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July 7, 2014

Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
Mail Stop 9W-11
400 7th Street, SW
Washington, D.C. 20219

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

Robert E. Feldman, Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, D.C. 20429.

Re: Comments on EGRPRA (FFIEC-2014-0001 and OP-1491)

Dear Sirs:

I am a bank regulatory attorney representing over 100 banks mainly in the Southeast and mostly community banks under $1 billion in assets. I have been advising these banks on regulatory compliance, governance, and other legal issues for over 30 years. The subject of the current regulatory analysis being reviewed by your agencies is an area I deal with every week: Applications and Reporting, Powers and Activities, and International Operations.

While I probably could spend the rest of this fiscal year analyzing the rules being reviewed on a section-by-section basis and tell you where changes should be made, my firm still requires me to generate billable hours to pay the light bill, so I would like to focus on one issue that permeates all these rules and could make both the industry and regulatory agencies more efficient in serving their ultimate goals.

In 1994, the Federal Reserve changed Regulation Y to amend Section 225.4(b)(1) regarding prior approval on holding company stock redemptions over 10% of capital to allow an exception to prior approval for well-capitalized, well-managed organizations. In other words, if the holding company has been deemed under other rules and the examination process to be above the highest standards, then there should not be a concern with allowing a redemption as long as the redemption does not cause the holding company to fall below the threshold. This concept should be extended on almost every regulation that requires a notice or prior approval in order to eliminate delays in banking organizations implementing their business objectives and relieving the burden on the regulatory agencies to have to spend time on this additional paperwork.

There is a general regulatory attitude which is highlighted when an institution is in or near a troubled condition that the "regulatory knows best." During the negotiation of informal or formal regulatory agreements, rather than setting parameters for which the bank can take certain actions, the attitude and ultimate written procedure is that the institution must "come to papa" and papa will decide what he will allow the institution to do on a case-by-case basis. How long this process takes to grant an approval seems to make no difference to the agency.

An example of the egregious attitude and bureaucratic procedures of the federal regulatory agencies is an application I filed on behalf of four banks in Tennessee in November of 2013 to seek prior approval for the banks to form a jointly owned subsidiary to hold foreclosed property in which all four banks had participation interests in the loan to the property owners. Some additional development of the property was necessary before selling the property; therefore, for the sole reason to protect the four banks from liability for these operations, they decided to form a totally liability-protected Tennessee entity to hold and operate the assets until they could sell the assets and recoup their losses. For many years, I have filed similar applications for other banks, and I am sure there are probably thousands of banks following this same process to protect themselves from liability. Unfortunately, there is an unwritten, unannounced policy within the FDIC that if the subsidiary is formed as a limited liability company ("LLC"), rather than a corporation, even though they have the same exact corporate veil protections under the Model Business Corporation Act as implemented in Tennessee, the banks must seek prior approval from the FDIC before proceeding. We filed the application in November, the state approved in January, and it is now July, and we are still awaiting FDIC approval. The FDIC has not raised a single question that has to do with the LLC structure, and the request is obviously just sitting on someone's desk in Washington growing mold. In the meantime, the four banks have not yet foreclosed on the property, and are risking further deterioration in value and the filing of other liens against their collateral, further jeopardizing the safety and soundness of all four banks caused totally by regulatory delay without any purpose. I have made numerous phone calls to various persons within the FDIC, but nobody can explain why this request is being held. This is an example of the travesty of our current regulatory system. Some changes to the regulations, as I have suggested above, might have prevented this further damage to these community banks.

The regulatory agencies need to review each regulation under a microscope and determine the regulatory burden on not only the bank but also the agency, and then they can decide how to relieve this burden with some common sense exemptions if the institution has met certain criteria. This will lead to more progress for the industry and the economy that the industry serves and impacts.

Sincerely,

Steven J. Eisen

SJE:slk
cc: Senator Robert P. Corker
Congressman Jim Cooper
Commissioner Greg Gonzales (TDFI)
Collin Barrett, President, Tennessee Bankers Association