Vice Chairman Federal Deposit Insurance Corporation on Regulatory Burden Relief Efforts before the Committee On Banking, Housing And Urban Affairs of the United States Senate
June 21, 2005 -- 10:00 AM
538 Dirksen Senate Office Building

Mr. Chairman, Ranking Member Sarbanes, and Members of the Committee, I very much appreciate the opportunity to testify and update you on our efforts to reduce unnecessary regulatory burden on depository institutions insured by the Federal Deposit Insurance Corporation (FDIC). I am here today as the leader of the interagency regulatory review process mandated by the Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA). In this capacity, and as a former community banker with over 23 years of experience, I share your commitment to pursue meaningful regulatory relief legislation, while maintaining the safety and soundness of the banking industry and protecting important consumer rights. This is an important endeavor and I think our nation's financial institutions, particularly America's smaller community banks, are counting on us to succeed in our efforts to reduce regulatory burden.

My testimony this morning will discuss the importance of balancing the relative costs and benefits of regulations, the proliferation of regulation in recent years and the high costs on the industry. It will also discuss the cumulative effect of regulations on our nation's bank and thrift institutions, particularly smaller community banks. I will also outline our interagency efforts to review regulations and address the existing regulatory burden, as mandated by EGRPRA. I then will describe actions the FDIC has taken to reduce burdens imposed by our own regulations and operating procedures. Finally, I will outline a dozen specific legislative proposals to reduce regulatory burden that all of the Federal bank and thrift regulators have agreed to support, as well as many more that are supported by more than one regulatory agency.

The Importance of Balancing the Costs and Benefits of Regulation

Our bank regulatory system has served us quite well, often helping to restrain imprudent risk-taking, protect important consumer rights and fulfill other vital public policy objectives. Statutes and regulations help preserve confidence in the banking industry and in the financial markets by ensuring that institutions operate in a safe and sound manner, promoting transparency in financial reporting, and encouraging fair business practices. However, as more and more laws are passed, and new regulations are adopted to implement those laws, it is incumbent upon policy makers to ensure that the intended benefits justify the considerable costs. We need to take stock periodically of the cumulative effect of all regulatory requirements on the industry. No one would advocate a system where people spend more time trying to figure out how to comply with all the laws than engaging in their primary economic activity. As Federal Reserve Board Chairman Alan Greenspan said in a speech a few months ago, "to be effective regulators we must also attempt to balance the burdens imposed on banks with the regulations' success in obtaining the intended benefits and to discover permissible and more efficient ways of doing so." I could not agree more. It is all about balance, and I am afraid that the scales have now tipped too heavily to one side and need to be rebalanced.

The Proliferation and High Cost of Regulation in the Industry

In my testimony before this Committee last year, I reported that, since enactment of the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) in 1989, the Federal bank and thrift regulatory agencies promulgated a total of 801 final rules. Since I testified in June of last year, the agencies adopted an additional 50 final rules, which means that there have been a total of 851 final rules adopted since FIRREA-- an average of about 50 new or amended rules promulgated every year. This does not include the rules adopted by the Securities and Exchange Commission (SEC), Financial Accounting Standards Board (FASB), Public Company Accounting Oversight Board (PCAOB), American Institute of Certified Public Accountants (AICPA) and a whole host of state regulatory authorities nor regulations that apply to companies in general (such as tax and environmental rules).

It is a challenge for bankers to maintain the capacity to respond to the steady stream of new regulations while continuing to comply with existing ones. Recently enacted laws reflect important public policy choices concerning, for example, the quality of the credit reporting system, identity theft, national security and changes in technology. However, it is incumbent upon the regulators who write implementing regulations, as well as the Congress, to be mindful of the need to avoid unnecessarily increasing regulatory burden on the industry as we implement new requirements mandated by legislation.

Rule changes, particularly for smaller community banks with limited staff, can be costly since implementation often requires computers to be reprogrammed, staff retrained, manuals updated and new forms produced. Even if some of the rules do not apply to a particular institution, someone has to at least read the rules and make that determination. The 4,094 insured institutions with less than $100 million in assets last year have, on average, fewer than 20 employees and the 1,000 smallest community banks and thrifts in the country average fewer than 10 employees. It is hard to imagine how those institutions can continue to serve their customers' needs and also meet myriad new regulatory requirements.

The cost of all of our regulatory requirements is hard to measure because it tends to become indivisible, if not invisible, from a bank's other activities. While there are no definitive studies, a survey of the evidence by a Federal Reserve Board economist in 1998 found that total regulatory costs account for 12 to 13 percent of banks' non-interest expense, or about $38 billion in 2004 ("The Cost of Bank Regulation: A Review of the Evidence," Gregory Elliehausen, Federal Reserve Bulletin, April 1998). Regulatory burden is an issue for all banks, but I believe that the burden falls heaviest on America's smaller community banks, as explained in the next section.

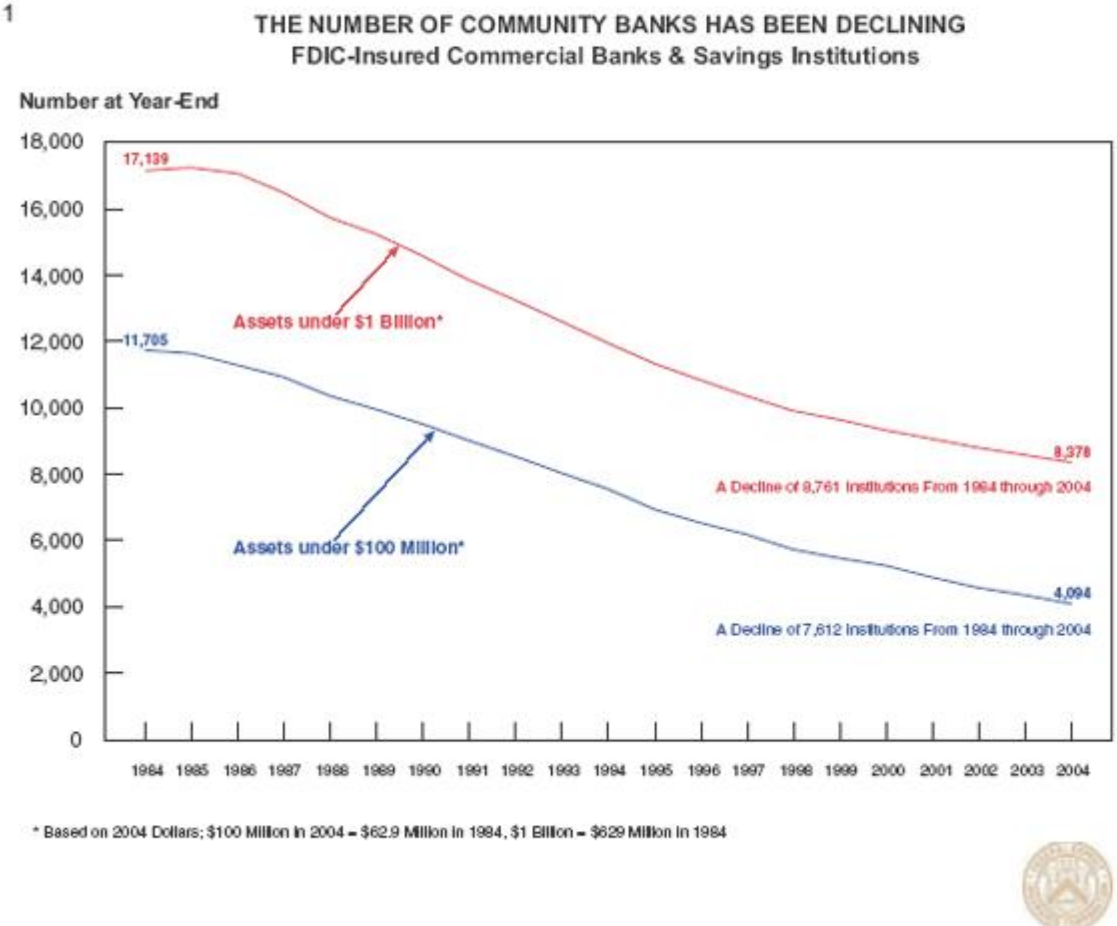
The Impact of Regulatory Burden on Community Banks

New regulations have a greater impact on community banks, especially smaller community banks (under $100 million in assets), than on larger institutions due to their inability to spread start up and implementation costs over a large number of transactions. The magnified impact of regulatory burden on small banks is a significant concern to me. Community banks play a vital role in the economic well-being of countless individuals, neighborhoods, businesses and organizations throughout our country, serving as the very lifeblood of their communities. These banks are found in all communities—urban, suburban, rural and small towns. They are a major source of local credit. Data from the June 2004 Call Reports indicates that over 90 percent of commercial loans at small community banks were made to small businesses. In addition, the data indicates that community banks with less than $1 billion in assets, which hold only 14 percent of industry assets, account for 45 percent of all loans to small businesses and farms.

Community banks generally know personally many small business owners and establish lending relationships with these individuals and their businesses. These small businesses, in turn, provide the majority of new jobs in our economy. Small businesses with fewer than 500 employees account for approximately three-quarters of all new jobs created every year in this country. The loss of community institutions can result in losses in civic leadership, charitable contributions, and local investment in school and other municipal debt. I have a real concern that the volume and complexity of existing banking regulations, coupled with new laws and regulations, are increasingly posing a threat to the survival of our community banks.

Over the last 20 years, there has been substantial consolidation in the banking industry. This can be seen most dramatically in the numbers of small community banks. At the end of 1984, there were 11,705 small community banks with assets of less than $100 million in today's dollars. At year-end 2004, the number of small community banks dropped by 65 percent to just 4,094 (see Chart 1).

Chart 1



For institutions with assets of $1 billion or less in 2004 dollars, there has been a decline of 8,761 institutions, or 51 percent over the twenty year period. This chart underscores the point that the rate of contraction in the number of community banks increases with decreasing asset size. The smaller the institutions, the greater the rate of contraction – even when we adjust size for inflation.

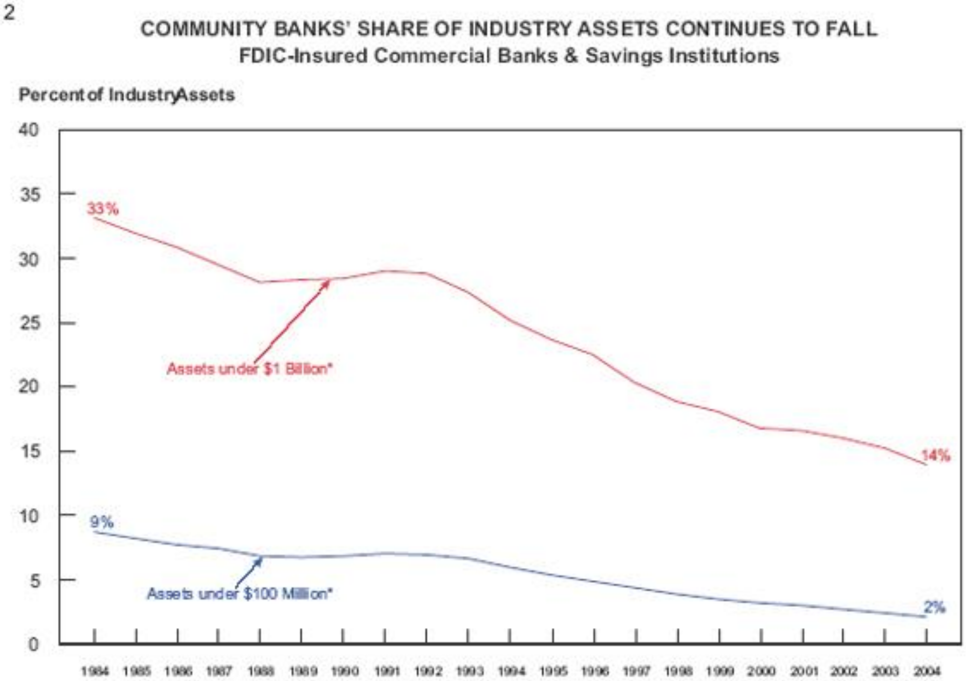
The decline in the number of community banks has three main components: mergers; growth out of the community bank category; and failures. These factors were only partially offset by the creation of more than 2,500 new banks during 1985-2005. (In the above calculations, bank asset size is adjusted for inflation. Thus, a bank with $100 million in assets today is compared with one having about $63 million in assets in 1985.)

A number of other market forces, such as interstate banking and changes to state branching laws impacted the consolidation of the banking industry. The bank and thrift crisis of the 1980s and the resulting large number of failures and mergers among small institutions serving neighboring communities also contributed to the decline in the smallest financial institutions. It is probable that together those factors were the greatest factors in reducing small bank numbers.

However, I believe regulatory burden plays a significant role in shaping the industry, including the number and viability of community banks. While many new banks have been chartered in the past two decades, I fear that, left unchecked, regulatory burden may eventually pose a barrier to the creation of new banks. Keeping barriers to the entry of new banks low is critical to ensuring that small business and consumer needs are met, especially as bank mergers continue to reduce choices in some local markets.

More dramatic than the decline in numbers of institutions has been the decline in market share of community banks. As Chart 2 indicates, the asset share of small community banks decreased from nine percent to two percent in the past 20 years, while the share of institutions with less than $1 billion in assets fell from 33 percent to 14 percent. This chart understates the real loss of market share for these institutions, since it does not reflect the growing importance of asset management activities that generate revenues but do not create assets on institutions' balance sheets. Chart 3, which presents community banks' share of industry earnings, shows a greater loss of share, from 12 percent to two percent for small community banks, and from 44 percent to 13 percent for institutions with less than $1 billion in assets.

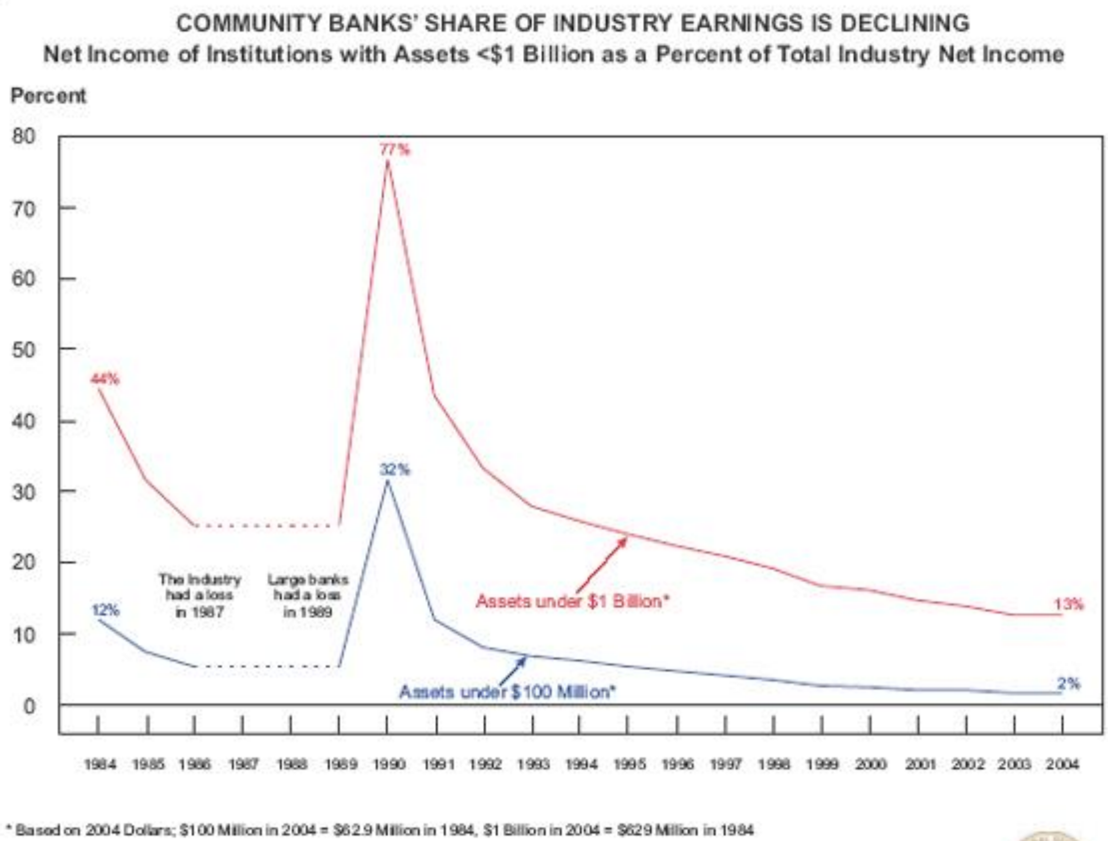
Chart 2



* Based on 2004 Dollars; $100 Million in 2004 = $62.9 Million in 1984, $1 Billion 2004 = $629 Million in 1984

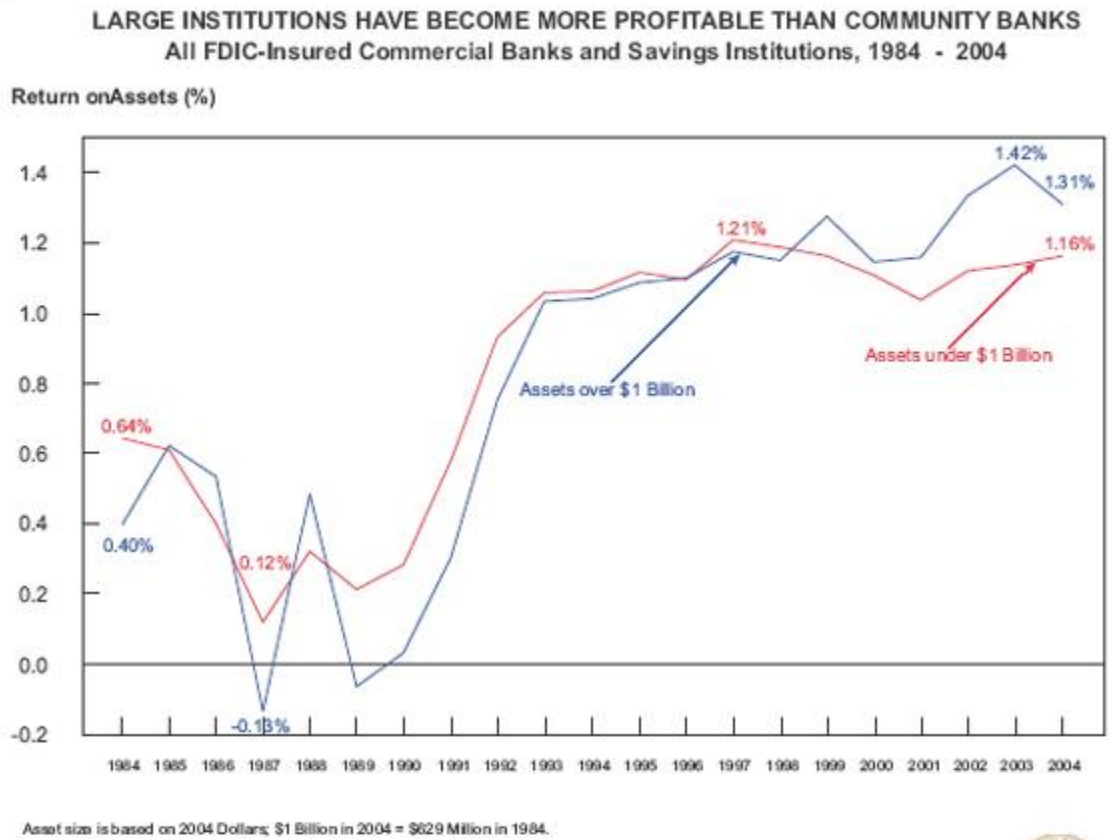
It may seem a paradox to discuss profitability concerns at a time when the banking industry is reporting record earnings. Last year the industry as a whole earned a record $122.9 billion, surpassing the previous annual record of $120.5 billion set in 2003. When you look behind the numbers, however, you see a considerable disparity in the earnings picture between the largest and smallest banks in the country. The 117 largest banks in the country (those with assets over $10 billion), which represent 1.3 percent of the total number of insured institutions, earned $89.3 billion or about 73 percent of total industry earnings. This is in contrast to the 4,094 banks with assets under $100 million, which represent 46 percent of the total number of insured institutions and earned about $2.1 billion or only 1.7 percent of total industry earnings (see Chart 3).

Chart 3



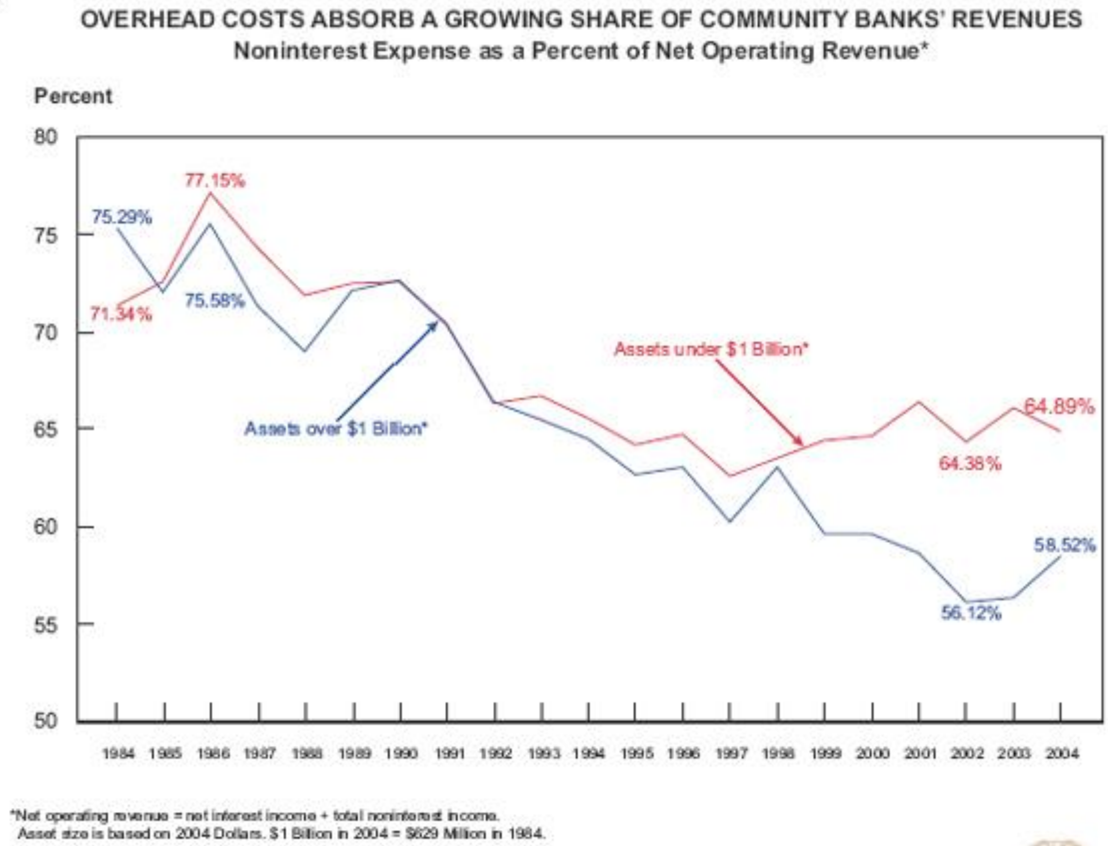
Moreover, when the data is examined further, you find that banks with assets over $1 billion had an average return on assets (ROA) of 1.31 percent, while those with assets under $1 billion had an average ROA of 1.16 percent (see Chart 4).

Chart 4



The ROA comparisons understate the actual disparity in performance between community banks and their larger counterparts. The 15 basis-point difference in nominal ROA last year increases to a 43 basis-point gap when the data is adjusted for the accounting effects of large-bank mergers and different tax treatment of Subchapter S corporations. One of the main causes of the growing difference is the greater ability of large institutions to spread their overhead costs across a larger and more diverse base of revenues. Chart 5 illustrates the growing efficiency gap separating large and small institutions. It shows the extent to which non-interest expenses absorb operating revenues. Throughout the early-1990s, both large and small institutions were able to control expense growth and increase revenues so that their efficiency ratios improved (declined) in tandem. During the past six years, however, larger institutions have been able to continue to improve their efficiency, whereas community banks have not. The regressive burden of regulation, which increased considerably during this period, contributed to this divergence in performance. Last year, more than one out of every ten small community banks was unprofitable. That was more than four times the proportion of larger institutions that were unprofitable. These numbers make it clear that community banks, while healthy in terms of their supervisory ratings, are operating at a lower level of profitability than the largest banks in the country. At least part of this disparity in earnings stems from the disproportionate impact that regulations and other fixed non-interest costs have on community banks.

Chart 5



Community bankers are increasingly worried that their institutions—and all that they mean to their communities—may not be able to operate at an acceptable level of profitability for their investors for too many more years under what they describe as a "never-ending avalanche" of regulations. As reported in the American Banker (May 25, 2004), regulatory burden was an important factor in the decision by two community banks to sell their institutions. While we have only anecdotal evidence on this point, conversations concerning merger or sale of institutions are likely occurring today in many community bank boardrooms all over the United States.

It is not just the total volume of regulatory requirements that pose problems for banks, but also the relative distribution of regulatory burden across various industries that could hit community banks hard in the future. For example, community bankers are increasingly subject to more intense competition from credit unions that, in many cases, have evolved from small niche players to full-service retail depository institutions. In the past ten years, the number of credit unions with assets exceeding $1 billion increased almost five-fold, from 20 institutions in 1994 to 99 institutions today -- and the credit union industry continues to grow nationwide. With ever-expanding fields of membership and banking products, credit unions are now competing head-to-head with banks and thrifts in many communities, yet the conditions under which this competition exists enable credit unions to operate with a number of advantages over banks and thrifts.

These advantages include exemption from taxation, not being subject to the Community Reinvestment Act, and operation under a regulatory framework that has supported and encouraged the growth of the credit union movement, including broadening the "field of membership." These advantages make for an uneven playing field, a condition that Congress should reexamine and seek to resolve.

Interagency Effort to Reduce Regulatory Burden

In 1996, Congress passed the Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA). EGRPRA requires the Federal Financial Institutions Examination Council (FFIEC) and each of its member agencies to review their regulations at least once every ten years, in an effort to eliminate any regulatory requirements that are outdated, unnecessary or unduly burdensome. For the past two years, I have been leading the interagency effort and am pleased to report that we are making progress.

Under the EGRPRA statute, the agencies are required to categorize their regulations by type (such as “safety and soundness” or “consumer protection” rules) and then publish each category for public comment. The agencies have already jointly published four separate requests for comment in the Federal Register. The first notice, published on June 16, 2003, sought comment on our overall regulatory review plan as well as the initial three categories of regulations: Applications and Reporting; Powers and Activities; and International Operations. The second interagency notice, published on January 20, 2004, sought public comment on the lending-related consumer protection regulations, which include Truth-in-Lending (Regulation Z), Equal Credit Opportunity Act (ECOA), Home Mortgage Disclosure Act (HMDA), Fair Housing, Consumer Leasing, Flood Insurance and Unfair and Deceptive Acts and Practices. The third notice, published on July 20, 2004, sought public comment on remaining consumer protection regulations (which relate primarily to deposit accounts/relationships). The fourth notice, published on February 3, 2005, sought public comment on our anti-money laundering, safety and soundness and securities regulations.

These four requests for comments have covered a total of 99 separate regulations. In response to these requests, the agencies received a total of 846 comment letters from bankers, consumer and community groups, trade associations and other interested parties. Each of the recommendations is being carefully reviewed and analyzed by the agency staffs. Based on these reviews, the appropriate agency or agencies may bring forward, and request public comment on, proposals to change specific regulations.

Banker, consumer and public insight into these issues is critical to the success of our effort. The regulatory agencies have tried to make it as easy as possible for all interested parties to be informed about the EGRPRA project and to let us know what are the most critical regulatory burden issues. The EGRPRA website, which can be found at www.egrpra.gov, provides an overview of the EGRPRA review process, with direct links to the actual text of each regulation. Comments submitted through the website are automatically transmitted to all of the financial institution regulatory agencies and posted on the EGRPRA website. The website has proven to be a popular source for information about the project, with thousands of hits being reported every month.

While written comments are important to the agencies' efforts to reduce regulatory burden, it also is important to have face-to-face meetings with bankers and consumer group representatives so they have an opportunity to communicate their views on the issues directly. Over the past two years, the agencies sponsored a total of nine banker outreach meetings in different cities around the country to heighten industry awareness of the EGRPRA project. Two additional meetings are scheduled for tomorrow in New Orleans and September 21 in Boston. The meetings provide an opportunity for the agencies to listen to bankers' regulatory burden concerns, explore comments and suggestions, and identify possible solutions. To date, more than 450 bankers (mostly CEOs) and representatives from the national and state trade associations participated in these meetings with representatives from FDIC, FRB, OCC, OTS, CSBS and the state regulatory agencies. Summaries of the issues raised during the meetings are posted on the EGRPRA website.

We also held three outreach meetings for consumer and community groups. Representatives from a number of consumer and community groups participated in the meetings, along with representatives from the FDIC, FRB, OCC, OTS, NCUA and CSBS. The meetings provided a useful perspective on the effectiveness of many existing regulations. We will hold one additional meeting with consumer and community groups on September 22 in Boston, Massachusetts, and we are willing to hold additional meetings if there is sufficient interest among consumer and community groups.

Response by the Regulatory Agencies

The tremendous regulatory burden that exists was not created overnight and unfortunately, from my perspective, cannot be eradicated overnight. It is a slow and arduous process, but I believe that we are making some headway. In fact, the banking and thrift regulatory agencies are working together closely and harmoniously on a number of projects to address unnecessary burdens affirmatively. In addition to eliminating outdated and unnecessary regulations, the agencies have identified more efficient ways of achieving important public policy goals of existing statutes. Although we have much work ahead of us, there has been significant progress to date. Here are some notable examples:

Community Reinvestment Act Regulations

On February 22, 2005 , the FDIC, along with the OCC, issued a proposal to amend the Community Reinvestment Act (CRA) regulations. The Federal Reserve Board issued a very similar proposal shortly thereafter. The agencies' proposal would raise the “small bank” threshold in the CRA regulations to $1 billion in assets, without regard to holding company assets. This would represent a significant increase in the small bank threshold from the current level of $250 million which was established in 1995. Under the proposal, just over 1,566 additional banks (those with assets between $250 and $1 billion) would be subject to small bank reporting and streamlined examination standards.

This proposal does not exempt any institutions from complying with CRA—all banks, regardless of size, will be required to be thoroughly evaluated within the business context in which they operate. The proposal includes a “community development test” for banks between $250 million and $1 billion in assets which would be separately rated in CRA examinations. This community development test would provide eligible banks with greater flexibility to meet CRA requirements than the large bank test under which they are currently evaluated. Another effect of the proposal would be the elimination of certain collection and reporting requirements that currently apply to banks between $250 million and $1 billion in assets.

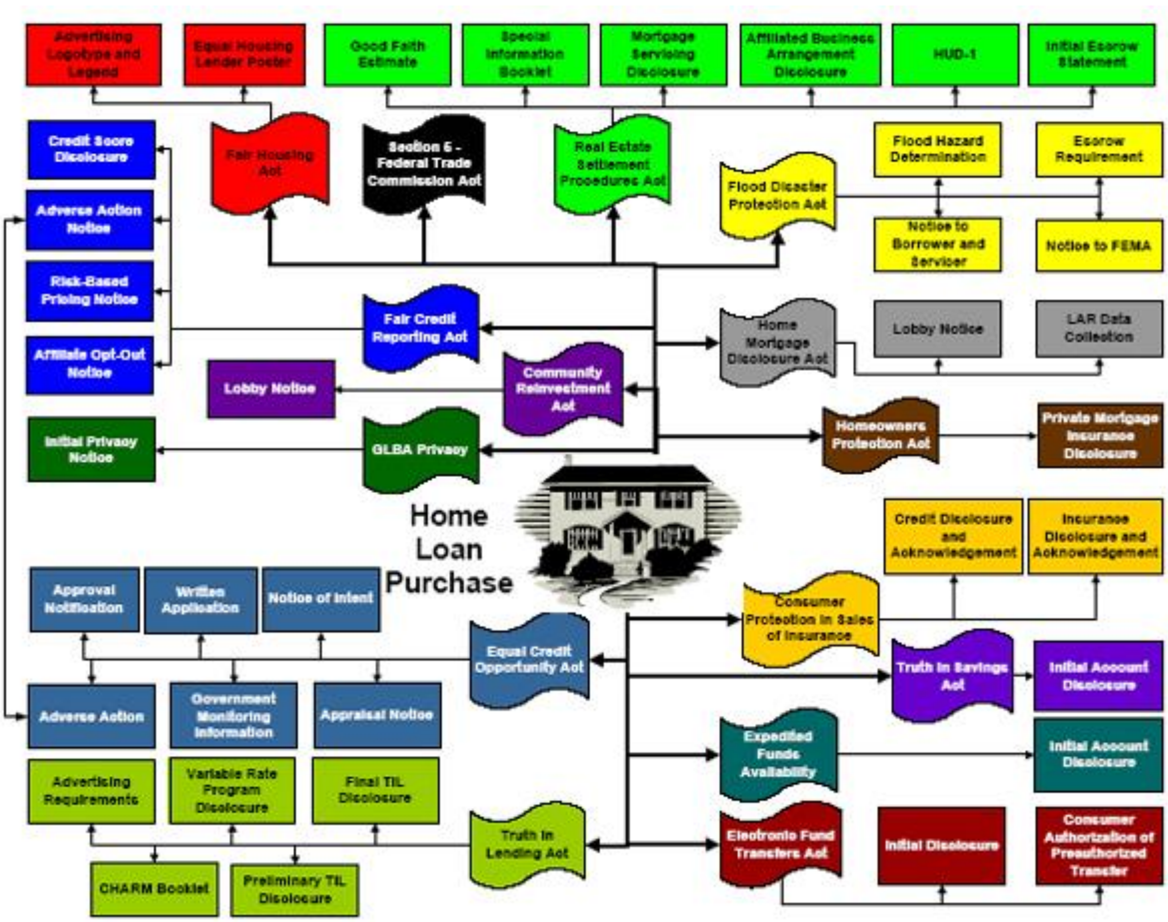
These changes to the regulation, if adopted as proposed, would result in significant regulatory burden reduction for a number of institutions. I recognize that there are many competing interests and that community groups, in particular, as well as many Members of Congress, generally oppose any increase at all in the threshold level -- and I remain receptive to all points of view. The comment period for this proposal closed on May 10, 2005, and the FDIC received approximately 3,800 comment letters. It is my hope that, after carefully considering all comments, the agencies will agree on a final rule before the end of this year.

Privacy Notices

On December 30, 2003, the Federal bank, thrift and credit union regulatory agencies, in conjunction with the Federal Trade Commission, SEC, and the Commodity Futures Trading Commission, issued an Advanced Notice of Proposed Rulemaking (ANPR), seeking public comment on ways to improve the privacy notices required by the Gramm-Leach-Bliley Act. Although there are many issues raised in the ANPR, the heart of the document solicited comment on how the privacy notices could be improved to be more readable and useful to consumers, while reducing the burden on banks and other service providers required to distribute the notices. In response to the comments received, the agencies are conducting consumer research and testing that will be used to develop privacy notices that meet these goals. As they do so, it is important for the agencies to continue to be mindful that changes to privacy notices and the requirements for their distribution may themselves create new costs for the banking industry.

Consumer Disclosures

In recent speeches, Acting Comptroller Julie Williams called for a comprehensive review of existing consumer disclosures to make them more useful and understandable for consumers as well as less burdensome for banks. I applaud her efforts to highlight this issue and agree that we should take a careful look at the large number and actual content of all consumer disclosures required by law. Consumers may in fact be experiencing “information overload.” Beginning with the Truth in Lending Act 35 years ago, through the privacy provisions of the Gramm-Leach-Bliley Act and culminating with the recently enacted FACT Act, there are now dozens of consumer laws and regulations, any number of which might apply, depending on the transaction. Chart 6 graphically depicts some of the laws and regulations that a bank must be concerned with under different mortgage lending scenarios.



The sheer number of potential disclosures raises several questions: (1) Are the numbers of disclosures too many for banks and consumers to deal with effectively; (2) do consumers find the disclosures too complicated, conflicting and duplicative; and (3) are these disclosures failing to achieve their designated purpose in helping consumers become informed customers of financial services? I think we need to look at the whole panoply of disclosures and find ways to eliminate the existing overlap, duplication and confusion. We may have reached a point where we have “non-disclosure by over-disclosure.” I look forward to working with my fellow regulators to improve the current situation with respect to consumer disclosures.

BSA and USA PATRIOT Act Guidance

There is no question that financial institutions and the regulators must be extremely vigilant in their efforts to implement the Bank Secrecy Act (BSA) in order to thwart terrorist financing efforts and money-laundering. Last year, bankers filed over 13 million Currency Transaction Reports (CTRs) and over 300,000 Suspicious Activity Reports (SARs) with the Financial Crimes Enforcement Network (FinCEN). Although FinCEN is providing more information to bankers than previously, bankers still believe they are filing millions of CTRs and SARs that are not utilized for any law enforcement purpose. Consequently, bankers believe that a costly burden is being carried by the industry which is providing little benefit to anyone. In an effort to address this concern and enhance the effectiveness of these programs, the financial institution regulatory agencies are working together with FinCEN and various law enforcement agencies, through task forces of the Bank Secrecy Act Advisory Group, to find ways to streamline reporting requirements for CTRs and SARs and make the reports that are filed more useful for law enforcement and to communicate with bankers more effectively.

In the next week or so, the bank and thrift regulatory agencies are expected to issue detailed BSA examination procedures that will address many of the questions bankers have about BSA compliance. To further assist banks, the agencies and FinCEN issued interpretive guidance designed to clarify the requirements for appropriately assessing and minimizing risks posed when providing banking services to Money Services Businesses. Bankers understand the vital importance of knowing their customers and thus generally do not object to taking additional steps necessary to verify the identity of their customers. However, bankers wanted guidance from the regulators on how to establish appropriate customer identification requirements under the USA PATRIOT Act. In response, the bank and thrift regulatory agencies, the Treasury Department and FinCEN issued interpretive guidance to all financial institutions to assist them in developing a Customer Identification Program (CIP). The interagency guidance answered the most frequently asked questions about the requirements of the CIP rule. Finally, with respect to the requirements of the Office of Foreign Assets Control (OFAC), the agencies are working to develop examination procedures and guidance for OFAC compliance.

I have met on several occasions with FinCEN's Director, William Fox, and pledged to work with him to make reporting under the BSA more effective and efficient, while still meeting the important crime-fighting objectives of anti-terrorism and anti-money-laundering laws. I am convinced that we can find ways to make this system more effective for law enforcement, while at the same time make it more cost efficient and less burdensome for bankers.

FDIC Efforts to Relieve Regulatory Burden

In addition to the above-noted interagency efforts to reduce regulatory burden, the FDIC, under the leadership of Chairman Powell, has undertaken a number of initiatives to improve the efficiency of our operations and reduce regulatory burden, without compromising safety and soundness or undermining important consumer protections. Over the last several years, we have streamlined our examination processes and procedures with an eye toward better allocating FDIC resources to areas that could ultimately pose greater risks to the insurance funds – such as problem banks, large financial institutions, high-risk lending, internal controls and fraud. Some of our initiatives to reduce regulatory burden include the following:

1. Raised the threshold for well-rated, well-capitalized banks to qualify for streamlined safety and soundness examinations under the FDIC MERIT examination program from $250 million to $1 billion so that the FDIC's resources are better focused on managing risk to the insurance funds;
2. Implemented more risk-focused compliance, trust and IT specialty examinations, placing greater emphasis on an institution's administration of its compliance and fiduciary responsibilities and less on transaction testing;
3. Initiated electronic filing of branch applications through "FDIC Connect" and began exploring alternatives for further streamlining the deposit insurance application process in connection with new charters and mergers;
4. Simplified the deposit insurance coverage rules for living trust accounts so that the rules are easier to understand and administer;
5. Simplified the assessment process by providing institutions with electronic invoices and eliminating most of the paperwork associated with paying assessments;
6. Amended our international banking regulations to expand the availability of general consent authority for foreign branching and investments in certain circumstances and replaced the fixed asset pledge with a risk-based pledge requirement;
7. Reviewed existing Financial Institution Letters (FILs) to eliminate outdated or unnecessary directives and completely changed the basic format of the FILs to make them easier to read.
8. Provided greater resources to bank directors, including the establishment of a "Director's Corner" on the FDIC website, as a one-stop site for Directors to obtain useful and practical information to in fulfilling their responsibilities, and the sponsorship of many "Director's Colleges" around the country;
9. Made it easier for banks to assist low and moderate income individuals, and obtain CRA credit for doing so, by developing Money Smart, a financial literacy curriculum and making available the Money Smart Program free-of-charge to all insured institutions;
10. Implemented an interagency charter and federal deposit insurance application that eliminates duplicative information requests by consolidating into one uniform document, the different reporting requirements of the three regulatory agencies (FDIC, OCC and OTS);
11. Revised our internal delegations of authority to push more decision making out to the field level to expedite decision making and provide institutions with their final Reports of Examination on an expedited basis; and
12. Provided bankers with a customized version of the FDIC Electronic Deposit Insurance Estimator (EDIE), a CD-Rom and downloadable version of the web-based EDIE, which allows bankers easier access to information to help determine the extent to which a customer's funds are insured by the FDIC.
13. Amended the FDIC's securities disclosure regulations for banks subject to the registration and disclosure requirements of the Securities Exchange Act of 1934 so

that the reporting requirements remain substantially similar to those required of all publicly traded companies by the Sarbanes-Oxley Act of 2002.

14. Adopted revised guidelines for supervisory and assessment appeals to provide more transparency and independence in the appeals process.

The FDIC is aware that regulatory burden does not emanate only from statutes and regulations, but often comes from internal processes and procedures. Therefore, we continually strive to improve the way we conduct our affairs, always looking for more efficient and effective ways to meet our responsibilities.

Legislative Proposals to Reduce Regulatory Burden

Mr. Chairman, I wish to commend you, Senator Crapo, and the other distinguished Members of your Committee for your efforts to develop legislation to remove unnecessary regulatory burden from the banking industry. Since most of our regulations are mandated by statute, I believe it is critical that the agencies work hard not only on the regulatory front, but also on the legislative front, to alert Congress to unnecessary regulatory burden. In fact, the EGRPRA statute requires us to identify and address unnecessary regulatory burdens that must be addressed by legislative action.

Almost a year ago, I testified on regulatory burden relief before this Committee, along with eighteen other witnesses. At the end of the hearing, Senator Crapo asked me, as the leader of the interagency EGRPRA task force, to review the testimony presented at the hearing and extract the various regulatory burden reduction proposals. The result was a matrix with a total of 136 burden reduction proposals.

Thereafter, I convened a meeting of banking industry representatives from the American Bankers Association, America's Community Bankers, the Independent Community Bankers of America, and the Financial Services Roundtable, who together reviewed the matrix of 136 proposals in an effort to determine which of these proposals they could all support as industry consensus items. This process yielded a list of 78 banking industry consensus items.

The FDIC reviewed the 78 banking industry consensus proposals for safety and soundness, consumer protection and other public policy concerns and determined that we could affirmatively support 58 of the 78 industry consensus proposals. There are other proposals that, after review, the FDIC determined we have "no objection" to or we take "no position" on, since the proposals do not affect either the FDIC or the institutions we regulate. There are only five of the banking industry consensus proposals that the FDIC opposes.

The next step in the consensus building process was to share our positions with the other Federal banking agencies in an effort to reach interagency consensus. After much work, negotiation, and compromise, the FRB, OCC, OTS and the FDIC agreed to support twelve of the banking industry consensus proposals. This "bankers' dozen" includes the following specific proposals for regulatory burden relief, which are described in greater detail in the testimony's Appendix:

1. Authorize the Federal Reserve to Pay Interest on Reserves
This amendment gives the Federal Reserve express authority to pay interest on balances that depository institutions are required to maintain at the Federal Reserve Banks. By law, depository institutions are required to hold funds against transaction accounts held by customers of those institutions. These funds must be held in cash or on reserve at Federal Reserve Banks. Over the years, institutions have tried to minimize their reserve requirements. Allowing the Federal Reserve Banks to pay interest on those reserves should put an end to economically wasteful efforts by banks to circumvent the reserve requirements. Moreover, it could be helpful in ensuring that the Federal Reserve will be able to continue to implement monetary policy with its existing procedures.

2. Increase Flexibility for the Federal Reserve Board to Establish Reserve Requirements
This proposal gives the Federal Reserve Board greater discretion in setting reserve requirements for transaction accounts below the ranges established in the Monetary Control Act of 1980. The provision eliminates current statutory minimum reserve requirements for transaction accounts, thereby allowing the Board to set lower reserve requirements, to the extent such action is consistent with the effective implementation of monetary policy.

3. Repeal Certain Reporting Requirements Relating to Insider Lending
These amendments repeal certain reporting requirements related to insider lending imposed on banks and savings associations, their executive officers, and their principal shareholders. The reports recommended for elimination are: (1) reports by executive officers to the board of directors whenever an executive officer obtains a loan from another bank in an amount more than he or she could obtain from his or her own bank; (2) quarterly reports from banks regarding any loans the bank has made to its executive officers; and (3) annual reports from bank executive officers and principal shareholders to the bank's board of directors regarding their outstanding loans from a correspondent bank.

Federal banking agencies have found that these particular reports do not contribute significantly to the monitoring of insider lending or the prevention of insider abuse. Identifying insider lending is part of the normal examination and supervision process. The proposed amendments would not alter the restrictions on insider loans or limit the authority of the Federal banking agencies to take enforcement action against a bank or its insiders for violations of those restrictions.

4. Streamline Depository Institution Merger Application Requirements
This proposal streamlines merger application requirements by eliminating the requirement that each Federal banking agency must request a competitive factors report from the other three Federal banking agencies, in addition to requesting a report

from the Attorney General. Instead, the agency reviewing the application would be required to request a report only from the Attorney General and give notice to the FDIC as insurer.

5. Shorten Post-Approval Waiting Period on Bank Mergers and Acquisitions Where There Are No Adverse Effects on Competition

The proposed amendments to the Banking Holding Company Act and the Federal Deposit Insurance Act shortens the current 15-day minimum post-approval waiting period for certain bank acquisitions and mergers when the appropriate Federal banking agency and the Attorney General agree that the transaction would not have significant adverse effects on competition. Under those circumstances, the waiting period could be shortened to five days. However, these amendments do not shorten the time period for private parties to challenge the transaction under the Community Reinvestment Act.

6. Improve Information Sharing with Foreign Supervisors

This proposal amends section 15 of the International Banking Act of 1978 to add a provision to ensure that the Federal Reserve, OCC, FDIC, and OTS cannot be compelled to disclose information obtained from a foreign supervisor in certain circumstances. Disclosure could not be compelled if public disclosure of the information would be a violation of the applicable foreign law and the U.S. banking agency obtained the information under an information sharing arrangement or other procedure established to administer and enforce the banking laws. This amendment provides assurance to foreign supervisors that may otherwise be reluctant to enter into information sharing agreements with U.S. banking agencies because of concerns that those agencies could not keep the information confidential and public disclosure could subject the foreign supervisor to a violation of its home country law. It also facilitates information sharing necessary to supervise institutions operating internationally, lessening duplicative data collection by individual national regulators. The banking agency, however, cannot use this provision as a basis to withhold information from Congress or to refuse to comply with a valid court order in an action brought by the U.S. or the agency.

7. Provide an Inflation Adjustment for the Small Depository Institution Exception under the Depository Institution Management Interlocks Act

This amendment increases the threshold for the small depository institution exception under the Depository Institution Management Interlocks Act. Under current law, a management official generally may not serve as a management official for another nonaffiliated depository institution or depository institution holding company if their offices are located, or they have an affiliate located, in the same metropolitan statistical area (MSA). For institutions with less than $20 million in assets, this MSA restriction does not apply. The proposal increases the MSA threshold, which dates back to 1978, to $100 million.

8. Exempt Merger Transactions Between an Insured Depository Institution and One or More of its Affiliates from Competitive Factors Review and Post-Approval Waiting Periods.

This proposal amends the Bank Merger Act (12 U.S.C. 1828(c)) to exempt certain merger transactions from both the competitive factors review and post-approval waiting periods. It applies only to merger transactions between an insured depository institution and one or more of its affiliates, as this type of merger is generally considered to have no affect on competition.

9. Increase Flexibility for Flood Insurance
These amendments make a number of changes to the Flood Disaster Protection Act of 1973 to: (1) increase the maximum dollar amount qualifying for the “small loan” exception to the requirement to purchase flood insurance and adjust that maximum loan amount periodically based on the Consumer Price Index; (2) eliminate the 15-day gap between the 30-day grace period during which flood insurance coverage continues after policy expiration and the 45-day period required after policy expiration before a lender can purchase insurance on the borrower’s behalf; and (3) replace the current mandatory system for imposing civil monetary penalties in response to significant violations of the flood insurance requirements with a discretionary system for doing so. These amendments would both reduce burden on lenders and give the federal supervisory agencies greater discretion to tailor their responses to violations more closely to the facts of individual cases.

10. Enhance Examination Flexibility
This proposal raises the total asset threshold for small institutions to qualify for an 18-month examination cycle from $250 million to $500 million, thus potentially permitting more institutions to qualify for less frequent examinations. The FDI Act requires the banking agencies to conduct a full-scale, on-site examination of the insured depository institutions under their jurisdiction at least once every 12 months. The Act provides an exception for small institutions -- that is, institutions with total assets of less than $250 million -- that are well-capitalized and well-managed, and meet other criteria. Examinations of these qualifying smaller institutions are required at least once every 18 months. The proposal would reduce regulatory burden on low-risk, smaller institutions and permit the banking agencies to focus their resources on the highest-risk institutions.

11. Call Report Streamlining
This proposal requires the Federal banking agencies to review information and schedules required to be filed in Reports of Condition (Call Reports) every five years to determine if some of the required information and schedules can be eliminated. Preparing the Call Report has become a significant burden for many banks. A bank must report a substantial amount of financial and statistical information with its Call Report schedules that appears to be unnecessary to assessing the financial health of the institution and determining the amount of insured deposits it holds. This amendment requires the agencies to review the real need for information routinely so as to reduce that burden.

12. Authorize Member Bank to Use Pass-Through Reserve Accounts
This amendment allows banks that are members of the Federal Reserve System to count as reserves their deposits in affiliated or correspondent banks that are in turn

“passed through” by those banks to the Federal Reserve Banks as required reserve balances. It extends to these member banks a privilege that was granted to nonmember institutions at the time of the Depository Institutions Deregulation and Monetary Control Act of 1980.

Additional Proposals

The above-noted industry-backed proposals have the unanimous support of all the Federal bank and thrift regulatory agencies. However, they are not the only legislative proposals to reduce regulatory burden that are supported by one or more of the regulatory agencies. In fact, many of the other banking industry consensus items have support from multiple Federal banking agencies. In a matrix of legislative proposals prepared by Senate staff, there are dozens of proposals with multiple agency support, no objection, or no position. (It is important to note that the indication of “no position” by some agencies does not indicate that the agency has decided not to object to a particular proposal.) These proposals may yet yield a number of industry consensus regulatory burden relief proposals agreeable to all of the Federal banking agencies. We are continuing to work toward this goal within the context of the Interagency EGRPRA Task Force.

The EGRPRA process has produced a wealth of proposals. The synergism that has resulted from the EGRPRA process makes me believe that there is real momentum behind the effort to reduce regulatory burden on the industry. I look forward to working with the Committee on developing a comprehensive legislative package that provides real regulatory relief for the industry. I am certain that this hearing will provide valuable input for the comprehensive package.

Conclusion

Mr. Chairman, as I stated at the outset, the EGRPRA process addresses the problem of regulatory burden for every federally-insured financial institution. Banks and thrifts, both large and small, labor under the cumulative weight of our regulations. If we do not do something to stem the tide of ever increasing regulation, a vital part of the banking system will disappear from many of the communities that need it the most. That is why it is incumbent upon all of us – Congress, regulators, industry and consumer groups – to work together to eliminate any outdated, unnecessary or unduly burdensome regulations. I remain personally committed to accomplishing that objective, no matter how difficult it may be to achieve.

Now is the time to take action to address the unnecessary regulations that face the banking industry every day. There seems to be a real consensus building to address this issue. I remain confident that, if we all work together, we can find ways to regulate that are both more effective and less burdensome, without jeopardizing the safety and soundness of the industry or diluting important consumer protections.

Thank you for providing me with this opportunity to testify.

Appendix

Authorize the Federal Reserve to Pay Interest on Reserves

(Matrix Item 1)

Explanation:

This amendment gives the Federal Reserve explicit authority to pay interest on balances held by depository institutions at the Federal Reserve Banks. Unnecessary restrictions on the payment of interest on balances distort market prices and lead to economically wasteful efforts to circumvent these restrictions. Authorization of interest on balances at Reserve Banks could also be helpful in ensuring that the Federal Reserve will continue to be able to implement monetary policy with its existing procedures. The amendment would explicitly authorize the Board to issue regulations to implement this new authority, and would define “depository institution” so as to ensure equitable treatment for all financial institutions in the United States that are subject to reserve requirements and for all members of the Federal Reserve System. The conforming amendments would remove the current authorization for the Federal Reserve to pay interest only on supplemental reserves because that authority would be superfluous once the Federal Reserve gained authority to pay interest on all reserve balances.

Amendment:

SEC._____. AUTHORIZATION FOR THE FEDERAL RESERVE TO PAY INTEREST ON RESERVES

Section 19(b) of the Federal Reserve Act (12 U.S.C. 461(b)) is amended by adding at the end the following new paragraph:

“(12) EARNINGS ON BALANCES.—

“(A) IN GENERAL.—Balances maintained at a Federal reserve bank by or on behalf of a depository institution may receive earnings to be paid by the Federal reserve bank at least once each calendar quarter at a rate or rates not to exceed the general level of short-term interest rates. “

(B) REGULATIONS RELATING TO PAYMENTS AND DISTRIBUTIONS.—The Board may prescribe regulations concerning— “

(i) the payment of earnings in accordance with this paragraph; “

(ii) the distribution of such earnings to the depository institutions which maintain balances at such banks or on whose behalf such balances are maintained; and “

(iii) the responsibilities of depository institutions, Federal home loan banks, and the National Credit Union Administration Central Liquidity Facility with respect to the crediting and distribution of earnings attributable to balances maintained, in accordance with subsection (c)(1)(A), in a Federal reserve bank by any such entity on behalf of depository institutions. "

(C) DEPOSITORY INSTITUTIONS DEFINED.—For purposes of this paragraph, the term 'depository institution', in addition to the institutions described in paragraph (1)(A), includes any trust company, corporation organized under section 25A or having an agreement with the Board under section 25, or any branch or agency of a foreign bank (as defined in section 1(b) of the International Banking Act of 1978).".

Conforming Amendment:

Section 19 of the Federal Reserve Act (12 U.S.C. 461) is amended–
(1) in subsection (b)(4), by striking subparagraph (C) and redesignating subparagraphs (D) and (E) as subparagraphs (C) and (D), respectively; and
(2) in subsection (c)(1)(A), by striking "subsection (b)(4)(C)" and inserting "subsection (b)".

Increase Flexibility for the Federal Reserve Board to Establish Reserve Requirements

(Matrix Item 2)

Explanation:
This amendment gives the Federal Reserve Board discretionary authority to lower the level of reserve requirements on transaction accounts below the ranges established in the Monetary Control Act of 1980. That Act prescribed a reserve ratio not greater than 14 percent or less than 8 percent on transaction accounts above a certain amount, known as the "low reserve tranche." That Act also prescribed a minimum reserve requirement of 3 percent on transaction accounts below the "low reserve tranche." These amendments would give the Board greater flexibility to set lower–or even zero–reserve requirements to the extent such action is consistent with the effective implementation of monetary policy.

Amendment:

SEC. ____. INCREASED FLEXIBILITY FOR THE FEDERAL RESERVE BOARD TO ESTABLISH RESERVE REQUIREMENTS.

Section 19(b)(2)(A) of the Federal Reserve Act (12 U.S.C. 461(b)(2)(A)) is amended—

(1) in clause (i), by striking "the ratio of 3 per centum" and inserting "a ratio not greater than 3 percent (and which may be zero)"; and

(2) in clause (ii), by striking “and not less than 8 per centum,” and inserting “(and which may be zero),”.

Repeal Certain Reporting Requirements Relating to Insider Lending

(Matrix Item 4)

Explanation: This proposal eliminates certain reporting requirements related to insider lending imposed on banks (including savings associations), their executive officers, and their principal shareholders. This proposal amends section 22(g) of the Federal Reserve Act (12 U.S.C. § 375a) and section 106(b)(2) of the Bank Holding Company Act (BHCA) Amendments of 1970 (12 U.S.C. § 1972(2)). These statutes also apply to savings associations (see section 11(b) of the Home Owners’ Loan Act and section 106(b)(2)(H) of the BHCA Amendments of 1970). The three reports eliminated by this section are:

1) a report filed by a bank executive officer with the bank's board of directors whenever the executive officer obtains a loan from another bank in an amount that exceeds the amount the executive officer could obtain from his or her own bank;

2) a report required from banks in addition to its quarterly reports of condition (call reports and thrift financial reports) regarding any loans the bank has made to its executive officers since its previous report; and

3) an annual report from a bank's executive officers and principal shareholders to the bank’s board of directors of any outstanding loans from a correspondent bank.

The Federal banking agencies have found that these reports do not contribute significantly to the monitoring of insider lending or the prevention of insider abuse. These amendments would not alter the substantive restrictions on insider loans or limit the ability of Federal banking agencies to take enforcement action against a bank or its insiders for violation of lending restrictions.

Amendment:
SEC. ____. REPEAL CERTAIN REPORTING REQUIREMENTS RELATING TO INSIDER LENDING.

Section 22(g) of the Federal Reserve Act (12 U.S.C. 375a) is amended –

(1) by striking paragraphs (6) and (9); and

(2) by redesignating paragraphs (7), (8), and (10) as paragraphs (6), (7), and (8), respectively.

Section 106(b)(2) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1972(2)) is amended –

(1) by striking subparagraph (G); and
(2) by redesignating subparagraphs (H) and (I) as subparagraphs (G) and (H), respectively.

Streamline Depository Institution Merger Application Requirements

(Matrix Item 5)

Explanation: This proposal amends paragraph (4) of section 18(c) of the FDIA (12 U.S.C. § 1828(c)) to streamline application requirements by eliminating the requirement that each Federal banking agency must request a competitive factors report from the other three Federal banking agencies as well as from the Attorney General. The amendment decreases the number to two, with the Attorney General continuing to be required to consider the competitive factors involved in each merger transaction and the FDIC, as insurer, receiving notice even where it is not the appropriate banking agency for the particular merger. This section also makes a conforming amendment to section 18(c)(6) of the FDIA (12 U.S.C. § 1828(c)(6)) to address emergency situations requiring expeditious action.

Note: Both this proposal and the proposal to Exempt Merger Transactions Between Depository Institutions and Wholly Owned Subsidiaries or with Wholly Owned Subsidiaries of Their Holding Company from Competitive Factors Review and Post-Approval Waiting Periods, Mergers (item 61) amend section 18(c)(4) of the FDIA, if both proposals are accepted, they must be coordinated and harmonized.

Amendment:
SEC. ____. STREAMLINING DEPOSITORY INSTITUTION MERGER APPLICATION REQUIREMENTS.

(a) IN GENERAL.- Paragraph (4) of section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)) is amended to read as follows:
"(4) REPORTS ON COMPETITIVE FACTORS. “
(A) REQUEST FOR REPORT.-In the interests of uniform standards, before acting on any application for approval of a merger transaction, the responsible agency, unless the agency finds that it must act immediately in order to prevent the probable failure of a depository institution involved, shall
(i) request a report on the competitive factors involved from the Attorney General; and
(ii) provide a copy of the request to the Corporation (when the Corporation is not the responsible agency).
(B) FURNISHING OF REPORT.-The report requested under subparagraph (A) shall be furnished by the Attorney General to the responsible agency
(i) not more than 30 calendar days after the date on which the Attorney General received the request; or
General received the request; or

(ii) not more than 10 calendar days after such date, if the requesting agency advises the Attorney General that an emergency exists requiring expeditious action.”.

(b) TECHNICAL AND CONFORMING AMENDMENT.- The penultimate sentence of section 18(c)(6) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)(6)) is amended to read as follows:

“If the agency has advised the Attorney General under paragraph (4) (B) of the existence of an emergency requiring expeditious action and has requested a report on the competitive factors within 10 days, the transaction may not be consummated before the fifth calendar day after the date of approval by the agency.”.

Shorten the Post-Approval Waiting Period on Bank Mergers and Acquisitions Where There Are No Adverse Effects on Competition

(Matrix Item 6)

Explanation:

This proposal amends section 11(b) of the BHCA (12 U.S.C. § 1849(b)) and section 18(c)(6) of the FDIA (12 U.S.C. § 1828(c)(6)) to shorten the current 15-day minimum post-approval waiting period for certain bank acquisitions and mergers when the appropriate Federal banking agency and the U.S. Attorney General agree that the transaction would not result in significantly adverse effects on competition to a 5-day period. Under current law, the post-approval waiting period is generally 30 days. This 30-day period may be shortened to 15 days upon agreement of the appropriate banking agency and the Attorney General. This proposal would give the banking agency and the Attorney General the flexibility to further shorten the post-approval waiting period. Since CRA challenges occur during the pre-approval process, this amendment has no impact on CRA.

Note: Both this proposal and the proposal to Exempt Merger Transactions Between An Insured Depository Institution and One or More of Its Affiliates from Competitive Factors Review and Post-Approval Waiting Periods (item 61) amend section 18(c)(4) of the FDIA, if both proposals are accepted, they must be coordinated and harmonized.

Amendment:

SEC. ____. SHORTEN POST-APPROVAL WAITING PERIODS.

(a) The 4th sentence of section 11(b)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1849(b)(1)) is amended by striking “15 calendar days” and inserting “5 calendar days”.

(b) The last sentence of section 18(c)(6) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)(6)) is amended by striking “15 calendar days” and inserting “5 calendar days”.

Improve Information Sharing With Foreign Supervisors

(Matrix Item 46)

Explanation:
This proposal amends section 15 of the IBA (12 U.S.C. § 3109) to add a provision that ensures that the FRB, OCC, FDIC, and OTS cannot be compelled to disclose information obtained from a foreign supervisor if public disclosure of this information would be a violation of foreign law and the U.S. banking agency obtained the information pursuant to an information sharing arrangement with the foreign supervisor or other procedure established to administer and enforce the banking laws. The banking agency, however, cannot use this provision as a basis to withhold information from Congress or to refuse to comply with a valid court order in an action brought by the U.S. or the agency.

This amendment would provide assurances to foreign supervisors that the banking agencies cannot be compelled to disclose publicly confidential supervisory information that the agency has committed to keep confidential, except under the limited circumstances described in the amendment. This authority is similar to the authority provided to the Securities and Exchange Commission under the securities laws (15 U.S.C. § 78q(h)(5)). Some foreign supervisors have been reluctant to enter into information sharing agreements with U.S. banking agencies because of concerns that the U.S. agency may not be able to keep the information confidential and public disclosure of the confidential information provided could subject the supervisor to a violation of its home country law. This amendment will be helpful to ease those concerns and will facilitate information sharing agreements that enable U.S. and foreign supervisors to obtain necessary information to supervise institutions operating internationally.

Amendment:
SEC._____. PROTECTION OF CONFIDENTIAL INFORMATION RECEIVED BY FEDERAL BANKING REGULATORS FROM FOREIGN BANKING SUPERVISORS.
Section 15 of the International Banking Act of 1978 (12 U.S.C. 3109) is amended by adding at the end the following new subsection:

`(c) CONFIDENTIAL INFORMATION RECEIVED FROM FOREIGN SUPERVISORS-

`(1) IN GENERAL- Except as provided in paragraph (3), a Federal banking agency may not be compelled to disclose information received from a foreign regulatory or supervisory authority if--

`(A) the foreign regulatory or supervisory authority has, in good faith, determined and represented to such Federal banking agency that public disclosure of the information would violate the laws applicable to that foreign regulatory or supervisory authority; and

`(B) the relevant Federal banking agency obtained such information pursuant to--

`(i) such procedures as the Federal banking agency may establish for use in connection with the administration and enforcement of Federal banking laws; or

`(ii) a memorandum of understanding or other similar arrangement between the Federal banking agency and the foreign regulatory or supervisory authority.

`(2) TREATMENT UNDER TITLE 5, UNITED STATES CODE- For purposes of section 552 of title 5, United States Code, this subsection shall be treated as a statute described in subsection (b)(3)(B) of such section.

`(3) SAVINGS PROVISION- No provision of this section shall be construed as--

`(A) authorizing any Federal banking agency to withhold any information from any duly authorized committee of the House of Representatives or the Senate; or

`(B) preventing any Federal banking agency from complying with an order of a court of the United States in an action commenced by the United States or such agency.

`(4) FEDERAL BANKING AGENCY DEFINED- For purposes of this subsection, the term `Federal banking agency' means the Board, the Comptroller, the Federal Deposit Insurance Corporation, and the Director of the Office of Thrift Supervision.'.

Provide an Inflation Adjustment for the Small Depository Institution Exception under the Depository Institution Management Interlocks Act

(Matrix Item 49)

Explanation:
This proposal amends section 203(1) of Depository Institution Management Interlocks Act (12 U.S.C. § 3202(1)) to increase the threshold for the small depository institution exception. Under current law, generally a management official may not serve as a management official of any other nonaffiliated depository institution or depository institution holding company if (1) their offices are located or they have an affiliate located in the same metropolitan statistical area, primary metropolitan statistical area, or consolidated metropolitan statistical areas (collectively “MSAs”), or (2) the institutions are located in the same city, town, or village, or a city, town, or village that is contiguous or adjacent thereto. For institutions of less than $20 million in assets, the MSA restriction does not apply. The amendment would increase the current $20 million exemption to $100 million. This $20 million cap has not been amended since the current law was originally enacted in 1978. However, the asset size of FDIC-insured commercial banks between 1976 and 2000 has increased over five fold. Depository institutions of all sizes will continue to be subject to the city, town, or village test.

Amendment:
SEC._____. AMENDMENT TO PROVIDE AN INFLATION ADJUSTMENT FOR THE SMALL DEPOSITORY INSTITUTION EXCEPTION UNDER THE DEPOSITORY INSTITUTION MANAGEMENT INTERLOCKS ACT.

Section 203(1) of the Depository Institution Management Interlocks Act (12 U.S.C. 3202(1)) is amended by striking `$20,000,000' and inserting `$100,000,000'.

Exempt Merger Transactions Between An Insured Depository Institution and One or More of Its Affiliates from Competitive Factors Review and Post-Approval Waiting Periods

(Matrix Item 61)

Explanation: This proposal amends section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. § 1828(c)), also known as the Bank Merger Act (BMA), to exempt from a competitive factors review by the Attorney General and other agencies and from post-approval waiting periods, merger transactions between an insured depository institution and one or more of its affiliates. This type of merger is generally considered to have no effect on competition.

Presently, the BMA requires, among other things, the prior written approval of the responsible federal banking agency whenever an insured depository institution proposes a merger transaction with any other insured depository institution whether or not the institutions are affiliated. Before acting on any merger transaction application (other than one involving a probable failure or an emergency case), the agency must request a competitive factors report from the Attorney General and from each of the other three federal banking agencies and allow 30 days for them to respond. In the case of an emergency, the time period for response is 10 days. In the case of a probable failure, no such request is necessary.

Finally, the BMA provides that the merger transaction (other than a probable failure or emergency case), may not be consummated before the 30th day after approval or, if the Attorney General concurs, the 15th day after approval. In the case of a probable failure, the merger transaction may be consummated upon approval. In the case of an emergency, the merger transaction may be consummated on the 5th day after approval. The post-approval waiting period is generally designed to give the Attorney General an opportunity to file suit to block the merger transaction if the Attorney General determines that the merger transaction is anticompetitive.

Note: Both this proposal and the proposal to Eliminate Competitive Factors Report from the Other Three Federal Banking Agencies (item 5) amend section 18(c)(4) of the FDIA, if both proposals are accepted, they must be coordinated and harmonized.

Amendment:

SEC. ____. EXEMPTION FROM COMPETITIVE FACTORS REVIEW AND POST-APPROVAL WAITING PERIODS.

Section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. § 1828(c)(4)) is amended—

(a) in paragraph (4) by striking the first sentence and inserting the following: "Except where the responsible agency finds that it must act immediately in order to prevent the probable failure of one of the insured depository institutions involved, and except for a merger between an insured depository institution and one or more of its affiliates, the responsible agency shall request, in the interests of uniform standards, reports on the competitive factors involved from the Attorney General and the other Federal banking agencies referred to in this subsection before acting on any application for approval of a merger transaction."; and
(b) in paragraph (6) in the second sentence by striking "banks or savings associations involved" and inserting the following: "insured depository institutions involved, or if the proposed merger transaction is solely between an insured depository institution and one or more of its affiliates,".

Increase Flexibility for Flood Insurance

(Matrix Item 65)

Explanation:
This proposal amends the Flood Disaster Protection Act of 1973 to:

1. Increase the maximum dollar amount qualifying for the "small loan" exception to the requirement to purchase flood insurance and adjust that maximum loan amount periodically based on the Consumer Price Index;
2. Eliminate the 15-day gap between the 30-day grace period during which flood insurance coverage continues after policy expiration and the 45-day period required after policy expiration before a lender can purchase insurance on the borrower's behalf; and,
3. Provide discretion to the Federal entity responsible for lending regulation to impose civil money penalties in findings of patterns or practices of violations of flood insurance requirements.

The current exception for small loans is defined as a loan having "*an original outstanding principal balance of $5,000 or less; and a repayment term of one year or less*." The proposed amendment increases the qualifying loan amount to $20,000 to be adjusted every five years based on changes to the Consumer Price Index. This would allow the loan amount to change with changing economic conditions, and could reduce the burden on lenders as potentially more loans might be exempted if the loan amount increased when tied to a particular index.

Currently when a lender determines that a covered loan is not covered by any or adequate insurance, then the lender must provide a notice to the borrower, indicating that the lender will purchase flood insurance on the borrower's behalf and expense, if the borrower does not acquire insurance himself "*within 45 days after notification*." After a policy expires, a 30-day grace period exists during which flood insurance coverage continues. Under the current requirement, if the borrower does not renew the policy, the lender must wait 45 days after the expiration date to purchase insurance on the borrower's behalf. However, if a lender must wait 45 days after a policy expires, there are 15 days after the grace period ends during which there is no flood insurance coverage. Lenders who want to ensure that the collateral is protected during this 15-day period currently must seek private insurance. Private flood insurance is not widely available and is reportedly more expensive than flood insurance available through the NFIP.

The amendment would allow the lender to force place insurance 30 days after notifiying the borrower. Allowing the lender to force place insurance at approximately the same time the grace period ends reduces the risks associated with a flood during the current 15-day gap period.

Under current law, a Federal entity for lending regulation must impose civil monetary penalties (CMPs) whenever a regulated lending institution is found to have a pattern or practice of committing violations of specific federal flood insurance requirements. No discretion is permitted to the Federal entity for lending regulation with respect to the imposition of such CMPs, although there is some leeway regarding the amount of CMPs. The amendment would remove the requirement of mandatory CMPs and would instead allow each Federal entity for lending regulation to impose CMPs at its discretion, in accordance with each agency's authority to impose CMPs pursuant to its own implementing act. This would give the agencies greater discretion to tailor CMPs more closely to individual cases. GSEs would continue to be subject to CMPs by OFHEO for failure to comply with federal flood insurance requirements.

Amendment:

SEC. ____. FLOOD INSURANCE AMENDMENTS.

(a) Section 102(c)(2)(A) of the Flood Disaster Protection Act of 1973 (42 U.S.C. § 4012a(c)(2)(A)) is amended by striking "$5,000 or less" and inserting "$20,000 or less (this maximum amount to be increased every five years according to any increase in the Consumer Price Index)";

(b) Section 102(e)(2) of the Flood Disaster Protection Act of 1973 (42 U.S.C. § 4012a(e)) is amended by striking "45 days" and inserting "30 days"; and

(c) Subsections (f)(1) and (f)(2) of section 102 of the Flood Disaster Protection Act of 1973 (42 U.S.C. § 4012a(f)(1) and (2)) are amended by striking "shall" each time it appears and inserting "may".

Enhance Examination Flexibility

(Matrix Item 68)

Explanation: This proposal raises the exception total assets threshold for small institutions to qualify for an extended examination cycle from less than $250 million to $500 million, thus potentially permitting more institutions to qualify for less frequent examinations. Current law requires the banking agencies to conduct a full-scale, on-site examination of the insured depository institutions under their jurisdiction at least every 12 months. There is an exception for small institutions (i.e., institutions with total assets of less than $250 million) that are well-capitalized and well-managed, and meet other criteria. Examinations of these qualifying smaller institutions are required at least every 18 months. The proposal reduces regulatory burden on low-risk, smaller institutions and permit the banking agencies to focus their resources on the highest risk institutions.

Amendment:
SEC. ____. EXPANSION OF ELIGIBILITY FOR 18-MONTH EXAMINATION SCHEDULE.
Paragraph (4)(A) of section 10(d) of the Federal Deposit Insurance Act (12 U.S.C. 1820(d)) is amended by striking “$250,000,000” and inserting “$500,000,000”.

Call Report Streamlining

(Matrix Item 109)

Explanation:
This proposal requires the Federal banking agencies to review information and schedules required to be filed in Reports of Condition (Call Reports) every five years to determine if some of the information and schedules that are required can be eliminated. Preparing the Call Report has become and substantial burden for many banks. A bank must report a substantial amount of financial and statistical information with its Call Report schedules that appear to be unnecessary to assessing the financial health of the institution and determining the amount of insured deposits it holds. This amendment requires the Federal banking agencies to reduce this burden appropriately.

Amendment:
SEC. . STREAMLINING REPORTS OF CONDITION.

Section 7(a) of the Federal Deposit Insurance Act (12 U.S.C. 1817(a)) is amended by adding the following new paragraph:

`(11) STREAMLINING REPORTS OF CONDITION-

`(A) REVIEW OF INFORMATION AND SCHEDULES- Before the end of the 1-year period beginning on the date of enactment of the (fill in name of statute) and before the end of each 5-year period thereafter, each Federal banking agency shall, in consultation with the other relevant Federal banking agencies, review the information and schedules that are required to be filed by an insured depository institution in a report of condition required under paragraph (3).

`(B) REDUCTION OR ELIMINATION OF INFORMATION FOUND TO BE UNNECESSARY.—After completing the review required by subparagraph (A), a Federal banking agency, in consultation with the other relevant Federal banking agencies, shall reduce or eliminate any requirement to file information or schedules under paragraph (3) (other than information or schedules that are otherwise required by law) if the agency determines that the continued collection of such information or schedules is no longer necessary or appropriate.

Authorize Member Bank to Use Pass-Through Reserve Accounts

(Mini-Matrix Item 5)

Explanation:
This amendment extends to institutions that are members of the Federal Reserve System a privilege that was granted to nonmember institutions at the time of the Depository Institutions Deregulation and Monetary Control Act of 1980. Specifically, this amendment would allow member banks to count as reserves their deposits in affiliated or correspondent banks that are in turn "passed through" by those banks to the Federal Reserve Banks as required reserve balances, thus allowing member banks to utilize the same reserve management practices currently permissible for nonmember banks.

Amendment:
SEC. . AUTHORIZATION FOR MEMBER BANK TO USE PASS-THROUGH RESERVE ACCOUNTS
Section 19(c)(1)(B) of the Federal Reserve Act (12 U.S.C. 461(c)(1)(B)) is amended by striking "which is not a member bank"