

FINAL COMMUNITY REINVESTMENT ACT RULES ISSUED

On July 19, 2005, the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (together, the “federal banking agencies”) issued a joint final rule on Community Reinvestment Act (CRA) rules. The CRA was passed to ensure that federal banking and thrift agencies meet the credit needs of the entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the institution.

The federal banking agencies



FDIC-insured institutions will be required to comply with new CRA rules this September

proposed the changes in March 2005 and received substantial feedback from both community organizations and banking institutions. The comments were taken into account when creating the final rules.

The changes to the CRA include the following:

- “community development” under the CRA definitions can now include activities that revitalize or stabilize designated disaster areas and distressed or underserved rural areas;
- intermediate small banks (those with assets between \$250 million and \$1 billion) will no longer need to collect and report CRA loan data; and
- intermediate small banks will be evaluated under two separately rated tests: the small bank lending test and a flexible new community development test that includes an evaluation of community development in terms of community needs and the capacity of the bank.

Furthermore, the final rule adopts without change the proposed

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amendment stating that evidence of discrimination, or evidence of credit practices that violate an applicable law, rule, or regulation, will adversely affect a bank’s CRA evaluation.

These final rules will become effective as of September 1, 2005; however, the federal banking agencies will have interim CRA examination procedures for intermediate small banks in place by August 1, 2005. The federal banking agencies intend to issue interagency CRA guidance for comment in the near future.

In light of these recent changes, it is advisable for banks to re-evaluate their community development practices to ensure compliance with the new CRA rules.■

ELECTRONIC SIGNATURES FOR BENEFIT PLANS

On July 13, 2005, the Internal Revenue Service (IRS) and the Department of the Treasury (Treasury) issued proposed regulations on the use of electronic media to provide notices to employee benefit plan participants and to transmit elections or consents regarding employee benefit plans.

The proposed regulations mark an attempt to coordinate existing regulations with the requirements of the Electronic Signatures in Global and National Commerce Act (E-SIGN).

In general, the proposed regulations would affect sponsors of, and participants and beneficiaries in, certain employee benefit plans,

including qualified plans and health savings account under Section 223. However, these regulations would not apply to items required under provisions over which certain other federal agencies have interpretative

E-SIGN was enacted in 2000 to facilitate the use of electronic records and signatures in interstate and foreign commerce by ensuring the validity of contracts entered into electronically.

authority, such as summary plan descriptions and COBRA notices.

Like E-SIGN, these proposed regulations would require that businesses obtain consent to receive

information electronically that a law requires to be in writing, but they would also act as a “safe harbor” with respect to any communication that is not required to be in written form. Furthermore, the proposed regulations would require that the consent be made “in a manner that reasonably demonstrates the consumer’s ability to access the information in electronic form”, and prior to consent, the consumer must receive certain specified disclosures.

It is important to monitor these proposed regulations as they could affect the way that your company communicates with its employee benefits plan participants.■

AMENDMENT TO AUDIT AND REPORTING REQUIREMENTS PROPOSED

On July 19, 2005, the Board of Directors of the Federal Deposit Insurance Corporation (FDIC) approved a proposed amendment to its annual audit and reporting requirements.

As proposed, the FDIC would amend Part 363 of its regulations by doubling the asset-size threshold from its current level of \$500 million to \$1 billion for (i) internal control assessments by management and attestations by external auditors, and (ii) members of the audit committee to be independent of management.

If the proposed amendment becomes final, this effectively means the following for FDIC-covered institutions with total assets of less than \$1 billion:

- management would no longer be required to assess and report on the effectiveness of internal control over financial reporting,
- external auditors would no longer be required to examine and attest



The FDIC may approve an amendment to its annual audit requirements

- to management's internal control assertions, and
- the outside directors on the audit committee would no longer be required to be independent of management.

These amendments are proposed to take effect on December 31, 2005.

It is important to note that the FDIC's proposals, even if passed, would not relieve public companies from their Sarbanes-Oxley requirements or the Securities and Exchange Commission's rules and regulations on internal control assessments by management and attestations by external auditors and audit committee independence. ■

DIRECTORS AND OFFICERS INSURANCE POLICY PAYS OFF

SkillSoft PLC (SkillSoft), a provider of e-learning and technology products for businesses and information technology professionals, recently announced that its insurance company, American International Group, Inc. (AIG), agreed to pay \$15 million in connection with previously settled class action lawsuits.

In early 2004, SkillSoft agreed to settle class action lawsuits filed against the company and certain former and current officers and directors alleging violations of the federal securities laws. The class actions were filed in connection with the restatement of the historical financial statements of SmartForce PLC, with which SkillSoft

merged. At the time of the settlement, AIG was SkillSoft's lead directors and officers insurance carrier.

The \$15 million paid by AIG is nearly half of the amount, \$30.5 million, that SkillSoft paid in the class action settlement. With respect to the remaining amount, SkillSoft is currently in negotiations with its secondary directors and officers insurance providers.

As illustrated by this case, companies

should review their directors and officers insurance policies on a regular basis to ensure that such policies provide adequate coverage to protect against unfavorable settlements. ■

DIRECTORS AND OFFICERS LIABILITY INSURANCE PROVIDES FINANCIAL PROTECTION FOR THE DIRECTORS AND OFFICERS OF YOUR COMPANY IN THE EVENT THEY ARE SUED IN CONJUNCTION WITH THE PERFORMANCE OF THEIR DUTIES AS THEY RELATE TO THE COMPANY.

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