



This Second Edition of the AABD Bank Director Regulatory Report comes as the federal banking agencies begin to conduct their decennial review of regulatory burdens on banks and savings institutions due in 2016 as required by Section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA).

At this writing, AABD is not optimistic that the agencies will even consider the bank regulatory burdens on bank directors that they have added to over many years. To evaluate regulatory burdens on banks without also considering regulatory burdens on bank directors makes no sense to us.

Our 2012 First Edition detailed more than 800 provisions in statute, regulation and regulatory guidance that require bank and savings institution directors to take action in various forms. Over fifty written policies must be approved by directors – almost one a week. But that is just the beginning.

Some of these requirements are management in character for which the board of directors is unsuited to fulfill.

Many of the obligations imposed on bank directors are created through regulatory “guidance” or “guidelines” which generally are not adopted through rule making procedures and therefore are not considered rules or regulations. Yet, in the world of banking supervision, written guidance is often considered as important to bank examiners as rules or regulations, and they apply them during examinations as if they were rules. Conscientious bank directors will want their banks to meet the guidelines and will expend time and resources in order to accomplish that. As such these guidelines add to the burdens faced by bank directors. That is the reason why the federal banking agencies should evaluate guidelines creating burdens just as they evaluate regulations, even though EGRPRA does not require such a review.

In its First Edition, AABD proposed a set of recommendations to Congress and the federal banking agencies to reduce the burdens on bank directors. None have been adopted. Instead, the agencies have continued to add to the burdens without eliminating any.

In our recently completed survey measuring the impact of fear of personal liability on the willingness of persons to serve as directors, the second leading reason cited for director candidates not to accept director positions was time commitments (the first reason was fear of personal liability). It is well-known that the vast majority of bank directors are paid modest sums to serve on their boards at the same time being overburdened and at risk of personal liability. It used to be a great honor to serve on the board of a bank. No longer is that a sufficient reason to serve.

We also know from working closely with bank directors that once a board and its committees wade through legal requirements, compliance and bank regulatory obligations, there is little time for strategic planning. The community banking model’s viability is being questioned as never before. Many community banks are struggling to make a reasonable return for their shareholders. Some are

questioning whether they are in a dying industry and it is time to sell. Banks of all sizes are finding that challenges facing the banking industry require boards of directors to spend more time on strategic planning, but that time is simply not available.

Our 2012 recommendations are still timely, in part because the federal banking agencies have done little or nothing to address them.

The obligations listed in this Second Edition under OTS citations are now subject to the jurisdiction of the OCC.

This Second Edition updates new regulatory requirements that add to the already exceedingly long list of obligations placed on bank directors.

We urge the federal banking agencies and the U.S. Congress to revisit, as part of the decennial review of regulatory burdens required by Section 2222 of EGRPRA, our recommendations from our First Edition. These include:

- An agency evaluation of existing regulations and written guidance specifying bank director responsibilities to determine the overall burden on bank directors; eliminate unnecessary and duplicative requirements and requirements that are management in character or where the burden outweighs the benefits from such regulation or guidance; and organize the requirements so that they are easily retrievable and usable;
- Incorporation into the agencies' procedures a requirement that they will thoroughly consider the impact of proposed regulations or guidance on the burdens on bank directors, including their cumulative effects, and not add to the burdens unless the benefits of the proposed rule or guidance clearly outweigh the burdens;
- Proposal and adoption of a rule by the agencies that clarifies that bank boards of directors may delegate management duties to management and rely reasonably on management to perform such duties without incurring personal liability;
- As part of the decennial review, a proposal by the agencies in the Federal Register that opens public comment to all current regulations and guidance that impose responsibilities on bank boards of directors or their committees to determine which ones are unnecessary or unduly burdensome.

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