

## Recommendations

The following are AABD's recommendations to address the overwhelming regulatory burdens facing bank directors:

1. Each of the federal banking agencies should immediately initiate a review of their existing regulations and written guidance that places responsibilities on bank directors, their boards of directors or board committees. The purpose of the review is to evaluate the overall impact of the body of laws, regulations and regulatory guidance on bank directors, their boards of directors and their board committees; to eliminate unnecessary and duplicative regulations or guidance; to eliminate all regulations and guidance where the burden on bank directors and their boards and board committees outweighs the benefit from such regulations and guidance; and to organize the surviving regulations and guidance in a way that is easily retrievable and usable by bank boards of directors. In evaluating the burden of existing rules and guidance, the agencies should consider the cumulative effect of the body of banking laws, regulations and regulatory guidance on directors, the board of directors, and board committees.
2. The federal banking agencies should incorporate into their procedures a requirement that they will thoroughly consider the impact of new proposed rules or guidance on the burdens facing bank directors, including their cumulative effect, and not add to the burden of bank directors unless the benefits of the proposed rule or guidance outweigh the burdens placed on bank directors.
3. In addition, each of the federal banking agencies should propose by September 30, 2012 and adopt rules and guidance no later than June 30, 2013 that will clarify that bank boards of directors may delegate management duties to management and rely reasonably on management to perform such duties.
4. The federal banking agencies should undertake a review of the obligations that they are creating for boards of directors and board committees through formal and informal enforcement and administrative actions to determine the extent to which those actions are creating management-like burdens and responsibilities on bank boards, and take steps to assure that in the future, such enforcement/administrative actions will not force bank boards and board committees to undertake management responsibilities.
5. The reviews described in Recommendations #1 and #4, above, should be completed no later than December 31, 2012, and should be publicly disseminated and presented to the House Committee on Financial Services and the Senate Committee on Banking, Housing and Urban Affairs, with a set of recommendations for action.

6. Following the receipt of the reviews described in Recommendations #1 and #4, the Senate Committee on Banking, Housing and Urban Affairs and the House Committee on Financial Services should hold hearings at which representatives of each of the federal banking agencies will testify.
7. Based on the record of the hearings and any supplemental information, the House Committee on Financial Services and the Senate Committee on Banking, Housing and Urban Affairs, should take appropriate oversight action to help assure that the agencies will take reasonable steps to eliminate burdens on bank directors that are not outweighed by the benefits from such burdens, and propose legislation that will repeal or amend provisions of federal banking law whose burdens on boards of directors exceed the benefits.
8. The OCC<sup>24</sup> and FDIC<sup>25</sup> currently are, or will soon be, undertaking a substantive review of their regulations in order to identify any regulations that are “outmoded, ineffective, insufficient, or excessively burdensome.” Both agencies expect to invite public comment on the regulatory burden pursuant to the next round of EGRPRA in early 2012. AABD recommends that the participating agencies open public comment to all current regulations and guidance that imposes responsibilities on bank boards of directors or their committees to determine which are unnecessary or unduly burdensome, consistent with Recommendation #1, above.

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<sup>24</sup> Letter from John Walsh, Acting Comptroller of the OCC addressed to Cass Sunstein (Nov. 29, 2011), *available at* [www.occ.treas.gov/topics/laws-regulations/increasing-regulatory-effectiveness.pdf](http://www.occ.treas.gov/topics/laws-regulations/increasing-regulatory-effectiveness.pdf)

<sup>25</sup> <http://www.fdic.gov/regulations/laws/plans/index.html>