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MEMORANDUM

TO: EGRPRA/FDIC

FROM: Steven J. Eisen

DATE: April 29, 2004

RE: Comments on Regulatory Changes Needed

My top ten general comments about all the regulations:

1. Rather than allowing consumer groups to use Congress and the media to use political agendas to impose police powers (and penalties and liability for nonexercise thereof) on financial institutions, banking regulations should be implemented and enforced based on a complaint driven examination process similar to that used by the banks' competitors in the insurance and securities industries.

2. Applaud and recognize the good work done by 99% of the banking industry by adding more exceptions to many of the reporting and implementation rules triggered by certain thresholds; i.e., if a bank is "well capitalized," certain regulatory procedures do not need to be followed.

3. In light of inflation and changes in the economy and marketplace, every threshold currently included in any regulation should be examined for change either to a new threshold or a formula that will automatically change over time; i.e., appraisal rules kicking in at a higher loan amount than the $250,000 currently used; or big bank CRA standards being made applicable at a higher defined institution size.

4. Publish more assistance materials to help banks understand the rules they are supposed to follow so that they do not have to spend so much money on lawyers (like me), accountants, and other outside advisors. I am not looking for more requirements that sometimes come out in interpretive releases, but a more coordinated regulatory effort to publish instruction booklets similar to what the OCC has done a great job doing in many areas. Also, the Federal Reserve publishes commentary periodically on Reg Z, but what about all the other regulations?

5. Do not make changes for change's sake. Bankers' worst nightmare occurs just after they have finally figured out what they are supposed to do to comply with a particular

regulation. Then, the regulation has minor changes made to it, so that first, time is wasted while the regulators try to figure out what the change means, and then the bankers must figure it out. CRA, which is changed about every 5 years, is a great example of this.

6. Use focus groups of bankers to test out new regulations before they are imposed on all banks. Pay the banks for their trouble in being the guinea pigs.

7. Training for all regulators should be done jointly. It is very frustrating when different regulators interpret the same rules different ways. In addition, certain regulators should be designated as being the final arbitrators of particular rules. For example, the interpretation of 23A should be left to the Federal Reserve, which originally adopted the rule, but my experience is that when the FDIC tries to interpret it, they are generally wrong, and now the FDIC has even proposed a new reg where they say the FDIC will be the final determinator of interpretations, which I believe is going in the wrong direction,

8. When special items are added to on-site examiners' checklists of items to review in a bank (for example, if examiners are being asked to pay special attention to RESPA compliance this year), why not inform the banks of this special concern ahead of time, rather than using it as a "gotcha" program for the examiners to look like heroes to their bosses.

9. Lack of communication and information, even in today's internet and computer society, still seems to be a downfall in the relationship between regulators and bankers who they are supposed to help. For example:

(a) If the results of criminal investigations from CTR and SAR reporting were made more known to bankers, they might better appreciate the burden on them and may even provide better information.

(b) If the Ombudsman's office publicized its success stories, maybe bankers would not be so fearful of the perceived retribution if they complain to the Ombudsman's office. (PS - I understand there is a proposal to eliminate the Ombudsman; while I do not think it is effective on account of the fear of bakers to use it, eliminating the office would add more anxiety for the bakers and send the wrong message; therefore, steps need to be taken to encourage use by bankers.)

(c) Bankers feel that examiners get promotions based on how many problems they can find in a bank. While I am sure the regulators would deny this, more information on the promotion process, which hopefully is based somewhat on positive comments from bankers, might help this perception.

10. The biggest burden that bankers fear is not the law and regulations implementing the law, but the examiners and agencies themselves who use their subjective powers to misinterpret laws and regulations, bankers' intentions, and the business of banking. For example:

(a) The threat of civil monetary penalties is so overused that while it has become the boy who cried wolf in my eyes (I have seen it threatened very often in my 22 years experience, but never assessed), it is really very insulting to respected business people, especially in small communities.

(b) Bankers do not know whether to discuss issues with examiners or not. In the same week, one of my clients was criticized by an examiner for not arguing with him, implying that the banker either did not care or did not understand the examiner's comments; while another of my bank clients was criticized for arguing about the quality of a loan and was told that his attitude was a bigger problem than the loan issue and needed to be corrected.

(c) Very often, the excuse for an interpretation is that the examiner has not seen it done the banker's way before or that Bank A should do it the same way as its competitor, Bank B. This is a regressive, rather than progressive, attitude towards the business of banking which must constantly be changing to keep up with the new expanded competitive environment.

(d) Teach examiners and other regulatory officials some bank business classes so that they understand why banks operate the way they do. Quite often, the examiner loses sight of why a regulation might have been adopted and how it should interact with the business operations of the bank. State regulators are better about understanding the policy implications of rules and the business of banking, while federal regulators seem very distant from this reality.

The following are my specific comments about the regulations as outlined in the June, 2003 Federal Register Notice about EGRPRA:

Applications and Reporting	
Bank Merger Act	1. Eliminate the 15 day waiting period for the Justice Dept; the regulators check with Justice before they approve, so there is no longer any purpose of delaying closing another 15 days 2. Reduce newspaper notice to one time like most other regs
Change in Bank Control	Eliminate filing requirement for owners who become largest shareholder without any action on their part; i.e., a 17% largest shareholder sells 3% to a third party, while the little old lady who owned 15% did absolutely nothing, but now she has to file an application, fill out 20 pages of financial statements, and publish a notice in the paper about her personal business!
Notice of Addition or Change of Directors	
Rules, Policies, and Procedures for Corporate Activities	See comments below under Powers and Activities
Holding Companies – Formations, Acquisitions and Nonbanking Activities	There are too many categories of when to file (before, after, 12 day, 10 day, 30 day, etc…de novo activity/non-de novo activity, …) - need to simplify the types of notices or applications
State Member Banks	
Call Reports and Other Forms, Instructions and Reports	
Deposit Insurance Filing Procedures	1. The Statement of Policy on Applications for Deposit Insurance of the FDIC is outdated and enforced inconsistently. The most confusing section deals with compensation of insiders (the use of options and the like). I know that the FDIC does not want anyone to benefit from the granting of FDIC insurance, but if the new bank's prospectus gives full disclosure to the compensation and shareholders buy stock knowing what the compensation is going to be, why should the government care about the allocation of the bank's shareholder value between shareholders. The regulators are supposed to be protecting the FDIC insurance fund and the public, not private investors who have been given disclosure about what their investment entails. I have been following this procedure for 22 years with over 35 de novo banks, and I still get inconsistent interpretations of these rules, which is another good reason to eliminate them, since if there was a good purpose, everyone would know what it was and would be able to enforce the rules consistently. 2. Why does a de novo bank have to be told after it opens that it must file and wait for approval on a trust powers application when there is a checkbox included on

	the Application for Deposit Insurance asking whether the bank wants to exercise trust powers and all the information about trust powers is included in the Application for Deposit Insurance filing? This has happened to me a number of times lately with de novo banks filing with the FDIC.
Extension of Corporate Powers – General Character of Business	
Filing Procedures and Delegations of Authority	Applications filed on delegated authority still seem to have a lot of scrutiny performed by Washington folks, which results in additional mounds of questions and paperwork "just in case someone in Washington might ask;" if its delegated, make it really delegated.
Mutual-to-stock conversion	
Application Processing Procedures	OCC allows some e-filing, but outside lawyers for the institution are not allowed access, so most banks who still want their lawyer to file their application receive no benefit from the e-filing process; the FDIC and other agencies are getting ready to implement similar procedures and should not make the same mistake. The excuse is confidentiality, but lawyers operate by very high confidentiality standards.
Capital Distributions	
Federal Mutual Savings Associations – Incorporation, Organization and Conversion; or Merger, Dissolution, Reorganization and Conversion	
Federal Stock Savings Associations– Incorporation, Organization and Conversion	
Mutual to Stock Conversions	
Offices/Branches	1. I have a national bank wanting to use a temporary branch while a new building is being built. I filed a single application for both, but the OCC is making me file a new branch app for the temporary location, and then wants me to file another application later for the permanent building even though the temporary site will only be used a few months. This is redundant and should have been able to be handled in one application. 2. The day has come to allow all financial institutions to branch nationwide like thrifts. 3. Eliminate branch applications all together if bank is well capitalized.
Regulatory Reporting Standards; Other Reporting Requirements; and Recordkeeping	

Powers and Activities	
Bank Activities and Operations	I have experienced numerous problems and inconsistent and illogical interpretations of Part 362, for example:

	1. I spent many months and many legal fees convincing the FDIC lawyers in Memphis that owning and operating property should be deemed a "single purpose" subsidiary. 2. Over the years, many of my bank clients have been told they had to form a wholly-owned subsidiary to invest in another subsidiary to perform certain activities. This has led to much extra time and expense to form an extra subsidiary, when the additional liability protection is irrelevant. More recently, with respect to an investment in a title insurance agency, Pamela LeCren, senior counsel with the FDIC, informed me that the subsidiary of a subsidiary rules in Part 362.4 are not an exclusive way to invest in certain activities. Once again, banks and lawyers get different interpretations from the FDIC's legal staff in Memphis and in Washington, although I tend to go with Ms. LeCren as the senior authority on Part 362.
Community Development Corporations, Community Development Projects, and Other Public Welfare Investments	
Debt Cancellation Contracts and Debt Suspension Agreements	
Fiduciary Activities of National Banks	
Investment in Bank Premises	
Investment Securities	
Leasing	
Real Estate Lending	
Sales of Credit Life Insurance	
Bank Holding Companies and Financial Holding Companies	
State Member Banks	
Activities of Insured State Banks	
Activities of Insured State Savings Associations	
Deposits	1. Eliminate rules on deposit accounts so businesses can have interest bearing accounts, there will be no need for NOW accounts, and life will be simpler.
Electronic Operations	
Fiduciary Powers of Savings Associations	
General	
Lending and Investment	
Mutual Holding Companies	
Preemption of State Due-On-Sale Laws (Implementation of Garn-St Germain)	
Preemption of State Usury Laws (Implementation of DIDMCA)	
Savings and Loan Holding Companies	
Subordinate Organizations	

International Operations	
International Lending Supervision	
Foreign Operations of National Banks	
International Operations of U.S. Banking Organizations	
Edge and Agreement Corporations	
Foreign Banking Organizations	
Export Trading Companies	
Foreign Branching and Investment by Insured State Nonmember Banks	

Banking Operations	
Prohibition of Payment of Interest on Demand Deposits	
Assessment of Fees	
Bank Operations	
Availability of Funds and Collection of Checks	More coordination between the regulators and NACHA needs to occur; NACHA seems to adopt policy geared totally towards the benefit of its large members and in a fashion that keeps little guys out (sounds like anti-trust to me).
Collection of Checks and Other Items by Federal Reserve Banks and Funds Transfers Through Fedwire	
Reimbursement for Providing Financial Records; Recordkeeping Requirements for Certain Financial Records	
Reserve Requirements of Depository Institutions	
The Payment System Risk Reduction Policy	
Assessments	
Assessment of Fees upon Entrance to or Exit from the Bank Insurance Fund or the Savings Association Insurance Fund	
Determination of Economically Depressed Regions	
Assessments and Fees	

Capital	
Prompt Corrective Action	
Risk-Based and Leverage Capital Adequacy Standards	
Changes in Permanent Capital; Subordinated Debt as Capital	

CRA	
Community Reinvestment Act	1. Many large banks, however they are defined, operate in small communities where the required community investment vehicles are not available; therefore, addressing the size threshold for large banks is not the

	only issue to address, but also the location of the bank and its opportunities to invest, which usually end up being in other communities. 2. The CRA exemptions (like for wholesale banks) even for small banks are not broad enough for the changing marketplace and technology. When a bank does not operate publicly from its main operational office, it should not be required to define its market around a circumference from such main office.
Disclosure and Reporting of CRA-Related Agreements	

Consumer Protection	Do not jump on the political predatory lending or preemption bandwagon. Neither banks nor the OCC are bad guys, and there is no need for micromanaging behavior in this industry.
Consumer Protection in Sales of Insurance	
Fair Housing	
Loans in Identified Flood Hazard Areas	1. Eliminate these disclosure requirements; banks do not have to deal with this for fire or liability insurance so what special interest is the government trying to protect? 2. Eliminate the mandatory penalties - why should banks be the policemen for consumer ignorance?
Privacy of Consumer Financial Information	1. Requiring annual opt out and privacy statements is a total waste of money; everyone throws them away unless you want to see what others are using in order to adopt their language in your own notice. 2. Otherwise, leave it alone.
Prohibition Against Use of Interstate Branches Primarily for Deposit Production	Who cares - this is strictly a state protectionist law whose time has past.
Safeguarding Customer Information	This will be a hotbed of litigation in the future caused by heightened awareness from regulatory issuances. The standards are very wishy washy, and before examiners start chastising banks for their procedures, maybe the regulators should establish a standard of compliance (which will help in future litigation), then make suggestions for improvements, and finally grant a safe harbor period for compliance before pouncing on the banks.
Unfair or Deceptive Acts or Practices	GET RID OF RIGHT OF RECCISION - nobody ever uses it, so it just becomes a consumer inconvenience; if the customer wants to rescind, he can always pay off the mortgage.
Consumer Leasing	
Electronic Fund Transfers	
Equal Credit Opportunity	
Home Mortgage Disclosure Act	1. Most every banker will tell you HMDA is the most burdensome regulation there is; I do not need to say more.

	2. RESPA is another burdensome and illogical act for which even HUD does not have the gumption to push through reforms; therefore the title companies, mortgage companies, and other competitors to the banking industry will continue to have their way to use this law to keep bankers out of their marketplace.
Truth in Lending	Way too many details; bankers say that a borrower has to sign 13 places on various forms to borrow money against his house, and the borrower perceives the paperwork as nothing more than a justification for the bankers and lawyers to charge him more to close the loan. I guess bankers should really thank the government for this one during falling interest rate times; otherwise, it would really be too easy to refinance a loan.
Truth in Savings	APY is a term nobody understands or cares about and using it as a consistent comparison has lost its benefit in the more sophisticated world of consumerism.
Advertisement of Membership	Whether or not there is a sign, everyone assumes every bank is FDIC insured, which they are, so why do banks have to spend money saying "isn't our government great"?
Deposit Insurance Coverage	$100,000 is old and out of date
Notification of Changes of Insured Status	
Advertising	
Tying Restriction Exception	As long as consumers have a choice of financial institutions to use, especially with more options available on the internet, why does it matter if a bank wants to tie services to each other. This should be regulated by competition, not Washington.

Directors, Officers & Employees	
Disclosure of Financial Information	
Golden Parachute and Indemnification Programs	The regulators have expanded their threats regarding golden parachutes to micro-managing banks regarding all compensation plans; this is not the purview of bank regulators and should only be judged by shareholders in making sure Boards are exercising their fiduciary duties, for which the shareholders have remedies without the aid of government.
Limits on Extensions of Credit to Executive Officers, Directors and Principal Shareholders; Related Disclosure Requirements	Disclosure is OK, but limits need to be raised; basically, this forces insiders to bank elsewhere, which does not do any good for community banks in particular.
Management Official Interlocks	Everybody competes with everyone else everywhere, so this law is antiquated and not needed at all any more.
Bank Activities and Operations – Corporate Practices	
Board of Directors Composition	
Bond Coverage	
Employment Contracts, Compensation, Pension Plans	

Restrictions on Transactions with Officers, Directors, and Others	

Money Laundering	
Bank Secrecy Act Compliance	1. Too many reports required - exemptions need to be clearer. 2. Do not make the bank more liable than the criminal for unintentional non-compliance. 3. Notify banks the good that these reports do. 4. OTS has issued RB 18-6 summarizing the PATRIOT Act requirements; why shouldn't this be an FFIEC bulletin for everyone's use? In the same RB, though, the OTS threatens banks with cease and desist orders for noncompliance (incentive by threat again)!
Reports of Crimes or Suspected Crimes	Ditto on the above.

Rules of Procedure	
Uniform Rules of Practice and Procedure	
Voluntary Liquidation	
Resolution and Receivership Rules	
Restrictions on Sale of Assets by the Federal Deposit Insurance Corporation	
Investigative Proceedings and Formal Examinations	Allow specific exemption for aquirors to review acquiree's exam reports
Possession by Conservators and Receivers for Federal and State Savings Associations	
Removals, Suspensions and Prohibitions Where a Crime is Charged or Proven	

Safety and Soundness	
Appraisal Standards for Federally Related Transactions	1. Way too broad - many examples from bankers of instances where the customer had to be charged for a new appraisal where it was totally unnecessary, i.e., where the same bank refinances a loan but is taking no additional risk. 2. Raw land requirements need to be eased.
Frequency of Safety and Soundness Examination	
Lending Limits	Make permanent the 3 year pilot on increased limits
Real Estate Lending Standards	
Security Devices and Procedures	
Standards for Safety and Soundness	
Transactions with Affiliates	In my experience, the FDIC has major confusion how to interpret this reg, which should be the purview of the Federal Reserve anyway. The new FDIC proposal, which adopts a Reg W-like regulation, may help, but the fact that the FDIC states more emphatically that it will decide interpretations of the Reg shows further how

	different regulatory agencies can deviate and cause confusion and different standards of compliance from the banks. I have had bank clients spend years arguing and finally winning arguments with the FDIC and Federal Reserve on: 1. Whether wholly owned sister banks which together have control of a subsidiary conforms to the exemption from 23A for controlled subsidiaries of sister banks. 2. Whether loans secured by the guaranteed portion of SBA loans are exempt from being deemed "covered transactions" under 23A when 23A is very clear that it exempts "making a loan…fully secured by…obligations fully guaranteed by the United States or its agencies" and when we had the SBA pleading our case for 2 years.
Other Real Estate Owned	
Extensions of Credit by Federal Reserve Banks	
Limitations on Interbank Liabilities	
Annual Independent Audits and Reporting Requirements	Annual audits are great, but requiring inside auditors to be distinct from outside auditors has become very costly to small banks (do not tell me this is not required, because examiners are indirectly imposing this requirement on all banks, with their typical "hint, hint.")
Unsafe and Unsound Banking Practices (Standby Letters of Credit and Brokered Deposits)	In today's internet world, brokered deposits should not be viewed as an evil but as a condition of our times and the American way of encouraging competitiveness.
Audits of Savings Associations and Savings Association Holding Companies	
Financial Management Policies	
Lending and Investment – Additional Safety and Soundness Limitations	

Securities	
Banks as Registered Clearing Agencies	
Banks as Securities Transfer Agents	When a small bank acts as its own transfer agent or for its one-bank holding company, no registration should be required.
Government Securities Sales Practices	
Recordkeeping and Confirmation of Securities Transactions Effected by Banks	
Reporting Requirements for Reported Securities Under the Securities Exchange Act of 1934	
Securities Offerings	Sarbanes-Oxley is a nightmare and huge cost for all of corporate America, but is especially proportionally burdensome for small banks. Although technically not required to comply if assets are under $500 million, examiners are imposing Sarbanes-Oxley standards on small banks which not only creates direct costs but additional anxiety since these banks do not know which

	rules to follow and which they do not need to follow.
Municipal Securities Dealer Activities of Banks	
Credit by Banks and Persons Other than Brokers or Dealers for the Purpose of Purchasing or Carrying Margin Stock	
Accounting Requirements/Financial Statements	
Proxies	
Rules on the Issuance and Sale of Institution Securities	