Testimony of

INDEPENDENT COMMUNITY BANKERS OF AMERICA

on

"Cutting Through the Red Tape: Regulatory Relief for America's Community Based Banks"

House Financial Services Subcommittee on Financial Institutions and Consumer Credit
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and

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Mr. Chairman, Ranking member Sanders, and members of the subcommittee, my name is Dale Leighty. I am Chairman of the Independent Community Bankers of America (ICBA)[1] and President and Chairman of First National Bank of Las Animas, a $ 140 million-in-assets community bank located in Las Animas, Colorado.

I would like to thank the subcommittee for examining the important issue of regulatory relief for community banks. This is one of ICBA's top priorities, and I am pleased to testify today on behalf of our nearly 5,000 community bank members to share with you their views and concerns.

Regulation Disproportionately Burdens Community Banks and Impacts Their Communities

ICBA supports a bank regulatory system that fosters the safety and soundness of our nation's banking system. However, statutory and regulatory changes continually increase the cumulative regulatory burden for community banks. In the last few years alone, community banks have been saddled with the privacy rules of the Gramm-Leach-Bliley Act; the customer identification rules and anti-money laundering/anti-terrorist financing provisions of the USA-PATRIOT Act; and the accounting, auditing and corporate governance reforms of the Sarbanes-Oxley Act.

Yet relief from any regulatory or compliance obligation comes all too infrequently. New ones just keep being added. There is not any one regulation that community banks are unable to comply with—it is the cumulative effect of all the regulations that is so burdensome. As ICBA President and CEO, Cam Fine recently stated, "Regulations are like snowflakes. Each one by itself may not be much but when you add it all up, it could crush the building."

Regulatory and paperwork requirements impose a disproportionate burden on community banks because of our small size and limited resources. We have had to devote so much of our resources and attention to regulatory compliance that our ability to serve our communities, attract capital and support the credit needs of our customers is diminished. Moreover, the time and resources community banks spend on regulatory compliance has also resulted in increased costs to our consumer and small business customers. Credit unions and other non-bank institutions that perform "bank-like" functions and offer comparable bank products

[1] ICBA represents the largest constituency of community banks in the nation and is dedicated exclusively to protecting the interests of the community banking industry. We aggregate the power of our members to provide a voice for community banking interests in Washington, resources to enhance community bank education and marketability, and profitability options to help community banks compete in an ever-changing marketplace

and services are not subject to the same laws and regulations as community banks, thus placing community banks at a competitive disadvantage.

Perennial Problem. Regulatory burden is a perennial problem for community banks. In 1992, Grant Thornton, LLP conducted a study for ICBA on the cost of regulatory burden for community banks—the first to focus solely on compliance costs for community banks. At that time, the study showed the cost of complying with just 13 bank regulations (deemed the most burdensome in the eyes of community bankers), both in terms of time and money, was overwhelming. The annual cost for community for the 13 regulations—just a fraction of the rules that govern the industry—was $3.2 billion, which represented a whopping 24 percent of net income before taxes. In addition, 48 million staff hours were spent annually complying with the 13 regulatory areas.

Impact on Community Banks and Their Customers. Since that time, the market share of community banks with less than $1 billion in assets has dropped from about 20 percent of banking assets to 13 percent. And the share of large banks with more than $25 billion in assets has grown from about 50 percent to 70 percent. Community bank profitability also lags large banks.

At the same time credit unions, with an unfair tax-exempt advantage and favorable legislation loosening membership restrictions, have made inroads into small banks' market segments. Credit union assets have more than tripled since 1984, from $194 billion to $611 billion, whereas small bank (less than $1 billion) assets have decreased in value.

An analysis of these trends conducted by two economists at the Federal Reserve Bank of Dallas concluded that the competitive position and future viability of small banks is questionable.[2] The authors suggest the regulatory environment has evolved to the point placing small banks at an artificial disadvantage to the detriment of their primary customers—small business, consumers and farmers.[3]

ICBA Strongly Supports EGRPRA Review

ICBA is pleased that, at the direction of Congress, the federal bank regulators are currently reviewing all 129 federal bank regulations, with an eye to eliminating rules that are outdated, unnecessary or unduly burdensome. The review is required by the Economic Growth and Regulatory Paperwork Reduction

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[2] Gunther and Moore, "Small Banks' Competitors Loom Large," *Southwest Economy,* Federal Reserve Bank of Dallas, Jan./Feb. 2004.

[3] Community banks are responsible for a disproportionate amount of bank lending to small business, the primary job-creating engine of our economy. Banks with less than $1 billion in assets, make 37 percent of bank small business loans, though they account for only 13 percent of bank industry assets. And they account for 64 percent of total bank lending to farms.

Act of 1996 (EGRPRA). Community banks wholly applaud the EGRPRA effort and fervently hope that it bears fruit.

However, it is important for Congress to recognize there is only so much that the regulators can do to provide relief. Many regulatory requirements are hard-wired in federal statute. Therefore, effective reduction of regulatory burden will require congressional action.

ICBA's Federal Legislation Committee is currently examining ways to reduce the regulatory burden on community banks, and ICBA will present recommendations to Congress in the near future. The agencies will also make recommendations to Congress for legislative relief as a result of their EGRPRA review.

ICBA strongly urges the Congress to be bold and open-minded when considering recommendations offered by the regulators or the industry for regulatory relief.

The Most Burdensome Regulations

The litany of burdensome regulations is long. Here is a partial list:

- A myriad of consumer disclosures—that unfortunately are rarely read by consumers: Truth in Savings, Truth in Lending, Real Estate Settlement Procedures Act, Electronic Funds Transfer, Fair Lending, privacy notices, insurance disclosures, Funds Availability notices;
- Many reporting requirements: Home Mortgage Disclosure Act, Currency Transaction Reports, Suspicious Activity Reports, Call Reports, Regulation O (insider lending) reports, Regulation D (reserve requirements) reports;
- Requirements for written policies and procedures, including annual staff training for: information security, customer identification programs, Bank Secrecy Act, Community Reinvestment Act, and all other aspects of banking including procedures for operations, lending, deposit-taking, investments, advertising, collection, etc. And examiners often ask banks to develop policies and procedures that do not apply to that bank's individual operations!

These regulations are overwhelming to the 37 employees of my bank who must grapple with them everyday.

Feedback from ICBA members indicates that consumer lending and disclosure regulations (including the Truth in Lending right of rescission) are among the most burdensome. Others include: Bank Secrecy Act and anti-money laundering compliance, Community Reinvestment Act, and privacy notices. Many of these concerns apply to banks of all sizes, while others may be of special concern to community banks.

Appendix Attached. Included as an appendix to this written statement is a discussion of regulatory burden presented by a number of specific regulations that has been taken from comments ICBA has provided to regulators as part of the ongoing EGRPRA review and otherwise. It does not cover the full book of bank regulations.

Community Reinvestment Act. The Community Reinvestment Act deserves special mention since regulators have pending a proposal to reduce the regulatory and examination burden it poses on community banks. CRA is a clear example of regulatory overkill. At a time when banking monoliths stretch from coast-to-coast, evaluating the CRA performance of large complex banking organizations and small locally owned and operated community banks on the same examination standards simply does not make sense.

<u>Increased Size Limit for Streamlined CRA Examination.</u> ICBA strongly supports an increase in the asset size limit for eligibility for the small bank streamlined CRA examination process. Although we believe that a preferable threshold would be $2 billion in assets, we applaud the regulators' proposal to increase the limit to $500 million in assets and eliminate the separate holding company qualification. Chairman Bachus, we appreciate the letter you and Rep. Baker organized in support of the proposal.

ICBA also strongly supports Congressman Hensarling's legislation (H.R. 3952) calling for an increase in the CRA small bank size limit to $1 billion, although we would support amending the bill to raise the threshold to $2 billion. We also strongly support the inflation adjustment in the bill to ensure that inflation pressures do not diminish the bill's effect.

Under either the regulatory or legislative proposal, while community banks will still be subject to CRA, many will be free from the more onerous compliance burdens associated with the large bank CRA examination and able to concentrate efforts and resources on serving their communities. The bulk of CRA examination resources should be focused on truly large banks whose hundreds or thousands of local branches never see a CRA examiner, not on community banks that cannot survive unless they serve their communities.

Community activists have suggested that the proposal will "gut" the CRA. This is simply not so. All banks will still be subject to the requirements of the statute and continue to meet the credit needs of their communities. Increasing the small bank size limit will not undermine the purposes of CRA. Instead it will free community banks in the $250 million to $500 million asset range from unnecessary costs, improving their productivity and enhancing their ability to meet the credit needs of their communities.

CRA examination costs place an unfair burden on community banks. If the agencies' proposal is adopted, the regulatory paperwork and examination burden will be eased for 1,350 community banks between $250 million and $500 million of assets. These banks will no longer be subject to the investment and service tests, nor to CRA loan data collection and reporting requirements. Even so, the percentage of industry assets examined under the large bank tests will decrease only slightly from a little more than 90% to a little less than 90%.

In today's market, an institution with $500 million in assets is not a large bank. When the small bank streamlined examination was first considered, 17 percent of the banking industry's total assets were subject to the small bank exam using a $250 million asset limit. Due to consolidation and changes in industry demographics since then, if the asset limit were increased to $1 billion today, only slightly more than 15 percent of industry assets would be subject to the small bank exam—still less than the percentage of assets covered when the streamlined examination was first adopted nearly ten years ago.

<u>ICBA/Grant Thornton CRA Cost Study.</u> A 2002 ICBA/Grant Thornton study entitled *The High Cost of Community Bank CRA Compliance: Comparison of 'Large' and 'Small' Community Banks* reveals that CRA compliance costs can more than double when community banks exceed $250 million in assets and are no longer subject to streamlined examinations. A survey of community banks showed the mean employee cost attributable to CRA is 36.5 percent higher at large community banks than at small community banks. In each of two case studies—one contrasting costs for a bank that grew from "small" to "large" bank status, and one contrasting costs for a "small" and "large" bank owned by the same holding company—CRA compliance costs were four or more times greater for large community banks than for small ones.

The study further showed that the large bank CRA investment test also represents a cost burden for large community banks, with 92 percent finding the market for CRA investment opportunities "competitive" or "highly competitive" and 69 percent saying such investments are "not readily available." Half reported giving yield concessions to make CRA-qualified investments. Opponents of the proposal contend that community investments will disappear if smaller institutions are no longer subject to the investment test of the large bank CRA examination. We disagree. Community bankers report that they would be involved in the local community and make investments in community development because their success and survival depends on the success and the survival of the community and because they are integral parts of those communities.

It is ironic that community activists complain when larger institutions they consider less responsive to community needs merge with our-of-area banks. Yet the activists oppose critical steps to reduce the burden that is driving community banks to sell to their larger counterparts and, in fact, driving the community bank out of the community. Nevertheless, the cumulative effect of this one-size-fits-all regulation is driving away many of the small banks that have been serving their communities for decades. The ultimate result is that our local communities are losing not only their banks, but their community leaders.

Negative Cumulative Effect of Regulations on Community Banks

Even though each new requirement may be designed to address a particular problem, over time it all adds up to an unwieldy burden. A new rule is not just a new requirement for the bank. There's a lot more to it. First, the rule has to be understood and interpreted. Procedures have to be changed and adapted. Forms and software systems have to be updated to reflect the change. Bank employees have to be trained in the new requirement and given refresher courses from time to time. New audit programs have to be created and implemented to be sure that the new procedures for the new rule are properly followed.

How does the average community bank keep up? It's getting more and more difficult. The typical community bank has $75 million in assets and about 25 employees. During consumer compliance examinations alone, federal regulators review 26 separate consumer compliance rules. That's more rules than the average number of employees! And the time spent on compliance is time the bank is not using to serve its customers.

Moreover, the rules aren't segregated into product types. For example, a banker can't just look in one place for all the regulations applicable to a home equity loan. They have to consider a whole series of rules and regulations, such as Regulation B (Equal Credit Opportunity Act), Regulation C (HMDA), Fair Credit Reporting Act, RESPA, Truth-in-Lending. To make matters worse, the rules don't always match. If a customer wants to apply for a mortgage loan, RESPA and the Truth-in-Lending Act both require early disclosures to provide an applicant with information – but the requirements don't always mesh. After all, they're written by two different federal agencies.

Each rule has certain fixed costs associated with it. A mega bank with thousands of employees can more easily absorb those costs and devote the resources to addressing the new rule. For a small, community bank, the requirements are snowing them under. Unfortunately, many community bankers are seriously considering getting out of the business. When banks lose their local community focus, small businesses – the engines that help drive the economy – no longer have access to the kind of one-on-one relationship with a banker that can make or break the business.

State Law Also Adds Burden. Unfortunately, the Congress and federal regulators do not have a monopoly on regulatory burden. State laws and state regulations also can pose undue burden on community banks. ICBA strongly supports the dual banking system and the strengths it has brought to our economic and financial system. Many of our members are state-chartered and like it that way. But a growing number of state laws and regulations, including those that conflict with federal laws on the same topic, compound regulatory burden.

Tiered Regulation and Proper Allocation of Regulatory Resources

Community banks and large, national or regional banks pose different levels of risk to the banking system, and have different abilities to absorb the costs of regulatory burden   For these reasons, the ICBA strongly urges Congress and the agencies to continue to refine a tiered regulatory and supervisory system that recognizes the differences between community banks and larger, more complex institutions.

A tiered regulatory system allocates the costs of regulatory/paperwork burden relative to the risk of the institution and helps restore equity in regulation, leveling the playing field and enhancing customer service. Less burdensome rules and/or appropriate exemptions for community banks are the hallmark of a tiered regulatory system.

Just as banks are urged to focus resources to address the greatest risks, regulators and examiners should reallocate resources to the largest banks that pose the greatest systemic risk. ICBA strongly supports better allocation of supervisory and regulatory resources away from community banks and towards larger institutions that present systemic risk.

From time to time, Congress and the agencies have instituted welcomed regulatory and supervisory policies that lighten the regulatory and paperwork burden for community banks. Examples include: less frequent safety and soundness exams for small, healthy banks; streamlined, risk-focused exam procedures for noncomplex banks; streamlined CRA exams for small banks; and less frequent CRA exams for small, well-rated banks.

Nonetheless, bank regulators devote disproportionate resources to examination and supervision of community banks. For example, one agency, the Federal Reserve, devotes 75% of supervision time to banks with less than $10 billion in assets, yet these banks only hold 30% of aggregate assets and are unlikely to pose systemic risk. Legislators and regulators should address these disparities to better allocate examiner resources and reduce unnecessary burden for community banks.

Conclusion

ICBA member banks are integral to their communities. Their close proximity to their customers and their communities enables them to provide a more responsive level of service. However, regulatory burden and compliance requirements are consuming more and more resources, especially for community banks. The time and effort taken by regulatory compliance divert resources away from customer service. Even more significant, the community banking industry is slowly being crushed under the cumulative weight of regulatory burden, causing many community bankers to seriously consider selling or merging with larger institutions, taking the community bank out of the community.

The ICBA urges the Congress and the regulatory agencies to address these issues before it is too late. This is especially true for consumer lending rules, which, though well intentioned, too often merely increase costs for consumers and prevent banks from serving customers. The fact that banks and thrifts are closely examined and supervised should be taken into account in the regulatory scheme, and depository institutions should be distinguished from non-depository lenders.

The ICBA strongly supports the current efforts of the agencies and Congress to reduce regulatory burden. We look forward to working to ameliorate these burdens and to identifying statutory changes that should be made to ensure that the community banking industry in the United States remains vibrant and able to serve our customers and communities.

APPENDIX
Regulatory Burden
Comments on Selected Regulations [1]

Truth in Lending (Federal Reserve Regulation Z)

Right of Rescission. Perhaps one of the most troublesome issues of current regulatory requirements is the three-day right of rescission under Regulation Z. Bankers have identified the right of rescission as one of the top ten regulatory complaints. Most of the problems this particular right is designed to rectify originate with non-depository creditors, not banks, a fact that should be considered. Moreover, banks and thrifts are closely examined and supervised to ensure compliance and fair practices, another key point to consider in addressing regulatory burden.

Bankers report that consumers rarely exercise the right of rescission. However, consumers do resent having to wait three additional days to receive loan proceeds after the loan is closed, and they often blame the bank for "withholding" their funds. Even though this is a statutory requirement, inflexibility in the application and interpretation of the requirement makes it difficult to waive the right of rescission and aggravates the problem. The restrictions should be rationalized to reflect consumer desires and modern-day realities. If the requirement is not repealed outright, depository institutions should at least be given much greater latitude to allow customers to waive the right.

Identification of the Creditor. In addition to the right of rescission, community bankers have identified other problems under Regulation Z. In many lending arrangements the bank is not the only party involved in making the loan, creating difficulty and confusion in determining which entity is actually responsible for making the requisite disclosures. For example, banks often enter arrangements with car dealers to offer loan products but do not control the dealer's actions. These arrangements take a variety of formats and involve the bank in the credit at different stages of the process. However, the bank is likely to be held responsible for what the car dealer does or does not disclose, no matter when the bank became involved in the loan. The responsibility for disclosures when more than one creditor is involved should be more clearly outlined and defined so that banks understand when and to what extent they are expected to control the actions of counter-parties to a loan transaction.

[1] This appendix is a discussion of regulatory burden presented by a number of specific regulations that has been taken from comments ICBA has provided to regulators as part of the ongoing EGRPRA review and otherwise. It does not cover the full book of bank regulations.

Advertisements. Another problem under the Truth-in-Lending Act regulation involves how loan products may be advertised. From one perspective, advertisements help educate consumers about available loan products, but existing restrictions on what may be included and what must be included if a certain trigger term is used often limits the information actually included in advertising materials, meaning that consumers get less – not more – information. In some cases, the amount of information included can be virtually meaningless. While the intent is to encourage consumers to visit the bank to get more detailed information, the practical implications and market realities suggest that limiting information has the opposite effect. These restrictions should be greatly relaxed, if not eliminated. Banks are subject to the unfair and deceptive restrictions in section 5 of the Federal Trade Commission Act, and that standard should be more than sufficient for *all* bank advertising. Moreover, bankers question auto dealers' practice of advertising of zero percent financing for cars that fails to disclose all pertinent elements of the loan or that is not available to all but a very few – statements that would get bankers in trouble with their examiners but that place bank lenders at an unfair competitive disadvantage.

Finance Charges. The definition of the finance charge under Regulation Z is a primary example of an unclear regulatory requirement. Assessing what must be included – or excluded – is not easily determined, especially when fees and charges may be levied by third parties. And yet, the calculation of the finance charge is critical in properly calculating the annual percentage rate (APR). Even if that hurdle is overcome, actually calculating the APR and knowing when it is permissible to use estimates is also confusing to bankers that work with these issues every day. Explaining them to customers that are not as familiar with banking is not easy and may actually be more confusing to customers. This process desperately needs simplification so that *all* consumers can understand the APR. These calculations are especially frustrating in an increasingly competitive environment where non-depositories use sleight-of-hand to exclude certain items from the APR (bankers often point to auto dealers' advertisement of 0% APRs, as noted above). The regulation and disclosures ought to be tested against focus groups made up of average consumers and revised until easily understood by consumers.

New or Revised Disclosures. Once initial disclosures have been provided, there may be a lapse in time between loan approval and loan closing, especially for real estate loans. As a result, there can be changes in the structure of the final loan, and is not always clear when these changes mandate new disclosures. Similarly, it is not always clear when a change in an existing account relationship, as with a credit card account, requires a change-in-terms notice. Clearer rules or guidance on when new disclosures must be made is needed.

Real Estate Loans. Real estate loans create their own additional problems under Regulation Z. For example, the requirements for the early disclosures under Regulation Z are not in synch with the requirements under

HUD's RESPA requirements, and yet the banker should beware who does not get it right. The requirements should be coordinated.

Many consumers complain about the volume of documents required for real estate loan closings, and the volume and extent of disclosures has gotten so extensive as to provide little meaningful information. If a simplification process is to succeed, one set of coordinated rules for real estate loans is needed – not a variety of regulations issued by different agencies.

Real estate mortgage transaction disclosures should be simple and easy to understand, clearly specifying the obligations and responsibilities of all parties. Disclosures should focus on the information consumers want most: the principal amount of the loan, the simple interest rate on the promissory note, the amount of the monthly payment and the costs to close the loan. Information should be provided to consumers at the appropriate stage of a transaction to allow them to make informed decisions. One set of rules should govern all mortgage lenders, and regulation, supervision and enforcement must be consistent across the industry. And much better supervision of non-depository lenders is needed.

Credit Card Loans. For credit card loans, the requirements under Regulation Z and Regulation E (Electronic Funds Transfers) should be reconciled. Instead of two different regulations, it would be easier if the Federal Reserve established one regulation for credit cards that covered all requirements. In addition, regulatory restrictions requiring resolution of billing-errors within the given and limited timeframes are not always practical. The timeframes should be expanded to allow banks to investigate and resolve errors. Moreover, the rules for resolving billing-errors are heavily weighted in favor of the consumer, making banks increasingly subject to fraud as individuals learn how to game the system, even going so far as to do so to avoid legitimate bills at the expense of the bank. There should be increased penalties for frivolous claims and more responsibility expected of consumers.

Restitution. Recognizing the complexity of the disclosure requirements, if there have been inadvertent errors by the bank in making disclosures, greater flexibility should be allowed so banks do not have to review large numbers of consumer files and possibly make restitution of only a few cents: the costs for such actions certainly far outweigh the minimal benefits to the individual consumer.

Equal Credit Opportunity Act (Federal Reserve Regulation B)

Regulation B creates a number of compliance problems and burdens for banks. Knowing when an application has taken place is often difficult because the line between an inquiry and an application is not clearly defined. To answer customer questions about loan products, bankers must have sufficient information to respond correctly, and yet having too much information can lead to an “application” that triggers additional responsibilities on the part of the bank. While bankers want to provide customer service, the regulations make it difficult, and almost mandate a written application in all instances. This should be rationalized to reflect modern technologies and to prevent barriers to customer service.

Spousal Signature. A related issue that creates problems for all creditors is the issue of when to require the signature of a spouse. This can be especially problematic for small business loans when the principal of the business and his or her spouse guarantee the loan. Instead of allowing banks to accommodate customer needs and provide customer service, the requirements make it difficult and almost require that all parties – and their spouses – come into the bank personally to fill out the application documents. This makes little sense as the world moves toward new technologies that do not require physical presence to apply for a loan.

Adverse Action Notices. Adverse action notices present another problem—one that promises to be aggravated by new requirements under the Fair and Accurate Credit Transactions (FACT) Act. It would be preferable if banks could work with customers and offer them alternative loan products if they do not qualify for the type of loan for which they originally applied. However, doing so may trigger requirements to supply adverse action notices. And knowing when to send an adverse action notice is not always readily determined. For example, it may be difficult to decide whether an application is truly incomplete or whether it can be considered “withdrawn.”

Moreover, the requirements for adverse action notices under Regulation B are not always in synch with the requirements under the Fair Credit Reporting Act (FCRA). And, while there may be more than one reason that the loan was denied, determining what reason to provide on the adverse action notice form may not be simple. A simple straightforward rule on when an adverse action notice must be sent – that can easily be understood – should be developed.

The real danger is that regulatory complications could make it much easier for banks to deny an application instead of working with customers to find a suitable loan product. In such cases, it will be low- and middle-income loan applicants or those that are marginal or have problem credit histories that will be most negatively affected.

Other Issues. Regulation B’s requirements also complicate other aspects of customer relations. For example, to offer special accounts for seniors, a bank is limited by restrictions in the regulation. And, most important, reconciling the regulation’s requirements not to maintain information on the gender or race of a borrower and the need to maintain sufficient information to identify a customer under section 326 of the USA PATRIOT Act is difficult and needs better regulatory guidance.

Home Mortgage Disclosure Act (HMDA) (Federal Reserve Regulation C)

Exemptions. The HMDA requirements are the one area under Part 2 of the current EGRPRA regulatory review (consumer lending regulations) that does not provide specific protections for individual consumers. Rather, HMDA is primarily a data-collection and reporting requirement and therefore lends itself much more to a tiered regulatory requirement that places fewer burdens on smaller institutions. The current exemption for banks with less than $33 million in assets is far too low and does not make sense in today's banking environment, especially when there are banks with $1 *trillion* in assets. The HMDA exemption should be increased to at least $250 million, if not higher.

A second problem is the definition of an MSA (metropolitan statistical area). Since the definition of an MSA also determines which banks must report under HMDA, the banking agencies should develop a definition that applies to banks. Instead, banks are subject to a definition created by the Census Bureau for entirely different reasons. As a result, banks in rural areas and that should not be covered by HMDA reporting requirements may be captured by rules that do not reflect the reality of banking. Although the ICBA has often been a proponent of consistency in regulatory definitions, HMDA reporting requirements should be developed by the banking agencies and not subject to rules developed by other agencies that are establishing definitions for completely different criteria.

Volume of Data Required. For banks that are subject to HMDA requirements, the volume of the data that must be collected and reported is clearly burdensome, and has been identified by bankers as one of the top ten regulatory burdens. Consumer activists are constantly clamoring for additional data, and the recent regulatory changes requiring collection and reporting of yet more data succumb to their demands without a clear cost-benefit analysis. All consumers ultimately pay for the data collection and reporting. Moreover, collecting some of the information, such as data on race and ethnicity, can be offensive to some customers who hold the bank responsible. Clearly, better cost-benefit analysis is needed in assessing the volume of data required under HMDA, with clear demonstration of the utility that justifies the costs involved.

Specific data collection requirements are difficult to apply in practice and therefore add to regulatory burden and the potential for error. Bankers report expending precious resources to constantly review and revise the HMDA data to ensure accurate reporting. Some of these problems are:

- Knowing which loans are refinancings
- Assessing loans against HOEPA (the Home Owners Equity Protection Act)
- Determining the date the interest rate on a loan was set

- Comparing Treasury yields against loan rates when maturity of loan does not match existing Treasury securities
- Determining physical property address or census tract information in rural areas
- Determining lien status (first, second, third)
- Coordinating reasons for denial with requirements for Reg B adverse action notice
- Constant review and updating of information collected for reporting

These problems should be addressed, whenever possible by eliminating the data requirement, and regulatory guidance in this area should be clear and easily applied. The current complexity and difficulty in applying existing guidance to daily operations merely adds to the level of burden and cost.

Finally, bankers report encountering conflicts between the data required under HMDA and the data that must be collected and reported under ECOA. The two data collection requirements should be reconciled and coordinated so that there is only one set of data-collection rules that apply to the race, age, ethnicity and gender of borrowers.

Flood Insurance

Flood insurance is another one of the top ten regulatory problems identified by bankers. The current flood insurance regulations create difficulties with customers, who often do not understand why flood insurance is required and that the federal government – not the bank - imposes the requirement. The government needs to do a better job of educating consumers to the reasons and requirements of flood hazard insurance.

For bankers, it is often difficult to assess whether a particular property is located in a flood hazard zone since flood maps are not easily accessible and are not always current. Even once a property has been identified as subject to flood insurance requirements, the regulations make it difficult to determine the proper amount, and customers do not understand the relationship between property value, loan amount and flood insurance level. Once flood insurance is in place, it can be difficult and costly to ensure that the coverage is kept current and at proper levels. As a result, many banks rely on third party vendors to assist in this process, but that adds costs to the loan. Flood insurance requirements should be streamlined and simplified to be understandable.

Bank Secrecy Act (BSA) and Anti-Money Laundering (AML) compliance

Of special concern to ICBA member banks are the requirements and costs associated with filing currency transaction reports (CTRs), especially when weighed against the lack of evidence that they provide useful information. Bankers believe that law enforcement has a tendency to shift costs and burdens to the banking industry and therefore ignores the costs. Bankers are concerned with potential conflicts between anti-discrimination laws and customer identification requirements under the USA PATRIOT Act. And, although guidance has begun to appear, bankers are concerned with the overall lack of regulatory guidance, especially on practical issues such as retention of copies of a customer's driver's license.

Another problem under Patriot Act compliance is the data-match program that requires banks to search records for possible matches to lists furnished by the government every two weeks. And, related to BSA, bankers complain about the difficulty of using lists issued by the Office of Foreign Asset Control (OFAC).

Bankers are willing to take the necessary steps to do their part to combat money laundering and terrorist financing. However, there is a critical need for better communication from law enforcement about the success of existing bank efforts and guidance on what to look for to help detect illicit activities. There is a need for a true partnership between law enforcement and banks – but so far, banks feel that all the effort has been on the bank side. Perhaps more important, though, is the need to recognize that banks have limited resources. For example, the time and effort expended in filing currency transaction reports consumes resources not available to combat other types of fraud or to serve customers. These requirements must be balanced, and law enforcement should not view banks as having limitless resources to comply with these demands.

There is another important point that must be recognized. As the costs associated with compliance increase, the costs for offering simple checking and savings accounts also increase. These fees are ultimately passed along to consumers. This point is especially important in the anti-money laundering context because as these fees increase, they drive more and more potential customers away from banks. The Treasury Department has stressed the need to bring the nearly 10 million "unbanked" customers into the banking system. However, by increasing costs and driving customers away, it creates a fertile environment for underground banking systems. If a transaction is conducted through a regulated and highly supervised depository, law enforcement has access to the information. But driving consumers away from banks helps create systems where that information may not be as readily accessible.

Money Market Deposit Accounts (Federal Reserve Regulation D)

ICBA members have suggested that the current limit on transfers from MMDAs is an anachronism in today's environment that puts banks at a competitive disadvantage to brokerage firms and credit unions. This is especially true for smaller banks that cannot afford the costs that would allow them to offer sweep services. ICBA supports expanding the number of transfers for money market deposit accounts.

Privacy Notices

Many community bankers view the annual privacy notice as ineffective. Banks that do not share information other than as permitted under one of the exceptions should have the option not to deliver the annual notice unless there has been a change in their privacy policy, a step that would make it more likely consumers would pay attention to the notices. For banks that do not share information, a short statement to that effect printed on a customer's bank statement should be sufficient. As a general rule, a privacy notice should only be required at account opening and when a bank's privacy policy or practices change. The current requirement that banks furnish all customers with an annual privacy notice actually has a very serious unintended consequence: it encourages customers to disregard the information that is provided, making them increasingly less likely to pay heed to notices.

Call Reports

The volume and extent of information that must be reported for the call report is extensive and very time consuming for banks to prepare. Although software programs are helpful, many community banks report they must make manual adjustments to provide information in the format requested. Banks also question the volume of information requested and whether it is all truly meaningful or necessary. Bankers appreciate the steps being taken to overhaul the process, but believe more could be done. Unfortunately, it seems that once any particular bit of data is requested on the call report, it never goes away, even though the need for the information or the rationale for requesting it may have long expired.

Credit to Insiders (Federal Reserve Regulation O)

Bankers feel that the many disclosures required for loans to insiders, especially board members, invades privacy. More important, it drives good customers away by forcing insiders to go elsewhere for loans. The restrictions also make it difficult for bankers to attract qualified individuals to the board of directors.

Expedited Funds Availability (Federal Reserve Regulation CC)

The current funds availability schedule increases the potential for fraud loss for banks. Bankers also report that the costs and burdens associated with placing extended holds reduce their usefulness. Especially problematic is next-day availability for cashier's checks that are becoming increasingly subject to counterfeiting.

Examinations

The need for consistency among agencies, coordination of examinations and better training for examiners are critical. Bankers also stress the need to distinguish between different banks in different markets in the examination process.