
January 28, 2016

The Honorable Janet Yellen
Chairwoman
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

RE: Bank Director Regulatory Burdens

Dear Chairwoman Yellen:

The American Association of Bank Directors (AABD) is the only nonprofit trade association in the United States solely devoted to the interests of bank directors and their advocacy, education and information needs. It is from our unique perspective that we write now to deliver two messages for your consideration as you develop regulatory promulgations in the upcoming years.

First, AABD strongly believes that it is not the responsibility of bank boards of directors to address minutia and perform management functions that divert attention from their fundamental responsibility of exercising good faith judgment to meet their duties of care and loyalty. This approach to the proper separation of board and management responsibilities was articulated in a 2014 speech by Federal Reserve Governor Daniel Tarullo as follows:

... Boards must of course ... help ensure that good corporate governance compliance systems are in place. But it has perhaps become a little too reflexive a reaction on the part of regulators to jump from the observations that a regulation is important to the conclusion that the board must certify compliance through its own processes. We should probably be somewhat more selective in creating the regulatory checklist for board compliance and regulatory consideration. There are some MRAs that clearly come to the board's attention, but the failure to discriminate among them is almost surely distracting from strategic and risk-related analyses and oversight by boards.

In the final rulemaking for its "heightened expectations" guidelines for national and federal savings banks with assets of \$50 billion or more, the OCC responded to comments of AABD and other commentator to revise its proposed guidelines to differentiate between the roles of the board of directors and bank management and to make clear that bank boards are not required to assume management responsibilities. This is a principle that the AABD believes that all the federal bank regulatory agencies should keep uppermost in their priorities in reviewing all their promulgations. We urge the Fed to take this principle of the appropriate division of responsibilities between boards and management in consideration in all of its future regulatory and supervisory promulgations.

Second, we underscore an observation we previously made twice to the agencies in connection with their review of regulations pursuant to the Economic Growth and Regulatory Paper Reduction Act (EGRPRA). That is, in both of our comment letters (September 3, 2014 and September 4, 2015), we noted that it has been (and continues to be) a substantial omission of the agencies not to include regulatory guidance issuances in their EGRPRA review.

In AABD's 2014 publication entitled "Bank Director Regulatory Burden Report" we documented over 225 separate OCC guidance statements that directly impose responsibilities on bank directors, 180 such FDIC guidance statements and 140 Federal Reserve guidance statements. Regulatory guidance is often enforced as if they are statutes or regulations. Noncompliance is cited in reports of examination and if the agency believes that noncompliance with guidance constitutes unsafe or unsound banking practices, it may use its enforcement powers against banks and members of their board and management.

Because these guidance statements often substantially impact the operations of banking organizations and boards of directors in ways similar or identical to formal regulations, and because they are so numerous and substantially interfere with bank board efforts to meet their fundamental duties of care and loyalty, it is vital that they be addressed by each of the agencies in their EGRPRA review or independent of the EGRPRA review. Despite our prior observations, the agencies have not responded to our comments and the burdens on bank directors from both guidance and regulations continue to accumulate. As stated earlier, these burdens distract boards from effectively pursuing their legitimate duties as board members and not management. A copy of our comment letters on EGRPRA and the pages of the 2014 AABD Bank Board Regulatory Burden Report relating to Fed guidance addressing bank board responsibilities are enclosed.

Among the recommendations that AABD has previously made and continues to advocate are the following:

- The Fed should review its current regulations and written guidance to determine the overall impact on bank directors and revise or rescind those that are overly burdensome or require bank directors to perform management functions;
- The Fed should incorporate into its procedures a requirement that as to future regulations and guidance, it will consider the impact on bank directors and not add new burdens unless the benefits of the proposed regulation or guidance clearly outweighs the burdens placed on bank directors;
- Provisions placing burdens on bank directors, whether in statute, regulation, or regulatory guidance, should be specifically identified, consolidated and clarified so that bank directors may have full and easy access to such issuances; and
- The Fed should adopt a rule to recognize that boards of directors may delegate management duties to management and rely reasonably on management (consistent with the laws of all fifty states)

The Honorable Janet Yellen

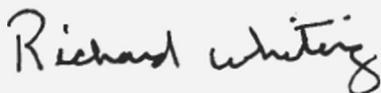
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January 28, 2016

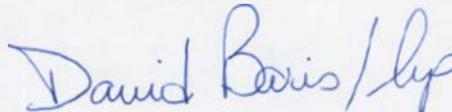
Thank you for your consideration of this letter. Again, the Fed's review can be entirely independent of the ongoing joint agency EGRPRA review.

We would be pleased to meet with you, other Fed Governors, and your staff to discuss further.

Sincerely,



Richard M. Whiting
Executive Director



David Baris
President

Enclosures

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September 2, 2014

Legislative and Regulatory Activities Division
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Robert deV. Frierson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Robert E. Feldman, Executive Secretary
Attention: Comments, FD/C
550 17th Street, NW
Washington, DC 20429

Re: Docket ID FFIEC-2014-0001
EGRPRA, Docket No. OP-1491

Dear Ladies and Gentlemen:

This responds on behalf of the American Association of Bank Directors ("AABD")¹ to the request for public comment by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation (the "Agencies") regarding a review of their regulations to identify outdated, unnecessary or unduly burdensome regulations for insured depository institutions (the "Notice"). The review is required by section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 ("EGRPRA").

The Agencies have been through this process once before, in 2006 and the two years that preceded that year. AABD's review of the 2006 effort concluded that it was an unsatisfactory and flawed process and result from the perspective of bank boards of directors. Numerous regulations and regulatory "guidance" that were unnecessary or unduly burdensome were ignored and have remained on the books ever since. Many regulatory burdens have been added since 2006. AABD urges the Agencies this time to take steps to avoid the mistakes made in the 2006 process.

¹ Founded in 1989, the non-profit AABD is the only trade group in the United States solely devoted to bank directors and their advocacy, information and educational needs. AABD recently established the Bank Director Liability Resource Center, which acts as a clearinghouse for developments in bank director liability, including lawsuits by the FDIC against directors of failed banks and savings institutions. The Institute for Bank Director Education, established in 1993 as the educational arm of AABD, acts as a clearinghouse for education programs designed for bank and savings institution directors that support the nationally recognized Director Certification Program.

AABD's Bank Director Regulatory Burden Report (both in the 2012 Edition and updated 2014 Edition) pointed out that the limited scope of the 2006 review was a factor in the failure to address or remedy the regulatory burdens imposed on bank directors. The Agencies gave notice and invited public comment on a very limited, prescribed set of regulations that included only four regulations directly burdening bank directors. A more inclusive public notice process might have engendered a dialogue that could have opened up discussions of the numerous unnecessary or excessively burdensome regulations and regulatory guidance that impose obligations on bank boards of directors.

On July 31, 2007, the FFIEC and its constituent federal banking agencies published the 69-page Joint Report to Congress on EGRPRA, detailing the Agencies' fulfillment of EGRPRA. The Joint Report highlights some of the comments that the Agencies received during the notice and comment period. Some commentators recommended that the Agencies conduct a study of examination reports to evaluate whether examiners were appropriately distinguishing management from board obligations in their examination findings, conclusions, and recommendations. Commentators also suggested that the Agencies review existing regulations that examiners rely on to support their prescriptions that directors undertake more managerial-type responsibilities. However, the Joint Report simply informs Congress that the Agencies received comments relating to the burdens on bank directors, without reference to the actions taken in response to the comments.

Given this history, it is important for the Agencies to state clearly in a future Notice that regulatory burdens on bank boards of directors and their committees are considered burdens on the banks themselves. This arguably is a truism but necessary nonetheless to be reflected in a future Notice so that commenters will know that the Agencies are interested in receiving comments on the regulatory burdens facing bank boards of directors and their committees. It goes without saying that bank boards are integral to the safe and sound operation of those institutions.

The Notice states that the Agencies will review regulations without addressing specifically whether that review will include regulatory guidance. We believe the intent of Congress in passing EGRPRA was to include regulatory guidance tantamount to regulations. However, whether or not the legislation actually requires such a review, the Agencies should want to review regulatory guidance in light of the practical effect of such guidance on the behavior of both bank boards of directors and the Agencies.

Boards of directors of depository institutions are subject to heavy regulatory burdens through the application of regulatory guidance issued by the Agencies. The Agencies routinely accord regulatory guidance the same weight and force as regulation and statute. Reports of Examination typically hold banks and their boards of directors responsible for complying with regulatory guidance and noncompliance with regulatory guidance are cited in the same part of the reports of examination that cite the bank or board for violations of laws and regulation. Enforcement actions can be taken against banks and their boards of directors if the violation of the regulatory guidance represents an unsafe or unsound practice. Because of this, responsible bank boards of directors and bank management will spend resources and time in order for them and their banks to meet the requirements of regulatory guidance as if they were laws or regulations. The burdens placed on bank boards of directors by regulatory guidance are identical in weight and character to those imposed by statute or regulation.

AABD issued the Bank Director Regulatory Burden Report to serve two purposes: i) provide bank directors with a guide to the various requirements applicable to the performance of their duties in one place, rather than spread over numerous regulatory materials and documents; and ii) evaluate the aggregate impact of such laws, regulations and guidance on the ability of bank directors to meet their oversight duties of care and loyalty. AABD did not attempt to address the myriad laws, regulations and guidance imposed under state law that affects directors of state-chartered banks.

AABD's review found a numbing litany of laws, regulations and guidance applicable to bank directors. There are in excess of eight hundred (800) federal banking laws regulations and guidance provisions that impose separate responsibilities on bank boards of directors. There are 143 federal statutory provisions imposing duties on bank directors. There are about 50 provisions in OCC regulations, 38 in FDIC regulations and 37 in Federal Reserve regulation that impose duties on the boards of directors of affected banks. In addition there are over 18 provisions in OTS regulations that have been continued under the aegis of the OCC.

In addition to these statutory and regulatory provisions, there are many issuances of regulatory guidance that impose further duties and responsibilities on bank directors. These are contained in various bank regulatory documents produced by the regulators, such as examination manuals, bulletins, circulars and financial institution letters. Although technically nonbinding, examiners frequently apply guidance as though they are binding regulations or law; as mentioned, if a bank does not meet all of the provisions in the guidance, the examiners may determine that the bank is engaged in "unsafe and unsound" banking practices or hold the board accountable in reports of examination and other regulatory communications. In AABD's review, it found over 225 separate provisions in OCC guidance that directly impose responsibilities on bank directors; approximately 180 provisions in FDIC guidance and about 140 such provisions in Fed guidance with an additional 33 provisions of Fed guidance applicable to boards of bank holding companies; and at least 200 provisions of OTS guidance. Finally, the heavy duties imposed on boards of directors in bank regulatory enforcement actions (more than 1,500 formal enforcement documents issued over the past six years and numerous other informal enforcement documents) are over and above the responsibilities required by the above-described statutory, regulatory and guidance provisions.

The duties and responsibilities of bank directors flowing from all these sources are numerous, burdensome, overwhelming, frustrating, sometimes conflicting, and often unnecessary. They divert the time and attention of bank board of directors and board committees away from the essential role they should play- meeting their fiduciary duties of care and loyalty by overseeing (NOT managing) the institution. Bank directors should be focused on establishing a prudent risk management system, monitoring adherence to that system, establishing and overseeing the strategic plan of the bank and overseeing the performance and compensation of management. Instead bank boards have become overwhelmed with compliance and regulatory matters, so much so that compliance and bank regulatory requirements have become a major line of business replete with administrative minutia and duties falling on the board that rightly should be left to bank management or in some instances dispensed with entirely.

Further, imposing management-like responsibilities on bank directors also confuses and misaligns the appropriate roles of the board of directors and management. Board members typically are not professional bankers. They are not loan officers, financial analysts, or bank regulatory experts - - they are doctors, teachers, attorneys, businesspersons and investors. They typically are not bank professionals and should not be expected to perform management functions. Instead of performing professional management-like responsibilities, the board of directors should be tasked with hiring and supervising individuals that can competently manage the banking institution. The ability of bank boards to delegate management functions to management to rely reasonably on them should be, but has not been, a clearly articulated and accepted facet of bank regulation and supervision.

Finally, the accumulation of so many duties and responsibilities from so many various regulatory sources in a manner that often is overlapping, duplicative and sometimes resulting in the inappropriate imposition of management-like minutia, especially when coupled with the increasing focus of enforcement and liability, negatively impacts the willingness of qualified individuals to serve as bank

directors. This is not a consequence that is good for the health of the nation's banking system or the nation's economy.

Earlier this year, AABD reported the results of a survey it conducted that found that almost 25% of the respondent banks, over the past five years, had directors resign or had individuals refuse to accept director positions over fear of personal liability or had directors refuse to serve as members of the directors loan committee. Fear of personal liability was the most common reason given for resignations or refusal to serve; but the second most common reason given was that the director or individual did not have sufficient time to meet the time requirements of being a bank director.

In order to address these adverse effects of the current regulatory system on the Nation's bank board of directors, AABD makes the following recommendations that it requests the Agencies to take into consideration in its ongoing review of regulatory burdens facing banks and bank boards of directors:

i) In their EGRPRA review, the Agencies should evaluate (and provide public notice for) the overall impact of the body of laws, regulations and regulatory guidance on bank directors, their boards of directors and their board committees to: a) eliminate unnecessary and duplicative requirements, b) eliminate those where the burdens outweigh the benefits, and; c) organize the surviving regulations in a way that is easily retrievable and usable by bank boards of directors;

ii) The Agencies should incorporate into their procedures an ongoing requirement that they will thoroughly consider the impact of new proposed rules or guidance on the burdens facing bank directors, including their cumulative effect, and not add to the burdens of bank directors unless the benefits of the proposed rule or guidance clearly outweigh the burdens placed on bank directors;

iii) The Agencies should adopt rules that will clarify that bank boards of directors may delegate management duties to management and rely reasonably on management to perform such duties;

iv) The Agencies should undertake a review of the obligations that they are creating for boards of directors through formal and informal enforcement and administrative actions to determine the extent to which those actions are creating management-like burdens and responsibilities on bank boards, and take steps to assure that in the future, such actions will not force bank boards and board committees to undertake management responsibilities; and

v) In their future solicitations of public comment pursuant to EGRPRA, the Agencies should expand the categories to be reviewed to include regulatory guidance and enforcement documents that impose responsibilities and duties upon bank boards of directors, members and committees;

Thank you for the opportunity to provide AABD's comments on these important issues. Our goal, as should be the goal of the Agencies, is to clarify and streamline the duties and responsibilities of the boards of directors of the Nation's banks so that they can focus on their duties of overseeing financially healthy and competitive institutions that serve their customers and communities. Please feel free to contact us if you have comments or require additional information.

Sincerely,

/s/ David Baris
President

/s/ Richard Whiting
Executive Director

September 3, 2015

Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
400 7th Street, SW
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Washington, DC 20219

Robert deV. Frierson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Robert E. Feldman
Executive Secretary
Attention: Comments, FDIC
550 17th Street, NW
Washington, DC 20429

**Re; Docket ID FFIEC-2014-0001-0081
EGRPRA, Docket No. OP-1491**

Dear Ladies and Gentlemen:

We write to you as a follow-up to our letter dated September 2, 2014 in which we responded to the request for public comment by your agencies regarding a review of your regulations to identify outdated, unnecessary or unduly burdensome regulations for insured depository institutions. A copy of our submission is attached. The review is required by section 2222 of the Economic Growth and regulatory Paperwork Reduction Act of 1996 (EGRPRA).

The American Association of Bank Directors ("AABD") is the only nonprofit trade association in the United States solely devoted to interests of bank directors and their information, education, and advocacy needs.

In our letter dated September 2, 2014 (enclosed), we noted that in the first decennial review under EGRPRA in 2006, the agencies failed to reduce the overwhelming regulatory burdens placed on bank directors. In that letter, we identified approximately 50 provisions in OCC regulations affecting bank directors, 38 provisions in FDIC regulations, 37 provisions in Federal Reserve regulations, and 18 provisions in OTS regulations (now OCC regulations).

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Page Two
September 3, 2015

These regulations were cited and described on pages 182-198 in our publication entitled "Bank Director Regulatory Burden Report (2014 Edition), previously provided to you. A copy of those pages is attached to this letter.

With a few exceptions, these provisions are not listed in the Federal Register as being reviewed pursuant to EGRPRA.

In addition, our September 2, 2014 letter pointed out that many of the agency promulgations that we and our members view as unnecessary and/or unduly burdensome (whether individually or in the aggregate) are labeled "guidance" and excluded from your EGRPRA review. See Category 8 of the matters that the agencies include in their EGRPRA review. (FFIEC webpage listing "Regulations under Review" at <http://egrpra.ffiec.gov/regulations-under-review/regulations-under-review-index.html>).

It has been nearly a year since submission of our September 2, 2014 letter on this same topic, but your agencies continue to exclude agency guidance from the scope of your EGRPRA review. Although labeled "guidance," such promulgations frequently have the same supervisory and regulatory weight as duly adopted regulations and can be similarly burdensome and/or unnecessary. We believe it is critical that these promulgations of guidance be addressed in the EGRPRA review.

First, as we noted in our 2014 comment letter and our publication entitled "Bank Director Regulatory Burden Report" (2014 edition), it is a substantial omission not to include these guidance issuances in the EGRPRA review. There are over 225 separate OCC guidance statements that directly impose responsibilities on bank directors, 180 such FDIC guidance statements and 140 Federal Reserve guidance statements. Because these guidance statements often substantially impact the operations of banking organizations in ways similar or identical to formal regulations, and because they are so numerous, it is vital that they be addressed in the EGRPRA review.

Second, the sheer volume and breadth of the regulatory pronouncements to which bank directors are subject forces bank boards of directors to address minutia and perform management functions that divert attention from their fundamental responsibilities of exercising their good faith judgment to meet their duties of care and loyalty.

Third, shining the light of public comment on such issuances through the EGRPRA review would have constructive and beneficial benefits for both the industry and the agencies. That "guidance" can be improved through public comment process is amply demonstrated by the experience of the OCC in its initial publication and final issuance of its guidance on Heightened Risk Management Expectations. By using the public comment process, the OCC received and heeded input from the industry, including AABD, and revised its original proposal to relieve

Page Three
September 3, 2015

bank directors from many of the burdens and responsibilities more rightly assignable to management. See: <http://aabd.org/occs-heightened-risk-management-guidelines-bank-directors-due-process/>. Similar benefits for both the banking industry and the federal agencies would result from following the same public comment procedures with respect to the many regulatory guidance promulgations of the federal banking agencies.

Since our comment letter of September 2, 2014, the agencies have continued to issue "guidance" that impose new or expanded burdens on bank directors. See, for example, the FFIEC Cybersecurity Assessment Tool adopted in June 2015, which details the role of a bank board of directors in supervising cybersecurity policies and procedures.

We agree with the observations of Federal Reserve Governor Daniel Tarullo, who stated in a speech in June of 2014 the following:

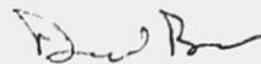
...Boards must of course...help ensure that good corporate governance compliance systems are in place. But it has perhaps become a little too reflexive a reaction on the part of regulators to jump from the observation that a regulation is important to the conclusion that the board must certify compliance through its own processes. We should probably be somewhat more selective in creating the regulatory checklist for board compliance and regulatory consideration...There are some MRAs that clearly should come to the board's attention, but the failure to discriminate among them is almost surely distracting from strategic and risk-related analyses and oversight by boards.

Our September 2, 2014 submission identified many other reasons for inclusion of regulatory guidance promulgations in your EGRPRA review and provided specific recommendations for the agencies to correct the problems created by these guidance issuances. We request that our prior submission as well as this letter be incorporated in the record of your EGRPRA review.

Sincerely,



Richard M. Whiting
Executive Director



David Baris
President

Enclosure

BANK DIRECTOR REGULATORY BURDEN REPORT

2014 EDITION



DAVID BARIS
LOYAL HORSLEY

"If you have 10,000 regulations, you destroy all respect for the law."

Winston Churchill



This Second Edition of the AABD Bank Director Regulatory Report comes as the federal banking agencies begin to conduct their decennial review of regulatory burdens on banks and savings institutions due in 2016 as required by Section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA).

At this writing, AABD is not optimistic that the agencies will even consider the bank regulatory burdens on bank directors that they have added to over many years. To evaluate regulatory burdens on banks without also considering regulatory burdens on bank directors makes no sense to us.

Our 2012 First Edition detailed more than 800 provisions in statute, regulation and regulatory guidance that require bank and savings institution directors to take action in various forms. Over fifty written policies must be approved by directors – almost one a week. But that is just the beginning.

Some of these requirements are management in character for which the board of directors is unsuited to fulfill.

Many of the obligations imposed on bank directors are created through regulatory “guidance” or “guidelines” which generally are not adopted through rule making procedures and therefore are not considered rules or regulations. Yet, in the world of banking supervision, written guidance is often considered as important to bank examiners as rules or regulations, and they apply them during examinations as if they were rules. Conscientious bank directors will want their banks to meet the guidelines and will expend time and resources in order to accomplish that. As such these guidelines add to the burdens faced by bank directors. That is the reason why the federal banking agencies should evaluate guidelines creating burdens just as they evaluate regulations, even though EGRPRA does not require such a review.

In its First Edition, AABD proposed a set of recommendations to Congress and the federal banking agencies to reduce the burdens on bank directors. None have been adopted. Instead, the agencies have continued to add to the burdens without eliminating any.

In our recently completed survey measuring the impact of fear of personal liability on the willingness of persons to serve as directors, the second leading reason cited for director candidates not to accept director positions was time commitments (the first reason was fear of personal liability). It is well-known that the vast majority of bank directors are paid modest sums to serve on their boards at the same time being overburdened and at risk of personal liability. It used to be a great honor to serve on the board of a bank. No longer is that a sufficient reason to serve.

We also know from working closely with bank directors that once a board and its committees wade through legal requirements, compliance and bank regulatory obligations, there is little time for strategic planning. The community banking model’s viability is being questioned as never before. Many community banks are struggling to make a reasonable return for their shareholders. Some are

questioning whether they are in a dying industry and it is time to sell. Banks of all sizes are finding that challenges facing the banking industry require boards of directors to spend more time on strategic planning, but that time is simply not available.

Our 2012 recommendations are still timely, in part because the federal banking agencies have done little or nothing to address them.

The obligations listed in this Second Edition under OTS citations are now subject to the jurisdiction of the OCC.

This Second Edition updates new regulatory requirements that add to the already exceedingly long list of obligations placed on bank directors.

We urge the federal banking agencies and the U.S. Congress to revisit, as part of the decennial review of regulatory burdens required by Section 2222 of EGRPRA, our recommendations from our First Edition. These include:

- An agency evaluation of existing regulations and written guidance specifying bank director responsibilities to determine the overall burden on bank directors; eliminate unnecessary and duplicative requirements and requirements that are management in character or where the burden outweighs the benefits from such regulation or guidance; and organize the requirements so that they are easily retrievable and usable;
- Incorporation into the agencies' procedures a requirement that they will thoroughly consider the impact of proposed regulations or guidance on the burdens on bank directors, including their cumulative effects, and not add to the burdens unless the benefits of the proposed rule or guidance clearly outweigh the burdens;
- Proposal and adoption of a rule by the agencies that clarifies that bank boards of directors may delegate management duties to management and rely reasonably on management to perform such duties without incurring personal liability;
- As part of the decennial review, a proposal by the agencies in the Federal Register that opens public comment to all current regulations and guidance that impose responsibilities on bank boards of directors or their committees to determine which ones are unnecessary or unduly burdensome.

David Baris

Executive Director

American Association of Bank Directors

Introduction to the First Edition

March 2012

Every bank director knows that “Your bank’s board needs to

” are words being expressed with increasing frequency by bank examiners.

The Dodd-Frank Act is only the most recent legislative action to increase the burden placed on directors of financial institutions. As illustrated on the cover, the aggregate impact of all federal legislation, regulation and regulatory "guidance" is a tsunami of bank regulation that only increases.

This report is the result of an extensive review of federal legislation, federal bank regulations, and federal banking agency guidance by the American Association of Bank Directors (AABD) to identify new and existing provisions that can and do overwhelm bank directors.

The AABD has identified over 800 legislative and regulatory provisions that have accumulated over many decades that impact the responsibilities of bank directors!

It is evident that no one - not Congress and not the federal banking agencies – is evaluating the aggregate effect government actions are having on the duties and responsibilities of bank directors.

This ever-increasing regulatory burden is a significant distraction from board time necessary for risk oversight and other essential board responsibilities. The increasing threat of regulatory and personal liability is forcing bank boards to become “compliance” boards where attention must be focused on satisfying laws, regulations, and regulatory guidance that pertain to duties that are properly the function of day-to-day management.

The AABD is requesting that the federal banking agencies take immediate action and develop a regulatory review process to address not only laws and regulations, but also the numerous regulatory guidance provisions affecting bank directors.

As a bank director, I want to express my gratitude to David Baris, AABD’s Executive Director, for initiating this project and undertaking this analysis. I can only hope that this report leads to a constructive response by bank regulators and does not discourage talented individuals from joining or remaining on bank boards.

Charles J Thayer

Chairman

American Association of Bank Directors

Preface to the First Edition

We all knew that bank directors were overworked and underpaid, and under frequent threat of civil money penalties, and civil suits from the FDIC if their institution failed.

But we never appreciated the extent of the obligations placed on bank directors from statutes, regulations and federal banking regulatory guidance - that is, until we looked.

There is no central repository of all of the obligations imposed on bank directors. So our compilation was accomplished through many months of searching and evaluating numerous disparate documents.

Even then, we cannot assure our members that we have found everything.

So here it is. The tally is over 800 provisions in statute, regulation or federal banking agency guidance that impose obligations on bank directors. That doesn't include numerous state statutes, regulations and state banking regulatory guidance affecting directors of state-chartered banks.

For ease of reference, we have grouped the regulatory guidance material and regulations under each federal banking agency. There is some overlapping - interagency statements are just that, so it doesn't matter, as to those statements, whether you are a director of a state member, state nonmember, national, or federal savings bank. They all apply to you and your board.

The overburdening of bank directors with responsibilities that are insignificant or that are better delegated to management is a serious public policy issue. Bank directors need to focus on the important issues facing their banks to meet their fundamental duties of care and loyalty. They are not full-time bank officers or employees and in most cases, they are not professional bankers. They are also not guarantors of success. They are entitled to exercise their business judgment in good faith, delegate duties to management and reasonably rely on such management. One would never know that by reading the voluminous admonishments and directives in the documents we have compiled.

AABD's set of recommendations urges the federal banking agencies, the U.S. House Committee on Financial Services and the U.S. Senate Committee on Banking, Housing and Urban Affairs to take immediate action to address the problem.

David Baris

Executive Director

American Association of Bank Directors

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Executive Summary

In response to President Obama's initiatives to identify and reduce unnecessary governmental burdens on the private sector, the American Association of Bank Directors ("AABD") initiated a review of laws, regulations and federal banking agency regulatory guidance that direct bank boards of directors to take certain action. After months of review, AABD found in excess of eight hundred such provisions. They were not easy to find, spread over numerous issuances and pronouncements, with no instructions to bank directors on how to find them.¹

Recent administrations have issued Executive Orders aimed at reducing the regulatory burden on industry, including banks and bank directors, and Congress attempted to do the same by enacting the Economic Growth and Regulatory Paperwork Reduction Act in 1996.

These Executive Orders and legislation have fallen far short of their goals with respect to bank directors. Having over 800 provisions that impose bank director responsibilities is overwhelming and impossible for bank directors to fully address, much less to find.

These attempts have also failed to address written federal banking agency guidance that often has not been subject to the rigors of the formal rule-making process, but which examiners often apply during the examination process as if it has the full effect of a law or regulation. Although President George W. Bush's Executive Order 13422, issued in 2007, directed federal agencies to consider the burden of regulatory guidance, President Obama's Executive Order 13497 in 2009 effectively repealed that requirement.

Also ignored are the enormous burdens placed on bank directors whose banks are required to sign Consent Orders, Formal Agreements and Memoranda of Understanding with their regulators. Over the last several years alone, more than one thousand banks have become subject to one or more of these documents, which typically impose management-like functions on board members, requiring many hours of their time – directors who mostly are not professional bankers but businesspersons, professionals, and community leaders with substantial responsibilities outside of their banks and whose compensation is often modest.

Then there are burdens placed on directors informally, through the bank examination process or regulatory expectations. The Matters Requiring Attention in reports of examination often require boards of directors to assure that management takes the action required or recommended by the banking agency. Other burdens are self-imposed although encouraged by many banking supervisors. Many community bank directors feel compelled to review and, if appropriate, approve individual loans that are above the lending authority of loan officers or are exceptions to policy even though no federal laws (and few state statutes) require such review and approval unless they are insider loans. This traditional practice of community bank boards (which

¹ AABD has attached appendices to this Report that catalog the laws, regulations, and guidance pronouncements for the respective federal banking agencies. Despite conducting months of research, AABD cannot assure that these appendices are exhaustive.

large bank boards frequently eschew) entails substantial personal liability risk if losses ensue and the bank fails.

This Report details the extraordinary burdens on bank directors that have accumulated over many decades from federal government action. It is evident that no one - not Congress and not the federal banking agencies - has paid attention to the detrimental aggregate effect that these governmental actions may have had.

This Report does not address the myriad laws, regulations and guidance imposed under state law that affects directors of state-chartered banks. Undoubtedly directors of most state-chartered banks face additional burdens as a result of state pronouncements.

These burdens unavoidably divert the time and attention of bank boards of directors and board committees away from the essential role that a bank board should play; that role is to meet their fiduciary duties - the duty of care and the duty of loyalty - and overseeing, not managing the institution. Bank directors should be focused on, among other things, establishing a prudent risk management system, monitoring adherence to that system, establishing and overseeing the strategic plan of the institution, and overseeing the performance and compensation of management. Instead, bank boards have become "compliance" boards, where their attention has been forced to turn toward satisfying laws, regulations, and regulatory guidance that often pertain to minutia and duties that typically should be left to management.

Imposing management-like responsibilities on bank directors is also foolish. Most outside bank directors are not professional bankers. Their "day job" has nothing to do with banking. They are doctors, pharmacists, teachers, attorneys, businesspeople, and community benefactors. They will not be better managers than those that their bank retains as managers. If the directors are better managers than those their bank has retained, then the bank has a real problem. Instead of assuming the role of management, the board of directors should hire new managers that can competently manage the institution.

There is virtually no recognition in the federal banking laws, regulation and guidance that it is prudent and consistent with a board's fiduciary duties for the board to rely reasonably on management and advisors. Yet this is the foundation of modern American corporate law. Every state recognizes either in statute or case law that corporate board members may reasonably rely on their management or on their opinions, information, reports and statements. Modern American corporations cannot function without the authority of boards of directors to delegate management responsibilities to management.

Even the FDIC's Statement Concerning the Responsibilities of Bank Directors and Officers, published in 1992, is silent on a bank board's right to delegate management responsibilities to management and to rely reasonably on management. This is the same Statement that holds former board members of failed banks potentially accountable for an exercise of micro-management - approving individual loans that turn bad, even if they have relied reasonably on management to

approve them. The Statement does not recognize that boards and their loan committees do not approve loans in a vacuum; their banks have loan and credit officers who review proposed loans before they are reviewed by the board or board committee pursuant to a written loan policy and that the board or board committee necessarily needs to rely on the work performed by such officers in deciding whether to approve the loans.

At a time when bank directors are being increasingly threatened with FDIC civil suits and federal banking agency enforcement actions, in addition to the extraordinary burdens imposed by law, regulation and regulatory guidance, there should be concern about and focus on the willingness of qualified individuals to serve as bank directors. Being a bank director is not a path to wealth. According to the most recent study of bank director compensation commissioned by AABD, the median total 2010 compensation of bank directors of community banks with assets of under \$500 million was \$17,160. For bank directors in banks with assets of between \$500 million and \$1 billion, the median compensation was \$25,273, and for bank directors serving in banks with assets of \$1 billion to \$5 billion, \$37,287.

The federal banking agencies should take immediate action to develop a regulatory review process to address not only laws and regulations, but also the numerous guidance provisions affecting bank directors, and determine which laws, regulation and guidance should be retained and which should be discarded. The agencies should complete this review by no later than December 31, 2012. The agencies also should incorporate into their policies and procedures a mechanism that before they propose or adopt a new rule or written guidance, they will consider whether the new rule will add to the burdens facing bank directors and whether the beneficial effect of such a rule or guidance will outweigh the burden created, taking into account the cumulative effect of all other rules and guidance applicable to bank directors.

The House Committee on Financial Services and the Senate Committee on Banking, Housing and Urban Affairs should also undertake a thorough review of the current laws, regulations, and guidance that impose obligations on bank directors. They should hold one or more fact-finding hearings on the appropriate role of bank boards of directors and whether the federal banking agencies' regulations and guidance negatively affect the ability of bank directors to fulfill that role. The hearing record will provide a basis for further Congressional action, including legislation. The Committees should also consider enlisting the services of the General Accountability Office to assist them in reviewing regulations and guidance applicable to bank directors.

Current State of Regulatory Burdens on Bank Directors

AABD recently undertook a thorough review of federal banking laws, federal banking agency regulations and federal banking agency written guidance to serve two purposes: 1. to provide bank directors with a guide to the various requirements in one place rather than spread over numerous regulatory materials and documents; and 2. to evaluate the aggregate impact of such laws, regulations and guidance on the ability of bank directors to meet their fundamental duties of care and loyalty. Even after its intense review, AABD is unable to verify that it has identified **all** federal banking laws, federal banking agency regulations and written guidance applicable to bank directors.

AABD's review found a numbing litany of laws, regulations and guidance that in the aggregate create huge burdens on bank directors. AABD estimates that there are in excess of eight hundred federal banking laws, regulations, and guidance provisions that impose separate responsibilities on bank boards of directors. There are 143 provisions in federal banking or related statutes imposing duties on bank directors. There are roughly 50 provisions in OCC regulations that impose requirements on national bank boards, 38 provisions in FDIC regulations imposed on either state nonmember bank boards, or, in some cases on all bank boards, and 37 provisions in Federal Reserve regulations imposed on state member boards and boards of national banks. Also, there are at least 18 provisions in OTS regulations imposing requirements on bank boards; these requirements have continued under the aegis of the OCC.

In addition, there are numerous issuances of "guidance." These issuances are spread around numerous bank regulatory documents such as examination manuals, bulletins, circulars, and financial institution letters. Although technically nonbinding, examiners frequently apply "guidance" as if they are binding regulations or laws; if a bank does not meet all of the provisions in the guidance, the examiners may determine that the bank is engaged in unsafe or unsound banking practices. In AABD's review, it found well over 225 separate provisions in OCC guidance that directly impose responsibilities on bank directors; approximately 180 separate provisions in FDIC guidance, and at least 140 separate provisions in Fed guidance, with an additional 33 provisions of Fed guidance to boards of bank holding companies; and at least 200 provisions in OTS guidance.

Finally, over the last several years, directors of more than 1,000 banks have been burdened with duties to comply with bank regulatory enforcement actions imposed on their banks. These enforcement documents are generally in the form of Consent Orders, Formal Agreements and Memoranda of Understanding. The documents typically cover a broad spectrum of actions that banks and their boards of directors are required to take to correct weaknesses in lending, investments, liquidity, management, the methodology used to establish the Allowance for Possible Loan Losses, audit, etc. The documents require directors not just to approve policies and procedures and oversee the effort, but also sometimes involve them in management-like functions – hands-on involvement in the implementation of the policies and procedures and other requirements of the document. Some directors have reported to AABD that the compliance effort by directors sometimes requires them to spend 30 hours or more per week.

The Impact of Regulatory Burdens on Bank Directors

AABD is concerned that this morass of laws, regulations and guidance in the aggregate creates a huge and counterproductive impact on bank directors that unavoidably causes them to divert their attention away from the essential job of being a bank director - meeting their duty of care and loyalty by overseeing, not managing, the institution - and instead to devote valuable time to the inconsequential or matters that should be properly delegated to management.

Whenever new regulations and guidance are added on top of an already burdensome regulatory scheme, the result is a massive pile-up that strains bank directors at the top and flows down into every component of their banks.

Additional burdens are faced by directors of the numerous banks that have become subject to banking agency enforcement actions, who face formidable challenges to meet the requirements of those actions, including the risk of civil money penalties for noncompliance.

It is difficult to measure the lost opportunity cost of regulatory compliance burdens placed on bank boards of directors, but AABD believes that those banks that assist their directors in meeting all of the requirements must devote considerable resources and funds to assure that their directors become aware of the various requirements and assist them in meeting them. Community banks are particularly harmed when they are required to spend valuable and limited resources to identify and interpret for their boards of directors the myriad bank regulatory requirements imposed on their boards of directors.

Much of bank directors' attention has turned to wasting time on inconsequential matters or matters that are more appropriate for bank management to address. Moreover, the numerous agency guidance documents impose upon bank directors the duty to review and approve policies and procedures that no board could possibly meet in any meaningful way - literally thousands of pages of technical jargon.

The federal banking agency guidance documents impose copious directives for directors to "ensure" that specific agency demands are met. To highlight a few examples, directors or committees of directors must: **ensure** that the institution helps to meet community credit needs; **ensure** that prior to engaging in subprime lending, management and staff possess sufficient expertise to manage risks in subprime lending; **ensure** that management and staff can manage credit card risk; **ensure** that the information security program is developed, implemented, and maintained; **ensure** that internal and external auditors are objective in their findings; **ensure** effective and timely response by management to correct internal control weaknesses; **ensure** compliance with all self-regulatory policies regarding retail nondeposit bank-related sales; perform due diligence through the audit committee in the selection of the auditor etc.

This list is a small fraction of the responsibilities placed on bank boards of directors to ensure management qualifications and success. Ensuring that management or auditors do their job is assuming the role of management by another name.

Examples of guidance that requires bank director micromanagement abound. They include the responsibility to review overdrafts and review the basis for service charges on dormant accounts² and the responsibility to designate a security officer to develop and administer a security program for each banking office.³

What is largely missing from federal banking agency guidance is a clear statement that boards of directors are not management, that their role is limited to the supervision of the institution, and in their supervisory role, boards may reasonably rely on information, opinions, reports and statements of bank officers, employees, board committees, auditors, and outside advisors and consultants. The FDIC's Statement Concerning the Responsibilities of Bank Directors is silent on a bank director's right to delegate responsibilities to management and rely reasonably on management, yet suggests that when directors do micro-manage by approving loans recommended by management, they may be held liable following the failure of their bank.

Directors are charged with the duties of care and loyalty, not the responsibility to guarantee results, and boards need agency guidance to inform them of what is delegable and what is not, so that directors can fulfill their fiduciary duties and promote the safe and sound operation of their institutions.

The Model Business Corporation Act (MBCA) provides clarity and direction for corporate boards of directors to delegate to management and employees.⁴ The MBCA provides that all corporate powers may be exercised under the authority of the board of directors (not necessarily by the board of directors itself), and that the business and affairs of the corporation may be managed under the direction, and subject to the oversight of its board of directors. Thus, the board of directors may delegate to appropriate officers, employees or agents of the corporation authority to exercise powers and perform functions not required by law to be exercised or performed by the board of directors itself. In addition, although delegation does not relieve the board of directors from its responsibilities of oversight, directors should not be held personally responsible for actions or omissions of officers, employees, or agents so long as the directors have relied reasonably and in good faith upon those officers, employees, or agents.⁵ If a board of directors is to be effective in exercising its authority, it must reasonably rely on information, opinions, reports, or statements provided by management and employees of the corporation.⁶ Corporate law adopts the very basic principle that boards of directors cannot do everything, which is also reflected in most states' corporate codes.⁷

² Federal Reserve Board, Commercial Bank Examination Manual § 3000.1, available at www.federalreserve.gov/boarddocs/supmanual/cbem/0005cbem.pdf.

³ 12 C.F.R. §§ 326.2, 326.4.

⁴ Model Bus. Corp. Act § 8.01 and § 8.30 (2007).

⁵ See MODEL BUS. CORP. ACT § 8.31 (2007).

⁶ *Id.*

⁷ *Id.*

This clarity, however, is muddled for bank directors by the numerous stipulations from the various federal banking agency guidance documents. The federal banking agencies need to clarify what duties and responsibilities bank boards of directors may delegate and those that they cannot delegate and eliminate the micro-management duties placed on boards.

Brief History of Attempts to Minimize Regulatory Burdens

President Reagan attempted modern formal Executive Branch review of the rulemaking process in 1981 with the signing of Executive Order 12291, "Federal Regulation." Reagan's executive order required agencies to produce Regulatory Impact Analyses (RIA) that include estimates of the costs and benefits of proposed regulation. In 1993, President Clinton issued Executive Order 12866, "Regulatory Planning and Review," describing the principles and procedures by which the Office of Information and Regulatory Affairs (OIRA) reviews agencies' draft rules at both the proposed and final stages of rulemaking before they are published in the *Federal Register*. Executive Order 12866 built on Reagan's Executive Order 12291 by requiring an assessment of alternatives to regulatory action, the rationale for choosing the regulatory action, and a statement of statutory authority for regulatory impact analyses. Executive Order 12866 also provided for periodic review of agencies' existing significant regulations to determine whether any such regulations should be modified or eliminated.

In 2007, President George W. Bush issued Executive Order 13422, significantly amending Executive Order 12866 in five general ways: (1) adding a requirement that agencies identify a specific market failure or problem that warrants new regulation, (2) adding a requirement that each agency head select a presidential appointee as a "regulatory police officer" to control future rulemaking, (3) adding a requirement that agencies estimate the costs and benefits of any proposed rules, (4) expanding the scope of OIRA review to include guidance documents, and (5) permitting agencies to utilize alternative formal rulemaking procedures. However, in 2009 President Obama issued Executive Order 13497, which repealed Executive Order 13422 in its entirety, including the requirement that OIRA reviews should include guidance documents.

On January 18, 2011, President Obama issued Executive Order 13563 as a supplement to, and reaffirmation of, Executive Order 12866 seeking to facilitate periodic agency review of existing significant regulations.⁸ This Order instructs regulatory agencies to modify, streamline, or repeal regulations that the agencies deem to be excessively burdensome or ineffective. Executive Order 13563's provisions did not reach the federal banking agencies. However, by signing Executive Order 13579 (July 11, 2011), President Obama extended regulatory review to the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and any other similar agency designated by statute as a Federal independent regulatory agency or commission, pursuant to 44 U.S.C. 3502(5).

The FDIC responded to Executive Order 13579 by stating⁹ that it already had a long-standing policy of reviewing its regulations and determining their impact, in accordance with the *FDIC Statement of Policy on the Development and Review of FDIC Regulations and Policies*, 63 Fed. Reg.

⁸ Exec. Order 13563 § 6 provides that an agency will perform a retrospective review of existing regulations to "determine whether any such regulations should be modified, expanded, streamlined, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives."

⁹ Available at <http://www.fdic.gov/regulations/laws/plans/index.html>

25,157 (1998). The FDIC noted that it would review the 1998 Statement of Policy to determine how it should serve the purpose of reducing regulatory burden.

Although neither Executive Order 13563 nor Executive Order 13579 applies to the Office of the Comptroller of the Currency by its terms, the OCC is subject to a statutory requirement pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA)¹⁰ that imposes regulatory review requirements similar to those in the Executive Orders. Under the EGRPRA, the OCC and the other federal banking agencies sought to identify and eliminate outdated, unnecessary, or unduly burdensome regulatory requirements. The EGRPRA required the Federal Financial Institutions Examination Council (“FFIEC”) and its member agencies to conduct a decennial review of their regulations and identify outdated, unnecessary or unduly burdensome requirements imposed on insured depository institutions.¹¹

Over a three-year period ending in 2006, the OCC, Federal Reserve, FDIC, and the Office of Thrift Supervision (“OTS”) sought comments and recommendations from industry professionals regarding ways to reduce the regulatory burden. The agencies sought comment on over 130 regulations in total, but only a fraction of this number actually related to burdensome regulations imposed upon boards of directors, and none related to bank regulatory guidance.

In 2006 President Bush signed into law the Financial Services Regulatory Relief Act of 2006 (FSRRA). Section 302 of this Act amended 12 U.S.C. 60 by removing the statutory formula for determining when national bank dividends could be made. It allowed national bank directors to declare dividends of so much of the bank’s undivided profits as they judged to be expedient. Other than this one adjustment, the FSRRA did little else to change the burden on bank directors.

Most recently, Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”) transferred to the OCC all the functions of the OTS. The transfer occurred on July 21, 2011, but under section 316(b)¹² of Dodd-Frank, all OTS regulations remain in effect “until modified, terminated, set aside, or superseded in accordance with applicable law by the Office of the Comptroller of the Currency or the Comptroller of the Currency.”¹³ As part of the transfer process, the OCC has undertaken a review of both OCC and OTS regulations to combine them where possible and eliminate those regulations the OCC determines to be unnecessary.¹⁴ In its *Preliminary Plan for Retrospective Analysis of Existing Rules*,¹⁵ dated May 18, 2011, the OTS noted that the OCC had already begun a review similar in effect to the review process under section 6 of Executive Order 13563, and that any determination not to enforce an OTS regulation will have the same effect

¹⁰ Pub. L. No. 104-208, § 2222, 110 Stat. 3009, 3009-414 (Sept. 30, 1996), codified at 12 U.S.C. § 3311.

¹¹ 12 U.S.C. § 3311(a).

¹² 12 U.S.C. § 5414(b).

¹³ 12 U.S.C. § 5414(b)(2).

¹⁴ Pursuant to section 316(c)(2) of the Dodd-Frank Act, the OCC published a notice in the Federal Register of the OTS regulations that will continue under Dodd-Frank. 76 FR 39246 (July 6, 2011).

¹⁵ Available at www.whitehouse.gov/files/documents/2011-regulatory-action-plans/OfficeofThriftSupervisionPreliminaryRegulatoryReformPlan.pdf.

as a repeal of that regulation. As of March 7, 2012, the OCC's website states that the OCC is still reviewing regulations developed by the former OTS and that the OCC will publish updates as they are developed and approved.¹⁶

¹⁶ Available at <http://www.occ.treas.gov/topics/laws-regulations/occ-regulations/index-occ-regulations.html> (last visited Jan. 4, 2011)

Why Previous Attempts to Minimize Regulatory Burdens Have Failed

Despite previous efforts to relieve regulatory burdens on bank directors, the burden has only increased. AABD believes that there are several reasons for that.

Recent Executive Orders and the manner in which agencies purport to apply the Executive Orders' provisions are limited in scope to the retrospective review of existing rules that constitute "significant regulatory action."¹⁷ Obama's Executive Orders 13563 and 13579 built upon the language of Clinton's Executive Order 12866 without updating the definition and interpretation of "significant regulatory action." Section 3(f) of Executive Order 12866 defines this as:

(f) "Significant regulatory action" means any regulatory action that is likely to result in a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

While Executive Orders 13563 and 13579 do not expressly limit themselves to review of "significant regulatory action," practice has shown that the executive orders have extremely limited efficacy in reducing the litany of regulatory action that is not deemed to be "significant." Much of the burden facing bank boards of directors comes from the accumulation of many rules, regulations and regulatory guidance pertaining to the minutia and micro-managing of bank activity. For this reason, it is possible that each particular burden facing directors is simply overlooked during the review process. Or, possibly, the reviewing agencies do not deem bank directors' burdens to constitute significant regulatory action, despite their impact on the successful operation of the banking sector.

The limited scope of the 2006 Economic Growth and Regulatory Paperwork Reduction Act review of existing laws and regulations is another reason that the EGRPRA failed to address and remedy the burdens levied on bank boards of directors. The federal banking agencies gave notice and invited public comment on a very limited, prescribed set of regulations that included only four regulations directly burdening bank directors.¹⁸ The dialog was never really open to discussing numerous ineffective or excessively burdensome regulations facing boards of directors, much less numerous "guidance" issuances.

¹⁷ Exec. Order 12866.

¹⁸ *Request for Burden Reduction Recommendations; Rules Relating to Banking Operations; Directors, Officers and Employees; and Rules of Procedure; Economic Growth and Regulatory Paperwork Reduction Act of 1996 Review*, 70 Fed. Reg. 46779, 46783-84 (Aug. 11, 2005) (only 12 C.F.R. 337.3; 12 C.F.R. part 7, Subpart B; 12 C.F.R. Part 215 [Reg. O]; and 12 C.F.R. Part 359 addressed burdens facing bank directors.).

On July 31, 2007, the FFIEC and its constituent federal banking agencies published the 69-page Joint Report to Congress on the Economic Growth and Regulatory Paperwork Reduction Act, detailing the agencies' fulfillment of EGRPRA. The Joint Report highlights some of the comments that the agencies received during the notice and comment period. Some commentators recommended that the agencies conduct a study of examination reports to evaluate whether examiners are appropriately distinguishing management from board obligations in their examination findings, conclusions, and recommendations.¹⁹ Commentators also suggested that the agencies review existing regulations that examiners rely on to support their prescriptions that directors undertake more managerial-type responsibilities.²⁰ However, the Joint Report simply informs Congress that the agencies received comments relating to the burdens on bank directors, without reference to the actions taken in response to the comments.²¹

Moreover, other than Executive Order 13422, previous executive orders and EGRPRA reviews failed to address the expanding volume and significance of regulatory guidance. While Executive Order 13422²² expanded OIRA review to include regulatory guidance documents, it was revoked by Executive Order 13497²³ before any changes were made to the substantial guidance burden facing bank boards of directors.

¹⁹ 72 Fed. Reg. 62082 (Nov. 1, 2007).

²⁰ *Id.*

²¹ *See, e.g.* 72 Fed. Reg. 62035, 62053, 62058, 62061-62, available at <http://www.federalregister.gov/articles/2007/11/01/07-5385/joint-report-to-congress-july-31-2007-economic-growth-and-regulatory-paperwork-reduction-act#p-793>.

²² 3 C.F.R. 191 (2008).

²³ 3 C.F.R. 218 (2010).

Recommendations

The following are AABD's recommendations to address the overwhelming regulatory burdens facing bank directors:

1. Each of the federal banking agencies should immediately initiate a review of their existing regulations and written guidance that places responsibilities on bank directors, their boards of directors or board committees. The purpose of the review is to evaluate the overall impact of the body of laws, regulations and regulatory guidance on bank directors, their boards of directors and their board committees; to eliminate unnecessary and duplicative regulations or guidance; to eliminate all regulations and guidance where the burden on bank directors and their boards and board committees outweighs the benefit from such regulations and guidance; and to organize the surviving regulations and guidance in a way that is easily retrievable and usable by bank boards of directors. In evaluating the burden of existing rules and guidance, the agencies should consider the cumulative effect of the body of banking laws, regulations and regulatory guidance on directors, the board of directors, and board committees.
2. The federal banking agencies should incorporate into their procedures a requirement that they will thoroughly consider the impact of new proposed rules or guidance on the burdens facing bank directors, including their cumulative effect, and not add to the burden of bank directors unless the benefits of the proposed rule or guidance outweigh the burdens placed on bank directors.
3. In addition, each of the federal banking agencies should propose by September 30, 2012 and adopt rules and guidance no later than June 30, 2013 that will clarify that bank boards of directors may delegate management duties to management and rely reasonably on management to perform such duties.
4. The federal banking agencies should undertake a review of the obligations that they are creating for boards of directors and board committees through formal and informal enforcement and administrative actions to determine the extent to which those actions are creating management-like burdens and responsibilities on bank boards, and take steps to assure that in the future, such enforcement/administrative actions will not force bank boards and board committees to undertake management responsibilities.
5. The reviews described in Recommendations #1 and #4, above, should be completed no later than December 31, 2012, and should be publicly disseminated and presented to the House Committee on Financial Services and the Senate Committee on Banking, Housing and Urban Affairs, with a set of recommendations for action.

6. Following the receipt of the reviews described in Recommendations #1 and #4, the Senate Committee on Banking, Housing and Urban Affairs and the House Committee on Financial Services should hold hearings at which representatives of each of the federal banking agencies will testify.
7. Based on the record of the hearings and any supplemental information, the House Committee on Financial Services and the Senate Committee on Banking, Housing and Urban Affairs, should take appropriate oversight action to help assure that the agencies will take reasonable steps to eliminate burdens on bank directors that are not outweighed by the benefits from such burdens, and propose legislation that will repeal or amend provisions of federal banking law whose burdens on boards of directors exceed the benefits.
8. The OCC²⁴ and FDIC²⁵ currently are, or will soon be, undertaking a substantive review of their regulations in order to identify any regulations that are “outmoded, ineffective, insufficient, or excessively burdensome.” Both agencies expect to invite public comment on the regulatory burden pursuant to the next round of EGRPRA in early 2012. AABD recommends that the participating agencies open public comment to all current regulations and guidance that imposes responsibilities on bank boards of directors or their committees to determine which are unnecessary or unduly burdensome, consistent with Recommendation #1, above.

²⁴ Letter from John Walsh, Acting Comptroller of the OCC addressed to Cass Sunstein (Nov. 29, 2011), *available at* www.occ.treas.gov/topics/laws-regulations/increasing-regulatory-effectiveness.pdf

²⁵ <http://www.fdic.gov/regulations/laws/plans/index.html>

Federal Reserve Supervision & Regulation Letters

SR 13-24: Managing Foreign Exchange Settlement Risks for Physically Settled Transactions December 23, 2013

- This guidance does NOT apply to institutions with less than \$50 billion in total consolidated assets unless the institution has extensive foreign exchange activities.
- The board of directors needs to be actively involved in the governance and compliance arrangements dealing with foreign exchange settlement-related risks. Management should inform the board of any significant compliance issues to the board and the board, one director, or a committee of the board must oversee the management of the foreign exchange settlement compliance function directly.

Found at: <http://www.federalreserve.gov/bankinforeg/srletters/sr1324.htm> and
<http://www.bis.org/publ/bcbs241.pdf>

SR 13-21: Inspection Frequency and Scope Requirements for Bank Holding Companies and S&L Holding Companies with Total Consolidated Assets of Less than \$10 Billion or Less December 17, 2013

- The board of directors' involvement in the inspection depends on the size and complexity of the holding company. If the holding company has less than \$1 billion in total consolidated assets, the FRB most often will conduct an off-site review. Whether on or off-site, the board will be notified of the results within 120 days after the receipt of the lead depository institution's examination report; the board may need to meet with FRB staff to discuss any supervisory issues. If the holding company has between \$1 billion and \$10 billion, it will be examined either annually or biennially depending on its complexity. The examiners will consider the board and management's understanding of the institution's risk exposures and whether they are effectively managing those exposures.

Found at: <http://www.federalreserve.gov/bankinforeg/srletters/sr1321a1.pdf>

SR 13-19: Guidance on Managing Outsourcing Risk December 5, 2013

- There are potential risks in outsourcing business functions or activities to service providers. For the purposes of this guidance, service providers are defined as any entity with whom the financial institution has a contractual relationship to provide business functions or activities. The bank is responsible for the service provider's actions and can be exposed to compliance, concentration, legal, operational, and reputational risks by entering into a relationship with a service provider. In order to protect the bank and ensure that outsourced activities are

conducted with the same level of compliance and competence as in-house activities, the board of directors must approve policies relating specifically to outsourced activities and service provider risk management. The policies need to address the entirety of the relationship, from inception onward, including contingency planning. Senior management must enforce the policies and regularly report to the board on service providers' compliance with the policies. If a service provider wishes to limit his potential liability, the board of directors must decide whether that limitation is reasonable when compared with the potential liability the bank faces should the service provider fail to perform the outsourced activities within the parameters of the bank's policy.

Found at: <http://www.federalreserve.gov/bankinfo/srletters/sr1319a1.pdf>

SR 13-13: Supervisory Considerations for the Communication of Supervisory Findings
June 17, 2013

- The board should be made aware of any significant supervisory issues, even though they are not the ones running the institution on a day-to-day basis, they are ultimately responsible for the safety and soundness of the institution and therefore need to understand any and all issues facing the bank. When the board receives an examination report, they must review it and direct management to take any necessary corrective actions. The FRB has two classifications for issues the board needs to address: MRIA (matters requiring immediate attention) and MRA (matters requiring attention).
- When the FRB communicates with the board of directors regarding an MRIA, it must state that the board of directors "is required to immediately . . ." and the board must take prompt action to address the matter. The board must state its corrective plan in writing and send it to the FRB, along with the important dates and the progress they have made. The board must do the same when they receive a report on an MRA, though the immediacy is lessened. The FRB will follow up on both MRIA and MRA reports to ensure the institution is in compliance with the board's directives and that the issues are being effectively addressed.

Found at: <http://www.federalreserve.gov/bankinfo/srletters/sr1313a1.pdf>

SR 13-3: Interagency Guidance on Leveraged Lending
March 21, 2013

- The FDIC, OCC, and FRB replaced the 2001 *Interagency Guidance on Leveraged Lending* with this updated guidance. The guidance states that companies should create a definition of leveraged lending that applies across all of its business lines in order to have the most sound policies. Risk management is important for high-risk credits, such as leveraged loans. The board of directors should receive a summary of the bank's leveraged lending portfolio at least quarterly from senior management. The board of directors should designate the

institution's risk appetite with regards to leveraged lending. Their decision should be based on the effect of leverage lending on the overall risk profile, the possible effect on earnings, liquidity, and capital. The board of directors must also receive timely reports on leveraged lending risk from senior management.

- The board of directors must establish written procedures to handle the institution's pipeline management. The board and management are responsible for establishing a procedure for pipeline transactions that have not been sold according to their original distribution plan. If those transactions are reclassified as hold-to-maturity, the board must be informed.

Found at: <http://www.federalreserve.gov/bankinforeg/srletters/sr1303a1.pdf>

SR 13-1: Supplemental Policy Statement on the Internal Audit Function and Its Outsourcing January 23, 2013

- This does NOT apply to community banks, which are defined as institutions with consolidated assets of \$10 billion or less.
- The Federal Reserve issued guidance to supplement its 2003 *Interagency Policy Statement on the Internal Audit Function and Its Outsourcing*. The board of directors and senior management must oversee the outsourcing arrangements and must be aware, and take precautions to ensure, that the outsourced function must maintain the same quality and compliance standards as it would had the bank kept it in-house. The board of directors must set and maintain risk tolerance limits and the internal audit evaluates the reasonableness of the limits the board set and the effectiveness of management in operating within those limits. In addition, the internal audit function evaluates governance at all management levels and reports to the board if there are any concerns.
- The vendor should supply the board of directors, the audit committee, and senior management with the information collected to allow them to understand any deficiencies and make the appropriate changes.

Found at: <http://www.federalreserve.gov/bankinforeg/srletters/sr1301a1.pdf>

SR 12-17: Consolidated Supervision Framework for Large Financial Institutions December 17, 2012

- This guidance does NOT apply to institutions with less than \$10 billion in total consolidated assets.
- In response to the financial crisis, the FRB has developed a new supervisory framework for large institutions focusing on enhancing the institution's resilience and reducing the broad economic impact of the institution's potential failure. In reaching these goals, the FRB is placing more responsibility on the board of directors. First and foremost, the board must create a culture of compliance for the whole institution. In addition, it is the board's

responsibility to ensure senior management is capable of managing all aspects of the institution's operations and that they understand the institution's risk appetite and corporate strategy, both of which the board has set. Management information systems (MIS) must support the board's oversight functions in order to increase resiliency, as well as to help integrate the resolution plan into the institution's corporate governance structures.

Found at: <http://www.federalreserve.gov/bankinforeg/srletters/sr1217.htm>

**SR 12-14: Revised Guidance on Supervision of Technology Service Providers (TSP)
October 31, 2012**

- See: OCC 2012-34

Found at: <http://www.federalreserve.gov/bankinforeg/srletters/sr1214.htm>

**SR 12-4: Upgrades of Supervisory Ratings for Banking Organizations with \$10 Billion or Less in Total Consolidated Assets
March 1, 2012**

- Examiners who are considering upgrading the composite rating of a community bank must focus on overall progress in moving the bank to a satisfactory condition, but especially the strength and effectiveness of board oversight, the strength of the core financial components, and overall risk management functions of the bank. The board's oversight should consist of strategic review of the bank's financial strength and risk profile, as well as active engagement in addressing any issues. In addition, the board should provide a check on management by regularly reviewing their actions and projections.

Found at: <http://www.federalreserve.gov/bankinforeg/srletters/sr1204.htm>

APPENDIX V: Federal Reserve Guidance

Matters to Be Addressed by Bank Boards of Directors Pursuant to Agency Guidance

Federal Reserve Commercial Bank Examination Manual

Found at: <http://www.federalreserve.gov/boarddocs/supmanual/cbem/0005cbem.pdf>

Director and Senior Management Responsibilities

- The Board of Directors is “responsible for having an effective system of internal audit function – and for ensuring that the importance of internal control is understood and adhered to throughout the institution.” (1010.1)

Due from Banks

- The Board of Directors is responsible for having written policies regarding periodic reviews and approval of balances, check signing authority, guidelines for charge-off of old items and officer responsibilities. (2010.4)

Investment Securities and End User Activities

- The Board of Directors is responsible for “overseeing and managing the risks associated with nontrading activities involving securities and derivative instruments.” (2020.1)

Bank Dealer Activities

- The Board of Directors is responsible for ensuring that “adequate policies and risk tolerance limits are developed for managing the risk in bank dealer activities, and they must understand, review, and approve these limits across all established product lines. (2030.1)

Loan Portfolio Management

- The Board of Directors is responsible for “discharging its duty to both depositors and shareholders [and] must ensure that loans in the bank’s portfolio are made based on the following three objectives 1) to grant loans on a sound collectible basis 2) to invest the banks funds profitably for the benefit of shareholders and the protection of depositors and 3) to serve the legitimate credit needs of the bank’s community. (2040.1)

Concentration of Credit

- The Board of Directors is responsible for “establishing appropriate risk parameters and for monitoring exposure, as well as for evaluating methods used by management to manage and control concentration risk.” (2050.1)

Allowance for Loan and Lease Losses (ALLL)

- The Board of Directors is responsible for maintaining the “Allowance for Loan and Lease losses at an appropriate level.” (2070.1)

Commercial and Industrial Loans

- The Board of Directors is responsible for adopting written commercial loan policies which establish procedures for reviewing commercial loans, defining qualified borrowers and for establishing minimum standards for documentation. (2080.4)

Real Estate Loans

- The Board of Directors is responsible for reviewing and approving real estate loan policies that define the institution’s target market, diversification standards, and to be aware of delinquency trends and problem loans. (2090.1)

Real Estate Construction Loans

- The Board of Directors is responsible for reviewing and approving written construction lending policies regarding the aggregate limit for construction loans. (2100.4)

Floor Plan Loans

- The Board of Directors should develop procedures for reviewing floor plan applications, define qualified borrowers, establish minimum standards for documentation and establish curtailment amounts and time limits. (2110.4)

Direct Financing Leases

- The Board of Directors should develop procedures for reviewing direct lease financing applications, define qualified property and establish minimum standards for documentation. (2120.1)

Consumer Credit

- The Board of Directors should adopt written installment loan policies that establish procedures for reviewing installment loan applications, standards for determining credit lines and establishing minimum standards for documentation. (2130.4)

Agricultural Loans

- The Board of Directors should “ensure that appropriate written guidance is provided for management in the agriculture lending areas.” (2140.1)

Asset-Based Lending

- The Board of Directors should adopt written policies that establish procedures for reviewing accounts receivable financing applications, establish standards for credit lines, establish standards for determining percentage advance to be made against acceptable receivables, establish minimum receivables and minimum standards of documentation. (2160.4)

Securities Broker and Dealer Loans

- The Board of Directors is responsible for establishing standards for determining broker and dealer credit lines and for establishing minimum standards for documentation. (2170.4)

Factoring

- The Board of Directors is responsible for establishing procedures for reviewing factoring agreements, standards for determining credit lines, standards for determining individual customer limits, standards for determining the percentage of advances, standards for determining the discount and to establish minimum standards for documentation. (2180.4)

Deposit Accounts

- It is the Board of Directors responsibility to review overdrafts and review the basis for service charges on dormant accounts. (3000.1)

Borrowed Funds

- The Board of Directors is responsible for having a written policy outlining the objectives of bank borrowing, describing the bank's borrowing philosophy and providing for risk diversification. (3010.4)

Capital Adequacy Requirements

- The Board of Directors must ensure that the "bank's officers and employees are operating in conformity with the Board's established capital adequacy guidelines." (3020.2)

Asset/Liability Management

- The Board of Directors is responsible for creating fund management policies, practices and procedures which include a line of authority and responsibility for liquidity management decisions, a formal mechanism to coordinate asset and liability management decisions, method to identify liquidity needs and guidelines for the level of liquid assets. (4020.4)

Asset Securitization

- The Board of Directors is responsible for knowing the degree to which the organization is exposed to the "credit, market, liquidity, operational, legal and reputational risks involved in the institution's securitization activities." The Board is also responsible for ensuring that the methods utilized in order to manage these risks are appropriate and sophisticated enough when compared to the level of the financial institution's activities. (4030.1)

Management of Insurable Risks

- The Board of Directors is responsible for establishing reasonable guidelines for the retention of risk. (4040.2)

Computer Services

- The Board of Directors is responsible for developing, implementing and testing contingency plans that will ensure the “continued operation of the institution’s data processing tasks if an unforeseen event occurs.” (4060.2)

Dividends

- The Board of Directors is responsible for having a written policy statement regarding dividend payments. (4070.2)

Employee Benefit Trusts

- The Board of Directors is responsible for approving new employment benefit plans. (4080.4)

Interest Rate Risk Management

- The Board of Directors is responsible for the Interest-Rate Risk Management taken by an organization. (4090.1)

Contingent Claims from Off-Balance-Sheet Credit Activities

- The Board of Directors is responsible for maintaining “adequate written policies and procedures and monitoring letters of credit activities.” (4110.1)

Payment System Risk and Electronic Funds Transfer Activities

- The Board of Director is responsible for reviewing and approving the institution’s “assessment and sender net debit cap.” (4125.2)

Private Placements

- The Board of Directors is responsible for adopting written policies regarding private placement activities. These policies should define objectives, provide guidelines for fee determinations, require that bank officers act in an advisory rather than agent capacity and establish appropriate procedures for conflict of interests. (4130.4)

Real Estate Appraisals and Evaluations

- The Board of Directors is responsible “adopting policies and procedures that establish effective real estate appraisal and evaluation programs.” (4140.1)

Retail Sales of Nondeposit Investment Products

- The Board of Directors is responsible for “ensuring that retail sales of nondeposit investment products comply with the interagency statement and with all applicable state and federal laws and regulations.” (4170.1)

Duties and Responsibilities

- Competent Executive Officers
 - The Board is responsible for selecting officers who are honest, competent, and efficient and have the necessary executive ability.

- Effective Supervision of Bank Affairs
 - The Board should “ensure a bank is soundly managed” have reasonable business judgment and competence.
- Adoption and Adherence to Sound Policies and Objectives
 - The Board should provide “a clear framework of objectives and policies within which the chief executive officer can operate and administer the bank’s affairs.”
- Avoidance of Self-Serving Practices
 - The Board of Directors has a greater responsibility in “upholding safe and sound practices.”
- Awareness of the Bank’s Financial Condition and Management Policies
 - The Board of Directors should have a Management Information System in place to provide information from an institution’s mainframe and microcomputers.
- Maintenance of Reasonable Capitalization
 - The Board of Directors has the responsibility to maintain “its bank on a sufficiently capitalized basis.”
- Compliance with Banking Laws and Regulations
 - The Board of Directors must ensure that banking laws are not violated.
- Guarantee of a Beneficial Influence on the Community’s Economy
 - The Board of Directors has a responsibility to meet the needs of the community and provide banking services which “meet the legitimate credit and other needs of the community being served.” (5000.1)

In addition, the Board should conduct its meetings as required by the bank’s bylaws; keep minutes of the Board meetings and may form committees to delegate some of the workload. (5000.1)

Compliance with Formal and Informal Administrative Actions

- The Board of Directors must correct any deficiencies found in the bank. (5000.1)

Duties and Responsibilities of Directors Examination Objectives

- Determine whether the Board of Directors understands its duties and responsibilities.
- Determine whether the Board of Directors is discharging its responsibilities in an appropriate manner.
- Determine whether the Board of Directors has developed adequate objectives and policies.
- Determine the existence of any conflict of interests.
- Determine compliance with laws and regulations. (5000.2)

Bank Secrecy Act/Anti-Money Laundering Examination Manual (BSA/AML)

Found at: http://www.ffiec.gov/bsa_aml_infobase/documents/BSA_AML_Man_2010.pdf

Board of Directors and Senior Management Oversight

The Board of Directors (BOD) is responsible for creating an “appropriate oversight culture” which is consistent with sound risk management and control environment. Moreover, the BOD should have well developed goals which target the client base in terms of “minimum net worth, investable assets and types of products and services sought.” In addition, these goals should include the types of clients the bank will or will not accept. The BOD is also expected to be actively involved “in establishing control and risk management goals for private banking activities, including effective audit and compliance reviews.” The BOD should also review “relationship manager compensation reports, budget or target comparison reports and risk management reports.”

Internal Controls - The Board of Directors is responsible for ensuring that the bank maintains an effective BSA/AML internal control structure. This includes suspicious activity monitoring and reporting. Furthermore, the Board should be informed the of compliance initiatives, compliance deficiencies, SARs filed and corrective action taken.

Independent Testing – The person conducting the BSA/AML testing should report directly to the Board of Directors. The testing should assist the Board of Directors and management in identifying areas of weakness or areas where there is a need for enhancements or stronger controls.

Training – The Board of Directors must ensure that the appropriate individuals are trained in the BSA.

Customer Identification Program – The Board of Directors must approve a Customer Identification Program pursuant to section 326 of the USA Patriot Act.

Office of Foreign Asset Control (OFAC) – The Board of Directors must develop policies, procedures and other processes consistent with OFAC laws.

Bank Holding Company Supervision Manual

Found at: <http://www.federalreserve.gov/boarddocs/supmanual/bhc/bhc.pdf>

Consolidated Supervision of Regional BHCs

The Board of Directors is responsible for selecting competent senior managers, monitoring risk tolerances, approving significant strategies, demonstrating leadership, ensuring that the organization has an effective audit function and ensuring that the organization has outlined policies governing the segregation of duties and conflicts of interest. (1050.2)

Functional Review

Directors have important roles “in formulating policies and establishing programs for private-banking products, operations, internal controls and audits.” (2010.11.2)

Loan Administration and Lending Standards

The Board of Directors should be responsible for reviewing and approving the financial institution’s policies at least annually. (2010.2)

Board and Management Oversight of CRE Concentration Risk

The Board of Directors is responsible for the CRE concentration and the overall growth objectives, financial targets and capital plans of the financial institution. (2010.2.5.3.1)

Program Management

The Board of Directors is responsible for “written policies that address the risks and management” of nondeposit investment product retail sale programs. (2010.6.2.1)

Internal Audit Function

The Board of Directors is responsible for “having an effective system of internal control and an effective internal audit function in place at their institution.” (2060.05.1.1)

Overview of the ALLL Policy Statement

The Board of Directors is responsible for maintaining the Allowance for Loan and Lease Losses at an appropriate level (ALLL). Moreover, the Board of Directors is responsible for “overseeing management’s significant judgments and estimates pertaining to the determination of an appropriate ALLL.” This oversight includes reviewing and approving ALLL policies and procedures, reviewing management assessment’s of the loan review system and to periodically validate and revise the ALLL methodology. (2065.3.1.2)

Sound Incentive Compensation Policies

The Board of Directors is responsible for “ensuring that the organization’s incentive compensation arrangements for all covered employees are appropriately balanced and do not jeopardize the safety and soundness of the organization.” (2068.0)

Risk-Focused Supervision Framework for Large Complex Banking Organizations

The Board of Directors is responsible for approving the written information security program, for overseeing its development and for approving a Red Flags Program. (2124)

Responsibilities of the Board of Directors and Senior Management

The Board of Directors is responsible for “working together to establish and implement a comprehensive and effective compliance risk-management program and oversight framework that is reasonably designed to prevent and detect compliance breaches and issues.” (2124.07.4)

Development and Implementation of Information Security Program

The Board of Directors is responsible for having a written information security program and to oversee the development, implementation and the maintenance of the bank holding company’s information security program. (2124.4)

Oversight of the Risk Management Policies

The Board of Directors “should approve all significant policies relating to the management of risks throughout the organization.” These policies, including those related to trading policies, should be “consistent with the organization’s broader business strategies, capital adequacy [requirements], expertise and overall willingness to take risk.” Moreover, the Board should be regularly informed about the risk exposure to the financial institution. (2125.0.1.1)

Model Risk Management

The Board of Directors is responsible for establishing a “strong model risk-management framework that fits into the broader risk management of the organization.” (2126)

Investment Securities and End-User Derivative Activities

The Board of Directors is responsible for approving major policies, for conducting investment activities and for the establishment of risk limits. (2126.1.1.3)

Board of Directors Policies Pertaining to Credit-Enhanced or Asset-Backed Commercial Paper

The Board of Directors should ensure that “appropriate policies, procedures and controls” are established by a banking organization before it participates in asset-backed commercial paper programs. The Board must approve and periodically review policies and procedures related to asset-backed commercial paper programs. Furthermore, these policies and procedures should follow prudent “standards of credit assessment and approval regardless of the role an institution plays in an asset-backed commercial paper program.” (2128.03.04)

Securitization Covenants Linked to Supervisory Actions or Thresholds

The Board of Directors is responsible for “initiating policies and procedures, and for monitoring processes and internal controls, that will provide reasonable assurance that the bank holding company’s contracts and commitments do not include detrimental covenants that affect its safety and soundness.” (2128.05)

Retained Interests From Securitization Activities

The Board of Directors is responsible for monitoring the risks associated from securitization activities. Furthermore, the Board of Directors is responsible for ensuring that its audit staff is competent regarding securitization activities. (2128.05)

Subprime Lending

The Board of Directors is responsible for the risks associated with subprime lending. Specifically, the Board needs to determine whether the costs and profit projections are met, the accuracy of the loss estimates and the credit needs of the community. (2128.08)

Other Risk-Management Principles for Elevated-Risk CSFTs

The Board of Directors should “send a strong message throughout the financial institution about the importance of compliance with law and overall good business ethics.” (2128.09.3.3)

Risk and Capital Adequacy Management

The Board of Directors is responsible for “ensuring that they fully understand the degree to which the organization is exposed to the credit, market, liquidity, operational, legal and reputational risks involved in the institution’s secondary-market credit activities.” (2129.05.4.1)

Futures, Forward, and Option Contracts

The Board of Directors is responsible for having written limitations with respect to financial-contract positions. (2130)

Recognition and Control of Exposure to Risk

The Board of Directors is responsible for consolidated risk evaluation and control. (2160)

Real Estate Appraisals and Evaluations

The Board of Directors is responsible for adopting policies and procedures that establish and maintain an effective independent appraisal, are sufficiently comprehensive and are applied uniformly to all units engaged in real estate activities. (2231)

Section 4(c)(8) of the BHC Act (Mortgage Banking) Board Oversight

The Board of Directors is expected to retain a competent executive management team, establish short and long term business objectives, monitor operations and ensure that the BHC meets the community’s residential mortgage credit needs. (3070.0.1.1)

Securities Underwriting Trading Policies

The Board of Directors is responsible for adopting written policies regarding securities underwriting/trading policies that outline objectives, establish limits or guidelines and price markups. (3240.0.13.1)

Offsetting Resale and Repurchase Transactions

The Board of Directors is responsible for adopting written policies regarding repurchase transaction policies regarding limiting the aggregate amount of offsetting repurchase transactions, limiting the amounts in unmatched or extended maturity transactions and determining the maximum time gaps for unmatched maturity transactions. (3240.0.13.1)

4(c)(8) Agency Transactional Services

The Board of Directors is responsible for risk taking operations in the financial institutions Futures Commissions Merchant activities. (3250.0.2.1)

Supervisory Guidance on Equity Investment and Merchant Bank Activities

The Board of Directors is responsible for “portfolio objectives, overall investment strategies and general investment policies that are consistent with the institution’s financial condition, risk profile, and risk tolerance.” (3909.0.2.1)

Consumer Protection In Sales Of Insurance Rules (CPSI)

The Board of Directors is responsible for “overseeing its depository institution subsidiaries’ compliance with the CPSI regulation.” (3950.0.6)

Payment of Dividends, Stock Redemption, and Stock Repurchases at Bank Holding Companies

The Board of Directors is responsible for the payment of dividends, stock redemptions and stock repurchases and should consider overall asset quality, potential for unanticipated losses, liquidity and credit commitments, earnings and the ability to raise additional equity capital. (4060.9)

Consolidated (Funding and Liquidity Risk Management)

The Board of Directors is responsible for the liquidity risk assumed and should ensure “that the institution’s liquidity risk tolerance is established and communicated in such a manner that all levels of management clearly understand the institution’s approach to managing the trade-offs between liquidity risk and short-term profits.” (4066)

Rating the Adequacy of Risk Management Processes and Internal Controls of Bank Holding Companies

The Board of Directors is responsible for the risk management processes and should have a clear understanding of the types of risks in the bank’s activities, approve policies to limit risks and should be familiar with adequate record keeping and reporting systems to measure risk. (4070.1)

Country Risk - Oversight by the Board of Directors

The Board of Directors is responsible “for periodically reviewing and approving policies governing its international activities to ensure that they are consistent with the bank holding company’s strategic plans and goals.” (4090.0.2.1)

Federal Reserve Supervision & Regulation Letters

SR 13-24: Managing Foreign Exchange Settlement Risks for Physically Settled Transactions

December 23, 2013

- This guidance does NOT apply to institutions with less than \$50 billion in total consolidated assets unless the institution has extensive foreign exchange activities.
- The board of directors needs to be actively involved in the governance and compliance arrangements dealing with foreign exchange settlement-related risks. Management should inform the board of any significant compliance issues to the board and the board, one director, or a committee of the board must oversee the management of the foreign exchange settlement compliance function directly.

Found at: <http://www.federalreserve.gov/bankinfo/srletters/sr1324.htm> and
<http://www.bis.org/publ/bcbs241.pdf>

SR 13-21: Inspection Frequency and Scope Requirements for Bank Holding Companies and S&L Holding Companies with Total Consolidated Assets of Less than \$10 Billion or Less

December 17, 2013

- The board of directors' involvement in the inspection depends on the size and complexity of the holding company. If the holding company has less than \$1 billion in total consolidated assets, the FRB most often will conduct an off-site review. Whether on or off-site, the board will be notified of the results within 120 days after the receipt of the lead depository institution's examination report; the board may need to meet with FRB staff to discuss any supervisory issues. If the holding company has between \$1 billion and \$10 billion, it will be examined either annually or biennially depending on its complexity. The examiners will consider the board and management's understanding of the institution's risk exposures and whether they are effectively managing those exposures.

Found at: <http://www.federalreserve.gov/bankinfo/srletters/sr1321a1.pdf>

SR 13-19: Guidance on Managing Outsourcing Risk

December 5, 2013

- There are potential risks in outsourcing business functions or activities to service providers. For the purposes of this guidance, service providers are defined as any entity with whom the financial institution has a contractual relationship to provide business functions or activities. The bank is responsible for the service provider's actions and can be exposed to compliance, concentration, legal, operational, and reputational risks by entering into a relationship with a

service provider. In order to protect the bank and ensure that outsourced activities are conducted with the same level of compliance and competence as in-house activities, the board of directors must approve policies relating specifically to outsourced activities and service provider risk management. The policies need to address the entirety of the relationship, from inception onward, including contingency planning. Senior management must enforce the policies and regularly report to the board on service providers' compliance with the policies. If a service provider wishes to limit his potential liability, the board of directors must decide whether that limitation is reasonable when compared with the potential liability the bank faces should the service provider fail to perform the outsourced activities within the parameters of the bank's policy.

Found at: <http://www.federalreserve.gov/bankinfo/reg/srletters/sr1319a1.pdf>

SR 13-13: Supervisory Considerations for the Communication of Supervisory Findings

June 17, 2013

- The board should be made aware of any significant supervisory issues, even though they are not the ones running the institution on a day-to-day basis, they are ultimately responsible for the safety and soundness of the institution and therefore need to understand any and all issues facing the bank. When the board receives an examination report, they must review it and direct management to take any necessary corrective actions. The FRB has two classifications for issues the board needs to address: MRIA (matters requiring immediate attention) and MRA (matters requiring attention).
- When the FRB communicates with the board of directors regarding an MRIA, it must state that the board of directors "is required to immediately . . ." and the board must take prompt action to address the matter. The board must state its corrective plan in writing and send it to the FRB, along with the important dates and the progress they have made. The board must do the same when they receive a report on an MRA, though the immediacy is lessened. The FRB will follow up on both MRIA and MRA reports to ensure the institution is in compliance with the board's directives and that the issues are being effectively addressed.

Found at: <http://www.federalreserve.gov/bankinfo/reg/srletters/sr1313a1.pdf>

SR 13-3: Interagency Guidance on Leveraged Lending

March 21, 2013

- The FDIC, OCC, and FRB replaced the 2001 *Interagency Guidance on Leveraged Lending* with this updated guidance. The guidance states that companies should create a definition of leveraged lending that applies across all of its business lines in order to have the most sound policies. Risk management is important for high-risk credits, such as leveraged loans. The

board of directors should receive a summary of the bank's leveraged lending portfolio at least quarterly from senior management. The board of directors should designate the institution's risk appetite with regards to leveraged lending. Their decision should be based on the effect of leverage lending on the overall risk profile, the possible effect on earnings, liquidity, and capital. The board of directors must also receive timely reports on leveraged lending risk from senior management.

- The board of directors must establish written procedures to handle the institution's pipeline management. The board and management are responsible for establishing a procedure for pipeline transactions that have not been sold according to their original distribution plan. If those transactions are reclassified as hold-to-maturity, the board must be informed.

Found at: <http://www.federalreserve.gov/bankinforeg/srletters/sr1303a1.pdf>

SR 13-1: Supplemental Policy Statement on the Internal Audit Function and Its Outsourcing

January 23, 2013

- This does NOT apply to community banks, which are defined as institutions with consolidated assets of \$10 billion or less.
- The Federal Reserve issued guidance to supplement its 2003 *Interagency Policy Statement on the Internal Audit Function and Its Outsourcing*. The board of directors and senior management must oversee the outsourcing arrangements and must be aware, and take precautions to ensure, that the outsourced function must maintain the same quality and compliance standards as it would had the bank kept it in-house. The board of directors must set and maintain risk tolerance limits and the internal audit evaluates the reasonableness of the limits the board set and the effectiveness of management in operating within those limits. In addition, the internal audit function evaluates governance at all management levels and reports to the board if there are any concerns.
- The vendor should supply the board of directors, the audit committee, and senior management with the information collected to allow them to understand any deficiencies and make the appropriate changes.

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SR 12-17: Consolidated Supervision Framework for Large Financial Institutions

December 17, 2012

- This guidance does NOT apply to institutions with less than \$10 billion in total consolidated assets.
- In response to the financial crisis, the FRB has developed a new supervisory framework for large institutions focusing on enhancing the institution's resilience and reducing the broad

economic impact of the institution's potential failure. In reaching these goals, the FRB is placing more responsibility on the board of directors. First and foremost, the board must create a culture of compliance for the whole institution. In addition, it is the board's responsibility to ensure senior management is capable of managing all aspects of the institution's operations and that they understand the institution's risk appetite and corporate strategy, both of which the board has set. Management information systems (MIS) must support the board's oversight functions in order to increase resiliency, as well as to help integrate the resolution plan into the institution's corporate governance structures.

Found at: <http://www.federalreserve.gov/bankinfo/srletters/sr1217.htm>

SR 12-14: Revised Guidance on Supervision of Technology Service Providers (TSP)

October 31, 2012

- See: OCC 2012-34

Found at: <http://www.federalreserve.gov/bankinfo/srletters/sr1214.htm>

SR 12-4: Upgrades of Supervisory Ratings for Banking Organizations with \$10 Billion or Less in Total Consolidated Assets

March 1, 2012

- Examiners who are considering upgrading the composite rating of a community bank must focus on overall progress in moving the bank to a satisfactory condition, but especially the strength and effectiveness of board oversight, the strength of the core financial components, and overall risk management functions of the bank. The board's oversight should consist of strategic review of the bank's financial strength and risk profile, as well as active engagement in addressing any issues. In addition, the board should provide a check on management by regularly reviewing their actions and projections.

Found at: <http://www.federalreserve.gov/bankinfo/srletters/sr1204.htm>

SR 11-10 – Subject: Interagency Counterparty Credit Risk Management Guidance

July 5, 2011

- The Board of Directors is expected to “clearly articulate the banking organization's risk tolerance for Counterparty Credit Risk Management.” The guidance is targeted to banks which have significant derivative portfolios.

Found at: <http://www.federalreserve.gov/bankinfo/srletters/sr1110.htm>

SR 11-8 – Subject: Supervisory Guidance on Implementation Issues related to the Advanced

- The Board of Directors is responsible for being aware of correspondent relationships and for managing risks “associated with funding and credit concentrations arising from correspondent relationships.” Institutions are expected to implement procedures that review the status of these correspondent relationships.

Found at: <http://www.federalreserve.gov/boarddocs/srletters/2010/sr1010.htm>

SR 10-6 - Subject: Interagency Policy Statement on Funding and Liquidity Risk Management

March 17, 2010

- The Board of Directors is expected to have an oversight role over an institution’s liquidity management process and to actively work with management. Furthermore, “the board of directors is ultimately responsible for the liquidity risk assumed by the institution.” In addition “the board should oversee the establishment and approval of liquidity management strategies, policies and procedures, and review them at least annually.”

Found at: <http://www.federalreserve.gov/boarddocs/srletters/2010/sr1006.htm>

SR 10-1 - Subject: Interagency Advisory on Interest Rate Risk

January 11, 2010

- The Board of Directors is responsible for the interest rate risk that an institution undertakes. Therefore, the Board of Directors should “understand and be regularly informed about the level and trend of their institutions’ IRR exposure.” In addition, the Board of Directors should oversee “the establishment, approval, implementation, and annual review of IRR management strategies, policies, procedures and limits (or risk tolerances).”

Found at: <http://www.federalreserve.gov/boarddocs/srletters/2010/sr1001.htm>

SR 09-4 - Subject: Applying Supervisory Guidance and Regulations on the Payment of Dividends, Stock Redemptions, and Stock Repurchases at Bank Holding Companies

February 24, 2009

- The Board of Directors is responsible for assessing capital adequacy requirements when making payments on dividends, stock redemptions or stock repurchases. The Board should look at overall asset quality, declines in assets values, cash flows and the composition and quality of the capital.

Found at: <http://www.federalreserve.gov/boarddocs/srletters/2009/SR0904.htm>

SR 09-02 – Subject: FFIEC - Risk Management of Remote Deposit Capture (RDC)

January 14, 2009

SR 08-7 - Subject: Interagency Examination Procedures for the Identity Theft Red Flags and Other Regulations under the Fair Credit Reporting Act

October 10, 2008

- The Board of Directors is responsible for administering a program which prevents identity theft.

Found at: <http://www.federalreserve.gov/boarddocs/srletters/2008/SR0807.htm>

SR 08-4 - Subject: Qualification Process for Advanced Approaches Risk-Based Capital Framework Implementation (Interagency Statement -- U.S. Implementation of Basel II Advanced Approaches Framework).

July 8, 2008

- The Board of Directors must enact an implementation plan in order to comply with “[a] new risk-based capital framework (advanced approaches rule) that requires some and permits other qualifying banks to use an internal ratings-based approach (IRB) and other methodologies to calculate risk-based capital requirements for credit risk and advanced measurement approaches (AMA) to calculate risk-based capital requirements for operational risk.”

Found at: <http://www.federalreserve.gov/boarddocs/srletters/2008/SR0804.htm>

SR 08-3 / 07-18 - Subject: FFIEC Business Continuity Planning Booklet

March 19, 2008 / December 12, 2007

- The Board of Directors is responsible for overseeing the development of a pandemic plan. Therefore, the Board is expected to “approve the institution’s written plan and ensure that senior management is investing sufficient resources into planning, monitoring, and testing the final plan.”
- The Board of Directors is responsible for overseeing the business continuity planning process. This includes ensuring that the proper personnel are in place to implement the plan, that the plan is regularly tested, that it is independently reviewed and that it is approved at least annually.

Found at: <http://www.federalreserve.gov/boarddocs/srletters/2008/SR0803.htm>

SR 08-1 Subject: Communication of Examination/Inspection Findings

January 24, 2008

- The Board of Directors must be made aware of examinations and inspections by written communication. The communications should include a section for Matters Requiring

expanding in existing markets.” In addition, the Board should be aware of its credit underwriting standards. Specifically, its lending policies “should reflect the level of risk that is acceptable to its board of directors and should provide clear and measurable underwriting standards that enable the institution’s lending staff to evaluate all relevant factors.”

Found at: <http://www.federalreserve.gov/boarddocs/srletters/2007/SR0701.htm>

SR 06-17 - Subject: Interagency Policy Statement on the Allowance for Loan and Lease Losses (ALLL)

December 13, 2006

- The Board of Directors “is responsible for overseeing management’s significant judgments and estimates pertaining to the determination of an appropriate ALLL.” The Board’s oversight includes reviewing ALLL policies and procedures, reviewing management’s assessment of the loan review system and to require management to periodically validate the ALLL methodology.

Found at: <http://www.federalreserve.gov/boarddocs/srletters/2006/SR0617.htm>

SR 06-7 - Subject: Amendments to Regulation K to include Bank Secrecy Act compliance program requirement

March 20, 2006

- The Board of Directors of state member banks are required to comply with the Bank Secrecy Program and are “not permitted to delegate approval of the Bank Secrecy Act compliance program.”

Found at: <http://www.federalreserve.gov/boarddocs/srletters/2006/SR0607.htm>

SR 06-4 - Subject: Interagency Advisory on the Unsafe and Unsound Use of Limitation of Liability Provisions in External Audit Engagement Letters

March 1, 2006

- The Agencies encourage Board of Directors, audit committees, and management to closely review all of the provisions of the audit engagement letter.

Found at: <http://www.federalreserve.gov/boarddocs/srletters/2006/SR0604.htm>

SR 06-1 - Subject: Interagency Guidance on Sharing Suspicious Activity Reports with Head Offices and Controlling Companies

January 26, 2006

- The Board of Directions should be notified when Suspicious Activity Reports are filed.
- Interagency Guidelines Establishing Information Security Standards
 - A financial institution's board of directors, or an appropriate committee of the board, must satisfy specific requirements designed to ensure that the institution's information security program is developed, implemented, and maintained under the supervision of those who are ultimately responsible.
 - At the outset, the board, or appropriate committee, must approve the written information security program.
 - Thereafter, the board or appropriate committee must oversee the implementation and maintenance of the program. These duties include assigning specific responsibility for implementing the program and reviewing management reports.

Found at: <http://www.federalreserve.gov/boarddocs/srletters/2006/SR0601.htm>

SR 05-11 - Subject: Interagency Credit Risk Management Guidance for Home Equity Lending
May 16, 2005

- The Board of Directors should review the institution's lending policies and ensure that they are "consistent with safe and sound banking practices and that an institution.... [should] review and approve these policies annually."

Found at: <http://www.federalreserve.gov/boarddocs/srletters/2005/SR0511.htm>

SR 05-8 - Subject: Interagency Interpretive Guidance on the Provision of Banking Services to Money Services Businesses Operating in the United States
April 26, 2005

- The Board of Directors should approve standards and guidelines on whether or not to close a bank account once a suspicious activity report has been filed.

Found at: <http://www.federalreserve.gov/boarddocs/srletters/2005/SR0508.htm>

SR 05-01 - Subject: Qualification Process for Basel II Implementation
January 27, 2005

- The Board of Directors must implement a plan which is consistent with Basel II. Specifically the Board of Directors "has an obligation to understand its risk profile and ensure that those risks are properly managed and that its capital in respect to those risks is adequate.

Found at: <http://www.federalreserve.gov/boarddocs/srletters/2005/SR0501.htm>

Statements of Policy, Including Interagency Statements of Policy

Statement Concerning the Responsibilities of Bank Directors and Officers:

- Directors are responsible for selecting, monitoring, and evaluating competent management; establishing business strategies and policies; monitoring and assessing the progress of business operations; establishing and monitoring adherence to policies and procedures required by statute, regulation, and principles of safety and soundness; and for making business decisions on the basis of fully informed and meaningful deliberation.
- Directors must require and management must provide the directors with timely and ample information to discharge board responsibilities. Directors also are responsible for requiring management to respond promptly to supervisory criticism. Open and honest communication between the board and management of the bank and the regulators is extremely important.

Found at: <http://www.fdic.gov/regulations/laws/rules/5000-3300.html>

Interagency Policy Statement on External Auditing Programs of Banks and Savings Associations (FIL-96-99):

- The federal banking agencies encourage institutions to adopt an annual external auditing program, including an audit committee composed entirely of outside directors where practicable.
- Boards of directors are responsible for ensuring that the external auditing program is appropriate for their institution and adequately addresses the financial reporting aspects of the significant risk areas and any other areas of concern in the institution's business.

Found at: <http://www.fdic.gov/news/news/financial/1999/fil9996.html>

Interagency Policy Statement on Coordination and Communication between External Auditors and Examiners:

- The federal banking agencies encourage auditors to attend examination exit conferences or other meetings between supervisory examiners and an institution's management or board of directors (or a committee thereof) at which examination findings are discussed that are relevant to the scope of the audit.

Found at: <http://www.fdic.gov/regulations/laws/rules/5000-3200.html>

Interagency Policy Statement on External Auditing Programs of Banks and Savings Associations:

- The board of directors and senior managers of a banking institution are responsible for ensuring that the institution operates in a safe and sound manner.

- The agencies recommend that the board of directors of each institution establish and maintain an external auditing program. An external auditing program complements the internal auditing function of an institution by providing management and the board of directors with an independent and objective view of the reliability of the institution's financial statements and the adequacy of its financial reporting internal controls.
- The board of directors of an institution is responsible for determining how to best obtain reasonable assurance that the institution's financial statements and regulatory reports are reliably prepared. In this regard, the board is also responsible for ensuring that its external auditing program is appropriate for the institution and adequately addresses the financial reporting aspects of the significant risk areas and any other areas of concern of the institution's business.
- To help ensure the adequacy of its internal and external auditing programs, the agencies encourage the board of directors of each institution that is not otherwise required to do so to establish an audit committee consisting entirely of outside directors.
- The audit committee or board of directors is responsible for identifying at least annually the risk areas of the institution's activities and assessing the extent of external auditing involvement needed over each area.
- The audit committee should report its findings periodically to the full board of directors.
- External auditing programs should provide the board of directors with information about the institution's financial reporting risk areas, *e.g.*, the institution's internal control over financial reporting, the accuracy of its recording of transactions, and the completeness of its financial reports prepared in accordance with generally accepted accounting principles.
- The board or audit committee of each institution at least annually should review the risks inherent in its particular activities to determine the scope of its external auditing program.
- The board of directors or its audit committee should adequately review and approve external auditing program policies at least annually.
- The board of directors should perform due diligence on the relevant experience and competence of the independent auditor and staff carrying out the work (whether or not an independent public accountant is engaged).
- The board or audit committee minutes should reflect approval and monitoring of the external auditing program and schedule, including board or committee reviews of audit reports with management and timely action on audit findings and recommendations.

Found at: <http://www.fdic.gov/regulations/laws/rules/5000-2400.html>

Interagency Policy Statement on the Allowance for Loan and Lease Losses (ALLL):

- The board of directors is responsible for overseeing management's significant judgments and estimates pertaining to the determination of an appropriate ALLL. This oversight should include but is not limited to:

- Reviewing and approving the institution's written ALLL policies and procedures at least annually.
 - Reviewing management's assessment and justification that the loan review system is sound and appropriate for the size and complexity of the institution.
 - Reviewing management's assessment and justification for the amounts estimated and reported each period for the PLLL and the ALLL.
 - Requiring management to periodically validate and, when appropriate, revise the ALLL methodology.
- Each institution should have a written policy that is reviewed and approved at least annually by the board of directors to evidence its support of and commitment to maintaining an effective loan review system.
 - The institution's board of directors should approve the scope of loan reviews on an annual basis or when any significant interim changes to the scope of reviews are made.

Found at: <http://www.federalreserve.gov/boarddocs/srletters/2006/SR0617a1.pdf>

Interagency Policy Statement on Allowance for Loan and Lease Losses (ALLL) Methodologies and Documentation for Banks and Savings Associations:

- Boards of directors of banks and savings institutions are responsible for ensuring that their institutions have controls in place to consistently determine the allowance for loan and lease losses (ALLL) in accordance with the institutions' stated policies and procedures, generally accepted accounting principles (GAAP), and ALLL supervisory guidance.
- Boards of directors should instruct management to develop and maintain an appropriate, systematic, and consistently applied process to determine the amounts of the ALLL and provisions for loan losses.
- The board of directors should assure themselves that ALLL policies specifically address the institution's unique goals, systems, risk profile, personnel, and other resources before approving them. The amounts reported each period for the provision for loan and lease losses and the ALLL should be reviewed and approved by the board of directors. To ensure the methodology remains appropriate for the institution, the board of directors should have the methodology periodically validated and, if appropriate, revised.
- The audit committee should oversee and monitor the internal controls over the ALLL determination process.
- To verify that ALLL balances are presented fairly in accordance with GAAP and are auditable, management should prepare a document that summarizes the amount to be reported in the financial statements for the ALLL. The board of directors should review and approve this summary.
- To verify that the ALLL methodology is valid and conforms to GAAP and supervisory guidance, an institution's directors should establish internal control policies, appropriate for the size of the institution and the type and complexity of its loan products.

Found at: <http://www.fdic.gov/regulations/laws/rules/5000-4650.html>

FFIEC Guidance on Managing Risk with Outsourcing Services (FDIC FIL-81-2000):

- The board of directors and senior management are responsible for understanding the risks associated with outsourcing arrangements for technology services and ensuring that effective risk management practices are in place.

Found at: <http://www.fdic.gov/news/news/financial/2000/fil0081.html>

Subprime Lending Guidance:

- The ALLL required for subprime loans should be sufficient to absorb at least all estimated credit losses on outstanding balances over the current operating cycle, typically 12 months. The board of directors and management are expected to ensure that the institution's process for determining an adequate level for the ALLL is based on a comprehensive and adequately documented analysis of all significant factors.

Found at: <http://www.federalreserve.gov/boarddocs/srletters/1999/sr9906a1.pdf>

Interagency Policy Statement on Income Tax Allocation in a Holding Company Structure:

- A holding company and its subsidiary institutions are encouraged to enter into a written, comprehensive tax allocation agreement tailored to their specific circumstances. The agreement should be approved by the respective boards of directors.

Found at: <http://www.federalreserve.gov/boarddocs/srletters/1998/sr9838a1.pdf>

Supervisory Policy Statement on Investment Securities and End-User Derivatives Activities:

- Board of director and senior management oversight is an integral part of an effective risk management program.
- The board of directors is responsible for approving major policies for conducting investment activities, including the establishment of risk limits.
- The board should ensure that management has the requisite skills to manage the risks associated with such activities.
- To properly discharge its oversight responsibilities, the board should review portfolio activity and risk levels, and require management to demonstrate compliance with approved risk limits.
- Boards should have an adequate understanding of investment activities. Boards that do not should obtain professional advice to enhance its understanding of investment activity oversight, so as to enable it to meet its responsibilities under this Statement.

- The board of directors is responsible for supervision and oversight of investment portfolio and end-user derivatives activities, including the approval and periodic review of policies that govern relationships with securities dealers.

Found at: <http://www.federalreserve.gov/boarddocs/srletters/1998/sr9812a2.pdf> /

Uniform Financial Institutions Rating System:

- Generally, directors need not be actively involved in day-to-day operations; however, they must provide clear guidance regarding acceptable risk exposure levels and ensure that appropriate policies, procedures, and practices have been established.

Found at: <http://www.fdic.gov/regulations/laws/rules/5000-900.html>

Security Standards for Customer Information:

- The board, or an appropriate board committee, is expected to:
 - Approve the institution's written information security program that complies with these guidelines; and
 - Oversee efforts to develop, implement and maintain an effective information security program, including regularly reviewing reports filed by management.

Found at: <http://www.fdic.gov/news/news/financial/2000/fil0043.html>

Interagency Statement on Sound Practices Concerning Complex Structured Finance Activities:

- The board of directors of a financial institution has ultimate responsibility for establishing the institution's risk tolerances for complex structured finance transactions and ensuring that a sufficiently strong risk control framework is in place to guide the actions of the financial institution's personnel.
- The board of directors and senior management also should send a strong message to others in the financial institution about the importance of integrity, compliance with the law, and overall good business ethics, which may be implemented through a Code of Professional Conduct.
- The Board should establish the financial institution's threshold for the risks associated with complex structured finance products and ensure that a sufficiently strong risk.

Found at: <http://www.federalreserve.gov/boarddocs/srletters/2007/SR0705a1.pdf>

Interagency Statement on the Purchase and Risk Management of Life Insurance:

- The agencies expect an institution that plans to acquire bank-owned life insurance (BOLI) in an amount that results in an aggregate CSV in excess of 25 percent of capital, or any lower internal limit, to gain prior approval from its board of directors or the appropriate board committee.
- Management of an institution should review the performance of the institution's insurance assets with its board of directors at least annually.

Found at: <http://www.occ.treas.gov/news-issuances/bulletins/2004/bulletin-2004-56.html>

Internal and Regulatory Guidelines for Managing Risks Associated with Acquisition, Development, and Construction Lending:

- The institution's board of directors is responsible for establishing appropriate risk limits, monitoring exposure, and evaluating the effectiveness of the institution's efforts to manage and control risk.
- The board of directors is responsible for establishing standards for reviewing and approving exceptions to loan policy.

Found at: <http://www.fdic.gov/news/news/financial/1998/fil98110.html>

Interagency Policy Statement on Income Tax Allocation in a Holding Company Structure:

- A holding company and its subsidiary institutions are encouraged to enter into a written, comprehensive tax allocation agreement tailored to their specific circumstances. The agreement should be approved by the respective boards of directors.

Found at: <http://www.federalreserve.gov/boarddocs/srletters/1998/SR9838.HTM>

Interagency Guidance on Subprime Lending:

- Institutions that engage in subprime lending in any significant way should have board-approved policies and procedures, as well as internal controls that identify, measure, monitor, and control these additional risks.
- Prior to engaging in subprime lending, the board and management should ensure that proposed activities are consistent with the institution's overall business strategy and risk tolerances, and that all involved parties have properly acknowledged and addressed critical business risk issues.
- The board should ensure that staff possesses sufficient expertise to appropriately manage the risks in subprime lending and that staffing levels are adequate for the planned volume of subprime activity.

Found at: <http://www.federalreserve.gov/boarddocs/srletters/1999/sr9906a1.pdf>

Interagency Advisory on Mortgage Banking:

- An institution's board of directors should establish limits on investments in mortgage-banking assets and evaluate and monitor such investment concentrations (on the basis of both asset and capital levels) on a regular basis.
- Given the sensitivity of the mortgage-servicing assets valuation to changes in assumptions and valuation policy, any such changes should be reviewed and approved by management and, where appropriate, by the board of directors.

Found at: <http://www.federalreserve.gov/boarddocs/press/bcreg/2003/20030225/attachment.pdf>

Interagency Policy on Banks/Thriffs Providing Financial Support to Funds Advised by the Banking Organization or Its Affiliates:

- Banking organizations must maintain appropriate controls over investment advisory activities. In the limited instances that the bank provides financial support, the bank's procedures should include an oversight process that requires formal approval from the bank's board of directors, or an appropriate board designated committee, independent of the investment advisory function. The bank's audit committee also should review the transaction to ensure that appropriate policies and procedures were followed.

Found at: <http://www.federalreserve.gov/boarddocs/srletters/2004/SR0401a1.pdf>

APPENDIX VI: Burden Study Laws and Regulations

Matters to be Addressed by Bank Boards of Directors Pursuant to Statute or Regulation		
Agency	Matter Addressed by Board of Directors	Citation
Title 12, United States Code		
OCC	Appoint a president, vice president, cashier, and other officers; define their duties; require bonds of them and fix the penalty thereof; dismiss such officers or any of them at pleasure; and appoint others to fill their places.	12 U.S.C. § 24
OCC	Prescribe bylaws consistent with law.	12 U.S.C. § 24
OCC	Contribute to community funds or charitable, philanthropic, or benevolent instrumentalities in such sums as the board of directors deems expedient and in the banking association's interest.	12 U.S.C. § 24
OCC	If converting to a national banking association per a shareholder vote and other requirements, the board of directors executes the articles of association, organization certificate, and other documents necessary for conversion.	12 U.S.C. § 35
OCC	Issue preferred stock, pursuant to shareholder vote and OCC approval.	12 U.S.C. § 51a
OCC	Sell a shareholder's stock at public auction to enforce payment of a deficiency assessment imposed on the shareholder.	12 U.S.C. § 55
OCC	The board of directors may declare a dividend from undivided profits as it deems expedient.	12 U.S.C. § 60; 12 U.S.C. § 626 (foreign banking)
OCC	Appoint a director to fill any vacancy in the board until the next election.	12 U.S.C. § 74
OCC	Designate the day to elect directors when the regularly scheduled election is not held for some reason	12 U.S.C. § 75

OCC	The board of directors may designate a director other than the bank president to be chairman of the board.	12 U.S.C. § 76
OCC	The board of directors may resolve to surrender the national banking association's trust powers if it so desires, and must file the resolution with the OCC.	12 U.S.C. § 92a /
OCC	Designate a bank officer to declare the correctness of the bank's report to the Comptroller of the Currency; at least three other directors must sign the report and attest to the correctness of its condition.	12 U.S.C. § 161
OCC	Supervise the liquidation agent or committee designated by the shareholders.	12 U.S.C. § 181
OCC	Certify notice to the public and OCC when a vote has been taken for the bank to go into liquidation.	12 U.S.C. § 182
OCC	If the board of directors consents by affirmative vote, the OCC may appoint a conservator for the bank.	12 U.S.C. § 203
OCC	<p>Various matters related to bank mergers, conversions, and dissenting shareholders:</p> <ul style="list-style-type: none"> • Approve the merger, consolidation, or conversion • Approve the plan for the merger, consolidation, or conversion • Determine the par price for the shares of dissenting shareholders sold at auction after those shareholders request payment in a consolidation or merger • Agree to a merger agreement • Execute all documents and papers required to convert into a federal corporation 	12 U.S.C. §§ 214a, 215, 215a, 215a-1, 215a-3, 629
OCC	Approve reorganization plan to become a subsidiary of a bank holding company after shareholder vote and OCC approval.	12 U.S.C. § 215a-2
Fed	Authorization of the purchase or acquisition of securities principally underwritten by an affiliate of the bank. The purchase must be approved, before the securities are initially offered for sale to the public, by a	12 U.S.C. § 371c-1 (Section 23B of the Federal Reserve Act)

	majority of the bank's board based on a determination that the purchase is a sound investment irrespective of the fact that an affiliate of the bank is a principal underwriter of the securities.	
Fed	<i>[Repealed by Dodd-Frank Act] Authorization of the bank to contract for or purchase from any of its directors (or any firm of which any of the directors is a member) any securities or other property when the purchase is made in the regular course of business upon terms not less favorable to the bank than those offered to others.</i> <i>Authorize the bank to sell securities or other property to a director, or to a firm of which a director is a member, in the regular course of business on terms not more favorable to such director or firm than those offered to others. [replaced by 12 U.S.C. § 1828(z), below under FDIC.]</i>	12 U.S.C. § 375
Fed	Receive reports of certain loans to executive officers of the bank.	12 U.S.C. § 375a
Fed	Approve the extension of credit to executive officers, directors, principal shareholders, and related interests of such persons that cause a statutorily-imposed limit to be exceeded, subject to certain conditions. May establish credit limits for executive officers more stringent than those set forth in statute.	12 U.S.C. § 375b
All (FDIC cite)	Every insured depository institution must make four reports of condition annually to the appropriate federal banking agency; at least two directors must sign the report and attest to its correctness with a declaration that they have examined the report and it is true and correct to the best of their knowledge and belief.	12 U.S.C. § 1817
FDIC	The board of directors may consent to the FDIC's appointment of a conservator or receiver to the insured depository institution.	12 U.S.C. § 1821
FDIC ₇	Among other requirements to make such an agreement valid, the board of directors may approve an agreement which tends to diminish or defeat the interest of the FDIC in any asset acquired by the FDIC as security for a loan or by purchase or as receiver of any insured depository institution.	12 U.S.C. § 1823

FDIC	If a sale of assets from or a purchase of assets to certain insiders or their related interests represents more than 10 percent of the capital stock and surplus of an insured depository institution, the transaction must be approved in advance by a majority of the members of the board of directors of the insured depository institution who do not have an interest in the transaction. [replaced 12 U.S.C. 375	12 U.S.C. § 1828(z)
FDIC	Each insured depository institution shall have an independent audit committee entirely made up of outside directors who are independent of management of the institution, except as otherwise provided in statute.	12 U.S.C. § 1831m
All	The Volcker Rule is most relevant to large banking organizations that have extensive proprietary trading operations. However, every bank, even small community banks, needs to review its compliance program and at least mention the Volcker Rule to show that the board is aware of the new regulation and its potential effect. The board's biggest role is to establish a culture of compliance so management and staff of the institution understand that compliance is of the utmost importance to the institution. If the bank has more than \$50 billion in total assets, the board must create an enhanced compliance program, which should then be reviewed by the board and the CEO in order to determine its effectiveness. Management must promptly notify the board of any material weaknesses or significant deficiencies in the implementation of the program.	12 U.S.C. § 1851
All	If the entity has received Troubled Asset Relief Program (TARP) funds, the board of directors must establish a Board Compensation Committee comprised entirely of independent directors to review employee compensation plans.	12 U.S.C. § 5221
All	The board of directors of a TARP recipient must establish a company-wide policy regarding excessive or luxury expenditures.	12 U.S.C. § 5221
Fed	Bank holding companies with assets of \$10 billion or more must—and bank holding companies with assets	12 U.S.C. § 5365 (Dodd-Frank Act,

	of less than \$10 billion may—establish a risk committee that includes independent directors and is responsible for enterprise-wide risk management practices.	Pub. L. No. 111-230, § 165(h))
Title 12, Code of Federal Regulations – OCC Regulations		
OCC	The views of a bank’s board of directors may be one factor in determining the appropriate minimum capital ratios for the bank.	12 C.F.R. § 3.11
OCC	Approve implementation plan for maintaining an appropriate level of capital in relation to the bank’s risk profile.	12 C.F.R. pt. 3, Appendix C, § 21(b)(1)(viii)
OCC	Approve and review the effectiveness of the bank’s advanced systems at least annually.	12 C.F.R. pt. 3, Appendix C, § 22(j)(2)
OCC	Approve the bank’s plan to reorganize as a subsidiary of a bank holding company.	12 C.F.R. § 5.32
OCC	Declare and pay dividends from undivided profits.	12 C.F.R. § 5.64
OCC	Approve transfer of “surplus surplus” from capital surplus to undivided profits, making it available as dividends, subject to certain limits.	12 C.F.R. § 5.64
OCC	Declare dividends payable in property.	12 C.F.R. § 5.66
OCC	Increase the number of bank directors and fill director vacancies, subject to certain limits.	12 C.F.R. § 7.2007
OCC	Manage and direct the business affairs of the bank; refer to published OCC guidance for additional information regarding the responsibilities of bank directors.	12 C.F.R. § 7.2010
OCC	Determine the amount of adequate fidelity bond coverage.	12 C.F.R. § 7.2013
OCC	Assign some or all of the duties previously performed by the bank’s cashier to its president, chief executive officer, or any other officer.	12 C.F.R. § 7.2015
OCC	Board of directors may fix a record date for determining the shareholders entitled to notice of, and	12 C.F.R. § 7.2016

	to vote at, any meeting of shareholders.	
OCC	Review and schedule the bank's banking hours.	12 C.F.R. § 7.3000
OCC	Thoroughly review OCC examination reports of the bank.	12 C.F.R. § 7.4000
OCC	Assign functions involving the exercise of the bank's fiduciary powers to officers and employees directly or through a designee.	12 C.F.R. § 9.2
OCC	Direct the management of the bank's fiduciary activities, or assign functions related to the exercise of fiduciary powers to any director, officer, employee, or committee.	12 C.F.R. § 9.4
OCC	<p>At least once each year, the bank's fiduciary audit committee must arrange for and direct a suitable audit of all significant fiduciary activities. Alternatively, the bank may adopt a continuous audit system under which the bank arranges for a discrete audit (by internal or external auditors) of each significant audit activity, under the direction of its fiduciary audit committee.</p> <p>The fiduciary audit committee must consist of a committee of the bank's directors or an audit committee of an affiliate bank. The committee (a) must not include any officers of the bank or an affiliate who participate significantly in the administration of the bank's fiduciary activities; and (b) must consist of a majority of members who are not also members of any committee to which the board of directors has delegated power to manage and control the fiduciary activities of the bank.</p>	12 C.F.R. § 9.9
OCC	Designate at least two of the bank's fiduciary officers or employees to have custody or control over the assets of fiduciary accounts.	12 C.F.R. § 9.13
OCC	A national bank may not permit any officer or employee to retain any compensation for actions as a co-fiduciary with the bank in the administration of a fiduciary account, except with the specific approval of the bank's board of directors.	12 C.F.R. § 9.15

OCC	A bank seeking to surrender its fiduciary powers must do so pursuant to a resolution of the board of directors.	12 C.F.R. § 9.17
OCC	Approve a written plan to establish and maintain each collective investment fund.	12 C.F.R. § 9.18
OCC	At least once each 12-month period, the bank administering a collective investment fund shall arrange for an audit of the fund by auditors responsible only to the board of directors.	12 C.F.R. § 9.18
OCC	Responsible for compliance with OCC regulation on minimum security procedures, and for ensuring that a security program which meets or exceeds the requirements of the regulation is developed and implemented for the bank's main office and branches.	12 C.F.R. § 21.1
OCC	Appoint a security officer who has the authority, subject to the approval of the board of directors, to develop and administer a written security program.	12 C.F.R. § 21.2
OCC	The bank's security officer shall report at least annually to the bank's board of directors on the effectiveness of the security program.	12 C.F.R. § 21.4
OCC	Whenever a bank files a suspicious activity report, the bank's management shall promptly notify the board of directors, or a committee of the directors, or executive officers designated by the board to receive notice.	12 C.F.R. § 21.11
OCC	Approve the bank's written Bank Secrecy Act compliance program.	12 C.F.R. § 21.21
OCC	<p>According to the Interagency Guidelines Establishing Standards for Safety and Soundness, a bank should:</p> <ul style="list-style-type: none"> • Have an internal audit system that, among other things, provides for review by the bank's audit committee or board of directors; • Establish and maintain prudent credit underwriting practices that, among other things, includes a system of independent, ongoing credit review and appropriate communication to management and the board of directors; • Provide for periodic reporting to management and the board of directors regarding interest 	12 C.F.R. pt. 30, Appendix A

	<p>rate risk with adequate information for management and the board of directors to assess the level of risk; and</p> <ul style="list-style-type: none"> • Provide periodic earnings reports with adequate information for management and the board of director to assess earnings performance. 	
OCC	<p>According to the Interagency Guidelines Establishing Standards for Safeguarding Customer Information, the board of directors or an appropriate committee of the board shall:</p> <ul style="list-style-type: none"> • Approve the bank's written information security program; and • Oversee the development, implementation, and maintenance of the bank's information security program, including assigning specific responsibility for its implementation and reviewing reports from management. 	12 C.F.R. pt. 30, Appendix B
OCC	Approve the use of special lending limits for residential real estate, small business, and small farm loans.	12 C.F.R. § 32.7
OCC	Review and approve the bank's written real estate lending policies (including, among other things, the bank's real estate appraisal and evaluation program) at least annually.	12 C.F.R. § 34.62
OCC	<p>According to the Interagency Guidelines for Real Estate lending:</p> <ul style="list-style-type: none"> • At least annually, the board of directors must review and approve appropriate limits and standards for all extensions of credit that are secured by liens on or interests in real estate or made for the purpose of financing the construction of a building or other improvements. • Bank management must monitor the bank's real estate loan portfolio and provide timely and adequate reports to its board of directors. • The bank's lending policies should reflect the level of risk that is acceptable to the board of 	12 C.F.R. pt. 34, Appendix A to Subpart D

	<p>directors and provide clear and measurable underwriting standards that enable the institution's lending staff to evaluate these credit factors.</p> <ul style="list-style-type: none"> • The aggregate amount of loans in excess of supervisory loan-to-value limits should be reported at least quarterly to the bank's board of directors. • The board of directors is responsible for establishing standards for the review and approval of exception loans (as defined in the Guidelines). • The bank must individually report exception loans of a significant size to its board of directors. 	
OCC	After holding real estate acquired for future bank expansion for one year, the board of directors or an appropriately authorized bank official or subcommittee of the board must state definite plans for its use.	12 C.F.R. § 34.84
OCC	Approve the initial written identity theft prevention program.	12 C.F.R. § 41.90(e)(1)
OCC	The bank must involve the board of directors, an appropriate committee of directors, or a designated employee at the level of senior management in the oversight, development, implementation, and administration of the identity theft prevention program.	12 C.F.R. § 41.90(e)(2)
OCC	<p>According to the Interagency Guidelines on Identity Theft Detection, Prevention, and Mitigation:</p> <ul style="list-style-type: none"> • The board of directors, an appropriate committee of the board, or designated senior management should oversee a written program to detect, prevent, and mitigate identity theft in connection with the opening of a covered account or any existing covered account. • Staff of the bank responsible for development, implementation, and administration of its identity theft program should report to the board of directors, an appropriate committee of 	12 C.F.R. pt. 41, Appendix J

	the board, or a designated employee at the level of senior management, regarding compliance of the program with OCC requirements at least annually.	1
OCC	Pursuant to 12 C.F.R. § 5.30(j), national banks must comply with 12 U.S.C. § 1831r-4, which requires, among other things, that each depository institution adopt a policy on branch closings. While the statute does not expressly state that the board of directors must adopt or approve such a policy, Mellon's practice has evidently been to obtain such approval.*	112 U.S.C. § 1831-4 12 C.F.R. § 5.30(j)
Title 12, Code of Federal Regulations – FDIC Regulations		
FDIC	Undercapitalized insured depository institutions must submit applications to the FDIC to engage in certain activities; such applications must be authorized by the board of directors. These activities include capital distributions; acquisitions, branching and new lines of business; bonuses and increased compensation for executives; and payment of principal or interest on subordinated debt.	12 C.F.R. §§ 303.200-303.206
FDIC	Approve proposals of insured state nonmember banks seeking prior approval from the FDIC to reduce the amount or retire any part of its common or preferred stock, or to retire any part of its capital notes or debentures.	12 C.F.R. § 303.241
FDIC	Approve submission of application to the FDIC to resume insured status if the status had previously been terminated.	12 C.F.R. § 303.247
FDIC	Approval by the board of directors is one requirement that must be met for an insured depository institution to release an examination report to a majority shareholder.	12 C.F.R. § 309.6
FDIC	According to the Capital Adequacy Guidelines for Banks: Internal-Ratings-Based and Advanced Measurement Approaches:	12 C.F.R. pt. 325, Appendix D

	<ul style="list-style-type: none"> • The board of directors of banks meeting certain criteria must approve a written implementation plan to meet qualification requirements regarding assessments of the bank's capital adequacy in relation to the its risk profile and strategies for maintaining adequate capital. • The bank's board of directors or a designated committee of the board must, at least annually, approve and review the effectiveness of the bank's advanced systems. • The bank must have an internal audit function independent of business-line management that at least annually assesses the effectiveness of the controls supporting the bank's advanced systems and reports its findings to the bank's board of directors or a committee of the board. 	
FDIC	Ensure that a written security program is developed and implemented for the bank's main office and branches.	12 C.F.R. § 326.0
FDIC	Designate a security officer to develop and administer a security program for each banking office, and receive reports regarding the program at least annually.	12 C.F.R. §§ 326.2, 326.4
FDIC	Approve a written program for compliance with the Bank Secrecy Act.	12 C.F.R. § 326.8
FDIC	<p>For banks that are required to have an identity theft prevention program, the board of directors or an appropriate committee of the board must approve the program in writing.</p> <p>The board, committee, or a designated senior management employee must also be involved in the development, implementation, and administration of the program.</p>	12 C.F.R. § 334.90; 12 C.F.R. pt. 334, Appendix J
FDIC	Approve certain large lines of credit that are granted to the bank's executive officers, directors, principal shareholders, or related interests of those persons.	12 C.F.R. § 337.3
FDIC	The management of a bank must notify the board of directors, or a committee of the board, of any suspicious activity report filed with the federal law enforcement agencies and the Department of the	12 C.F.R. § 353.3

	Treasury.	
FDIC	If the board of directors makes certain specific findings, the institution or holding company may advance legal and other professional expenses to institution-affiliated parties as an exception to the general prohibition on indemnification of such parties.	12 C.F.R. §§ 359.6, 359.5
FDIC	Approve securitization agreements.	12 C.F.R. § 360.6
FDIC	A state-chartered depository institution may not knowingly purchase, as principal or fiduciary during the existence of any underwriting or selling syndicate, any securities underwritten by the majority-owned subsidiary unless the purchase is approved by the board of directors before the securities are initially offered for sale.	12 C.F.R. § 362.4
FDIC	<p>Each insured depository institution must establish an audit committee of its board of directors to appoint, compensate, and oversee the independent public accountant who audits the institution's financial statements annually.</p> <ul style="list-style-type: none"> • The members of the committee must be outside directors who are independent of management. • For institutions with total assets of more than \$3 billion, the committee must include members with banking or related financial management expertise, have access to its own outside counsel, and not include any large customers of the institution. 	12 C.F.R. §§ 363.3, 363.5
FDIC	The independent public accountant who audits an institution's financial statements should meet with the institution's audit committee to review the accountant's reports required by this part before they are filed. It also may be appropriate for the accountant to review its findings with the institution's board of directors and management.	12 C.F.R. pt. 363, Appendix A
FDIC	The insured depository institution's audit committee shall review with management and the independent public accountant who audits the bank the basis for (a)	12 C.F.R. pt. 363, Appendix A

	<p>the internal control reports required by section 36 of the FDI Act; (b) the independent auditor's reports on the institution's internal control reports; (c) the independent audit required by section 36.</p> <p>The audit committee must review an internal control report signed by the chief executive officer and the chief accounting officer or financial officer of the institution which contains:</p> <ul style="list-style-type: none"> • A statement of the management's responsibilities for (1) preparing financial statements; (2) establishing and maintaining an adequate internal control structure and procedures for financial reporting; and (3) complying with the laws and regulations relating to safety and soundness which are designed by the FDIC and appropriate federal banking agency. • An assessment, as of the end of the institution's most recent fiscal year, of (1) the effectiveness of such internal controls structure and procedures; and (2) the institution's compliance with the laws and regulations relating to safety and soundness which are designated by the FDIC and the appropriate federal banking agency. <p>The board of directors may appoint other responsibilities to the audit committee.</p>	
FDIC	For an institution whose size, complexity or scope of operations does not warrant a full scale internal audit function, a system of independent reviews of key internal controls may be used, including a review of the effectiveness of the internal audit systems by the institution's audit committee or board of directors.	12 C.F.R. pt. 364, Appendix A
FDIC /	Institutions should establish and maintain prudent credit underwriting practices that establish a system of independent, ongoing credit review and appropriate communication to management and the board of directors.	12 C.F.R. pt. 364, Appendix A

FDIC	Institutions should provide for periodic reporting to management and the board of directors regarding interest rate risk with adequate information to assess the level of risk.	12 C.F.R. pt. 364, Appendix A
FDIC	Institutions should establish and maintain a system to identify problem assets and prevent deterioration in those assets, including providing periodic asset reports with adequate information for management and the board of directors to assess the level of asset risk.	12 C.F.R. pt. 364, Appendix A
FDIC	Institutions should establish and maintain a system to evaluate and monitor earnings and ensure that earnings are sufficient to maintain adequate capital and reserves, including providing periodic earnings reports with adequate information for management and the board of directors to assess earnings performance.	12 C.F.R. pt. 364, Appendix A
FDIC	The board of directors or an appropriate committee of the board shall approve the bank's written information security program and oversee the development, implementation, and maintenance of the program.	12 C.F.R. pt. 364, Appendix B
FDIC	Review and approve the bank's real estate lending standards at least annually.	12 C.F.R. § 365.2
FDIC	<p>According to the Interagency Guidelines for Real Estate Lending Policies:</p> <ul style="list-style-type: none"> • The board of directors must review and approve the institution's lending policies to ensure that they are consistent with safe and sound lending practices. • Management must monitor the loan portfolio and provide timely and adequate reports for the board of directors. • Lending policies should reflect the level of risk that is acceptable to the board of directors. • The aggregate amount of certain loans with loan-to-value ratios in excess of supervisory loan-to-value limits must be reported at least quarterly to the board of directors. • The board of directors is responsible for establishing standards for the review and 	12 C.F.R. pt. 365, Appendix A to Subpart A

	<p>approval of exception loans.</p> <ul style="list-style-type: none"> • Each institution should monitor compliance with its real estate lending policy and individually report exception loans of a significant size to its board of directors. 	
Title 12, Code of Federal Regulations – Federal Reserve Board Regulations		
Fed	Review and approve the bank's policies and procedures to prevent excessive exposure to any individual correspondent at least annually.	12 C.F.R. § 206.3
Fed	If a bank relies on another party to assess the financial condition of or select a correspondent, the board of directors must review and approve the general assessment or selection criteria used by that party.	12 C.F.R. § 206.3
Fed.	Approve the transfer of capital surplus in excess of that required by law to the bank's undivided profits account, making the funds available for the payment of dividends.	12 C.F.R. § 208.5
Fed	Review and approve the bank's policies establishing appropriate limits and standards for extensions of credit secured by liens or interests in real estate at least annually.	12 C.F.R. § 208.51
Fed	Ensure that a written security program for the bank's main office and branches is developed, implemented, and complies with the regulations.	12 C.F.R. § 208.61
Fed	Designate a security officer to develop and administer a written security program for each banking office.	12 C.F.R. § 208.61
Fed	Approve a written program for compliance with the Bank Secrecy Act.	12 C.F.R. § 208.63
Fed	<p>According to the Interagency Guidelines for Real Estate Lending Policies:</p> <ul style="list-style-type: none"> • The board of directors must review and approve the institution's lending policies to ensure that they are consistent with safe and sound lending practices. • Management must monitor the loan portfolio 	12 C.F.R. pt. 208, Appendix C

	<p>and provide timely and adequate reports for the board of directors.</p> <ul style="list-style-type: none"> • Lending policies should reflect the level of risk that is acceptable to the board of directors. • The aggregate amount of certain loans with loan-to-value ratios in excess of supervisory loan-to-value limits must be reported at least quarterly to the board of directors. • The board of directors is responsible for establishing standards for the review and approval of exception loans. <p>Each institution should monitor compliance with its real estate lending policy and individually report exception loans of a significant size to its board of directors.</p>	
Fed	Review the effectiveness of the bank's internal audit systems.	12 C.F.R. pt. 208, Appendix D-1
Fed	Institutions should establish and maintain prudent credit underwriting practices, including the establishment of an independent system or review and communication with management and the board of directors.	12 C.F.R. pt. 208, Appendix D-1
Fed	Institutions should manage interest rate risk and provide management and the board of directors with adequate information to assess the level of risk.	12 C.F.R. pt. 208, Appendix D-1
Fed	Insured depository institutions should maintain a system to identify problem assets and prevent deterioration in those assets, including providing periodic asset reports with adequate information for management and the board of directors to assess the level of asset risk.	12 C.F.R. pt. 208, Appendix D-1
Fed	Insured depository institutions should establish and maintain a system to ensure that earnings are sufficient to maintain adequate capital and reserves, including providing periodic earnings reports with adequate information for management and the board of directors to assess earnings performance.	12 C.F.R. pt. 208, Appendix D-1

Fed	The board of directors or an appropriate committee of the board shall approve the bank's written information security program and oversee the development, implementation, and maintenance of the program.	12 C.F.R. pt. 208, Appendix D-2
Fed	Approve the bank's implementation plan for compliance with capital adequacy qualification requirements.	12 C.F.R. pt. 208, Appendix F
Fed	Approve and review the effectiveness of the bank's advanced systems at least annually.	12 C.F.R. pt. 208, Appendix F
Fed	<p>Various matters must be reported to or acted upon by a bank's board of directors under Federal Reserve Board Regulation O, including:</p> <ul style="list-style-type: none"> • Approve the extension of credit to an insider of the bank or an affiliate in an amount that, when aggregated with the amount of all other extensions of credit to that person and to all related interests of that person, exceeds the higher of \$25,000 or 5 percent of the member bank's unimpaired capital and unimpaired surplus. • The board of directors of member banks with deposits of less than \$100,000,000 may resolve annually to increase the limit on credit extended to bank or affiliate insiders. • Each executive officer or director of a non-publicly traded member bank shall report annually to the board of directors of the member bank the outstanding amount of any credit that was extended to the executive officer or director and that is secured by shares of the member bank. 	12 C.F.R. pt. 215
Fed	The board of directors or an appropriate committee of the board must approve the bank's initial identity theft prevention program and the board, committee, or senior management must be involved in the oversight, development, implementation, and administration of the program.	12 C.F.R. § 222.90; 12 C.F.R. pt. 222, Appendix J

Fed	A member bank's ability to rely on certain exemptions from the requirements of Sections 23A or 23B of the Federal Reserve Act are predicated on, among other things, approval by the bank's board of directors.	12 C.F.R. §§ 223.15(b), 223.41, 223.53
Fed	Each executive officer or director of a bank holding company, the shares of which are not publicly traded, shall report annually to the board of directors the outstanding amount of any credit that was extended to the executive officer or director and that is secured by shares of the bank holding company.	12 C.F.R. § 225.4
Fed	Notice procedure for the establishment of a one-bank holding company requires a certification of certain matters by the notificant's board of directors. •	12 C.F.R. § 225.17
Fed	<p>If a bank holding company or nonbank subsidiary that engages in futures, forward, and options contracts on U.S. Government and agency securities and money market instruments is taking or intends to take positions in financial contracts, the company's board of directors must approve prudent written policies and establish appropriate limitations to insure that financial contract activities are performed in a safe and sound manner with levels of activity reasonably related to the organization's business needs and capacity to fulfill obligations.</p> <p>The board of directors, a duly authorized committee thereof or internal auditors should review periodically (at least monthly) all financial contract positions to insure conformity with such policies and limits.</p>	12 C.F.R. § 225.142
Fed	<p>According to the Interagency Guidelines Establishing Standards for Safeguarding Customer Information:</p> <ul style="list-style-type: none"> • The board of directors or an appropriate committee of the board of each bank holding company shall approve the bank's written information security program and oversee the development, implementation, and maintenance of the program and review reports from management. • Each bank holding company shall report at least annually to its board or an appropriate 	12 C.F.R. pt. 225, Appendix F

	committee of the board with respect to the security program.	
Fed	The board of directors of a bank holding company must approve the company's implementation plan for compliance with capital adequacy qualification requirements.	12 C.F.R. pt. 225, Appendix G
Fed	A bank holding company must report operational risk exposures, operational loss events, and other relevant operational risk information to business unit management, senior management, and the board of directors (or a designated committee of the board).	12 C.F.R. pt. 225, Appendix G
Fed	Review the effectiveness of and approve the bank holding company's advanced systems at least annually.	12 C.F.R. pt. 225, Appendix G
Fed	Approve the bank holding company's formal disclosure policy for certain public disclosure requirements. The board of directors and senior management are responsible for establishing and maintaining an effective internal control structure over financial reporting, including the disclosures required by this appendix, and must ensure that appropriate review of the disclosures takes place.	12 C.F.R. pt. 225, Appendix G
OTS	Two or more members of the board must attest to the report of condition	12 USC § 1817(a)(3) TFR Instructions
OTS	Directors must review and approve the association's interbank liability policies and procedures	12 CFR § 206.3
OTS	Directors must control the risks of participation in the system by establishing caps and reviewing policy compliance.	12 CFR § 210.25
OTS	If the association has total assets of \$500 million or more, the board must establish an independent audit committee.	12 CFR Part 363
OTS	Directors must, at least annually, review and approve lending policies for extensions of credit secured by real estate. Such lending policies should reflect risk levels that are acceptable to the board and provide clear and measurable underwriting standards.	12 CFR § 160.101

OTS	Directors should ensure that management evaluates and classifies the association's assets on a regular basis in a manner consistent with or reconcilable to OTS's asset classification system.	12 CFR § 160.160
OTS	Directors must ensure that the composition of the board is within the guidelines set forth	12 CFR § 163.33
OTS	The board must annually review and approve all employment contracts and compensation arrangements for senior officials and directors.	12 CFR § 163.39
OTS	The board is responsible for effective oversight of financial derivative activities and must establish written policies and procedures governing such activities.	12 CFR 163.172
OTS	The board of directors must approve the BSA compliance program that establishes and maintains procedures reasonably designed to assure and monitor compliance with BSA requirements.	12 CFR § 163.177(b)
OTS	The board of directors must review the association's interest rate risk exposure and devise and adopt policies for the management of interest rate risk. The board must review the results of operations at least quarterly and make appropriate adjustments as necessary. Requires all institutions to establish board-approved interest rate risk limits.	12 CFR § 163.176
OTS	The board must formally approve and annually review and assess the association's standard and supplemental bond coverage.	12 CFR § 163.190
OTS	The board must review each director's business and personal interests to ensure that the director does not advance his or her interests, or those of others with whom he or she has a personal or business relationship, at the expense of the association.	12 CFR § 163.200
OTS	Directors should develop, implement, and maintain appraisal policies to ensure that appraisals reflect professional competence and reliable market value of the collateral.	12 CFR § 164.8
OTS	The board must ensure that the association has a written security program for the main and branch offices. The board must designate a security officer to report at least annually on the implementation,	12 CFR Part 168

	administration, and effectiveness of the security program.	
OTS	Directors and senior management must ensure that the association has a system of internal controls that operate effectively as well as an internal audit function that is appropriate to its size, nature, and scope of activities.	12 CFR Part 170, Appendix A
OTS	The board must approve the association's written information security program and oversee the program's development, implementation, and maintenance.	12 CFR Part 170, Appendix B
OTS	The board of directors must approve the initial, written Identity Theft Prevention Program that establishes and maintains policies and procedures reasonably designed to monitor, detect, and mitigate identity theft.	12 CFR § 171.90