adopt the approach followed by the Department of the Treasury's CDFI Fund for designating median incomes in geographic areas for NCUA's program of designating low-income credit unions. The commenter noted that NCUA follows this convention in designating "underserved areas." This commenter also opposed recent changes by NCUA to the secondary capital rules, such as the requirement to obtain the Regional Director's approval before accepting an investment of secondary capital. This commenter offered several comments on aspects of the NCUA's revolving loan program rule, including eliminating some unnecessary provisions, improving the administration of other provisions, and either eliminating the community needs plan outright or making it subject to public review. The commenter recommended NCUA consider changing the loan program into a secondary capital program and eliminating as unnecessary and burdensome compliance with our non-member public unit share account rules once the loan to NCUA is repaid.

IV. Capital Part 702; Section 741.3 (70 FR 75986, December 22, 2005)

Seven of the eight commenters expressed strong support for a risk-based capital approach and advocated that NCUA continue to pursue necessary changes to the FCU Act to enable it to fully implement such a program. Six of these also advocated implementation of a risk-based capital program for corporate credit unions as well, and urged NCUA to continue its ongoing dialogue with the industry on this topic. One commenter noted that corporations have relatively more conservative investments and less risky loan portfolios, which supports the argument that a risk-based approach to capital is appropriate. One commenter noted that credit unions are unique among regulated financial institutions in their absence of a risk-based capital regime. In respect of the prompt corrective action rules, one commenter recommended that NCUA not require a credit union meeting the "adequately capitalized" test to undertake corrective action; another suggested that corrective action not be required where the credit union's capital ratio falls between 4 percent and 5 percent. One commenter noted that implementation of a risk-based net worth program could be complicated and expensive for smaller credit unions. Another commenter noted its support for the current accounting treatment allowed for a credit union's investment in the NCUSIF.

V. Consumer Protection

A. Lending-Related Rules (69 FR 5300, February 4, 2004) Note: includes certain Federal Reserve Board (FRB) rules that affect credit unions. Commenters did not offer suggestions on any rule developed or issued by NCUA, although one commenter suggested that the Federal Credit Union Act should be amended by eliminating or modifying the usury ceiling contained in section 107 of the Act.

1. Regulation Z, Truth in Lending 12 CFR 226 (FRB). Two commenters suggested amending Regulation Z to require that the costs associated with accepting a below-market financing offer, such as foregoing an available rebate or price reduction, be included in the finance charge and calculation of the annual percentage rate (APR). Two commenters suggested revising Regulation Z's requirement that debt cancellation fees may only be excluded from APR where the applicant has asked for the debt cancellation product in writing. The commenters characterized this requirement as unduly burdensome and asked that it be amended. They noted that many applicants seek credit through telephonic or electronic means, and that requiring a written request for a debt cancellation product is time-consuming and unnecessary. Two commenters requested that Regulation Z be amended to exclude cash advance fees from APR, noting these fees are typically assessed on a one-time basis, which they consider to be inconsistent with the purpose of disclosing APR. Two commenters requested that fees assessed as part of an overdraft protection program be excluded from APR. One commenter recommended that the three-day right of rescission available to applicants seeking a home equity loan or a mortgage refinance be eliminated. The commenter characterized the provision as unnecessary and rarely used. One commenter recommended that Regulation Z be amended to permit use of a consolidated APR disclosure where rates for cash advance, purchase, and balance transfer are the same. One commenter asked that the Federal Reserve provide clearer guidance on Regulation Z's disclosure requirements where a risk-based credit card program is offered.

Two commenters recommended amending the Truth in Lending Act to eliminate the required use of APR. These commenters suggested that use of APR has become counterproductive and confusing to consumers, who do not understand what costs comprise APR or why there is a difference between their note rate and the APR. One noted that several of the cost components in APR are not imposed or controlled by the lender. One stated that most consumers no longer use APR for comparison purposes, and also that the costs of calculating APR exceed any benefit from its use. Both commenters believe consumers would be better served with a more simplified disclosure of the interest rate and an itemization of costs and discount points assessed by the lender.

2. Regulation C, Home Mortgage Disclosure 12 CFR 203 (FRB). Three commenters objected to recent amendments to Regulation C adopted by the Federal Reserve requiring lenders to pursue questioning related to race when they receive applications electronically or via the telephone. These commenters stated that lenders who receive these types of applications are typically unaware of the applicant's race. They suggested that pursuit of such information by the lender is both unnecessary and possibly counterproductive, instilling doubt in the mind of the applicant as to the integrity of the process. One commenter cautioned that the Federal Reserve should avoid exalting the pursuit of data over the regulation's basic purpose, which is to discourage unlawful discrimination. Two commenters pointed out that the Federal Reserve's recent determination to change Hispanic to an ethnic rather than a racial category could be counterproductive, since ethnicity is not a protected class under the fair lending rules. One commenter suggested that the Federal Reserve should raise the threshold for reporting obligations under Regulation C to include only those lenders who originate at least $25 million in mortgage loans annually. This change would place depository institution lenders on the same footing as non-depository lenders. One commenter opposed the Federal Reserve's recent amendment to this rule expanding the definition of home loan to include any loan in which some amount of the proceeds is earmarked for home improvement. The commenter believes this change makes the scope of the rule too broad and more difficult to monitor for compliance purposes.

3. Regulation B, Equal Credit Opportunity 12 CFR 202 (FRB). All four commenters objected to the Federal Reserve's recent amendments to Regulation B imposing new standards for determining if an application for credit has been made jointly. The commenters believe these new standards, which preclude a lender from relying on either a joint financial statement or joint signatures on the promissory note as evidence of intent to jointly apply for an extension of credit, unduly increase the compliance burden and will result in delays. One commenter noted that use of the new standards is particularly difficult with telephonic or electronic credit applications.

4. Flood Insurance Part 760. Two commenters complained that the federal statute that authorizes funding for flood insurance needs annual congressional appropriation. The commenters are concerned that the appropriation process results in needless uncertainty about whether the required funds will be available. The commenters suggested that the enabling legislation be amended to provide for an automatic appropriation.

5. Federal Credit Union Act; Usury Ceiling. One commenter called for an amendment to section 107 of the Federal Credit Union Act to eliminate the 15 percent annual interest rate ceiling. The commenter noted that the FCU Act provides the NCUA Board with authority to establish a different usury ceiling under certain circumstances for periods not in excess of 18 months. The commenter stated that the possibility of change every 18 months creates uncertainty hindering the development of new loan products. The commenter believes the NCUA Board has ample authority to regulate against interest rate risk and suggested that the statutory usury ceiling has become unnecessary and arguably excessive.

6. Guidance on Electronic Disclosures. One commenter asked that the Federal Reserve provide guidance to the financial sector about the use of electronic disclosures under its lending regulations, as well as its electronic funds transfer and truth in savings regulations. The commenter stated that greater flexibility is necessary concerning what constitutes an "electronic address" and that clarification is necessary about how a consumer may evidence his or her consent to accept disclosures electronically.

B. Share Account–Deposit Relationships and Miscellaneous Consumer Regulations (69 FR 41202, July 8, 2004) Note: includes FRB rules governing Electronic Fund Transfers (Regulation E).

1. Truth in Savings Part 707. Two commenters suggested amending the Truth in Savings rule to eliminate the requirement that annual percentage yield on savings accounts be calculated and disclosed periodically, citing confusion that results on the part of consumers from this calculation. Two commenters also suggested that the rule be amended to eliminate the cumulative reporting of fees, as is presently required. One commenter suggested updating the dollar amount for determining if a bonus is permissible from $10 to $25, along with eliminating the required aggregation of de minimis items. Other suggestions to improve this rule included conforming the change in terms notice requirement to the 21 days that is required in Regulation E, as well as permitting the use of the acronym "APY" for annual percentage yield, similar to that which is permitted in Regulation Z for annual percentage rate. A commenter suggested modifying the requirement in the rule pertaining to advance disclosures in the case of non-check transactions, citing the difficulty in doing so with present technology. Two commenters suggested allowing notices to be delivered electronically through the home banking interface, rather than through e-mail, given the better security available in such programs. One commenter noted that this is a preferable approach in other consumer disclosures as well, such as Regulations Z, E, and M. Finally, one commenter supported the continued use of this rule as the principal avenue for regulation of bounce protection programs.

2. Privacy Part 716. Two commenters noted opposition to the requirement of annual consumer privacy notices where there has been no change in privacy policy and no right of opt-out. One commenter acknowledged this is a statutory requirement and sought NCUA's support for a change in the law. This commenter also stated there was no need to change the form of privacy notices, especially where a short form with no opt out is used. Three commenters indicated that any change to the privacy notices ought to await completion of rule changes required by the Fair and Accurate Credit Transactions Act (FACT Act), which was enacted last year and amends the Fair Credit Reporting Act. One commenter suggested NCUA should amend the definition of affiliate to include a company that may be owned or controlled by more than one credit union.

3. Electronic Funds Transfers 12 CFR 205 (FRB). Two commenters opposed any change from current requirements relating to debit card transactions, and indicated that technological difficulties exist with providing fee information in connection with point of sale debit card transactions. One commenter also noted opposition to any requirement that transaction fees on ATM or POS transactions be disclosed on a year-to-date, cumulative basis on periodic account statements.

4. Share Insurance Part 745. One commenter approved of the use of examples of share insurance coverage in the appendix to the share insurance regulation and asked that two additional examples, relating to insurance coverage for joint revocable trusts, be added. One commenter suggested that NCUA include the examples as part of official staff commentary, subject to notice and public comment. The commenter also recommended that NCUA include staff interpretations in the official commentary, as an alternative to the use of private legal opinion letters.[69]

VI. Corporate Credit Unions (70 FR 75986, December 22, 2005)

A. Corporate Credit Unions Part 704

Commenters addressed several other aspects of the corporate rule and related matters. One commenter requested different treatment for corporations for Bank Secrecy Act compliance and anti-money laundering rules because of corporates' lower risk profile. One commenter advocated more flexibility for corporates' investments, such as permitting derivatives indexed to inflation, to allow beneficial hedging opportunities. This commenter also advocated narrowing the scope of the corporate CUSO rule so the rule only applies to CUSOs in which a corporate has a controlling interest. This commenter opposed the loan limits applicable to corporate lending to CUSOs and suggested NCUA make loans to CUSOs subject to the same or comparable rules as member loans. This commenter stated the requirement that a corporate obtain a legal opinion addressing the issue of corporate separateness is burdensome and unnecessary in view of the actual risks. This commenter also asserted part B Expanded Authority, part V, is unduly burdensome when applied to wholesale corporates, because it restricts loan participation authority to loans made by members and natural person credit unions cannot be members of wholesale corporates.

Two commenters requested NCUA change the provisions of section 704.2 to enable corporates to settle ACH transactions on the settlement date, not the advice date. One commenter requested NCUA remove the restriction in section 704.14(a)(2), contending it unnecessarily restricts corporates from considering the full range of potential directors. This commenter also advocated that NCUA allow CUSOs to engage in the full range of permissible lending available to credit unions and allow corporates to deal in CUSO loans in the same manner as credit union

[69] The appendix to part 745 is published for comment as part of the rulemaking process and includes both examples and interpretations.

loans. This commenter advocated greater flexibility in the loans to one borrower limits, especially for corporates holding expanded authorities. This commenter also indicated the requirement in section 704.12(a)(1), pertaining to providing services to nonmembers only through a correspondent agreement, is overly burdensome and reduces competition and so should be eliminated. Finally, this commenter recommended NCUA prepare guidance on corporate mergers because they are likely to continue for the foreseeable future.

VII. Directors, Officers, and Employees (70 FR 39202, July 7, 2005)

A. Parts 711 and 713; Sections 701.21, 701.33, and 701.19

1. Officers, Directors, and Employees. Two commenters wrote in support of a provision currently in both the Credit Union Regulatory Improvements and the Regulatory Relief bills pending in Congress that would allow a credit union to reimburse a volunteer for wages lost due to time spent in service to the credit union. Two commenters recommended that NCUA amend section 701.21, the general lending rule, to specify that a credit union employee who is also a member of its board of directors can receive any discounts, for example in interest rates, that the credit union makes available to other employees.

Two commenters that had previously submitted comments on the proposed amendments to part 713 reiterated their comments here. Each suggested that NCUA expand its eligibility criteria for the higher deductible beyond credit unions that qualify under NCUA's RegFlex program and allow well capitalized credit unions to qualify under the rule. One reiterated its support for the proposed changes to the coverage limits in the rule. The other reiterated its request that NCUA add a waiver procedure to enable credit unions needing a longer time period to procure a bond with different coverage as required by the rule. This same commenter asked that we also include an exemption procedure for credit unions to avoid having to meet the new coverage limits. A third commenter suggested that NCUA clarify the distinction between references to a credit union's board of directors and the NCUA Board.

One commenter requested that NCUA broaden the provisions in section 701.19(c) to allow greater discretion and flexibility in making investments to support employee benefit plans.

VIII. Anti-Money Laundering (70 FR 5946, February 4, 2005)

A. Anti-Money Laundering Part 748

Five commenters sought guidance and clarification from NCUA concerning requirements to file SARs; one sought an outright exemption from the filing requirements for small credit unions. Three commenters recommended raising the threshold for filing Currency Transaction Reports from the current $10,000 trigger; one sought an expansion of the time in which filing is required to 30 days. One commenter recommended raising the thresholds for reporting on monetary instruments from the current $3,000 trigger and for filing money laundering SARs from its current reporting threshold of $5,000. This commenter also advocated establishing a de minimis threshold for reporting insider theft and abuse, as well as eliminating the annual recertification requirements for exempt customers. Two commenters sought training and guidance from NCUA, in concert with the other banking regulators, on what constitutes an adequate anti-money laundering program and what requirements apply in testing and auditing of these programs. Two commenters recommended that the Office of Foreign Assets Control be merged with FinCEN under the auspices of the Department of the Treasury.

IX. Rules of Practice and Procedure (70 FR 39202, July 7, 2005)

A. Parts 709, 710, 747

1. Rules of Practice and Procedure. No commenters addressed any aspect of the rules of practice and procedure.

X. Safety and Soundness (70 FR 39202, July 7, 2005)

A. Safety and Soundness Parts 703, 715, 722, 741, 748, 749; Section 701.21

Four commenters suggested amending the Federal Credit Union Act to provide NCUA with greater flexibility in establishing maximum rates and maturities on loans. One commenter suggested liberalizing the requirements in the lending rules governing approval for loans to insiders. Although the MBL rule was not specifically included in this notice, two commenters recommended changes to it, including expanding the permissible maturity limits and allowing individual boards of directors to make some of the decisions that currently require NCUA waiver or specific approval. One commenter suggested expanding the privileges available to RegFlex credit unions in the MBL context to all adequately capitalized credit unions. The same commenter suggested raising the threshold for the mandatory use of appraisals above its current statutory limit of $250,000 for real estate loans.

Three commenters addressed the investments rule. One recommended eliminating restrictions on purchasing steeply discounted CMOs, and another suggested extending the investment privileges available to RegFlex credit unions to all adequately capitalized credit unions. The third commenter suggested amending the investment regulation to require closer monitoring and reporting of investments that fall outside of the board’s investment policy.

One commenter requested that the NCUA permit smaller credit unions to file the 5300 Call Report on a semiannual or annual basis, rather than a quarterly basis. Four commenters sought clarification and liberalization of our recordkeeping rule, including guidance on what constitutes a vital record and clarification about the time period after which records that pertain to a merged credit union may be destroyed by the continuing credit union.

B. Impact of NCUA Rules on Federally Insured Credit Unions Part 741

One commenter sought clarification on the extent to which NCUA’s rules apply to state-chartered, federally insured credit unions. This commenter opposed NCUA's current method, as reflected in 12 CFR 741, that notes those rules that apply to federally insured state credit unions. The commenter believes this approach leads to confusion and uncertainty, especially when a rule may not apply in its entirety to a state credit union. The commenter recommends NCUA should restate explicitly which of the rules outside of part 741 apply to these credit unions, even if this results in some redundancy in the rules.

C. Miscellaneous

Two commenters addressed documents recently published by NCUA that provide guidance to credit unions. The guidance documents, dealing with overdraft protection programs and incident response programs in cases involving breach of security, are intended to assist credit unions to comply applicable regulatory and statutory requirements but do not have the force or effect of regulations. One commenter suggested that the bounce program guidance was incorrect in calling for overdrafts to be reported as loans, and also questioned the recommendation in the guidance concerning notice to consumers about the availability of overdraft protection in non-checking account transactions such as debit card or ATM use. The other commenter, addressing the security program guidance, recommended that NCUA clarify the steps a credit union should take in monitoring an account that has been the subject of a security breach.

Although not discussed in an EGRRPA notice, one commenter offered specific suggestions in support of several items included in the regulatory relief bills currently pending, including support for raising the CUSO investment authority from 1 percent to 3 percent of assets, or higher as determined by the credit union's level of capital adequacy. The commenter also supports allowing a continuing credit union in a merger to include the retained earnings of the merging credit union in calculating and reporting its net worth, as well as permitting credit unions to cash checks and provide wire transfer services to anyone within the field of membership. Finally, the commenter supports allowing a converting credit union to continue to serve members of a select employee group post-conversion and providing NCUA with greater flexibility in adjusting the FCU usury ceiling.

XI. Total Comments Received, by Type

In response to its 6 published notices soliciting comment on its 10 categories of rules, NCUA received a total of 41 comments. Of these, 17 were generated by national trade associations, 13 by natural person credit unions, 6 by state credit union leagues, 3 by corporate credit unions, and 2 by individuals.