



January 20, 2006

Banking Agency Review to Reduce the Burden of Regulations Regarding Prompt Corrective Action and CRA-Related Agreements

EXECUTIVE SUMMARY

- The bank and thrift regulatory agencies – Office of the Comptroller of the Currency (OCC), Office of Thrift Supervision (OTS), Federal Reserve Board, and Federal Deposit Insurance Corporation (FDIC) – have issued a Request for Comments to identify outdated, unnecessary or burdensome regulatory requirements imposed on institutions they regulate. All of the federal financial regulators are required by a 1996 paperwork reduction law (Economic Growth and Regulatory Paperwork Reduction Act or EGRPRA) to review their regulations at least once every 10 years. (Because the credit union system is quite different than the banking system, NCUA publishes its notices separately but maintains comparability with the other regulators to the extent the issues are the same.)
- The Act requires the regulators to categorize the regulations, publish the categories for comment, report to Congress on any significant issues raised by the comments and eliminate unnecessary regulations.
- In total, the regulators will seek comments on 13 categories of their regulations which impose burden on federally-insured banks and thrifts between 2003 and the end of the cycle (2006). The regulators have already sought comments on the following categories: (1) applications and reporting and (2) banking operations; (3) capital; (4) Community Reinvestment Act; (5) consumer protection - lending related rules; (6) consumer protection – account/deposit relationships and miscellaneous consumer rules; (7) directors, officers and employees; (8) international operations; (9) money laundering; (10) powers and activities; (11) rules of procedure; (12) safety and soundness; and (13) securities.
- **The categories that are the subject of this sixth and final request include the rules addressing the following 2 categories:**

(1) Capital – Prompt Corrective Action (PCA)

The rules of the FDIC are laid out below as representative of the banking and thrift agencies:

12 C.F.R. Part 325, subpart B:

<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=80a3f5b8bfed4ac75f3e290924188bc7&rgn=div5&view=text&node=12:4.0.1.2.14&idno=12#12:4.0.1.2.14.2>

Capital-Ratio Thresholds under PCA

Capital Category	Capital Ratio		
	Total Risk-based	Tier 1 Risk-based	Leverage
Well-capitalized ^a	10% or more, and	6% or more, and	5% or more
Adequately capitalized	8% or more, and	4% or more, and	4% or more
Undercapitalized ^b	Less than 8%, or	Less than 4%, or	Less than 4%
Significantly undercapitalized	Less than 6%, or	Less than 3%, or	Less than 3%

Source: GAO (1997)

^aAn institution is not considered to be well-capitalized if it is subject to a formal regulatory action that requires the institution to meet and maintain a specific capital level.

^bThe leverage ratio can be as low as 3% if the institution has a CAMELS rating of 1.

*“Critically undercapitalized” means the bank has a ratio of tangible equity to total assets that is equal to or less than 2.0 percent.

Mandatory Actions under the PCA Provisions of FDICIA

Well-capitalized and adequately capitalized

- None

Undercapitalized

- May not pay dividends or management fees.
- Subject to increased monitoring.
- Must implement acceptable capital plan.
- Asset growth restricted.
- Approval needed for acquisitions, branching, and new business lines.
- May not issue brokered deposits.
- Access to discount window restricted.

Significantly undercapitalized

- Subject to provisions applicable to undercapitalized institutions.
- Compensation of senior officers restricted.
- Unless action would not further the purposes of PCA, supervisor shall
 - Require bank to raise additional capital or be merged.
 - Enforce Section 23A of Federal Reserve Act as if exemptions in act do not apply.
 - Restrict deposit interest rates to those prevailing in region. Critically undercapitalized
- After 60 days, may not make payments on subordinated debt without approval.
- Must be placed in receivership
 - Within 90 days, unless action would not achieve the purposes of PCA.
 - Within 270 days, unless specific statutory requirements are met.
- Access to discount window restricted more than for undercapitalized.
- May not do the following without FDIC approval
 - Undertake material transactions, except in usual course of business.
 - Extend credit for any highly leveraged transaction.
 - Make any material change in accounting methods.
 - Undertake covered transactions, as defined in Section 23A of Federal Reserve Act.
 - Pay excessive compensation or bonuses.
 - Pay interest on liabilities above prevailing market rates

Source: Primarily Jones and King (1995).

- Regulations for the national banks regulated by the OCC can be found at 12 C.F.R. Part 6:
<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=80a3f5b8bfed4ac75f3e290924188bc7&rgn=div5&view=text&node=12:1.0.1.1.6&idno=12>
 - Regulations for banks regulated by the Federal Reserve can be found at 12 C.F.R. Part 208, subpart D (Regulation H):
<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=80a3f5b8bfed4ac75f3e290924188bc7&rgn=div5&view=text&node=12:2.0.1.1.8&idno=12#12:2.0.1.1.8.4>
- AND
- 12 C.F.R. 263.201-.205
- Regulations for thrifts regulated by the OTS can be found at 12 C.F.R. Part 565:
<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=80a3f5b8bfed4ac75f3e290924188bc7&rgn=div6&view=text&node=12:3.0.1.1.19.8&idno=12>
 - Regulations for thrifts regulated by the OTS can be found at 12 C.F.R. Part 565:
<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=80a3f5b8bfed4ac75f3e290924188bc7&rgn=div5&view=text&node=12:5.0.1.1.41&idno=12>

(2) Community Reinvestment Act (CRA) – Disclosure and Reporting of CRA-Related Agreements

- The banking and thrift agencies have regulations that implement provisions of the Gramm-Leach-Bliley Act (GLBA) that require reporting and public disclosure of written agreements between insured depository institutions or their affiliates and nongovernmental entities or persons (NGEPs) made in connection with fulfillment of Community Reinvestment Act requirements. Many banks and thrifts enter into agreements with NGEPs (such as community investment financial institutions or CDFIs) to be conduits for loans and investments into the distressed communities to fend off CRA-related complaints against the bank/thrift by community groups.
- The regulations apply to agreements between an institution and NGEPs, made pursuant to or in connection with the fulfillment of the institution's CRA obligations, whereby the institution agrees to provide to individuals or entities cash payments, grants, or other consideration (except loans) that have an aggregate value of more than \$10,000 in any calendar year OR make loans to individuals or entities that have an aggregate principal amount of more than \$50,000 in any calendar year. In either case, the recipients of the payments, resources, or loans are not required to be parties to the agreement.

- The disclosure requirements do not apply to: (1) any individual mortgage loan; (2) any agreement concerning a loan or credit commitment "at rates not substantially below market rates," and where there is no relending of borrowed funds; and (3) any agreement with a party that "has not commented on, testified about, or discussed with the institution or otherwise contacted the institution" about CRA.
- GLBA requires requires each party to an agreement covered by the statute to disclose the agreement, "in its entirety," to the appropriate Federal banking agency (AFBA) that supervises the insured depository institution that is a party to the agreement, and to the public. The rules require banks/thrifts to make disclosure to the "relevant supervisory agency" within 60 days of the end of each calendar quarter either by filing a copy of the covered agreement with that agency or by providing the agency with a list of covered agreements entered into in that calendar quarter. A bank/thrift that elects to provide a list must submit a copy of any agreement on the list within 7 calendar days of receiving a request for the agreement from the agency. An NGEF is required to provide a copy of a covered agreement to the appropriate agency only upon the agency's request. Both the bank/thrift (or its affiliate) and the NGEF are required to make disclosure to the public by making a copy of the covered agreement available upon request.
- The rule also requires each bank (or its affiliate) and each NGEF that is a party to a covered agreement to file an annual report with the AFBA for the insured institution party. The reporting requirements are different for the two types of entities. The bank's/thrift's (or its affiliate's) report must include all of the following information:
 - Payments, fees, or loans made to, or received from, any party to the covered agreement and the terms and conditions of those payments, fees, or loans.
 - Aggregate data on loans, investments, and services provided by each party in its community pursuant to the covered agreement. (The institution, however, is not required to provide information about another party if the institution does not have the information or if the information will be included in the other party's annual report.)
- The NGEF must report to the bank's AFBA "an accounting of the use of funds received pursuant to the covered agreement during the preceding 12 months. The NGEF's accounting must include "a detailed, itemized list of the uses to which [the] funds have been made, including compensation, administrative expenses, travel, entertainment, consulting and professional fees" and "other expenses and uses" (which must be specified).

- The rule provides that confidential and proprietary information may be protected from disclosure. A party is permitted to withhold information from public disclosure (but not from disclosure to the agencies) if the party believes that the Federal banking agency could withhold the information pursuant to the Freedom of Information Act (FOIA). Certain types of information may not be withheld from disclosure, however. The rules list the types of information that the parties must disclose in all circumstances, including: the names and addresses of the parties; the amount of payments, loans, or other consideration to be provided by any party; a description of how the resources provided are to be used; the term of the agreement (if the agreement establishes a term); and anything else that the relevant agency determines must be disclosed. Although there will be no prior agency review of any redactions of information by a party, a member of the public that receives a copy of a covered agreement in which information has been withheld may ask the relevant federal banking agency to determine whether any of the information withheld should be disclosed.
- Any willful failure by the non-bank party to comply with the disclosure and reporting requirements will result in the agreement being unenforceable, after notice and a reasonable period to comply. There are no penalties for inadvertent or de minimis reporting errors. If any agreement is unenforceable, the federal regulator may help the bank find a successor party. The federal regulator is not authorized to enforce provisions of the agreement.
- The regulations for national banks supervised by the OCC are found at 12 C.F.R. Part 35:
<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=80a3f5b8bfed4ac75f3e290924188bc7&rgn=div5&view=text&node=12:1.0.1.1.33&idno=12>
- The regulations for banks supervised by the Federal Reserve can be found at 12 C.F.R. Part 207 (Regulation G):
<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=80a3f5b8bfed4ac75f3e290924188bc7&rgn=div5&view=text&node=12:2.0.1.1.7&idno=12>
- Regulations for thrifts supervised by the OTS can be found at 12 C.F.R. Part 533:
<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=80a3f5b8bfed4ac75f3e290924188bc7&rgn=div5&view=text&node=12:5.0.1.1.15&idno=12>

- The regulatory agencies encourage all comments with regard to these rules. Specifically, comments are encouraged with regard to the following issues:
 - Whether statutory changes are needed.
 - Whether the rules contain requirements that are not needed to serve the purposes of the statutes they implement.
 - The extent to which the rules may adversely affect competition.
 - The cost of compliance with regard to reporting, recordkeeping, and disclosure requirements, particularly on small credit unions (those with less than \$10 million in assets).
 - Whether any regulatory requirements are inconsistent or redundant.
 - Whether any of these rules are unclear.

- At the conclusion of the comment period, the regulators will review the comments received and will consider proposing amendments to these rules. **Comments that may also require statutory changes are also encouraged.** A report will be submitted to Congress discussing the issues raised in the comments and whether they must be addressed by legislative or regulatory changes.

- Comments are due to the agencies by April 4, 2006. **Please send your comments to CUNA by March 17, 2006.** Please feel free to fax your responses to CUNA at 202-638-7052; e-mail them to Associate General Counsel Mary Dunn at mdunn@cuna.com or to Senior Regulatory Counsel Catherine Orr at corr@cuna.com; or mail them to Mary or Catherine in c/o CUNA's Regulatory Advocacy Department, 601 Pennsylvania Avenue, NW, 6th Floor - South Building, Washington, DC 20004. You may also contact us at 800-356-9655, ext. 6743, if you would like a copy of the Request for Comments, or you may access it on the Internet at:

QUESTIONS TO CONSIDER REGARDING THE REQUEST FOR COMMENTS

1. Do any of the PCA requirements/procedures provide more leniency or flexibility which you feel could/should be adopted for credit unions?

Yes _____ No _____

If yes, which provisions should be adopted in the PCA framework for credit unions?

2. Do you believe the existing rules in place for banks and thrifts to publicly disclose agreements they have with NGPEs are sufficient?

Yes _____ No _____

If not, what additional requirements do you feel should be imposed?

3. Other comments?

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