

RESCINDED

99-21

OCC 99 - 21

Subject: Community Bank-Focused Regulatory Review

Description: Advance Notice of Proposed Rulemaking

Date: June 3, 1999

This rescission does not change the status of the transmitted document. To determine the current status of the transmitted document, refer to the Code of Federal Regulations, www.occ.gov, or the original issuer of the document.

The attached advance notice of proposed rulemaking (ANPR) regarding the OCC's review of regulations that affect community banks was published in the Federal Register on May 12, 1999. The comment period for the rule expires on July 12, 1999.

The ANPR solicits public comment in several areas of OCC regulations that are of concern to community banks. These areas include:

- Corporate Activities and Transactions The OCC requests comment on whether to amend Part 5 to expand the list of operating subsidiary activities eligible for expedited filings or after-the-fact notices to include other low-risk activities commonly engaged in by community banks. The OCC also requests suggestions for alternative time frames or methods of providing public notice for community banks wishing to open or relocate new branches.
- Lending Limits The OCC requests comment on the extent to which national bank lending limits create competitive disparities between community banks and other types of lenders that are not subject to equally stringent limits. The agency solicits suggestions on how it might modify its regulations without negatively affecting safety and soundness.
- Corporate Governance The ANPR requests comment on how to provide additional flexibility in the corporate governance procedures of community banks, including whether to designate more state law provisions as acceptable models for national banks.
- Capital Requirements The ANPR invites comment on the OCC's current capital adequacy standards for community banks and requests specific suggestions for changes to Part 3.

In addition, the ANPR requests comment on any other rules the OCC could revise to address community bank concerns.

For further information, contact Stuart Feldstein, Assistant Director, or Heidi Thomas, Senior Attorney, Legislative and Regulatory Activities Division (202) 874-5090.

Julie L. Williams
Chief Counsel

Attachment 64 FR 25469

(3) There must not be a reduction in training and supervising of agents, loss adjusters, or underwriting and quality assurance personnel;

(4) There must not be a reduction in program integrity or an adverse affect on actuarial soundness;

(5) There must not be a reduction in the total delivery system's ability to serve all producers, including small producers, limited resource farmers as defined in the Basic Provisions, 7 CFR 457.8, minority producers, and producers located in areas with small volumes of crop insurance business;

(6) There must not be a reduction in the total delivery system's ability to provide risk management education to all producers;

(7) The efficiency must be measurable in dollar terms;

(8) RMA must be able to verify the existence and amount of the efficiency and that it is derived from the administrative and operating subsidy and not any expected underwriting gain;

(9) The efficiency must not derive from marketing or underwriting practices that are unfairly discriminatory; such as discriminating among producers on the basis of farm size or premium amount; and

(10) The premium reduction must not jeopardize or diminish the financial condition of the approved insurance provider.

(c) Each application will be reviewed to determine if all necessary documentation is included. FCIC may require changes or adjustments to the application consistent with the Act and FCIC's regulations.

(d) An application to reduce premium will not be approved if FCIC determines that it will discriminate against small producers, limited resources farmers as defined in section 1 of the Basic Provisions, 7 CFR 457.8, or minority producers.

(1) If the insurance provider proposes to offer the premium reduction to an identifiable group of producers or in a specific geographical area, then the premium reduction must be made available to all producers in that group or area, regardless of the amount of premium to be earned on the producer's policy.

(2) No group or geographical area may be defined in such a manner as to exclude small producers, limited resource farmers, or minority producers.

(e) The Director of the Reinsurance Services Division will notify the approved insurance provider of the action taken.

(1) If the application is disapproved, the approved insurance provider:

(i) Will be notified of the reason for disapproval and will be allowed to amend the application in an effort to obtain FCIC's approval. If the approved insurance provider amends the application, the review process starts again and it may not be possible to approve the application in time to have it applicable for the crop year for which such application was submitted; and

(ii) May request reconsideration of the decision with the Deputy Administrator of Insurance Services within 30 days of disapproval. Such request must provide a detailed narrative of the basis for reconsideration.

(2) Approval is solely within the discretion of FCIC.

(3) An approved application may be implemented by the approved insurance provider by the next sales closing date for the affected crop after approval by RMA.

(4) Approved applications for premium reduction will only be valid for the period specified by RMA.

(5) FCIC may rescind any approval at any time that it determines that the requirements imposed by this rule are no longer satisfied or if a change in the Act necessitates rescission. In such case, rescission will not take effect earlier than the date of FCIC's written notice to the approved insurance provider.

(6) The approved insurance provider must report all changes causing a material impact upon a previously-approved application to the Director of the Reinsurance Services Division.

§ 400.756. Records and Review.

At any time after approval, RMA may conduct a review or audit of any action approved under this subpart and require additional information or access to records pertaining to such actions. Failure to comply with this section will result in the impositions of sanctions in accordance with § 400.757.

§ 400.757 Sanctions.

(a) No crop insurance policy in violation of this subpart will be eligible for reinsurance, premium subsidy, or administrative and operating expenses. If reinsurance, premium subsidy, or administrative and operating expenses have been paid for such policy, they must be repaid to FCIC.

(b) Approved insurance providers are responsible for the conduct of all of their covered persons. If such covered person violates any provision in this subpart, the approved insurance provider will be held strictly liable.

Signed in Washington, DC, on May 4, 1999.

Kenneth D. Ackerman,
Manager, Federal Crop Insurance Corporation.

[FR Doc. 99-11759 Filed 5-11-99; 8:45 am]

BILLING CODE 3410-08-P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Chap. I

[Docket No. 99-05]

Community Bank-Focused Regulation Review

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is undertaking a review of its regulations with a view toward identifying rules that may impose disproportionate or unnecessary burden on community banks. This advance notice of proposed rulemaking (ANPR) identifies several parts of the OCC's regulations that are already under review, requests comment on changes that could be made to these regulations, and solicits suggestions for improvements in other areas that would be helpful to community banks. The intended effect of this action is to identify areas where the OCC could reduce unnecessary burden on community banks without impairing their safety and soundness.

DATES: Comments must be received by July 12, 1999.

ADDRESSES: Please direct your comments to: Docket No. 99-05, Communications Division, Third Floor, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC, 20219. You can inspect and photocopy all comments received at that address. In addition, you may send comments by facsimile transmission to FAX number (202) 874-5274, or by electronic mail to REGS.COMMENTS@OCC.TREAS.GOV.

FOR FURTHER INFORMATION CONTACT: Stuart Feldstein, Assistant Director, or Heidi Thomas, Senior Attorney, Legislative and Regulatory Activities, at (202) 874-5090.

SUPPLEMENTARY INFORMATION:

Background

The OCC supervises over 2,400 national banks that vary widely in size, business strategy, complexity, and

geographic diversity. The OCC has a strong commitment to ensure that our regulations encourage, rather than impede, national banks' efficiency and competitiveness, consistent with safety and soundness. Toward that end, we continually reevaluate our rules in order to identify and eliminate requirements that impose burdens on banks that are not necessary to maintain safety and soundness, promote fair access to financial services for consumers, or accomplish the OCC's other statutory responsibilities.

In 1996, the OCC completed a three-year, comprehensive effort to review and revise all of its regulations. The results of this effort, which was called the Regulation Review Program (Program), were positive. Most of the bankers, trade group representatives, banking lawyers, and consumer representatives whom the OCC asked about the effects of the Program thought that, on balance, it had been a success. While some of the regulatory changes made pursuant to the Program were designed to benefit community banks, the Program did not have the community bank charter as a particular focus.

The OCC recognizes that community banks operate with more limited resources than larger institutions and may present a different risk profile. For example, many community banks have more direct "hands-on" oversight by senior management and smaller spans of operations and controls such that less complex risk-management or compliance systems may be appropriate. Differences between community banks and larger banks in operational structure and focus may result in inefficient or uneven application of regulatory requirements. Therefore, we believe that it is appropriate to take a fresh look at our regulations with the community bank perspective in mind.¹

Specifically, the OCC is considering further changes to our regulations that would take into account the impact the rules have on community banks' resources, as well as other factors that bear on community banks' operations. For example, community banks typically have smaller, less specialized staffs than larger banks, so the burden of complying with complex regulations is proportionately higher. The purpose

of our community bank-focused regulation review is to eliminate or modify regulatory requirements that impose unnecessary burden. In addition, we are seeking to identify regulations as to which it may be appropriate to develop alternative, differential regulatory approaches that will achieve the OCC's goals while minimizing burden on community banks.

This advance notice describes four areas of regulation that the OCC is already reviewing. In those areas, commenters are invited to make specific suggestions for change. Depending on the results of the OCC's own review and the suggestions made by commenters, we will then consider proposing specific revisions to our rules for comment. In addition, commenters on this advance notice are invited to suggest other regulations that could be modified in ways helpful to community banks.

A few of the OCC's regulations distinguish among banks based on asset-size categories and apply different requirements to smaller banks. For example, 12 CFR part 25, the regulation implementing the Community Reinvestment Act (CRA), provides for alternative means of compliance for banks with less than \$250 million in assets. The OCC does not have a standard, generally applicable definition of "community bank," however. We invite comment on whether to adopt such a definition for purposes of this regulation review. If so, should the definition be based primarily on asset size, and what should the asset threshold be? Should the OCC consider factors other than asset size, such as whether the bank is the sole provider of banking services in a community, regardless of asset size?

Areas Currently Under Review

Part 5—Corporate Activities and Transactions

Community banks, like larger national banks, routinely seek OCC approval for different types of corporate transactions. Recent amendments to the OCC's operating subsidiary rule reduced burden by grouping procedures for OCC approval of operating subsidiary activities into different categories based upon the novelty of the activity and level of risk it presents. The required approval procedures vary depending upon the group in which the activity is placed. For example, qualifying national banks need only file a simple after-the-fact notice for certain, so-called "plain vanilla" activities (e.g., providing accounting, data processing, and other

business services for the bank or its affiliates). A 30-day review under an expedited filing procedure may be available for more complex operating subsidiary activities. See 12 CFR 5.34(e).

We invite comment on whether and how we could improve the current rule to further reduce application burden for community banks seeking to engage in certain routine bank-permissible activities. Specifically:

(1) Should the OCC expand the list of activities eligible for after-the-fact notice or expedited filing to include more activities that do not present significant safety and soundness concerns?

(2) What types of activities should the OCC include in such an expanded list?

Banks that have experience with the OCC's applications process are also invited to make suggestions about how that process could be streamlined or improved for community banks. For example, could the OCC modify the process to reduce the need for, and therefore the costs of, community bank reliance on outside expertise to help them comply with filing requirements?

Branching is an area in which community banks are especially active. In 1998, national banks with assets of less than \$250 million filed approximately 358 branching applications. National banks with assets of between \$250 million and \$1 billion filed 213 branching applications. OCC intrastate branch application procedures generally require a 30-day public comment period and a decision no later than 15 days after the close of the public comment period or 45 days after the filing, whichever is later, for applications qualifying for expedited processing, and no later than 30 days after the close of the comment period for applications subject to standard processing. (The comment period for applications to engage in a short-distance branch relocation is 15 days.) OCC rules also require an applicant to publish notice of its filing in a newspaper of general circulation in the community in which the applicant proposes to engage in business.

We are requesting comment on whether there are alternative time frames or methods of providing public notice that would reduce burden for community banks while preserving the ability of the public to provide meaningful comment pursuant to the CRA or otherwise. For example:

(1) Would posting a conspicuous notice at the main office and all existing branches of the bank in lieu of newspaper publication reduce unnecessary burden but still provide adequately for public participation?

¹ The OCC already recognizes and incorporates into its supervisory approach the distinctions between large banks and community banks. The OCC has, for example, developed approaches to examination and supervision that are appropriate to each charter type. See, e.g., *Comptroller's Handbook*, Community Bank Supervision (August 1998), Large Bank Supervision (July 1998). See also *id.*, Community Bank Fiduciary Activities Supervision (December 1998).

(2) Are there other reasonable regulatory alternatives that would be less burdensome for community banks but that are consistent with statutory requirements and the OCC's supervisory goals?

Part 32—Lending limits

Federal law (12 U.S.C. 84) limits the amount of loans and extensions of credit a national bank can make to any one borrower to 15 percent of a national bank's unimpaired capital and surplus. A bank may lend an additional 10 percent if the credit is secured by readily marketable collateral. Section 84 also provides exceptions to these limits for various types of loans or extensions of credit, such as loans secured by certain obligations of the United States or fully guaranteed by the United States, loans secured by a segregated deposit account, and loans arising from the discount of certain types of commercial paper. The OCC is authorized to issue rules to carry out the purposes of Section 84 and to establish limits or requirements other than those specified in this section for particular classes or categories of loans or extensions of credit. The OCC's rule implementing section 84 is set forth at 12 CFR part 32.

Community banks in a number of states have represented to the OCC that disparities in the lending limits applicable to national banks impair their ability to provide effective and competitively priced services in many cases. We are interested in obtaining further information about the extent to which these limits may constrain community banks from prudently extending credit, especially as compared with other financial services providers in the markets in which they compete. Commenters are invited to provide specific information about such disparities in particular states, and to address the following questions:

(1) Does the national bank lending limit create competitive disadvantages for community banks?

(2) Are community banks operating under national charters losing significant business to competitors, as a result of the constraints imposed by the national bank lending limits? If so, which types of lending are most heavily affected?

(3) Are there factors in addition to the lending limits that could be contributing to this business loss?

Because the lending limit promotes diversification of credit risk, which is fundamental to the safe and sound operation of banks, the OCC must undertake any revisions to the national bank lending limit rules with great care. Commenters who recommend changes

to the OCC's lending limit rule therefore are asked to:

(1) Identify specific categories of loans or borrowers that might be addressed;

(2) Identify prudential conditions that the OCC might impose, to ensure that any change is implemented consistent with safety and soundness; and

(3) Discuss whether any changes to the lending limits should include safeguards, such as collateralization or margin requirements, similar to those imposed by some states with lending limits that exceed those in 12 CFR part 32.

Commenters are also invited to evaluate the effect of the lending limit rules on structures, such as loan participations, that are commonly used to diversify credit risk and to recommend any changes to these provisions that would facilitate community banks' use of these structures, consistent with safety and soundness.

Part 7—Corporate Governance

The OCC recently revised some of its rules to enhance a national bank's flexibility to use the corporate governance procedures that are best suited to a particular bank's operations. For example, part 7 of our regulations now permits national banks to adopt the corporate governance provisions in the law of the state where the main office of the bank is located, the state where the holding company of the bank is incorporated, the Delaware General Corporation Law, or the Model Business Corporation Act, to the extent that these standards are not inconsistent with applicable federal banking statutes or regulations, or bank safety and soundness.

Community bank operations and management may present unique concerns from a corporate governance perspective, and we invite comment on whether there are additional ways to enhance the flexibility of existing procedures. For example, are there specific state law provisions that we should consider including in the regulation as appropriate for adoption by community banks?

Part 3—Capital Adequacy

The OCC, and the other federal banking agencies,² measure banks' capital adequacy according to a detailed set of uniform standards based on an international agreement, commonly

²The OCC's capital adequacy standards appear at 12 CFR part 3. The Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) each have regulations containing similar standards.

referred to as the Basle Accord, which was concluded in 1988 by the Basle Committee on Banking Regulations and Supervisory Practices (the Basle Committee).³ The 1988 Accord applies to internationally active banks.⁴ The OCC's capital adequacy standards, however, apply to all national banks, and the other agencies' standards similarly apply to all of the institutions they supervise.

The OCC is interested in learning commenters' views about whether the differences in activities and levels and types of risks between large and community banks warrant a differential approach to supervising capital adequacy. Commenters addressing this issue are invited to:

(1) Suggest a different, simpler overall approach to measuring capital adequacy for community banks; and

(2) Identify specific aspects of the OCC's part 3 standards that could be revised or applied differently to community banks.

The part 3 capital adequacy standards are linked directly to the prompt corrective action (PCA) provisions in 12 CFR part 6 of the OCC's rules. The capital categories used for PCA purposes (e.g., well capitalized, adequately capitalized, etc.) are defined by reference to the standards and definitions in part 3. The PCA framework, which derives from statute,⁵ is a crucial component of safety and soundness supervision. Like the capital adequacy standards, it has been implemented jointly by the OCC and the other federal banking agencies. Accordingly, commenters favoring a differential approach to capital adequacy supervision for community banks are encouraged to address how such an approach could be implemented consistent with the PCA requirements.

We expect to use the information that commenters provide on this issue to inform our discussions with the other agencies about alternative approaches to

³This Committee is now known as the Basle Committee on Banking Supervision. The Basle Committee was established in 1975 by the central bank Governors of the Group of Ten Countries. It consists of senior representatives of bank supervisory authorities and central banks from Belgium, Canada, France, Germany, Italy, Japan, Luxembourg, the Netherlands, Sweden, Switzerland, the United Kingdom, and the United States. It usually meets at the Bank for International Settlements in Basle, where its permanent Secretariat is located.

⁴The Basle Committee is currently considering revisions to the 1988 Accord. Any changes would be subject to a consultative process and are expected also to apply to internationally active banks.

⁵See 12 U.S.C. 1831o (PCA statute); 12 CFR part 6 (OCC PCA regulation).

evaluating capital adequacy for small institutions. After receiving comments in response to this ANPR, the OCC will consult with the other agencies to determine if modifications to the capital regulations are appropriate.

Comment Solicitation

The OCC invites comment generally on each of the areas identified in this advance notice, as well as specifically on the questions asked in each area. For each of these areas, we are interested in:

- (1) Whether existing rules are requiring inefficient allocation of the bank's existing resources or imposing undue burdens on in-house staff.
 - (2) What community bank lines of business or community bank operations are affected by the rule and what specific requirements require the bank to obtain expertise from outside sources?
 - (3) Could we change or modify specific provisions to reduce burdens on community banks without compromising safety and soundness standards?
 - (4) Are there reasonable regulatory alternatives that would be less burdensome for community banks?
- In addition, commenters on this notice are invited to suggest other regulations that could be modified in ways helpful to community banks.

Dated: May 4, 1999.

John D. Hawke, Jr.,

Comptroller of the Currency.

[FR Doc. 99-12011 Filed 5-11-99; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 050399D]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 2-day public meeting on May 26 and 27, 1999, to consider actions affecting New England fisheries in the exclusive economic zone.

DATES: The meeting will be held on Wednesday, May 26, 1999, at 9:30 a.m.

and on Thursday, May 27, 1999, at 8:30 a.m.

ADDRESSES: The meeting will be held at the Sheraton Plymouth Inn, 180 Water Street, Plymouth, MA 02360; telephone (508) 747-4900. Requests for special accommodations should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, MA 01906-1036; telephone: (781) 231-0422. Copies of framework adjustment documents may be obtained from the Council.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (781) 231-0422.

SUPPLEMENTARY INFORMATION:

Wednesday, May 26, 1999

After introductions, the Executive Director of the South Atlantic Fishery Management Council will discuss the Atlantic Coastal Cooperative Statistics Program process from a Council perspective. During the Groundfish Committee Report which follows, the committee will make recommendations to the Council regarding approval of Framework Adjustment 31 (FWA 31) to the Northeast Multispecies Fishery Management Plan (FMP). Possible management measures on FWA 31 would require vessels in the multispecies fishery to remove four 30-day blocks out of their fishing time in the fishery to achieve the FMP objectives for Georges Bank cod and minimize impacts on other regulated species. Other possible measures in this framework include eliminating the Gulf of Maine cod trip limit program running clock, raising the cod minimum size to 21 inches (0.5 m), and reducing the number of hooks and gillnets fished by fixed gear vessels on Georges Bank. The Groundfish Committee also will provide the Council with an update on the development Amendment 13 to the FMP. The discussion of groundfish issues will continue throughout the rest of the afternoon.

Thursday, May 27, 1999

The meeting will commence with reports from the Council Chairman, Executive Director, Acting NMFS Regional Administrator, Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons, and representatives of the Coast Guard and the Atlantic States Marine Fisheries Commission. During the Scallop Committee Report, the Council will identify issues to be addressed by Amendment 10 to the Atlantic Sea Scallop FMP, including

rotational area management. Additionally, the Council will issue recommendations to the Acting Regional Administrator for specific research proposals utilizing the 1 percent scallop Total Allowable Catch set-aside from Closed Area II. During the Whiting Committee Report, the committee will recommend ways to modify the mesh size/possession limit enrollment program and expand the use of net strengtheners to the 2.5 inch (0.06 m) category in the whiting fishery. Any recommendations approved by the Council may be submitted to NMFS for its consideration as a public comment on Amendment 12 to the Northeast Multispecies Fishery Management Plan. The Council will discuss industry-based gear research and information collection opportunities during years 1 and 2 of plan implementation. During the afternoon session, the Interspecies Committee will report on and ask for approval of committee priorities, including vessel permit consistency and upgrading issues and recommendations for changing the start dates of the fishing years. The committee will report on their discussions about vessel capacity management. The Habitat, Enforcement, Dogfish, Herring, and Ad-hoc Vessel Buyback Committees will update the Council on their activities.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice.

Documents pertaining to framework adjustment actions are available for public review 7 days prior to a final vote by the Council. Copies of the documents may be obtained from the Council (see **ADDRESSES**).

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: May 6, 1999.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99-12031 Filed 5-11-99; 8:45 am]

BILLING CODE 3510-22-F