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Delivered via e-mail

Public Information Room
Office of the Comptroller of the Currency
250 E Street, SW, Mailstop 1–5
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regs.comments@occ.treas.gov

Robert E. Feldman, Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
comments@fdic.gov

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street & Constitution Ave., NW
Washington, DC 20551
regs.comments@federalreserve.gov

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
regs.comments@ots.treas.gov

Re: EGRPRA Burden Reduction: Prompt Corrective Action and Disclosure and Reporting of CRA-Related Agreements; FDIC 12 CRF Chap. III; **FRB** Docket No. R–1243; **OCC** Docket No. 05–22: **OTS** No. 2005–53; 71 Federal Register 287; January 4, 2006.

Ladies and Gentlemen:

Section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA) requires federal banking agencies (Agencies) to review their regulations at least once every 10 years. The Agencies in Round Six of the review are asking for comments on the ways in which the laws and regulations relating to the Community Reinvestment Act Sunshine Act and Prompt Corrective Action may be outdated, unnecessary, or unduly burdensome. These laws and regulations may affect all commercial banks and savings associations. The American Bankers Association, on behalf of the more than two million men and women who work in the nation's banks, brings together all categories of banking institutions to best represent the interests of this rapidly changing industry. Its membership--which includes community, regional and money center banks and holding companies, as well as savings associations, trust companies and savings banks--makes ABA the largest banking trade association in the country.

Community Reinvestment Act Sunshine Act

Section 711 of the Gramm-Leach-Bliley Financial Modernization Act of 1999 (the CRA Sunshine Act) enacted a requirement that nongovernmental entities or persons, insured depository institutions, and affiliates of insured depository institutions that

are parties to certain agreements that are in fulfillment of the Community Reinvestment Act of 1977 make the agreements available to the public and the appropriate agency and file annual reports concerning the agreements with the appropriate agency.

The regulations were crafted to reduce the burden on community organizations as much as possible, including allowing them to use Federal tax forms and other mandatory reports to meet the reporting requirements of the CRA Sunshine Act; allowing single, consolidated report filings of community organizations and financial institutions that might be parties to multiple agreements; and allowing community organizations to file with the financial institution with which it has an agreement, with the financial institution being required to forward the filing to the appropriate federal banking agency. Overall, a review of the implementing regulations leads ABA to believe that they do in fact hold the regulatory burden on community organizations and financial institutions to a minimum, consistent with the requirements of the statute. Therefore, ABA has no recommendations for changes to the CRA Sunshine regulations.

Prompt Corrective Action

According to the FDIC's Quarterly Banking Profile for the fourth quarter of 2005, there are no undercapitalized SAIF-insured institutions at the end of 2005 and there are only 2 undercapitalized BIF-insured institutions at the end of 2005.

Supervisory and Capital Ratings for First Semiannual Assessment Period, 2006

Capital Group	Supervisory Risk Subgroup A		B		C	
1. Well-capitalized						
Number of institutions	7,325	94.6%	320	4.1%	42	0.5%
Assessable deposit base	$4,839	98.7%	$54	1.1%	$3	0.1%
2. Adequately capitalized						
Number of institutions	49	0.6%	6	0.1%	1	0.0%
Assessable deposit base	$8	0.2%	$1	0.0%	$0	0.0%
3. Undercapitalized						
Number of institutions	0	0.0%	0	0.0%	2	0.0%
Assessable deposit base	$0	0.0%	$0	0.0%	$0	0.0%

NOTE: "Number" reflects the number of BIF members; "Base" reflects the BIF-assessable deposits held by both SAIF and BIF members. Institutions are categorized based on capitalization and a supervisory subgroup rating, which is generally determined by on-site examinations.

SAIF Assessment Base Distribution
Assessable Deposits in Billions as of December 31, 2005
Supervisory and Capital Ratings for First Semiannual Assessment Period, 2006

Capital Group	Supervisory Risk Subgroup A		B		C	
1. Well-capitalized						
Number of institutions	1,033	93.9%	53	4.8%	8	0.7%
Assessable deposit base	$1,252	98.6%	$15	1.2%	$2	0.1%
2. Adequately capitalized						
Number of institutions	5	0.5%	1	0.1%	0	0.0%
Assessable deposit base	$1	0.1%	$0	0.0%	$0	0.0%
3. Undercapitalized						
Number of institutions	0	0.0%	0	0.0%	0	0.0%
Assessable deposit base	$0	0.0%	$0	0.0%	$0	0.0%

NOTE: "Number" reflects the number of SAIF members; "Base" reflects the SAIF-assessable deposits held by both BIF and SAIF members. Institutions are categorized based on capitalization and a supervisory subgroup rating, which is generally determined by on-site examinations.

Because of the current condition of the banking industry, there is no recent experience with the provisions of the Prompt Correct Action statute and implementing regulations to develop or evaluate proposals to reduce regulatory burden.

ABA does, however, have two suggestions for the Agencies' consideration. First, the Agencies should amend applicable leverage ratios used under Prompt Corrective Action as needed to remain consistent with changes brought about by Basel II and revisions to Basel I under the so-called Basel IA exercise. The Prompt Corrective Action regulations use as benchmarks for the imposition of corrective action an institution's total risk-based capital ratio, Tier I risk-based capital ratio, and leverage ratio. As the Agencies proceed with amending the risk-based capital standard, it will be necessary for the Agencies to revise the Prompt Corrective Action regulations to keep them consistent with changes to the overall capital adequacy guidelines for banks and savings associations.

A number of changes under Basel II to the measurement of risk-based capital do not appear to affect the calculation of the total risk-based capital and the Tier 1 risk-based capital, since they are defined in relation to the risk-weighted assets. The calculation of risk-weighted assets will be changed by any Basel II regulations. However, any reduction in the leverage ratio for Basel II banks and savings associations cannot be reflected in the Prompt Corrective Action standards without explicit changes in the regulations, since the leverage ratio is not purely risk-based but rather has as its denominator "total assets." The calculation of total assets will not be changed by any of the contemplated Basel II changes. Thus, if and when the Agencies adjust the leverage ratio for Basel II banks and savings associations, they will perforce need to change the applicable leverage ratios under Prompt Corrective Action. Similar adjustments may be needed as a result of changes under the Basel IA revisions.

Second, the Agencies should review the Call Report instructions and calculation for disallowed deferred tax assets in calculating risk-based capital ratios.[1] For small banks (defined at a minimum as those with under $150 million in total assets), ABA recommends eliminating the calculation or at least substantially simplifying the calculation or its related instructions. According to staff of the ABA's Tax and Accounting Group, the instructions for calculating the deferred tax assets and projected future income, which is necessary for completing the disallowance formula in the Call Report, are difficult to understand, even for accountants. Outsourcing these calculations is simply not cost-effective, particularly for community banks. Given that many of these banks already hold 12 percent or more risk-based capital, the results of the calculation are insignificant to the overall capital calculations for most banks. There has to be a simpler, more cost-effective way of estimating these generally insignificant numbers.

Conclusion

ABA appreciates the opportunity to comment on this phase of the EGRPRA regulatory burden reduction project. If there are any questions about any part of these comments, please call the undersigned.

Sincerely,

Paul Smith
Senior Counsel

[1] While comments on the Call Report are not explicitly within the scope of the most recent EGRPRA comment solicitation, the Call Report schedules are used to determine if a supervisory action under Prompt Corrective Active is required and thus are at least indirectly related to the topics on which comments are invited.